

#### **D. Status of compliance with the recommendations of the IACHR**

35. 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 twelve years.

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

37. 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.

38. 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 2012.

39. 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.

40. The three categories included in the table are the following:
- a. 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);
  - b. 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);
  - c. Compliance pending (those cases in which the IACHR considers that there has been no compliance with the recommendations because no steps have been taken in that direction; because the state has explicitly indicated that it will not comply with the recommendations made; or because the state has not reported to the IACHR and the Commission has no information from other sources that would suggest otherwise).

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.307, Report No. 103/01, María Merciadri de Morini (Argentina) <sup>1</sup>	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) <sup>2</sup>	X		
Case 12.536, Report No. 17/10, Raquel Natalia Lagunas and Sergio Antonio Sorbellini (Argentina)		X	
Petition 242-03, Report No. 160/10, Inocencia Luca Pogoraro (Argentina)		X	
Petition 4554-02, Report No. 161/10, Valerio Castillo Báez (Argentina)		X	
Petition 2829-02, Report No. 19/11, Inocencio Rodríguez (Argentina)		X	
Petition 11.708, Report No. 20/11, Aníbal Acosta and L. Hirsch (Argentina)		X	

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

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

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 11.833, Report No. 21/11, Ricardo Monterisi (Argentina) <sup>3</sup>	X		
Petition 12.532, Report No. 84/11, Penitencieras de Mendoza (Argentina)		X	
Petition 12.306, Report No. 85/11, Juan Carlos de la Torre (Argentina)		X	
Petition 11.670, Report No. 168/11, Menéndez and Caride (Argentina)	X		
Case 11.395, Report No. 73/11, Juan José López (Argentina)		X	
Cases 12.067, 12.068 and 12.086, Report No. 48/01, Michael Edwards, Omar Hall, Brian Schroeder and Jeronimo Bowleg (Bahamas)			X
Case 12.265, Report 78/07 Chad Roger Goodman (Bahamas)			X
Case 12.513, Report 79/07 Prince Pinder (Bahamas)			X
Case 12.053, Report No. 40/04, May Indigenous Community of the Toledo District (Belize)			X
Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)		X	
Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia) <sup>4</sup>	X		
Petition No. 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia) <sup>5</sup>	X		
Petition No. 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia) <sup>6</sup>	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	

<sup>3</sup> See IACHR, *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 180-183.

<sup>4</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 109-114.

<sup>5</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 115-19.

<sup>6</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 120-124.

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.289, Report No. 95/03, José Pereira (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) <sup>7</sup>	X		
Case 12.001, Report No. 66/06, Simone André Diniz (Brazil)		X	
Case 12.019, Report No. 35/08 Antonio Ferreira Braga (Brazil)			X
Case 12.310, Report No. 25/09 Segastião Camargo Filho (Brazil)			X
Case 12.440, Report No. 26/09 Wallace de Almeida (Brazil)			X
Case 12.308, Report No. 37/10, Manoel Leal de Oliveira (Brazil)			X
Case 12.586, Report No. 78/11, John Doe (Canada)		X	
Case 11.771, Report No. 61/01, Samuel Alfonso Catalán Lincoleo (Chile)		X	
Case 11.715, Report No. 32/02, Juan Manuel Contreras San Martín <i>et al.</i> (Chile) <sup>8</sup>	X		
Case 12.046, Report No. 33/02, Mónica Carabantes Galleguillos (Chile) <sup>9</sup>	X		
Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile)		X	
Petition 4617/02, Report No. 30/04, Mercedes Julia Huenteao Beroiza <i>et al.</i> (Chile)		X	
Case 12.142, Report No. 90/05, Alejandra Marcela Matus Acuña <i>et al.</i> (Chile) <sup>10</sup>	X		
Case 12.337, Report No. 80/09, Marcela Andra Valdés Díaz (Chile) <sup>11</sup>	X		
Petition 490-03, Report No. 81/09 "X" (Chile) <sup>12</sup>	X		
Case 12.469, Report No. 56/10, Margarita Barberia Miranda (Chile)		X	

<sup>7</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 162-175.

<sup>8</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 187-190.

<sup>9</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 191-194.

<sup>10</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 216-224.

<sup>11</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 298-302.

<sup>12</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR.

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 12.281, Report No. 162/10, Gilda Rosario Pizarro et al. (Chile)	X		
Case 12.195, Report No. 163/10, Mario Alberto Jara Oñate (Chile)	X		
Case 12.232, Report No. 86/11, María Soledad Cisternas (Chile)	X		
Case 11.654, Report No. 62/01, Riófrío 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	
Case 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia) <sup>13</sup>	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) <sup>14</sup>	X		
Petition 477-05, Report No. 82/08 X and family (Colombia) <sup>15</sup>	X		
Petition 401-05, Report No. 83/08 Jorge Antonio Barbosa Tarazona <i>et al.</i> (Colombia)		X	
Case 10.916, Report No. 79/11, James Zapata Valencia y José Heriberto Ramírez (Colombia)		X	
Case 12.476, Report No. 67/06, Oscar Elias Biscet <i>et al.</i> (Cuba)		X	
Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo <i>et al.</i> (Cuba)			X
Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)		X	
Case 11.439, Report No. 94/00, Byron Roberto Cañaverl (Ecuador)		X	
Case 11.445, Report No. 95/00, Ángelo Javier Ruales Paredes (Ecuador) <sup>16</sup>	X		

<sup>13</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 329-333.

<sup>14</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 274-280.

<sup>15</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 339-444.

<sup>16</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 283-286.

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
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	
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	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
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 11.765, Report No. 55/02, Paul Lallion (Grenada)		X	
Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)		X	
Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala)		X	
Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)		X	
Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay <i>et al.</i> ; Case 10.799 Catalino Chochoy <i>et al.</i> ; Case 10.751 Juan Galicia Hernández <i>et al.</i> and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales <i>et al.</i> (Guatemala)		X	
Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo <i>et al.</i> (Guatemala)		X	
Case 11.382, Report No. 57/02, Finca "La Exacta" (Guatemala)		X	
Case 11.312, Report No. 66/03, Emilio Tec Pop (Guatemala)		X	
Case 11.766, Report No. 67/03, Irma Flaquer (Guatemala)		X	
Case 11.197, Report No. 68/03, Community of San Vicente de los Cimientos (Guatemala)		X	
Petition 9168, Report No. 29/04, Jorge Alberto Rosal Paz (Guatemala)		X	
Petition 133/04, Report No. 99/05, José Miguel Mérida Escobar (Guatemala)		X	
Case 10.855, Report No. 100/05, Pedro García Chuc (Guatemala)		X	
Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala)		X	
Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)		X	

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.422, Report No. 1/12, Mario Alioto López sánchez (Guatemala)		X	
Case 12.546, Report No. 30/12, Juan Jacobo Arbenz Guzmán (Guatemala)		X	
Petition 714-06, Report No. 123/12, Angelica Jerónimo Juárez (Guatemala) <sup>17</sup>	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
Petition 11.805, Report No. 124/12, Carlos Enrique Jaco (Honduras) <sup>18</sup>			
Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique y Dalton Daley (Jamaica)		X	
Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)		X	
Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)		X	
Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)		X	
Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)		X	
Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)			X
Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)		X	
Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)		X	
Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)			X
Case 11.807, Report 69/03, José Guadarrama (Mexico) <sup>19</sup>	X		
Petition 388-01, Report 101/05 Alejandro Ortiz Ramírez (Mexico) <sup>20</sup>	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) <sup>21</sup>	X		

<sup>17</sup> See IACHR, Friendly Settlement Report No. 123/12, Petition 714-06 (Angelica Jerónimo Juárez), November 12, 2012.

<sup>18</sup> See IACHR, Friendly Settlement Report No. 124/12, Case 11.805 (Carlos Enrique Jaco), November 12, 2012.

<sup>19</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 552-560.

<sup>20</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 562-562.



CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez <i>et al.</i> (Mexico) <sup>22</sup>		X	
Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (Mexico)			X
Case 12.642, Report No. 90/10, Jose Ivan Correa Arevalo (Mexico)		X	
Case 12.660, Report No. 91/10, Ricardo Ucan Seca (Mexico) <sup>23</sup>	X		
Case 12.623, Report No. 164/10, Luis Rey Garcia (Mexico) <sup>24</sup>	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 12.431, Report No. 121/10, Carlos Alberto Mojolí (Paraguay) <sup>25</sup>	X		
Case 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru) <sup>26</sup>	X		
Case 11.031, Report No. 111/00, Pedro Pablo López González <i>et al.</i> (Peru)		X	
Cases 10.247 and others, Report No. 101/01, Luis Miguel Pasache Vidal <i>et al.</i> (Peru)		X	
Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru)		X	
Case 12.035; Report No. 75/02, Pablo Ignacio Livia Robles (Peru) <sup>27</sup>	X		

<sup>21</sup> See IACHR, *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 833-844

<sup>22</sup> See IACHR, *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 833-844.

<sup>23</sup> See IACHR *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 876-881.

<sup>24</sup> See IACHR *Annual Report 2011*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 982-987.

<sup>25</sup> See IACHR *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 904-908.

<sup>26</sup> See IACHR *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 928-935.

<sup>27</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 332-335.

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.149, Report No. 70/03 Augusto Alejandro Zúñiga Paz (Peru) <sup>28</sup>	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) <sup>29</sup>	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	
Petitions 71-06 et al, Report No. 22/11, Gloria José Yaquetto Paredes et al (Peru)		X	
Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)			X
Case 9903, Report No. 51/01, Rafael Ferrer Mazorra <i>et al.</i> (United States)			X
Case 12.243, Report No. 52/01, Juan Raul Garza (United States)			X
Case 11.753, Report No. 52/02, Ramón Martínez Villarreal (United States)			X
Case 12.285, Report No. 62/02, Michael Domingues (United States) <sup>30</sup>	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	

<sup>28</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 336 and 337.

<sup>29</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 613-616.

<sup>30</sup> See IACHR *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 185-186.

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)			X
Case 11.331, Report No. 99/03, Cesar Fierro (United States)			X
Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)		X	
Case 12.412, Report No. 101/03, Napoleon Beazley (United States)		X	
CASE 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)			X
Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)		X	
Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)			X
Case 12.534, Report No. 63/08 Andrea Mortlock (United States)			X
Case 12.644, Report No. 90/09 Medellín, Ramírez Cárdenas and Leal García (United States)			X
Case 12.562, Report No. 81/10, Wayne Smith, Hugo Arnedariz et al. (United States)			X
Case 12.626, Report No. 80/11, Jessica Lenahan (Gonzales) (United States)		X	
Case. 12.776, Report No. 81/11, Jeffrey Timothy Landrigan (United States)			X
Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay) <sup>31</sup>	X		
Petition 228-07, Report no. 18/10, Carlos Dogliana (Uruguay) <sup>32</sup>	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)**

41. 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

<sup>31</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 1109-1116.

<sup>32</sup> See IACHR *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 1033-1039.

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.

42. 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.

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

44. 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.

45. 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.

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

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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".

56. 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.

57. 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.

58. 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.

59. In communications sent on December 3, 2012 and October 10, 2013, the Commission asked the parties to provide up-to-date information on progress in implementing the pending recommendations.

60. With regards to the commitments adopted by the State, the Commission had already taken as fulfilled the aspects of the friendly settlement agreement concerning financial compensation and the agreement's publication. The Commission has received no updates regarding the duty to investigate and punish those responsible for violation of Juan Ángel Greco's human rights.

61. By communication of December 9, 2013, the State provided information concerning progress in the commitments adopted by the authorities of Chaco Province. In that communication, the authorities said that Judgment No. 62, issued on May 31, 2012, by the First Criminal Division against the four policemen (Juan Carlos Escobar, Adolfo Eduardo Valdez, Ramón Antonio Brunet, and Julio Ramón Obregón), had become final since no appeal had been filed against it. The judgment acquitted Juan Carlos Escobar and Ramón Antonio Brunet of the crime of ABANDONMENT OF A PERSON FOLLOWED BY DEATH (ABANDONO DE PERSONA SEGUIDO DE MUERTE) and found Adolfo Eduardo Valdez and Julio Ramón Obregón guilty of the crimes of ABUSE OF AUTHORITY AND DERELICTION OF DUTIES (ABUSO DE AUTORIDAD E INCUMPLIMIENTO DE LOS DEBERES DE FUNCIONARIO PUBLICO). The latter were handed a suspended sentence of one year and 10 months in prison as well as a special disqualification for twice the length of the penalty imposed. At the same time, the State reported on the progress made in the process of appointing an assistant special criminal prosecutor for human rights; the position has been announced vacant and candidates invited to submit qualifications and sit an exam.

62. By communication of December 19, 2013, the petitioners reported on progress in implementing the agreement. In this regard, reported that while after the signing of the friendly settlement, the Provincial Justice began the trial of those responsible for the death of Mr. Greco, this would have been made on the basis of evidence produced by the poor research which have hindered

the process and the determination of the responsibility of the police officers involved in the events. Through this communication the petitioners demanding the State elucidate the events leading to the death of Juan Ángel Greco and punish responsible of it, and to determine the reasons that originally the poor investigation was conducted and determine the responsibility of the officials who carried forward.

63. Regarding the appointment of members of the Provincial Committee for the Prevention of Torture and other Cruel, Inhuman and / or Degrading reported that they have finally completed their composition and is fully operational. This committee develops this task with a specific budget which is provided annually to function effectively as a guarantee of non-repetition in the face of torture prevention.

64. Concerning the Special Prosecutor for Human Rights, the petitioners held legislative reform at the policy level. However, they report that the physical action of the Special Prosecutor has not proved fully effective. The petitioner part consider worrisome shortage of cases in which requests go to trial and the procedural delays in investigations.

65. Regarding other institutional measures, among which is the presentation of a bill aimed at creating a "provincial system of protection of human rights in the exercise of police and prison work", the petitioners report that to date have not received information about the state in which discussion is in the provincial legislature, but insist that approval would mean a major breakthrough in the control of police practice to the prevention, investigation detection and punishment of any functional abuse may involve torture, harassment, degrading and inhuman cruel. So urge the State to take precautions so that approval is made possible.

66. In parallel, regarding the performance of Law No. 6976 which establishes the "Provincial Public Security System" in the province of Chaco. Asked the Commission to request information to the state about how this rule affects the operation of the security forces and in particular whether anticipated devices to prevent future human rights violations, as occurred in this case and information on their implementation.

67. From the information provided by both parties, the Commission indicates that the State has complied with commitments to investigate and punish those responsible for the death of Mr. Ángel Greco; with the appoint members of the Provincial Committee for the Prevention of torture and other Cruel, Inhuman and / or Degrading and in promoting legislative and administrative measures for better protection of Human Rights. Similarly, the Commission notes that, in terms of legislative and administrative measures, there are some pending of approval like the project of "provincial system of protection of human rights in the exercise of police and prison function".

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

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

69. 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.

70. 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.”

71. 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.

72. 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.

73. 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.

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

experts serving on the Commission agreed to work together to prepare the Commission's draft Rules of Procedure.

75. 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 140<sup>th</sup> 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. In a communication of November 27, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the remaining recommendations. In a note dated December 18, 2012, the petitioners provided updated information referencing, firstly, the Draft legislative reform “making it mandatory, without exception, to conduct an autopsy in every single case of violent death or death suspect of being a crime, including prohibiting the members of the security forces from taking part in the autopsy connected to any incidents in which they may have participated.” They noted that said draft reform was submitted in a timely fashion, but that after several years elapsing, there has been no response to it and that the issue has not been addressed at any working meeting with the Secretariat for Human Rights. They also reported on the Draft reform of the Criminal Procedural Code of the Nation, which was to incorporate the right of the next-of-kin of the victim to opt for appointing their own expert prior to the autopsy being conducted; and the Draft reform of the Criminal Procedural Code of the Nation, introducing human rights violations as grounds for review; none of which has been dealt with by the Secretariat for Human Rights either as of the present date.

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

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

83. Lastly, with regard to drafting rules to establish a procedure for the processing and investigation of petitions that are brought before the Commission and the Inter-American Court of Human Rights, “which provides for the creation of a specific body with decision making authority – including the institution of the “friendly settlement” – and a mechanism for compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights;” the petitioners noted that they learned of draft rules prepared by the Argentine State, which were rejected and considered to be noncompliant with the reparations undertaken by the Argentine Government in the instant case. In short, the petitioners claimed that even though some officials of the Argentine State have showed good will to move forward in complying with the executed Friendly Settlement Agreement, progress has been too slow and that this stands in the way of timely reparation, as provided in the commitment entered into on March 2, 2005.

84. In a communication dated October 9, 2013, the Commission requested the parties to provide up-to-date information on the status of the recommendations whose implementation was still pending. The petitioners responded in a communication dated October 30, 2013, in which they said that, as yet, there had been no response from the State with respect to the legislative reforms included in the friendly settlement agreement. The petitioners reportedly submitted in a timely manner four proposed reforms to the country's Code of Criminal Procedure and requested that violation of human

rights be introduced both as grounds for review and as grounds for suspension or interruption of the running of the statute of limitations. They also requested an evaluation of forensic procedures with a view to making changes that would enhance the transparency and effectiveness of the roles performed by medical examiners and forensic experts. In addition, they requested a review of the country's legislation on hostage taking and the use of force in order to bring it into line with international standards.

85. By the same manner, the petitioners informed the Commission of their concern regarding the delays preventing the work of the Truth Commission at its full capacity, in their opinion a *sine qua non* aspect as far as compliance with the friendly settlement agreement was concerned. As regards the draft law for the creation of a procedure for processing petitions being heard by the IACHR and the Inter-American Court, they said that they had rejected the draft presented by the State because its objectives were ineffective. The petitioners also mentioned that the State had failed to meet its commitment to facilitate the activities of the working group, provide it technical support, and grant it permission to use the facilities that it needed to carry out its work, as well as failing to provide information on the results achieved by the technical group. The State has not offered any response to the above information.

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

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

87. 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.

88. 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.

89. 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.

90. 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.

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

92. 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 140<sup>th</sup> 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.

93. 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.

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

95. 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.

96. 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.

97. On December 3, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the friendly settlement agreement. In a communication of January 2, 2013, the petitioner provided updated information indicating that, regarding the non-pecuniary reparation measures set forth therein, publication of the Friendly Settlement Agreement in the Official Gazette of the Argentine Republic, or in a daily newspaper of nationwide circulation, has still not taken place.

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

99. She also claims that the State has not honored its commitment to examine the possibility of incorporating the “Giovanelli” case into the current curricula at the police training institutes as a measure of non-repetition of human rights violating practices. She further contends that



no steps have been taken by the authorities to draw up draft rules establishing a procedure to process and investigate petitions brought before the Commission and the Inter-American Court of Human Rights, as provided in the final item of the non-pecuniary reparation measures included in the Agreement.

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

101. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The petitioners did not supply the information requested.

102. On November 26, 2013 the State reported that hitherto, by payment order No. 215.491 the amount of \$1,100,006.78, including principal and moratorium interest, had been paid to the heirs and deposited in the account in the Quilmes branch of the Banco Provincia de Buenos Aires of the Second Lower Court for Civil and Commercial Matters of the Judicial District of Quilmes, Province of Buenos Aires. As regards the amount due to Mrs. Ana Esther Ramos, the State informed that the sum of \$1,100,006.78 had been deposited in the Banco Hipotecario through payment order No. 222.937; the sum of \$ 158.274,36 to Guillermo Jorge Giovanelli by payment order No. 222.936; the amount of \$ 158.274,36 to Enrique José Giovanelli by payment order No. 222.938; and that the sum of \$ 35.216,04 had been deposited in Banco de la Provincia de Buenos Aires for the lawyer Mariana Bordones. There remain pending the deposits to Messrs. Montesisi and Salvioli, the representatives of Shiappa, the arbitration body, who were required to contact the Treasury's Obligations Department in order to request the necessary documentation so that their deposits could be made. In addition, according to the information submitted, Mrs. Mabel Yapur, had promised on behalf of COFAVI to undertake the necessary steps at the AFIP to enable the amount due to her to be paid.

103. On December 10, the State informed that Case No. 1-2378 entitled " N.N, homicide - victim: Giovanelli, Fernando Horacio" [N.N s/ homicidio - victima: Giovanelli, Fernando Horacio] had been reopened. It also said that in keeping with the information provided by the Director of Educational Research and Planning, the police training study program specifically focuses on topics concerning institutional violence, the rights of detainees, different legal forms of deprivation of liberty; torture, prohibition of torture, cruel, inhuman, and degrading treatment; the use of force and firearms, and ethical principles governing police conduct in which the aim is to make the student aware of the importance of abiding by the law in carrying out police duties, instilling awareness of the ethical standards that govern the profession, the importance of respect for human rights, and interpretation of national and international policing standards in force.

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

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

105. On August 6, 2009, through the adoption of its Report No. 79/09, the Commission approved the friendly settlement agreement signed by the parties of the Case 12.159, Gabriel Egisto Santillán. Summarizing, the petitioner asserts that the State is responsible for the death of Gabriel E. Santillán, which happened on December 8, 1991, when he was 15 years old. The victim died from a

bullet wound he sustained on December 3, 1991, when members of the Buenos Aires Provincial Police were in pursuit of unidentified persons accused of stealing a vehicle. The complaint also alleges that judicial protection and guarantees were denied by virtue of the lack of due diligence in the investigation into the facts and failure to punish those responsible for the death of Gabriel E. Santillán.

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

**III. Measures to be adopted**

**a. Pecuniary damages**

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

**b. Non-pecuniary damages**

1. The Government of the Republic of Argentina pledges to publish this agreement—once it has been officially approved by the Inter-American Commission on Human Rights, in accordance with the provisions of Article 49 of the American Convention on Human Rights—by means of a notice in the “Official Gazette of the Argentine Republic” and in a nationally distributed newspaper. The text of the notice shall be agreed in advance with the victim's relatives.
2. The Government of the Republic of Argentina undertakes to invite the Government of the Province of Buenos Aires to report on the status of the following cases being heard by courts in the provincial jurisdiction until their final conclusion:
  - a. Case 5-231148-2, entitled “Perpetration of Crime and Resisting Authority, along with Assault with Weapons, Homicide, and Discovery of Vehicle. Victim: Santillán, Gabriel Egisto,” before the Second Transitional Court of the Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District, Buenos Aires Province.

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

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

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

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

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

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

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

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

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

114. Additionally, regarding case file No 5-23148-02, entitled "Assault and Resistance in concurrence with Abuse of Weapons, Homicide and Finding of Stolen Motor Vehicle, victim: Santillan, Gabriel Egisto," which is being heard before Trial Court No. 2 for Criminal and Transitional Correctional Matters of the Judicial District of Moron, Province of Buenos Aires, the petitioner reported that said case has been closed. She claims that even though, in early 2012, the mother of the victim requested judicial authorization to exhume the body and have it cremated and for the appropriate measures to be taken so that the Forensic Anthropology Team preserves DNA evidence for a possible comparison, should the remains of his father Omar Santillán, who disappeared during the military dictatorship period in Argentina, come to light at some point in time. As for case file No 3001-2014/99 "Ministry of Justice, Santillán, Gabriel Egisto. Report on case No 12.148/91" and "3001-465/05 Executive Branch of the Province of Buenos Aires-Office of the Under Secretary of Justice transfers case 12.159- Santillán, Gabriel Egisto," which were brought before the Supreme Court of Justice of the Province of Buenos Aires, she stated that both of these cases have been closed.

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

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

117. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. In a note dated December 9, 2013, the State reported that the National Directorate had prepared a draft decree for the payment to be made as agreed once the budgetary credits for fiscal year 2013 had been earmarked. The State mentioned that the draft decree was contained in file No. S04 0052637/2013, which have been referred to the Minister of Justice and Human Rights of the Nation for his signature. It also said that the Undersecretary for Justice of the Province of Buenos Aires had been asked to provide up-to-date information on the case.

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

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

119. 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.

120. 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.

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

122. 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.

123. 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."

124. 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.

125. 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.

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

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

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

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

129. 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.

130. 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 124<sup>th</sup> 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.

131. 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.

132. 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.

133. 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.

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

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

136. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The State replied to that request in a communication dated December 9, 2013, in which it provided information supplied by the Ministry Of Defense of the Nation and a note from the Secretariat of Human Rights informing that the contents of the friendly settlement report had been published in the Public Newsletter [*Boletín Público*] and Confidential Newsletter [*Boletín Reservado*] of the Argentine Army. The State also reiterated that in a communication of December 23, 2011, the contents of the friendly settlement report had been referred to the Secretariat of Public Communication for publication in the newspapers *Clarín*, *La Nación*, *Río Negro* and *La Mañana del Sur*. The Commission notes that the petitioners did not provide any information in that regard.

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

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

138. 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.

139. 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.

140. 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.

141. 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.

142. 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.

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

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

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

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

147. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The State did not furnish the information requested.

148. In a communication dated November 6, 2013, the petitioner recalled his previous communications and reiterated that the State had not taken steps to implement the commitments pending. In particular, the petitioner said with respect to the information provided by the State concerning the establishment of a "Monitoring Commission" and that he had no knowledge of any record of its incorporation, its members, and where his refusal to participate had been registered. In that regard, he said that he did not know what possible value the Commission could have since it had been created unilaterally. He also said that he had no knowledge of the current situation with regard to the government attorney assigned to the case.

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

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

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

151. 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 Ferrá.

152. 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.

153. 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.

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

155. 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.

156. 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.

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

158. In a communication of January 30, 2013, the State reported, with regard to item 2.2 of the friendly settlement agreement, that the Attorney General of the Nation ordered, under Decision PGN No 435112 of October 23, 2012, the creation of the "Specialized Unit for cases of appropriation of

children during the period of State terrorism.” It notes that the unit operates under the Prosecutorial Coordination and Follow-up Unit for Human Rights Violations committed during the period of State terrorism and its chief coordinators are attorneys Martin Mikilson and Pablo Parenti, who are empowered to intercede as assistant and ad hoc prosecutor, respectively, in the different proceedings before the courts and at every level, from the trial through all appeal and review levels.

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

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

161. Moreover, the State indicated that commitment 2.5 of the friendly settlement agreement was published in Official Gazette No. 31785 on November 20, 2009, under Decree No 1800/2009, which approved the aforementioned Agreement. It added that the daily newspapers *Página 12*, *Clarín* and the *La Nación*, as well as several print media articles have occasionally mentioned the Pegoraro case both directly and indirectly.

162. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

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

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

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

165. 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.

166. 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.

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

168. 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.

169. 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.

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

171. In a communication dated April 19, 2013, the State provided information about its compliance with a commitment to provide financial reparation in accordance with the procedure envisaged by Law 24.043, that it had complied with that procedure and that corroborating documents had been furnished in the proceeding before the IACHR in that regard. It also said that the matter raised by the petitioner had no merit, since he had expressly accepted all the decisions adopted by signing the relevant forms, giving his consent to the settlement proposed and "expressly waiving, absolutely and in full, any claim of any nature in connection [therewith]." The State also said that that waiver had likewise been set down in item 3 of the friendly settlement agreement.

172. For his part, in a communication dated May 27, 2013, Mr. Castillo Báez noted with respect to the indemnification established in his favor that although the length of his arbitrary detention had been recognized, that time had not been compensated for in accordance with the aforementioned Law 24.043, which was why he was claiming the difference. Specifically, he argued that under the parameters set down in Articles 4 and 7 of Law 24.043 and the National Administration Employees salary scale, he was entitled, based on the date of payment (year 2011) to a much higher figure than the one arrived at by the State. He said that he did not know what remuneration the government took into account in making the settlement and that, furthermore, he was paid in bonds that were quoted at less than their par value. He said that when the payment was made he signed the forms that were presented to him for time being, in order to collect the indemnification for which he had been made to wait for a long time, but that it had been his understanding that that could not entail any waiver of his right to settlement in accordance to law and, therefore, he asked the IACHR not to take the matter of the amount of the indemnification as settled.

173. In a communication dated October 21, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendation whose implementation was pending. On December 3, 2013, the State said that there had been no new developments in the case except with regard to the petitioner's claim concerning indemnification, which it regarded as unfounded. Accordingly, the State said that the settlement made in a timely manner should be accepted and the agreement regarded as implemented.

174. The Commission notes with satisfaction the progress made in implementing the friendly settlement agreement. However, it finds that discrepancy lingers between the parties over the amount of the indemnification due to Mr. Castillo Báez under the terms of the friendly settlement agreement.



175. In that regard, from the information furnished by the parties, the IACHR finds that the indemnification established by the State has been effectively paid to Mr. Castillo Báez and that following said payment Mr. Castillo Báez is disputing the overall amount of the settlement because he regards it as insufficient under the law. The Commission also notes that in the record before the IACHR there is an "memorandum of agreement" [*acta de conformidad*] signed by Mr. Castillo Báez, in which he expresses his agreement with the settlement, "expressly waiving, absolutely and in full, any claim of any nature in connection [therewith]." Therefore, the IACHR finds that the petitioner's claim was not presented at the appropriate time, that is, upon being made aware of the indemnification settlement and actual payment. Accordingly, the Commission concludes that the friendly settlement agreement has been fulfilled.

#### **Petition 2829-02, Report No. 19/11, Inocencio Rodríguez (Argentina)**

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

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

#### **FRIENDLY SETTLEMENT AGREEMENT**

The parties to petition No. 2829/02 (Inocencio Rodríguez), registered with the Inter-American Commission on Human Rights: the petitioners, represented herein by Dr. Tomás Ojea Quintana, and the Government of the Argentine Republic, as a State party to the American Convention on Human Rights, hereinafter "the Convention," acting in accordance with the express mandates of Articles 99(11) and 126 of the Argentine Constitution, represented by the Secretary of Human Rights of the Ministry of Justice and Human Rights of the Nation, Dr. Eduardo Luis Duhalde, and by the Special Representative for Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras, have the honor to inform the Honorable Inter-American Commission on Human Rights that they have reached a friendly settlement to the petition, whose content is included below, and request that, based on the

consensus achieved, this agreement be accepted and the pertinent report adopted, pursuant to Article 49 of the Convention.

## **I. Background**

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

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

## **II. Friendly settlement**

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

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

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

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

However, there are certain scenarios such as the one presented today to the Inter-American System for the Protection of Human Rights, for which there is no provision for obtaining compensation from the State. As indicated by the Inter-American Commission on Human Rights in Report 28/92 and the Inter-American Court of Human Rights in the cases “Barrios Altos” and “Bulacio”, the States have a legal duty to provide adequate compensation to the victims of human rights violations. It is, moreover, a peacefully accepted principle of international law that a State may not invoke provisions of its domestic law to justify its failure to perform an international obligation. From that point of view, the State considers Mr. Inocencio Rodríguez a victim of political persecution by the military dictatorship that ruled the country with an iron fist from March 24, 1976 through December 10, 1983, by applying a legal provision whose sole purpose was to make any opposition activity a crime, in flagrant violation of the rights and guarantees enshrined in the Convention on Human Rights. Taking this into consideration and in compliance with the international obligations in the field of human rights, the Argentine State considers that the petitioner is entitled to be adequately compensated for the violations of his rights.

### **III. Measures to be adopted**

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

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

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

### **IV. Petition**

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

Buenos Aires, August 16, 2007.

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

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

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

181. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

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

#### **Case 11.708, Report No 20/11, Aníbal Acosta and L. Hirsch (Argentina)**

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

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

#### **FRIENDLY SETTLEMENT AGREEMENT**

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

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

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

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

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

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

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

#### **II. Friendly settlement process**

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

The representatives of the petitioners and of the Government of the Argentine Republic jointly

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

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

### **III. Measures adopted by the Argentine State**

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

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

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

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

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

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

### **IV. Petition**

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

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

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

186. The Commission notes that, by Presidential Decree No. 1404, signed at a public ceremony presided over by the President of the Argentine Republic at which he recalled the events that gave rise to the petition, the State adopted a set of measures designed to address the reported

situation. First of all, it nullified the compulsory discharge of the petitioners from the Argentine Navy, as of July 1, 1974, and ordered their reinstatement under compulsory retirement status. Likewise, it accorded the petitioners the rank of frigate lieutenant under effective compulsory retirement status, as of July 16, 1974.

187. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

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

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

#### **Case 12.532, Report No 84/11, Penitentiaries of Mendoza (Argentina)**

190. In Report No. 84/11, dated July 21, 2011, the Commission approved the friendly settlement agreement signed by the parties on October 12, 2007, in case No. 12.532, Inmates of the Penitentiary of Mendoza. The Commission received a petition lodged by 200 inmates of Cell Block 8 of the Penitentiary of Mendoza alleging responsibility of the Republic of Argentina for violation of the right of the inmates to their physical integrity, health and life. In summary, the petitioners claimed that approximately 2,400 of them were allegedly being housed in a prison with a maximum capacity of 600 inmates, where 4 to 5 inmates were living in a single 3 by 2 square-meter cell. They also alleged that they lack toilets, showers, enough food and adequate medical care. They reported that, many times, confinement time in such conditions is as long as twenty hours per day, with only a total of four non-continuous hours permitted outside of the cell. They claimed that inmates must relieve themselves into a nylon bag without any privacy inside of their cell in front of the rest of their cellmates. They further alleged that they lack water to bathe with and must resort to using a hose for washing and that many of them suffer scabies and other diseases as a result of unsanitary conditions. As a result of the overcrowding, the petitioners denounced a series of deaths of inmates and other incidents in which an indefinite number of inmates were injured; however, the authorities have not cleared up any of the circumstances in which these events happened. Moreover, the petitioners alleged that the inmates did not have access to medical treatment, nor to any kind of work or activity aimed to their rehabilitation; additionally they cannot attend to school or the religious services; and, there is no separation between convicted prisoners and prisoners on remand.

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

#### **FRIENDLY SETTLEMENT AGREEMENT**

The parties to Case N° 12.532 of the registry of the Inter-American Commission on Human Rights – Inmates of the Penitentiaries of Mendoza – the petitioners, represented at this meeting by Dr. Carlos Varela Álvarez, and the Government of Argentina, as a State party to the American

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

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

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

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

### **II.- Measures of Pecuniary Reparation:**

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

"1. The parties agree to create an “ad-hoc” Arbitration Tribunal, in order for it do determine the amount of pecuniary reparation owed to the victims involved in the case, in accordance with the



rights for which a violation has been recognized in section 1 of this agreement, in keeping with any international standards that may be applicable.

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

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

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

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

### **III. Measures of non-pecuniary reparation**

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

#### **1. Normative measures:**

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

b) Introduce a bill before the Legislature of the Province of Mendoza to create the office of the Human Rights Ombudsman of Mendoza, whose responsibility shall be the defense of the human rights of the entire population (right to health, education, security, development, a healthy environment, freedom of information and communication, of consumer and users, etc.) and take the necessary steps to achieve the approval thereof.

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

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

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

## **2. Other Measures of Satisfaction:**

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

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

## **C. Plan of Action and Budget**

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

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

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

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

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

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

f) Endeavor to provide adequate training and professional instruction to Penitentiary Staff.

**D. Ratification and dissemination:**

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

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

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

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

**IV. Final Request**

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

Washington, DC, October 12, 2007.

Annex I to the Agreement of August 28, 2007

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

01) ANDRADA MOLFA, Mario Guillermo: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4249- P-04. Criminal Case: No:

106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Cándida Graciela MOLFA (mother)

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

03) GUALPA, Javier Antonio: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Norma Lila GUALPA (mother).

04) REALES REYNOSO, Sergio Darío: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Rosa Aurelia REINOSO (mother).

05) VILLAROEL MURÜA, Carlos Marcelo: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Manuel VILLAROEL (father).

06) SAEZ, Ramón Pedro: Deceased at Lagomaggiore hospital on June 4, 2004, after being hospitalized for one month for burns sustained in the fire at Granja Penal de Lavalle. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.566, of the First Civil Chamber of Mendoza. Plaintiffs: Rosa Antonia SAEZ (mother); Julio César SAEZ (son); Tomás Agustín SAEZ (son); Ramón Emiliano SAEZ (son).

07) CASTRO IRAZOQUE, Ángel Patricio: Murdered on September 27, 2004 with puncture-cutting implements. Ministry of Justice and Security Administrative File No 1403- P-04. Criminal Case: Indictment No: 4759/04, 6<sup>th</sup> Police Precinct, Second Chamber of the Investigating Magistrate. Civil Claim: No 97.524 of the Tenth Civil Chamber of Mendoza. Plaintiff: María Argentina IRAZOQUE (mother) and Heriberto Dionisio CASTRO (father).

08) CAMARGO QUIROGA, Alejandro Ceferino: Murdered on October 30, 2004 with puncture-cutting implements inside of cell block No 11 of the Provincial Penitentiary. Ministry of Justice and Security Administrative File No 2818-P-04, Criminal Case: Indictment No. 6397/04, 6<sup>th</sup> Police Precinct, no. P-78757/04, Fourth Chamber of the Investigating Magistrate, Civil Case No. 15.2460, Eleventh Civil Chamber of Mendoza. Plaintiff: Teresa QUIROGA (Madre).

09) SALINAS ARES, Sergio Norberto: Murdered on December 4, 2004 with puncture-cutting implements and cut up into pieces inside Cell Block No. 7. Criminal Case Third Chamber of Criminal Matters of Mendoza. Civil Case: No. 115.187, Thirteenth Civil Chamber of Mendoza. Plaintiffs: Norberto Ángel SALINAS and Julia Rosario ARES.

10) CAMARGO QUIROGA Marcelo Javier: Wounded on November 21, 2004, with puncture-cutting implements in Cell Block 13 of the Provincial Penitentiary and passed away at the Lagomaggiore hospital on October 30, 2004. Criminal Case: No. P-84858-04, Office of the General Secretariat NN, Civil Case: 152,460, Eleventh Civil Chamber of Mendoza; Plaintiffs: Mónica 'Beatriz' LUCERO on behalf of his minor daughter Priscila Abigail CAMARGO LUCERO and Teresa QUIROGA (mother).-

11) Luis CUELLAR VASQUEZ Murdered on March 17, 2005. Criminal Case: Prosecutors Unit for Complex Crimes. Civil Case: 21,5519, 20<sup>th</sup> Civil Chamber of Mendoza. Plaintiff: Ella Brualia VASQUEZ (mother).

12) GOMEZ GONZALEZ, Gerardo: (39 year old): Murdered and mutilated on June 17, 2006. Criminal Case: 159801, Prosecutors Unit for Complex Crimes. Civil Case: n° 110,752, 12<sup>th</sup> Civil Chamber of Mendoza. Plaintiffs: Not recognized minor son, filiation under examination.

13) FERRANTI LUCERO, Diego Ceferino (32 years of age): Murdered and mutilated on June 17, 2006. Criminal Case: P- 59801, Prosecutors Unit for Complex Crimes. Civil Case: n° 82,744, 7<sup>th</sup> Civil Chamber of Mendoza. Plaintiffs: Mirta Yolanda LUCERO (mother) and a minor son without legal representation.

14) HERNANDEZ ALVARADO, Héctor Gustavo: After becoming intoxicated on "Chimichuqui", he died from lack of medical care inside of the Penitentiary of Mendoza in September of 2006, Criminal Case: P- 107889, Prosecutors Unit for Complex Crimes. Civil Case: Plaintiff: ESPINOSA, Vanesa.

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

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

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

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

#### ANNEX II to the Agreement of August 28, 2007

##### Persons Injured at the Penitentiary of Mendoza filing claims

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

- 2) HERRERÍA Jose Edmundo: Seriously injured on June 6, 2003, with a puncture-cutting implement in the thorax when was housed in Cell Block 9 of the Provincial Penitentiary. Criminal Case n° 178.693/1: case titled: "F.c/ PEREZ, Julio; DIAZ, Mauricio; BARROSO, Sergio y CANTO/Italo p/Lesiones Graves a Edmundo José HERRERIA" in the First Chamber of the Investigating Magistrate of the Province. Civil Case: n° .83.541, titled "HERRERIA, Jose Edmundo CIPROVINCIA DE -MENDOZA S/ Daños y Perjuicios. Damages sought: \$ 40.000.
- 3) VERA FUNES Miguel Gustavo: Seriously injured on December 12, 2005, with puncture-cutting implements at Penitentiary Unit n° 4, Granja Penal de Gustavo André Lavalle. Criminal Case: Proceeding N° P-92.931105 of the Office of the Prosecutor of Investigating Magistrate N° 18 –Prosecutors Complex Crimes Unit. Civil Case: 70% disability.
- 4) GUIRALDES ECHEGARAI, Sergio Héctor: Seriously injured on October 3, 2006 inside of the Penitentiary, with a “chuza” [makeshift knife] to the face. He was transferred to Lagomaggiore Hospital and then to Central Hospital where he was diagnosed with meningitis and was kept in the hospital until December 28 of that same year. Criminal Case: Civil Case.
- 5) VILLAREAL DOMINGUEZ, José Lucas. Entered the Penitentiary on April 7, 2007 and was raped on April 10 and 11, that same day he was seriously injured with a puncturing implement, losing his sight in the left eye. Criminal Case: Complaint at Prosecutors Unit No 1 of the Capital of Mendoza.
- 6) ORELLANO SILVA, Vicente Raúl: Because of an infection, a probe was placed in his bladder, and due to deficient medical care, his urethra sustained necrosis since it was in that state for 14 months. In July of 2006, he was injured with a puncturing implement in one of his eyes injuring his brain and causing an infection. Criminal Case:
- Civil Case:
- 7) MOLINA VALDEZ, Hernán Adrián: Was deprived of his liberty in September of 2003 until July 5, 2007, when he was released. He was diagnosed with alopecia (a disease of the skin), as a psychosomatic manifestation from the conditions of his detention, according to reports from prison psychologists, which appear in case n° 7067-F of the First Criminal Chamber. Initially, he was denied conditional release due to a minor punishment he received in February of 2006, which was vacated a year later by Judge Eduardo Mthus, based on the argument that his right to a defense and due process had been violated. His release was finally granted in July of 2007.
- 8) IDEME BASAEZ: Inmate who sustained serious injuries when he fell from scaffolding while performing repair duties of inside the Penitentiary.

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

**Measures of Pecuniary Reparation:**

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

193. As indicated in Report No. 84/11, the friendly settlement agreement was approved by means of Decree No. 2740, in which State responsibility was recognized and the Law ratifying the agreement was approved on September 16, 2008 and published on October 17, 2008. In keeping with

the aforementioned agreement, the Ad-Hoc Tribunal was created on December 15, 2008. Said Tribunal issued its arbitral award judgment on November 29, 2010. The Tribunal examined the 6 deaths (numbered 1 to 6 in the agreement), which took place at the prison of Lavalle as a result of the fire occurring on May 1, 2004, and set a total amount of \$601,000 USD. It additionally set the amount of \$1,413,000 USD to be paid by the State in the 10 cases of persons (7 to 18 in the agreement) who died at the penitentiary located in Boulogne Sur Mer. In the 8 cases of persons who sustained injuries at the different centers, it set an amount of \$202,000 USD. As costs and fees, it ordered the payment of \$100,000 USD, and \$18,000 in remuneration to the arbitrators.

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

### **Measures of Non Pecuniary Reparation**

#### **Normative Measures:**

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

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

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

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

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

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

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

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

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

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

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

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

**Other Measures of Satisfaction:**

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

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

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

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

**Plan of Action and Budget**

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

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



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

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

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

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

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

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

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

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

*e) Ensure access and adequate service at the Courts of Criminal Sentence Execution, for all persons who have a legitimate interest in the Execution of the Punishment of the inmates in the Prisons of Mendoza. Especially, unimpeded access for attorneys who can freely examine the records of the proceedings being heard in said courts;*

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

*f) Attempt to provide adequate training and professional instruction to Penitentiary Staff.*

210. In Report No. 84/11, the Commission took note of the adoption of Organic Law No. 7.976 on the Provincial Penitentiary Service, which requires professionalization of senior penitentiary officials. However, no information is available to date on the establishment of the Penitentiary University Institute.

*Lastly, the parties agree to keep open a space of dialogue and to set up a Monitoring Commission in order to follow-up on compliance with the commitments taken on under this agreement, including the normative and other measures agreed upon, in which framework the parties may*

*propose other measures of action that could aid in better fulfilling the purpose and objective of the instant agreement.*

211. The Commission does not have any information on the establishment of the Monitoring Commission.

212. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

213. It is apparent from the information available to the Commission that a large number of the commitments undertaken by the State in the friendly settlement agreement have been implemented. In this connection, it bears mentioning that, in Report No. 84/11, the IACHR was very appreciative of the efforts made by the parties to reach the agreement and implement it.

214. Notwithstanding the above, the Commission cautions that it cannot comment on the points pending implementation because of the absence of information about them.

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

**Case 12.306, Report No 85/11, Juan Carlos de la Torre (Argentina)**

216. In Report No. 85/11, dated July 21, 2011, the Commission approved the friendly settlement agreement signed by the parties on November 4, 2009, in case No. 12.306, Juan Carlos de la Torre. In summary, the petitioners state that Mr. Juan Carlos De la Torre, a Uruguayan national, entered Argentina in 1974 with authorization from the National Immigration Office, and then, after 24 years of living in Argentine territory, Mr. De la Torre was arrested without a judicial warrant and expelled from the country through a summary proceeding that did not provide him with judicial guarantees. The petitioners allege that the Argentine State, by taking those actions, violated the rights to personal liberty, a fair trial, judicial protection, non-interference in one's private life, and protection of the family, enshrined respectively in Articles 7, 8, 25, 11(2), and 17 of the American Convention on Human Rights, in conjunction with Article 1(1) of said instrument, to the detriment of Mr. Juan Carlos De la Torre.

217. On November 4, 2009, the petitioners and representatives of the Government of the Argentine Republic signed an agreement whose text reads as follows:

**FRIENDLY SETTLEMENT AGREEMENT**

The parties in petition No. 12,306 of the registry of the Inter-American Commission on Human Rights – Juan Carlos De la Torre: Centro de Estudios Legales y Sociales (CELS), represented herein by Ms. Andrea Pochak, and the Center for Justice and International Law (CEJIL), represented herein by Ms. Liliana Tojo, both in their capacity as petitioners, and the Government of the Argentine Republic, in its capacity as a state party to the American Convention on Human Rights, hereinafter “the Convention,” represented by the Deputy Secretary for the Protection of Human Rights of the Nation, Mr. Luis Hipólito Alen; the National Director for Legal Matters on Human Rights, Ms. Andrea Gualde; the Director for Human Rights (International Litigation) of the Argentine Ministry of Foreign Affairs, Mr. Javier Salgado; the Adviser to the Minister of the

Argentine Foreign Ministry, Mr. Jorge Cardozo; and the Representative of the National Immigration Office, Mr. Carlos Alberto Beraldi, who signs this document *ad referendum* the National Director for Immigration, have the honor to inform the illustrious Inter-American Commission on Human Rights that they have reached a friendly settlement agreement in relation to the petition, whose contents are set forth below requesting that considering the consensus reached, it be accepted and that the report provided for in Article 49 of the Convention be adopted.

#### **I. THE FRIENDLY SETTLEMENT PROCESS**

1. In the context of the 118<sup>th</sup> period of sessions of the Inter-American Commission on Human Rights, the Argentine State and the petitioners agreed to engage in a dialogue aimed at exploring the possibility of a friendly settlement of the petition, all without prejudice to the arguments of fact and of law put forth by the parties in the course of the procedure.

2. On that occasion, a working agenda was agreed upon that included the evaluation of various regulatory and administrative measures related both to the legal framework in force on immigration and with respect to the individual situation of Mr. Juan Carlos De la Torre.

3. The process that began contributed decisively to the derogation of the law on immigration then in force, known as the "Videla Law," and to its replacement by Law 25,871, approved on January 20, 2004; to the implementation of a mechanism for consultation with different organizations for the purpose of issuing the regulation of the new law; to the adoption of the measures necessary for approving and subsequently ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to the suspension of immigration inspections and their sequelae of stops, arrests, and expulsions; to the issuance of Decree 836/04 that regulates the normalization of the papers of natives of MERCOSUR, Chile, Bolivia, and Peru; and to the issuance of Decree 1169/04, with the identical objective for the persons who are nationals of any other state. In that regard, the recently approved "National Plan against Discrimination" includes a chapter specifically dedicated to migrants and refugees.

4. In addition, and particularly as regards the personal situation of Mr. De la Torre – whose expulsion from the national territory without proper guarantees led to the complaint filed with the IACHR – the National Immigration Office, pursuant to the working agenda to which reference is made in point 2 of this agreement, resolved on October 13, 2005 to lift the prohibition on his re-entry to Argentine territory.

5. In the context of the 123<sup>rd</sup> regular period of sessions of the IACHR, on October 19, 2005, the parties stated that in view of the extent of progress in getting through the working agenda of this dialogue process, "... the conditions are set for evaluating the final document of understanding." From that perspective, the parties stated their "satisfaction with and mutual recognition of the efforts deployed by both with a view to reaching a friendly settlement of this petition."

#### **II. FRIENDLY SETTLEMENT AGREEMENT**

In view of the foregoing, the Government of the Argentine Republic and the petitioners agree:

1. To state their satisfaction with the results of the friendly settlement process described above, which ratifies once again the high value and potential of the inter-American system for the protection of human rights, and in particular of the institution of friendly settlement as a legitimate early warning mechanism and for the effective implementation of measures aimed at the institutional improvement of the State;

2. That the Argentine State undertakes to adopt all those measures necessary to ensure respect for the international standards that apply on immigration matters, based on the following tentative working agenda:

a) The Argentine State undertakes to make its best efforts to issue, within one (1) month, the regulation of the new Law on Immigration, taking as the text the proposed legislation approved by the Advisory Commission for the Regulation of Law No. 25,871, created by Order No. 37130/08 of the National Immigration Office, of May 26, 2008. Said Commission was made up of ecclesiastic organizations such as the Fundación Comisión Católica, and human rights organizations such as CELS, among others. The Commission, which sat from June to October 2008, drew up a draft regulation of the immigration law, which is attached as an integral part of this agreement. This draft respects the contents of the new law, guaranteeing, among other aspects, equal access for immigrants to social services, public goods, health care, education, justice, work, employment and social security, the right to form and raise a family, the right to due process in immigration proceedings, facilities for the payment of the immigration fee (*tasa migratoria*), and a clear system of exemption from that fee, and the adoption of the measures necessary to ensure adequate legal advisory services for migrants and their families.

b) The Argentine State undertakes to make a detailed review of the legislation in force on this subject (federal and provincial) so as to foster the adaptation of those provisions that may contain provisions that effectuate illegitimate discrimination based on the status of a person as a foreigner or on their immigration status to the international and constitutional standards on the subject. In this regard, the parties note the approval of the "National Plan against Discrimination," which includes a chapter specifically devoted to migrants and refugees.

c) The Argentine State undertakes, through the coordination of the Ministry of Foreign Affairs, International Trade and Worship, to periodically hold working meetings, at the office of the Ministry of Foreign Affairs, as necessary so as to monitor the effective application of the commitments taken on, to which the state agencies with jurisdiction over the various issues to be evaluated shall be convened, and to inform the Inter-American Commission on Human Rights with the same frequency.

### III. PETITION

1. The Government of the Argentine Republic and petitioners celebrate the signing of this agreement, state their full agreement with its content and scope, and mutually value the good will expressed in the negotiation process.

2. In addition, the parties are grateful for the permanent cooperation and monitoring of the case by the illustrious Inter-American Commission on Human Rights and ask that once the Decree of Regulation of the law is published in the official gazette (Boletín Oficial) of the Argentine Republic, that the friendly settlement agreement reached be approved by adoption of the report provided for in Article 49 of the American Convention on Human Rights.

3. Finally, it is noted for the record that this instrument is signed by CELS and CEJIL in their capacity as petitioners – in keeping with the broad active standing recognized by Article 44 of the American Convention on Human Rights – and not in the exercise of their representation. Accordingly, it cannot be opposed by Mr. Juan Carlos De la Torre, considering that he has not expressed his conformity.

Washington, DC, November 4, 2009.

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

219. According to information provided by the State, Decree 616/2010, regulating Law 25.871, was issued on May 6, 2010. It continued along the lines of the Law on Immigration as concerns respect for human rights standards on the matter.

220. In a communication dated January 2, 2013, the petitioners informed the Commission that, although the State had initially given strong indications of a commitment to implementation of the agreement, in particular through issuance of regulations for the new Law on Immigration, essential points of the agreement had not yet been complied with. In particular, the petitioners indicate that no progress has been made on the detailed review of federal and provincial legislation, which the State pledged to conduct in order to foster the adaptation of those provisions to human rights standards, and that a joint working group has not been formally set up to work periodically on the effective implementation of the commitments undertaken.

221. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending.

222. In a communication received on December 4, 2013, the State informed that, despite considering that the friendly settlement agreement signed by the parties was substantially fulfilled with the adoption of the aforesaid Decree No. 616/10, working meetings had been held and work was continuing on the analysis of standards in this area.

223. The Commission is highly appreciative of the efforts made by the parties that resulted in the repeal of the immigration law known as the "Videla Law" and its replacement by Law 25.871, adopted on January 20, 2004, as well as the Regulations for the Law on Immigration, approved by the President of Argentina, through Decree No. 616. At the same time, the Commission notes that points 2.b and 2.c of the friendly settlement agreement are pending implementation. Therefore, it reiterates to the parties the need that they make every effort to move forward in the review of the legislation currently in force in order to bring it into line with international standards in the area, and to establish the joint working body to follow up on implementation of the agreement.

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

**Case 11.670, Report No. 168/11, Amílcar Menéndez and Juan Manuel Caride et al. (Argentina)**

225. In Report No.168/11 of November 3, 2011, the Commission approved the friendly settlement agreement executed by the parties on November 4, 2009 in Case No. 11.670, Amílcar Menéndez and Juan Manuel Caride et al. In short, the petitioners argued that during the processing of the readjustment of their social security benefits by ANSES [National Social Security Administration] and subsequently before the national courts, they were subjected to interminable administrative and judicial proceedings, which in most instances were unsuccessful at providing for the rights to which they were

entitled. Additionally, Articles 16 and 22 of Law 24.463, known as the “Social Security Solidarity Law,” allow the State to deny payment on the grounds of budget resource constraints and indefinitely put off collection of the social security benefit readjustment. Consequently, judicial proceedings involving claims for readjustment or setting of social security benefits were excessively long from the time of the filing of the initial administrative claim until settlement and the attendant payment under final judicial disposition. They also contended that even after final judgments were handed down, presumably with the status of *res judicata*, the State agency in charge of enforcing said judgments, ANSES, had put up countless roadblocks to final payment. Additionally, they claimed that enforcement of Law 24.463 has further exacerbated the plight of retirees. This is because, during benefit readjustment or benefit-setting proceedings, ANSES argued as a defense that budget constraints prevented them from complying with the court decision granting the claim, which was then expanded to include analogous cases (Article 16). In such cases, ANSES was able to introduce as expert evidence a report of the Office of the Auditor General of the Nation (Article 17), as well as the defense of budget resource constraints on compliance with the rulings against the Social Security Administration (Article 22). This situation led to retirees passing away without their right to enjoy a dignified old age ever being provided for.

226. On November 4, 2009, the petitioners and government representatives of the Republic of Argentina entered into an agreement, the text of which reads as follows:

#### **FRIENDLY SETTLEMENT AGREEMENT**

The parties in petition No. 11.670 of the registry of the Inter-American Commission on Human Rights (hereinafter, “IACHR” or “the Inter-American Commission”) – Case MENÉNDEZ and CARIDE – Sergio BOBROVSKY and Horacio GONZÁLEZ, attorneys representing the victims and their successors, the Center for Legal and Social Studies (CELS), represented in this act by Andrea POCHAK, and the Center for International Justice and Law (CEJIL), represented in this act by Liliana TOJO, in the character of petitioners, and the Government of the Republic of Argentina, in its character of Party State to the American Convention on Human Rights (hereinafter, “the American Convention”, “Convention”, or “ACHR”), represented by the Deputy Secretary for the Protection of Human Rights of the Nation, Dr. Luis Hipolito ALEN, the National Director for Legal Matters on Human Rights, Ms. Andrea GUALDE; the Director for Human Rights (International Litigation) of the Argentine Ministry of Foreign Affairs, Mr. Javier SALGADO; the Adviser to the Minister of the Argentine Foreign Ministry, Mr. Jorge CARDOZO; the Manager of Coordination and Control of the National Social Security Administration (ANSES), Dr. María TABOADA, have the honor of reporting to the illustrious Inter-American Commission on Human Rights that they have reached a friendly settlement agreement to the petition, whose content is set forth below requesting that considering the consensus reached, it be accepted, that the report provided in Article 49 of the American Convention be adopted, and that a follow-up mechanism be provided.

#### **1. BACKGROUND**

On December 27, 1995, Juan Manuel CARIDE and Amílcar MENÉNDEZ, with the sponsorship of attorneys Sergio Carlos BOBROVSKY and Horacio Ricardo GONZÁLEZ, filed a petition against the State of Argentina for violation of a number of rights and guarantees protected under the American Convention on Human Rights. On January 16, 1997, CELS and CEJIL filed as co-petitioners.

Before lodging the petition, the retirees or pensioners of Argentina had sought readjustment of benefits through legal proceedings in Argentine courts. Because of the delay in substantiation of claims and/or noncompliance with judgments issued in those proceedings, the presenters Juan Manuel CARIDE and Amílcar MENÉNDEZ – to whom other cases were added under the same terms – claimed the violation of the rights to an effective recourse and to a hearing within a

reasonable time, as provided in Articles 25 and 8, respectively, of the American Convention. They also claimed the violation of their rights to property (Article 21 of the ACHR) and equal protection (Article 24 of the ACHR), all of which are related to Articles 1(1) and 2 of the ACHR. The petitioners also claim the violation of the rights to the preservation of health and to well-being (Article XI), to social security as it relates to the duty to work and contribute to social security (Articles XVI, XXXV and XXXVII), as provided the American Declaration of the Rights and Duties of Man.

In particular, the petition contested the judicial procedure set forth in Law 24.463, known as the Social Security Solidarity Law, insofar as the law permitted the Government of Argentina to delay proceedings to readjust benefits and to postpone compliances with judgment based on the lack of budget resources.

On January 19, 2001, the Inter-American Commission on Human Rights, through Report No. 3/01, declared the petitions of several of the petitioners admissible in reference to the alleged violations of rights provided in Articles 1(1), 2, 8(1), 21, 24 and 25(2)(c) of the American Convention on Human Rights, and of the rights enshrined in Article XI and those considered jointly in Articles XVI, XXXV, and XXXVII of the American Declaration of the Rights and Duties of Man.

#### **The Friendly Settlement Process**

En In the context of the 118th Regular Period of sessions of the Inter-American Commission on Human Rights, in October 2003, the State of Argentina and the petitioners agreed to engage in a dialogue aimed at exploring the possibility of a friendly settlement of the petition, all without prejudice to the arguments of fact and law put forth by the parties in the course of the procedure.

On that occasion, the parties agreed to develop a tentative working agenda that would include the evaluation of various regulatory and administrative measures related both to the legal framework in force on matters of social security and to the individual situations of the petitioners.

The process initiated contributed decisively to the reform of Law 24.463 on Social Security. As a result, on April 6, 2005, the Congress of the Nation, through Law 26.025, revoked Article 19 of the contested law. Months later, on October 26, 2006, Law 26.153 was passed, revoking Articles 16, 17, 20 and 23 of the contested law, and reformulated Article 22 in terms agreed among the parties. With these reforms to the law a substantial portion of the petitioners' original complaint was satisfied: the revocation of a regulation that had become an obstacle to prosecuting lawsuits.

The international proceedings also influenced the Supreme Court of Justice of Argentina, in its new composition, to reestablish constitutional doctrine in matters of social security and its compatible interpretation with international human rights treaties. Thus, in the ruling on "Itzcovich" (CS, 221312005, 1.349.XXXIX) the Supreme Court declared unconstitutional Article 19 of Law 24.463, which would then be revoked by Congress. Later, through its ruling on "Sánchez" (CS, 171512005, S.2758.XXXVIII) the Court caused the doctrine of the "Chocobar" case to be of no consequence (CS, 2711211996, C.278.XXVIII), reestablishing the validity of the constitutional right to retirement benefit adjustments and the in the cases known as "Badaro" (CS, 8/8/2006 y 2611 112007, B.675.XLI) the Court declared unconstitutional Article 7 item 2 of Law 24.463, which subjugated the application of readjustments of retirement benefits to the allocation of budget resources.

Furthermore, through Resolution 23 of 2004, the Secretariat of Social Security (SESS) instructed ANSES – the agency of the Ministry of Labor, Employment, and Social Security responsible for administering the funds of the national retirement and pension regimes, among others – to comply strictly with firm legal judgments, thus preventing this artificial mode of litigiousness that prolonged legal proceedings on retirement income cases, to the clear injury of the retirees.

Moreover, during the friendly settlement proceedings, ANSES took the measures necessary to resolve the individual specific cases of the petitioners in this case.

Therefore, the parties view positively the constructive dialogue engaged and the reforms achieved to date. However, there are pending issues that must be resolved, making it necessary that the drafting of this friendly settlement agreement include concrete commitments to be assumed by the State of Argentina and a follow-up process that includes periodic meetings, and that it be monitored by the Inter-American Commission on Human Rights.

## **II. FRIENDLY SETTLEMENT AGREEMENT**

In view of the progress made so far, the parties express their satisfaction and mutual acknowledgement of the efforts made by both in order to reach a friendly settlement to this petitions, which once again ratifies the high value and potency of the Inter-American system in protecting human rights and, particularly, of the friendly settlement construct as a legitimate mechanism for early warning and for the effective instrumentation of measures that improve the institutions of the State.

However, without prejudice to the positive assessment of the constructive dialogue engaged and the reforms achieved to date, some pending issues remain to be resolved. In particular, there are some administrative practices that do not comply with current law and that require special attention to effectively protect the human rights affected in this case in order to restore to all current and future Argentine retirees their rights to social security and to effective and timely judicial protection.

1. Therefore, the State of Argentina – through the National Social Security Administration – commits to adopt all measures necessary to guarantee compliance with the resolutions and regulations decreed as a result of this friendly settlement process, as mentioned in the foregoing paragraph. In particular, these measures must include:

a) Strict compliance with all provisions contained in Resolution No. 23 of 2004, of the Secretariat of Social Security, complemented by Resolution No. 955 of 2008 (in force since 13/8/2008) of the Secretariat of Social Security, which is attached to this agreement. Especially that which sets forth that all judgments still awaiting execution, except there be provisions to the contrary contained in the firm judgment itself, must be fulfilled without other limitations than those provided by the law, pursuant to the provisions of Circular 1. Any other limitation introduced through infra-regulatory interpretations will not be applicable.

b) To formalize a system to liquidate payroll settlements of court judgments that will guarantee compliance with the terms and time frames specified in the final rulings of the court.

c) Not to appeal court judgments in the trial and appeals phase that were ruled in favor of the beneficiaries on allegations of fact on which the Supreme Court has already ruled.

d) To desist, within sixty calendar days of the signing of this agreement, from appeals that have been filed with the Supreme Court or the Federal Chamber of Social Security Appeals contesting judgments in favor of the beneficiaries on allegations of fact on which the Supreme Court has already ruled in similar cases.



2. The State of Argentina obliges itself to establish a mechanism for the periodic follow-up on the commitments made in this agreement, in which the various public agencies involved will participate, and that this mechanism be coordinated by the Foreign Ministry of Argentina. Except in the case of a special request by any of the parties, working meetings will be held every two months at the headquarters of the Foreign Ministry of Argentina.

3. This mechanism will include the systematic production and systemization – every six months – of essential information for this purpose, with respect to the points of commitment in this agreement: a) liquidating judgments; b) cases appealed by ANSES; c) the cases desisted by the ANSES before the Supreme Court; and d) compliance with judgments with executions still pending.

### **III. PETITION**

1. The Government of the Republic of Argentina and the petitioners celebrate the signing of this agreement, manifest their complete conformity with its content and scope, and mutually value the goodwill made manifest in the negotiation process.

2. The parties thank the illustrious Inter-American Commission on Human Rights for its ongoing collaboration and follow-through on this case and request the approval of the friendly settlement agreement reached through the adoption of the report provided in Article 49 of the American Convention on Human Rights.

3. Lastly, the parties request that the illustrious Inter-American Commission continue to monitor the process of execution of the agreement until all aspects contained therein have been satisfied.

Washington, DC, November 4, 2009.

227. On December 5, 2012, the Commission requested information from both parties on the commitments included in the friendly settlement agreement entered into by the parties.

228. In a communication dated December 31, 2012, the petitioners asserted that in order to consider that there has been compliance with the agreement and the consequent follow-up to the terms of item 1 of the agreement, there must be compliance with items 2 and 3 thereof. On this score, they claimed that even though some meetings were held during 2011 with the National State at the Ministry of Foreign Relations and Worship, during 2012, no meeting had been held in order to continue to work towards compliance with the agreement.

229. They noted that, in light of said situation, they requested a meeting on July 11, 2012, suggesting an agenda, and also calling for the attendance of the actors involved in the remaining items in order to move toward final disposition of the matter; for the purpose of facilitating dialogue and advancing joint efforts. They claim they never received any response to this request. In short, the petitioners argue that for more than one year now, talks on the items of the agreement pending compliance have been at a standstill.

230. In turn, the State reported in a note of January 30, 2013, that the Argentine Integrated Social Security System (SIPA) operates under a set of values and economic policy decisions that have made Social Security in Argentina the exact opposite of what the petitioners contended it was in their initial claim. It specifically argues that this is all based on strategic application of several legal and operational measures, which are designed to bring about a paradigm shift in the Argentine Social

Security System, and it attached detailed information on this. In summary, the State referred to a series of paradigm changes in the welfare policy, among others, that the system values are now based on a concept of solidarity, that the administration went from being mixed to be on the State, that the distribution of the income is redistributive, that the passive coverage rate stands at 95.1%, that the wage replacement rate is 60.8% for profits without moratorium and 52.1% for the total system, that there are progresses in the coverage of the more vulnerable sectors (3.5 million children in family groups in Argentina perceived universal child allowance and 60,000 pregnant women without other coverage are included in the birth allowance for Social Protection), that has operated a decrease in the "digital gap" with the donation of netbooks to students in public secondary schools in the country and also because the schools have been equipped with the Internet, that there is access to credit for seniors, and access to housing with "Credit Argentine Bicentennial program for Single Family Housing," that there is financial sustainability because the pension system has a break-even situation, that there is access to justice because the provisions at issue in this case had been terminated and that the settlement of judgments are regulated with the current normative, which have also been modified.

231. With respect to compliance with the remaining items of the friendly settlement agreement (section II, items 1, 2 and 3), the State provides by way of information that the administrative proceedings for execution of the court judgment adhere to current law, to the guidelines for settlement of accounts as set forth in the court judgment, and to legal precedents as established by the Supreme Court of Justice of the Nation (SCJN) on the subject of social security. It adds that, once procedural remedies are exhausted within the lawsuit itself, and all disputed issues between the parties are settled by the presiding magistrate, the court judgment is executed within this same framework; and that because of the length of time that has elapsed since the initial filing of the petition by the petitioners, the entering into the agreement between the parties and the present date, laws have been amended and brought into line, as appropriate, with new legal precedents.

232. Additionally, the State contended that a court judgment execution system had been put into place, which has shortened the time it takes to obtain a final disposition in such proceedings, all within a context of institutional transparency through strict and systemic enforcement of the rules of procedure and steady progress in automatizing the settlement system, oversight of proceedings and settlement by conducting random monitoring and safeguarding the public treasury. It also noted that the instruction had been given to the legal representatives of the agency, who are subject to internal control mechanisms, to desist from pursuing any appeals or to expressly consent to judgments that strictly and specifically match the circumstances of fact laid out by the Supreme Court of Justice of the Nation up until the time of the signing of the Friendly Settlement Agreement; and to create and make available a page on the agency's web site to which beneficiaries and their attorneys can gain access and provide information on any lawsuits or appeals that they believe ANSES has not desisted from, in breach of the terms and conditions of the Friendly Settlement Agreement.

233. Moreover, with respect to items 2 and 3, the State noted that the periodic follow-up mechanism on compliance with the commitments made under the agreement has proceeded on two parallel fronts: a) an institutional framework, as provided for under item 2 of the agreement, spearheaded by ANSES with the participation of the Association of Social Security Attorneys of Buenos Aires (the organization with the highest membership of attorneys specialized in this field in the Autonomous City of Buenos Aires); b) Dr. Bobrovsky and, occasionally, other registered attorneys, will meet at ANSES headquarters in order to analyze, discuss and agree on opportunities to improve procedures, on a monthly basis, except when obligations or specific circumstances of the participants warrant postponement. The States also mentioned the meetings in the Foreign Ministry, with all

parties to the agreement. The States indicates that at the last meeting on September 15, 2011, the ANSES provided a copy of the Report submitted to the Supreme Court detailing the status of Social Security System in Argentina, among others.

234. In short, the State claims that the Social Security System, the subject of the petition before the Inter-American Commission on Human Rights, has undergone deep structural reforms aimed at “restoring the right of all current and future Argentine retirees to social security and to effective and timely judicial protection,” as set forth under the terms of the agreement. It contends that, because Social Security essentially constitutes an inter-generational pact, said reforms, in turn, have provided a response to society, which has benefited as a whole from the evolution of the major social indicators. It concludes by asserting that the State of Argentina has fully complied with the commitments it has undertaken in the Friendly Settlement Agreement.

235. In a communication dated October 11, 2013, the Commission requested the parties to provide up-to-date information on the state of implementation of the recommendations.

236. In July 2013, the State reiterated that it had embarked on a program of structural reforms to the social security system, which had enabled the implementation of an inclusive model oriented toward income redistribution, and that it had complied in full with the commitments contained in the friendly settlement agreement in this case. In that connection, it said that for more than a year and a half the ANSES had not appealed or had desisted from appellate proceedings in a total of 14,565 judicial proceedings and that since October 2012 it had received no claims from litigants through the application designed to enable the lodging of claims alleging incorrect appeal of cases by the agency's legal departments.

237. With respect to procedural improvements, the State said that it had upgraded the agency's computer systems for judicial management and payment of judicial awards, and that the “Operational Work Order” system in use prevents discretionary assessment, calculation, and payment of awards and gives priority to cases involving older and poorer claimants, as well as longer-standing cases. The State also noted that there are procedures in place for fast-tracking cases of claimants over 80 years old and persons or family groups with attested terminal illnesses.

238. As regards the follow-up mechanism, the State reported that in 2013 four meetings had been held at the Ministry of Foreign Affairs and Worship at which the indicators on implementation of the commitments adopted in the agreement were set out. The State also said that the co-petitioner, CELS, had requested and been provided the systems data for the “Operational Work Order” system [*Orden Operativo de Trabajo*] as well as a detailed explanation of how it works, and that a formal and permanent channel of communication had been set up through the Judicial Awards Analysis and Settlement Division [*Dirección General de Análisis y Liquidación de Sentencias Judiciales*].

239. With regard to the situation of social security lawsuits concerning cuts in benefits, the State said that judicial statistics (from the Federal Social Security Court) showed a marked downturn in the number of suits filed against the National Social Security Administration and in the number of people who had filed suit over benefit cuts. The State also said that the statistics for 2013 revealed that an unprecedented number of cases had been settled (17,808 cases in six months) and that the number of people aged 80 or over awaiting settlement was also in decline. It said that all of the foregoing had come in a context in which the main variables by which a social security system is measured had been steadfastly sustained, including sustained coverage of benefit payments, improvements in the salary

substitution rate, and others. Accordingly, the State requested that the IACHR evaluate concluding this monitoring.

240. In a communication of November 2013, the State reported that according to the record of the last meeting held at the Ministry of Foreign Affairs and Worship, the CELS had expressed its willingness to desist from its monitoring of this complaint on the understanding that the pending items had been fulfilled. It also said that in 2013 meetings had been held on February 4, May 30, June 28, and October 9 at the invitation of the Argentine Foreign Ministry and that the lawyers for the original petitioners, Menéndez and Caride had not attended the last three monitoring meetings, which it interpreted as a lack of interest in meaningfully monitoring of the terms of the agreement. In addition to the foregoing, it said that a bimonthly mechanism had been established for the receipt of consultations via the Judicial Awards Analysis and Settlement Division.

241. In a communication dated November 5, 2013, CELS informed the Commission of its decision to desist from the friendly settlement agreement monitoring process. In that regard it noted that the friendly settlement agreement reached with the State in the case reflected the constructive dialogue between the parties based on a variety of specific requests made by CELS to identify indicators to track progress in implementing the commitments adopted. They said that at the request of CELS, the National Social Security Administration had produced information and prepared monitoring indicators on those items in the framework of the working meetings held in the course of 2013.

242. They said that three indicators were defined: the first refers to the number of "desisted or agreed" cases pursuant to Social Security Secretariat Administrative Resolutions Nos. 23 of 2004 and 955 of 2008; the second concerns the evolution of lawsuits in connection with benefit cuts, obligated budget items, and payment of judicial awards in connection with the above Social Security benefit cuts; and the third indicator concerns the disaggregation of data for the second indicator according to age and health factors. They said that that information revealed a large number of desisted-from judicial appeals or judgments agreed to by the state; a reduction in the number of lawsuits filed in connection with claims concerning benefit cuts; increased budget appropriations for the payment of judicial awards; an improvement in the payment of judicial awards; and a weighting of age and health factors in the payment of those awards. However, they said that there had been no significant improvement in reducing the lead time (in days) for the actual payment of awards; and that the State had committed to setting up an internal institutional mechanism for consultation, dialogue, production, and presentation of information for analyzing indicators on compliance with the State's obligations that this process has specifically highlighted. They said that CELS will play an active role in this internal institutional mechanism.

243. In a communication dated December 5, 2013, the representatives of the original petitioners in this case said that the ANSES had not amended their unlawful "administrative practices." In particular, they said that those practices violated the right of everyone right to simple and prompt recourse and to a hearing with due guarantees and within a reasonable time, since the guidelines laid down by the Supreme Court of Justice of the Nation had been disregarded in numerous court judgments, forcing retirees and pensioners to file an administrative complaint and then institute judicial proceedings to bring about the enforcement of those judgments, and denying the possibility of a claim for cuts in social security benefits in the administrative sphere. They say that the foregoing has occurred to individuals whose age and state of health do not allow lengthy delays.

244. They also claimed noncompliance with the commitment to introduce a judicial awards settlement system that guaranteed compliance with decisions in accordance with legally prescribed terms and time limits. They said that the time limit of 120 days to pay awards set by final judicial decisions was not being met and that in most cases retirees were obliged to institute enforcement proceedings after awards were not paid on time or only partially paid. They say that it had not been possible to prepare a list of judgments in which payment was past due and that the greatest difficulty had been to determine how to account for those in which ANSES had made a partial payment.

245. They also said that the Argentine government was not meeting its obligation “to establish a mechanism for the periodic follow-up on the commitments made in [the friendly settlement] agreement.” They said that the bimonthly meetings that the Argentine Foreign Ministry was supposed to arrange with the petitioners were not held with any regularity but announced without agreement on their date and on short notice. Thus, they were of the opinion that an entirely productive dialogue between the State and the representatives of the petitioners was not possible.

246. Finally, they said that in practice, a new judicial instance had been created in the regular jurisdiction that preceded the special appeal process to the Supreme Court of Justice of the Nation; namely, the Federal Court of Cassation for Social Security Matters [*Cámara Federal de Casación de Seguridad Social*], thus preventing, in their opinion, Argentine retirees from being ensured effective and timely judicial protection. Compounding this, they said, was the restriction of precautionary measures, defined as provisional measures, whenever the State or one of its decentralized agencies was a party. In conclusion, they say that the Argentine State is not honoring the commitments that it adopted when it signed the agreement.

247. The Commission notes that, as entered by the parties in the agreement itself the individual situation of the people on behalf of whom the petition was filed, had been settled during the friendly settlement procedure. Furthermore, this friendly settlement contributed decisively to the reform of the Law on Interim Security 24.463 manner. In this regard, on April 6, 2005, the National Congress, Law 26.025 repealed section 19 of that Act. Months later, on October 26, 2006, passed Law 26.153 which was repealed by Articles 16, 17, 20 and 23, Article 22 and reformulated in the terms agreed between the parties. Legal reforms through which fulfilled a substantial part of the original claim of the petitioners, namely the repeal of legislation had become an obstacle to the processing of court cases. Why the points of the friendly settlement agreement were intended to encourage management practices that conform to current regulations.

248. In this regard, the Commission appreciates the wealth of detailed information provided by the State under which entrepreneurship has structural reforms in Social Security. Information by which the Commission observe that for over a year and a half, ANSES have not appealed or recursive instances have given up a total of 14,565 lawsuits; since October 2012 had not received complaints from litigants the application designed for Apelles allegedly incorrectly claim cases by the legal services agency, and had strengthened it developments relating to judicial management and payment of judgments by the ANSES. Information, consistent with the one presented by CELS in his letter of resignation, according to which the analysis of the indicators agreed with the state can see a great number of resources had pursued in court or judgments that have been agreed to by the State, a reduction lawsuits filed in connection with claims of pension adjustments; biggest budget items for the payment of judgments, an improvement in the payment of judgments, and a weight of age and health issues for the payment of those.

249. Whereupon, without taking note of the findings filed by the original complainant, the Commission concludes that the State complied with the commitment to take all measures necessary to ensure compliance with the rulings and regulations issued in connection with this settlement process friendly, contained in the first paragraph of the agreement. The Commission urges the State to strengthen the measures taken.

250. Regarding the monitoring mechanism that points 2 and 3 of the friendly settlement agreement, the information submitted by the parties refer the Commission notes with satisfaction that launched an internal mechanism for consultation, dialogue, production and reporting for the analysis of the evolution of indicators of compliance with State requirements. The Commission welcomes the creation of such a mechanism, and urges the State to provide the conditions for the original petitioners are parties thereto, and invites them to participate in that space of dialogue and monitoring.

251. The Commission hopes that the monitoring mechanism contributes to the participation of all the parties, and further progress towards the consolidation of the measures taken by the State, in order to secure the social security rights to Argentine retirees and have an effective and timely judicial protection.

252. With the understanding that the improvement of social security system in Argentina is an ongoing process and not without assessing the progress through the process of friendly settlement, the Commission terminating the monitoring process in this case.

#### **Case 12.324, Report No. 66/12, Rubén Luis Godoy (Argentina)**

253. In Report No. 66/12 dated March 29, 2012, the Inter-American Commission concluded during its 140th Ordinary Period of Sessions that the State of Argentina didn't adequately investigate the torture, cruel or inhuman treatment allegation made by Mr. Godoy, and thus violated the rights enshrined in articles 8.1 and 25.1 in relation to article 5.1 of the American Convention. In addition, the Commission concludes that the confession made by Mr. Godoy under allegations of torture, cruel or inhuman treatment, was used by the court in his trial, in violation of 8.3 of the Convention. Furthermore, the Commission concludes that Mr. Godoy had no access to a judicial revision of elements of fact, law and proof and reception of proof that the tribunal considered, thus violating Article 8.2.h and Article 2, all with regard to Article 1.1 of the Convention. Likewise, the Commission concludes *iura novit curiae* that the State violated articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rubén Luis Godoy.

254. The Commission made the following recommendations to the Argentine State:

1. Take the necessary measures so that the appeal filed by the defense of Ruben Luis Godoy to obtain a extensive review of the conviction, is settled in keeping with Article 8.2.h of the American Convention, barring any evidence obtained under coercion, as provided for in Article 8.3 of said instrument. The IACHR will monitor the proceedings and results of the appeal.
2. Complete the criminal investigation to clarify the complaint of torture, cruel, inhuman, and degrading treatment leveled by Ruben Luis Godoy, as soon as possible and in an effective and impartial manner. The IACHR will monitor the proceedings and results of said investigation.

255. In a communication dated October 11, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending.

256. With a communication dated November 19, 2013, the petitioner informed that on September 24, 2013, the Criminal Appeals Court of Rosario, ruled the prescription of the criminal action against Mr. Godoy also. She also reported in relation to the cause in which Mr. Godoy intervene as plaintiff, where they are investigating the inhumane treatment denounce in his complaint (case No. 343/1992 before the Criminal Instruction Judge No. 3 of Rosario), that had been investigative measures requested by the Fiscalía General No. 8 and by the Defensoría General de Cámaras, in their capacity as representative of the victim.

257. The Commission notes with satisfaction the progress made in implementing its recommendations in this case, particularly the declaration of acquittal of Mr. Ruben Luis Godoy. At the same time notes that the recommendation regarding the criminal investigation to clarify the claim for torture is still ongoing, reason why concludes that is partially resolved. Accordingly, the Commission will continue to monitor the remaining item.

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

258. 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.

259. 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.

260. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

261. Therefore, the Commission reiterates that there has been partial compliance with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

262. 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.

263. On October 7, 2013, the IACHR requested from both parties information related to compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

264. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.



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

265. 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 was 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.

266. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

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

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

268. 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.

269. 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.

270. On January 16, 2013, the petitioners in this case reiterated their request for a working meeting to take place during the 147<sup>th</sup> period of sessions of the Inter-American Commission. They based their request on the recent escalation of human rights violations against the Maya indigenous peoples, by the State allowance of oil development and illegal logging on Maya lands without the free, prior, and informed consent of the Maya people regarding the use of the lands they own. The Commission granted this working meeting with both parties, which was scheduled to take place on March 13, 2013. The State notified the Executive Secretariat of the IACHR on March 12, 2013 that it would not be able to participate in this working meeting since it would be unable to present the information required in the same. Therefore, the meeting was cancelled by the Executive Secretariat. As follow-up, the Executive Secretariat sent to the State a letter on March 21, 2013, requesting observations on compliance with the recommendations contained in Report 40/04, within the time period of one month. The Commission did not receive a response from the State to this communication.

271. On March 15, 2013, the Commission received a communication from the petitioners expressing concern over the cancellation of the State's participation in the working meeting. They underscored in their communication that this was the second time that Belize has cancelled its participation in a hearing of this nature on a very short notice. They also informed that the Maya people of Toledo and the organizations which represent them, such as the Maya Leaders Alliance, work with very limited budgets. Therefore, they feel that the State's attitude towards the effort and resources required to send a representative overseas is disrespectful of their people and of the important role of the Commission. Belize's failure to comply with the recommendations of the Commission in this case and to present country reports to other international human rights institutions conveys the message to the international community that Belize is not committed to its human rights obligations.

272. Previously, on March 13, 2013, the petitioners submitted to the Commission a report underscoring the non-compliance by the State of Belize of the recommendations included in Report 40/04. The petitioners highlight in the aforementioned document the continuous violation of the rights of the Maya people by the State of Belize; a problem which they claim has recently intensified as Belize allows an American transnational corporation, the U.S. Capital Energy Ltd. (U.S. Capital), to proceed with plans to commence exploratory oil drilling on Maya customary lands without obtaining their free, prior, and informed consent. They consider these actions to be in complete disregard of the Commission's recommendations and of Belize's obligations under the United Nations Declaration on the Rights of Indigenous People. They allege that Belize is also in contempt of its domestic law, concretely two injunctions issued by the Supreme Court of Belize in *Re Maya Land Rights*, which prohibit interference with Maya lands and, provisions of the *Petroleum Act* which require oil companies to obtain the consent of landowners and lawful occupiers before entering their lands for exploration and extraction activities. They also highlight how numerous international bodies have raised concerns with Belize regarding its failure to demarcate and protect Maya village lands, and its interference with those lands, including the

UN Committee on the Elimination of Racial Discrimination, the UN Periodic Review Working Group, and the UN Human Rights Committee.

273. The petitioners also inform that the government has been constructing a paved road through multiple Maya villages without consultation or consent. This road will run to the Belize-Guatemala border and significantly increase traffic through village lands. They claim that experiences in Belize and in a number of other countries have demonstrated that road improvements lead to increased demand for land along the roads by third parties. Without official confirmation of the village's customary title, the road construction poses a greater risk that these villages will lose control of their lands to settlers.

274. Based on these considerations, the petitioners request from the Inter-American Commission a continuous dialogue with Maya leaders and their representatives as essential in assisting the government to develop an adequate framework for the implementation of the recommendations. In this regard, the petitioners request from a monitoring compliance with its recommendations. In this regard, the petitioners request from the Commission to publically condemn the recent actions of the State of Belize through the issuance of a press release or by other means it considers appropriate, to closely monitor the State efforts to comply with its domestic and international human rights obligations, to provide the government the needed expertise and technical assistance, and to send a delegation of the Commission to Belize to participate in a working conference with the Maya communities.

275. On October 7, 2013, the Commission requested updated information from both parties concerning compliance with the Commission's Recommendations in Report No. 40/04. Since then, the Inter-American Commission did not receive any additional information from the parties within the established time period.

276. On the basis of the information provided by the petitioners, the Inter-American Commission observes that compliance with the aforementioned recommendations remains pending. Therefore, the Commission will continue monitoring compliance with its recommendations.

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

277. 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.

278. 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;

279. 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.

280. 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.

281. 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.

282. 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.

283. 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.

284. 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.

285. 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.

286. 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.

287. 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.

288. On November 16, 2012, the Commission asked the parties for an update on compliance with the commitments entered into by the Bolivian State under the friendly settlement agreement. The petitioner did not submit information in the time allowed by the IACHR. In a communication received on December 14, 2012, the State asked the IACHR for an extension, which the Commission granted (for 15 days) in a communication dated December 17, 2012.

289. In a communication received on December 31, 2012, the State reported that in 2011 and 2012, the Plurinational Legislative Assembly had received the draft Law on Compulsory Military Service for police and military candidates and the draft Law on Compulsory Military Services,

respectively, so that the conscientious objection continued to be the subject of much in-depth analysis. It pointed out that one proposal in the draft Law on Compulsory Military Service is to include alternative military service for conscientious objectors. The State indicated that, although Article 249 of the Political Constitution of the State establishes that “all Bolivian men are forced to perform military service,” implementation of that Constitution provision takes several forms, some of which exclude military training and the use of arms. Accordingly, the State pointed out that through Bolivia’s Civil Aviation Law (Law 2902 of 2004) and Ministerial Resolution No. 1152 of August 25, 2000, provision is being made to award a military service certificate free of charge to young volunteers in the Bolivian Air Force’s search and rescue squads who meet the requirements and perform that service once a week for two years. In short, the State pointed out that in practice there is an alternative to compulsory military service.

290. In a communication received on February 5, 2013, the petitioner indicated that no further progress had been made vis-à-vis what was reported in 2011 and, consequently, the State had not complied to date with the commitments made in subparagraphs (d) and (e) of Friendly Settlement Agreement N° 97/05.

291. On October 7, 2013, the Commission asked the parties to provide up-to-date information on compliance with the commitments undertaken by the Bolivian State under the friendly settlement agreement. In a communication received on November 6, 2013, the State reported that based on the 2009 Political Constitution of the State, which incorporates the principles and rights established under international and regional rights instruments and under the principle of *reserva legal* (reservation of right or power strictly under law or *sensu stricto* rule of law), there is no restriction at all on regulating the right to conscientious objection through the law. The State contended that, as it had reported to the IACHR on December 31, 2012, two law proposals are before the Plurinational Legislative Assembly to modify military law in line with the 2009 Political Constitution: PL 00/2011 “Declare as a National Priority the Compulsory Military Service for Applicants to Cadets in the Police and Military on National Territory,” and PL 345/12 “Law proposal on Compulsory Military Service Law.” The State also reiterated that the Alternative Military Service SAR (Search and Rescue) constitutes an alternative to compulsory military service based on its far-reaching social character, inasmuch as it involves aerial search, assistance and rescue, as well assistance and relief in traffic accidents and natural disasters, among others.

292. In response, the petitioner reported in a communication received on November 7, 2013, that the State had not complied to this date with commitments d) and e) of Friendly Settlement Report No. 97/05.

293. 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)**

294. 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.

295. The IACHR made the following recommendations to the Brazilian State:<sup>33</sup>

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

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<sup>33</sup> 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).

implement these recommendations, for the purposes set forth in Article 51(1) of the American Convention.

296. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Information has been received from both parties this year relevant to compliance with the Commission recommendations contained in Report No. 54/01.

297. The State for its part presented a communication on August 29, 2013, highlighting efforts to comply with the recommendations contained in merits report No. 54/01. In regards to recommendation 2, the State confirms that there is a judicial process in course related to the case of Maria Da Penha Maia Fernandes under the framework of the *Conselho Nacional de Justiça* (CNJ), and it will submit information to the Commission related to this process in the future. It also informed that on October 14, 2011, the *Secretaria de Políticas para as Mulheres* (SPM) and the CNJ signed a collaboration agreement in which the SPM will form part of the program “Justicia Plena”. This program has the objective of monitoring and to give transparency to judicial processes of great social implications. In the realm of said program, the SPM will have the faculty of selecting five processes related to the *Lei Maria da Penha* of great social repercussion, to be monitored by said program. Among other measures to guarantee the effectiveness of the *Lei Maria da Penha*, the State highlights two 2012 Supreme Court judgments resolving doubts related to the constitutionality of its dispositions, the creation of state coordinators to address domestic violence issues as permanent organs of the presidency of the tribunals, and technical collaboration agreements reached between the SPM and other justice system organs to improve women’s access to justice in cases of violence. The State also informs of the informative campaign entitled “Compromisso e Atitude pela Lei Maria da Penha – a Lei é Mas Forte!,” to involve the executive branch, as well as the administration of justice and public security organs, in addressing the impunity that surrounds acts of violence against women.

298. In regards to recommendation 4, the State informs that since 2007, the SPM implements a round of work activities related to the *Lei de Maria da Penha*, with the objective of creating a space of debate and clarification related to the commitments contained in the law, including training courses for judges. The State also verifies the creation of the National Forum of Judges related to Domestic and Family Violence against Women (FONAVID), with the goal of creating a permanent space of discussion related to the *Lei Maria da Penha* and domestic violence. The State also informs of the implementation of training programs related to the *Lei Maria da Penha* in coordination with various entities related to the administration of justice; the annual planning of a national summit of the state prosecutors offices related to the implementation of the *Lei Maria da Penha*; and the creation of a series of State mechanisms to promote the defense of the rights of women such as the *Comissão da Mulher no Conselho Nacional dos Defensores Públicos Gerais* (CONDEGE), among others.

299. The State also informs that upon the launching of the *Pacto Nacional de Enfrentamento à Violência contra a Mulher*, in August of 2007, the attention of women in situations of violence was selected as a one of the two axis of attention of the State of Brazil. Within this axis, there has been the creation of a network to improve the quality of attention offered to women victims of violence. The SPM is currently employing a number of efforts to monitor the workings of the network. The State also mentions significant efforts to strengthen the *delegacias especializadas no atendimento à mulher* and to implement a national database of statistics related to domestic and family violence, among other measures. The State finally reiterates that the *Lei Maria da Penha* constitutes the north of the actions implemented to address violence against women within the III National Plan of Policies towards Women



(2013-2015). For these reasons, the State considers it has implemented all of the recommendations issued by the Commission.

300. The petitioners presented their response to the Commission's request on November 25, 2013, and previously submitted relevant information this year on February 6, 2013. In regards to recommendation 2, the petitioners indicate that the judicial process undertaken under the framework of the *Conselho Nacional de Justiça* (CNJ) concerning this case, did not pronounce on responsibilities related to irregularities and delays in the course of the criminal process against the aggressor of Maria da Penha Maia Fernandes. At the request of the victim, a new process was undertaken in the context of the CNJ in September of 2009, in order for the irregularities to be effectively investigated. In its last communication, the State of Brazil informed that an additional process was opened under the CNJ to determine responsibilities for the irregularities and delays in the criminal process, which the petitioners claim was archived on June 11, 2013, according to information available electronically. The petitioners indicate that access to the files concerning this last process requires that Ms. Penha travels to Brasilia personally, which is challenging for her due to the results of the domestic violence she suffered. Therefore, they request that the Commission asks the State of Brazil to forward the decision undertaken in the realm of said process. In summary, they consider that recommendation 2 is still pending compliance after 12 years of the approval of the merits report from the Commission.

301. In regards to recommendation 4, the petitioners reiterate the information they presented in the 2011 thematic hearing before the IACHR related to the implementation of the *Lei Maria da Penha*. They highlight a number of obstacles to the proper application of said law to address domestic violence in Brazil, which evidence that recommendation 4 is still pending compliance from the State. They highlight challenges in the creation of a network to provide needed services to women who are victims of violence. They also underscore the reduction in the total number of *delegacias especializadas no atendimento á mulher* between 2007 and 2012, from 397 to 395, and their lack of proper distribution among the national territory. They also note a reduction in the amount of specialized tribunals across the country, the lack of a monitoring mechanism related to the quality of specialized services, and the pending need to collect data related to domestic violence crimes. Despite the adoption of this specialized law, there is also a persistent increase in the number of cases of violent deaths by women. They refer to a specific study published by the *Instituto de Pesquisa Econômica Aplicada* (IPEA) in 2013, indicating that since the adoption of the *Lei Maria da Penha*, there has not been a reduction in the annual rates of deaths by women; results which indicate for the petitioners the lack of an appropriate application of this law by the State.

302. While recognizing the efforts from the State, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

303. 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.

304. 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.

305. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State has not presented information on compliance with the recommendations set forth above this year.

306. The petitioners presented their response to the request for information of the IACHR on December 4, 2013. In regards to recommendation 1, the petitioners indicated that as to the criminal process related to Aluísio Cavalcanti, after seven extensions, a sentencing hearing of Robson Bianchi and Luiz Fernando Goncalves, was held on April 25, 2012, before the IV Judicial Tribunal of Sao Paulo. They were absolved in said instance, and an appeal was presented, which is currently pending a resolution.

307. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

308. 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).

309. 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.

310. On October 7, 2013, 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 parties have not presented information related to compliance with the recommendations set forth above this year.

311. Based on the foregoing, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

312. 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.

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

1. That it adopts 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.

314. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

315. 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.”

316. Pursuant to that agreement, the State undertook to:<sup>34</sup>

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

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<sup>34</sup> 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).

reducing production costs such as the non-payment of labor and social taxes, exploitation of child, slave, or semi-slave labor”; and (ii) the version presented by the Deputy Zulaiê Cobra to take the place of the proposed law No. 5,693 of Deputy Nelson Pellegrino, which amends Article 149 of the Brazilian Criminal Code.

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

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

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

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

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

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

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

317. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned agreement, pursuant to Article 48.1 of its Rules of Procedure. Information has been received from both parties this year relevant to compliance with the friendly settlement agreement in the aforementioned case.

318. The Commission first notes information presented by the State relevant to compliance with the above-referenced agreement and the dispositions contained therein on January 2, 2013. In the mentioned documentation, the State described the measures it has adopted aimed at strengthening the legal framework to combat slave labor, including the Constitutional Amendment proposal (PEC) 458/2001, which is still waiting for a vote by the Chamber of Deputies; the decision to establish a

Parliamentary Inquiry Commission (CPI) to investigate the situation of slave labor in Brazil, on February 3, 2012; as well as several bills related to slave labor currently under consideration by the Federal Legislature (PL 5016/2005, which aims at reforming the Penal Code regarding the punishment for slave labor; PL 169/2009, which aims at prohibiting Brazilian enterprises from signing contracts with companies that exploit degrading labor abroad; PL 603/2011, which relates to labor conditions in coal mines; and PL 1515/2011, which aims at impeding that public spaces of any nature be named after people notoriously involved in the exploitation of slave labor).

319. In addition, the State explained in its communication the measures adopted to adequately monitor compliance with existing labor laws. In this regard, the State highlighted that the International Labor Organization (ILO) has asserted that Brazil's inspection actions should be considered as exemplary best practices. The State also made specific reference to the continuous achievements regarding administrative/civil sanctions, quantity of freed workers, and number and scope of operations carried out.

320. The petitioners also presented information relevant to the aforementioned provisions on January 30, 2013. In regards to the measures related to the judgment and sanction of the perpetrators, the petitioners claim that they have not received any information concerning efforts or initiatives from the state of Brazil in this regard. As to prevention measures, they refer to the *Segundo Plano Nacional para a Erradicação do Trabalho Escravo*, launched on September 10, 2008, and they refer to an assessment undertaken on 2010 by the *Comissão Nacional para a Erradicação do Trabalho Escravo* (CONATRAE), indicating that approximately 41% of the actions contained in the plan have not been implemented, 31% have been partially complied with, and only about 27% have been complied with comprehensively. In reference to legislative reform, they express their concern over the delay and archive of several legislative projects related to different facets of the prohibition of the practice of slave labor in Brazil. Regarding the creation of the positions of Agent or Delegate of the Federal Police, the petitioners advance information indicating that 500 positions have been created of Delegates of the Federal Police and 750 positions of federal police agents, by means of Law Nº 11.890/2008, but they also present an assessment prepared by the *Associação Nacional dos Delegados de Polícia Federal* of August of 2011, indicating that there is a deficit of 3,000 federal police officers (including delegates, experts and agents), and that it is possible that vacancies will result in the exit of 2,270 federal police officers until December of 2015.

321. The petitioners also refer to an existing conflict of federal and state competencies as one of the factors which prolongs the most the criminal process, and contributes to the prescription of crimes and the perpetuation of impunity in the country. They highlight that the issue is currently before the *Supremo Tribunal Federal*, by means of an extraordinary recourse which is pending resolution. They also assert that in Brazil it is still challenging to verify the exact number of legal procedures in course, before the *Ministério Público do Trabalho, Justiça do Trabalho* or before the *Justiça Comun*, which impedes a proper assessment of compliance with the agreement celebrated in this case, and the monitoring of the occurrence of slave labor in the country, among other concerns.

322. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned friendly settlement agreement. Accordingly, the Commission will continue to monitor compliance with the items pending compliance.

323. 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.

324. 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.

325. On October 7, 2013, 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 parties have not presented information on compliance with the recommendations set forth above this year.

326. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

327. 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.

328. The Commission made the following recommendations to the State:<sup>35</sup>

1. That it make full reparations, in consideration of both moral and material damages, to the next-of-kin of Jailton Neri da Fonseca, for the human rights violations determined in this report, and, more specifically, that it do the following:
2. Ensure a full, impartial, and effective investigation into the crime conducted by nonmilitary organs, with a view to establishing responsibility for the acts related to the detention and murder of Jailton Neri da Fonseca and punishing the responsible parties.
3. Pay the next-of-kin of Jailton Neri da Fonseca compensation computed in accordance with international standards, in an amount sufficient to make up for both the material damages and the moral damages suffered on the occasion of his murder. Such compensation, to be paid by the Brazilian State, should be computed in accordance with international standards, and should be in an amount sufficient to make up for both the material damages and the moral damages suffered by the next-of-kin of Jailton Neri da Fonseca on the occasion of his murder and other violations of his human rights referred to in this report.
4. Amend Article 9 of the Military Criminal Code and Article 82 of the Code of Military Criminal Procedure, in addition to any other domestic legal provisions that need to be amended to abolish the competence of the military police to investigate human rights violations committed by members of the military police, and transfer that competence to the civilian police.
5. Adopt and implement measures to educate officers of the justice system and members of the police to prevent acts involving racial discrimination in police operations, and in criminal investigations, proceedings, or sentencing.
6. Adopt and implement immediate measures to ensure observance of the rights established in the American Convention, the Convention on the Rights of the Child, and the other national and international standards on the matter, in order to ensure that the right to special protection of children is enforced in Brazil.

329. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

330. 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

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<sup>35</sup> 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).



violation of the obligation imposed by Article 1(1) to respect and ensure the rights enshrined in that instrument.

331. The Commission made the following recommendations to the State of Brazil:<sup>36</sup>

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

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<sup>36</sup> 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, Chapter III.D, para. 187). In 2011, the petitioners specified that they consider recommendation 12 fully complied with.

332. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

333. 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.

334. 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.

335. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year.

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

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

337. In Report No. 15/09 of March 19, 2009, the IACHR concluded that the Brazilian State breached its obligation to ensure the right to life of Sebastião Camargo Filho, provided for at Article 4 of the American Convention, on not preventing the victim's death on February 7, 1998, despite being aware of the imminent risk to the workers who had settled on the *Boa Sorte* and *Santo Ângelo* estates, and on failing to duly investigate the facts and punish those responsible. In addition, the IACHR established that the Brazilian State is responsible for violations of judicial guarantees and judicial protection, under Articles 8 and 25 of the American Convention, due to lack of due diligence in the process of investigating and collecting evidence, without which judicial proceedings cannot go forward. Finally, the Inter-American Commission concluded that the State breached the general obligation established at Article 1(1) of the Inter-American Convention.

338. 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.

339. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State has not presented information on compliance with the recommendations set forth above this year.

340. The petitioners only informed the Commission on November 7, 2013, of the interposition of a complaint by the *Ministério Público* against Tarcicio Barbosa de Souza, for the murder of Sebastião Camargo Filho. In this regard, they considered that there would be a judicial decision concerning the receipt of the complaint and the processing of this action in November of this year. The Commission did not receive any additional information from the petitioners this year.

341. Based on the foregoing, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

343. 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.

344. 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.

345. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State has not presented information on compliance with the recommendations set forth above this year.

346. The petitioners presented their response to the request for information of the IACHR on December 6, 2013. The petitioners indicate that the context of police violence and summary executions has not changed in Rio de Janeiro since the murder of Wallace de Almeida in 1998. They indicate that statistics show that there are still 2.4 deaths per day at the hands of the security forces in Brazil. Police violence and the use of lethal force as a systematic violation of human rights is common, and evidences

the preservation of the security system used in the 1990's. For example, the project launched on 2008 to create *Unidades de Policia Pacificadora* (UPP) across the national territory, has also been the subject of many human rights violations claims, including the description of acts of torture, execution, and forced disappearances, in areas where the UPP's operate.

347. Regarding compliance aspects with the Commission recommendations, the petitioners underscore that the State of Brazil just offered some reparations to the family of Wallace de Almeida, in the form of indemnization. The State also organized on June 25, 2009, a ceremony where the Governor of the State of Rio de Janeiro announced the payment of indemnization to the family members of Wallace Almeida and offered a formal apology. However, the petitioners consider that these measures do not constitute sufficient reparations, since the family members could not speak in the formal ceremony and the payment of indemnization is not enough to consider this aspect of the recommendations completely complied with. They also underscore that after 15 years of the murder of Wallace de Almeida, the military police officers who perpetrated these acts have not been judicially sanctioned and they still serve in the police forces. They remark irregularities and delays in the investigations of these types of executions, including that of Wallace de Almeida, and the fact that most of them remain in impunity. They also underscore a pronouncement from the United Nations Committee on the Elimination of Racial Discrimination describing the influence of racial discrimination in the criminal law system in Brazil, and how the creation and existence of the *Secretaria Especial de Políticas de Promoção Racial* is not sufficient to resolve the problem of racism in the country. Therefore, they consider that the State of Brazil has not duly complied with the recommendations in Report No. 26/09.

348. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

#### **Case 12.308, Report No. 37/10 Manoel Leal de Oliveira (Brazil)**

349. 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.

350. The Inter-American Commission made the following recommendations to the Brazilian State.<sup>37</sup>

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;

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<sup>37</sup> With regards to recommendations 1 and 4 as indicated in the IACHR annual report of 2012, the petitioners specified that they consider these recommendations fully complied with (IACHR, Annual Report 2012, Chapter III.D, para. 328).

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.

351. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State has not presented information on compliance with the recommendations set forth above this year.

352. The petitioners presented their response to the request for information of the IACHR on November 1, 2013. They consider that the State of Brazil has yet to comply with the recommendation to reopen the case related to the murder of Manoel Leal de Oliveira and to identify and sanction its intellectual authors. They also informed that in October 18, 2012, the *Conselho de Defesa dos Direitos da Pessoa Humana* adopted resolution number 7, in which it created a working group related to human rights and communication professionals in Brazil, with the goal of analyzing the current context related to this issue and to propose actions to prevent violence against these professionals. By means of resolution number 6, adopted by the *Secretaria de Direitos Humanos da Presidência da República*, it recommended the special protection of journalists and communication professionals while covering protests and included directives related to the use of less lethal weapons by public security forces. The *Secretaria* also organized a colloquium at the *Pontifícia Universidade Católica de Rio de Janeiro (PUC-RJ)*, to discuss the security of communication professionals and the importance of eradicating impunity when they suffer violence.

353. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

**Case 12.586, Report No. 78/11, John Doe et al. (Canada)**

354. In Report 78/11 dated July 21, 2011, the Commission concluded that the State was responsible for violations of Articles XVII and XXVII of the American Declaration. As a result, the IACHR issued the following recommendations to Canada:

1. Adopt measures to identify the John Does and verify their situation and status, in order to process any outstanding claim for asylum they may wish to present;
2. Make full reparation to the John Does for the established violations, including, but not confined to material damages;

3. Adopt the necessary legislative or administrative changes to ensure that refugee claimants are afforded due process in presenting their asylum claims. If the direct back policy is continued, this would require gaining the necessary assurances from the third State's immigration officials that directed back individuals will be able to return to Canada for their scheduled refugee eligibility interviews. In the alternative, the State would need to conduct individualized assessments based on the third State's immigration law to determine whether directed back individuals would have access to seek asylum in that State and not face automatic legal bars. In those cases where there is a bar from seeking asylum, those individuals may not be directed back. Finally, any "direct back" policy shall include an individualized determination of whether there is risk of subsequent *refoulement* for any refugee claimant directed back to the third State; and

4. Adopt the necessary legislative or other measures to ensure refugee claimants have access to adequate and effective domestic remedies to challenge direct-backs before they occur.

355. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented any new information concerning compliance with the recommendations set forth above this year.

356. Based on the foregoing, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

357. 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.

358. 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.

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

360. 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.

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

362. 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.

363. 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.

364. 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.



365. 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.

366. 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.

367. On December 12, 2012, the Commission asked the parties to provide updated information on the status of the first and second recommendations made to the State in Report No. 61/01. In its note of January 10, 2013, the State supplied information concerning the first recommendation, in reference to the status of the proceedings in Case No. 113.958 (Catalán Lincoleo). It noted that the State of Chile is a party in the case, and that the Executive Branch is represented by the Law No. 19.123 Continuation Program (or Human Rights Program) of the Ministry of the Interior and Public Security. It also reiterated that the case is being heard by the Special Visiting Judge from the Temuco Appeals Court and that it is currently a preliminary criminal inquiry; no one has as yet been charged with the crime of qualified abduction committed against the victim. It added that as of December 2012, certain investigative measures had not yet been carried out, intended to establish the identity of the subjects who participated in the crime committed against Catalán Lincoleo.

368. As for the second recommendation, the State offered no information concerning any progress made on the bills introduced in 2009. The bill for the interpretation of Article 93 of the Penal Code is still in the second reading in the Senate required under the Constitution, while the bill concerning a new mechanism for review of human rights violations was still in its first reading.

369. In view of the foregoing, the IACHR again observes with concern that its recommendation to the effect that the identity of the parties responsible for the murder of Samuel Alfonso Catalán Lincoleo be established has not been heeded, and that despite the amount of time that has passed, case No. 113.958 is still in the preliminary inquiry phase, and no one has thus far been brought to trial. Lastly, the Commission reiterates that despite the efforts made to adapt Chile's laws to conform to the American Convention, which is an international obligation incumbent upon the State but

thus far unfulfilled, in 2011 and 2012 no progress was made on the constitutional procedures required for passage of the bills that the Executive Branch introduced in 2009. Since all branches of the Chilean government have to be involved in the process of adapting domestic laws to conform to the American Convention, the legislative branch is urged to comply with the Commission's recommendations.

370. In a communication dated October 11, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

371. The Commission concludes that the Chilean State has partially complied with its recommendations. The Commission will, therefore, continue to supervise the recommendations still outstanding.

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

372. 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.

373. 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.

374. 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.

375. 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.

376. 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 Nº 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.

377. 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.

378. 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.

379. 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.

380. 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.

381. 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.

382. 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.

383. 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.

384. 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.

385. 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.

386. 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.

387. 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.

388. On December 3, 2012, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in Report No. 139/99. The State provided information by a note dated January 10, 2013. In connection with the first recommendation, it reiterated that through the Ministry of the Interior's Human Rights Program, it had called for a reopening of the preliminary inquiry into the case of aggravated homicide that claimed the life of Carmelo Soria Espinoza, but that its request was denied by the Supreme Court's Examining Justice. In its 2013 presentation, the State also reported that it was awaiting notification of the final ruling in Case No. 7,981, prosecuted for the crimes of conspiracy and obstruction of justice in the investigation into the murder of Carmelo Soria.

389. As for the second recommendation, the State again observed that it was compiling information to enable it to comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. It also reported that the bill interpreting Article 93 of the Penal Code was still in the second constitutional round in the Senate, while the bill for a new mechanism for review of human rights violations was still in the first constitutional round.

390. In a communication dated October 16, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

391. In view of the foregoing information, the Commission reiterates that the State has not yet complied with the Commission's recommendation regarding the investigation and punishment of those responsible for the murder of Carmelo Soria and its recommendation that Chilean domestic law be brought in line with the provisions of the American Convention on Human Rights.

392. The Commission concludes, therefore, that the Chilean State has partially complied with the recommendations the Commission made in Report No. 139/99. Consequently, the Commission will continue to monitor for compliance with the recommendations that have not been carried out.

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

393. On March 11, 2004, by Report No. 30/04, the Commission approved a friendly settlement agreement in the petition of Mercedes Julia Huentea 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.

394. 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.

395. In 2011, the IACHR asked the parties for updated information on compliance with the preceding recommendations.

396. 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.

397. 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.

398. 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.

399. 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.

400. 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.

401. 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.

402. 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 Biobío”; working in conjunction with the relocated families and the National Agricultural Development Institute (INDAP), it is preparing a work plan for the communities in the Upper Bío Bío sector. According to information provided by the State, two meetings were held with the petitioners in 2011 to review the commitments in the Friendly Settlement Agreement: one in the city of Los Ángeles on May 10 and the other in Santiago on May 15. Likewise, in letter No. 477, dated September 9, 2011, the National Director of CONADI informed the petitioners of the decision of the Ministry of Planning to make CONADI responsible for implementing and following up on the commitments under the Friendly Settlement Agreement.

403. 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.

404. 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.

405. 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.

406. 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.

407. 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.

408. On December 3, 2012, the IACHR asked the parties to provide updated information concerning their compliance with the commitments undertaken in the agreement.

409. As for the State’s commitment to undertake measures to improve the legal institutions protecting the rights of indigenous peoples and their communities, in a communication dated January 4, 2012, the State provided information to the effect that the Government has a commitment to the country’s indigenous organizations to push for constitutional recognition of the indigenous peoples, which would require it to undertake consultations on the draft constitutional amendment recognizing indigenous peoples; once those consultations were concluded, the legislative discussion could again get underway.

410. Concerning its compliance with commitment 1(b), the State again made the point that it had ratified ILO Convention No. 169 –as stated in the IACHR’s 2011 report. It also advised that in fulfillment of the consultation and participation obligations set forth in that Convention, in March 2011 it began implementation of the “Consultation on Indigenous Institutions”, the first stages of which were carried out between March and August 2011 and involved dissemination and Information. It again pointed out that, as previously noted, the Consultation Commission created by the CONADI Council had, since September 2011, held various meetings to discuss the “Consultation Procedure” required under ILO Convention No. 169.

411. The State added that the elections for the Indigenous Members of the CONADI Council were held on January 15, 2012; the elected members took office on May 9, 2012, and immediately began working with the CONADI Council’s Consultation Commission to move forward with the discussions “on the rules that would govern the Indigenous Consultation required under ILO Convention No. 169.” The State reported that as a result, on August 8, 2012, the Minister of Social Development

visited the ILO office where he officially delivered to the indigenous peoples and various organizations the proposed “New Regulations Governing Indigenous Consultation” so that the indigenous peoples of Chile might study and discuss them independently and then enter into a dialogue with the Government to agree upon the final version of those regulations. The State reported that the various organizations of Indigenous Peoples began discussing the new Proposed Regulations to Govern Indigenous Consultations on August 8, 2012, in meetings that they themselves convened, with support and funding from the Government. The State also observed that more than 74 informative workshops and meetings were held between August and November 2012, and that Indigenous Peoples from across the country had met in a Grand National Encounter of Indigenous Peoples, held in Santiago, Chile, November 30, 2011, with over 250 representatives of the indigenous peoples in attendance.

412. The State reported that some concrete proposals have been received so far, containing observations on the Government’s proposal or alternative proposals on how to regulate indigenous consultation. It added that all these proposals, and those received thereafter, will become basic material that will be taken up at the Negotiating Table where the government and the various representatives of the indigenous peoples will sit down to agree upon the final version of the regulations to govern Indigenous Consultation, which hopefully will enter into force in 2013.

413. As for the State’s compliance with commitment 1(b)(2)(a) regarding the creation of a municipality in the Upper BíoBío sector, the State reiterated that this commitment had been honored – as confirmed in the IACHR’s 2011 Annual Report. As for commitment 1(b)(2)(b) concerning agreement on mechanisms to resolve the land problems affecting the indigenous communities in the Upper BíoBío, the State reported that under Article 20, letter B of Law 19.253, land had been purchased for almost all the Pehuenche communities in the municipality of Upper BíoBío. The State explained that this was how the 8,000-hectare Trapa Ranch was purchased for the Pehuenche communities of Butalelbún and Kíñe Leche Coyan, located in the Cajón del Queuco, Upper BíoBío; that purchase represented an investment of \$1,556,772,000 Chilean pesos.

414. As for commitment (c), which was to “Strengthen indigenous participation in the Upper BíoBío Indigenous Development Area (ADI)”, the State reported that reactivation of the Upper BíoBío Indigenous Development Area is scheduled for 2013, and is a clause in an agreement that CONADI, the BíoBío Provincial Government and the Upper BíoBío Municipality concluded. The State asserts that CONADI will draw upon the Indigenous Development Fund for the resources necessary to operate the ADI.

415. As for commitment (d) concerning an agreement on mechanisms designed to ensure the participation of indigenous communities in the management of the Ralco Forest Reserve, the State reiterated that this commitment had already been carried out, as confirmed in the IACHR’s 2011 Annual Report.

416. As for fulfillment of commitment 3(a), the State reported that in 2012, the Environmental Evaluation Service (SEA) continued to monitor the project’s environmental obligations and had requested an opinion from the competent agencies regarding the following reports: a) the 2010 report of the Independent Environmental Auditor’s Office; b) ENDESA’s response to SEA’s opinion on the 2010 reports of the Independent Environmental Auditor’s Office; c) the 2011 report of the Independent Environmental Auditor’s Office; d) Report of the Independent Environmental Auditor’s Office for the first half of 2012; e) Final Report “Audit on the status of compliance with the environmental commitments and demands in relation to the tourism value of the territory. Ralco

Hydroelectric Dam,” and f) Report “Identification and Protection of Pehuenche Heritage Sites in the Upper BíoBío.”

417. The State reported that because it is still compiling background information, it does not yet have any final results to report to the interested municipalities and communities. It said that once it has the results, they will be reported by the authority charged with follow-up and inspection. It added that because the Office of the Environmental Superintendent (SMA) and the environmental courts started functioning on December 28, 2012 as part of the New Environmental Institutional Infrastructure, the SEA is preparing to hand over all the background information it has compiled; henceforth, the SMA will be in charge of that background information, by virtue of its legal authorities.

418. As for compliance with commitment 3(b), the State reported that the municipality of Upper BíoBío has been incorporated into the planning of the BíoBío regional government’s Rural Territorial Development Infrastructure Program (PIRDT). It indicated that the program will strengthen the concept of land planning, maximize production and develop new planning methods. It also observed that the planning is to be a participatory enterprise conducted by the BíoBío Regional Government; at the same time, the BíoBío Regional Government and CONADI have approved the sum of \$458,000,000 pesos to execute non-farm projects of Pehuenche Communities in BíoBío Province. The State explained that the purpose of these projects is to strengthen and diversify the economy of Pehuenche families, in areas such trade, crafts, beekeeping, ecotourism, and others. This program will last 18 months, during which time it will support the enterprise projects of 300 Pehuenche families in the province, 200 of whom are in the Upper BíoBío municipality. As a result of communications between the government and ENDESA, at the families’ request their concerns and demands have been taken into account in the context of the measures aimed at the affected communities’ development.

419. As for fulfillment of commitment 3(c), according to the State, the government anticipates that new initiatives can be undertaken in 2013 to fulfill commitment 3(c). As for commitment 3(d), the State repeated what it had said in 2011 to the effect that this commitment was being carried out in accordance with the existing legal system, which includes the treaties signed by the State, among them ILO Convention No. 169.

420. The State claims that commitment 4 has been fulfilled, as stated in the IACHR’s 2011 annual report.

421. As for commitment 5(a), following up on what it reported in 2011 the State asserted that in 2012 the BíoBío Regional Secretariat of the Ministry of National Assets did on-site work to make technical corrections and then administrative business to legalize the changes. The State reported that the operating premise was that each beneficiary’s land was to be respected, and the idea was to help identify boundaries. It observed that the technical and legal corrections necessary to transfer title to the tracts of land in Lots B and C will be completed in the first half of 2013. It also pointed that the procedure requires the permission of the families involved. At an on-site meeting held on December 10, 2012, those families were advised of the procedure and what it will mean.

422. As for commitment 5(b), the State indicated that in 2012, the Municipality of Quilaco, CONADI and the Regional Government began talks about applying the Territorial Development Template [Plan Marco de Desarrollo Territorial] (PMDT) in the “Pemehue Highlands Reserve”. The State reports that this tool is a means of enabling investment on the relocated ranches of La Suerte and El Porvenir; it also reported that in 2012, this Project was presented to the Regional Council and the terms

of reference and the terms of the tendering procedure were prepared; the study is planned for the first half of 2013.

423. With regard to commitment 5(c), the State reported that the housing is being arranged through MINVU's Rural Subsidy Program. However, to achieve this objective, basic services (sanitation) have to be made available before this measure can be finalized. Finally, it reiterated that it had complied with commitment 5(d).

424. In a communication dated October 16, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

425. The Commission appreciates the measures the State has taken to honor the commitments it made under the Friendly Settlement Agreement. While it observes that a number of commitments have been fulfilled, some measures are still in the process of being implemented. Therefore, the Commission concludes that the State has partially fulfilled the Friendly Settlement Agreement. Consequently, the Commission will continue to monitor the pending commitments.

**Case 12.469, Report No. 56/10, Margarita Cecilia Barbería Miranda (Chile)**

426. 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.

427. 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.

428. 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.

429. 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.

430. 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.

431. 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.

432. The Commission observes that, for the reasons explained by the State, the recommendations regarding reparations to Mrs. Margarita Barbería Miranda for the violations established in the Commission's previous report have not been carried out.

433. On December 5, 2012, the Commission asked the parties to update the information on the status of compliance with the second recommendation the Commission made in report No. 56/10. By a communication received on January 15, 2013, the petitioner claimed that in 2012 she had no contact with representatives of the Chilean State in connection with fulfillment of the Commission's second recommendation. For its part, on January 4, 2013, the State sent a communication repeating what it had previously reported, specifically that while it had suggested to the petitioner that she press for satisfaction of her financial claims by pursuing recognized domestic procedures under Chilean law, Mrs. Barbería had not opted to pursue that course of action.

434. In a communication dated March 1, 2013, the petitioner said that she was without recourse to action in the domestic courts because under the rules governing the country's statute of limitations, which are set out in Book IV, Title XLII of the Civil Code, the overall time limit on taking legal action in the regular jurisdiction is five years. She said that the facts on which any hypothetical action might be based had occurred 12 years ago. She also said that she lacked another of the requirements: a legally enforceable basis for her claim, which did not include the records of the Inter-American Commission. Finally, the petitioner said that her reparation claims were intended to redress the harm caused by the seven years in which she was arbitrarily excluded from practicing law.

435. In a communication dated October 11, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

436. The Commission is concerned that the recommendation concerning adequate reparations for Margarita Barbería Miranda has not been carried out. The Commission therefore concludes that the Chilean State has partially complied with the aforementioned recommendations. Consequently, it will continue to monitor the recommendation not yet honored.

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

437. In Report No. 62/01 of April 6, 2001, the Commission concluded that the State was responsible for the violation of the right to life, enshrined in Article 4 of the American Convention, in the massacre perpetrated by State agents and members of paramilitary groups of the following persons: Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio Cesar Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano. In addition, it concluded that the State was responsible for having breached its special duty of protection, under Article 19 of the American Convention, to the detriment of minors Dora Estella Gaviria Ladino and Luz Edelsy Tusarma Salazar. The Commission also concluded that the Colombian State was responsible for violating the right to humane treatment, enshrined in Article 5 of the Convention, to the detriment of Hugo Cerdeño Lozano, Miguel Ladino, Cenaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza, and of breaching its duty to provide effective judicial protection to the victims in this case under Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) of the same.

438. 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.

439. The IACHR has been monitoring the State compliance of the recommendations it issued and on November 15, 2012 it requested information from both parties. On January 2, 2013 the State submitted the information requested by the IACHR regarding the measures adopted for the compliance of the three recommendations. On October 2, 2013, the IACHR requested additional information on compliance with the recommendations from both parties. The State's response was received on the following November 27, while the petitioners did not respond to the request for information.

440. Based on the information provided by the State in 2013, and regarding recommendation No. 1, the State has reiterated that the criminal case has been reassigned to Specialized Prosecutor's Office 48 of the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation and that it remains at the preliminary investigation stage. It also reiterated that since October 1998, the decision to acquit the members of the military forces in the disciplinary proceeding brought against them was upheld and that some of their harsher sentences were made more lenient (dismissal became reprimand and suspension of duties became acquittal). The State further reported that during 2013, an investigation was conducted "as a mechanism to formally implicate some individuals who, as a result of the evidence gathered thus far, may be connected to the crimes that are the subject of the case."

441. With respect to recommendation No. 2, the State reiterated that, as of 2004, there has been compliance with a conciliation agreement between Colombia and the family members of the victims and it requested the IACHR to rule that there has been compliance with the obligation set forth under recommendation No. 2 of Report 62/01.

442. As for recommendation No. 3, the State reiterated the information submitted during the monitoring stage, regarding the Ministry of National Defense making Human Rights (HR) and International Humanitarian Law (IHL) policies permanent, applying them to all members of the public security forces and developing the guiding principles of leadership, promotion and respect for HR and IHL; as well as prevention, deterrence, control, integration and recognition. Additionally, it reported that under Directive No. 003 of January 8, 2013, the General Command of the Armed Forces, the organizational structure and operation of the Delegated Inspections was adjusted to include among their duties issues pertaining to HR, IHL and other things. Consequently, the State requested the IACHR to find that recommendation No. 3 of Report 62/01 has been fully complied with.

443. In light of 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)**

444. 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.

445. In Report No. 63/01, the IACHR made the following recommendations to the State:

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

446. The IACHR has been monitoring the State compliance of the recommendations it issued and on November 26, 2012 it requested information from both parties. On January 2, 2013 the State submitted the information requested by the IACHR regarding the measures adopted for the compliance of the three recommendations, while the petitioners submitted additional information on January 24. On October 2, 2013, the IACHR requested updated information from both parties on compliance with



the pending items. The State's response to this request was received that November. The petitioners did not respond to the request for information.

447. With regard to recommendation No. 1, the State has reiterated that the case has been reassigned to Specialized Prosecutor's Office 16 of the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation. In this regard, it reiterated that convictions were handed down against several of the 9 individuals for the crime of being an accessory after the fact by giving favorable treatment. It also noted that on May 2, 2012, three individuals were convicted for the crime of the aggravated homicides of Carlos Manuel Prada and Evelio Antonio Bolaño, and that an appeal filed by the attorneys of the defendants was pending. Based on the foregoing, the State requested the IACHR to find that there is full compliance with the first recommendation of Report 63/01.

448. With respect to recommendation No. 2, the State reiterated that as of 2009, payment of damages for pain and suffering to the next-of-kin of Carlos Manuel Prada and Evelio Antonio Bolaño was fully complied with and it requested the IACHR to find that there is compliance with the obligation set forth in recommendation No. 2 of Report 63/01.

449. Regarding recommendation No. 3, the State reiterated the information it has submitted as of 2010. The State submitted information concerning the introduction of policies and lines of action in human rights and international humanitarian law intended for all members of law enforcement, emphasized the work of the Superior Council of the Judiciary to implement the doctrine developed by the Constitutional Court on the definition of the competence of ordinary courts when dealing with serious human rights violations and reported on the measures taken to transfer cases involving possible human rights violations from the military justice system to the regular courts. Given the importance of the topic and its heavy impact on the evaluation of the duty to guarantee and protect human rights, and inasmuch as all branches of government were constantly monitoring this problem, the State asked the Commission once again to find that recommendation No. 3 had been fully carried out.

450. In response, the petitioners recognized that significant progress has been made in compliance with the first recommendation, acknowledging in this regard the convictions handed down for the crimes of the instant case. Notwithstanding, they believe that the investigations should remain open "until all of those responsible [who are] implicated are identified, prosecuted and punished," and that the crime of "'accessory after the fact' as a type of criminal charge be examined" inasmuch as it could constitute a "mechanism of impunity for extrajudicial executions." As for the second recommendation, the petitioners recognized as a significant step forward the payment of compensation to the victims as provided under the decision of the Council of State in the instant case, and deem that at the same time other actions or mechanisms should be taken or put into place to contribute to the full reparation of the next-of-kin of the victims.

451. With regard to recommendation No. 3, in their communication of January 24, 2013, the petitioners described the amendment to the Political Constitution approved by the Congress of the Republic under Legislative Act 02 of 2012, pertaining to military jurisdiction of criminal justice, as a serious aspect linked to compliance viewing it as substantially expanding the scope of competence of the military justice system to hear cases of violations of international humanitarian law, as well as of human rights violations such as those committed in the instant case. [Footnote: Note of secretariat: as of the date of the approval of the instant Annual Report, and based on information of public knowledge, under the decision of the Constitutional Court, Legislative Act 02 of 2012 had been declared

unconstitutional. See: Press release No. 41 of the Constitutional Court. October 25, 2013. Available at: <http://www.corteconstitucional.gov.co/>

452. Based on the foregoing, and given that in the criminal case there are decisions pending review, 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)**

453. 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.

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

1. Conduct an impartial and effective investigation before ordinary jurisdiction for the purpose of judging and sanctioning those responsible for the extrajudicial execution of Mr. Leonel de Jesús Isaza Echeverry.
2. Adopt the measures necessary for reparation of the consequences of violations committed to the detriment of María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as providing due indemnity for the relatives of Leonel de Jesús Isaza Echeverry.
3. Take the steps necessary to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention, as well as adopting the measures necessary to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission in investigating and prosecuting similar cases through the ordinary criminal justice system.

455. The IACHR has been monitoring the State compliance of the recommendations it issued. Accordingly, on November 3, 2012, a working meeting of the parties was held wherein the steps taken for compliance with the first and third recommendations were addressed, particularly the possibility that this type of case not be investigated under military jurisdiction. On January 2, 2013 the State submitted the information regarding the steps taken to comply with the three recommendations. On February 5, 2013, the State submitted additional information on compliance with the agreements reached at the working meeting of November 2012.

456. As to recommendation No. 1, the State has reiterated the information on the decision handed down in November 2004 acquitting the defendants under the principle of *in dubio pro reo*. However, it added that a motion to review the ruling was filed with the Supreme Court of Justice in

order to enforce proper due process procedures and ensure that a legally pre-established judge with jurisdiction to hear the matter presides (guarantee of natural judge).<sup>38</sup>

457. The State has reiterated that by Payment Resolution No. 2512 the conciliation agreement was carried out, as the payment of compensation was made to María Fredesvina Echeverri de Isaza and Lady Andrea Isaza Pinzón and requested the IACHR to find that there was compliance with the obligation set forth in recommendation No. 2 of Report 64/01.

458. With respect to recommendation No. 3, the State reiterated the information submitted in 2010 and 2011 on making Human Rights (HR) and International Humanitarian Law (IHL) policies permanent, applying them to all members of the public security forces and developing the guiding principles of leadership, promotion and respect for HR and IHL; as well as prevention, deterrence, control, integration and recognition. It mentioned the Comprehensive HR and IHL Policy that was issued in January 2008, the HR and IHL School of the Military Forces being up and running as of 2009 and ongoing progress made by the Constitutional Court in setting legal precedents to define the limits of military criminal jurisdiction. The State also highlighted the efforts of the Superior Council of the Judiciary to enforce judgment C-358 and define the jurisdiction of civilian courts when faced with serious human rights violations and it noted that from 2009 to 2011, the Superior Council of the Judiciary entertained motions from 472 cases, of which 210 were referred on jurisdictional grounds to civilian courts and 62, to the military criminal justice system. In light of the foregoing, the State requested the IACHR to find full compliance with recommendation No. 3 of Report 64/01.

459. 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)**

460. On July 29, 2002, by Report No. 105/05<sup>39</sup>, 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.

461. 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

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<sup>38</sup> The State submitted the date of the filing of the motion for review and a copy in its communication of February 5, 2013; however, as of the date of approval of the instant Annual Report, the Commission has not received information from the parties on the processing of said action.

<sup>39</sup> 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>.

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.

462. 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.

463. On November 15, 2012 the IACHR requested information from both parties about the compliance of the friendly settlement agreement. On December 19, 2012 the State submitted the information requested by the IACHR regarding the measures adopted, the petitioners did not submit the information requested.

464. In 2012, the State reiterated that at present a preliminary investigation is under way in the Human Rights Unit of the Office of the Attorney General, and that the office in charge ordered a series of measures be taken to make progress in determining the possible perpetrators and accomplices of the events that are the subject matter of the case. It also reported that the entities with jurisdiction are studying the possibility of presenting a complaint seeking a review of the proceedings that concluded favorably for the persons being investigated. As for the publication and dissemination of the friendly settlement agreement, the State advised that consensus could not be achieved with the representatives of the victims and, therefore, "it will proceed to publish and disseminate the friendly settlement agreement."

465. On October 2, 2013, the IACHR requested information from both parties on compliance with the pending items. On November 5, 2013, the State requested and was granted an extension until November 25. However, no reply was received from the State before the deadline lapsed and the petitioners did not respond to the request for information either.

466. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission shall continue to monitor pending items.

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

467. On February 28, 2006, the Commission approved a report pursuant to Article 50 of the American Convention by which it concluded that the State was responsible for violating the rights to life, to a fair trial, rights of the child, and right to judicial protection, corresponding to Articles 4, 8, 19, and 25 of the American Convention in relation to its Article 1(1), to the detriment of the child Leydi Dayán Sánchez Tamayo, and that the State had violated the rights to judicial guarantees and judicial protection corresponding to Articles 8 and 25 of the American Convention in relation to Article 1(1) of that international instrument, to the detriment of the next-of-kin of Leydi Dayán Sánchez Tamayo. This case has to do with the responsibility of state agents in the death of the child Leydi Dayán Sánchez Tamayo, which occurred on March 21, 1998, in Ciudad Kennedy, Bogotá, and the failure to clarify the facts of the case judicially.

468. 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.

469. 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.

470. On October 4, 2013, the IACHR requested information from both parties on compliance with the items still pending. The petitioners have not responded to the request for information.

471. On December 3, 2013, the State submitted its response reporting that in October 2013, Criminal Case Backlog-Clearing Circuit Court No. 55 of Bogota issued a conviction and sentenced an individual to a jail term of 36 years and 6 months. Additionally, it highlighted that a serious and impartial investigation was conducted in the proceedings by the Office of the Attorney General of the Nation. The State also noted the active participation of the representatives of the victim's family therein, as a civil party to the criminal proceedings and having the chance to voice their legal position in case.

472. 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)**

473. On October 30, 2008, in its Report No. 83/08<sup>40</sup>, 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.

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<sup>40</sup> 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>

474. 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.

475. 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.

476. In 2012, the State reported that the Criminal Appeals Chamber of the Supreme Court of Justice settled the motion to review filed by the Office of the Inspector General of the Nation against the ruling of February 15, 1993 (which terminated the investigation of an individual for the crime of homicide) and the ruling of April 15, 2002 (which precluded investigation of three individuals for the crime of simple abduction). In its judgment of September 26, 2012, the Supreme Court of Justice vacated both decisions and ordered the investigation to be transferred to the Office of the Attorney General of the Nation. The State noted that because of this, the investigations will be reopened and continued in order to determine what happened and who is responsible.

477. With regard to the search for the remains of Mr. Jorge Antonio Barboza Tarazona, the State informed that the case was registered in the Single Virtual Identification Center (CUVI) and was filed at the National Unit of Prosecutors for Justice and Peace, to be included on the list of individuals pending identification among those who were found in the exhumations of that Unit. Lastly, the State requested the IACHR to find that the State has fully complied with its obligations under the friendly settlement agreement.

478. In response, on April 11, 2013, the petitioners contended: "they have the right as the victims to know what technical and scientific efforts have been made by the Colombian State in the search for the remains of the victims." Specifically, they claimed that the State must submit information regarding: i) "whether it is true that members of the military confessed that the body was left under N.N.[Unclaimed] status in the cemetery of Cienega – Maddalena;" ii) what investigations have been conducted and for how long by the authorities in charge for the purpose of locating the remains; and iii) "what are the reasons or circumstances for it [**?not**] being possible to locate them [the remains], even though it is known that the remains are located at a particular cemetery." This information was forwarded to the State in an IACHR communication of April 30, 2013, requesting its response within a period of one month.

479. On October 8, 2013, the IACHR requested information from both parties on compliance with the items pending, but no response has been received.

480. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

**Case 10.916, Report No. 79/11, James Zapata Valencia and José Heriberto Ramírez**

481. On October 21, 2010, the Commission approved Merits Report No. 113/10, pursuant to Article 50 of the American Convention. In said report, the Commission concluded that the Republic of Colombia violated the right to life, the right to humane treatment and the right to personal liberty, enshrined in Articles 4, 5 and 7 of the American Convention, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos, in connection with the provisions of Article 1.1 of the aforementioned international instrument. Likewise, it concluded that the State violated the rights of the child of Jose Heriberto Ramirez Llanos, who was 16 years of age at the time of the incidents. And lastly, the IACHR also concluded that the State was responsible for the violation of the right to humane treatment, to a fair trial and to judicial protection, enshrined in Articles 5, 8 and 25 of the Convention, to the detriment of the next-of-kin of the victims and in conjunction with the general obligation to respect and ensure of Article 1.1 of the Convention.

482. In approving the aforementioned Report, the Commission established several deadlines for the State to move towards compliance with the recommendations set forth therein. After considering the information provided by both parties and the efforts made by the State to comply with the recommendations, the Commission decided to issue Report No. 79/11, pursuant to Article 51 of the American Convention and publish it. In said report, the IACHR recommended the following to the State:

1. That it conduct a full, impartial, effective investigation within a reasonable time into the circumstances in which James Zapata Valencia and the child José Heriberto Ramírez Llanos died.
2. That it adopt the necessary measures to ensure a due investigation into the cases of the executions perpetrated by State security agents.
3. That it provide adequate reparations to the families of James Zapata Valencia and José Heriberto Ramírez Llanos, taking into account the child special condition of José Heriberto Ramírez at the time of the events.

483. The IACHR has been monitoring State compliance with the recommendations it issued. Accordingly, on March 13, 2013, a working meeting of the parties was held regarding compliance with said recommendations. On October 4, 2013, the IACHR requested information from both parties on compliance with the recommendations.

484. On April 5, 2013, the petitioners submitted information regarding recommendation No. 3. On this topic, they noted that even though in July 2012, Resolution No. 3937 was approved by the Ministers of the Interior, Foreign Relations, Justice and of Law, who decided “to issue an opinion favorable to compliance with Report No. 71 of 2011 [...] as provided by and for the purposes of Law 288 of 1996 [...],” they contended that as of the present date no conciliation hearing has been convened as provided for in the procedure of Law 288, and that there has been a 15 month delay of said proceeding. In this regard, they note that the information received from the government officials claims that the Ministry that is responsible for paying the compensation has not been assigned, nor has a request for conciliation been filed with the Office of the Public Ministry [of the Office of the Inspector General]. In response to the IACHR’s request for information, on October 31, 2013, the petitioners reiterated that

the procedure to convene the conciliation hearing has not been complied with despite several requests and arguments on the rights of petition that were filed with domestic authorities. Said information was forwarded to the State for its comments.

485. In response, on May 30, 2013, the State reported on a new meeting that was held on May 23, 2013, in the context of the Working Group on “implementation and follow-up to compliance with judgments of the Inter-American Court of Human Rights and other orders and recommendations issued by international human rights bodies in individual cases” in order to establish a timeline of steps for compliance with orders issued under Report No. 71 of March 31, 2011 of the Commission, and consequently [in compliance] with resolution of the Committee of Ministers No. 3937 of July 6, 2012. The IACHR requested the Colombian State to submit information on the May 23, 2013 meeting.

486. On July 11, 2013, the State noted that at the meeting “alternatives were examined so that in accordance with the competence of the different institutions related to the subject matter, compliance with the orders of the Honorable Commission in its Report No. 71 of March 31, 2011, and consequently with [the resolution of] Committee of Ministers resolution No. 3937 of July 6, 2012 is made feasible.” Said information was forwarded to the petitioners for their reference.

487. In response to the request for information made by the IACHR, the State submitted information on compliance with the three recommendations on December 2, 2013.

488. With respect to recommendation No. 1, the State reiterated that the Human Rights and IHL Unit of the Office of the Attorney General of the Nation is conducting a criminal investigation under case file number 169. The State submitted a list of steps taken in the investigation from 1998 to 2013.

489. Regarding recommendation No. 2, the State reiterated on “numerous measures adopted in order to prevent executions perpetrated by agents of State security, as well as to move the respective investigations forward and, as the case may warrant, provide reparation to the victims of this criminal conduct.” In this regard, the State mentioned the state policy of zero tolerance for human rights violations by the public security forces, the legal framework to punish arbitrary deprivation of life and the death of persons in protective custody, the administrative framework to prevent and ensure non-repetition of arbitrary deprivation of life or homicides of individuals in protective custody, the judicial framework to ensure the investigation, prosecution and punishment of those allegedly responsible for punishable conduct that may constitute arbitrary deprivation of life or homicide of protected individuals, and the judicial framework to ensure full reparation for the damages caused as a consequence.

490. As for recommendation No. 3, the State noted that even though progress has been made regarding administrative and legal proceedings of consultation to enforce the measures of reparation, “unfortunately a final consensus has not been reached on the inter-institutional matters that make it possible to approve a decision based on law, in keeping with the constitutional and legal framework, as to what state entity would be responsible for representing the Colombian State at the conciliation hearing to be convened by the Office of the Public Ministry [...]”

491. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Accordingly, the Commission will continue to monitor compliance.



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

492. In Report No. 67/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for violations of Articles I (right to life, liberty, personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to preservation of health and well-being), XVIII (right to justice), XX, (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration, to the detriment of Messrs. Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efrén Fernández, Juan Adolfo Fernández Saínz, 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.

493. 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.

494. 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.

495. On November 4, 2013, the Commission requested up-to-date information from the parties on the status of compliance with the recommendations that were put forth in the instant case.

496. As was noted in the 2011 Annual Report, the Cuban Government released the victims of Case 12.476, who as of that year were still deprived of their liberty, most of which moved to Spain and, those who refused to leave Cuba, were granted a "furlough."

497. However, their convictions were not vacated, even though the statutory basis for them placed unlawful restrictions on their human rights. As for the second, third and fourth recommendation of the IACHR, the Cuban State has not taken any steps thus far to comply with them.

498. The Commission reiterates its appreciation to the State for releasing all of the victims of Case 12.476.

499. Based on the foregoing, the Commission concludes that the State has partially complied with the recommendations. Consequently, the Commission will continue to monitor the pending items.

**Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo *et al.* (Cuba)**

500. 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.

501. 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.

502. On November 4, 2013, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case. On October 16, 2013 the petitioners reported that there was no evidence that the Cuban State had carried out the recommendations of the IACHR and asked the Commission to continue monitoring the case until the State fully carries out the recommendations. The State did not submit any information.

503. Based on the foregoing, the Commission concludes that the State has not complied with the recommendations. Therefore, the Commission will continue to monitor the pending items.

**Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)**

504. 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.

505. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 93/00<sup>41</sup>, in which it acknowledged that the State had complied with the payment of a compensation in the amount of US\$30,000, and decided:

2. To urge the State to take the necessary measures to carry out the commitment to pursue civil and criminal proceedings and to seek to impose punishment on those persons who, in the performance of government functions or under the color of public authority, are considered to have participated in the alleged violation, and the payment of interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise implementation of the friendly settlement, and in that context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to performance of the obligations assumed by the State under this friendly settlement.

506. On October 4, 2013, the IACHR requested information on compliance from both parties. On November 19, 2013, the petitioners indicated that the State has still not taken any judicial steps to investigate, prosecute and punish those responsible for the murder of the victim nor has it punished those judges whose conduct has allowed the case to remain in impunity, who by not adequately disposing of the case and by allowing the case to become time-barred with the passage of time. The State did not respond to the request for information.

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<sup>41</sup> Report No. 93/00, Case 11.421, Edinson Patricio Quishpe Alcívar, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.421.htm>

507. 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 Cañaveral (Ecuador)**

508. 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 Cañaveral on May 26, 1993, at the hands of state agents who subjected him to torture and other forms of cruel and inhumane treatment.

509. On November 19, 2000, the IACHR adopted Friendly Settlement Report No. 94/00<sup>42</sup>, 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.

510. On October 4, 2013, the IACHR requested information on compliance from both parties. On November 19, 2013, the petitioners informed that the Ecuadorian State had not taken any steps to investigate, prosecute and punish the acts alleged in the petition before the Commission. The State did not respond to the request for information.

511. 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)**

512. 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.

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<sup>42</sup> 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>

513. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 96/00<sup>43</sup>, 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.

514. On October 4, 2013, the IACHR requested information on compliance with the items pending. On November 21, 2013, the petitioners reiterated that as of 1999 the police jurisdiction found the statute of limitations on the case to have lapsed, while the State did not take any action to vacate said ruling for being a violation of a right, because the police judges had acted without jurisdiction to prosecute human rights violations and, consequently, said crimes remained in impunity. The State failed to respond to the request for information.

515. 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)**

516. 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.

517. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 97/00<sup>44</sup>, 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.

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<sup>43</sup> 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>

<sup>44</sup> 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>.

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.

518. On October 4, 2013, the IACHR requested information on compliance with the items pending. On November 19, 2013, the petitioners reported that the State had not taken any judicial action to investigate, prosecute and punish the police judges, who improperly assumed jurisdiction to investigate human rights violations and, in 1995, found the case to be time-barred under the statute of limitations and closed it. Once again, the State failed to respond to the request for information.

519. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.783, Report No. 98/00, Marcia Irene Clavijo Tapia (Ecuador)**

520. 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.

521. On October 5, 2000<sup>45</sup>, 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.

522. On October 4, 2013, the IACHR asked both parties for information on compliance with pending items. Neither of the parties submitted any information.

523. 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.

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<sup>45</sup> 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>

**Case 11.868, Report No. 99/00, Carlos Santiago and Pedro Restrepo Arismendy (Ecuador)**

524. 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.

525. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 99/00<sup>46</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$2,000,000, and decided:

2. To urge the State to take the measures needed to comply with the commitments still pending to carry out the total, definitive, and complete search for the bodies of the two brothers, and the criminal trial of the persons considered to have participated in the torture, disappearance, and death of the Restrepo Arismendy brothers, as well as in covering up those acts.

3. To continue to monitor and supervise compliance with the settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report “periodically, upon request of the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights, as to the performance of the obligations assumed by the State under this friendly settlement.”

526. On March 15, 2013, the State submitted information on progress in the steps taken for compliance. In this regard, it reported on the creation of the Operational Team, which goes by the name of “POR LA VERDAD Y JUSTICIA” [“For Truth and Justice”], within the Ministry of the Interior, in order to facilitate the search and discovery of victims’ remains. It further reported that the Ministry of the Interior had launched a “far-ranging communications campaign” to secure information on the whereabouts of the victims’ remains. The State also noted that the Argentine Forensic Anthropology Team has assisted in the process of investigation. Additionally, it reported that “since the time the Operational Team began to perform its duties, the Restrepo family has participated in the investigation,” mainly through attendance at periodic meetings to be briefed on progress and to listen to their [the family’s] requests.

527. With regard to the criminal investigation, the State reported that the matter is under the responsibility of a prosecuting attorney of the Truth and Human Rights Commission of the Office of the Attorney General of the State and that the process is in the preliminary stage. In this regard, the State noted that “there is total secrecy with regard to the investigation being conducted by the prosecuting attorney,” and that it would report at the proper time when the case moves to the next

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<sup>46</sup> 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>

stage of the investigation. This information was forwarded to the petitioners for their comments, and as of the date of approval of the instant Annual Report, the petitioners have not submitted their reply.

528. On October 04, 2013, the IACHR requested information from both parties on compliance with the items still pending, but no replies have been received.

529. 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)**

530. 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.

531. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 100/00<sup>47</sup>, 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.

532. On October 4, 2013, the IACHR asked both parties to report on compliance with the pending items. On November 19, that year, the petitioners reiterated that, despite the time elapsed since the signing of the agreement, the State had not complied with the obligation it accepted regarding investigation, prosecution and punishment of those responsible. Additionally, they claimed that the State had not reported on any steps taken to overturn the judgment handed down in the absence of the victim, when the Constitution clearly provides that the trial stage of the proceedings shall take place in the presence of the defendant, in order to ensure his legitimate right of defense. They added that said judgment, which they contend violates domestic legislation and was adopted in the absence of Kelvin Torres, could be retaliation against him because he had the courage to file suit against the State and

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<sup>47</sup> 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>



charge prosecutors and judges with violating his rights. For its part, the State did not submit the information requested.

533. 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)**

534. 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.

535. On February 20, 2001 the IACHR adopted Friendly Settlement Report No. 19/01<sup>48</sup> 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.

536. On October 07, 2013, 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.

537. 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)**

538. 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

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<sup>48</sup> 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>

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.

539. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 20/01<sup>49</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided:

2. To urge the State to adopt the necessary measures to conclude implementation of the commitment regarding the trial of persons implicated in the facts alleged.
3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR, every three months, of its compliance with the obligations assumed by the State under this friendly settlement agreement.

540. On October 4, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, on November 19, 2013, the petitioners reported that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim and, consequently, the case became time-barred under the statute of limitations, while the judges who delayed the case from going forward have enjoyed impunity from prosecution. The State did not respond to the request for information.

541. 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)**

542. 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.

543. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 21/01<sup>50</sup>, 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:

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<sup>49</sup> 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>

<sup>50</sup> 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>

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.

544. On October 4, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that on November 19, 2013, the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case became time-barred under the statute of limitations in the Criminal Code, which time bars cases after a period of 10 years from the date of the crime or from the start of the trial, as the case may be, when the judiciary issues no decision in cases punishable with jail sentences such as those involving the crime of murder. The State, in turn, did not respond to the request for information.

545. 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)**

546. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This was in connection with the duration of the preventive custody in which José Patricio Reascos was held during his prosecution for narcotics use. The victim was detained on September 12, 1993, and, on September 16, 1997, he was sentenced to an 18-month prison term, when he had already been in custody for four years.

547. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 22/01<sup>51</sup>, 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.

548. On October 8, 2013, the IACHR requested information from both parties regarding the state of compliance with pending items. The petitioners responded on November 21, 2013, by saying

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<sup>51</sup> 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>

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.

549. 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)**

550. In Report No. 66/01 of June 14, 2001, the IACHR concluded that the Ecuadorian State had violated, with respect to Mrs. Dayra María Levoyer Jiménez, the following rights enshrined in the American Convention: the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in conjunction with the general obligation to respect and ensure of Article 1.1 of the Convention. This was in connection with the violations of physical integrity and the denial of liberty suffered by Mrs. Levoyer Jiménez, who was detained on June 21, 1992, without an arrest warrant, and kept incommunicado for 39 days, during which time she was subjected to psychological torture. She was held in custody without a conviction for more than five years, and finally all the charges against her were dismissed.

551. 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.

552. On October 8, 2013, the IACHR requested information from both parties on compliance with the remaining items. On November 19, 2013, the petitioners claimed that the State had not yet opened any judicial or administrative investigation to identify and punish those responsible for the crimes, nor had it taken any steps to provide reparation for the damages caused to the victim. Regarding compliance with the third recommendation, they reiterated the information pertaining to the entering into force of the 2008 Constitution, which provides that the *habeas corpus* remedy must be heard by a judicial authority. The State did not submit the requested information.

553. 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)**

554. 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.

555. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 104/01<sup>52</sup>, 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.

556. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on November 19, 2013, by reiterating 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.

557. 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)**

558. 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.

559. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 105/01<sup>53</sup>, certifying that the victim had been paid compensatory damages in the amount of US\$30,000, and decided:

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<sup>52</sup> 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>

<sup>53</sup> Report No. 105/01, Case 11.443, Washington Ayora Rodríguez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11443.htm>

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.

560. On October 8, 2013, the IACHR asked both parties to submit information on compliance with the pending items. In response, the petitioners reported on November 19, 2013 that the State has not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. The State did not respond to the request for information.

561. 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)**

562. 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.

563. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 106/01<sup>54</sup>, 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.

564. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on November 19, 2013 that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case was time-barred under the statute of limitations in the Criminal Code, which time bars cases after a period of

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<sup>54</sup> 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>

10 years from the date of the crime or from the start of the trial, when no judicial decisions are taken in cases punishable with jail sentences such as those involving the crime of murder. The State did not respond to the request for information.

565. 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)**

566. 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.

567. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01<sup>55</sup>, 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.

568. On October 4, 2013 the IACHR asked both parties to report on compliance with the items still pending. On November 19 that year, the petitioners reiterated that the police judges (who did not have jurisdiction) heard this case of human rights violations and dismissed and closed it, without the State having taken any action to vacate said decision on the grounds that it was issued by judges who did not have jurisdiction to punish those responsible; nor has the State taken any action against the police judges who improperly assumed jurisdiction. The State did not respond to the request for information.

569. 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)**

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<sup>55</sup> 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>

570. 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.

571. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01<sup>56</sup>, 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.

572. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. On November 19 that year, the petitioners reiterated that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case was time-barred under the statute of limitations in the Criminal Code, which time bars a case from moving forward after a period of 10 years has elapsed from the date of the crime or from the start of the trial, when there has been no judicial decision in cases punishable with jail sentences such as those involving the crime of murder. The State did not respond to the request for information.

573. 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)**

574. 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

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<sup>56</sup> Report No. 108/01, Case 11.574, Wilberto Samuel Manzano, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11574.htm>



inhumane treatment; he was then executed and his body was found on May 8, 1993, on the beltway surrounding the city of Guayaquil.

575. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 109/01<sup>57</sup>, 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.

576. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on November 19, 2013, that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case was time-barred under the statute of limitations in the Criminal Code, which time bars cases from moving forward after a period of 10 years has elapsed from the date of the crime or from the start of the trial, when no judicial decision has been taken in cases punishable with jail sentences such as those involving the crime of murder. The State submitted no information.

577. 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)**

578. 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.

579. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 110/01<sup>58</sup>, in which it acknowledged that the State had complied with paying the victim the amount of US\$20,000 as compensatory damages, and decided:

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<sup>57</sup> Report No. 109/01, Case 11.632, Vidal Segura Hurtado, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11632.htm>

<sup>58</sup> 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>

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.

580. On October 8, 2013, the IACHR requested both parties to report on the state of compliance with pending items. Neither of the parties submitted the information requested.

581. 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)**

582. 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).

583. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 63/03<sup>59</sup>, in which it acknowledged that the State had complied with paying the victim the amount of US\$30,000 as compensatory damages, and decided:

2. To remind the State that it must comply fully with the friendly settlement agreement by initiating judicial proceedings against the persons involved in the alleged violations.

3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement, and in this context to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under this friendly settlement.

584. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reiterated on November 21, 2013, 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, however, did not reply to the Commission's request for information.

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<sup>59</sup> 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>

585. 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)**

586. 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.

587. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 64/03<sup>60</sup>, 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.

588. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on November 19, 2013, 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.

589. In consideration whereof, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

**Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos (Ecuador)**

590. 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

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<sup>60</sup> 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>

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.”

591. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 65/03<sup>61</sup>, 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.

592. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending, but received no response.

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

**Petition 12.205, Report No. 44/06, José René Castro Galarza (Ecuador)**

594. 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.

595. 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.

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<sup>61</sup> 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>

596. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 44/06<sup>62</sup>, 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.

597. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners indicated on November 19, 2013, that the State had not initiated any action to punish the police officers and prosecutors responsible for the facts, nor had it carried out all necessary reparations measures and lifted the prohibition against transferring ownership of the property of the of Mr. José René Castro Galarza. They added that they had requested the State to lift the precautionary measures prohibiting transfer of the victim's property and that the Ministry of Justice (the institution in charge of complying with the agreement entered into between the State and the victim) told them that it could not order records in the register of property to be expunged.

598. In this regard, the petitioners claimed that the precautionary measure prohibiting transfer of the victims property was issued in 1992, and that 20 years had elapsed without the victim being able to use and enjoy his property, which would be a serious breach of the friendly settlement agreement and a violation of his right to property stemming from arbitrary acts of State agents. Consequently, the IACHR was requested to urge the State to cease the violations against the victim and proceed to lift the aforementioned precautionary measures. The State did not respond to the request for information.

599. 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)**

600. 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.

601. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 45/06<sup>63</sup>, 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.

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<sup>62</sup> 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>

<sup>63</sup> 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>

602. On October 18, 2013 the IACHR asked both parties to report on compliance with the items still pending. In response, on November 19, 2013, the petitioners asserted that the State had not instituted any (civil, criminal or administrative) actions aimed at investigating, prosecuting and punishing those responsible for the violations committed against the victim. The State did not reply to the Commission's request for information.

603. 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)**

604. 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.

605. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 46/06<sup>64</sup>, 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.

606. On February 8, 2013, the petitioners reiterated that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. They also noted that the State only has complied with the item of financial compensation.

607. On October 8, 2013, the IACHR asked both parties to report on the status of compliance with the items still pending and received no response from either one.

608. 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.

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<sup>64</sup> 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)**

609. 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.

610. 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.

611. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 47/06<sup>65</sup>, 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.

612. On October 4, 2013, the IACHR requested both parties to report on the state of compliance with the pending items. In response, the petitioners reported that on November 19, 2013, the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victims, nor against the police judges, who improperly assumed jurisdiction to try cases of human rights violations. The State did not reply to the Commission's request for information.

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

**Case 12.487, Report No. 17/08 Rafael Ignacio Cuesta Caputi (Ecuador)**

614. In Report No. 17/08<sup>66</sup> of March 14, 2008, the Commission concluded that the Ecuadorian State had incurred international responsibility for violation of Rafael Ignacio Cuesta Caputi's rights to a fair trial, to judicial protection and to freedom of expression, set forth in articles 8(1), 25 and 13 of the American Convention, in conjunction with its general obligation under Article 1(1) to respect and ensure the Convention-protected rights. The present case concerns the Ecuadorian State's responsibility for failure to properly investigate the facts surrounding the explosion of a bomb that Mr. Cuesta Caputi was holding in the course of practicing his profession of journalism.

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<sup>65</sup> 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>

<sup>66</sup> 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>

615. 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.

616. On October 8, 2013, the IACHR requested both parties to report on the state of compliance with the pending items.

617. On October 25, that year, the petitioner reiterated that “there has been no change” in compliance with the recommendations “and the situation has remained the same since late 2010.” In this regard, he noted there was only partial compliance with the recommendations pertaining to publishing a public apology and dedicating a commemorative plaque. As for reparation, he claimed that there has been no effort made by the State to comply with this recommendation.

618. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations made in Report No. 17/08. Accordingly, the Commission will continue to monitor for compliance.

**Case 12.525, Report No. 84/09 Nelson Iván Serrano Sáenz (Ecuador)**

619. In Report No. 84/09<sup>67</sup> of August 6, 2009, the Commission concluded that the State was responsible for violation of the rights to humane treatment, personal liberty, to a fair trial, nationality, freedom of movement and residence, and judicial protection, recognized in articles 5, 7, 8, 20, 22 and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, by virtue of the unlawful detention of Nelson Iván Serrano Sáenz, a citizen with dual Ecuadorian and United States citizenship, and his immediate deportation to the United States to face trial for the murder of four people in the state of Florida, where he was subsequently convicted and sentenced to die.

620. 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.

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<sup>67</sup> 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>



621. On October 4, 2013, the IACHR requested both parties to report on compliance with the items still pending and received no response from either one.

622. The Commission therefore concludes there has been partial compliance with the recommendations made in Report 84/09. Accordingly, the Commission will continue to monitor compliance with those recommendations.

**Petition 533-05, Report No. 122/12, Julio Rubén Robles Eras (Ecuador)**

623. On October 10, 2006, through the good offices of the Commission, the parties reached a friendly settlement agreement. The Ecuadorean State recognized its responsibility for violations of the right to life, humane treatment, a fair trial and judicial protection and its obligation to respect and ensure human rights under the American Convention on Human Rights. Additionally, the State pledged to pay compensation and to both civilly and criminally prosecute the individuals who were implicated in the act violating the Convention. The case involves the death of Mr. Juiio Ruben Robles Eras and gave rise to two criminal proceedings. One case was under military jurisdiction, presided over by the First Judge of the Third Military Zone and the other case was under civilian jurisdiction and was prosecuted by the Assistant Government Attorney of Macará and the Seventh Judge for Criminal Matters of Loja. The case brought in the civilian court was joined with the case being heard in the military justice system.

624. On November 13, 2012, the IACHR approved Friendly Settlement Report No. 122/12<sup>68</sup> finding that the State had made good on the payment of US\$300,000.00 as financial compensation, and had made some progress in complying with the non-pecuniary measures of reparation. Consequently, the IACHR decided to:

1. Approve the terms of the agreement entered into by the parties on October 10, 2006.
2. Continue to monitor the commitments of the Ecuadorean State pending compliance and, for this purpose, remind the parties of their commitment to report periodically to the IACHR on compliance thereof.

625. On October 4, 2013, the IACHR requested both parties to report on compliance with the items still pending. On November 20, 2013, the petitioners reported that the State made good on paying the amount of compensation provided for in the agreement entered into and had undertaken the creation of a adjudicatory unit that ordered police and military courts to become part of the Regular Civilian Judiciary Service.

626. Additionally, they reported that the State pledged to institute civil and criminal proceedings to make it possible to adequately determine the circumstances of the death of the victim and the degree of responsibility of each perpetrator, though they reported that they were not aware as to whether or not said proceedings had been brought yet and the status thereof. The State, in response, did not submit the information requested.

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<sup>68</sup> Report No. 122/12, Petition 533-05, Julio Rubén Robles Eras, November 13, 2012, available at: <http://www.oas.org/es/cidh/decisiones/amistosas.asp>

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

**Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez et al. (El Salvador)**

628. In Report No. 47/03, of October 8, 2003, the IACHR concluded that the Salvadoran State was responsible for: i) violation of Article 25 of the American Convention on Human Rights, to the detriment of Jorge Odir Miranda Cortez and 26 other persons identified in the processing of the petition, by virtue of the fact that a petition they attempted to file seeking *amparo* relief was not the simple and effective remedy required under the international human rights obligations undertaken by the Salvadoran State; ii) violation of Article 2 of the Convention, by virtue of the fact that El Salvador's *amparo* law did not meet the requirements set forth in Article 25 of the American Convention, as it was not the simple and prompt recourse required under Article 25 of the Convention; and iii) violation of Article 24 of the Convention, to the detriment of Mr. Jorge Odir Miranda Cortez. The Commission did not find a violation of Article 26 of the Convention.

629. 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.

630. 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.

631. 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.

632. 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.

633. In 2011, regarding the first recommendation, the Salvadorian State informed that the Draft Law of the Constitucional Procedural Law - presented before the Legislative Assembly in 2002 – was still under study by the Committee on Legislation and Constitutional Affairs.

634. On November 14, 2013, the IACHR asked the parties to provide updated information on the status of compliance with the pending recommendation. Regarding the recommendation to reform the provisions governing *amparo*, the State argued that the draft Law of the Constitutional Procedure Law continues to be under consideration by the Supreme Court of Justice. Once it is approved, it will be sent to the Committee on Legislation and Constitutional Affairs. The petitioners indicated that they are unaware of any progress of said Draft Law even though it was introduced years ago. They also argued that the Draft Law has the same problems as the previous one because it does establish the time frame for admitting the process of the *amparo* action, which constitutes an obstacle to access to justice.

635. With regards to the economic reparation, the State argued that the draft agreement for releasing the remaining funds on the amount of \$ 32,000.00 was transferred to the Asociación Atlacatl, and that the organization has still not submitted its respective observations. The petitioners said that said agreement was received on September 25 2013 and is currently under review.

636. On October 30, 2013, the parties held a working meeting during the 149<sup>th</sup> Regular Period of Sessions of the IACHR in which reiterated their positions.

637. Based on the above, the Commission concludes that the State has not complied with the recommendations. Therefore, the Commission will continue to monitor the pending items.

**Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala)**

638. In Report No. 4/01 of January 19, 2001, the IACHR indicated that “it fully recognizes and appreciates the reforms carried out by the State of Guatemala in response to the recommendations put forth in Report 86/98. As recognized by the partes, said recommendations constitute a significant step forward in protecting the fundamental rights of the victim and of women in general in Guatemala. These reforms represent a measure of substantial compliance with the Commission’s recommendations, and are consistent with the obligations of the State as a party to the American Convention.” For this reason, it concluded that the State had implemented a significant portion of the recommendations issued in Report 86/98.

639. In this same Report, the Commission indicated that it was not in a position to conclude that the State had fully complied with the recommendations and reiterated that the Guatemalan State was responsible for having violated the rights of María Eugenia Morales de Sierra to equal protection, respect for her family life, and respect for her private life, established at Articles 24, 17, and 11 of the American Convention on Human Rights in relation to the title and section 1 of Article 110 and Article 317(4), and that accordingly the State was responsible for breaching the obligation imposed by Article 1 to respect and ensure those rights enshrined in the Convention, as well as the obligation imposed on it by Article 2 to adopt legislation and other measures necessary for upholding those rights of the victim.

640. 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.

641. 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.”

642. Regarding the compliance of these recommendations, the petitioner has contended as on earlier occasions, that Article 317 of the Guatemalan Civil Code has not been amended and that, consequently, her rights under the American Convention are still being violated and that she had not been given any “reparation or compensation for the damages caused.”

643. In response, the State has reiterated that it has implemented all of the reforms to the Civil Code that had been deemed necessary by the IACHR and that the only reform pending was Article 137 of said body of laws. In this regard, it has reiterated that the Draft Law to amend the article had been introduced by the Executive Branch in the National Congress, where it was awaiting approval.

644. With regard to the recommendation on redress and adequate compensation to María Eugenia Morales de Sierra, as was noted earlier, it is on record in the “Agreement for Specific Compliance with Recommendations,” entered into by the parties on March 3, 2006 that Attorney Morales de Sierra expressly stated “that her struggle is to bring dignity to women and, therefore, she has no personal pecuniary interest, expressly waiving the economic redress that was recommended by the IACHR in her status as a victim.”

645. On October 4, 2013, the Commission asked the parties to submit updated information on the state of compliance with the recommendations. In 2013, the petitioners indicated that no substantive steps have been taken to give impetus to the reform of Article 317 of the Civil Code. They indicated that the State has merely said that an opinion has been expected on a legislative initiative aimed at amending that article since October 2, 2007. The State did not submit any information in this regard.

646. Based on the foregoing, the Commission reiterates that the State has partially complied with the recommendations. Consequently, the Commission will continue to monitor the pending items.

#### **Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)**

647. 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.

648. 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.

649. On October 7, 2013, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in this case. The petitioners did not supply any information.

650. The State reported on the first recommendation that the Internal Armed Conflict Special Cases Unit of the Human Rights Section of the Office of the Public Prosecutor had drawn up an investigation plan but that it was classified pursuant to Article 314 of the Criminal Procedure Code and therefore specific details could not be provided about the investigation. However, it did mention that the Public Ministry was investigating the instant case, and that as progress reports are produced they will be sent to the IACHR.

651. As to the second recommendation of the IACHR, the State reported the following:

- a) Concerning the search for the remains of Mr. Oscar Manuel Gramajo Lopez, it indicated that the Forensic Anthropology Foundation of Guatemala (FAFG) –an autonomous, technical-scientific non-governmental organization- interviewed and took DNA samples of the family members of Mr. Gramajo Lopez. A comparison of said samples, as well as samples secured from the bone remains recovered in the exhumations by the FAFG at different locations in Guatemala, had been run to check them against the genetic data in its database (BDD) and, thus far, Oscar Manuel Gramajo Lopez has not been successfully identified.
- b) Regarding the necessary arrangements to accommodate the wishes of the family as to the final resting place of the remains of Mr. Oscar Manuel Gramajo, the State indicated that once his remains are located and identified, it will – with the approval of his family –coordinate efforts related to his final resting place.
- c) With regard to the recommendation to award proper and timely reparations to the victim's family, it stated that on December 5, 2008, the National Reparations Program awarded economic reparation in the amount of twenty four thousand quetzals to Mrs. Edelia Lopez Escobar as a result of the forced disappearance of her son Oscar Manuel Gramajo, thus this commitment was carried out.

652. 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)**

653. In Report No. 59/01 of April 7, 2001, the IACHR concluded that the Guatemalan State was responsible for violating the following rights: (a) the right to life, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalán, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajquí Gimón, and Juan Tzunux Us, as established at Article 4 of the American Convention; (b) the right to personal liberty in the case of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajquí 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 Ajquí 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.

654. 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.

655. 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.

656. With regard to Case 10.626 (Remigio Domingo Morales and Rafael Sanchez) in Report 59/01, on April 24, 2006, the IACHR decided under Resolution 1/06 to correct the aforementioned Report, declaring that on June 28, 1990, Remigio Domingo Morales and Rafael Sanchez were detained by members of the Civil Self-Defense Patrols (PAC) and were taken on that same day to Huehuetenango Hospital to be treated for multiple blunt-force sharp instrument injuries that they presented; both of them were discharged from the hospital on July 3, 1990. The State of Guatemala and the petitioners were notified of the above-cited Resolution and it was subsequently published in Report Nº 59/01.

657. On October 8, 2013, the Commission requested updated information from the parties regarding compliance with the recommendations set forth in Report No. 59/01. The petitioners did not provide any information.

658. In its reply, the State addressed Case 10.626 (Remigio Domingo Morales and Rafael Sanchez) and stated that if the petitioners believe that their rights had been violated by the State during the internal armed conflict, the National Reparations Program was in place and functioning, and that its purpose was to provide reparation to the victims of human rights violations, which occurred during said conflict, provided that they qualify for reparation under Program criteria.

659. As to the fourth recommendation of Report 59/01, the State reiterated that the Civil Self-Defense Patrols (PAC) were dissolved under Decree 143-96 of the Congress of the Republic of Guatemala, dated November 28, 1996, and that the process of disarmament of the PAC had been verified by the Office of the Prosecutor for Human Rights of Guatemala and by the United Nations Verification Mission in Guatemala, (MINUGUA).

660. As for the fifth recommendation, the State asserted "that it is organized to ensure that all of its inhabitants enjoy their rights and freedoms, set forth in the Constitution of Guatemala [and], that constitutes the ethical and legal imperative of the domestic legal order." In this regard, it indicated that it "guarantees the right of freedom of expression of all persons in the national territory."

661. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

**Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo, Ana María López Rodríguez<sup>69</sup>  
y Luz Leticia Hernández (Guatemala)**

662. In Report on the Merits No. 60/01 of April 4, 2001, the IACHR concluded that the Guatemalan State had violated the rights of Ileana del Rosario Solares Castillo, Ana María López Rodríguez, and Luz Leticia Hernández to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), judicial guarantees (Article 8), and judicial protection (Article 25), all in conjunction with the obligation to ensure the rights protected in the Convention, as established in Article 1(1) of the same Convention. These violations occurred as a result of the detention and subsequent forced disappearance of Ileana del Rosario Solares Castillo, Ana María López Rodríguez, and Luz Leticia Hernández at the hands of agents of the Guatemalan State on September 25, 1982, in the case of Ms. Solares Castillo; and on November 21, 1982, in the case of Ms. López Rodríguez and Ms. Hernández.

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

1. Conduct an impartial and effective investigation into the facts of this complaint to determine the whereabouts and condition of Ileana del Rosario Solares Castillo, Ana María López Rodríguez, and Luz Leticia Hernández, to identify the persons responsible for their disappearance, and to punish them in accordance with the rules of due legal process.
2. Take steps to make full amends for the proven violations, including measures to locate the remains of Ileana del Rosario Solares Castillo, Ana María López Rodríguez, and Luz Leticia Hernández, the arrangements necessary to fulfill their families' wishes regarding the final resting place of their remains, and adequate and timely compensation for the victims' relatives.

664. In the instant case, the State entered into an agreement on compliance with the recommendations issued by the IACHR in Merits Report No. 60/01 on December 19, 2007 with the next-of-kin of victim Ileana del Rosario Solares Castillo, and on October 14, 2010 with the next-of-kin of Ana Maria Lopez Rodriguez.

665. The next-of-kin of victim Luz Leticia Hernandez Agustin have informed the State that after reaching a consensus on economic reparation or measures of moral reparation, the State must hand over the remains of Luz Leticia.

666. On October 8, 2013, the Commission requested the parties to provide updated information on compliance with the recommendations set forth in Report No. 60/01.

667. With regard to the first recommendation, that is, to investigate the incidents that were the subject of the complaint pertaining to the forced disappearance of Ileana del Rosario Solares Castillo, Ana Maria Lopez Rodriguez and Luz Leticia Hernandez, which took place in 1982, to determine those who are responsible for it and punish them, the State informed that the Office of the Public Prosecutors had opened two investigations (File MP001/2006/12842 for the forced disappearance of Ileana del Rosario Solares Castillo and File MP001/2006/67766 for the forced disappearance of Ana Maria Lopez Rodriguez and Luz Leticia Hernandez) and that the investigations are still on-going. The petitioners reported that they are aware that the Public Ministry continues the investigation, but that no criminal charges have yet to be brought against any of the persons responsible.

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<sup>69</sup> The State reported in a note dated December 18, 2012 that the correct name of the victim is Ana Maria Lopez Rodriguez and not Maria Ana as it appeared in the IACHR Report.



668. As for the second recommendation, to adopt measures of reparation, including: measures to locate the remains of the three women detainees, who disappeared in 1982, and help to accommodate the wishes of their next of kin regarding the final resting place of their remains, the State has previously reported that the Forensic Anthropology Foundation of Guatemala (FAFG) –an autonomous, scientific/technical non-governmental organization- performed exhumations and that when it completed the appropriate examination, the FAFG would provide the results of the exhumations. The petitioners said that to date the remains of Ana María López Rodríguez have not been located.

669. Concerning the component of adequate and timely reparation to the next-of-kin of the victims, the State informed that the degree of compliance with the agreements entered into with the family members of victims Ileana del Rosario Solares Castillo and Ana María López Rodríguez, can be summarized up as follows:

<b>Commitments stemming from the agreement on recommendation compliance as provided in Report No. 60/01</b>	<b>Family members of Ileana del Rosario Solares Castillo</b>	<b>Family members of Ana María López Rodríguez</b>
Recognition of international responsibility and apology	Implemented	Implemented
<b>Commitments stemming from the agreement on recommendation compliance as provided in Report No. 60/01</b>	<b>Family members of Ileana del Rosario Solares Castillo</b>	<b>Family members of Ana María López Rodríguez</b>
Unveiling of commemorative plaque in memory of the victim	Implemented	In the process of implementation
Payment of economic reparation	Implemented	Implemented
Seed capital for creating a foundation	Implemented	Implemented
Printing of CD with biography of the victim and case summary	Implemented	NA
Printing of education brochure	NA	In the process of implementation
Scholarships	NA	Implemented
Promoting approval of Law 3.590 (which creates the Commission for the Search of Disappeared Detainees)	In the process of implementation	In the process of implementation
Promote the prosecution and punishment of those responsible for the forced disappearances	In the process of implementation	In the process of implementation

670. The family members of Ana María López Rodríguez agree with the State regarding the status of implementation of each of the reparations related to her.

671. Based on the above, the Commission expresses its appreciation for the State's actions and concludes that there has been partial compliance with the recommendations summarized above. As a result, the Commission will continue to monitor the pending items.

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

672. 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.

673. 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.

674. On June 9, 2003, the parties entered into an “Agreement on the Rules for Compliance by the State of Guatemala with the Recommendations of the IACHR” and on October 24, 2003, they entered into an Agreement on Economic Reparation: Additionally they signed an *addendum* under which the Government undertook to appropriate 950,000 quetzals as economic reparation.

675. On October 8, 2013, the Commission requested updated information from the parties on the status of compliance with the recommendations issued in the instant case.

676. The State only addressed two of the recommendations issued by the IACHR in its Merits Report 57/02. With regard to the investigation related to the facts in the instant case, the State reiterated the information that it had previously submitted to the IACHR, on the investigation conducted by the Office of the Public Prosecutor in 2002 and 2008 in connection with the arrest warrants issued against several of the individuals charged with the crimes committed on August 24, 1994, when a group of people assaulted the workers occupying La Exacta farm and their families and, as a result of the assault, three workers were killed and at least eleven people were seriously injured. In addition, as regards the third recommendation of the IACHR on reparation, the State reported on some measures that have been taken in 2013, principally the awarding of 96 housing units and access to drinking water

services. In addition, on this recommendation, the State had previously reported that in December 2003 the payment of 950,000.00 quetzals as economic reparation was completed. The petitioners indicated that since the State had not made specific and significant progress in carrying out the respective recommendations, they do not have updated information to present to the Commission.

677. In light of the foregoing, the IACHR expresses its appreciation for the measure adopted by the State as economic reparation and finds that the recommendations outlined above have been partially fulfilled. Consequently, the Commission will continue to monitor the pending items.

**Case 11.312, Report on Friendly Settlement Agreement No. 66/03, Emilio Tec Pop (Guatemala)**

678. 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.

679. In the Friendly Settlement Agreement, the State undertook to 1) Recognize state responsibility; 2) Grant reparation and assistance to the victim consisting of payment of USD \$2,000.00 in compensation and provide seed capital for basic grains to Mr. Emilio Tec Pop in order to raise his standard of living and, 3) Investigate and punish those responsible for the incidents charged in the petition.

680. According to information provided by the parties, the record shows that the State has complied with the commitments pertaining to recognition of international responsibility, reparation and assistance.

681. On October 4, 2013, the Commission requested up-to-date information from the parties on the status of compliance with the commitments made under the Friendly Settlement Agreement.

682. With respect to the commitment to investigate and punish those responsible, the petitioners assert that the information provided by the State does not make it possible to establish whether concrete and significant progress has been made in the investigation, prosecution and punishment of those responsible for the human rights violations against Emilio Tec Pop.

683. In response, the State claimed that it is continuing to follow up on the criminal investigations aimed at prosecuting those responsible for the arbitrary detention of Emilio Tec Pop.

684. The IACHR appreciates the measures taken by the State as to recognition of international responsibility, payment of reparation and provision of assistance.

685. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

**Case 11.766, Report on Friendly Settlement Agreement No. 67/03, Irma Flaquer (Guatemala)**

686. 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.

687. 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.

688. 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.

689. 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.

690. Based on information provided by the parties during follow-up on the Friendly Settlement Report, the State has complied with delivery of the apology letter to the next-of-kin of the victim in a public ceremony, which was held on January 15, 2009.

691. Consequently, the following measures are pending compliance: a) Creation of a scholarship for journalism studies; b) Creation of a university professorship on the History of Journalism; e) Investigating the forced disappearance of journalist Irma Flaquer Azurdia and the extrajudicial execution of Fernando Valle Flaquer.

692. On October 4, 2013, the IACHR requested up-to-date information from the parties on the status of compliance with the pending items of the agreement. The petitioners did not submit any information.

693. The State only referred to the reparation consisting of the creation of a scholarship for studying journalism, and reported that it has not been possible to carry out this commitment since the procedures of the National Trust of Scholarships and State Credits (FINABECE) require that one indicate the type of scholarship and the conditions in which it will be delivered. In view of the foregoing, it indicated that it would be necessary to make the respective modification to the friendly settlement agreement between the parties.

694. The IACHR notes that compliance with creating a scholarship for the study of journalism and investigation of the case is pending.

695. 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)**

696. 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.

697. On September 11, 2002, the parties agreed on a friendly settlement in the case and established the following commitments:

1. Purchase, on behalf of all the members of the Los Cimientos Quiché community comprising the civic association "Community Association of Residents of Los Cimientos Xetzununchaj," the San Vicente Osuna estate, and its annex, the Las Delicias estate, which are adjacent to each other and are located in the municipality of Siquinalá, Escuintla department.
2. The community of Los Cimientos, through the Community Association of Residents of Los Cimientos Xetzununchaj civic association, and the Government, shall identify and negotiate, within sixty days following the settlement of the community, urgent projects to reactivate its productive, economic, and social capacities, with a view to fostering the community's development and wellbeing, and in consideration of the agrological study carried out and the record of the landmarks and limits of the San Vicente Osuna estate and its annex, the Las Delicias estate.
3. The individual land owners, land holders, and assigns of the estates comprising the Los Cimientos community, as a part of the commitments arising from the government's purchase on their behalf of the estates known as San Vicente Osuna and its annex, the Las Delicias estate, shall cede their current rights of ownership, holding, and inheritance to the Land Fund, in compliance with the provisions of Article 8(h) of the Land Fund Law, Decree No. 24-99.
4. The State shall be responsible for relocating the 233 families of the community of Los Cimientos, Quiché, together with their property, from the village of Batzulá Churranchó, Santa María Cunén municipality, Quiché department, to the San Vicente Osuna estate and its annex, the Las Delicias estate, located in Siquinalá municipality, Escuintla department.
5. The government shall provide the resources necessary to feed the 233 families during their transfer to and settlement in their new homes, and it shall accompany them with a duly equipped mobile unit for the duration of the transfer and until such time as a formal health facility is established in their settlement, in order to cater for any emergency that may arise.
6. For the community's location and resettlement, the government of the Republic will provide humanitarian assistance, minimal housing, and basic services.
7. The government of Guatemala agrees to organize the creation of a promotion committee that will be responsible for monitoring progress with the legal proceedings initiated against the individuals involved in the events of June 25, 2001, perpetrated against the owners of the Los Cimientos and Xetzununchaj estates.

698. By a communication dated October 4, 2013, 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.

699. As regards the initiative for 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, the State said that the fact that no one has been convicted in this case does not mean that no initiative has been taken to make progress; indeed, it said that Mateo Hernández Sánchez was arrested and investigated (the only person who has been arrested in the case). For their part, the petitioners indicated that the State continues to fail to follow through on its commitment to investigate, prosecute, and punish those responsible, for this case has been in total impunity for more than 12 years. In addition, they lamented that the only person prosecuted in this case was released due to an improper act by the Public Ministry in this case.

700. With regards to the cession of the current rights of ownership, holding, and inheritance to the Land Fund, the petitioners indicated that the information communicated by the State in 2013 is the same as that reported since 2010, thus they conclude that the State has not made progress in carrying out this commitment. They also said that they are waiting for COPREDEH to convene them to continue and conclude this process.

701. Regarding the granting of housing, as provided in the commitment “For the community’s location and resettlement, the Government of the Republic shall provide humanitarian assistance, minimum housing and basic services,” the petitioners reported that as of October 2013, of a total of 103 records of beneficiaries of housing, 65 socioeconomic studies had been approved, and that approval of the other 38 was pending. They also said that they are waiting for the Guatemalan Housing Fund (FOGUAVI) to declare and approve the 103 housing units.

702. The petitioners reported, however, that the “Specific Agreement” proposed by the State for implementation and compliance with certain measures of reparation has still not been signed into force.

703. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue monitoring the items that are pending.

#### **Petition 9168, Report on Friendly Settlement No. 29/04, Jorge Alberto Rosal Paz (Guatemala)**

704. 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.

705. 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.

706. 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.

707. 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.

708. As for the grant of a plot of land to Mrs. Blanca Elvira Vargas Cordón de Rosal, the State reported that thus far it had been unable to make good on this commitment. In April of this year, Mrs. Blanca Vargas was sent a draft of the commitment for her comments but did not respond even though she was sent a reminder to continue with the process. On this subject, the State reported earlier that it needed to amend the friendly settlement signed on January 9, 2004 to justify payment by the Ministry of Public Finances of an amount equal to the current value of the land. The State indicated that the petitioners approached it in November of this year to resume discussion of the housing and they agreed to hold a meeting on December 12, 2011.

709. In a communication dated October 4, 2013, the Commission asked the parties to provide updated information on the status of compliance with the pending points of the agreement in this case.

710. The State indicated the following:

- Scholarship of Maria Luisa Rosal Paz: The State notes that it approved a budget for María Luisa Rosal Paz to pursue master's studies at McGill University in Canada, but that she had already completed a master's degree in Argentina with other funds.
- Scholarship of Jorge Alberto Rosal Vargas: On April 18, 2012, Jorge Alberto Rosal Paz requested an increase in the scholarship amount so it could cover an additional year of study. However, at a hearing before the IACHR held on November 3, 2012, the State indicated that it cannot make any further changes to the commitment it accepted and that it will only comply with what was approved in the financing agreement dated February 17, 2012.
- Land for a family home: The State reiterated that it has proposed to the petitioner awarding her the amount of money equal to the value of the property based on an appraisal conducted by the Cadastral Information Register, and that the proposal was turned down by the petitioner who found the amount of money offered to be insufficient.
- Process of investigation: The case investigation remains open.



711. The petitioners reported that Maria Luisa Rosal and Jorge Alberto Rosal have thus far received part of the scholarships. As for Maria Luisa, they noted that the awarding of the rest of the scholarship money for college studies is pending and asked that the possibility remain open of doing university studies at any university in any country. With regard to the scholarship of Jorge Alberto Rosal, payment of US\$5,327.05 is pending for the first years of the intermediate level and, that as a result of payment delay, he was unable to matriculate as a full time student, which set him back in his studies. They point out that he would require two more years of university studies in order to get his undergraduate degree and, two years for a master's degree. Regarding family housing, the petitioners requested the State to conduct a new commercial appraisal so that the appraised value is consistent with the actual market value. They also noted that the investigation is still pending and that there are no concrete results that show implementation by the State in this regard.

712. The IACHR finds that the State has complied with several of the commitments as set forth in the agreement, while the matter of the scholarships and the agreement on the value of the property are awaiting a settlement. The investigation is also pending.

713. The Commission therefore concludes that the friendly settlement agreement has been partially complied with. Accordingly it will continue to monitor for compliance with those points still pending.

**Petition 133-04, Report on Friendly Settlement Agreement No. 99/05, José Miguel Mérida Escobar (Guatemala)**

714. 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.

715. 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:

- i. To take steps to ensure that the *Ministerio Público* conducts a serious and effective investigation.
- ii. To make appropriate arrangements to establish a fellowship for police studies abroad.

- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.

716. Based on information provided by the parties during the follow-up on the Friendly Settlement Report, the following can be established:

- a) Investigation into the facts of the case is pending.
- b) Regarding instituting the “Jose Miguel Merida Escobar” Scholarship, approval of the regulations is pending.
- c) The letter of recognition of international responsibility of the State was issued by former President Alvaro Colom and published in the Official Gazette on September 15, 2010. Circulating of the letter to international organizations by way of Internet is pending.
- d) The State fulfilled the commitment to place a memorial plaque to honor the memory of Jose Miguel Escobar.
- e) The State fulfilled the commitment to name the street where the victim resided with his family ‘Jose Miguel Merida Escobar Street.’
- f) The commitment of awarding a lifetime pension for Jose Miguel Merida Escobar’s parents was exchanged for medical care; and the pension for Edilsar Omar Merida Alvarado [was exchanged] for payment of an amount in quetzals. Both commitments have been fulfilled by the State.
- g) The beneficiaries entitled to the psychological treatment offered by the State expressed that they were not interested in receiving it.
- h) Regarding the scholarship offered to Edilsar Omar Merida Alvarado, he expressed that he was not interested in receiving it.

717. On October 4, 2013, the IACHR requested up-to-date information from the parties on the current status of compliance with the pending items of the agreement. The petitioners did not provide any information.

718. In addition to prior communications, the State only referred to the investigation of the crimes charged in the petition and established that it has been determined that the direct perpetrators of the assassination of Mr. José Miguel Mérida Escobar were two individuals; nonetheless, to date it has not been possible to identify those persons. Regarding investigations conducted, it noted that information is being collected from different sources with respect to the assassination of Mr. Mérida Escobar and that the Office of the Special Prosecutor is investigating Messrs. Gonzalo Cifuentes Estrada and Guerra Galindo because of the accusation made against them in relation to the assassination of José Miguel Mérida Escobar.

719. The IACHR expresses its appreciation for the recognition of international responsibility by the State for violation of the rights enshrined under Articles 4, 5, 8 and 25 of the American Convention in the instant case. It also appreciates compliance with several of the commitments made by the State under the friendly settlement agreement it entered into with the petitioners.

720. The IACHR notes that the commitments that are still pending are: investigating the facts of the case; establishing the rules of the 'Jose Miguel Merida Escobar' Scholarship and; circulation of the letter of recognition of international responsibility of the State to international agencies by way of Internet.

721. 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)**

722. 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.

723. 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.

724. 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.

725. 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.

726. During follow-up on compliance, the Guatemalan State reported that the commitments pertaining to payment of financial compensation to the victim's next-of-kin; creation of an Indigenous Association for Business Development –ASINDE-; public apology from the State and; measures to dignify the memory of the victim, were complied with.

727. Regarding the commitments identified as "pending," the State of Guatemala reported that: i) regarding the operation of the Association, the articles of association of ASINDE (Indigenous Association for Business Development) had to be amended for the appointment of the new representative. However, it noted that this change had not been possible because the petitioners had not submitted the respective articles of association for amendment, in addition to the tax exemption that should be processed with the SAT. Regarding the handover of a property where ASINDE headquarters will be set up, the State asserted that arrangements have been made with the Municipal Mayor of Quetzaltenango on granting a plot of land in that department, with the prerequisite that the petitioners make a formal application to the Municipal Council for the proper approval but this has not happened, even though contact has been made for this purpose. Regarding its commitment to provide technical training to the members of ASINDE, it stated that because the Technical Training Institute – INTECAP- requires a minimum number of participants, it has coordinated with another association to join the training process in order to comply with the agreement but the petitioners have not responded in this regard.

728. On October 4, 2013, the IACHR requested up-to-date information from the parties on the status of compliance with the pending items of the agreement.

729. Regarding the recommendation to investigate the extrajudicial execution of Pedro Garcia Chuc, prosecute and punish those responsible, the State noted that said investigation is still ongoing. The petitioners, however, noted that the State had not taken actions to follow up on this commitment.

730. With regard to the other commitments emanating from the agreements executed by the parties, the State reiterated that the greatest difficulty in complying with them is the absence of and lack of interest shown by the petitioners in attending the scheduled meetings and their failure to submit the documentation required to streamline the procedures and be able to honor the commitments. It also asserted that the family members of Mr. Pedro García Chuc have stated their refusal to continue with the case in question.

731. In response, the petitioners claimed that the State has not taken actions to carry out its commitments entailing giving the property to ASINDE and providing technical training to the García Yax and García Chuc families. They also stated that the lack of specific and significant gains in carrying out the commitments pending is verified by the fact that the State continues to reiterate the information sent to the Commission since 2011.

732. 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)**

733. 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.

734. 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.

735. On October 8, 2013, the Commission requested the parties to provide updated information on the status of compliance with the recommendations. The petitioners did not submit information.

736. The State indicated that it believes that it has partially complied with the first recommendation inasmuch as Santos Chich Us has been punished since 1996 for the death of Tomas Lares Cipriano. However, the arrest of two of the men charged is still pending.

737. As for reparation, the State once again made reference to the lack of interest on the part of the victim's next-of-kin in the instant case, despite consistent attempts by the State, the last one being in December 2010. Consequently, it requests the IACHR to deem said recommendation to be fulfilled because the victim's next-of-kin are opposed to it.

738. As to the recommendation aimed at preventing a resurgence of the PACs, it reported that under Decree No. 143-96 of November 28, 1996, a repeal was issued for Decree 19-86 of January 17, 1986, which had instituted said patrols.

739. Concerning the recommendation pertaining to the measures of reparation, the State indicated that it has implemented prevention measures with regard to security and justice including: decree 40-2010 dated November 2, 2010 of the National Congress of Guatemala creating the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; government decision 197-2012 creating the "Specific Cabinet for Security, Justice and Peace" as part of the Executive Branch, which is designed to aid in the implementation of proposals and public policies, aimed at enhancing governance, security and protection from violence and impunity in the country. It also mentioned approval of Decree 17-2009, the Law Strengthening Criminal Prosecution, which includes reforming the Criminal Code, the Criminal Code of Procedure, the Anti-Organized Crime Law and the Law Regulating Extradition Procedures. In the area of strengthening investigation of crime, the Office of the Public Prosecutor implemented the prosecution strategy for pursuing crimes committed by criminal organizations, in order to successfully dismantle them.

740. The IACHR notes that the State has partially complied with the recommendation regarding the crimes charged in the petition, to prosecute and punish those responsible. It also takes note that the beneficiaries of the economic reparation are not interested in receiving it.

741. Based on the foregoing, the Commission finds that the recommendations outlined above have been partially complied with. Therefore, the Commission will continue to monitor the pending item, which is to prosecute and punish those charged with the death of Tomas Lares Cipriano, for whom arrests warrants are outstanding.

#### **Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)**

742. 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.

743. The Commission made the following recommendations to the Guatemalan State:

1. Conduct a complete, impartial, and effective investigation of the reported events leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin.
2. Effectively prevent the reemergence and reorganization of the Civil Self-defense Patrols.
3. Promote in Guatemala the principles set forth in the United Nations “Declaration of the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” and take the necessary measures to ensure respect for the freedom of expression of those who have undertaken to work for the respect of fundamental rights and to protect their lives and personal integrity.
4. Adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the responsibility to prevent and to guarantee the fundamental rights recognized in the American Convention.”
5. Comply with the obligations still pending in the area of reparations to the victim’s next of kin.

744. 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 126<sup>th</sup> 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.

745. 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.

746. 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.

747. By means of a communication dated October 8, 2013, the IACHR requested the parties to provide updated information on the status of compliance with the recommendations made for the present case.

748. Concerning the recommendation of conducting an investigation into the crimes charged in the petition, prosecuting and punishing those responsible, the State of Guatemala, as on earlier occasions, submitted a timeline of the investigation and punishments of those responsible for the crimes alleged in the petition and reiterated that the Criminal Trial Court handed down an acquittal of Pedro Chaperon, who had been charged with the homicide of Mr. Martin Pelico Coxic. Additionally, it noted that the complainant and plaintiff to the civil proceedings related to the criminal proceedings stressed that she was unaware of who was responsible for the death of her husband and that she was no longer interested in pursuing the investigation into the case.

749. Concerning this item, the petitioners stated that this case is still in impunity because there is no one punished for the death of Mr. Martin Pelicó. Also, the case files submitted by the State do not show any evidence that in recent years there has been a substantial progress in the clarification of the facts. The petitioners also requested a chronological report of the investigative actions; that report was submitted by the State through the IACHR, and they requested a detailed analysis of the viability of the criminal prosecution of those responsible.

750. As to the recommendation of providing reparation, the parties concur that the State has complied with these commitments.

751. The Commission welcomes the compliance with the majority of the commitments accepted under the "Compliance Agreement of the Recommendations of Report No. 48/03."

752. Based on the foregoing, the Commission concludes that the State has complied with the recommendations outlined above, except for the recommendation pertaining to investigation. Consequently, the Commission will continue to monitor this pending item.

#### **Case 11.422, Report No. 1/12, Mario Alioto López Sánchez (Guatemala)**

753. On January 26, 2012, by Report No. 01/12, the Commission approved a friendly settlement agreement in the case of Mario Alioto López Sánchez. In that case, on November 11, 1994, Mario Alioto López Sánchez, a law student at the Universidad de San Carlos de Guatemala, was with a group of students protesting the increase in urban transit fares, blocking the Avenida Petapa. The petitioners noted that approximately 100 National Police agents attempted to disperse the students by throwing tear gas canisters, shooting firearms, and beating them. Consequently, several tried to flee; approximately 23 were detained. Included in this group was Mario Alioto López Sánchez, who was beaten by the security officials at the time of his arrest; and even though he was hemorrhaging from a gunshot wound in his left thigh, he did not receive immediate medical care, having been taken to Hospital Nacional approximately two hours after his arrest, where he died the day after being admitted. As for the judicial proceeding domestically, on July 30, 1997, the Third Court for Criminal and Drug-trafficking Matters handed down its judgment. Danilo Parinello Blanco, Mario Alfredo Mérida Escobar, Salvador Estuardo Figueroa, and Carlos Enrique Sánchez Gómez were convicted and sentenced to 10 years, as the perpetrators of the crime of premeditated homicide against Mario Alioto López Sánchez and for the crime of moderate lesions against students Julio Alberto Vásquez Méndez and Hugo Leonel Cabrera. Carlos Venancio Escobar Fernández was convicted and sentenced to 30 years of prison as the direct perpetrator of the crime of assassination against Mario Alioto López Sánchez and the crime of moderate lesions against the other two students. On appeal, the judgment was partially annulled, absolving the first four and reducing Escobar Fernández's sentence to 10 years in prison.



754. On October 19, 2011, the parties signed a friendly settlement agreement. In that agreement the State recognized its responsibility for the facts in the case, and indicated that carrying out the commitments that derive from the Agreement is based primarily on helping to achieve national reconciliation by seeking the truth and the administration of justice, dignifying the victim and next-of-kin, providing assistance or making reparation as a result of the alleged violation, and strengthening the inter-American human rights system. In addition, according to the fourth point of that agreement, the main commitments assumed in friendly settlement agreement No. 01/12 include:

**1. Recognition of the International Responsibility of the State and acceptance of the facts**

The State of Guatemala recognizes its international responsibility derived from the direct participation of agents of the State in committing the acts and for the violations of human rights committed against Mario Alioto López Sánchez under the American Convention on Human Rights, specifically the rights set forth at the following articles: right to life (Article 4), right to humane treatment (Article 5), freedom of association (Article 16), and judicial protection (Article 25), and the obligation to respect and ensure the rights enshrined in the American Convention on Human Rights (Article 1(1)).

Implementing the commitments that stem from this Agreement is based primarily on achieving national reconciliation through the search for the truth and the administration of justice in those cases whose nature so allows; dignifying the victim and family members; assistance or reparation resulting from the alleged violation; and strengthening the inter-American system for the promotion and protection of human rights.

**2. Private Apology**

(a) The Guatemalan State undertakes to hold a private ceremony with high-level authorities of the Ministry of Interior and the President of the Presidential Commission for Coordinating Executive Branch Policy on Human Rights (COPREDEH), in which it will recognize its international responsibility for the human rights violations committed against Mario Alioto López Sánchez and a letter signed by the President of the Republic of Guatemala will be delivered in which it apologizes for the harm caused the victim's family.

The parties agree that the ceremony will be held within three months of the date of signing this agreement.

(b) The parties undertake to ensure that the private ceremony will be held in the facilities occupied currently by the Ministry of Interior, and that the date, program, and time will be established in due course.

(c) The State undertakes not to make public the information in this Agreement, at the specific request of the victim's next-of-kin, to which end the parties will ask the illustrious Inter-American Commission of Human Rights to recognize, at the appropriate time, compliance by the State in relation to the commitments of this case, without disseminating the details.

**3. Measures to honor the memory of the victim**

(d) The State undertakes to place and unveil a commemorative plaque in the memory of the victim in the house ... whose material and content should be agreed upon with his next-of-kin.

(e) The State undertakes to seek, from the Universidad de San Carlos de Guatemala, books and videos that contain historical information on the struggle of Mario Alioto López Sánchez, which will be delivered to the victim's next-of-kin to be preserved.

#### 4. Economic Reparation

(a) The State recognizes that accepting international responsibility stemming from the violation of the victim's human rights established in the American Convention on Human Rights implies the responsibility to pay fair compensation to the petitioners under the criteria which, by common agreement, are determined by the parties and the parameters established by national and international law.

The State, through the COPREDEH and in keeping with the actuarial study prepared by an expert on April 27, 2011, undertakes to grant economic compensation ... broken down as follows:

Compensation for actual damages:	...
- Lost earnings	...
- Actual damages	...
Compensation for moral damages:	...
<b>Total Compensation</b>	...

#### 5. Investigation, prosecution, and punishment of the persons responsible

The State of Guatemala undertakes, through the corresponding institutions, to give impetus to the investigation to identify, prosecute, and punish the persons who are the subjects of a criminal proceeding into their role as the persons allegedly responsible for the death of Mario Alioto López Sánchez, and to address this case through the Impetus Committee (Comité de Impulso).

The State of Guatemala undertakes to convene the Impetus Committee every four months for it to give a report on the progress in the investigation, to be forwarded to the Inter-American Commission on Human Rights, the legal representatives in the case, and the victim's next-of-kin.

755. In the Report on Friendly Settlement, the Commission indicated that on January 17, 2012, the State reported that on November 18, 2011, in a public ceremony, it acknowledged its responsibility and apologized to the family of Mario Alioto López Sánchez. In addition, it reported that the payment of the total amount agreed upon as economic reparation for each of the beneficiaries was made on December 28, 2011; and that on December 20, 2011, the ceremony was held to unveil the commemorative plaque in honor of Mario Alioto López Sánchez.

756. Accordingly, still pending implementation would be: (a) delivering to the family members the books and videos from the Universidad de San Carlos on the struggle of Mario Alioto López Sánchez, for the preservation of memory, and (b) the investigation into and sanction of the persons responsible.

757. On October 4, 2013, the IACHR asked the parties for updated information on the implementation of the other points pending of the agreement.

758. In relation to delivering the historical information to the family members, the State indicated that even though many initiatives have been taken vis-à-vis the Universidad de San Carlos – and even with the members of Mario Aliota Sánchez López’s family – to obtain books and videos that contain historical information about his struggle, neither the University nor the family members have the respective materials. Consequently, the State said it was unable to carry out this commitment. Regarding the investigation into and punishment of the persons responsible for the events, the State indicated that it has carried out this commitment since, through what is now a firm judgment handed down on July 30, 1997, by the Third Court of Criminal Matters, Drug-trafficking, and Crimes against the Environment, Carlos Venencio Escobar Fernández, responsible for the death of Mario Aliota López Sánchez, was convicted and sentenced to serve time in prison.

759. The petitioners indicated that in 2012 and 2013, the State has not taken the actions needed to advance in carrying out the commitments still pending.

760. In view of the foregoing, the Commission concludes that the State has partially carried out the friendly settlement agreement. Consequently, the Commission will continue to supervise the two points pending: delivering the historical memory to the family members, and investigating and punishing those responsible.

**Case 12.546, Report No. 30/12, Juan Jacobo Arbenz Guzmán (Guatemala)**

761. On March 20, 2012, by Report No. 30/12, the IACHR approved a friendly settlement in the case of Juan Jacobo Arbenz Guzmán. By way of background, Jacobo Arbenz Guzmán was elected the constitutional president of Guatemala in 1951 and served in that position until June 27, 1954, the date on which he was overthrown by a military coup headed up by Colonel Carlos Castillo Armas and directed from Honduras by the Central Intelligence Agency of the United States of America. Juan Jacobo Arbenz and his family, made up at that time of his wife, María Cristina Vilanova de Arbenz, and their children Juan Jacobo, María Leonora, and Arabella, were expelled from the country and forced to live in exile. Juan Jacobo Arbenz Guzmán died in exile on January 27, 1971. The *de facto* government confiscated the property of Mr. Arbenz Guzmán and his family. The government junta issued Decree No. 2, on June 2, 1954, and then the dictator Castillo Armas promulgated a second decree, No. 68. Article 1 of Decree 2, ordered intervening the assets, freezing and immobilizing the deposits, creditor accounts, securities, and current accounts of the persons who were on the lists drawn up by the Ministry of Finance and Public Credit; President Arbenz was on this list. Article 1 of Decree 68 established that all securities, actions, rights, assets, and property of all types would be adjudicated to the State as compensation, with no exception, which for any reason is under the control, possession, tenure, and usufruct of the former officials and employees that appear on the list mentioned in Decree 2. The property confiscated included the farm “Finca el Cajón,” which was a property of the Arbenz family. Both Mr. Arbenz Guzmán while alive, and his next-of-kin after his death, called for the return of their properties.

762. On May 28, 1995, Mrs. María Cristina Vilanova Castro, the widow of Arbenz, brought an action challenging the constitutionality of Decrees 2 and 68, both of 1954, before the Constitutional Court of Guatemala. On September 26, 1996, the Court declared unconstitutional Article 1 of Decree 2 and Article 1 of Decree 68. In 1996, the Office of the Government Attorney (Procuraduría General) issued opinion 8-96, in which it recognized that one should study compensation for the next-of-kin of the former president, and that the matter should be debated in the legislative branch. On January 31, 2003, the Office of the Government Attorney issued a new opinion in which it states that the

Constitutional Court judgment imposed an obligation on the State of Guatemala to return the properties or to pay compensation to his heirs.

763. On March 14, 2006, the IACHR found the case admissible for the alleged violation of Articles 8 (judicial guarantees), 21 (private property), 24 (equality before the law), and 25 (judicial protection). On May 19, 2011, the parties signed a friendly settlement agreement, the pertinent parts of which, with respect to reparation, are as follows:

## (2) ECONOMIC REPARATION

....

The State of Guatemala, after a valuation conducted February 21, 2007, by the Bureau of Cadastre and Appraisal of Real Properties of the Ministry of Public Finance, at farm number 3443, folio 76 of book 40 of Escuintla of the General Registry of Property, called “Finca el Cajón,” situated in the municipality of Santa Lucía Cotzumalguapa of the department of Escuintla, undertakes to pay the sum of ... as economic reparation, for former president Juan Jacobo Árbenz Guzmán, to his wife María Cristina Vilanova and their children Juan Jacobo, María Leonora, and Arabella, all with the last names Árbenz Vilanova, a sum that includes both material and moral damages. The State of Guatemala undertakes to make the payment by bank transfer immediately once the Friendly Settlement Agreement has been signed and once the petitioners deliver the notarial act identifying the beneficiaries and the special power of attorney to Mr. Erick Jacobo Arbenz Canales, which authorizes him to sign this friendly settlement and to receive the payment of the economic reparation; these documents must have all the legal authorizations required to be considered to be fully valid under Guatemalan legislation. Once the transfer is made, the petitioner undertakes to sign an administrative act of settlement to be extended to the State of Guatemala.

## (3) OTHER FORMS OF REPARATION

This Friendly Settlement Agreement establishes the commitment of the State of Guatemala to carry out the following commitments:

**(a) Public Ceremony for Acknowledging International Responsibility:** The State of Guatemala undertakes to dignify the memory of former president Juan Jacobo Árbenz Guzmán with a public ceremony for recognition of the international responsibility of the State, which will be held at the National Palace of Culture, and shall be presided over by the President of the Republic....

**(b) Letter of Apology:** The State of Guatemala undertakes to draft a letter of apology that the President of the Republic shall deliver to the family members of former President Árbenz Guzmán in the public ceremony for acknowledging responsibility. This letter will be signed by the President and published in the *Diario de Centro América* and in *El Periódico*.

**(c) Designation of a hall in the National History Museum:** The State of Guatemala undertakes to name, permanently, a hall of the National History Museum, to be known as the “Jacobó Arbenz Guzmán” hall.

On November 5, 2010, the State of Guatemala named the “Jacobó Arbenz Guzmán Reading Room” in the National History Museum, thus the petitioner accepted this act as part of the moral reparation in this case, as that ceremony was already held.

**(d) Review of National Basic Curriculum:** The State of Guatemala undertakes to take the necessary steps vis-à-vis the Ministry of Education to review the National Basic Curriculum specifically regarding the government of the then-constitutional President of the Republic of

Guatemala, Colonel Juan Jacobo Árbenz Guzmán, and the events that occurred at the time of the 1954 military coup against him; after the State and the family members of former president Árbenz Guzmán have reviewed them, the State will take steps to implement the changes proposed.

**(e) Diploma Program in Human Rights, Multiculturalism, and Reconciliation of the Indigenous Peoples:** The State of Guatemala undertakes to create a “Diploma Program in Human Rights, Multiculturalism, and Reconciliation on Indigenous Peoples,” with the economic backing of the Universidad de San Carlos de Guatemala, in which there will be two sections: one in the western region, which will be made up of the departments of Quetzaltenango, as the principal location of the program, plus San Marcos, Retalhuleu, Suchitepéquez, Quiché, and Sololá; and the other in the eastern region, which will be made up of the departments of Zacapa, as the principal location, along with Chiquimula, Jalapa, El Progreso, and Jutiapa.

This diploma program is geared mainly to public officials of the executive and judicial branches, staff of other intermediate level offices, and indigenous leaders. It will have 10 face-to-face sessions, to be held once every two weeks. The diploma program will address issues that make it possible to analyze the inequalities among the Maya, Garifuna, Xinka, and Mestizo peoples for the purpose of helping to curb discriminatory practices.

**(f) Naming of the Highway to the Atlantic:** The State of Guatemala undertakes to take steps vis-à-vis the appropriate institution for the highway to the Atlantic be named “Juan Jacobo Arbenz Guzmán” in the course of 2011. Once that request is authorized, a public ceremony will be held for the naming of that highway.

**(g) Restitution of an area of the Finca el Cajón:** As mentioned above, farm number 3443, folio 76, of book 40 of Escuintla of the General Property Registry, called “Finca el Cajón,” situated in the municipality of Santa Lucía Cotzumalguapa, department of Escuintla, a property of the Árbenz Vilanova family, was confiscated by the State of Guatemala by Decree 2 of July 5, 1954 of the Government Junta and registered to the State of Guatemala, as regulated by Decree 68 of August 6, 1954, issued by the *de facto* President. Subsequently that farm was divided into lots by the National Institute for Agrarian Transformation (INTA). In 1996 and 2006, the Constitutional Court handed down judgments in cases 305-95 and 1143-2005, finding Decrees 2 and 68 to be unconstitutional.

In legal opinion 29-2003, issued by the Consultations Section of the Office of the Government Attorney (Procuraduría General de la Nación), that institution considered as follows: “The judgment of the Constitutional Court that corresponds to case 305-95 of September 26, 1996, which found unconstitutional and without any effect the provisions that were the basis for the expropriation, practically created an obligation for the State of Guatemala that consists of returning the properties or, in the alternative, paying compensation to the heirs thereof; accordingly that judgment is a decision of great importance for defining the dubious situation that led to the case that is analyzed today.”

In view of the foregoing, the State of Guatemala undertakes to take the steps and conduct the studies required to verify whether there is any area that is part of the Finca el Cajón that is owned by the State. If so, the State of Guatemala will take the statutory and/or administrative steps necessary for that part of the farm to be returned to the family members of former president Árbenz Guzmán.

If the study and the steps taken by the State in relation to the Finca el Cajón indicate that there is no area under the control of the State or that it is not possible to return it to the family members

of former President Arbenz Guzmán, the State undertakes to pay the additional sum of ... in the course of 2011.

The family members of former President Arbenz Guzmán reserve the right to choose between the restitution of that part of the Finca el Cajón which, as a result of the study, could be returned to them, or the payment ... by the end of 2011.

....

**(i) Photography exhibit at the National History Museum:** The State of Guatemala undertakes to organize a temporary photography exhibit on former President Arbenz Guzmán and his family in one of the halls of the National History Museum....

**(j) Recovery of the photographs of the Arbenz Guzmán family:** The State of Guatemala undertakes to digitally record, in San José, Costa Rica, the photo archive of former President Arbenz Guzmán that is in the possession of his family members, with three complete digital copies and three print copies, from a selection made by mutual agreement, to be delivered to the family members. This commitment will be made in 2011.

**(k) Book of Photos:** The State undertakes to publish, in 2011, a book with a selection of photographs of former President Arbenz Guzmán....

**(l) Re-publication of the book “Mi Esposo el Presidente Árbenz”:** The State of Guatemala undertakes to reprint the book “Mi Esposo el Presidente Arbenz,” the author of which is María Cristina Vilanova de Árbenz, the wife of former President Árbenz Guzmán....

**(m) Production and publication of a biography of former President Juan Jacobo Árbenz Guzmán:** The State of Guatemala undertakes to produce and publish a biography of former President Juan Jacobo Árbenz Guzmán. To this end his family members undertake to provide the data required and to accompany the book’s author in preparing the biography; they also authorize its production and publication....

**(n) Issuance of a series of postage stamps:** The State of Guatemala undertakes to take the steps to issue a series of postage stamps whose theme and/or motive is commemorating former President Arbenz Guzmán and his period in office. The authorization, design, perforations, margins, number, value, and run is at the discretion of the corresponding authorities, with whom COPREDEH and the family members of former President Arbenz Guzmán will coordinate proposals.

**(o) Travel costs ...**

764. In the friendly settlement report the IACHR determined that the State also has the following commitments set forth in the May 19, 2011 agreement:

**1. To make reparation to the Árbenz Vilanova family for the damages caused and the human rights violations committed.** This commitment was carried out by the State in June 2011.

**2. Public ceremony acknowledging international responsibility and the installation of a photographic exhibit at the National Palace of Culture.** On October 20, 2011, the public ceremony acknowledging the international responsibility of the State was held in the Patio de la Paz in the National Palace of Culture. At the ceremony, the President of the Republic of Guatemala recognized the responsibility of the State for the human rights violations directed

against the Arbenz family and apologized: “As head of State, as the constitutional president of the Republic, as the commander in chief of the Army, I wish to apologize to the Árbenz Vilanova family for that crime committed on June 27, 1954.”

In addition, on October 17, 2011, the State inaugurated a photo exhibit at the National Palace of Culture called “Arbenz, combatant of Freedom and Progress” and “Arbenz, end of exile/apotheosis of the return.”

**3. Letter of Apology.** The letter of apology was delivered by the President of the Republic on October 20, 2011, during the public ceremony acknowledging the international responsibility of the State, to Mr. Jacobo Arbenz Vilanova, the son of former President Arbenz Guzmán, and published in written media.

**4. Designation of a hall in the National History Museum, on a permanent basis, with the name of “Jacobó Arbenz Guzmán.”** On November 5, 2010, the State of Guatemala designated the “Jacobó Arbenz Guzmán Reading Room” in the National History Museum. In the agreement signed May 19, 2011, the petitioner accepted this act as part of the moral reparation in this case.

**5. Creating a “Diploma Program in Human Rights, Multiculturalism and Reconciliation on Indigenous Peoples,” with the academic backing of the Universidad de San Carlos de Guatemala.** The State, to carry out this commitment, developed a seven-module curriculum, in 10 face-to-face sessions, in the departments of Quetzaltenango and Zacapa. The diploma programs included the participation of public officials from different departments, and Mr. Jacobo Arbenz Vilanova, the son of former President Arbenz Guzmán, participated in the closing ceremonies. This commitment was carried out in July, August, and September 2011.

**6. Security.** As agreed, the State provided security measures to the family members of former President Árbenz Guzmán to be able to attend the public ceremony acknowledging international responsibility on October 20, 2011.

**7. Recovery of the collection of photographs of the Arbenz Guzmán family.** This commitment was carried out by the State in July and August 2011.

**8. Re-publication of the book *Mi Esposo el Presidente Árbenz*.** This commitment was carried out by the State and copies of the book were distributed during the public ceremony acknowledging international responsibility on October 20, 2011.

**9. Covering the travel cost for family members of Juan Jacobo Arbenz Guzmán to be present at the IACHR for the signing of the friendly settlement agreement and at the public ceremony for acknowledging responsibility to be held at the National Palace of Culture.** This commitment was carried out by the State in May 2011 and October 2011.

765. As regards the following commitments pending implementation, the information provided by the parties in 2013 indicates as follows:

**1. Review of the National Basic Curriculum: COMPLETED.** The State reported that with the backing of the Ministry of Education two curricular orientations were prepared called (a) curricular orientations, historical events and political gains of the government of Jacobo Arbenz, Primary Level, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> grades; and (b) curricular orientations, historical events and political gains of the government of Jacobo Arbenz, Middle Level, Basic Cycle 2<sup>nd</sup> and 3<sup>rd</sup> years. Both were delivered on January 12, 2012.

2. **Naming of the Highway to the Atlantic. COMPLETED.** The State reported that the ceremony was held on January 12, 2012.
3. **Restitution of an area of Finca el Cajón. COMPLETED.** Since it was not possible to make restitution of the farm, the agreement established that compensation would be paid in the alternative; the State made the payment on February 27, 2012.
4. **Photographic exhibit at the National History Museum. COMPLETED.** The State reported that the photo exhibit "Arbenz, combatant for Freedom and Progress," was inaugurated on December 22, 2011.
5. **Book of Photos. PENDING.** The State indicated that it hired a professional to touch up 120 photographic images of the Arbenz family that will be used to publish the book of photos. The administrative steps required for producing the book are being taken.
6. **Production and publication of a biography of Jacobo Arbenz Guzmán. COMPLETED.** The State indicated that it was published on January 12, 2012.
7. **Issuance of a series of postage stamps. PENDING.** The State indicated that several meetings were held with the National Philatelic Council, which proposes, to be able to carry out this commitment, that a postmark be issued, which is used to mark postage stamps so they cannot be reused. Nonetheless, as this would change the object of the commitment, the State has asked the Arbenz family to indicate whether it is in agreement with this means of carrying out the commitment.

766. The IACHR values the gains in carrying out the friendly settlement agreement. The IACHR will continue following up on the commitments pending: Publication of the book of photos, and the issuance of a series of postage stamps. In view of all the foregoing, the Commission concludes that the friendly settlement agreement has been carried out in part.

**Petition 714-06, Report No. 123/12, Angélica Jerónimo Juárez (Guatemala)**

767. On November 13, 2012, by Report No. 123/12, the Commission approved a friendly settlement agreement in the case of Angélica Jerónimo Juárez. According to the background set forth in that report, on April 27, 2002, Mr. Nicolás Alvarado Tolón had his wife Angélica Jerónimo Juárez admitted to the Hospital Nacional de Salamá, department of Baja Verapaz, with symptoms of labor. She was examined by the physicians, who considered it necessary to perform a cesarean section. As the effects of the anesthesia were not reversed, and as she did not have mobility in her legs, that same day she was transferred to the Hospital San Juan de Dios, where she was hospitalized for one month. As it was not possible to revert the effects of the anesthesia, she was transferred to the Hospital Nacional de Salamá to receive physical therapy; nonetheless, after having begun the criminal proceeding against the personnel of the Hospital Nacional de Salamá, Mr. Alvarado Tolón decided to care for her at home. On May 9, 2002, Mr. Nicolás Alvarado Tolón filed a complaint with the Public Ministry against Ms. Gilda Antonia Teos Herrera, who administered the anesthesia. On December 12, 2005, the Court for Criminal Matters, Drug-Trafficking, and Crimes against the Environment of Baja Verapaz issued a judgment in which it declared the acquittal of the accused Gilda Antonia Teos Herrera, but it ruled favorably on the civil action brought against her and ordered her to pay Q. 35,000.00 (thirty-five thousand quetzals) as compensation and it ordered the State of Guatemala to pay Q. 700,000.00 as compensation to Ms. Teos Herrera. The State of Guatemala, through the Office of the Government Attorney (PGN), filed an appeal, which was heard by the Mixed Regional Chamber of the Court of Appeals of Coban, Alta Verapaz, and



which, by judgment of March 27, 2006, set aside the judgment that was appealed. The family was unable to file a motion for cassation due to its economic situation.

768. On November 21, 2007, in Guatemala City, the parties signed a friendly settlement agreement, which at section four establishes the following terms:

#### **IV. REPARATIONS**

Economic Reparation:

a) The Government of Guatemala recognizes the right of Ms. Angélica Jerónimo Juárez and her family to reparation for the violations suffered, accordingly as regards economic reparation the State of Guatemala, in keeping with the actuarial calculation performed in the instant case, and by mutual agreement with the family members of Angélica Jerónimo Juárez, undertakes to pay economic compensation for the sum of ONE MILLION TWO HUNDRED SIXTY-ONE THOUSAND SIX HUNDRED QUETZALS (Q. 1,261,600.00), a sum that includes moral reparation, lost earnings, and actual damages.

Time period:

The payment of economic reparation shall be made during the month of December 2007.

The time period agreed upon in this Friendly Settlement Agreement may be extended by mutual agreement of the parties, for budgetary reasons.

Moral Reparation:

a) The Government of Guatemala undertakes to take steps for the Ministry of Public Health and Social Assistance to continue providing the respective therapies to Ms. Angélica Jerónimo Juárez at the Hospital de Salamá, department of Baja Verapaz, in keeping with the possibilities of the Hospital Nacional de Salamá, Baja Verapaz.

b) The Government of Guatemala shall take steps vis-à-vis the Ministry of Agriculture and Food to provide monthly food packages to the family of Angélica Jerónimo Juárez, for a period of two years, or in keeping with the possibilities of the Ministry of Agriculture and Food.

c) The Government of Guatemala undertakes to seek from the Ministry of Education scholarships for the minor children of Ms. Angélica Jerónimo Juárez who meet the requirements established by said Ministry.

769. In the Friendly Settlement Report the IACHR stated that according to information provided by the parties in the working meeting held in Guatemala on May 27, 2009, it appears that the State has partially carried out the following points of the friendly settlement agreement:

- On January 8, 2008, the State paid fifty percent (50%) of the amount of compensation, i.e. the sum of SIX HUNDRED THIRTY THOUSAND EIGHT HUNDRED QUETZALS (Q. 630,800.00).
- In 2008 part of the food packages that the Government of Guatemala committed to deliver through the Ministry of Agriculture and Food were provided.

- As regards the therapies that the Government of Guatemala undertook to take steps to provide through the Ministry of Public Health and Social Assistance, the petitioners expressed their difficulty travelling to the city of Coban twice weekly. In this respect, the State undertook to seek travel at no cost for Ms. Angélica Jerónimo Juárez to receive therapy in another city.
- At that working meeting, the State undertook to deliver the scholarships for the minor children of Ms. Angélica Jerónimo Juárez on June 17, 2009, through a foundation.

770. According to the information provided by the parties in the course of following up on the Friendly Settlement Report, the State partially implemented the commitments adopted in that agreement.

771. On October 4, 2013, the IACHR asked the parties for updated information on the status of implementation of the points of the agreement still pending. The petitioners did not submit information.

772. As regards economic reparation, the State indicated that it was delivered by means of two payments of 50% each, the first on January 8, 2008, and the second on December 28, 2010. With regard to facilitating the physical therapy service for Ms. Angélica Jerónimo Juárez at the Hospital General de Salamá, the State said that all steps necessary to that end have been taken, yet Mr. Alvarado Tolón has waived them as he finds other options more favorable. On the delivery of the food packages, the State indicated that it made the respective deliveries in 2008, 2009, 2010, and 2011. As regards the scholarships, the State said that Ms. Angélica Jerónimo Juárez's three daughters received their respective scholarships, and that her son Fidelfo Alvarado Jerónimo was exempted from paying tuition by the Instituto de Educación Básica por Cooperativa. The petitioners did not respond to the request for information.

773. Based on the foregoing, the Commission concludes that the friendly settlement agreement has been fully implemented.

**Petition 11.805, Report No. 124/12, Carlos Enrique Jaco (Honduras)**

774. On November 13, 2012, by Report No. 124/12, the IACHR approved a friendly settlement agreement in the case of Carlos Enrique Jaco. According to the background information, Carlos Enrique Jaco, 16 years of age, was detained on November 9, 1994 and unlawfully sent to the San Pedro Sula prison center for adults by then-Judge of the Second Court of Peace for Criminal Matters of that city, Ms. Vianey Cruz Recarte. They indicated that when apprehended Carlos Enrique Jaco said he was a minor, despite which the judge sent him to a prison for adults without ordering a medical exam to verify his age. The petitioners indicated that the result of the negligence and lack of diligence on the part of Judge Vianey Cruz Recarte resulted in the death of the adolescent Carlos Enrique Jaco at the hands of a prisoner in the adult prison in which he was locked up. The petitioners also alleged the lack of any investigation and of any punishment of the persons responsible.

775. On June 19, 2001, the parties signed a friendly settlement agreement in the following terms:

FRIENDLY SETTLEMENT AGREEMENT BETWEEN THE GOVERNMENT OF HONDURAS AND THE ASSOCIATION CASA ALIANZA/CENTER FOR JUSTICE AND INTERNATIONAL LAW ON CASE No. 11,805 (CARLOS ENRIQUE JACO) BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Government of Honduras (hereinafter "the Government") for the first part, and for the second party the Association of Casa Alianza América Latina and the Center for Justice and International Law (hereinafter "the petitioners") sign this Friendly Settlement Agreement before the Honorable Inter-American Commission on Human Rights (hereinafter "the Commission") on Case 11.805 (Carlos Enrique Jaco), in keeping with the provisions of Articles 48, 49, and 50 of the American Convention on Human Rights (hereinafter "the Convention"), in relation to the complaint submitted by the petitioners alleging the violation of Articles 4 (right to life), 7 (personal liberty), 8 (judicial guarantees), 19 (rights of the child), 25 (judicial protection), and 1(1) (obligation to ensure and respect the rights enshrined in the Convention), have agreed as follows:

FIRST: That the Government undertakes to instruct the Juvenile Courts that once it has been brought to their attention that the detention of a person under 18 years of age in a prison for adults has been ordered, they shall proceed to adopt the legal actions called for by law.

SECOND: The State of Honduras undertakes to make reparation for the harm. The reparation shall include the following aspects:

- i. The administrative and judicial actions that make possible the prosecution and punishment of the persons responsible for the events alleged.
- ii. Reparation for the harm.

THIRD: That as reparation for the harm produced by the violation of the articles of the Convention referred to in the Sum, the Government undertakes to pay compensation to the victim's family members through the mother of Carlos Enrique Jaco, Ms. JUANA MELGAR, as the petitioners have confirmed that the deceased had no other family member who might enjoy priority in this right. It is agreed that compensation shall be **L.298,320.00 (TWO HUNDRED NINETY-EIGHT THOUSAND THREE HUNDRED TWENTY LEMPIRAS)** corresponding to the following damages: (a) For actual damages and lost earnings: L 25,000.00 (TWENTY-FIVE THOUSAND LEMPIRAS); (b) For deprivation of life: L. 150,000.00 (ONE HUNDRED FIFTY THOUSAND LEMPIRAS); (c) For detention in an adult prison: L 96,200.00 (NINETY-SIX THOUSAND TWO HUNDRED LEMPIRAS); and, (d) For moral damages: L. 27,120.00 (TWENTY-SEVEN THOUSAND ONE HUNDRED TWENTY LEMPIRAS).

FOURTH: The Government undertakes to make the payment for the compensation described in the previous paragraph in two (2) quarterly payments. The time for payments shall run from the signing of this Agreement, the first payment being made upon its signing and the second payment three (3) months from the date on which it is signed. The times referred to can only be extended by mutual agreement of the parties.

FIFTH: The payment shall be made to the victim's family members by means of Ms. JUANA MELGAR, the mother of Carlos Enrique Jaco, directly and personally, by means of the Honduran Institute for Children and the Family (IHNFA), by government check at the offices of the IHNFA.

SIXTH: Once the Government has performed the obligations that arise from this Friendly Settlement Agreement it will ask the Commission to proceed in conformity with what is established in the Convention and at Article 45(6) of the Commission's Rules of Procedure. If after the signing of this Agreement the corresponding actions and payments are not carried out the Agreement will have no effect and the Commission shall proceed to prepare the final report in the terms established in the Convention....

776. In relation to the implementation of the points of the agreement, the friendly settlement agreement approved by the IACHR established as follows:

- Both the petitioners and the State confirmed that in keeping with the Friendly Settlement Agreement, the state of Honduras paid the sum of 298,320.00 lempiras to Ms. Juana Melgar to make reparation for the harm.
- By communication received February 12, 1999, the State informed the IACHR that on April 15, 1998, the First Criminal Court of San Pedro Sula found José A. Medina liable for the death of Carlos Enrique Jaco and sentenced him to 10 years and six months of prison.
- The petitioners reported, by communication received April 15, 2011, that in 1997, Judge Vianey Cruz was dismissed from her position due to her responsibility in the detention of Carlos Enrique Jaco. Nonetheless on February 1, 2001, she was said to have been hired once again as Judge (Jueza de Letras) in La Ceiba, Atlántida. In this respect, the State reported that the Law on the Judicial Career Service allows for the rehabilitation of a judicial or administrative officer who has been removed with just cause after three years, and that in this regard Judge Vianey Cruz had already received her punishment. By communication received October 18, 2011, the petitioners reported that they were taking note of what was indicated by the State and that they did not have any more observations in this respect. They asked the Commission "to consider the information mentioned in order to determine whether there has been effective implementation of the friendly settlement agreement." For its part, the State affirmed that it had carried out the friendly settlement agreement and asked the Commission to proceed with the corresponding procedures to archive the case.

777. In view of the foregoing, the IACHR valued the efforts made by both parties to reach this settlement and determined that the commitments of the agreement were carried out. The Commission concludes that the friendly settlement agreement has been fully implemented.

**Case 12.028, Report No. 47/01, Donnason Knights (Grenada)**

778. 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.

779. 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.

780. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

781. Based on the foregoing, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 11.765, Report No. 55/02, Paul Lallion (Grenada)**

782. 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.

783. 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.

784. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

785. Based on the foregoing, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)**

786. 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.

787. 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.

788. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

789. Based on the foregoing, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 12.264, Report No. 1/06, Franz Britton (Guyana)**

790. 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.

791. 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.

792. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

793. The State submitted its response on November 8, 2013. In its communication, the State indicated that it has no additional information to share with the Commission to complement its earlier submissions dated October 17, 2011 and November 2, 2011.

794. Based on these considerations, the Commission reiterates that compliance with the recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

#### **Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)**

795. 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.

796. 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.

797. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

798. The State submitted its response on November 8, 2013. In its communication, the State indicated that it has no additional information to share with the Commission to complement its earlier submissions dated October 17, 2011 and November 2, 2011.

799. Based on these considerations, the Commission reiterates that compliance with the aforementioned recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

**Case 11.335, Report No. 78/02, Guy Malary (Haiti)**

800. 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.

801. 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.

802. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

803. Based on these considerations, the Commission reiterates that compliance with the Commission's recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

**Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)**

804. 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.

805. 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.

806. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

807. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

808. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. The IACHR will continue supervising until full compliance is reached.

**Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)**

809. 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.

810. 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.

811. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

812. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses,

the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

813. Therefore, the Commission reiterates that there has been partial compliance with the recommendations. As a result, the Commission shall continue to monitor the items that are pending.

**Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)**

814. 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.

815. 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.

816. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

817. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

818. The response of the petitioners was received on October 16, 2013. They confirm in their communication that Mr. Thomas has not been released nor retried, and is currently incarcerated at Tower Street Adult Correctional Facility.

819. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

**Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)**

820. 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.

821. 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.

822. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

823. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

824. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

**Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)**

825. 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.

826. 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.

827. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

828. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

829. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

**Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)**

830. 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.

831. 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.

832. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

833. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

834. Therefore, the Commission reiterates that compliance with the recommendations of Report 41/04 remains pending. As a result, the Commission shall continue to monitor its compliance.

**Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)**

835. 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.

836. 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.

837. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

838. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

839. Therefore, the Commission reiterates that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

**Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)**

840. 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.

841. 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.

842. On October 8, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

843. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

844. Therefore, the Commission reiterates that the State has complied with the second and third recommendations. As a result, the Commission shall continue to monitor compliance with the first recommendation.

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

845. 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.

846. 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.

847. 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.

848. On October 9, 2013, the Commission requested the parties to provide updated information on the status of compliance with the recommendations.

849. As for the recommendation to investigate, prosecute and punish in the ordinary criminal jurisdiction those responsible for the crimes charged in the petition, the State noted that is working to see that the investigations that resulted from the recommendations published by the IACHR in its Report 53/01 are carried out, implemented, and conducted efficiently. It also said that subsequently it will send more information on progress in the respective investigations. For their part, the petitioners indicated that even though the transfer of this case to the civil jurisdiction is an essential condition for adequate implementation of the recommendations, the state delegation in Chiapas of the federal Office of the Attorney General (PGR) (which should be in charge of the investigation) has no record of having received a preliminary inquiry referred to it due to the lack of jurisdiction of the Office of the Attorney General for Military Justice (PGJM) over the matter.

850. Regarding the recommendation to provide adequate reparation to the victims of Case 11.565, it can be established as fact that in 2011 the State reported that, through the Government of Chiapas, on April 4, 2011, it awarded the victims and their mother, in a private ceremony, the sum of \$2,000,000 Mexican pesos (two million pesos), or the equivalent thereof of US\$172,000, as humanitarian support. It clarified that the support granted to the victims did not constitute recognition of responsibility for the incidents that prompted the recommendations of the IACHR and it could not be viewed as reparation for damages. In 2012, the State reiterated that the government of the State of Chiapas had awarded a sum of money to the victims as humanitarian aid.

851. In response, the petitioners indicated that the recommendation was not implemented since even though the State affirms that this economic assistance was in relation to what is indicated in Report 53/01, the agreement signed indicated that the delivery of that sum was in the way of humanitarian assistance, without it representing implementation of the recommendations made by the IACHR.

852. Based on the foregoing, the IACHR notes that the recommendation issued in the merits report of 2001 pertaining to the investigation, prosecution and punishment of those responsible for the

crimes charged in the petition has not been fulfilled. The IACHR, however, does appreciate the humanitarian relief granted by the government of Chiapas. Notwithstanding, said relief does not constitute recognition of responsibility for the incidents nor reparation for damages, as the State itself has asserted.

853. As a result, the recommendations issued in this case by the Commission are pending compliance and the Commission will thus continue to monitor compliance therewith.

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

854. In Report No. 2/06 dated February 28, 2006, the Commission concluded that the Mexican State was responsible for breaching the right to a fair trial and judicial protection as provided for in Articles 8 and 25 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Miguel Orlando Muñoz Guzman. It also determined that the case file did not contain any evidence that would make it possible to attribute international responsibility to the State for the alleged forced disappearance of Miguel Orlando Guzman. Consequently, it did not find the State responsible for the alleged violation of the rights to life, humane treatment and personal liberty; nor of the right to humane treatment of his next-of-kin. However, it recommended that the State investigate under the ordinary court jurisdiction the whereabouts of Miguel Orlando Muñoz Guzman and, should it be established that there was forced disappearance, punish those responsible.

855. 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 26<sup>th</sup> 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.

856. 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.

857. By means of a communication dated November 7, 2013, the IACHR requested both parties to report on the measures taken to comply with these recommendations.

858. The State indicated that in October 2013 a meeting was held between the Office of the Attorney General of the State of Chihuahua and the petitioners in which the actions necessary to carry

out the recommendations were defined, and seven agreements were reached regarding the joint review of the design of the investigation. In addition, the State reported that it requested Mr. Miguel Orlando Muñoz Guzmán's genetic profile from his family members in order to strengthen the current lines of the investigation. The petitioners stated that they value the aforementioned agreements, and that they expect them to be fully complied with. However, they reiterated that while this happens, the Mexican State has not complied with the recommendation to investigate, prosecute, and punish. On the other hand, the petitioners reported that since the Merits Report No. 2/06 was issued, the State has not addressed the recommendation related to the reparations for Mr. Muñoz Guzman's relatives.

859. 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.

**Case 11.822, Report on Friendly Settlement Agreement No. 24/09, Reyes Penagos Martínez et al. (Mexico)**

860. 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.

861. 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...

862. Thereafter, in the “Agreement on Reparation for the Harm to the Victims and Their Next of Kin,” signed on November 3, 2006, the parties agreed that:

**“THIRD. Measures of Satisfaction and Guarantees of Non-Repetition. (...)**

**a) Public Recognition of the International Responsibility of the Mexican State**

The State undertakes to make a public pronouncement in which it recognizes ITS RESPONSIBILITY IN the facts described in the first section, considering that the death of Reyes Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González, committed by various public servants of the state of Chiapas, are imputable to it.

The State also undertakes to apologize publicly to the victims and their family members for the facts reported to the IACHR, which were the result of a violation of human rights.

This pronouncement may be made at the moment the payment is made to make reparation for the material and non-material injury agreed upon in the preceding paragraphs.

Likewise, the State undertakes to publish the public pronouncement in two local newspapers.

**b) Investigation and punishment of the persons responsible**

In addition, the State undertakes to continue the investigations until attaining the sanction of the persons responsible for those crimes, through a serious and impartial investigation according to the international human rights standards, for the purpose of avoiding their re-victimization due to lack of access to justice.

[...]

**SIXTH. Material injury. [...]**

In this regard, the following sums have been agreed upon:

Beneficiary	For	Amount
1. Penagos Roblero family*	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 105,354.00 MN
	<b>SUBTOTAL</b>	<b>\$ 157,902.00 MN</b>
2. Julieta Flores Castillo	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	<b>SUBTOTAL</b>	<b>\$ 65,187.00 MN</b>
3. Enrique Flores González	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	<b>SUBTOTAL</b>	<b>\$ 65,187.00 MN</b>
	<b>TOTAL 1</b>	<b>\$ 288,278.00 MN</b>

**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
	<b>TOTAL 2</b>	<b>\$ 800,000.00 MN</b>

[...]

**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.

863. 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."

864. On October 4, 2013, the IACHR asked the parties for updated information on the status of compliance with pending commitments.

865. Regarding the obligation to investigate, prosecute, and punish, the State reiterated that it has been following up on its implementation. It reported that the Office of the Prosecutor Specialized in Human Rights of the Office of the Attorney General of the State of Chiapas was the institution entrusted with seeing to it that the investigations be conducted in a diligent manner. As regards the crime of rape committed against one of the victims, it reported that the Office of the Public Prosecutor (Ministerio Público) filed a criminal action on September 13, 2012, against seven persons. It highlighted that the victim has been able to gain access to the files and to the proceeding and ratified its commitment to guarantee her right to assistance. As regards the investigation into the crimes committed against Reyes Penagos and Enrique Flores, he indicated that the administrative and criminal investigations into the public servants involved were exhausted and the corresponding sanctions applied.

866. The petitioners indicated that the State has failed to take steps to effectively investigate the extrajudicial execution of Mr. Reyes Penagos and the illegal detention and torture of Mr. Enrique Flores and Ms. Julieta Flores. They noted that the State has only made reference to certain steps in the investigations of the crime committed against Ms. Julieta Flores but no reference has been made to the human rights violations to the detriment of other victims.

867. 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)**

868. 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.

869. 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.

870. 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.

871. 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.

872. 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.

873. 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.<sup>70</sup> It also considered that "in the absence of a judgment on merit that considers

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<sup>70</sup> IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12, 2009, paragraph 110.

“[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.”<sup>71</sup>.

874. 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.

875. 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.

876. In a communication dated October 7, 2013, the IACHR requested updated information from the parties concerning the status of compliance with the recommendations made in the present case. The State did not respond to the request of the IACHR.

877. The petitioners reiterated that there still had not been compliance with the recommendations of the IACHR. As a result, the State was failing to meet its international obligations and Mr. Campo Dodd continued to be deprived of his freedom. They reported that in August 2010 Mr. Martín del Campo Dodd submitted a petition for recognition of innocence to the Seventh Criminal Chamber of the Superior Court of Justice of the Federal District. In that petition, he referred to the international processing of the case and on November 25, 2011, that Chamber declared his petition unfounded. They added that on November 16, 2011, an amparo proceeding was brought against said decision, which is still under consideration as of the present time. They noted that on August 17, 2012, nine months after the amparo claim was filed, the Third District Court Judge ruled he did not have jurisdiction to hear and settle the case, and it was passed on to the Second Collegiate Court of the 29<sup>th</sup> Circuit based in Pachuca Hidalgo to settle the jurisdictional dispute. Additionally, they contended that as a result of a request made by Martín del Campo Dodd to the Federal Government to comply with the merits report and to issue an order for his release, in November 2012, he received a communication from the General Directorate of Legal Services of the Government of the Federal District requesting the presence of his next-of-kin to review the matter and determine whether it is under the jurisdiction of the Office of Legal Counsel of the Federal District.

878. 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.

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<sup>71</sup> IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12, 2009, paragraph 112.



**Case 12.642, Report on Friendly Settlement Agreement No. 90/10, José Iván Correa Arévalo (Mexico)**

879. 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.

880. 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.

881. 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.

882. 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[.]".

883. 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.

884. On October 4, 2013, the IACHR asked the parties for updated information on the status of implementation of the commitments pending. The State did not provide any information. The petitioners rejected the State's assertion that it had fully carried out the agreement. The petitioners argued that it had failed to investigate the facts. In particular, they indicated that even though there is sufficient information to determine that the case was a homicide, no investigative actions have been taken to determine the direct perpetrators or the authorities who aided and abetted the crime.

885. In light of the foregoing, the Commission notes that compliance is still pending of:

Clarification of the historical truth regarding the homicide of Jose Ivan Correa Arevalo, through a diligent and thorough investigation.

886. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending items.

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

887. 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.

888. 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.

889. 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 Solis, 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.

890. 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.

891. 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.

892. 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.

893. On October 4, 2013, the Commission asked the parties to submit updated information on the status of compliance with the recommendations. The State did not provide information.

894. On November 7, 2013 co-petitioners CEJIL and CENIDH reported that they had no observations. Mr. Alfredo Barberena Campos, the victim in the case, and his representative, said that the State had not carried out the commitments signed on June 7, 2007. In addition, on September 23, 2013, the IACHR received a communication from 25 members of a commission of former customs workers directed to the CENIDH in which they affirm that the State continues to fail to carry out the recommendations set forth in Report 100/01 despite many efforts made by the corresponding institutions.

895. 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.

896. 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)**

897. 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.

898. 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.

899. 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.

900. 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)**

901. 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.

902. 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.

903. 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.

904. 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 Victor 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.

905. 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.

906. 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.

907. On December 4, 2012, the Commission asked the parties to supply updated information. In a communication dated January 4, 2013, the petitioners pointed out that the recommendation concerning investigation, prosecution and punishment of the human rights violations committed against Victor Hugo Maciel had still not been carried out. They reiterated that the State had not taken

measures to conduct an effective investigation into the circumstances of the victim's death; that the investigations had made no tangible progress toward identifying, prosecuting and punishing all those responsible and that the judicial proceedings had been flawed and dysfunctional. They also maintained that the Paraguayan State had not yet supplied the complete information needed to ascertain the precise status of the judicial proceedings.

908. In a communication dated October 15, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending.

909. With communication dated November 15, 2013, the petitioners reported that the investigation, prosecution and punishment of human rights violations committed against the victim in this case is still pending. They argue that as stated in their submissions of December 21, 2010; November 21, 2011 and January 4, 2013, the State has not taken any steps to promote an effective investigation into the events that caused the death of Victor Hugo Maciel and therefore there is no progress in the identification, prosecution and punishment of all those responsible. They also indicated that the State has not provided information to help determine the exact state of the proceedings.

910. Based on the information supplied by the parties, the Commission observes that the recommendation concerning the investigation, prosecution and punishment of the human rights violations committed against Victor Hugo Maciel, have not yet been fulfilled. Therefore, the IACHR concludes that the friendly settlement agreement that the parties signed on March 22, 2006, has been only partially honored.

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

911. 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.

912. 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.

913. 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.

914. 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.

915. 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.

916. 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 in the following section on Report Nº 101/01.

917. Throughout 2012, the petitioners remitted communications indicating that on July 20, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice had handed down judgment on appeal in the proceedings conducted to investigate on a series of crimes, including the forced disappearance of the El Santa farm workers. The petitioners pointed out the Permanent Criminal



Chamber had concluded that the disappearance of the El Santa farm workers did not constitute a “crime against humanity” (*lesa humanidad*) because, although at that time there had indeed been a systematic and widespread practice of executions and disappearances, it had not been directed against the civilian population but rather at “military leaders of the Peruvian Communist Party – Sendero Luminoso and terrorists.” In August 2012, the Inter-American Court of Human Rights held a hearing on this matter in its follow-up to the judgment in the Barrios Altos case and issued a resolution in September of the same year. According to information received by the IACHR, on September 27, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice annulled the verdict handed down on July 20, 2012. With that decision, a new Chamber is to be formed to hear on first appeal the criminal proceeding aimed at establishing the liability of the perpetrators and high-level government officials for the El Santa and other cases.

918. On November 3, 2012, a working meeting on this case was held during the 146<sup>th</sup> regular session of the IACHR. At that meeting, the State indicated that it was meeting its international obligation to investigate and punish those responsible for the disappearance of the farm workers of El Santa, as a result of which the judgment handed down by the Permanent Criminal Chamber of the Supreme Court on July 20, 2012 had been voided *ex officio* by the same judicial body. For their part, the petitioners stressed that the July 20, 2012 decision illustrated a constant practice of the Permanent Criminal Chamber of issuing decisions in cases of grave human rights violations that contravened inter-American standards. The petitioners further argued that although the annulment of that decision had corrected a situation of impunity, the Supreme Court had yet to hand down a final verdict regarding the forced disappearance of the victims, even though more than 20 years had elapsed.

919. On November 16, 2012, the IACHR asked the parties to report on progress with implementing the aforementioned recommendations. The petitioners and the Peruvian State remitted communications in which they reiterated the arguments they put forward during the working meeting of November 3, 2012. In addition, the petitioners reported that, on March 6, 2012, one of the accused, Julio Rolando Salazar Monroe, had obtained a judgment, in the course of a *habeas corpus* proceeding, in which the Constitutional Court had ordered his removal from the criminal proceedings relating to the El Santa, Barrios Altos, and Pedro Yauri Bustamente cases. According to the petitioners, if that judgment were to be carried out, it would be tantamount to a denial of the Peruvian State’s obligation to punish the aforementioned crimes appropriately. As regards financial reparation, the petitioners repeated the observations remitted in previous years, which are summarized in the section dealing with Report No. 101/01.

920. On October 7, 2013, the IACHR asked the parties for updated information on the state of compliance with the recommendations made in Report No 111/00. The parties did not submit any updated information within the time period set by the IACHR. Nonetheless and given that recommendation 3 of Report Nos.111/00 and 101/01 is included in subparagraphs c) and d) of the joint press release signed by the IACHR and the Peruvian State on February 22, 2001, and the IACHR celebrated a working meeting during its 147<sup>th</sup> regular period of sessions, the IACHR will refer to compliance with this recommendation in the subsequent section regarding Report No. 101/01 covering both cases at the same time.

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

921. 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.

922. 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.

923. 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.

924. 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.

925. 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.

926. 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.

927. 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.

928. 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.

929. 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.<sup>72</sup>

930. 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.

931. 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.

932. 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.

933. 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.

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<sup>72</sup> See <http://www.cidh.oas.org/Comunicados/English/2001/Peru.htm>.

934. 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.

935. 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.

936. Regarding reparations in the area of health, the State reported that Administrative Resolution No. 082-2003/SIS incorporated the victims of human rights violations and their relatives as recognized by the IACHR in the Comprehensive Health Insurance System (SIS). It indicated that to date the Ministry of Health reports a total of 191 beneficiaries enrolled in the SIS and 68 beneficiaries enrolled with some other type of insurance. It stated that the Memorandum of Understanding of March 29, 2011, signed during the 141st regular session of the IACHR, agreed that the State, through the Ministry of Health, will issue a letter within no more than two months certifying lifetime affiliation with the SIS for each of the beneficiaries, to ensure that the beneficiaries do not encounter any obstacles when proving their affiliation with the SIS.

937. 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.

938. On November 16, 2012, the IACHR asked the parties to report on progress with implementation of the aforementioned recommendations. In a communication on December 20, 2012, the State reported that the victims' relatives were covered by the Comprehensive Health Insurance System (SIS) and had universal access to health care services in the centers corresponding to their address. As regards reparation in the form of housing, it stated that " progress is being made with implementing the reparation [corresponding] to two hundred (200) beneficiaries, of the total number of victims covered by Supreme Decree N° 005-2002-JUS, or their legal heirs, as the case may be, pursuant to Article 3 of Supreme Decree N° 014-2006-JUS. As for financial reparation, Peru said that the intention was to pay 10,000 new soles for each victim mentioned in the press release of February 22, 2001, adding that "all the relevant steps are being taken to comply with that decision."

939. The petitioners did not present up-to-date information in the time allowed by the IACHR. Nevertheless, given that recommendation 3 of Reports No. 111/00, No. 101/01, and 112/00 are included in paragraphs c) and d) of the joint press release issued by the IACHR and the Peruvian State on February 22, 2001, the IACHR will take information thereon submitted by the petitioners in 2012 in account. That information from the petitioners dealt with the following: justice, housing, education, and health care.

940. Regarding actions taken by the State to investigate and punish the alleged perpetrators, the petitioners voiced their concern regarding Plenary Agreement (*Acuerdo Plenario*) No. 9/2009 of the Supreme Court of the Republic of Peru, which requires that the alleged perpetrators of forced disappearances must be government officials at the time that crime is formally defined in Peruvian legislation in 1991.

941. Regarding reparation in the form of health care, the petitioners reported that in this period new problems had arisen because of interventions by the Household Targeting System (Sistema de Focalización de Hogares –SISFOH), which is the entity reporting to the Ministry of Social Inclusion that certifies or does not certify the poverty or extreme poverty status of persons applying for membership of the cost-free SIS, and which had rejected the affiliation of some of the victims' next of kin. The petitioners indicated that the State should include the category of "person affected by political violence" so as to avoid these kinds of problems.

942. With respect to reparation in the form of educational facilities, the petitioners reported that one of the beneficiaries' requests was the right to transfer the education benefit to a relative, a demand supported by the Ombudsman's Office (*Defensoría del Pueblo*) but not yet met by the State. With regard to reparation in the form of housing, the petitioners reported that, while the State had taken some steps that would benefit 200 of the 507 victims included in paragraphs "c" and "d" of the joint press release, no definition had yet been reached regarding measures that would effectively benefit the remaining victims. They pointed out that, in June 2012, the Metropolitan Municipality of Lima had issued a risk assessment report lowering very high-risk status to average-risk status. They reported that the victims and their relatives were feeling overwhelmed and very disappointed by the excessive delay in the State's compliance with its commitment to transfer ownership of the plots of land, which many of them were occupying despite the lack of basic services and security in that area.

943. As for financial reparation, the petitioners reported that there had been problems for some victims and their relatives in getting listed in the Register of Victims (Registro Único de Víctimas - RUV), which was a prerequisite for benefiting under the financial reparation program. They pointed out that, apart from the disqualifications established in Article 4 of the Reparations Law, only those

accrediting permanent disability as a result of torture would benefit from financial reparation, but not those persons who had been forcibly disappeared and later turned up alive.

944. On October 7, 2013, the Commission requested up-to-date information from the parties on the status of compliance with the recommendations made by the IACHR in its Report No. 101/01. The parties did not provide any updated information. Nonetheless and given that recommendation 3 of Report Nos. 111/00 and 101/01 is included in subparagraphs c) and d) of the joint press release signed by the IACHR and the Peruvian State on February 22, 2001, and that the IACHR celebrated a working meeting during its 147<sup>th</sup> regular period of sessions, the IACHR will take into account the information provided by the parties on this subject during 2013. In this regard, the petitioners submitted information on the subject of housing, health, financial reparation and education.

945. With regard to housing-related reparation, the petitioners reported that as of the present date the State has not approved the Supreme Decree authorizing the transfer of ownership of the land located in Huachipa. They also claimed that the State has not reported to them on efforts made to locate similar parcels of land for the victims and/or next-of-kin, which are not included in the parcel of land of Huachipa. Regarding reparation in the form of health care, the petitioners noted that the State has not informed them as to whether it had taken certain steps to address the difficulties related to the process of applying for membership of the cost-free SIS, or the shortcomings in care for the beneficiaries of this measure, which were noted in previous years. With regard to measures of financial reparation, the petitioners contended that even though the State has been paying compensation under Full Reparation Plan Law No. 28593, some victims and/or next-of-kin thereof are unable to be included under the scope of that law and, therefore, the State must take specific measures of financial reparation, outside of the purview of the aforementioned law. Lastly, with respect to reparation in the area of education, the petitioners claimed that even though they had submitted to the State a roster of names and contact information of the beneficiaries of this reparation, the State has not apprised them as of the present date about what steps it has taken in this regard, nor have they received any reply to the request they made involving the ability to transfer this benefit to another family member.

946. The Commission appreciates the measures adopted by the State to comply with the recommendations made in Report Nos. 111/00 and Nº 101/01. At the same time, it notes that there are measures that are pending compliance. Based on the above, the Commission concludes that there has been partial compliance with the recommendations, so that it will continue to monitor the pending items.

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

947. 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.

948. 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.

949. 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.

950. 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."

951. 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.

952. 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.

953. On November 16, 2002, the IACHR asked the parties to report on progress made with implementing the aforementioned recommendations. The petitioners did not reply in the time allowed. On December 20, 2012, the State presented a report describing the steps it has been taking to make reparation. That report reiterates the information submitted in the other cases covered by the joint press release of February 22, 2001, which is summarized in the Commission's follow-up to Cases 10.247 et al [sic], Report No. 101/01, Luis Miguel Pasache Vidal et al. (Peru).

954. On October 7, 2013, the IACHR asked the parties to report on progress in the implementation of the recommendations made by the IACHR in its Report No. 112/00. The parties have not submitted any information in the time given by the Commission.

955. 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)**

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

957. 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.



958. 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.

959. 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.

960. 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.

961. 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.

962. 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.

963. 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.

964. 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.

965. 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.

966. 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.

967. On October 27, 2010, the Commission held a working meeting on this case during the course of its 140<sup>th</sup> 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.

968. 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.

969. 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.

970. 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."

971. 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.

972. During the course of 2011, the State indicated that it had complied with clauses in the agreement with regard to compensation of the relatives of Mrs. Mamérita Mestanza, health benefits and education benefits. It noted that all the beneficiaries are permanently affiliated with the Comprehensive Health Insurance System (SIS), which is subsidized by the State. Regarding educational benefits, it stated that the beneficiaries have access to public educational facilities in the locality where they live.

973. 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."

974. 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.

975. Regarding economic reparations, the State indicated that there has been full compliance with the payment of benefits for moral damages, emerging damage, psychological rehabilitation, and land or housing, for a total amount of US\$109,000. Regarding health benefits, it reiterated that all the beneficiaries are permanently affiliated with the Comprehensive Health Insurance System. Regarding education benefits, it noted that an intra-sectoral commission of the Ministry of Education has initiated actions to identify the needs of each of the seven children of María Mamérita Mestanza.

976. In a communication dated November 19, 2012, the IACHR asked both parties to provide up-to-date information on compliance with the aforementioned points.

977. The State reported that on December 20, 2012, the First Supraprovincial Criminal Prosecuting Attorneys' Office in Lima (*Primera Fiscalía Penal Supraprovincial de Lima*) had issued a resolution on November 5, 2012 ordering the reopening of the preliminary investigation into the alleged perpetrators of crimes against life, personal integrity, and health in the form of felonious homicide (*homicidio culposo*) and the exposure to danger under aggravating circumstances of dependent persons,

crimes against the public administration in the form of embezzlement, and others, to the detriment of Mrs. María Mamérita Mestanza Chávez, 2,084 other people, and the Peruvian State. The State pointed out that the previous Prosecuting Attorneys' Office had ordered several procedures to be carried out, such as gathering the identity cards in the National Identification and Civil Status Registry Office (RENIEC) of those persons listed in the investigation as alleged victims, but that were not included at the time in the archiving resolution (*resolución de archivo*) nor in the prosecuting attorney's order. The State also said that preliminary statements by both those under investigation and the victims were being rescheduled.

978. In a communication on December 17, 2012, the petitioners expressed concern to the IACHR regarding the preliminary investigation recently started by the First Supraprovincial Prosecuting Attorneys' Office in Lima, because that Office was handling other human rights violation cases, had only minimal staff, and no personnel specializing in the subject (women's human rights, the gender perspective, and interculturalism).

979. On October 7, 2013, the Commission asked the parties to provide updated information on compliance with the friendly settlement agreement. The State asked the IACHR for an extension, which was denied in a communication of December 4, 2013. The petitioners did not submit any information prior to the lapsing of the deadline set by the Commission.

980. The Commission appreciates the steps taken by the State to comply with the commitments undertaken in the Friendly Settlement Agreement. At the same time, it notes that with respect to some measures compliance is still pending. Therefore, the Commission concludes that there has been partial compliance with the friendly settlement. Accordingly, the Commission will continue to monitor the pending points.

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

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

982. 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.

983. 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.

984. 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.

985. 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.

986. 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.

987. 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.

988. The petitioner did not answer the Commission’s November 11, 2010 request for updated information.

989. 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.

990. 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.

991. On November 20, 2012, the IACHR asked the parties to report on progress made with compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreement. In a communication on December 20, 2012, the State asked for an extension, which the Commission granted (for 15 days) in a communication of January 17, 2013. In a communication dated December 20, 2012, the State requested an extension, which the IACHR granted, for 15 days, on January 17, 2013. Peru did not submit any observations during the period of time granted.

992. On October 7, 2013, the IACHR asked the parties to report on progress made in compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreement. In a communication of November 12, 2013, the State requested an extension to provide information to the IACHR, which was denied in a communication of December 4, 2013.

993. In a communication received on November 11, 2013, the petitioner claimed that the Peruvian State has not reimbursed him for some benefits that derive from the recognition of the time of service during which he was separated from active duty. Specifically, Mr. Semoza Di Carlo claimed that he has not been reimbursed for fuel subsidies from August 1990 to September 2001, or for lost earnings from 1997 to 2003. He contended that the State has not complied with FOSEROF normalization (officers' retirement fund), had not held the public apology ceremony, and had not punished those responsible for the violation of his rights.

994. Based on the foregoing, 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)**

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

996. 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.

997. 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.

998. 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 received a public apology. 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.

999. 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.

1000. 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.

1001. 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.

1002. 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.

1003. 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 Agreement<sup>73</sup> does not form part thereof. Accordingly, and without prejudice to any

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<sup>73</sup> 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

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.

1004. On November 19, 2012, the IACHR asked the parties to report on progress with compliance with the commitments undertaken by the Peruvian State. On December 18, 2012, Peru remitted a communication in which it stated that Mr. Roger Herminio Salas had been reinstated to the position of Supreme Judge and regular member of the Second Provisional Criminal Division of the Supreme Court of Justice as of January 13, 2006 and that on April 11, 2008 his position had been terminated due to his having reached retirement age. The State said that in April 2011 it had paid Mr. Salas 834,166.58 new soles and that on December 16, 2005, at 11:00 a.m. a ceremony had been held in the Ministry of Justice and Human Rights to offer public apology and recognition to Mr. Salas, who had attended the ceremony. Throughout 2012, the petitioner remitted communications in which he maintained that the Peruvian State had not actually made the reparation payment for salaries and other fringe benefits not paid to him during his separation from the Judiciary. With respect to those propositions, the IACHR reiterates that they do not form part of the friendly settlement agreement signed by the parties and for that reason it will not follow-up on the matter through this Chapter of its Annual Report.

1005. On October 7, 2013, the IACHR asked both parties to report on the status of compliance with the Friendly Settlement Agreement. The State presented information in a communication of November 27, 2013. In this opportunity, the State asked the Commission to hold that the Friendly Settlement Agreement has been complied, as it has met the four commitments assumed in this Agreement. The States points out that the eventual debt that the Judicial Branch could have in favor of the petitioner for the time he served, retirement and other labor benefits he did not received, is not part of the Friendly Settlement Agreement.

1006. For its part, the petitioner asked the Commission in communications received in August and November 7, 2013, to interpret the 5<sup>th</sup> clause of the Friendly Settlement Agreement<sup>74</sup>, which deals with “other monetary reparations” in relation to the first clause of the same agreement on “background”.

1007. The Commission notes that according to clause 3<sup>rd</sup> of the Friendly Settlement Agreement, which deals with the commitment on reinstatement of the title of justice of the Supreme Court by the National Council of the Judiciary, that Mr. Roger Herminio Salas Gamboa was reinstated of the title of justice of the Supreme Court of the Republic through Resolution N 021-2006-CNM of January 13, 2006, and served in this position until its termination due to age limit when he was 74 years old on April 11, 2008. Consequently, the Commission considers that the State has met this commitment in the friendly settlement. Regarding the commitment of the State set in the fourth and fifth clauses of the previous agreement relating to compensation and other monetary reparations, the Commission notes that the State paid the petitioner the amount of 68,440 new soles on January 5, 2006 by concept of economic reparation, and that as April 2011 had made the payment of 834,166.58 new soles (about

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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.

<sup>74</sup> FIFTH: ANOTHER TYPE OF MONETARY REPARATIONS: “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”.



US\$298,559.38). The Commission has stated in its 2011 and 2012 Annual Reports that the suggestions made by the petitioner relating to the payment of monetary compensation other than the fixed compensation amount established in the fourth clause of the Friendly Settlement Agreement does not form part thereof, based in the commitment of the parties to the fifth clause of the previous agreement: “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”. As a result, the Commission considers that the State has complied with the commitment made in the fourth and fifth clauses of the friendly settlement. Finally, in relation to the sixth clause of the agreement relating to the celebration of a public apology ceremony to Mr. Salas Gamboa, the Commission notes that on December 16, 2005, at 11:00 am, a ceremony of public apology was held in the Ministry of Justice and Human Rights to Mr. Salas Gamboa, and therefore considers that the State has met this commitment of the friendly settlement agreement.

1008. By virtue of the foregoing, the Commission concludes that the friendly settlement agreement is met.

**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)**

1009. 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.

1010. According to the text of the friendly settlement agreements included in the above-mentioned reports, the State:

1. Pledged to restore the corresponding title and facilitate the reinstatement of the judicial officials.
2. Pledged to recognize the period of service not worked in calculating duration of service, retirement, and other applicable employment benefits under Peruvian law.
3. Agreed to make compensation.
4. Will conduct a new evaluation and reconfirmation process under the purview of the National Council of the Magistracy for the judicial officials included in the instant agreement.

5. Pledged to hold a Public Reparations Ceremony for the reinstated judicial officials.

1011. 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.

1012. 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.

1013. 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.

1014. On October 27, 2010, the Commission held a working meeting during its 140<sup>th</sup> 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.

1015. 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.

1016. 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.

1017. 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.

1018. 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.

1019. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Most of the petitioners did not submit information within the time period stipulated by the IACHR.

1020. 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.

1021. On November 19, 2012, the IACHR asked the parties to report on progress made with compliance with the commitments undertaken by the Peruvian State. Most of the petitioners did not submit information within the time allowed by the IACHR.

1022. In communications dated December 11 and 17, 2012, the State reported that it had paid reparation in full to a portion of the judges (79) and partially to another group of judges (97), disbursing a total of US\$724,800.00. It said that in the case of Mr. Castañeda Sánchez, , it had paid the US\$5,000 agreed upon in the Friendly Settlement Agreement. For their part, some petitioners reported that the Peruvian State had still not paid the fully compensation of US\$5,000 and that it had not conducted a public apology and recognition ceremony for all the judges.

1023. Throughout 2012, the IACHR received communications in which some judges alleged that they had been subjected to disciplinary proceedings that did not respect their guarantees and that Peru had not paid their pensions or other outstanding fringe benefits. Since such propositions are not included in the friendly settlement agreements signed by the parties, and without prejudice to actions that may have been initiated by the petitioners under domestic law, the IACHR will not follow-up on the aforementioned communications in connection with the above-mentioned Friendly Settlement Reports.

1024. On October 7, 2013, the Commission asked the parties to report on progress reached in fulfilling the commitments accepted by the Peruvian State in the friendly settlement agreement. Most of the petitioners did not submit information within the time period set by the IACHR. The State submitted information in a communication of November 27, 2013. On this opportunity, the State noted that with regard to the judges covered under Friendly Settlement Report No. 50/06 of March 15, 2006, the judges were reinstated under Resolution No. 156-2006-CNM of April 20, 2006. It also noted that it has recognized their time of service, retirement and other labor benefits; it has paid each one of them the sum of US\$5,000, as established in the friendly settlement agreement, and held the public apology ceremony on December 9, 2008.

1025. With respect to the judges covered under Friendly Settlement Report No 109/06 of October 21, 2006, the State claimed that under Resolution No 019-2007-CNM of January 11, 2007, the judges were reinstated, thus fulfilling the commitment contracted under the friendly settlement agreement. The State further reported that it has recognized their time of service for periods they did not work for the calculation of service, retirement and other labor benefits for this group of judges; and it has paid each one of them a financial reparation in the amount of US\$5,000 , as provided for in the friendly settlement agreement.

1026. The State noted, with regard to the judges covered under Friendly Settlement Report No. 20/07 of March 9, 2007, that it has recognized as of the present date, their time of service, retirement and other labor benefits; and it has paid each of them the amount of US\$3,400 as financial reparation, with payment pending of another US\$1,600 each.

1027. With regard to the judges covered under Friendly Settlement Report No 71/07 of July 27, 2007, the State reported that under Resolution No. 319-2007-CNM of October 2, 2007, the judges were reinstated. It also noted that it recognized time of service for periods they did not work in the calculation of time of service, retirement and other labor benefits for this group of judges; and it has paid them financial reparation in the amount of US\$3,400 each as financial reparation, with payment pending of another US\$1,600 each.

1028. Throughout 2013, the IACHR received communications in which judges alleged that the State had failed to comply with the public apology ceremony and had not paid off the total amount of financial reparation.

1029. 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)**

1030. 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.

1031. 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.

1032. 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.

1033. On January 6, 2011, the Commission reiterated the request for updated information to the parties. The applicant did not submit observation.

1034. 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.

1035. 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.

1036. 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.

1037. On November 19, 2012, the IACHR asked the parties to report on progress made with compliance with the commitments undertaken by the Peruvian State. The petitioner did not submit information in the time allowed by the IACHR. For its part, Peru remitted a communication on December

18, 2012, in which it said it had complied with items 1, 2, 3, and 5 of the friendly settlement agreement, as described above.

1038. On October 7, 2013, the Commission requested the parties to provide up-to-date information on progress reached in compliance with the commitments accepted by the Peruvian State. The State reiterated in a communication received on November 27, 2013, the information provided in prior years. The petitioner did not submit any response within the time period set by the IACHR.

1039. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

**Petition 71-06 et al., Report No. 22/11, Gloria José Yaquette Paredes et al. (Peru)**

1040. On March 23, 2011, in Report No. 22/11, the Commission approved the terms of the Friendly Settlement Agreement of September 24, 2010, signed by the Peruvian State and 21 unratified judges, whose claims were joined in Petition 71-06.

1041. Pursuant to the text of the Friendly Settlement Agreement, the State:

1. Undertook to restore the corresponding title and to order the reinstatement of the judges.
2. Undertook to recognize the unworked service time in calculating duration of service, retirement benefits and other fringe benefits under Peruvian law.
3. Agreed to a total compensation of US\$5,000 (five thousand U.S. dollars and 00/100), which includes expenses and costs of national and international proceedings relating to their petition.
4. Undertook to conduct a new evaluation and ratification procedure overseen by the National Judicial Council with respect to the judges included in the friendly settlement agreements. That procedure will be conducted in accordance with the standards and principles of the Peruvian Constitution (Articles 139 and 154), the American Convention on Human Rights, and the binding jurisprudence guaranteeing due process handed down by the Inter-American Court of Human Rights and the Constitutional Court. Applicable regulatory provisions shall be adjusted as necessary.
5. Undertook to conduct a public exoneration and apology ceremony for the reinstated judges.

1042. On January 15, 2013, the Commission requested updated information from both parties on progress made in complying with the commitments assumed by the State under the friendly settlement agreement. On that occasion, the IACHR did not receive an answer within the established time period.

1043. During the Commission's follow-up of compliance with the previous Friendly Settlement Report in 2012, the State presented information on some of the unconfirmed judges. With respect to commitments 1 and 4 of the agreement, the State notified the IACHR of the following: by resolution N<sup>o</sup> 029-2011-P-CSJS, dated September 1, 2011, Mr. Manuel Vicente Trujillo Meza was reinstated to the

position of member of the Superior Court of the Judicial District of Junín, but he was not able to occupy the post because of the age limit established by law; by resolution N° 029-2011-P-CSJSU-PJ, dated September 1, Mr. José Miguel La Rosa Gómez de la Torre was reinstated to the position of member of the Superior Court of Justice of Lima, but, subsequently, he was not confirmed by the National Judicial Council during the individual evaluation and confirmation procedure conducted that same year; and by resolution N° 122-2011-CNM, dated April 14, 2011, Mr. Carlos Felipe Linares Vera Portocarreño was reinstated as a judge until early 2012 since, based on a new individual evaluation and confirmation procedure, the National Judicial Council decided not to renew its confidence in him. As for commitment 2, the State presented information solely on judges Manuel Vicente Trujillo Meza and José Miguel La Rosa Gómez de la Torre.

1044. Likewise, in 2012 Mr. José Miguel La Rosa Gómez de la Torre informed the IACHR, in connection with commitment 3, that the State had paid the amount of \$3,000, with \$2,000 still to be paid. With regard to commitment 4, Mr. José Miguel La Rosa Gómez said that the new evaluation and confirmation procedure he was subject to had not been conducted in accordance with constitutional standards and principles and the American Convention on Human Rights. Moreover, he said that the State had not complied with commitment 5 of the agreement.

1045. Judge Carlos Felipe Linares Vera Portocarreño, in a communication dated January 30, 2013, informed the IACHR with respect to commitment 1 of the agreement that the State had not reinstated him to his original position, even though it was available. Related to commitment 4, Mr. Linares said that he had been denied access to an impartial judge at the appeals level.

1046. On October 7, 2013, the IACHR asked the parties to provide up-to-date information on progress reached in the process of compliance with the commitments acquired by the State under the friendly settlement agreement. On this opportunity, the State reported in a communication of November 27, 2013, that under Resolution No. 123-2011-CNM of April 14, 2011, the judges were reinstated, and it requested the Commission to deem this commitment as fulfilled. The State also reported that it has paid the petitioners the amount of US\$3,400 as financial reparation, and that payment of US\$1,400 to each one of them is still pending.

1047. The majority of the petitioners did not submit information before the IACHR-established deadline. Petitioner Edwin Elias Vasquez Puris reported, in a communication of November 6, 2013, that with regard to provision 2, pertaining to recognition of time of service, the State has not complied with enforcing all of the rights to “retirement and other labor benefits,” which he is entitled to under Peruvian law. Regarding the commitment to pay US\$5,000, he claimed that he has only received US\$3,000, and that he did not submit himself to a new process of evaluation and confirmation because the conditions that existed prior have not changed and, therefore, he resigned from his judge position (Vocal Superior). He further reported that the State has not held the public apology ceremony to the present day.

1048. Petitioner Fidel Gregorio Quevedo reported, in a communication of October 14, 2013, that the State had only paid him US\$3,500 as financial reparation and that it had not recognized time of service for the period he had not worked for purposes of pension and, therefore, he had filed a suit in court on this issue. Meanwhile, petitioner Carlos Felipe Linares Vera Portocarreño reported, in a communication of October 9, 2013, that the State has not complied with the commitment regarding reinstatement of his original position, and regarding the new process of confirmation by an impartial judge.

1049. In view of the information received, the IACHR concludes that the friendly settlement agreement signed by the parties has been complied with in part, and it will therefore continue monitoring the items still pending.

**Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)**

1050. 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.

1051. 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.

1052. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

1053. Based on these considerations, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

**Case 9903, Report No. 51/01, Rafael Ferrer Mazorra *et al.* (United States)**

1054. In Report No. 51/01 dated April 4, 2001, the Commission concluded that the State was responsible for violations of Articles I, II, XVII, XVIII and XXV of the Declaration with respect to the petitioner's deprivations of liberty.



1055. 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.

1056. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1057. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier submissions regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1058. Therefore, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

**Case 12.243, Report No. 52/01, Juan Raul Garza (United States)**

1059. 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.

1060. 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.

1061. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The

petitioners have not presented information on compliance with the recommendations set forth above this year.

1062. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier submissions regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also informed that Mr. Garza was executed on June 19, 2001.

1063. Therefore, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

**Case 11.753, Report No. 52/02, Ramón Martínez Villarreal, (United States)**

1064. 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.

1065. The IACHR issued the following recommendations to the State:

1. Provide Mr. Martínez Villarreal with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Martínez Villarreal's release.

2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

1066. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1067. The State submitted its response to the Commission's request on November 22, 2013. In its response, the State referred the Commission to its earlier submissions regarding this merits report informing that Mr. Villarreal suffers from a mental disability and that his death sentence has been vacated. The State also informs that Mr. Villarreal was released on October 4, 2006. Since he has been released, the United States considers that it is in compliance with the Commission's first recommendation in its Report No. 52/02 to release Mr. Villarreal.

1068. With respect to the Commission's second recommendation, the State reiterates that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained

foreign nationals. The State is also pleased to note that paragraph 607 of the Chapter III.D of the 2011 Annual Report of the IACHR states that the Commission considers that there has been a partial compliance with its recommendations in the merits report in this case.

1069. Based on these considerations, the Commission concludes that the State has fully complied with recommendation 1 set forth in Report N° 52/02 and is in partial compliance with recommendation 2. Accordingly, the IACHR will continue to monitor the item still pending compliance.

**Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)**

1070. In Report No. 75/02 dated December 27, 2002, the IACHR concluded that the State failed to ensure the Danns' right to property under conditions of equality contrary to Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.

1071. The IACHR issued the following recommendations to the State:

1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures necessary to ensure respect for the Danns' right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.
2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration.

1072. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1073. The petitioners presented their response to the communication from the Commission on November 23, 2013. In said response, they reiterate that the State has made no efforts to comply with the recommendations. They also underscore that the United States has continued to allow destructive resource extraction activities on the ancestral lands of the Western Shoshone with no attempt to sit down and resolve the long standing and ongoing human rights violations identified in its Merits Report. They request additional intervention by the Commission to conduct an on-site visit and to recommend a training workshop for public officials on the international human rights of indigenous peoples.

1074. For its part, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission.

1075. Therefore, the Commission reiterates that compliance with its recommendations set forth in Report No. 75/02 remains pending. Therefore, it will continue to monitor compliance with its recommendations.

**Case 11.193, Report No. 97/03, Shaka Sankofa (United States)**

1076. 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.

1077. 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.

1078. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1079. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State concretely referred to the response submitted by the United States on December 17, 2012 related to the follow-up of the recommendations in this case, and to the Commission's conclusion incorporated in paragraph 613 of the Chapter III.D of the 2012 Annual Report of the IACHR indicating that there has been partial compliance with its recommendations in Report N. 97/03.

1080. Based on these considerations, the Commission reiterates that compliance with the recommendations in Report No. 97/03 remains partial. Accordingly, the Commission will continue to monitor the items still pending compliance.

**Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)**

1081. 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.

1082. 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.

1083. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1084. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission.

1085. Therefore, the Commission reiterates that compliance with its recommendation remains pending. Accordingly, it will continue to monitor compliance with its recommendation.

**Case 11.331, Report No. 99/03, Cesar Fierro (United States)**

1086. 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.

1087. 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.

1088. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1089. The State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier communications regarding this Merits Report, in particular the one forwarded on December 17, 2012, without mentioning any efforts undertaken this

year in order to comply with the recommendations of the IACHR. With respect to the Commission's second recommendation, the State reiterated that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals. The State was also pleased to note that paragraph 619 of the Chapter III.D of the 2012 Annual Report of the IACHR states that the Commission considers that there has been a partial compliance with its recommendations in the Merits Report in this case.

1090. The petitioners presented information relevant to compliance with the recommendations contained in the Merits Report on December 11, 2012. The petitioners indicate that Mr. Fierro has not been released or afforded a new trial, or that any executive, legislative, or judicial steps have been taken leading to one of these actions. Mr. Fierro remains in death row in Texas without a date scheduled for his execution, and no new court action has been filed during the past year on his behalf. Regarding the recommendation that the United States review its laws, procedures, and practices to improve compliance with consular access obligations, they report that no such review has been initiated by the federal government, or any of the state governments. When police agencies violate these obligations and foreign nationals are convicted of crimes, the courts provide no redress to secure release or any other remedy. They claim that in these cases, prosecutorial agencies routinely seek to dissuade the courts from providing any remedy. The executive branch, does not, at either the state or federal level, exercise power of clemency as a remedy for such violations. The United States 2005 denunciation of the Vienna Convention's Optional Protocol on Compulsory Settlement of Disputes has not been withdrawn.

1091. During the past year, the petitioners also inform that a number of foreign nationals who sought judicial relief for the fact that they were not informed about consular access had their cases come to a judicial decision. To the petitioners' knowledge, no court in the United States has offered relief in any of these cases, nor in any civil action seeking damages for a consular access violation. In the criminal cases, courts have denied relief on a variety of grounds.

1092. Therefore, the Commission reiterates that there has been partial compliance with its second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

**Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)**

1093. 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.

1094. 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.

1095. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1096. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State concretely mentions its communication presented to the Commission on December 17, 2012, and underscores that it was pleased to note that paragraph 622 of Chapter III.D of its 2012 Annual Report states that the Commission considers that there has been partial compliance with its recommendations in Report No. 100/03.

1097. Therefore, the Commission reiterates that compliance with the recommendations in Report No. 100/03 remains partial. Accordingly, the Commission will continue to monitor the items still pending compliance.

**Case 12.412, Report No. 101/03, Napoleon Beazley (United States)**

1098. 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.

1099. 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

1100. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1101. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State concretely referred to the response submitted by the United States on December 17, 2012 related to the follow-up of the recommendations in this case, and the Commission's conclusion incorporated in paragraph 625 of the Chapter III.D of the 2012 Annual Report of the IACHR indicating that there has been partial compliance with its recommendations in Report N. 101/03.

1102. Therefore, the Commission reiterates that compliance with the recommendations in Report N° 101/03 remains partial. Accordingly, the IACHR will continue to monitor the item still pending compliance.

**Case 12.430, Report No. 1/05 Roberto Moreno Ramos (United States)**

1103. 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.

1104. 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.

1105. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1106. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, in particular the one forwarded on December 17, 2012, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. With respect to the Commission's second recommendation, the State reiterates that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals. The State is also pleased to note that paragraph 628 of the Chapter III.D of the 2012 Annual Report of the IACHR states that the Commission considers that there has been a partial compliance with its recommendations in the merits report in this case.

1107. Therefore, the Commission reiterates that there has been partial compliance with its recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.



**Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)**

1108. 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.

1109. 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.

1110. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

1111. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State concretely referred to the response submitted by the United States on December 17, 2012 related to the follow-up of the recommendations in this case, and the Commission's conclusion incorporated in paragraph 631 of the Chapter III.D of the 2012 Annual Report of the IACHR indicating that there has been partial compliance with its recommendations in Report N. 25/05.

44. Therefore, the Commission reiterates that compliance in this case remains partial. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)**

1112. 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.

1113. 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.

1114. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1115. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, in particular the one forwarded on December 17, 2012, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also informed that Mr. Medina was executed on 2002.

1116. With respect to the Commission's third recommendation, the State reiterates that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals. The State is also pleased to note that paragraph 634 of the Chapter III.D of the 2012 Annual Report of the IACHR states that the Commission considers that there has been a partial compliance with its recommendations in the merits report in this case.

1117. The petitioners presented observations relevant to compliance with the recommendations in this case on November 22, 2012. In the aforementioned observations, they indicated that the United States has partially complied with the Commission's recommendations and repeatedly ignored two of the four recommendations detailed in the Commission's final report. Concretely, the United States has failed to ensure that unadjudicated offenses are not introduced as evidence in capital proceedings, and has failed to provide reparations to the family of Mr. Suarez Medina. Also, while the United States has recently strengthened the language in its letters to state authorities regarding the issuance of precautionary measures, it has not adopted sufficient steps to ensure that those measures are implemented. For example, the United States could conduct training workshops on the Inter-American Commission for state and local officials explaining how the

Commission functions and emphasizing the importance of complying with the Commission's precautionary measures. The United States could also support petitioners' request for stays of execution in order to allow the Commission to carry out its mandate. At a minimum, the United States could take the position in legal proceedings that the Commission's precautionary measures are entitled to deference and "respectful consideration." In their view, this would lend greater weight to the efforts of petitioners to convince state courts and political decision makers that the Commission's work is of critical importance in evaluating the fairness of capital sentences and states' compliance with fundamental human rights norms. The United States has taken measures to improve compliance with Article 36 of the Vienna Convention on Consular Relations, and has filed *amicus curiae* briefs in support of Mexican nationals seeking review and reconsideration of their convictions and sentences in accordance with the decision of the International Court of Justice in *Avena and Other Mexican Nationals*. Nonetheless, the United States has failed to enact legislation implementing the *Avena* judgment, and two Mexican nationals have been executed without having received the judicial review mandated by the ICJ's decision in *Avena*.

1118. Therefore, the Commission reiterates that there is partial compliance with the aforementioned recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 12.534, Report No. 63/08, Andrea Mortlock (United States)**

1119. 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.

1120. 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".

1121. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1122. The petitioners presented their response to the communication from the Commission on October 24, 2013. In said communication, they report again that they are unaware of any plan by the United States to remove Ms. Mortlock from its jurisdiction in compliance with the deportation order issued in this case. They underscore however that they remain very concerned for Ms. Mortlock's life should the United States immigration authorities decide not to comply with the IACHR's recommendation and will inform the Commission if there is any change.

1123. On the other hand, the State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendation of the IACHR.

1124. Therefore, the Commission reiterates that, apparently, there has been compliance with its recommendation. However, in light of the position previously adopted by the State with respect to

the recommendation in the Merits Report, the Inter-American Commission cannot reach a determination on compliance until it receives conclusive information. Accordingly, the IACHR will continue to monitor compliance with its recommendation.

**Case 12.644, Report No. 90/09, José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García (United States)**

1125. 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.

1126. 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.

1127. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1128. The State submitted its response to the Commission’s request on November 22, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without

mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also confirms that Mr. Medellín was executed on August 5, 2008, while Mr. Leal García was executed on July 7, 2011. The State also underscores that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals, and reiterates its request that the Commission reviews its submission made on June 23, 2010, which details the on-going efforts by the United States to improve compliance with the consular notification and access provisions of the VCCR.

1129. The petitioners submitted their response to the Commission observations on November 22, 2012. The petitioners stress that the United States executed both Petitioners in violation of the Commission's Merits Report and recommendations, and its repeated issuance of precautionary measures. While the petitioners recognize and appreciate the efforts of the Executive Branch of the United States government to implement the *Avena* judgment of the International Court of Justice, the fact remains that Congress has thus far failed to enact legislation that would give effect to the ICJ's ruling. Petitioner Rubén Ramírez Cardenas remains alive, but could face execution in 2013. He has not yet received review and reconsideration of his conviction and sentence in accordance with the ICJ's mandate in *Avena*. Moreover, the United States has completely ignored three of the four recommendations detailed in the Commission's final report. Concretely, the United States has failed to vacate the death sentences of all Petitioners, has failed to ensure that unadjudicated offenses are not introduced as evidence in capital proceedings, and has failed to revise its clemency procedures. Although the United States would doubtless point out that individual states control the regulations and procedures relating to executive clemency for state prisoners, the United States has taken no measures to encourage such a review by the States. Finally, the United States has failed to provide reparations to the family of Mr. Medellín.

1130. Therefore, the Commission reiterates that the State failed to comply with the recommendation issued by the Commission regarding Messrs. Medellín and Leal García and is pending compliance with the recommendations regarding Mr. Ramírez Cárdenas. Consequently, the Commission will continue its supervision of the matters pending compliance.

**Case 12.562, Report No. 81/10, Wayne Smith, Hugo Armendariz et al. (United States)**

1131. In its Report No. 81/10, approved July 12, 2010, the IACHR concluded that in light of the deportation of Wayne Smith and Hugo Armendariz from the United States, the State is responsible for violating the rights of Messrs. Wayne Smith and Hugo Armendariz enshrined in Articles V, VI, VII, XVIII, and XXVI of the American Declaration. The IACHR pointed out, moreover, that it is well-recognized under international law that a Member State must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations, such as the rights protected under Articles V, VI, and VII of the American Declaration. The administrative or judicial bodies charged with reviewing deportation orders in each Member State must be permitted to give meaningful consideration to a non-citizen resident's defense, examine it, and balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provide effective relief from deportation if merited. In Case 12.562 the United States did not follow these International norms.

1132. 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.

1133. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1134. The State submitted its response to the Commission's request on November 22, 2013. In its response, the State merely reiterated its earlier submissions regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated its position during the working meeting related to this case on March 26, 2011, still declining to implement the recommendations contained in the Merits Report.

1135. The petitioners presented information relevant to the compliance with the recommendations contained in the Merits Report relevant to this case on November 7, 2013 and December 14, 2012. In their submissions, they highlighted that the State has failed to comply with any of the recommendations contained in the Merits Report, and underscored the importance of the State's good faith adherence to its international obligations in keeping with the *pacta sunt servanda* principle. In regards to recommendations 1, 2, and 3, the petitioners indicate that they submitted requests for humanitarian parole on behalf of Messrs. Smith and Armendariz, which were denied by U.S. immigration authorities without explanation. Mr. Smith passed away in Trinidad on July 15, 2011, without ever been granted permission to return to the United States, thus permanently and irreversibly failing to comply in this respect with Recommendations Nos. 1, 2, and 3. The State has also failed to adopt measures to provide any significant redress to Mr. Smith's family. At present, Mr. Armendariz still remains in Mexico, far from his siblings and his elderly parents, who all remain in the United States. The State has not allowed him to re-enter the United States free of charge, has not reopened his respective immigration proceedings, and has not allowed a competent, independent immigration judge to apply a balancing test to his case with due consideration of humanitarian factors, all of this in spite of repeated requests.

1136. In regards to recommendation 4, the petitioners indicate that compliance is pending, given that the United States has not undertaken reforms to relevant legislation, or notable changes in the implementation thereof. They inform that United States law still provides that those convicted of an aggravated felony – a broad term including even minor crimes – are subject to mandatory deportation without judicial discretion to consider humanitarian or other legitimate defenses to deportation, considered on a case-by-case basis, and without regard to the best interests of the children who are affected. Petitioners observe that current proposals for comprehensive legislative reform

provide the State a historic opportunity to adopt the legislative measures necessary to comply with the recommendations, and to finally bring its immigration legislation in line with its international obligations by implementing recommendation 4 contained in Report No. 81/10, as well as similar recommendations issued in other cases involving the United States immigration system.

1137. Based on these considerations, the Commission reiterates that the State has failed to comply with the recommendations issued. The Commission urges the United States to fully and promptly comply with its recommendations with respect to Mr. Armendariz, as well as to provide full redress to Mr. Smith's family members. The Commission will continue its supervision with the recommendations in this case.

**Case 12.626, Report No. 80/11, Jessica Lenahan (González) *et al.* (United States)**

1138. In its Report No. 80/11, approved July 21, 2011, the IACHR concluded that the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. The State also failed to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration. Finally, the Commission finds that the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration.

1139. Consequently, the IACHR issued the following recommendations to the State:

1. Undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation;
2. Conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan's protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable;
3. Offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs;
4. Adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;
5. Adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law

enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;

6. Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs; and

7. Design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.

1140. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1141. The petitioners responded to the Commission's communication on November 12, 2013; previously, they had presented observations relevant to compliance on October 23 and February 7, 2013. They highlight in their communications that more than two years since the Merits report was issued, few concrete steps have been taken by the State to implement the recommendations issued by the Commission. They also reiterate their concern over the State's failure to maintain adequate communication with the petitioners, or to provide them regular and meaningful responses to their requests and suggestions regarding compliance. They underscore as immediate priorities in compliance, the granting of full reparations to Jessica Lenahan and the adequate and effective investigation of the deaths of her daughters in Colorado, the investigation and sanction of the police failures in this case, and the need for the Department of Justice to adopt guidance related to gender bias in policing and to organize a roundtable on discussion on human rights and domestic violence.

1142. On October 30, 2013, the petitioners participated in a working meeting with the State related to this case during the 149<sup>o</sup> Sessions of the IACHR, in which Jessica Lenahan was present. In this meeting, the petitioners stressed the need for concrete benchmarks from the United States to facilitate implementation of the Lenahan decision through policy and education initiatives at the national level, and the importance of the State responding in writing to the correspondence submitted to them by the petitioners. The State representatives present were not able to provide any new information or make any commitments, and indicated they were unable to adequately prepare due to the government shutdown that had taken place in the weeks prior to the working meeting.

1143. In regards to recommendation 2, the petitioners report in their communications that the Office on Violence against Women has reached out to the Castle Rock Police Department to offer support and technical assistance for policy changes and training. Their understanding is that such training did take place during the Spring of 2013 for law enforcement in the judicial district which covers Castle Rock, and they would like to be informed of the next steps. The petitioners also had conversations with local officials in Colorado about the possibility of a forensic investigation into the death of Jessica Lenahan's daughters and would like to receive updates in this regard. As to recommendation 3, they request that the State explains in detail why it believes reparations are not available to be paid at the federal, state, and local levels.



1144. As to recommendation 6, the petitioners also inform that on June 20, 2013, the Office of Community Oriented Policing Services, the Office of Victims and Crime, and the Office on Violence against Women of the Department of Justice (DOJ) issued a joint statement on gender discrimination in policing. The statement announced that prevention of sex-based discrimination by law enforcement is a top priority of the Civil Rights Division of the DOJ because of the negative role gender bias plays in the law enforcement response to crimes against women. Therefore, they believe a number of next steps are essential to turn this statement into a tool for meaningful change, including DOJ informing advocates and others about its jurisdiction to investigate complaints and about its protocols for conducting investigations regarding gender-biased policing; and that DOJ should finalize updates to its publically available information to reflect that adequate investigations of domestic and sexual violence and under-enforcement of laws addressing these issues fall within DOJ's jurisdiction.

1145. In July 2013, the petitioners also informed that DOJ proposed that the roundtable discussion on human rights and domestic violence takes place prior to October 1, 2013. In this regard, petitioners were expecting to hear formally from the State by August 9, 2013, regarding an agenda and proposed dates, but in September they received an informal communication indicating that roundtable planning was still ongoing, and that the roundtable would happen in early February of 2014. Even though the petitioners understand the impact of the government shutdown in its planning of activities, they urge the government to follow through on its commitments to hold the roundtable on human rights and domestic violence, and to provide a concrete timeline and agenda for action in this regard, in collaboration with the petitioners.

44. The State submitted its response to the communication from the Commission on November 22, 2013. In its response, the State merely reiterated its earlier November 1, 2012 submission regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also referred to its participation in several working meetings with the IACHR Country Rapporteur and the petitioners to discuss compliance with the Commission's recommendations. The United States was also pleased to note that paragraphs 646-649 of Chapter III.D of the Commission's 2012 Annual Report discusses the response of the United States to the recommendations contained in the Merits report, and that paragraph 650 states that the Commission considers that there has been partial compliance with its recommendations in Report No. 80/11.

1146. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. The Commission encourages the parties to continue dialoguing on ways to implement the recommendations contained in Merits Report No. 80/11. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

**Case 12.776, Report No. 81/11, Jeffrey Timothy Landrigan (United States)**

1147. In Report No. 81/11, the Commission concluded that the United States was responsible for violating Articles II, XVIII, and XXVI of the American Declaration with respect to Jeffrey Timothy Landrigan, and that his execution on October 26, 2010, constituted a serious and irreparable violation of the basic right to life enshrined in Article I of the American Declaration.

1148. Consequently, the IACHR issued the following recommendations to the State:

1. Provide reparations to the family of Mr. Landrigan as a consequence of the violations established in this report; and
2. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, II, XVIII, and XXVI.

1149. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1150. The State submitted its response to the communication from the Commission on November 22, 2013. In its response, the State merely reiterated its earlier December 7, 2012 submission regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1151. The petitioners submitted their response on October 29, 2013. The petitioners noted that the United States has failed to provide reparation to the family of Mr. Landrigan. They also claim that the execution of Timothy Landrigan was carried out using a drug which was illegally imported, as determined by subsequent federal agency action and federal court decisions. They assert that in nine out of the past thirteen executions by the State of Arizona, beginning with the execution of Timothy Landrigan on October 23, 2013, the executioners subjected prisoners to a surgically painful and invasive procedure in order to set the lethal intravenous (IV) lines. Therefore, the petitioners request that the Commission makes note of the United States failure to comply with the majority of its recommendations detailed in Report 81/11, and that the Commission directs the United States to provide reparations to his family for his unlawful execution.

1152. Based on these considerations, the Commission reiterates that the State has failed to comply with the aforementioned recommendations. Accordingly, the Commission will continue its supervision of the recommendations.

**Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)**

1153. 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.

1154. 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.

1155. On November 19, 2010, the IACHR requested updated information from the parties concerning compliance with the recommendations.

1156. 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.

1157. 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.

1158. 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.

1159. 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.

1160. 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.

1161. 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.

1162. On December 11, 2012, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in Report No. 86/09.

1163. In its communication of January 3, 2013, the State reported that it continued to make progress on the implementation of the Commission's recommendations. It pointed out that the Chamber of Representatives' Committee on the Constitution, Codes, General Legislation and Government was still studying the bill to amend the Penal Code, and the bills to amend the General Procedural Code and the Code of Criminal Procedure. It maintained that those amendments are intended to introduce an accusatory system of justice that ensures full observance of the principle of presumption of innocence, the right to cross-examine prosecution witnesses, the principle of procedural immediacy, and the right to public, oral proceedings; the separation of functions, to ensure the conditions necessary for the accused to be defended by an attorney, with absolute procedural equality of arms; the victims' participation in the criminal proceedings, without prejudice to the State's prosecution of the case; restricted use of precautionary measures against an accused person, and others.

1164. The State also mentioned that progress is being made in other areas, as in the case of the regime of penalties and alternatives to imprisonment. Here it noted that the Chamber of Representatives' Committee on the Constitution, Codes, General Legislation and Government had completed its consultations on the bill to amend Law No. 17.725 on Penalties and Alternatives to Incarceration. The corresponding report must be drawn up before the bill can be introduced in the full Chamber.

1165. In its communication the State reported that it had a number of clarifications regarding the assertions made by the petitioners in their note of August 6, 2012, where they claimed that "despite

the repeal of Article 76 of Law 2230, under which Messrs. Peirano had been tried and imprisoned, the judge presiding over the case had decided to go ahead with the proceedings.”

1166. The State said that the court’s decision was based on an interlocutory ruling on a request filed by the various defense attorneys representing all the defendants on trial –including the Peirano brothers-, seeking to have the case closed and the record of the case filed. The State indicated that the interlocutory ruling was appealed and the Criminal Appellate Court of Third Rotation overturned the ruling, and ordered the record of the proceedings closed. The public prosecutor then filed a cassation appeal to challenge the appellate court’s ruling, which the Supreme Court overturned and confirmed the original court decision. Therefore, the State argues that the case brought against the Peirano brothers and the other defendants followed appropriate procedure and that –contrary to what the petitioners are claiming- the Supreme Court’s decision is what prevented the case from being closed; the principle of retroactivity of the law was never violated.

1167. Therefore, the State contends that one cannot make the case that the principle of the retroactivity of the law most beneficial to the criminal defendant was violated because Article 76 of Law 2230 was repealed in 2008; by that time, the indictment alleging a different crime (criminalized in Article 5 of Law 14,095 of 1972) had long since been filed. The State contends that none of the circumstances posited in Article 9 of the American Convention was present. In effect, this is not a case in which the law applied was not the applicable law at the time the crime was committed (as already noted, law 14,095 dates from 1972, and the events on trial in this case occurred well thereafter). The State further contends that this is not a case in which a heavier penalty was applied, since in its indictment, the Public Prosecutor’s Office classified the criminal behavior with which the defendants were accused under the provisions Article 5 of Law 14,095. The State observes that the indictment marks the start of the criminal trial; the crime with which the defendant is charged can be changed provided that the facts for which the defendant is standing trial are not changed. Finally, the State points out that the article that was repealed was one that the Public Prosecutor’s Office did not cite in its indictment. Hence the vicissitudes of a provision that was not used in the prosecution’s case are irrelevant to the defendants since the defense arguments must go to and contest the indictment; the verdict must be rendered on the basis of the indictment. The charges against the defendant have to be analyzed in rendering a final decision.

1168. The State also asserted that the court did not deny the petitioners’ right to leave the country; instead, it authorized them to leave provided they put up bond. It added that the suspension of Jorge Peirano’s professional credentials was the result of enforcement of Article 140 of Law 15,750. It therefore contends that the application of the law in force at the time cannot be deemed a judicial abuse. As to the assertion that no allowance was made for the time that Juan Peirano served in preventive detention in the United States, the State’s contention was that the preventive detention served in the United States was in connection with another case, not the case of the Peirano brothers, Jorge, José and Dante. In effect, the State points out that Juan Peirano’s extradition from the United States was done pursuant to existing legal provisions and the extradition treaty, which are not part of case 12,553 processed with the IACHR.

1169. The petitioners, for their part, provided information on the follow-up. In a communication received on September 11, 2012, the petitioners expressed their concern over the fact that the State had not complied with the Commission’s second recommendation in which the State was asked to amend its legal or other provisions in order to make them fully compatible with the rules of the American Convention that ensure the right to personal liberty, not only as a guarantee of non-

repetition, but also as a measure to put an end to the violations suffered by the victims in the present case. They contend that the effect of the State's failure to comply with the Commission's second recommendation has been to deprive the victims of any protection against judicial abuse, and ensures that the violations of articles 8 and 25 of the American Convention of which the Peirano brothers have been victim will become continuing violations.

1170. The petitioners consider that the amendment process must be undertaken as a matter of urgency and that the Uruguayan State should consider the standards established in the inter-American system's case law on the subject of criminal proceedings so as to ensure that Uruguayan domestic law guarantees due process and the principles of legality, non-retroactivity and, above all, consistency in all criminal proceedings.

1171. In a communication dated November 1, 2012, the petitioners reported that once the victims in the case were released pursuant to the first recommendation in Report 35/07, they were subjected to a kind of "partial freedom", since they were not allowed to leave Montevideo; one of them was allegedly unable to practice his profession because his professional credentials were said to have been suspended even before he was convicted of anything; furthermore, they were allegedly granted extraditions, etc.

1172. In a communication received on July 18, 2012, the petitioners reported that the Peirano Basso brothers were still being criminally prosecuted. The petitioners observed that although enactment of Law No. 18411 of November 14, 2008, had repealed Article 76 of Law No. 2230 –for which the brothers had been prosecuted- and the criminal case was filed as a result, the Prosecutor's Office appealed that decision, which the Uruguayan Supreme Court overturned on April 15, 2011, ordering that the decision to close the case be revoked and that the criminal proceedings were to go forward.

1173. The petitioners assert that the ground cited in the Supreme Court's ruling was that the crime being prosecuted is established in the formal indictment, and not in the prosecution of the case; they consider this interpretation to be at variance with domestic and international law on this subject. Therefore, this is not simply a matter of the State's failure to comply with the second recommendation; it is also a violation of international law.

1174. The petitioners add that in the case against the Peirano brothers, the only crime charged in the final order binding them over for trial was abrogated; the final order binding them over for trial is the one that spells out the crime for which the defendants are being prosecuted. They contend that the court order mapped out the legal grounds on which the case was being prosecuted, which was Article 76 of Law 2230, not Article 5 of Law 14095 (fraudulent corporate insolvency); however, the case is now being prosecuted on the basis of Article 5 of Law 14095. They are therefore arguing that the set of facts existing at the time the order to stand trial was delivered and the set of facts when the complaint was filed had allegedly changed, which is not the case.

1175. In a note dated October 15, 2013, the Commission asked the parties to provide information on the status of the recommendations whose implementation was pending. On November 18, the State reiterated that the Senate Constitution and Legislation Committee was debating a bill to reform the Code of Criminal Procedure, that it was the first chamber of the legislature to address the matter, and that it was hoped that it would be approved in December 2013. The State also informed that the bill was part of a broader criminal reform process given that a proposed organizational law creating the Office of the National Prosecutor as a decentralized department was being examined. At

present, that office is still part of the Ministry of Education and Culture and the Criminal Code reform bill is currently being studied by the relevant committee in the House of Representatives.

1176. For their part, on November 25, the petitioners submitted information indicating that the Code of Criminal Procedure reform bill would not be approved under this administration because the deadline for adopting laws that entailed spending expired in October 2013. They said that national elections would soon be held and that the adoption of laws that entailed spending was also banned in an election year. As a result, they said that a new parliament would not take up the bill until 2015. Furthermore, they noted that the Peirano brothers still have to obtain judicial permission to travel outside Montevideo and that Jorge Peirano was still ineligible after eight years of preventive detention, even though the judgment at first instance had been issued, sentencing him to six years in prison. As a result, his ineligibility was being kept in place for longer than the amount of time ordered in the criminal sentence. They added that a new development that had arisen in the case was that the above judgment of first instance had been handed down 11 years after the proceedings began, which, moreover, had been set aside at one point. They claimed that this affected the right to be presumed innocent, fair trial guarantees, and other international guarantees. They said that the judgment is currently under appeal. In sum, they say that the Peiranos are still being submitted to the same criminal proceeding and procedural rules that the IACHR described as falling short of the standard set by the Convention and that the delay by the State in implementing the recommendation pending affected thousands of persons currently being or who will be subjected to an arbitrary process. The petitioners hold that despite being at liberty, in other ways, the victims are still being subjected to an ongoing violation of their rights to a impartial and fair trial.

1177. The Commission notes that the process of reforming the rules on pretrial detention, in particular, and the criminal procedural system, in general, is ongoing. Given that the recommendation whose implementation is pending concerns that legislative reform process, the Commission urges the State to effectively complete the appropriate parliamentary procedure as a matter of priority.

1178. The Commission therefore concludes that the recommendation in question has been partially fulfilled; it will therefore continue to monitor for compliance with the recommendation.

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

1179. On October 27, 2006, by means of Report No. 110/06<sup>75</sup>, 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.

1180. 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

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<sup>75</sup> 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>

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.

1181. On October 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.

1182. On October 4, 2013, the IACHR requested information on compliance with pending items from both parties and received no reply from either party.

1183. 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.

#### **Case 11.706, Report No. 32/12, Yanomami Indigenous People of Xaximú (Venezuela)**

1184. On October 1, 1999, through the good offices of the Commission, a friendly settlement agreement was executed between the Venezuelan State and the petitioners. The case is about the death of 16 Yanomami indigenous people, by a group of Brazilian gold prospectors (*garimpeiros*), who had also injured another group, in the region of Haximu, State of Amazonas, Venezuela, on the border with Brazil.

1185. In the agreement, the State promised to conduct surveillance and control over the Yanomami area, by establishing a Joint and Standing Surveillance and Control Plan to monitor and oversee the entry of *garimpeiros* and illegal mining in the Yanomami area; with regard to the health of the Yanomami people, it pledged to design, fund and put into operation, through the Ministry of Health and in coordination with the Regional Council of Health of the State of Amazonas, a Comprehensive Health Program for the Yanomami Peoples. With respect to the judicial investigation of the massacre, it pledged to undertake follow-up to the judicial investigation into the criminal proceeding that is being brought before the Brazilian authorities, in order to establish responsibility and apply the appropriate criminal punishments. It also undertook to study and promote legislative measures for the protection of indigenous peoples and the appointment of an expert on indigenous affairs. Subsequently, the IACHR received information on the proposals for compliance with the agreement between the parties, specifically regarding the surveillance and control of the Yanomami area and the Yanomami health plan.

1186. On March 20, 2012, the IACHR approved Friendly Settlement Report No. 32/12<sup>76</sup> recognizing the willingness of the State to comply with the items of the agreement and the progress made in this regard, based on the information provided by the parties during the processing of the

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<sup>76</sup> Report No. 32/12, Petition 11.706, Yanomami Indigenous People of Haximú, March 20, 2012, available at: <http://www.oas.org/es/cidh/decisiones/amistosas.asp>



instant matter. Additionally, it assessed the proposals for compliance outlined by the petitioners. With regard to the judicial investigation proceedings into the facts of this case, the IACHR took into account that the investigation led to the punishment of those responsible by the Brazilian authorities.

1187. Consequently, the IACHR decided to:

1. Approve the terms of the friendly settlement agreement reached by the parties with the respective amendments.
2. Make the instant report public and include it in the Annual Report of the Commission to the OAS General Assembly.

1188. On October 08, 2013, the IACHR requested both parties to report on compliance with the pending items and received no reply from either side.

1189. Based on the foregoing, the IACHR concludes that there has been partial compliance with the recommendations made in Report 122/12. Accordingly, the Commission will continue to monitor compliance.