

REPORT No. 33/14
CASE 12.820
MERITS
MANFRED AMRHEIN ET AL
COSTA RICA
April 4, 2014

I. SUMMARY

1. From March 2004 to November 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received eight petitions regarding 17¹ individuals,² alleging international responsibility of the State of Costa Rica (hereinafter “the State” or “Costa Rica”) for failing to provide for an ordinary procedure of right to appeal the criminal convictions of seventeen individuals to an intermediate court of review. In some of these petitions, violations were also alleged with regard to due process rights, excessive duration of preventive detention and poor conditions of detention at the prison facility called the Centro de Atención Institucional La Reforma or ‘Institutional Care Center’ (hereinafter “CAI La Reforma,” for its Spanish acronym).

2. The State disputed the claims made in the petitions. With regard to the alleged failure to provide for an ordinary procedure of appeal for the comprehensive examination of criminal convictions, it claimed that this had been remedied with enactment of Law No. 8503, titled “Law for the Opening of Criminal Cassation (*casación penal*)” in 2006 and, subsequently, Law No. 8837, titled “Law creating a conviction appeal procedure, other reforms to the appeals system and Implementing new rules on oral proceedings in criminal matters” in 2010. As to the other allegations, Costa Rica contended that every one of the criminal proceedings was conducted with respect for due process, the preventive detentions were not arbitrary and that conditions of detention at CAI La Reforma are adequate.

3. After examining the positions of the parties, the Inter-American Commission concluded that Costa Rica is responsible for the violation of the rights to a fair trial, judicial protection, humane treatment, and personal liberty, as established in Articles 8, 25, 5 and 7 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) in connection with the obligations set forth in Articles 1.1 and 2 thereof, to the detriment of the individuals listed in each section of the instant report. Accordingly, the Commission made the respective recommendations.

II. PROCEEDINGS BEFORE THE IACHR

4. From March 2004 to November 2006, eight petitions were lodged with the Inter-American Commission, of which the processing up to the admissibility decision is explained in detail in admissibility report 105/11, issued on July 22, 2011.³ In said report, the IACHR found the petition

¹ Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González, Arturo Fallas, Rafael Rojas Madrigal, Carlos Eduardo Yopez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga, Miguel Antonio Valverde, Guillermo Rodríguez Silva, Martín Rojas Hernández, Manuel Hernández Quesada, Damas Vega Atencio, Miguel Mora Calvo and Jorge Martínez Meléndez.

² These petitions are part of a larger group of matters dealing with the same issues, which are currently being examined by the Commission at other procedural stages.

³ IACHR, Report No. 105/11, Petitions 663/06 et al, Manfred Amrhein et al, Costa Rica, July 22, 2011, paras. 5-13.

admissible and decided to join the petitions under Article 29.1.d of the Rules of Procedure in force at the time, inasmuch as they “address similar facts.” Additionally, it noted that the facts alleged in the petitions could tend to establish violations of the rights enshrined in Articles 5, 7, 8 and 25 of the American Convention, in connection with the obligations set forth in Articles 1.1 and 2 thereof.⁴

5. On July 29, 2011, by means of a written communication, the IACHR advised the parties of the approval of the admissibility report and notified them about the aforementioned joining of petitions. Additionally, in keeping with Article 48.1.f of the Convention, the Commission placed itself at the disposal of the parties to reach a friendly settlement.

6. During the merits stage, the petitioners continued submitting communications separately. Thus, during this stage, additional communications were received in connection with the different petitions on the following dates: i) September 3, 5 and 10, October 3 and 4, November 8, 10, 14 and 24, and December 5, 2011; ii) January 18, April 17, November 5, and December 21, 2012; and iii) April 22, August 12 and September 3, 2013. The State, in turn, made a single submission during the merits stage, on June 21, 2013. In this submission, the State included its reply to the arguments of all the petitions. All of the submissions were duly forwarded to the parties.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

7. The Commission notes that the substantive allegations of the petitioners pertaining to the violation of **Article 8.2.h of the American Convention** are similar in content. Accordingly, the IACHR will provide a consolidated description of said arguments. The factual details and the particular domestic proceedings of each petition will be recounted under the Commission’s findings of fact (*infra*, Proven Facts), based on the information provided by both parties.

8. The petitioners contended that after the various convictions of the alleged victims were handed down, the only remedy available to them was the petition for writ of reversal on cassation (*recurso de casación*). They argued that said remedy i) only addressed the specific contention of the appellant and did not allow for a comprehensive examination of the judgment; ii) it kept in place the restriction on examining the sequence and account of facts as adjudicated by the sentencing court; and iii) it did not allow for any review of the facts, the evidence, the evaluation of evidence, among other things.

9. They argued that once a conviction is made final – either as a result of the failure to file for a writ of reversal on cassation or because this writ was denied – the only mechanism available is the motion for review of conviction (*procedimiento de revisión*). They alleged that said procedure is of an extraordinary nature (*extraordinario*), that is, it is discretionary and therefore is not required to be entertained by a higher court as of right, under Article 42 of the Constitution. They contended that in its rulings on motions for review of conviction (*procedimiento de revisión*), the Third Chamber for Criminal Matters of the Supreme Court of Justice (hereinafter “the Third Chamber”) has held that “what has been argued cannot be reargued and that the motion for review of conviction was pro-forma.”

⁴ IACHR, Report No. 105/11, Petitions 663/06, Manfred Amrhein et al, Costa Rica, July 22, 2011, operative items 1 & 2.

10. The petitioners noted that, in 2006, Law No. 8503, titled the “Law for the Opening of Criminal Cassation” (*Ley de Apertura de Casación Penal*), was approved. They contended that this remedy continued to be restrictive, inasmuch as it did not allow for the challenge of facts adjudicated as proven in the judgment of conviction, or the evidence evaluated by the trial court. They also argued that the motion for review of conviction was still limited in scope and did not allow for a comprehensive and thorough examination of the conviction.

11. They noted that, in 2010, Law No. 8837, titled the “Law creating a conviction appeal procedure, other reforms to the appeals system and Implementing new rules on oral proceedings in criminal matters,” was approved. They further noted that, for all intents and purposes, Law No. 8837 supplanted all of Law No. 8503.

12. The petitioners contended that because their criminal convictions are final and conclusive (*res judicata*), they are allegedly precluded from filing a motion for appeal (*recurso de apelación*) or from resorting to the new intermediary appeals court (*tribunal de apelación*), both created under said statute (Law No. 8837). They claimed that under transitional Article III, their only recourse is to pursue the motion for review of conviction within a period of six months from the time the law came into force. They noted that with said remedy, under amendments to Articles 408 and 411 of the Code of Criminal Procedure, review of the facts or claims for procedural flaws violating due process rights may not be argued. They also noted that claims previously made in prior motions or appeals cannot be reasserted.

13. Additionally, they reported that as of 2009 judgments have been recorded on compact discs and, therefore, individuals serving sentences have no way of learning the decision, thus making it highly complicated to appeal through the remedies mentioned above, inasmuch as they are unaware of the content of the judgments of conviction.

14. The Commission notes that the petitioners made specific arguments about other violations of the Convention. The IACHR provides a summary of these arguments hereunder.

15. A group of alleged victims contended the violation of **the rights to a fair trial and judicial protection** as a result of the lack of i) independence and impartiality of judges;⁵ ii) formal charges;⁶ iii) adequate time and means for defense preparation;⁷ iv) assistance of a translator or interpreter;⁸ v) adequate legal assistance from a public defender;⁹ vi) notification of judgment of

⁵ Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González, Arturo Fallas Rafael Rojas Madrigal and Jorge Martínez Meléndez.

⁶ Rafael Rojas Madrigal, Luis Archbold Jay, Enrique Archbold Jay, Carlos Eduardo Yépez, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde.

⁷ Rafael Rojas Madrigal, Luis Archbold Jay, Enrique Archbold Jay, Carlos Eduardo Yépez, Fernando Saldarriaga Saldarriaga, Miguel Antonio Valverde and Jorge Martínez Meléndez.

⁸ Luis Archbold Jay and Enrique Archbold Jay.

⁹ Rafael Rojas Madrigal, Luis Archbold Jay, Enrique Archbold Jay, Carlos Eduardo Yépez, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde.

conviction or decisions on appeals filed;¹⁰ and vii) failure to call witnesses to appear on behalf of the defense.¹¹

16. A group of alleged victims argued violation of the **right to humane treatment**, as enshrined in Article 5 of the American Convention.¹² They contended that during their stay at CAI La Reforma prison facilities they endured physical and psychological abuse as a consequence of a lack of medical care, overcrowding, lack of access to potable drinking water, poor sanitary conditions, lack of nourishment, and threats and assaults by police agents and other persons deprived of liberty.

17. Lastly, Rafael Rojas Madrigal and Jorge Martínez Meléndez alleged violation of the **right to personal liberty** claiming that their preventive detention was arbitrary because it exceeded the maximum length of prison sentence permitted under Costa Rican law. While, Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos González Lizano and Arturo Fallas Zúñiga, also alleged violation of their right to personal liberty claiming their conviction was unlawful because due process was not upheld.

B. Position of the State

18. The State submitted preliminary arguments expressing its disagreement with the admissibility report approved by the IACHR. As for the allegations of a violation of Article 8.2.h of the American Convention, it contended that the IACHR did not explain what it meant by saying that *prima facie* under Law No. 8503, the writ of reversal on cassation (*recurso de casación*) and the motion for the review of judgments of conviction (*procedimiento de revisión*) have a limited scope and do not provide for a comprehensive examination. It argued that this position places the State at a disadvantage in order to mount a defense because the IACHR had not explained the reasoning behind its decision. It further maintained that in ruling on the potential scope of Law No. 8837, which had not gone into force as of time the admissibility report was issued, the IACHR was prematurely issuing an opinion on it.

19. As to the allegations of the alleged victims on the violation of Article 8.2.h of the American Convention, the State argued that under the *Herrera Ulloa vs. Costa Rica* Case judgment of the Court, a change was made to the rules for contesting convictions. In this regard, the State argued that said judgment “does not establish that the remedy of appeal of criminal convictions is the only means of challenge to ensure effective protection of the right to appeal a judgment before a higher judge or court.” The State also contended that neither is it obligated to “hold two trials on the facts that are addressed by charges. What it [the *Herrera Ulloa* judgment] does establish is the requirement of (...) an effective remedy to make possible true, broad and comprehensive control over criminal convictions.”

20. For this reason, the State contended, in 2006, it approved Law No. 8503 “Law for the Opening of Criminal Cassation,” which i) eliminates the formal procedural requirements of the writ of reversal on cassation (signature requirement, mandatory legal citations, differentiation between procedural and substantive grounds); ii) allows for violations of due process or the right to a defense to

¹⁰ Rafael Rojas Madrigal, Luis Archbold Jay, Enrique Archbold Jay, Carlos Eduardo Yépez, Fernando Saldarriaga Saldarriaga, Miguel Antonio Valverde and Jorge Martínez Meléndez.

¹¹ Jorge Martínez Meléndez.

¹² Rafael Rojas Madrigal, Luis Archbold Jay, Enrique Archbold Jay, Carlos Eduardo Yépez, Fernando Saldarriaga Saldarriaga, Miguel Antonio Valverde and Damas Vega Atencio.

be the subject of a petition for writ of reversal on cassation; and iii) allows for the use of and ex officio request for factual evidence. In this way, the State claimed, the right to an accessible remedy for the thorough reexamination of a conviction was ensured and is ridden, for the most part, of complexity.

21. The State also noted that when a conviction becomes final and conclusive because the petition for a writ of reversal on cassation has been denied, the motion for review of conviction may be pursued. In this regard, it alleged that the new statute also did away with the formal requirements of said remedy, inasmuch as several motions to review conviction may now be filed on grounds of due process violations, including a violation of the right to appeal a criminal conviction. The State specified that these requirements no longer apply, except when the claim has been heard on previous cassation petition or in another previous motion to review conviction. It also noted that under this law, the conviction review procedure “has a broadness similar to that of the petition for writ on cassation, which can be filed against a conviction.” Lastly, the State noted that under this statute, it is prohibited for the same judge or court to sit on the panel of judges in more than one proceeding on the same matter.

22. Without prejudice to the foregoing, the State asserted that the adjustments and changes made under Law No. 8503 “involved asymmetries or imperfections in the criminal appeals system, and in the judicial structure in charge of applying it, which arose as a collateral effect of actual and effective enforcement that the liberal reform had, mainly with regard to the jurisdiction of the courts of cassation and the emergence of conflicting legal precedents.” It emphasized that said situation raised “the need to institute a structural reform to make it possible to overcome the asymmetries, which are produced in any process of change, inconsistencies that in no way involve an infringement or disregard of the right of a defendant in a criminal proceeding to challenge the conviction before a higher judge or court for comprehensive examination thereof.”

23. Because of the foregoing considerations, the State of Costa Rica maintained that, in 2010, Law No. 8837 was enacted, “Law creating a conviction appeal procedure, other reforms to the appeals system and Implementing new rules on oral proceedings in criminal matters,” which came into force on December 9, 2011. It claimed that under said law, not only did it keep the writ of reversal on cassation in place, but it also created the motion for appeal of criminal conviction, whereby a conviction became reviewable by a higher court.

24. With regard to persons who have received final judgment of conviction and who consider the right set forth in Article 8.2.h of the American Convention to have been violated, as in the case of the alleged victims of the instant petition, the State contended that their only option is to pursue the motion for review of conviction before the Third Chamber of the Supreme Court. It argued that granting said motion “is at the discretion of the judges” (*extraordinario*) and it underscored that “there is no other procedural formula [available], inasmuch as the criminal proceeding they underwent has already concluded, and as of that point in time, the ruling takes on the status of *res judicata*.” It further noted: “if a judgment is final and conclusive, it may not be considered appealable.”

25. Additionally, the State asserted that said motion for review of judgment would be admissible if three requirements are met. Firstly, it noted that there must have been prior allegations as to the violation of Article 8.2.h of the American Convention either on a previously filed petition for cassation or a prior motion for review of conviction.

26. Secondly, the State argued that the appellant must specifically define in concrete terms the offense what he or she believes was caused by the violation, for which he is appealing the ruling. It

also noted that the appellants must list the reasons why the cassation claim they filed previously proved to be a limited or inadequate procedural mechanism, specifically stating the wrong they have endured. It underscored that said wrong must involve a minimum of substance, such as, he or she was prevented from arguing on an important or decisive issue, essential evidence was suppressed, he or she was arbitrarily prohibited from taking part or that his or her right to defense was infringed. Moreover, it noted that it is not admissible to argue *in abstractum* with regard to the violation of the right enshrined in Article 8.2.h of the American Convention. It also noted that simply citing the article number of the Convention or failing to explain the actual wrong endured by the appellant “renders such an allegation (...) a mere exercise of formality, without any content at all.”

27. Lastly, the State argued that the claim may only be filed one time within the six-month period from the time the law came into force. It contended that the motion for review of conviction can only be filed one time, inasmuch as “that opportunity may not be used indiscriminately [because] it would lead to the collapse of the Costa Rican criminal justice system.” It noted that the judges in a cassation proceeding or a motion for review of conviction are required to recuse themselves if they are hearing the matter for a second time, in the event that a new appeal has been filed. The State further noted that, should a due process violation be proven, it could have a legal consequence, such as sending the case back to the trial court, which would be processed under the ordinary criminal procedure in force, under which appeals are regulated as a procedural mechanism to contest the judgment or, as the case may be, for the State to obtain civil reparation.

28. The State argued that Law No. 8837 was examined by the Inter-American Court in its compliance supervision decision on the judgment in the case of *Herrera Ulloa v. Costa Rica* of November 22, 2010. It contended that since the case was archived by the Court, it is understood that Costa Rica does have a mechanism in place capable of effectiveness and efficiency in the future, as well as with regard to cases that have been heard and disposed of prior to the time the law came into force. The State alleged that said statute is the “legal instrument whereby, in short, it was successful at bringing the Costa Rican legal system into line with the provisions of Article 8.2.h of the American Convention (...) inasmuch as this regulation provides for the effective and efficient protection of the right to appeal a judgment before a higher judge or court than the one who issued it.”

29. With regard to the claim of some of the alleged victims of failure to provide adequate legal assistance by a public defender, the State countered that the public defense enjoys absolute independence in its professional technical function.

30. The State contended that there is a unit made up of thirteen public defenders and a coordinating defender in charge of advising persons deprived of liberty during the execution of their sentences. The State noted that said advisory function consists of filing of motions before the sentence execution oversight judge, as well as motions for review of conviction. For this purpose, it underscored that the unit conducts visits to prison facilities. It reports that when Law No. 8837 came into force, a new unit was created for the appeal of convictions, which was up and running by January 2012. The State noted that, when an individual files an appeal on his or her own behalf, under Article 409 of the Code of Criminal Procedure, the public defender’s office must appoint an attorney to advise and represent the interests of the person deprived of liberty. It pointed out that the public defender’s office does not act on its own initiative (*ex officio*) and, therefore, the person serving the sentence is required to make the respective request for this service to be provided to him or her.

31. As to the other arguments of the petitioners, the State alleged that the criminal proceedings were conducted in keeping with due process protections and that it is not true that the conditions of detention denounced by them in the petition exist at the CAI La Reforma prison facilities. Lastly, the State contended that the deprivation of liberty of these individuals was not arbitrary.

IV. PROVEN FACTS

A. Relevant Legal Framework

1. Code of Criminal Procedure 1996

32. On December 10, 1996, the Code of Criminal Procedure was enacted under Law No. 7594, which came into force on January 1, 1998.¹³ Until Law No. 8503 was enacted on January 6, 2006, the Code of Criminal Procedure established that a petition for a writ of cassation (*recurso de casación*) could be filed to reverse a conviction in a criminal proceeding.

1.1 Writ of reversal on cassation (*Recurso de casación*)

33. Article 443 of the Code of Criminal Procedure established that the petition for a writ of reversal on cassation (*recurso de casación*) shall be admissible when the decision failed to observe or erroneously applied a legal precept. When the legal precept that is being claimed as unobserved or erroneously applied constitutes a procedural defect or flaw, the petition for cassation shall only be admissible if the interested party has filed a timely motion to rectify it or has sworn to petition for a writ of reversal on cassation, except in instances of absolute defects and those occurring subsequent to the closure of oral trial arguments.”

34. In this regard, Article 369 established that “the defects of a conviction, which are valid grounds for cassation” would be as follows:

- a) The defendant has not been properly identified;
- b) No basis provided for the determination on a fact found to be proven by the court;
- c) It is based on exhibits or evidence that have not been legally admitted at trial or have been admitted by an interpretation violating the rules established in the Code;
- d) There is no basis for the majority opinion of the court, the basis is inadequate or conflicting, or [the application of] the rules of free and reasoned judgment (the standard of *sana crítica*) is not apparent in the basis, with regard to exhibits or evidence of decisive value;
- e) The operative portion [of the judgment of conviction] is missing essential elements;
- f) The date of the act [of conviction] is missing and it is not possible to set [the date] or the signature of one of the judges is missing and it cannot be determined whether he or she has participated in the deliberation, notwithstanding the exceptions set forth in the law;
- g) Failure to observe the rules set forth for the deliberation and drafting of the judgment;
- h) Failure to observe the rules pertaining to the correlation between the conviction and the charges;
- i) Failure to observe or erroneous application of substantive law.

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35. As to the procedure for filing a petition for writ of reversal on cassation, Article 445 of the Code of Criminal Procedure established that it must be submitted to the court that issued the ruling “by means of a written motion expressing a basis in law, in which the legal provisions that are considered to not have been observed or to have been erroneously applied and the claim shall be clearly cited and expressed,” as well as “each ground for the legal basis shall be separately listed” inasmuch as “outside of this opportunity other grounds may not be pleaded.” Under Articles 446 and 447, it is stipulated that the case file shall be forwarded to the competent court of cassation, which shall determine the admissibility of the petition and whether or not a hearing must be convened.

36. With regard to the ability to introduce evidence, Article 447 of the Code of Criminal Procedure established that, in finding the petition admissible, the court has the authority to refrain from ordering evidence to be received. Additionally, under Article 449, it was established that “evidence may be introduced when the petition is based on a procedural defect and the way in which the act [of conviction] has been conducted is at issue, as opposed to what was stated in the proceedings, on the record of the oral proceedings, or in the judgment of conviction. If the court so deems it necessary, it may order it [the introduction of evidence] ex officio.”

37. Lastly, Article 450 of the Code of Criminal Procedure provided that, when the court of cassation grants the petition, it shall vacate either totally or partially the ruling under challenge and shall order the case to be retried or the ruling to be reissued. Additionally, it established that when the ruling is partially vacated, the concrete purpose of the retrial or new ruling shall be stated and, in the other instances, “it [the cassation court] shall amend the defect” and it shall resolve the matter in keeping with applicable law.

1.2 Motion for Review of Criminal Convictions (*procedimiento de revisión*)

38. Article 408 of the Code of Criminal Procedure established that the review is admissible against final judgment of conviction in the following instances:

- a) When the facts considered the basis of the conviction are inconsistent with those established by another final criminal judgment.
- b) When the conviction has been based on bogus evidence.
- c) When the judgment of conviction has been handed down as a result of abuse of authority or malfeasance in office, bribery, violence or any other criminal offense or fraudulent scheme, the existence of which has been adjudicated in a subsequent final conclusive judgment, except when one of the instances set forth in the subsection below is applicable.
- d) When it is proven that the conviction is illegal as a direct consequence of a serious breach of duties committed by a judge, even though it is impossible to prosecute due to an emerging circumstance.
- e) When after the conviction is handed down new facts or evidence suddenly emerge or are uncovered which alone or in combination with those already examined in the proceedings, prove that the crime did not take place, that the person convicted did not commit the crime or that the crime committed falls under a more favorable statute.
- f) When a subsequent law declares the act, which prior to that time was considered a punishable offense, is no longer so or when the law that served as the basis for the conviction has been found unconstitutional.
- g) When the conviction has not been rendered under due process of law or with an opportunity for a defense.

39. Pursuant to Articles 410 and 411 of the Code of Criminal Procedure, the review must be pursued by means of a written motion before the proper court of cassation and “matters that were not discussed and settled in the cassation proceedings” may not be raised, “except for when they are based on new grounds or evidence.”

2. Law for the Opening of Criminal Cassation No. 8503 of 2006

40. On June 6, 2006, Law No. 8503 was published with the title “Law for the Opening of Criminal Cassation (*Ley de Apertura de la Casación Penal*).”¹⁴ Said statute amended several articles of the Code for Criminal Procedure.

2.1 Writ of reversal on Cassation (*recurso de casación*)

41. With regard to the petition for a writ of reversal on cassation, Article 447 provided that “the Court of Cassation may declare the petition inadmissible, if it finds that the decision is not subject to challenge, that the petition has been filed tardily or that the party is not entitled to contest, in which case it shall so declare and send the case file back to the original court.” Article 449 established that “evidence may be introduced by the parties, when the petition for writ of cassation is based on a procedural defect and the way in which the [procedural] act has been conducted is at issue, as opposed to what was stated in the proceedings, on the record at hearings and trial, or in the judgment of conviction.”

42. Article 449 bis provided that the court of cassation “shall evaluate the admissibility of the claims pleaded in the petition and the basis for them, by examining the case file of the proceedings and the hearing record, so that it can assess how the trial judges evaluated the evidence and supported their decision.” Additionally, Article 369 listed new grounds under ‘defects of the conviction’, which constitute valid grounds for cassation. In this regard, subsection j) was added, establishing the circumstance of a judgment of conviction, which “has not been rendered under due process of law or with an opportunity for a defense.”

2.2 Motion for review of criminal conviction (*procedimiento de revisión*)

43. With regard to the motion for review of conviction, Article 410 established that “it shall contain, the concrete reference to the grounds on which it is based and the applicable provisions of the law. Additionally, the documentary evidence that is involved shall be attached and, as the case may warrant, the place or archive where it is located shall be indicated. Also, evidence in support of the grounds for the review being sought shall be introduced.”

2.3 Status of persons who, at the time of enactment of this statute, had already received final conviction

44. As for persons convicted of a crime on a date prior to [enactment] of Law No. 8503, transitional Article I thereof established that “anyone who may have been hindered from petitioning for

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a writ of reversal on cassation, based on the rules regulating the admissibility thereof on that date, may pursue a review of judgment of conviction (*revisión*) before the competent court, pleading in each instance, the wrong and the aspects of fact and law, which could not be heard in the cassation proceeding.”

3. Law No. 8837 of 2010 - “Law creating a conviction appeal procedure, other reforms to the appeals system and Implementing new rules on oral proceedings in criminal matters

45. On June 9, 2010, Law No. 8837 was published and was titled the “Law creating a conviction appeal procedure, other reforms to the appeals system and Implementing new rules on oral proceedings in criminal matters.”¹⁵ It came into force on December 9, 2011. Said statute created and regulated admissibility, filing procedures and processing of motions for appeal.

3.1 The new motion for appeal

46. Article 459 established admissibility requirements for a motion to appeal as follows:

The motion to appeal judgment shall enable a comprehensive examination of the ruling, when the interested party claims to be in disagreement with the findings of fact, the introduction and evaluation of the evidence, the basis in law, or punishment established. The appeals court shall rule on any items that are expressly contested, but shall declare, *ex officio* on its own initiative, any absolute defects and infringements of due process that may be found in the judgment of conviction.

47. The articles subsequent to Article 459 regulated filing, processing, potential holding of hearing, as well as circumstances in which it is admissible to introduce evidence.

3.2 Petition for writ of reversal on cassation

48. Additionally, the writ of cassation was reformed, making it admissible when i) there are conflicting precedents issued by the appellate courts, or between the appellate courts and the Chamber of Criminal Cassation; and ii) the judgment of conviction fails to observe or erroneously applies a substantive or procedural precept of law.

3.3 Status of persons, who at the time of enactment of this statute, already had a final conviction or had filed a petition for writ of reversal on cassation, which has yet to be settled.

49. As for persons whose conviction became final and conclusive prior to this statute coming into force, transitional provision II provides:

In all matters that have a final conviction at the time the instant law came into force, and in which claims were made of a violation of Article 8.2.h of the American Convention of Human Rights prior to that time, the person convicted shall be entitled by right to pursue, one time only,

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over a period of the first six months, the procedure for review of conviction, which shall be heard in keeping with the jurisdictional authority established in this Law, by the former Courts of Cassation or the Third Chamber for Criminal Matters [of the Supreme Court]. In matters pending disposition and in which claims were made of a violation of Article 8.2.h of the American Convention of Human Rights prior to that time, the appellant shall be given a period of two months to convert his or her petition for writ of cassation into a motion for appeal, which shall be filed before the former Courts of Cassation or the Third Chamber, as appropriate, which shall forward the case file to the new Courts of Appeals.

B. Status of the Alleged Victims

1. Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos González Lizano and Arturo Fallas Zúñiga

50. On June 18, 2001, the Trial Court of the First Judicial Circuit of San José issued a conviction of several individuals including Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos González Lizano, Carlos Osborne Escalante and Arturo Fallas Zúñiga as co-perpetrators in the crime of embezzlement of public funds in abuse of public office.¹⁶ The Trial Court sentenced them to a 15-year prison term and disqualified them for 10 years from holding public office.¹⁷

51. On September 22, 2003, the Third Chamber denied the petitions for writ of reversal on cassation filed by them.¹⁸ In these petitions, arguments were made on violation of the principle of derivation logic, failure to provide a basis for the judgment of conviction, distorting the account of the facts in the charging document, among other aspects. The Chamber “wrote a synopsis of the facts that were considered as proven by the trial court, which was the essential basis for the ruling issued.” Using the facts established by the Trial Court as a foundation, the Third Chamber ruled on the grounds for reversal under cassation that were pleaded. With respect to the petition of Arturo Falla, the Third Chamber noted that “in both the facts that were considered as proven and the examination of the evidence corroborating them [the facts], the claims of the challenger (...) are not consistent with a macro view of the decision issued.”¹⁹ With regard to the petitions of the other alleged victims, the Third Chamber made reference to the facts already proven by the court and indicated that the arguments do not “fit the proven factual framework.”²⁰

52. Notwithstanding, Carlos González Lizano submitted an argument on the legal assessment of the established facts. Specifically, he argued that some of the facts should have been subsumed into other ones and not considered as autonomous crimes of embezzlement of public funds. The Third Chamber accepted said claim and reassessed the facts and convicted him as co-perpetrator of

¹⁶ Annex 4. Judgment No. 746-2001 of the Trial Court of the First Judicial Circuit of San José, dated June 18, 2001. Annex to petitioners’ communication of March 24, 2004.

¹⁷ Annex 4. Judgment No. 746-2001 of the Trial Court of the First Judicial Circuit of San José, dated June 18, 2001. Annex to petitioners’ communication of March 24, 2004.

¹⁸ Annex 5. Decision No. 2003-00822 of the Third Chamber of the Supreme Court of Justice, dated September 22, 2003. Annex to petitioners’ communication of March 24, 2004.

¹⁹ Annex 5. Decision No. 2003-00822 of the Third Chamber of the Supreme Court of Justice, dated September 22, 2003. Annex to petitioners’ communication of March 24, 2004.

²⁰ Annex 5. Decision No. 2003-00822 of the Third Chamber of the Supreme Court of Justice, dated September 22, 2003. Annex to petitioners’ communication of March 24, 2004.

an ongoing crime of embezzlement of public funds, thus decreasing his prison term to 12 years. The Chamber applied the same criterion to the other alleged victims.²¹

53. The Commission does not have information as to whether or not this group of alleged victims pursued the procedure for review of conviction after the petition for writ of reversal on cassation was denied, or after the laws of 2006 and 2010 cited above were enacted.

2. Rafael Rojas Madrigal

2.1. Criminal proceedings

2.1.1. Case File No. 99-000136-065-PE

54. On May 17, 2000, the Office of the Attorney General brought formal charges against Rafael Rojas Madrigal and requested that proceedings be instituted for the crime of forgery and use of a bogus document in committing fraud.²² On August 4, 2000, the Criminal Court of the Second Judicial Circuit of Alajuela ordered proceedings to be instituted²³ and, on November 22 of that year, convicted Mr. Rojas of the crime of use of a bogus document while abusing public authority to authenticate official documents and sentenced him to a four-year prison term.²⁴

55. On December 18, 2000, Mr. Rojas filed a petition for writ of reversal on cassation alleging violation of due process on the grounds of i) failure to apply the standard of free reasoned judgment in assessing the evidence; ii) incorrect application of conduct to criminal offence as set forth in the criminal code; and iii) inconsistencies in the testimonies based upon which he was charged.²⁵ Three days later, Mr. Rojas' public defender filed another petition for writ of reversal on cassation contending i) illegitimate basis for the punishment; ii) erroneous assessment of the evidence; and iii) failure to corroborate evidence.²⁶

56. On February 2, 2001, the Third Chamber found the petition filed by Mr. Rojas inadmissible.²⁷ With regard to Mr. Rojas' arguments, the Third Chamber noted that "the specific relevance of the alleged irregularities that he is claiming is not proven, nor does he make a distinction between the arguments and the support in the law that (...) Article 455 of the 1996 Code of Criminal

²¹ Annex 5. Decision No. 2003-00822 of the Third Chamber of the Supreme Court of Justice, dated September 22, 2003. Annex to petitioners' communication of March 24, 2004.

²² Annex 6. Official Letter of the Office of the Prosecuting Attorney of San Carlos, dated May 17, 2000. Annex to petitioner's communication of May 21, 2005.

²³ Annex 7. Order to institute trial proceedings of the Criminal Court of the Second Judicial Circuit of Alajuela, dated August 4, 2000. Annex to petitioner's communication of May 21, 2005.

²⁴ Annex 8. Judgment No. 172-2000 of the Criminal Court of the Second Judicial Circuit of Alajuela, dated November 22, 2000. Annex to petitioner's communication of May 21, 2005.

²⁵ Annex 9. Communication of Mr. Rojas, dated December 18, 2000. Annex to petitioner's communication of February 28, 2010.

²⁶ Annex 10. Communication of the public defender of Mr. Rojas, dated December 21, 2000. Annex to petitioner's communication of February 28, 2010.

²⁷ Annex 11. Decision 2001-000122 of the Third Chamber of the Supreme Court of Justice, dated February 2, 2001. Annex to petitioner's communication of February 28, 2010.

Procedure establishes.” The Third Chamber held that “what is formulated [in this petition] is [his] disagreement with the result of the final trial.”²⁸

57. In the same judgment, and with regard to the petition filed by the public defender, the Third Chamber ruled that “the triers of fact go to great lengths in assessing the evidence introduced in the proceedings (...) as such it is untrue that the judgment is not backed by the intellectual support as claimed.”²⁹ Notwithstanding, the Third Chamber noted that the Court did not explain how it was serious to use a little boy and a young man in the commission of the crime inasmuch as their involvement was in the offense of fraud, a crime that has lapsed, and not the use of a bogus document, for which he was punished. Consequently, the Third Chamber ordered it to “vacate the judgment with regard to the setting of the punishment and ordered the case to be sent back so that, if possible, the same triers proceed to make a determination under the law.”³⁰ Additionally, the Third Chamber ordered the preventive custody measures to remain in effect as it awaited the new judgment of the trial court.

58. On March 28, 2001, the Court of the Second Judicial Circuit of Alajuela issued new judgment No. 172-2000.³¹ The Court held that after hearing the parties at trial, Mr. Rojas was found to be guilty of the crime of use of a bogus document in abuse of public office and he was given a 4-year prison term. In response to this decision, on April 2 and 24, 2001, Mr. Rojas and his public defender filed new petitions for writs of reversal on cassation, respectively. They argued that the basis for the punishment, as the Third Chamber requested of the trial court to provide in the new sentence, is at odds with the elements of the crime for which he was sentenced and, therefore, is illegal.³²

59. On June 8, 2001, the Third Chamber ruled on the petitions filed and noted that the trial court committed the same error it [originally] had pointed out.”³³ The Third Chamber found that the 4-year prison sentence imposed on him “is not proportional to the acts performed by the claimant and for the sake of procedural economy, the length of the prison term imposed is reduced (...) to the sum of three years in prison.”³⁴ Accordingly, the Third Chamber ordered his immediate released.³⁵

²⁸ Annex 11. Decision 2001-000122 of the Third Chamber of the Supreme Court of Justice, dated February 2, 2001. Annex to petitioner’s communication of February 28, 2010.

²⁹ Annex 11. Decision 2001-000122 of the Third Chamber of the Supreme Court of Justice, dated February 2, 2001. Annex to petitioner’s communication of February 28, 2010.

³⁰ Annex 11. Decision 2001-000122 of the Third Chamber of the Supreme Court of Justice, dated February 2, 2001. Annex to petitioner’s communication of February 28, 2010.

³¹ Annex 8. Judgment No. 172-2000 of the Criminal Court of the Second Judicial Circuit of Alajuela, dated March 28, 2001. Annex to petitioner’s communication of February 28, 2010.

³² Annex 12. Submission of petition for writ of reversal on cassation, dated April 2, 2001. Annex to petitioner’s communication of February 28, 2010; Submission of petition for writ of reversal on cassation, dated April 24, 2001. Annex to petitioner’s communication of February 28, 2010.

³³ Annex 14. Decision No. 00550-2001 of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 28, 2010.

³⁴ Annex 14. Decision No. 00550-2001 of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 28, 2010.

³⁵ Annex 14. Decision No. 00550-2001 of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 28, 2010.

60. On September 14, 2001, the Third Chamber denied a motion for review of conviction brought by Mr. Rojas.³⁶ The Third Chamber noted that the grounds argued by the alleged victim (failure to properly apply conduct to criminal offense, lack of correlation between charges and judgment of conviction, failure to notify and use of bogus evidence) “lacked an autonomous basis in the law and concrete proof of the consequence of the alleged defect.”³⁷ It further noted that it stands at odds with Article 410 of the Code of Criminal Procedure.³⁸

61. On February 23, 2005, the Third Chamber granted Mr. Rojas’ motion of November 29, 2004, in which he asked to drop his claims and withdraw every motion for review of conviction relating to judgment No. 172-2000, inasmuch as he had not received technical legal support.³⁹

62. On October 19, 2007, the Third Chamber denied a motion for review of conviction brought with regard to the alleged due process violation because he was unable to appeal the judgment of the intermediate appeals court.⁴⁰ The Third Chamber maintained that it has repeatedly held that the Herrera Ulloa case does not create the obligation to provide for a means to appeal a judgment to a higher judge or court, but rather a remedy that allows for a comprehensive examination of the judgment.⁴¹ It indicated that by means of the writ of reversal on cassation, it is possible to conduct a thorough examination of the merits of the judgment.⁴² The Third Chamber added that the petition for reversal on cassation submitted by his defense attorney was granted inasmuch as it reduced the length of the punishment from four to three years.⁴³

63. Two justices of the Third Chamber issued a dissenting opinion wherein they noted that the claim could be entertained.⁴⁴ They asserted that the petition for writ of reversal on cassation was denied under an “overly formalistic” criterion and that:

(...) it is not clear why it was found inadmissible and [yet] the substantial validity of the conviction under challenge was examined. We should look into the claims of that unexamined petition for a writ of reversal on cassation, examine whether the judgment is substantiated and whether the

³⁶ Annex 15. Decision No. 2001-00882 of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 28, 2010.

³⁷ Annex 15. Decision No. 2001-00882 of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 28, 2010.ird

³⁸ Annex 15. Decision No. 2001-00882 of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 28, 2010.

³⁹ Annex 16. Receipt of notification of the Third Chamber of the Supreme Court of Justice. Annex to petitioner’s communication of February 27, 2005.

⁴⁰ Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

⁴¹ Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

⁴² Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

⁴³ Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

⁴⁴ Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

substantive law was correctly applied. (...) [The Third Chamber that heard the petition for writ of reversal on cassation] not only (...) did not prove what the specific relevance is of the alleged irregularities that are claimed, but neither did it make a distinction between the arguments and the support in the law which, under punishment of denial, the Code of Criminal Procedure (...) establishes (...).⁴⁵

64. These two justices also noted that the principle of impartiality and objectivity of the court was violated, inasmuch as the same members who issued the conviction resented the petitioner when the case was sent back down to the trial court.⁴⁶

65. On May 28, 2010, the Third Chamber ruled on a motion for review of conviction filed by Mr. Rojas pertaining to the decision of said Chamber to reduce his sentence to a three-year term.⁴⁷ As for the argument of failure to assess his statement, the Third Chamber held that “even though his statement is not expressly examined in the judgment, his version of the facts was not supported in view of the rest of the evidence which refuted it.”⁴⁸ With respect to the argument of failure to provide a basis, the Third Chamber noted that while the judgment does not say what witness version was adopted, “it can be deduced that the version that proved to be credible to the trier of fact is the one that concurred with another witness.”⁴⁹

66. With regard to the argument of violation of the principle of judicial objectivity, the Third Chamber noted that it is untrue that the same judges who handed down the conviction had previously upheld the preventive detention.⁵⁰ The allegation of preclusion from contesting the length of the prison term as set by the Third Chamber itself was accepted.⁵¹ The Third Chamber set aside decision No. 00550-2001 of June 8, 2001 and partially vacated decision No. 172-2000 of March 28, 2001, as to the length of the term of the jail sentence imposed. It noted that “because the judgment of guilt had not been modified (...), the defendant had no criminal record at the time of carrying out the proven act and for reasons of procedural economy, the jail term sentence is set (...) at one year.”⁵²

2.1.2. Case File No. 99-0029291-042-PE

⁴⁵ Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

⁴⁶ Annex 17. Decision No. 2007-01117 of the Third Chamber of the Supreme Court of Justice, dated October 19, 2007. Annex to petitioner’s communication of March 10, 2008.

⁴⁷ Annex 18. Decision No. 2010-00544 of the Third Chamber of the Supreme Court of Justice, dated May 28, 2010. Annex to petitioner’s communication of October 28, 2010.

⁴⁸ Annex 18. Decision No. 2010-00544 of the Third Chamber of the Supreme Court of Justice, dated May 28, 2010. Annex to petitioner’s communication of October 28, 2010.

⁴⁹ Annex 18. Decision No. 2010-00544 of the Third Chamber of the Supreme Court of Justice, dated May 28, 2010. Annex to petitioner’s communication of October 28, 2010.

⁵⁰ Annex 18. Decision No. 2010-00544 of the Third Chamber of the Supreme Court of Justice, dated May 28, 2010. Annex to petitioner’s communication of October 28, 2010.

⁵¹ Annex 18. Decision No. 2010-00544 of the Third Chamber of the Supreme Court of Justice, dated May 28, 2010. Annex to petitioner’s communication of October 28, 2010.

⁵² Annex 18. Decision No. 2010-00544 of the Third Chamber of the Supreme Court of Justice, dated May 28, 2010. Annex to petitioner’s communication of October 28, 2010.

67. On July 22, 2002, the Criminal Court of the First Judicial Circuit of San José ordered a trial proceeding to be opened for three crimes of rape, one crime of aggravated corruption, two crimes of sexual abuse of a minor and two crimes of deprivation of liberty of three children.⁵³

68. On December 12, 2002, the Criminal Court of the First Judicial Circuit of San José issued its judgment finding Mr. Rojas responsible for two crimes of sexual abuse of minors and for one crime of raping a minor [statutory rape].⁵⁴ The Criminal Court sentenced him to a 24-year jail term.⁵⁵

69. On January 20, 2002, a petition for a writ of reversal on cassation was filed.⁵⁶ A violation of due process rights and the right to a defense was alleged, on the grounds that i) no physical identification of the individuals was conducted; ii) no notice was served of the court rulings; iii) findings on the technical defense were omitted; iv) the judgment could not be fully read; v) no correlation could be drawn between the charges and the conviction. On July 31, 2003, the Third Chamber denied the petition.⁵⁷

70. On February 6, 2004, the Third Chamber denied the motion for review of conviction filed by him.⁵⁸ It held that one of the admissibility rules for a motion of review of conviction is that the issues have not been previously raised. It noted that the arguments being submitted have already been addressed in the cassation decision of July 31, 2003.⁵⁹

71. Mr. Rojas filed four additional motions for review of conviction on March 1, 15, and 29, and April 12, 2004.⁶⁰ In these motions, he alleged i) failure to gather essential evidence; ii) failure to provide a basis for the conviction; iii) violation of the principle of consistency between the charges and the judgment; and iv) preclusion from providing testimony during the preliminary hearing.⁶¹

⁵³ Annex 19. Order to institute trial proceedings of the Criminal Court of the First Judicial Circuit of San José, dated July 22, 2002. Annex to petitioner's communication of January 14, 2005.

⁵⁴ Annex 20. Judgment No. 1536-02 of the Criminal Court of the First Judicial Circuit of San José, dated December 12, 2002. Annex to petitioner's communication of January 14, 2005.

⁵⁵ Annex 20. Judgment No. 1536-02 of the Criminal Court of the First Judicial Circuit of San José, dated December 12, 2002. Annex to petitioner's communication of January 14, 2005.

⁵⁶ Annex 21. Submission of petition for writ of cassation, dated January 20, 2002. Annex to petitioner's communication of September 25, 2009.

⁵⁷ Annex 22. Decision No. 2003-00625 of the Third Chamber of the Supreme Court of Justice, dated July 31, 2003. Annex to petitioner's communication of January 14, 2005.

⁵⁸ Annex 23. Decision No. 2004-00047 of the Third Chamber of the Supreme Court of Justice, dated February 6, 2004. Annex to petitioner's communication of December 20, 2008.

⁵⁹ Annex 23. Decision No. 2004-00047 of the Third Chamber of the Supreme Court of Justice, dated February 6, 2004. Annex to petitioner's communication of December 20, 2008.

⁶⁰ Annex 24. Submission of motion for review, dated March 1, 15 and 29, and April 12, 2004. Annex to petitioner's communication of December 20, 2008.

⁶¹ Annex 24. Submission of motion for review, dated March 1, 15 and 29, and April 12, 2004. Annex to petitioner's communication of December 20, 2008.

72. On July 9, 2004, the Third Chamber denied the motions he filed “because they were flawed in form.”⁶²

73. On October 28, 2005, the Constitutional Chamber denied a petition for writ of habeas corpus filed on October 21 against the criminal courts of the First and Second Judicial Circuits of San José over judgment of conviction No. 1536-02, which was upheld by the Third Chamber.⁶³ Mr. Rojas claimed that a fair trial protection set forth in Article 8.2.h of the Convention had been omitted and his conviction was finalized based on a violation of due process and his right to a defense. The Constitutional Chamber found that said issues must be raised “in compliance with the formal procedures established for that purpose” in the process of review of conviction under Article 408.g of the Code of Criminal Procedure.⁶⁴

74. On February 20, 2007, the Special Unit for Cassation of the Office of the Public Prosecutor filed a reply as requested by the Third Chamber in its decision of December 15, 2006 pertaining to the motion for review of conviction filed by Mr. Rojas.⁶⁵ It reported that there has been no infringement of rights as a result of the two judges, who took part in the decision-making process upholding the preventive detention orders, subsequently participating in the drafting of the judgment of conviction, inasmuch as they did not issue an opinion on the merits of the case or on the merits of the evidence.⁶⁶ Consequently, the unit requested that the motion for review of conviction be denied.⁶⁷

75. On May 12, 2010, the Constitutional Chamber denied the petition for writ of habeas corpus filed on May 10 by Mr. Rojas.⁶⁸ The alleged victim claimed that he is deprived of his liberty on the basis of judgment of conviction No. 1536-02, which became dispositive without his being able to exercise the right provided for under Article 8.2.h of the American Convention.⁶⁹ Mr. Rojas further contended that the new legislative bill cannot require the motion for review of conviction to be filed through an attorney, because the public defenders office is unable to take on that burden.⁷⁰ He also argued that the attorney requirement and the time limit of 6 months from the time said statute comes into force to file the motion for review of conviction is a way of denying equal conditions for enjoyment

⁶² Annex 25. Decision No. 00791-04 of the Third Chamber of the Supreme Court of Justice, dated July 9, 2004. Annex to petitioner’s communication of December 20, 2008.

⁶³ Annex 26. Decision No. 2005-014932 of the Constitutional Chamber, dated October 28, 2005. Annex to petitioner’s communication of March 13, 2006.

⁶⁴ Annex 26. Decision No. 2005-014932 of the Constitutional Chamber, dated October 28, 2005. Annex to petitioner’s communication of March 13, 2006.

⁶⁵ Annex 27. Official Letter from the Special Unit for Cassation of the Office of the Public Prosecutor, dated February 20, 2007. Annex to petitioner’s communication of July 23, 2007.

⁶⁶ Annex 27. Official Letter from the Special Unit for Cassation of the Office of the Public Prosecutor, dated February 20, 2007. Annex to petitioner’s communication of July 23, 2007.

⁶⁷ Annex 27. Official Letter from the Special Unit for Cassation of the Office of the Public Prosecutor, dated February 20, 2007. Annex to petitioner’s communication of July 23, 2007.

⁶⁸ Annex 28. Decision No. 2010-008598 of the Constitutional Chamber, dated May 12, 2010. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

⁶⁹ Annex 28. Decision No. 2010-008598 of the Constitutional Chamber, dated May 12, 2010. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

⁷⁰ Annex 28. Decision No. 2010-008598 of the Constitutional Chamber, dated May 12, 2010. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

of the right established in Article 8.2.h of the Convention.⁷¹ With regard to Law No. 8503, the Constitutional Chamber noted that if Mr. Rojas believes that there has been a due process violation because of infringement of the right to appeal a judgment to a higher court, “he should make the proper arguments in a criminal proceeding.”⁷² With respect to the legislative bill, the Constitutional Chamber emphasized that “it is not the body to review the content of draft laws.”⁷³

76. On January 9, 2012, Mr. Rojas made a written submission to the Courts of Justice of the Second Judicial Circuit of San José.⁷⁴ Seeking relief under Law No. 8837, he filed a motion to appeal the conviction.⁷⁵ On February 8, 2012, the Second Judicial Circuit of the Court of Appeals of Criminal Judgments denied the motion to appeal filed by Mr. Rojas Madrigal.⁷⁶ The Court of Appeals noted that the conviction was final and conclusive and, therefore, “it cannot be contested by means of a motion to appeal judgment.” It also indicated that none of the objections provided for in Transitional Article III of Law No. 8837 of May 3, 2010 were applicable “inasmuch as it is a conviction that materially has the status of *res judicata*.”

77. On June 1, 2012, the Constitutional Chamber denied the *amparo* petition for constitutional relief filed by Mr. Rojas in the context of judgment of conviction 1536-02.⁷⁷ On June 27, 2012, the Constitutional Chamber denied the petition for writ of habeas corpus filed by Mr. Rojas on June 25 that same year in which he alleged several infringement of due process rights caused by the Criminal Court of the First Judicial Circuit of San José, which led to judgment of conviction No. 1536-2002, mainly the application of statutes for which regulations had not been issued.⁷⁸

2.1.3. Case File No. 02-004656-0647-TP

78. On May 7, 1998, Mr. Rojas was charged with the crime of fraud for an act that had been committed in December 1997.⁷⁹ On September 19, 2000, a preliminary hearing was held, at which he was notified of the crimes for which he was taken into custody and was advised that he has the right to

⁷¹ Annex 28. Decision No. 2010-008598 of the Constitutional Chamber, dated May 12, 2010. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

⁷² Annex 28. Decision No. 2010-008598 of the Constitutional Chamber, dated May 12, 2010. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

⁷³ Annex 28. Decision No. 2010-008598 of the Constitutional Chamber, dated May 12, 2010. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

⁷⁴ Annex 29. Pleading submitted by Rafael Antonio Rojas Madrigal to the Courts of Justice of the Second Judicial Circuit of San José, dated January 9, 2012. Annex to petitioner’s communication of March 3, 2012.

⁷⁵ Annex 29. Pleading submitted by Rafael Antonio Rojas Madrigal to the Courts of Justice of the Second Judicial Circuit of San José, dated January 9, 2012. Annex to petitioner’s communication of March 3, 2012.

⁷⁶ Annex 30. Decision No. 2012-0201 of the Second Judicial Circuit of the Court of Criminal Conviction Appeals, dated February 8, 2012. Annex to petitioner’s communication of March 3, 2012.

⁷⁷ Annex 31. Decision No. 2012007320 of the Constitutional Chamber of the Supreme Court of Justice, dated June 1, 2012. Annex to petitioner’s submission of December 21, 2012.

⁷⁸ Annex 32. Decision No. 2012008883 of the Constitutional Chamber of the Supreme Court of Justice, dated June 27, 2012. Annex to petitioner’s submission of December 21, 2012.

⁷⁹ Annex 33. Report No. 122-DE-98 of the Economic Crimes Section of the Department of Criminal Investigations. Annex to petitioner’s communication of August 7, 2009.

be assisted by an attorney.⁸⁰ On April 5, 2005, the Office of the Prosecuting Attorney formally charged him with the crimes of check fraud, use of bogus documents and forgery of a document equivalent to a public one.⁸¹

79. On October 19, 2005, the preliminary hearing was held.⁸² Mr. Rojas requested that the deadlines for the lapsing of the statute of limitations be examined, being that the allegedly criminal acts occurred in 1997. He contended that he had not be advised of the charges and, consequently, Articles 8.2.a, b. and c. of the American Convention were violated. The next day, the Criminal Court of the First Judicial Circuit of San José ordered the opening of trial proceedings for the crime of forgery of a document equivalent to a public one and check fraud.⁸³ The Criminal Court held that the statute of limitations had not lapsed inasmuch as a period of time greater than one half the maximum prison sentence time for the crime under investigation had not elapsed.⁸⁴

80. On July 2, 2009, the Criminal Court of the First Judicial Circuit of San José found him guilty of the crimes of fraud and use of a bogus document.⁸⁵ Mr. Rojas noted that he filed a petition for writ of reversal of said conviction on cassation.⁸⁶

81. On July 17, 2009, the Constitutional Chamber ruled on the habeas corpus petition filed by Mr. Rojas, who claimed that he was not served with a copy of the judgment and could not gain access to it [the judgment] because there is no equipment available at the CAI La Reforma prison facilities to view DVDs. The Constitutional Chamber requested a report from the judge that heard the case and to forward the entire case file of the court proceedings.⁸⁷ On July 28, 2009, the Constitutional Chamber denied the petition.⁸⁸ The Constitutional Chamber based its ruling on the statements of the judge of the Criminal Court of the First Judicial Circuit, who declared that the judgment was heard in its entirety by Mr. Rojas. Therefore, it deemed that “at no time had the appellant requested from the prison

⁸⁰ Annex 34. Initial statement of defendant, dated September 19, 2000. Annex to petitioner’s communication of August 7, 2009.

⁸¹ Annex 35. Official Letter from the Office of the Prosecuting Attorney of the Ministry of the Public Prosecutor, of April 5, 2005. Annex to petitioner’s communication of August 7, 2009.

⁸² Annex 36. Record of preliminary hearing before the Criminal Court of the First Judicial Circuit of San José, dated October 19, 2005. Annex to petitioner’s communication of August 7, 2009.

⁸³ Annex 37. Official Letter opening trial proceedings from the Criminal Court of the First Judicial Circuit of San José, dated October 20, 2005. Annex to petitioner’s communication of August 7, 2009.

⁸⁴ Annex 38. Official Letter opening trial proceedings from the Criminal Court of the First Judicial Circuit of San José, dated October 20, 2005. Annex to petitioner’s communication of August 7, 2009.

⁸⁵ Annex 39. Judgment No. 614-2009 cited by Decision No. 2012007836 of the Constitutional Chamber of the Supreme Court of Justice, dated June 12, 2012. Annex to petitioner’s submission of December 21, 2012.

⁸⁶ Annex 40. Submission filed by Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated February 20, 2012. Annex to the petitioner’s communication of March 3, 2012.

⁸⁷ Annex 41. Decision of the Constitutional Chamber, dated July 17, 2009. Annex to petitioner’s communication of August 7, 2009.

⁸⁸ Annex 42. Decision No. 2009-011710 of the Constitutional Chamber, dated July 28, 2009. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

authorities what he needed to be able to hear the judgment and [at no time] had it been denied to him and, therefore, the harm claimed by him has not been established as fact either.”⁸⁹

82. On January 9, 2011, Mr. Rojas filed a pleading with the Third Chamber of the Supreme Court of Justice.⁹⁰ He contended that the petition for writ of reversal on cassation against criminal conviction judgment No. 614-2009 of the Criminal Court of the First Judicial Circuit of San José is still pending disposition.⁹¹ He submitted a request to convert the petition for a writ of cassation into a motion to appeal, as required under transitional provision III of Law No. 8837.⁹² He requested that the trial court judgment be subjected to a thorough review and that a hearing be convened as provided for under Articles 463 and 464 of the Code of Criminal Procedure (CPP) in order to make oral arguments and introduce evidence.⁹³ Lastly, he requested that his case file be forwarded to the new courts of appeals of the Second Judicial Circuit of San José to carry out his requests.⁹⁴

83. On April 15, 2011, the Constitutional Chamber denied the *amparo* petition brought by Mr. Rojas Madrigal on April 7, that year. Mr. Rojas alleged that the Third Chamber denied the request for the judges of said Chamber, who entertained the petition for a writ of cassation filed against judgment 614-2009, to recuse themselves. The Constitutional Chamber countered that the proceedings addressed by Mr. Rojas “are of a body of the Judiciary in the performance of its judicial function” and, therefore, “those acts are not subject to constitutional enforcement by means of *amparo*.”⁹⁵

84. On February 20, 2012, Mr. Rojas Madrigal filed a petition for *amparo* with the Constitutional Chamber of the Supreme Court of Justice.⁹⁶ He contended that as yet his petition for a writ to reverse criminal conviction on cassation had not been resolved.⁹⁷

85. On February 20, 2012, he filed a pleading with the Third Chamber of the Supreme Court of Justice.⁹⁸ He requested that the processing of his writ of cassation case be moved to the court of

⁸⁹ Annex 42. Decision No. 2009-011710 of the Constitutional Chamber, dated July 28, 2009. Annex to petitioner’s communication received in the IACHR on October 28, 2010.

⁹⁰ Annex 43. Submission filed by Rafael Antonio Rojas Madrigal to the Third Chamber of the Supreme Court of Justice, dated January 9, 2011. Annex to petitioner’s communication of March 3, 2012.

⁹¹ Annex 43. Submission filed by Rafael Antonio Rojas Madrigal to the Third Chamber of the Supreme Court of Justice, dated January 9, 2011. Annex to petitioner’s communication of March 3, 2012.

⁹² Annex 43. Submission filed by Rafael Antonio Rojas Madrigal to the Third Chamber of the Supreme Court of Justice, dated January 9, 2011. Annex to petitioner’s communication of March 3, 2012.

⁹³ Annex 43. Submission filed by Rafael Antonio Rojas Madrigal to the Third Chamber of the Supreme Court of Justice, dated January 9, 2011. Annex to petitioner’s communication of March 3, 2012.

⁹⁴ Annex 43. Submission filed by Rafael Antonio Rojas Madrigal to the Third Chamber of the Supreme Court of Justice, dated January 9, 2011. Annex to petitioner’s communication of March 3, 2012.

⁹⁵ Annex 44. Decision No. 2011005080 of the Constitutional Chamber of the Supreme Court of Justice, dated April 15, 2011. Annex to petitioner’s submission of December 21, 2012.

⁹⁶ Annex 45. Submission filed by Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated February 20, 2012. Annex to petitioner’s communication of March 3, 2012.

⁹⁷ Annex 45. Submission filed by Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated February 20, 2012. Annex to petitioner’s communication of March 3, 2012.

⁹⁸ Annex 45. Submission filed by Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated February 20, 2012. Annex to petitioner’s communication of March 3, 2012.

appeals, and that as yet it had not been settled. He argued that being held in custody “aggravated [his] condition of having [the] criminal proceeding [up] in the air.” He contended that under transitional provision III of Law No. 8837, a motion to convert the petition for writ of reversal on cassation into a motion to appeal with a period of two months was permitted.⁹⁹

86. Based on accounts provided by the State, on March 22, 2012, the Third Chamber denied the petition for writ of reversal on cassation.¹⁰⁰ The Third Chamber rejected the different arguments that “the [trial] court took as the point of departure [a particular] platform of facts” which established “the certainty of the claimant being the perpetrator, as well as his way of acting.”¹⁰¹ It further noted that “taking a proven fact, or two, in isolation from other ones, which expand and/or complement them, just as is done by the claimant, would mean getting into a prohibited area, both for the challenging party and for this Chamber.”¹⁰²

87. Additionally, in said decision, the Third Chamber denied the request to convert the petition for writ of cassation into a motion to appeal because Mr. Rojas did not fulfill the requirements set forth in Transitional Article III of Law No. 8837.¹⁰³ Particularly, it noted that his request “is careless with regard to stating the basis for the grievance, being that he only references the violation of Article 8.2.h of the American Convention.”¹⁰⁴ It also held that Mr. Rojas did not explain the reasons that led him to believe that, despite his petition being filed prior to Law No. 8837 came into force, the procedure for appeal of conviction, provided for therein, should be applied to his case.¹⁰⁵

88. On September 4, 2012, the Constitutional Chamber denied the petition for habeas corpus relief sought by Mr. Rojas, in which he argued that the Third Chamber denied his motion to convert the petition for writ of cassation into motion to appeal.¹⁰⁶

89. On November 5, 2012, Mr. Rojas filed another petition for relief under a writ of habeas corpus with the Constitutional Chamber. He contended that he did not file a motion for review of judgment 614-2009 because he was unable to gain access to the written judgment of conviction due to the fact it was provided to him in compact disc format.¹⁰⁷

⁹⁹ Annex 45. Submission filed by Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated February 20, 2012. Annex to petitioner’s communication of March 3, 2012.

¹⁰⁰ Annex 46. State’s submission of June 21, 2013.

¹⁰¹ Annex 46. State’s submission of June 21, 2013.

¹⁰² Annex 46. State’s submission of June 21, 2013.

¹⁰³ Annex 47. Decision No. 2012012366 of the Constitutional Chamber of the Supreme Court of Justice, dated September 4, 2012. Annex to petitioner’s submission of April 22, 2013.

¹⁰⁴ Annex 47. Decision No. 2012012366 of the Constitutional Chamber of the Supreme Court of Justice, dated September 4, 2012. Annex to petitioner’s submission of April 22, 2013.

¹⁰⁵ Annex 47. Decision No. 2012012366 of the Constitutional Chamber of the Supreme Court of Justice, dated September 4, 2012. Annex to petitioner’s submission of April 22, 2013.

¹⁰⁶ Annex 47. Decision No. 2012012366 of the Constitutional Chamber of the Supreme Court of Justice, dated September 4, 2012. Annex to petitioner’s submission of April 22, 2013.

¹⁰⁷ Annex 48. Submission of petition for writ of habeas corpus, dated November 5, 2012. Annex to petitioner’s submission of December 21, 2012.

90. On January 15, 2013, Mr. Rojas sought constitutional relief via *amparo* alleging that judgment of conviction 914-2009 was not provided to him in written form and, therefore, he was unable to appeal all of the flaws appearing therein. He reiterated that it was only provided to him in DVD form and that he was unable to view it at the CAI La Reforma prison facilities inasmuch as the hardware required for this purpose is not available. He further claimed that the judgment became a final settled matter of law despite the multiple irregularities by which it was flawed.¹⁰⁸

2.2. Relief sought by Mr. Rojas Madrigal outside of the criminal proceedings

91. On January 30, 2009, the Constitutional Chamber outright rejected a petition for habeas corpus relief filed on January 6, 2008 by Mr. Rojas Madrigal against the Legislative Assembly, the Chief Justice of the Supreme Court and the Chief Judge of the Third Chamber on the grounds that i) they did not include in domestic law an appeals remedy pursuant to Article 8.2.h of the American Convention; and ii) Law No. 8503 did not abide by the order issued by the Inter-American Court in the judgment of the Herrera Ulloa case.¹⁰⁹

92. On May 4, 2011, the Constitutional Chamber of the Supreme Court of Justice received a petition for habeas corpus relief brought by Mr. Rojas.¹¹⁰ Therein, Mr. Rojas sought definition of the scope of Law No. 8837 inasmuch as said he claimed statute does not explain the status of persons convicted prior to the time it came into force. He argued that the law does not establish how persons previously convicted will be redressed for violation of their right to review of judgment as provided for in Article 8.2.h of the American Convention. He also contended that the Article regulating the procedure for the motion for review of conviction does not ensure, based on the valid grounds listed therein, a thorough examination of the judgment of conviction.

93. On June 6, 2012, Mr. Rojas moved for a disciplinary proceeding to be instituted against the justices of the Third Chamber because their decisions were at odds with the legal precedents of the new Court of Appeals.¹¹¹

2.3. CAI La Reforma prison facilities

94. On June 26, 2006, Mr. Rojas filed a grievance (*recurso de queja*) with the Sentence Execution Court of the First Judicial Circuit of Alajuela.¹¹² He argued that in 2002 he was relocated to the CAI La Reforma prison; that the following year he was diagnosed with diabetes and he was not provided treatment despite fainting, dizzy spells and headaches.¹¹³ He also claimed that he was found

¹⁰⁸ Annex 49. Submission of motion for *amparo*, dated January 15, 2013. Annex to petitioner's submission of December 21, 2012.

¹⁰⁹ Annex 50. Decision No. 2009-001350 of the Constitutional Chamber, dated January 30, 2009. Annex to petitioner's communication of July 7, 2009.

¹¹⁰ Annex 51. Submission by Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated April 2, 2011. Annex to petitioner's communication of March 3, 2012.

¹¹¹ Annex 52. Submission of Mr. Rojas Madrigal, dated June 6, 2012. Annex to petitioner's submission of December 21, 2012.

¹¹² Annex 53. Submission of the grievance by Mr. Rojas Madrigal, dated June 26, 2006. Annex to petitioner's communication of August 5, 2006.

¹¹³ Annex 53. Submission of the grievance by Mr. Rojas Madrigal, dated June 26, 2006. Annex to petitioner's communication of August 5, 2006.

to have an hernia and that he did not receive any medical treatment either because there is only one doctor at the prison facility and he is for emergencies only.¹¹⁴

95. On July 18, 2006, the Constitutional Chamber ruled on a petition for *amparo* relief brought by Mr. Rojas against the director and officials of the CAI La Reforma prison facilities.¹¹⁵ In said petition, Mr. Rojas claimed that he submitted an allegedly confidential report to the prison authorities regarding acts of extortion committed by other persons deprived of liberty. He reported that said persons gained access to said report and, therefore, robbed and beat him and actually attempted to kill him. In light of the foregoing statement made by the alleged victim, the Constitutional Chamber issued an order, effective immediately, for Mr. Rojas Madrigal to be located in a place where his life and safety were not in jeopardy and requested a report on the alleged acts from prison officials of CAI La Reforma.¹¹⁶

96. On July 26, 2006, the Constitutional Chamber denied the petition filed by Mr. Rojas.¹¹⁷ The Constitutional Chamber held that based on the reports given under oath by the prison officials “no infringement of his rights can be ascertained” inasmuch as measures of protection were adopted and that the persons who robbed and extorted him were transferred away.¹¹⁸

97. On November 26, 2007, Mr. Rojas filed with the Office of the Prosecuting Attorney a criminal complaint against the four officials of the CAI La Reforma prison for the crime of torture stemming from the acts described above pertaining to the robbery and assault inflicted on him by other inmates during the second half of 2006.¹¹⁹

98. On December 18, 2006, the Constitutional Chamber ruled on a petition for habeas corpus relief filed by Mr. Rojas on December 12, of that year.¹²⁰ Mr. Rojas contended that since the time he entered cellblock C of CAI La Reforma prison facilities in 2003, he had not received any medical care for his condition of diabetes and other illnesses. He reported that he was only taken to a hospital one time because he had fainted. He also claimed that beginning in August 2006, when he was transferred to cellblock B, he had to “compete for a place because only the first two patients are treated each week.” He also made reference to the allegations pertaining to the beating he received from other inmates after they heard that he was an “informant.” He claimed that the guards refused to provide

¹¹⁴ Annex 53. Submission of the grievance by Mr. Rojas Madrigal, dated June 26, 2006. Annex to petitioner’s communication of August 5, 2006.

¹¹⁵ Annex 54. Decision of the Constitutional Court, dated July 18, 2006. Annex to petitioner’s communication of April 15, 2008.

¹¹⁶ Annex 54. Decision of the Constitutional Court, dated July 18, 2006. Annex to petitioner’s communication of April 15, 2008.

¹¹⁷ Annex 55. Decision No. 2006-010962 of the Constitutional Chamber, dated July 26, 2006. Annex to petitioner’s communication of April 15, 2008.

¹¹⁸ Annex 55. Decision No. 2006-010962 of the Constitutional Chamber, dated July 26, 2006. Annex to petitioner’s communication of April 15, 2008.

¹¹⁹ Annex 56. Criminal complaint filed by Mr. Rojas Madrigal, dated November 26, 2007. Annex to petitioner’s communication of February 4, 2008.

¹²⁰ Annex 57. Decision of the Constitutional Chamber, dated December 18, 2006. Annex to petitioner’s communication of March 7, 2007.

him with security despite his asking them to do so. He also reported that he was forced to sign a document dropping the petition for habeas corpus relief.¹²¹

99. In light of said information, the Constitutional Chamber requested the CAI director to submit a report on the allegations within a period of 48 hours.¹²² It also issued an order to take the necessary measures to ensure that Mr. Rojas “receives the medical care he needs to adequately treat his ailments, either at the Institutional Care Center [CAI facilities] itself (...) or at an appropriate hospital facility (...). Additionally the claimant must be immediately placed in a location where his life and safety are not at risk.”¹²³ On December 21, 2006, the CAI La Reforma prison Director and other officials of the facilities presented the report requested by the Constitutional Chamber, refuting the allegations made by Mr. Rojas Madrigal in this petition habeas corpus relief.¹²⁴

100. On January 9, 2007, the Constitutional Chamber denied the habeas corpus petition. The Constitutional Chamber found the information provided by the CAI La Reforma prison authorities to be proven fact.¹²⁵

101. On January 17, 2007, the General Directorate of Social Adaptation issued an official letter to the Institutional Level Coordinator noting that Mr. Rojas claimed in a letter of January 8 that “his life continues to be in jeopardy” and “he requests that he be placed in another prison facility in

¹²¹ Annex 57. Decision of the Constitutional Chamber, dated December 18, 2006. Annex to petitioner’s communication of March 7, 2007.

¹²² Annex 57. Decision of the Constitutional Chamber, dated December 18, 2006. Annex to petitioner’s communication of March 7, 2007.

¹²³ Annex 57. Decision of the Constitutional Chamber, dated December 18, 2006. Annex to petitioner’s communication of March 7, 2007.

¹²⁴ Annex 58. Official Letter from the Institutional Care Center La Reforma [CAI prison facility], dated December 21, 2006. Annex to petitioner’s communication of April 15, 2008. The CAI report notes that it is true that Mr. Rojas was admitted to Cellblock C in August 2003 and that he stated: “in the last seven years he has not used any treatment.”¹²⁴ The officials reported that i) he received medical care in an external examination in October 2006; ii) the appointment to treat his hernia is pending; iii) he was diagnosed with diabetes and was given his prison leave slip to undergo several tests, which have not been conducted because of “his own inaction (...) [inasmuch as] all that needs to be done is (...) show the referrals to the security managers in charge of external medical visits.” As for the alleged fainting of Mr. Rojas and his treatment in the hospital, they noted that “there is no medical record of the claimant.”¹²⁴ With regard to the conditions in Cellblock B of CAI La Reforma, they claimed Mr. Rojas’ allegation is false, inasmuch as medical examinations are conducted every day averaging 16 to 20 patients per day.¹²⁴ They further contended that on December 20, 2006, an attempt was made to conduct a medical examination of Mr. Rojas but he refused to be examined exclaiming that “he was in good shape and that he was not going to undergo the evaluation.” With regard to the alleged acts of robbery and the beating taken by Mr. Rojas, they reported that it is true that he provided a confidential report on extortion by other inmates in June 2006 but that “it is not possible for them to have found out about it. Notwithstanding, they claimed that the persons accused of this were transferred to other areas. Additionally, they claimed that it was not proven that he had been a victim of assaults and threats, nor is there any record of any request to ascertain these acts. They noted that no reports are on record that corroborate that Mr. Rojas has committed any disciplinary offenses nor are any precautionary measures in effect for him, which is proof that he has a healthy rapport with his cellmates. Lastly, they claimed that it is untrue that he was forced to withdraw a habeas corpus relief petition. They admit that he was robbed in an accidental situation and that, even though they asked him whether he wants to be relocated, Mr. Rojas answered that “he is fine where he is.”

¹²⁵ Annex 59. Decision No. 2007-000008 of the Constitutional Chamber, dated January 9, 2007. Annex to the petitioner’s communication of April 15, 2008.

order to protect his (...) life (...)."¹²⁶ The General Directorate replied that it would examine "the possibility of placing him in another prison establishment."¹²⁷

102. On March 28, 2007, the Court of Sentence Execution of Alajuela denied a request for medical care leave filed by Mr. Rojas.¹²⁸ The alleged victim indicated that he had not been treated at CAI La Reforma prison even though he has diabetes.¹²⁹ The Court of Sentence Execution noted that based on a forensic medical examination submitted to it, it discards that he is suffering from an disease that cannot be treated in the prison facility.¹³⁰ It also noted that there is no evidence of negligence, neglect or arbitrariness by prison medical officials, which in any way has infringed the right to life or health of Mr. Rojas.¹³¹

103. On January 28, 2008, CAI La Reforma officials reported that they offered Mr. Rojas a chance to be transferred to another prison facility.¹³² They claimed that Mr. Rojas stated that "he declines the offer, because he would lose [his] family tie and climate conditions of the location would affect [him], including his health."¹³³ They further noted that he contended that "at this time his is fine in the place where he is and his physical integrity is not at risk."¹³⁴

104. On May 29, 2008, the Constitutional Chamber denied the petition for *amparo* relief filed by more than ten persons deprived of liberty of the CAI La Reforma prison facilities, including Mr. Rojas, on May 5, 2008.¹³⁵ Said persons requested that prison officials be required to provide nourishment that is satisfactory and is sufficient for all inmates, inasmuch as food is rationed and is inadequate.¹³⁶ The Constitutional Chamber concluded that the serving of meals was conducted by the inmates themselves, which "directly places at risk the physical integrity and therefore the right to life and health of the

¹²⁶ Annex 60. Official Letter D.G. 101-2007 of the General Directorate of Social Adaptation, dated January 17, 2007. Annex to petitioner's communication of March 7, 2007.

¹²⁷ Annex 60. Official Letter D.G. 101-2007 of the General Directorate of Social Adaptation, dated January 17, 2007. Annex to petitioner's communication of March 7, 2007.

¹²⁸ Annex 61. Decision No. 1004-2007 of the Sentence Execution Court of Alajuela, dated March 28, 2007. Annex to petitioner's communication of August 18, 2009.

¹²⁹ Annex 61. Decision No. 1004-2007 of the Sentence Execution Court of Alajuela, dated March 28, 2007. Annex to petitioner's communication of August 18, 2009.

¹³⁰ Annex 61. Decision No. 1004-2007 of the Sentence Execution Court of Alajuela, dated March 28, 2007. Annex to petitioner's communication of August 18, 2009.

¹³¹ Annex 61. Decision No. 1004-2007 of the Sentence Execution Court of Alajuela, dated March 28, 2007. Annex to petitioner's communication of August 18, 2009.

¹³² Annex 62. Treatment Report of the CAI La Reforma prison, dated January 28, 2008. Annex to petitioner's communication of February 4, 2008.

¹³³ Annex 62. Treatment Report of the CAI La Reforma prison, dated January 28, 2008. Annex to petitioner's communication of February 4, 2008.

¹³⁴ Annex 62. Treatment Report of the CAI La Reforma prison, dated January 28, 2008. Annex to petitioner's communication of February 4, 2008.

¹³⁵ Annex 63. Decision No. 2008-009067 of the Constitutional Chamber, dated May 29, 2008. Annex to petitioner's communication of August 18, 2009.

¹³⁶ Annex 63. Decision No. 2008-009067 of the Constitutional Chamber, dated May 29, 2008. Annex to petitioner's communication of August 18, 2009.

persons deprived of liberty.”¹³⁷ It noted that the prison officials themselves admitted that it is impossible to supervise the serving of food to make it fair.¹³⁸ Accordingly, the Constitutional Chamber ordered the CAI La Reforma prison to issue the necessary orders so that the delivery and serving of meals “is conducted in a fair, timely and properly supervised fashion.”¹³⁹

105. The Office of the Ombudsman of the Inhabitants issued a report in 2010 announcing its position on CAI La Reforma.¹⁴⁰ In the report, it mentions infrastructure deficiencies, specifically in the electric fixtures, sanitation services, walls and roofs.¹⁴¹

106. On February 11, 2011, the Constitutional Chamber denied the petition for *amparo* relief filed by Mr. Rojas on January 18, 2010.¹⁴² The alleged victim, therein, complained that meals were insufficient and there was overcrowding at CAI La Reforma prison.¹⁴³ The Constitutional Chamber noted that based on the information provided by the Director of the CAI, “degrading treatment from lack of nourishment cannot be proven.”¹⁴⁴ It also said that “even though this Chamber has ascertained on other occasions that critical overcrowding (...) constitutes degrading treatment, in this case we did not engage in assessing that aspect because the main argument of the claimant did not address overcrowding but rather the lack of food.”¹⁴⁵

107. On June 25, 2012, Mr. Rojas brought an *amparo* proceeding before the Constitutional Chamber claiming that he suffered from an hernia as a result of work at the prison facility and that he had not been operated on even though it had been prescribed by the doctor.¹⁴⁶ On June 28, 2012, the Constitutional Chamber requested the facilities’ authorities “to adopt the necessary measures in order to ensure the medical care [for him] that he requires in order to adequately treat his ailment.”¹⁴⁷

¹³⁷ Annex 63. Decision No. 2008-009067 of the Constitutional Chamber, dated May 29, 2008. Annex to petitioner’s communication of August 18, 2009.

¹³⁸ Annex 63. Decision No. 2008-009067 of the Constitutional Chamber, dated May 29, 2008. Annex to petitioner’s communication of August 18, 2009.

¹³⁹ Annex 63. Decision No. 2008-009067 of the Constitutional Chamber, dated May 29, 2008. Annex to petitioner’s communication of August 18, 2009.

¹⁴⁰ Annex 64. Press clipping “Office of the Ombudsman claims crisis in prison” published in the daily newspaper *Diario Extra*, dated April 20, 2011. Annex to petitioner’s communication of July 7, 2011.

¹⁴¹ Annex 64. Press clipping “Office of the Ombudsman claims crisis in prison” published in the daily newspaper *Diario Extra*, dated April 20, 2011. Annex to petitioner’s communication of July 7, 2011.

¹⁴² Annex 65. Decision No. 2011-001692 of the Constitutional Chamber, dated February 11, 2011. Annex to petitioner’s communication of February 28, 2011.

¹⁴³ Annex 65. Decision No. 2011-001692 of the Constitutional Chamber, dated February 11, 2011. Annex to petitioner’s communication of February 28, 2011.

¹⁴⁴ Annex 65. Decision No. 2011-001692 of the Constitutional Chamber, dated February 11, 2011. Annex to petitioner’s communication of February 28, 2011.

¹⁴⁵ Annex 65. Decision No. 2011-001692 of the Constitutional Chamber, dated February 11, 2011. Annex to petitioner’s communication of February 28, 2011.

¹⁴⁶ Annex 66. Submission of Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated June 25, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁴⁷ Annex 67. Decision of the Constitutional Chamber of the Supreme Court of Justice, dated June 28, 2012. Annex to petitioner’s submission of December 21, 2012.

108. On July 17, 2012, the Constitutional Chamber granted the *amparo* relief sought by Mr. Rojas. It found that “it is obvious that his fundamental right to health has been violated (...) which is attributable to the authorities of the Institutional Care Center La Reforma.”¹⁴⁸ The Constitutional Chamber ordered the alleged victim to be transferred to the medical appointment that has been scheduled.¹⁴⁹

109. On August 5, 2012, Mr. Rojas sought constitutional relief by *amparo* from the Constitutional Chamber from alleged lack of access to potable water at CAI La Reforma prison facilities. He contended that i) inmates are given non-potable to drink; ii) water is usually rationed every three hours and is only available for 10 minutes; and iii) at times there is no water for the whole day. He further asserted that this has happened over 2011 and 2012. He claimed that persons have died as a result of this situation and others were ill.¹⁵⁰

110. On September 14, 2012, the Constitutional Chamber granted the request for *amparo* relief brought by Mr. Rojas, received on August 14, 2012.¹⁵¹ The Constitutional Chamber found the reports of the National Water Laboratory as proven facts establishing with certainty that the water supplied to the persons deprived of liberty at CAI La Reforma prison facilities was “not potable and a was high health risk to the users” and that the internal water works of the facilities “presented fecal contamination,” an “absence of water disinfection,” an absence of a quality control program, and an absence of a storage tank cleaning program.”¹⁵² Additionally, said report identified that the water pumps were turned off from 17:40 hours until 5:30 hours and that when the service is provided it is for 20 to 40 minute intervals, depending on the area of the facilities.¹⁵³ The Constitutional Chamber noted that, since 2010, the Costa Rican Institute of Aqueducts and Sewers has been warning both the Ministry of Justice and the authorities at the prison facilities about the water contamination.¹⁵⁴ It maintained that despite the warnings, “it is not apparent that any steps have been taken to solve the aforementioned issue.”¹⁵⁵ It also noted that the CAI La Reforma authorities “did not introduce any evidence at all (...) to prove that the water is actually potable.”¹⁵⁶

¹⁴⁸ Annex 68. Decision No. 2012009242 of the Constitutional Chamber, dated July 17, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁴⁹ Annex 68. Decision No. 2012009242 of the Constitutional Chamber, dated July 17, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵⁰ Annex 69. Submission of Rafael Antonio Rojas Madrigal to the Constitutional Chamber of the Supreme Court of Justice, dated August 5, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵¹ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵² Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵³ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵⁴ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵⁵ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵⁶ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

111. The Constitutional Chamber ordered the water contamination problem to be solved within a period of one month.¹⁵⁷ It noted that in order to ascertain that it was indeed solved, the Costa Rican Institute of Aqueducts and Sewers shall coordinate with the National Water Laboratory to test the water of CAI La Reforma prison and provide a report thereof to the Chamber.¹⁵⁸ The Constitutional Chamber also concluded that the suspensions of water service “are disproportionate and affect, therefore, the health of those deprived of liberty.”¹⁵⁹ It ordered the authorities to provide potable water service continually within a period of three months, “that is to say, for 24 hours a day seven days a week.”¹⁶⁰

112. In a communication received on December 25, 2012, Mr. Rojas filed a petition for *amparo* relief with the Constitutional Chamber. He requested for the third time that his right to health be ensured inasmuch as he did not have access to medical services. He claimed that he suffers from high fevers, blood in his stool and diarrhea. He specifically contended that the prison overcrowding problem made his condition worse.¹⁶¹

113. On December 27, 2012, the Constitutional Chamber ordered the authorities “to adopt the necessary measures to ensure that Rafael Antonio Rojas Madrigal receives the medical attention he requires to adequately treat his ailment (...) either in the Institutional Care Center [the prison] itself or at a hospital facility.”¹⁶²

114. On January 18, 2013, the Constitutional Chamber granted the petition for *amparo* relief filed by Mr. Rojas, received on December 25, 2012.¹⁶³ The Constitutional Chamber found it to be proven fact that on September 7, 2011, Mr. Rojas was diagnosed with hemorrhoids and was prescribed a treatment.¹⁶⁴ It noted that because medical attention had just been sought for him with the filing for *amparo*, it “constitutes a violation of his right to health.”¹⁶⁵ Accordingly, the Constitutional Chamber

¹⁵⁷ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵⁸ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁵⁹ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁶⁰ Annex 70. Decision No. 2012012846 of the Constitutional Chamber of the Supreme Court of Justice, dated September 14, 2012. Annex to petitioner’s submission of December 21, 2012.

¹⁶¹ Annex 71. Submission of *amparo* petition of Mr. Rojas Madrigal, dated December 25, 2012. Annex to petitioner’s submission of April 22, 2013.

¹⁶² Annex 72. Decision of the Constitutional Chamber, dated December 27, 2012. Annex to petitioner’s submission of April 22, 2013.

¹⁶³ Annex 73. Decision of the Constitutional Chamber, dated January 18, 2013. Annex to petitioner’s submission of April 22, 2013.

¹⁶⁴ Annex 73. Decision of the Constitutional Chamber, dated January 18, 2013. Annex to petitioner’s submission of April 22, 2013.

¹⁶⁵ Annex 73. Decision of the Constitutional Chamber, dated January 18, 2013. Annex to petitioner’s submission of April 22, 2013.

ordered the State “to payment of costs and damages caused (...) which shall be liquidated in execution of the administrative claim judgment.”¹⁶⁶

115. On February 25, 2013, Mr. Rojas requested the Sentence Execution Court for a doctor to visit him at the prison in order to treat him for blood in the stool and constant fever that he has had since 2008.¹⁶⁷

3. Carlos Eduardo Yépez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde

116. On November 18, 2002, Carlos Eduardo Yépez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde, all Colombian nationals, were arrested by the Costa Rican Anti-Drug Police “for apparent international drug trafficking.” Pursuant to an official letter from the Anti-Drug Police, a boat on which the alleged victims were traveling was chased and in the course pursuit they reputedly threw packages into the sea, which apparently contained cocaine.¹⁶⁸ On September 22, 2003, the alleged victims were convicted to a 12-year prison term for the crime of transportation of drugs for sale, a crime against public health.”¹⁶⁹

117. On September 9, 2004, the Court of Criminal Cassation of the Second Judicial Circuit of San José denied a petition for a writ of cassation for reversal of the convictions of Luis Archbold Jay, Enrique Archbold Jay, Carlos Yepes Cruz, Miguel Valverde Montoya and Fernando Saldarriaga.¹⁷⁰ The alleged victims argued violation of due process inasmuch as i) the conviction was based on illegitimate evidence; and ii) the chain of custody for the evidence was not established.¹⁷¹

118. The Court of Criminal Cassation noted that “the finding of the proven facts in the judgment of conviction was essentially based on the fact that the five defendants accepted them as they were described in the charging document.” It also noted that the facts are corroborated “by documentary evidence that was cited and assessed in the judgment of conviction.”¹⁷²

119. On November 30, 2005, the Constitutional Chamber denied on the merits the unconstitutionality action brought by Mr. Yepes against several articles of the Code of Criminal

¹⁶⁶ Annex 73. Decision of the Constitutional Chamber, dated January 18, 2013. Annex to petitioner’s submission of April 22, 2013.

¹⁶⁷ Annex 74. Request of Mr. Rojas Madrigal, dated February 25, 2013. Annex to petitioner’s submission of April 22, 2013.

¹⁶⁸ Annex 75. Official Letter D.PCD-1509-2002 of the Drug Enforcement Police of Costa Rica, dated November 19, 2002. Annex to petitioner’s communication of January 24, 2010.

¹⁶⁹ Annex 76. Request for Judicial Assistance No. 964 from the National Unit for Asset Forfeiture and Anti-Money Laundering of the Office of the Attorney General of the Nation of Colombia, dated June 29, 2001. Annex to petitioner’s communication of September 3, 2011.

¹⁷⁰ Annex 77. Decision No. 2004-0924 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated September 9, 2004. Annex to petitioner’s communication of May 4, 2006.

¹⁷¹ Annex 77. Decision No. 2004-0924 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated September 9, 2004. Annex to petitioner’s communication of May 4, 2006.

¹⁷² Annex 77. Decision No. 2004-0924 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated September 9, 2004. Annex to petitioner’s communication of May 4, 2006.

Procedure inasmuch as he alleged that they restrict the “possibility of contesting judgments of conviction in criminal matters.”¹⁷³ The Constitutional Chamber noted that it had repeatedly ruled on the subject matter and, therefore, “it sees no reason at all to prompt it to review or depart from what it has held on those opportunities.”¹⁷⁴

120. Based on the information provided to it, the Commission notes that the alleged victims filed at least five petitions for review of conviction. On June 10, 2005, the Court of Criminal Cassation of the Second Judicial Circuit of San José found the petition for review requested by the alleged victims to be inadmissible.¹⁷⁵ The Court of Criminal Cassation held that it is not admissible “to revisit issues which were previously the subject of cases heard under the petition for reversal on cassation, which they pursued.”¹⁷⁶

121. On October 20, 2006, the Court of Criminal Cassation of the Second Judicial Circuit of San José denied another petition for review of conviction. The Court of Criminal Cassation cited its own ruling on cassation of September 9, 2004 declaring the petition inadmissible.¹⁷⁷ Additionally, on April 19, 2007, the Court of Criminal Cassation of the Second Judicial Circuit of San José found another petition for review filed by the alleged victims to be admissible.¹⁷⁸ It held that “it addresses the issue of the evidence (...) which previously was the reason for this chamber to hear it in the proceeding for petition of reversal on cassation filed at its proper time.”¹⁷⁹

122. On July 5, 2007, the Court of Criminal Cassation again found inadmissible another petition for review of conviction.¹⁸⁰ The Court of Criminal Cassation held that, under Article 411 of the Code of Criminal Procedure, it is not admissible to raise matters on review that have been previously addressed on cassation.¹⁸¹ It noted that with regard to the new allegation of the violation of the right to be heard by a competent and impartial judge – which was based on one of the judges, who had sat on the bench in the preliminary hearing, previously issuing a preventive detention order against him – no flaw was identified inasmuch as it is the job of the trial court and not the court presiding over the

¹⁷³ Annex 78. Decision No. 2005-016776 of the Constitutional Chamber of the Supreme Court of Justice, dated November 30, 2005. Annex to petitioner’s communication of August 20, 2007.

¹⁷⁴ Annex 78. Decision No. 2005-016776 of the Constitutional Chamber of the Supreme Court of Justice, dated November 30, 2005. Annex to petitioner’s communication of August 20, 2007.

¹⁷⁵ Annex 79. Decision No. 2005-0535 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated June 10, 2005. Annex to petitioner’s communication of May 4, 2006.

¹⁷⁶ Annex 79. Decision No. 2005-0535 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated June 10, 2005. Annex to petitioner’s communication of May 4, 2006.

¹⁷⁷ Annex 80. Decision No. 2006-1107 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated October 20, 2006. Annex to petitioner’s communication of April 30, 2007.

¹⁷⁸ Annex 81. Decision No. 2007-0389 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated April 19, 2007. Annex to petitioners’ communication received in the IACHR on July 5, 2007.

¹⁷⁹ Annex 81. Decision No. 2007-0389 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated April 19, 2007. Annex to petitioners’ communication received in the IACHR on July 5, 2007.

¹⁸⁰ Annex 82. Decision No. 438-25-24 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated July 5, 2007. Annex to petitioners’ communication of August 20, 2007.

¹⁸¹ Annex 82. Decision No. 438-25-24 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated July 5, 2007. Annex to petitioners’ communication of August 20, 2007.

preliminary hearing, to assess the evidence that is introduced, and to determine the existence of the facts and the legal assessment thereof.¹⁸²

123. On March 9, 2009 Luis and Enrique Archbold Jay filed a new motion for review of conviction alleging violation of due process and of the right to a defense on the grounds of failure to arraign them and take their initial statement. They also contended that they were denied a request to have an interpreter because they do not speak Spanish.¹⁸³

124. On July 10, 2009, the Court of Criminal Cassation of Cartago found inadmissible the argument pertaining to the failure to provide a translator.¹⁸⁴ It noted that in different steps of the investigation and proceedings that were conducted both in the preliminary investigation and the intermediate phases and subsequently during the proceedings of cassation and review, no request had ever been made to appoint a translator.¹⁸⁵ However, it did find the argument pertaining to the failure to take a preliminary statement to be admissible for examination by the court and ordered a hearing to be held.¹⁸⁶ Said hearing was held on August 25, 2010 and subsequently the Court of Criminal Cassation denied the petition for review of conviction.¹⁸⁷

125. By the account of the petitioners, in October and December 2011, Luis and Enrique Archbold Jay had finished serving the sentence imposed on them and, therefore, were deported back to Colombia.¹⁸⁸

4. Jorge Martínez Meléndez

126. On August 21, 1998, the Office of the Deputy Prosecuting Attorney for Economic, Corruption and Tax Offenses brought formal charges against Jorge Martínez Meléndez, Sigifredo Martínez Meléndez, Marvin Martínez Meléndez and Heber di Bella Hidalgo for the crime of embezzlement of public funds in abuse of the Program of Social Compensation and Land Titling and the State.¹⁸⁹ The Office of the Prosecuting Attorney claimed that improper payments had been made with funds from said program and that the monetary loss stemmed from Mr. Martínez, who was appointed

¹⁸² Annex 82. Decision No. 438-25-24 of the Court of Criminal Cassation of the Second Judicial Circuit of San José, dated July 5, 2007. Annex to petitioners' communication of August 20, 2007.

¹⁸³ Annex 83. Submission of motion for review, dated March 9, 2009. Annex to petitioners' communication of September 10, 2009.

¹⁸⁴ Annex 84. Decision No. 2009-0191 of the Court of Criminal Cassation of Cartago, dated July 10, 2009. Annex to petitioners' communication of September 10, 2009.

¹⁸⁵ Annex 84. Decision No. 2009-0191 of the Court of Criminal Cassation of Cartago, dated July 10, 2009. Annex to petitioners' communication of September 10, 2009.

¹⁸⁶ Annex 84. Decision No. 2009-0191 of the Court of Criminal Cassation of Cartago, dated July 10, 2009. Annex to petitioners' communication of September 10, 2009.

¹⁸⁷ Annex 85. Opinion 2009-0251 of Court of Criminal Cassation of Cartago, dated August 25, 2009. Annex to petitioners' communication of September 10, 2009.

¹⁸⁸ Annex 86. Petitioners' communication of April 17, 2012.

¹⁸⁹ Annex 87. Decision of the Criminal Court of the First Judicial Circuit of San José, dated December 3, 2003. Annex to petitioner's communication received at the IACHR on October 11, 2006.

by the Second Vice President of the Republic as representative to the Commission of Social Compensation.¹⁹⁰

127. The next day, the Criminal Court for Extraordinary Matters ordered Mr. Martinez to be taken into preventive custody for a period of six months on the grounds that “he could pose a procedural obstacle by manipulating the evidence.”¹⁹¹ On February 19, 1999, the Criminal Court of the First Judicial Circuit of San José granted bail to Mr. Martinez, under which he was to pay an amount of money to be granted conditional release.¹⁹²

128. Jorge Martínez traveled to Canada on November 26, 1999.¹⁹³ Under a court decision of December 13, 1999, Jorge Martinez was found in contempt of court. On December 16, 1999, an international arrest warrant was issued for the alleged victim.¹⁹⁴

129. On September 7, 2000, the Criminal Court of the First Judicial Circuit of San José ordered the application of the special procedures for processing of complex matters because of the high number of documents involved in the case. It noted that by proceeding under these special rules, the procedural deadlines are extended to twice as long as in ordinary procedures and that “while the procedure for the processing of complex cases redounds to the detriment of defendants when they are being held in (...) preventive detention, this is not so in this instance when all are on release.”¹⁹⁵ The Criminal Court also issued a warrant for the preventive detention of Mr. Martínez on the grounds that he left the country and did not fulfill the conditions that were imposed on him when he was released on bail. The next day, the Office of the Prosecuting Attorney requested the Criminal Court of the First Judicial Circuit of San José to approve and open the proceedings for the extradition of Mr. Martínez.¹⁹⁶

130. Based on information in newspaper clippings, on March 26, 2003, the Federal Court of Canada found that Mr. Martínez was not eligible for the status of politically persecuted in order to obtain refugee status.¹⁹⁷ Mr. Martínez appealed said decision arguing that he fears “being persecuted

¹⁹⁰ Annex 88. Decision of the Criminal Court in Chambers for Extraordinary Matters, dated August 22, 1998. Annex to petitioner’s communication received at the IACHR on October 11, 2006.

¹⁹¹ Annex 88. Decision of the Criminal Court in Chambers for Extraordinary Matters, dated August 22, 1998. Annex to petitioner’s communication received at the IACHR on October 11, 2006.

¹⁹² Annex 89. Decision of the Criminal Court of the First Judicial Circuit of San José, dated February 19, 1999. Annex to petitioner’s communication of May 24, 2011.

¹⁹³ Annex 90. Press clipping “Canadá entrega a prófugo Martínez” [‘Canada hands over fugitive Martinez’] published in the *Diario La Nacion*, dated December 3, 2003, which references Decision No. 2003-IMM-4206-01 of the Federal Court of Canada of March 26, 2003. Annex to State’s communication of June 1, 2011.

¹⁹⁴ Annex 91. Decision of the Criminal Court of the First Judicial Circuit of San José, dated September 7, 2000. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

¹⁹⁵ Annex 91. Decision of the Criminal Court of the First Judicial Circuit of San José, dated September 7, 2000. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

¹⁹⁶ Annex 92. Official Letter of 2000 Office of the Deputy Prosecuting Attorney for Economic, Corruption and Tax Crimes, dated September 7, 2000. Annex to petitioner’s communication of March 26, 2011.

¹⁹⁷ Annex 93. Press clipping “Justicia canadiense determinó que prófugo no era perseguido” [‘Canadian Justice ruled fugitive was not persecuted’] published in *Diario Extra*, undated. Annex to State’s communication of June 1, 2011.

as a consequence of being under politically motivated indictment for embezzlement of public funds.”¹⁹⁸ On December 1, 2003, a hearing was held at which the Federal Court of Canada denied the motion filed by him.¹⁹⁹ The Canadian Federal Court noted that “the claimant failed to establish that there existed a serious possibility of irreparable harm.”²⁰⁰

131. On December 3, 2003, Mr. Martínez arrived in Costa Rica after being deported. On that day, the Criminal Court of the First Judicial Circuit of San José issued a preventive detention order for Mr. Martínez for the course of one year.²⁰¹ It held that the offense that he is charged with is serious, there is risk of flight, risk of obstruction inasmuch as it had been successfully ascertained that his siblings had destroyed evidence, and a risk of repeat offense, given that he is under another investigation for the crime of embezzlement of public funds and other offenses.²⁰²

132. On June 2, 2006, the Criminal Court of the First Judicial Circuit of San José granted an extension “on an exceptional basis” of the preventive detention order for Jorge Martínez beginning on June 3, 2006 until “the operative portion of the judgment giving rise to the instant matter is issued.”²⁰³ The Criminal Court recognized that “even though it is true (...) [that] the ordinary and extraordinary time periods [deadlines] of the preventive detention expire this coming June 3 (...), the Court finds that by applying the principles of proportionality and reasonability, the period of time of the preventive detention must be extended on an exceptional basis.”²⁰⁴ It held that it is apparent that Jorge Martínez showed “an obvious lack of care about being brought to trial in breaking every condition of release in the past that have been imposed [on him] by the authorities.”²⁰⁵

133. On June 7, 2006, Mr. Martínez’ public defender filed a petition for habeas corpus relief contesting the court decision of June 2 that same year on the grounds that the precautionary measure of preventive detention falls outside of the ordinary and extraordinary periods of time. Accordingly, he moved for Mr. Martínez’ release to be ordered.²⁰⁶

¹⁹⁸ Annex 94. Press clipping “Juez decidirá el 1 de diciembre si se detiene extradición de Jorge Martínez” [‘Judge shall rule on December 1 whether to halt extradition of Jorge Martinez’] published in the *Diario La Nación*, dated November 25, 2003. Annex to State’s communication of June 1, 2011.

¹⁹⁹ Annex 95. Press clipping “Martínez hizo su último intento de defensa ayer” [‘Martinez made last attempt at defense yesterday’] published in *Diario La Nación*, dated December 2, 2003. Annex to State’s communication of June 1, 2011; Annex 96. Order of Justice Snider, Docket 1MN-9118-03, dated December 1, 2003. Annex to State’s communication of June 1, 2011.

²⁰⁰ Annex 97. Press clipping “Canadá entrega a prófugo Martínez” [‘Canada hands over fugitive Martinez’] published in the *Diario La Nación*, dated December 3, 2003. Annex to State’s communication of June 1, 2011.

²⁰¹ Annex 98. Decision of the Criminal Court of the First Judicial Circuit of San José, dated December 3, 2003. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰² Annex 98. Decision of the Criminal Court of the First Judicial Circuit of San José, dated December 3, 2003. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰³ Annex 99. Decision of the Criminal Court of the First Judicial Circuit of San José, dated June 2, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰⁴ Annex 100. Decision of the Criminal Court of the First Judicial Circuit of San José, dated June 2, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰⁵ Annex 100. Decision of the Criminal Court of the First Judicial Circuit of San José, dated June 2, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰⁶ Annex 101. Submission of Ricardo Barahona Montero to Constitutional Chamber of the Supreme Court of Justice, dated June 7, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

134. On June 23, 2006, the Constitutional Chamber denied the petition filed by him.²⁰⁷ It held that “even though the duration of the measure adopted by the Court has not been established precisely, it is not found unreasonable nor contrary to the principle of proportionality, considering that the case is in the trial stage (...) and that the aim sought with the measure is to ensure that the purposes of the proceeding are fulfilled.”²⁰⁸ It also noted that with regard to Mr. Martínez, “the presumption of flight has been a factor throughout the proceeding.”²⁰⁹ The Constitutional Chamber held that the Court hearing the case must proceed to the oral trial as diligently and expeditiously as possible.²¹⁰

135. On July 17, 2007, the Criminal Court of the First Judicial Circuit of San José found Mr. Martínez and another two individuals guilty of twelve charges for the offense of embezzlement of public funds as an ongoing crime in abuse of public office, the Fund for Social Development and Family Allocations and the Costa Rican State.²¹¹ The Criminal Court also extended the preventive detention duration of the sentenced defendants for six additional months taking effect on August 17, 2007.²¹²

136. On August 23, 2007, the Criminal Court of the First Judicial Circuit of San José issued a ruling to follow up on the judgment of conviction wherein it imposed a 19-year prison term on Jorge Alberto Martínez Meléndez. It also banned him from holding public office for a period of 12 years.²¹³

137. On August 28, 2007, Mr. Martínez’ public defender filed a petition for habeas corpus relief on the grounds that the sentence was issued on July 17 of that year and the preventive detention was to take effect one month later and, therefore, he would be in custody for a month without any legal basis.²¹⁴ On September 7, 2007, the Constitutional Chamber denied the petition for “being due to a material error.”²¹⁵

138. On January 24, 2008, Mr. Martínez’ public defender filed a petition for habeas corpus relief on the grounds that if it was a material error, the preventive detention would have ended on

²⁰⁷ Annex 102. Decision No. 2006-008979 of the Constitutional Chamber, dated June 23, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰⁸ Annex 102. Decision No. 2006-008979 of the Constitutional Chamber, dated June 23, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²⁰⁹ Annex 102. Decision No. 2006-008979 of the Constitutional Chamber, dated June 23, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²¹⁰ Annex 102. Decision No. 2006-008979 of the Constitutional Chamber, dated June 23, 2006. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²¹¹ Annex 103. Judgment No. 680-2007 of the Criminal Court of the First Judicial Circuit of San José, dated July 17, 2007. Pages 5486-5489. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²¹² Annex 103. Judgment No. 680-2007 of the Criminal Court of the First Judicial Circuit of San José, dated July 17, 2007. Pages 5486-5489. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²¹³ Annex 104. Decision on the length of the prison sentence to be imposed on Jorge Martínez Meléndez by the Criminal Court of the First Judicial Circuit of San José, dated August 23, 2007. Annex to petitioner’s communication of March 26, 2011.

²¹⁴ Annex 105. Submission of Ricardo Barahona Montero to Constitutional Chamber of the Supreme Court of Justice, dated August 28, 2007. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

²¹⁵ Annex 106. Decision No. 2007-013057 of the Constitutional Chamber of the Supreme Court of Justice, dated September 7, 2007. Annex to petitioner’s communication received in the IACHR on October 11, 2006.

January 17, 2008.²¹⁶ On January 29, 2008, the Criminal Court of the First Judicial Circuit of San José extended Mr. Martínez' preventive detention by two additional months based on the "high penalty with which the defendants were punished."²¹⁷

139. On February 1, 2008, the Constitutional Chamber granted the petition on the grounds that Mr. Martínez "was in custody without any warrant being in effect to legitimately order the deprivation of his liberty" until the decision of January 29, 2008 of the Criminal Court of the First Judicial Circuit of San José.²¹⁸ Notwithstanding, it did not order his release because of the existence of the aforementioned decision.²¹⁹

140. On March 11, 2008, the Third Chamber granted the petition for a writ of reversal of judgment on cassation filed by Mr. Martínez.²²⁰ Mr. Martínez alleged violation of the principle of impartiality on the grounds that one of the judges who took part in issuing the decision of July 30, 2004, when the preventive detention of one of the defendants was assessed, subsequently was a member of the trial court panel that issued the conviction.²²¹ The Third Chamber found that said situation did not constitute a violation of due process.²²² However, two of the judges issued a dissenting opinion in favor of petition filed by him, finding that "the flaw that is the subject of the claim took place and its consequence is that the judgment of conviction should be vacated" inasmuch as "in the preventive detention decision, a ruling was also made on the perpetration and guilt that are attributed to the defendants based on the facts."²²³

141. Mr. Martínez also alleged that there was erroneous assessment of the evidence. The Third Chamber rejected said argument and held that "it cannot be contested on cassation, as can be gathered by a simple reading of Article 443 of the Code (...), to object to the veracity of the facts set forth in the charging document."²²⁴ The Third Chamber rejected other arguments based on the fact that they had been previously made and adjudicated by the trial court.

²¹⁶ Annex 107. Submission of Ricardo Barahona Montero to Constitutional Chamber of the Supreme Court of Justice, dated January 24, 2008. Annex to petitioner's communication received at the IACHR on October 11, 2006.

²¹⁷ Annex 108. Decision No. 2008-01650 of the Constitutional Chamber of the Supreme Court of Justice, dated February 1, 2008. Annex to petitioner's communication received in the IACHR on October 11, 2006.

²¹⁸ Annex 108. Decision No. 2008-01650 of the Constitutional Chamber of the Supreme Court of Justice, dated February 1, 2008. Annex to petitioner's communication received in the IACHR on October 11, 2006.

²¹⁹ Annex 108. Decision No. 2008-01650 of the Constitutional Chamber of the Supreme Court of Justice, dated February 1, 2008. Annex to petitioner's communication received in the IACHR on October 11, 2006.

²²⁰ Annex 109. Decision No. 2008-00232 of the Third Chamber of the Supreme Court of Justice, dated March 11, 2008. Annex to petitioner's communication received in the IACHR on March 10, 2010.

²²¹ Annex 109. Decision No. 2008-00232 of the Third Chamber of the Supreme Court of Justice, dated March 11, 2008. Annex to petitioner's communication received in the IACHR on March 10, 2010.

²²² Annex 109. Decision No. 2008-00232 of the Third Chamber of the Supreme Court of Justice, dated March 11, 2008. Annex to petitioner's communication received in the IACHR on March 10, 2010.

²²³ Annex 109. Decision No. 2008-00232 of the Third Chamber of the Supreme Court of Justice, dated March 11, 2008. Annex to petitioner's communication received in the IACHR on March 10, 2010.

²²⁴ Annex 109. Decision No. 2008-00232 of the Third Chamber of the Supreme Court of Justice, dated March 11, 2008. Annex to petitioner's communication received in the IACHR on March 10, 2010.

142. Based on information from the State, Mr. Martínez filed a motion for review of conviction, which was denied by the Third Chamber in 2012.²²⁵ It noted that the alleged victim only argued the alleged flaw of erroneous basis for the punishment, which was dismissed by the Chamber on the grounds that it was not of “a legal nature.”

5. Guillermo Rodríguez Silva and Martín Rojas Hernández

143. On February 1, 2004, a complaint was filed against Martín Rojas and Guillermo Rodríguez²²⁶ for the crime of rape. On that day, both individuals were taken into custody under arrest. According to the case file, documents from the preliminary investigation statements of both of them appear on the record in which a prosecutor explains to them in detail “the crimes they are charged with, what the evidence is against them (...) that if they make a statement they have the right to offer exculpatory evidence or clarify any facts they deem pertinent.”²²⁷

144. The Criminal Court for Extraordinary Matters of San José ordered the preventive detention of Martín Rojas and Guillermo Rodríguez for a term of four months given the high penalty to which they could be subject.²²⁸ The measure was extended at different times in order to “complete the process of investigation.”²²⁹

145. On December 2, 2004 the Trial Court of San José convicted i) Guillermo Rodríguez as the perpetrator responsible for the crimes of rape and sexual abuse and sentenced him to a total of 72 years in prison; and ii) Martín Rojas as a perpetrator responsible for the crimes of rape and sentenced him to a total of 28 years in jail.²³⁰

146. On January 19, 2005, the public defender of Guillermo Rodríguez filed a petition for a writ of reversal on cassation of the conviction alleging that i) the rules of the Code of Criminal Procedure were not observed inasmuch as there is no consistency between the formal charges leveled by the Office of the Public Prosecutor and the crimes adjudged as proven by the court; ii) the evidence introduced is not compelling enough to find responsibility; and iii) the basis for the punishment is

²²⁵ Annex 46. State’s submission of June 21, 2013.

²²⁶ Annex 110. Report 019-DSFV-CI-04 of the Department of Criminal Investigations, dated February 1, 2004. Case File No. 04-002096-042-Pe. Office of the Prosecutor for Extraordinary Matters Second Judicial Circuit San José. Investigation File. Pages 1-3.

²²⁷ Annex 111. Initial Statements of Martín Rojas and Guillermo Rodríguez. Case File No. 04-002096-042-Pe. Office of the Prosecutor for Extraordinary Matters Second Judicial Circuit San José. Investigation File. Pages 20-25.

²²⁸ Annex 110. Decision ordering preventive custody issued by the Criminal Court for Extraordinary Matters of San Jose. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Precautionary Measures files. Pages 10-12.

²²⁹ Annex 110. Decision extending the term of the precautionary measure from the Criminal Court of the Third Judicial Circuit of San José. Case File. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Precautionary Measures files. Pages 36-42; Annex 110. Decision extending the term of the precautionary measure of the Criminal Court of the Defenseless. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Precautionary Measures files. Pages 63-75.

²³⁰ Annex 111. Judgment No. 248-04 of the Trial Court of San José, dated December 2, 2004. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Investigation files. Pages 261-291.

inadequate.²³¹ That same day, Martín Rojas' public defender filed a petition for reversal on cassation of the conviction alleging i) failure to precisely define the crime that the court found as proven in order to convict Mr. Rojas; ii) violation of due process on the grounds that the judgment of conviction was based on an imprecise charge; iii) the basis for the punishment is inadequate; iv) erroneous application of substantive law.²³²

147. On May 30, 2005, the Third Chamber denied the petitions for reversal on cassation.²³³ With regard to the arguments pertaining to establishing the crimes, the Third Chamber reiterated the view of the trial court in noting that "it is unanimously certain with regard to some of the crimes of charging document."²³⁴ It also noted that "the crimes deemed proven (...) are supported in the evidence to sustain the guilt of the defendants."²³⁵

148. The Commission notes that a public defender of Alajuela noted in a pleading that, after examining the judgment of conviction, the motion for review of conviction would be rendered out-of-order.²³⁶ He contended that the basis given by the court "is consistent and specific, the analysis of the facts is clear and it does not present contradictions or gaps." He also argued that because the two petitions for reversal on cassation were denied it "limits [the] possibilities of defense (...) inasmuch as based on the rules in force as to admissibility of a motion for review of conviction, we cannot retrace our steps or re-allege arguments that have been previously ruled on by [the Third Chamber]."²³⁷

149. In a communication received on July 22, 2011, Guillermo Rodríguez filed a motion to review conviction before the Third Chamber of the Supreme Court of Justice.²³⁸ He alleged that review of his judgment of conviction is not possible, though it is provided for under the American Convention.²³⁹ He also contended that there was a due process violation on the grounds that i) the

²³¹ Annex 112. Submission of Dora Camacho, public defender of Guillermo Rodríguez, dated January 17, 2005. Annex to petitioner's communication of September 20, 2006.

²³² Annex 111. Submission of Alejandro Rechnitzer, public defender of Martín Rojas, dated January 17, 2005. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Investigation files. 292-301.

²³³ Annex 111. Decision No. 2005-00529 of the Third Chamber of the Supreme Court of Justice, dated May 30, 2005. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Investigation files. Pages 318-332.

²³⁴ Annex 111. Decision No. 2005-00529 of the Third Chamber of the Supreme Court of Justice, dated May 30, 2005. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Investigation files. Pages 318-332.

²³⁵ Annex 111. Decision No. 2005-00529 of the Third Chamber of the Supreme Court of Justice, dated May 30, 2005. Case File No. 04-002096-042-Pe. Office of the Prosecuting Attorney for Extraordinary Matters of the Second Judicial Circuit of San José. Investigation files. Pages 318-332.

²³⁶ Annex 113. Undated submission of Óscar Rojas Herrera, public defender of Alajuela. Annex to petitioner's communication of September 20, 2006.

²³⁷ Annex 113. Undated submission of Óscar Rojas Herrera, public defender of Alajuela. Annex to petitioner's communication of September 20, 2006.

²³⁸ Annex 114. Submission filed by Guillermo Rodríguez to the Third Chamber of the Supreme Court of Justice, dated July 22, 2011. Annex to petitioner's communication of October 4, 2011.

²³⁹ Annex 114. Submission filed by Guillermo Rodríguez to the Third Chamber of the Supreme Court of Justice, dated July 22, 2011. Annex to petitioner's communication of October 4, 2011.

crimes were not established as to time and space; and ii) the experts' and witnesses' testimony was confusing and conflicting.²⁴⁰

6. Manuel Hernández Quesada

150. On November 23, 2001, the Office of the Public Prosecutor of Alajuela brought a criminal complaint against Manuel Hernández Quesada for the crimes of rape and sexual abuse. On July 16, 2003, the Trial Court of Alajuela convicted Mr. Hernández for two counts of the crime of statutory rape and one count of sexual abuse of a minor in concurrence with each other. The Trial Court sentenced him to a 24-year prison term.²⁴¹

151. On July 14, 2003, Manuel Hernández filed a petition for a writ of reversal of conviction on cassation.²⁴² He alleged violation of due process and the right to a defense in connection with a lack of diligence of the public defenders. He contended that no adequate technical defense was mounted inasmuch as the public defender i) did not file motions on his behalf despite the irregularities in the proceedings; ii) he did not contest, request clarification or addition to any of the expert witness reports given in the case; iii) he did not object to the charges as formulated by the Office of the Public Prosecutor; and iv) he advised the defendant to refrain from taking the stand to testify.²⁴³

152. On November 28, 2003, the Third Chamber denied the petition.²⁴⁴ The Third Chamber held that Mr. Hernández did not explain the irregularities committed by the three public defenders, who were appointed to him during the proceeding.²⁴⁵ It noted that "the contention is an overt, subjective disagreement with the decision of the Trial Court."²⁴⁶ It also held that the arguments made by him do not show "how what was admitted to the record in each of the expert witness reports could have been disproven."²⁴⁷

153. On November 21, 2005, Mr. Hernández filed a petition for writ of habeas corpus relief alleging a violation of Article 8.2.h of the American Convention.²⁴⁸ On October 30, 2006, he filed a

²⁴⁰ Annex 114. Submission filed by Guillermo Rodríguez to the Third Chamber of the Supreme Court of Justice, dated July 22, 2011. Annex to petitioner's communication of October 4, 2011.

²⁴¹ Annex 115. Judgment No. 332-003 of the Trial Court of Alajuela, dated June 16, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴² Annex 116. Submission of petition for reversal on cassation, dated July 14, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴³ Annex 116. Submission of petition for reversal on cassation, dated July 14, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴⁴ Annex 117. Decision No. 2003-01104 of the Third Chamber of the Supreme Court of Justice, dated November 28, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴⁵ Annex 117. Decision No. 2003-01104 of the Third Chamber of the Supreme Court of Justice, dated November 28, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴⁶ Annex 117. Decision No. 2003-01104 of the Third Chamber of the Supreme Court of Justice, dated November 28, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴⁷ Annex 117. Decision No. 2003-01104 of the Third Chamber of the Supreme Court of Justice, dated November 28, 2003. Annex to petitioners' communication of July 22, 2007.

²⁴⁸ Annex 118. Submission of petition for habeas corpus writ, dated November 21, 2005. Annex to petitioners' communication of July 22, 2007.

request for constitutional relief under *amparo* alleging a failure to formally charge him.²⁴⁹ The IACHR does not have information on the decisions issued with regard to either the habeas corpus or the *amparo* petitions.

154. Lastly, on October 7, 2006, Mr. Hernández filed a motion for review of conviction alleging failure to formally charge him for the crimes, to introduce and assess under the law evidence in the criminal proceeding.²⁵⁰ On May 23, 2007, the Third Chamber denied the motion to review noting that the crimes for which he was charged and subsequently sentenced “were formally brought against him.”²⁵¹

7. Miguel Mora Calvo

7.1. Judgment No. 736-98

155. On September 24, 1998, the Trial Court of Alajuela convicted Mr. Miguel Mora Calvo, for the crime of organization for international and domestic drug trafficking against public health, sentencing him to a nine-year prison term.²⁵²

156. On August 11, 2000, the Third Chamber denied the motion for review of conviction filed by Mr. Mora alleging a violation of due process because he was not advised of his right to not testify against himself.²⁵³ The Third Chamber held that the Constitutional Chamber has noted that said situation in an abbreviated [guilty plea] proceeding such as the one Mr. Mora was undergoing “does not constitute a due process infringement.”

157. On May 28, 2008, the Court of Criminal Cassation of the Second Judicial Circuit of Alajuela denied the motion for review of conviction filed by Mr. Mora on the grounds that he was undergoing an abbreviated proceeding [to plead guilty] and he was not advised of his right to silence at the time of accepting the facts.²⁵⁴ The Court of Cassation noted that said arguments were previously made during the hearing on the motion for review of conviction, which was denied.

7.2. Judgment No. 632-2000

158. On December 5, 2000, the Trial Court of Goicoechea found Miguel Mora guilty of the crime of possession, transportation and storage of drugs, with the aggravating factor of involving

²⁴⁹ Annex 118. Submission of petition for habeas corpus writ, dated November 21, 2005. Annex to petitioners’ communication of July 22, 2007.

²⁵⁰ Annex 119. Submission of motion for review of conviction, dated October 7, 2006. Annex to petitioners’ communication of July 22, 2007.

²⁵¹ Annex 120. Decision No. 2007-00509 of the Third Chamber of the Supreme Court of Justice, dated May 23, 2007. Annex to petitioners’ communication of August 27, 2007.

²⁵² Reference to judgment No. 736-98 in: Annex 121. Decision No. 2000-000917 of the Third Chamber of the Supreme Court of Justice, dated August 11, 2000. Annex to State’s communication of December 8, 2008.

²⁵³ Annex 121. Decision No. 2000-000917 of the Third Chamber of the Supreme Court of Justice, dated August 11, 2000. Annex to State’s communication of December 8, 2008.

²⁵⁴ Annex 122. Decision No. 2008-00236 of the Court of Criminal Cassation of the Third Judicial Circuit of Alajuela, dated May 28, 2008. Annex to State’s communication of December 8, 2008.

international trafficking and of organizing three individuals to commit the crime. The Trial Court sentenced him to a fifteen-year prison term.²⁵⁵

159. On September 16, 2009, the Third Chamber denied the motion for review of conviction brought by Mr. Mora Calvo on April 30, 2007.²⁵⁶ Mr. Mora alleged violation of the principle of impartiality on the grounds that one of the members of the sentencing court panel had sat on the panel in the issuing of a decision to grant an extension of his preventive detention term. The Third Chamber noted that said situation did not affect the impartiality of the judge inasmuch as the decision did not involve any considerations on the merits.²⁵⁷ Two judges joined each other in a dissenting opinion, wherein they indicated that the situation laid out by Mr. Mora constitutes a violation of the right to have an impartial judge pursuant to Article 8.1 of the American Convention on the grounds that “there is no question that the judges have had necessarily to assess evidence to provide a basis in the facts for the precautionary measure [of preventive detention].”²⁵⁸

7.3. Remedies pursued by Mora Calvo outside of the criminal proceedings

160. On May 1, 2005, the Constitutional Chamber flatly denied the petition for *amparo* relief filed by Mr. Mora, arguing that he is deprived of his liberty arbitrarily since “he is unable to appeal the conviction handed down against him.”²⁵⁹ The Constitutional Chamber stated that it is not its duty “to replace the criminal jurisdiction or act as a court of review in the subject matter.”²⁶⁰ It further noted that if Mr. Mora believes that during the processing of his case and conviction there were due process violations, this issue should be raised through the procedure for review of judgment.

161. On January 6, 2006, the Constitutional Chamber denied the petition for habeas corpus relief filed against the Third Chamber by Mr. Mora, alleging a violation under Article 8.2.h of the American Convention and pursuant to the provisions of the *Herrera Ulloa v. Costa Rica* case judgment. The Constitutional Chamber held that said argument has been examined thoroughly and that the principle of the right to appeal a judgment to a higher court “has been satisfied with the extraordinary remedy of the writ for reversal on cassation.”²⁶¹

8. Damas Vega Atencio

²⁵⁵ Reference to judgment No. 632-2000 in: Annex 123. Official Letter of Miguel Mora, dated April 30, 2007. Annex to State’s communication of December 8, 2008.

²⁵⁶ Annex 124. Decision No. 2009-01158 of the Third Chamber of the Supreme Court of Justice, dated September 16, 2009. Annex to petitioner’s communication received at the IACHR on March 15, 2010.

²⁵⁷ Annex 124. Decision No. 2009-01158 of the Third Chamber of the Supreme Court of Justice, dated September 16, 2009. Annex to petitioner’s communication received at the IACHR on March 15, 2010.

²⁵⁸ Annex 124. Decision No. 2009-01158 of the Third Chamber of the Supreme Court of Justice, dated September 16, 2009. Annex to petitioner’s communication received at the IACHR on March 15, 2010.

²⁵⁹ Annex 125. Decision No. 2005-06480 of the Third Chamber of the Supreme Court of Justice, dated May 1, 2005. Annex to petitioner’s communication of August 28, 2006.

²⁶⁰ Annex 125. Decision No. 2005-06480 of the Third Chamber of the Supreme Court of Justice, dated May 1, 2005. Annex to petitioner’s communication of August 28, 2006.

²⁶¹ Annex 126. Decision No. 2006-000052 of the Constitutional Chamber of the Supreme Court of Justice, dated January 6, 2006. Annex to petitioner’s communication of August 28, 2006.

8.1. Criminal Cases

162. On October 2, 2002, the Court of the Judicial Circuit of the Southern Zone issued a conviction finding Damas Vega Atencio and Kattia Sánchez to be jointly guilty of two counts of the crime of attempted aggravated homicide and aggravated robbery stemming from a single act (*en concurso ideal*), issuing a sentence of a 20-year prison term.²⁶² Then on April 4, 2002, the Court of the First Judicial Circuit of the Atlantic Zone issued a sentence of a prison term of three years and 4 months for the crime of aggravated robbery.²⁶³ On December 3, 2003, the Sentence Execution Court of Alajuela unified the convictions.²⁶⁴ Hereunder, an account is provided of the motions filed with regard to each judgment of conviction.

8.1.1. Judgment No. 106-2002

163. On October 29, 2002, the legal defense team of Mr. Vega filed a petition for writ of reversal of conviction on cassation alleging: i) failure to provide a basis for the conviction inasmuch as it was only based on police conjecture and presumption; ii) conflicting testimony; and iii) violation of the rules of the standard of free and reasoned judgment (*sana crítica*).²⁶⁵ On March 28, 2003, the Third Chamber denied the petition for reversal on cassation. It noted that “it is evident that the court set forth the reasons why it finds the defendants criminally responsible and are convicted.”²⁶⁶

164. On October 20, 2003, Mr. Vega filed a motion for review of conviction on the grounds of due process violation for improper basis for the punishment and assessment of the criminal offenses.²⁶⁷ On April 16, 2004, the Third Chamber granted the motion to review with regard to the argument of failure to provide a basis for the punishment.²⁶⁸ However, on October 12, 2004, Mr. Vega filed a motion to dismiss the motion to review judgment,²⁶⁹ which was granted by the Third Chamber on April 27, 2005.²⁷⁰

²⁶² Annex 127. Judgment No. 106-2002 of the Court of the Judicial Circuit of the South Zone, dated October 2, 2002. Case File No. 99-000506-062PE. Pages 579-636. Annex to petitioner’s submission of July 16, 2007.

²⁶³ Annex 128. Decision No. 2677-03 of the Sentence Execution Court of Alajuela, of December 3, 2003. Annex to compact disc attached by the State in its communication of October 25, 2010.

²⁶⁴ Annex 127. Decision No. 2677-03 of the Sentence Execution Court of Alajuela, of December 3, 2003. Annex to compact disc attached by the State in its communication of October 25, 2010.

²⁶⁵ Annex 127. Submission of petition for writ of reversal on cassation, dated October 29, 2002. Case File No. 99-000506-062PE. Pages 638-696. Annex to petitioner’s submission of July 16, 2007.

²⁶⁶ Annex 127. Decision No. 2003-00214 of the Third Chamber of the Supreme Court of Justice, dated March 28, 2003. Case File No. 99-000506-062PE. Pages 721-728. Annex to petitioner’s submission of July 16, 2007.

²⁶⁷ Annex 127. Submission of motion for review of conviction, dated October 20, 2003. Case File No. 99-000506-062PE. Pages 755-768. Annex to petitioner’s submission of July 16, 2007.

²⁶⁸ Annex 127. Decision No. 2004-00357 of the Third Chamber of the Supreme Court of Justice, dated April 16, 2004. Case File No. 99-000506-062PE. Pages 775-778. Annex to petitioner’s submission of July 16, 2007.

²⁶⁹ Annex 127. Submission of Mr. Vega, dated October 12, 2004. Case File No. 99-000506-062PE. Page 802. Annex to petitioner’s submission of July 16, 2007.

²⁷⁰ Annex 127. Decision No. 2005-00331 of the Third Chamber of the Supreme Court of Justice, dated April 27, 2005. Case File No. 99-000506-062PE. Pages 817-820. Annex to petitioner’s submission of July 16, 2007.

165. On March 9, 2005, the Constitutional Chamber outright denied the petition for habeas corpus relief filed by Mr. Vega.²⁷¹ The Constitutional Chamber held that “possible disagreements or differences of opinion that may arise with regard to proper processing of a review of judgment of conviction are not properly settled in this court.” It found that if Mr. Vega meant that he was unable to exercise the right to appeal a judgment to a higher court, “that involves an object properly addressed in a criminal court.”²⁷²

166. Additionally, on April 15, 2005, the Constitutional Chamber outright denied the petition for a writ of habeas corpus filed on April 13 that year with regard to the inability to exercise the right to file a motion to appeal the convictions.²⁷³ The Constitutional Chamber noted that the judgment “may not be contested in any way in this court.”²⁷⁴ On April 29, that year, the Constitutional Chamber fully denied the petition for habeas corpus relief filed by Mr. Vega on April 26 that year, on the same grounds as in the prior ruling it issued.²⁷⁵

167. On June 14, 2005, the Constitutional Chamber flatly denied the petition for constitutional relief on *amparo* filed by Mr. Vega on June 6, 2005, as it pertained to the violation of Article 8.2.h of the American Convention.²⁷⁶ The Constitutional Chamber noted that “the principle of the right to appeal a judgment before a higher court has been satisfied with the extraordinary remedy of the writ of cassation.” On June 28, 2005, the Constitutional Chamber also outright denied another petition for writ of *amparo* relief pertaining to the violation of Article 8.2.h of the American Convention toting that “this Chamber does not constitute another body within the established criminal procedure.”²⁷⁷

168. On January 30, 2006, Mr. Vega filed a motion for review of conviction alleging that i) he was not involved in the crimes; ii) illegal evidence was used; and iii) the basis for the conviction was improper.²⁷⁸ On June 7, 2006, the Third Chamber granted the motion based on the arguments of a due process violation of illegal evidence and erroneous application of substantive law.²⁷⁹

8.1.2. Judgment No. 92-2002

²⁷¹ Annex 129. Decision No. 2005-02583 of the Constitutional Chamber of the Supreme Court of Justice, dated March 9, 2005. Annex to petitioner’s communication of August 1, 2005.

²⁷² Annex 129. Decision No. 2005-02583 of the Constitutional Chamber of the Supreme Court of Justice, dated March 9, 2005. Annex to petitioner’s communication of August 1, 2005.

²⁷³ Annex 130. Decision No. 2005-04055 of the Constitutional Chamber of the Supreme Court of Justice, dated April 15, 2005. Annex to petitioner’s communication of August 1, 2005.

²⁷⁴ Annex 130. Decision No. 2005-04055 of the Constitutional Chamber of the Supreme Court of Justice, dated April 15, 2005. Annex to petitioner’s communication of August 1, 2005.

²⁷⁵ Annex 131. Decision 2005-05080 of the Third Chamber of the Supreme Court of Justice, dated April 29, 2005. Annex to petitioner’s communication of August 1, 2005.

²⁷⁶ Annex 132. Decision No. 2005-07329 of the Constitutional Chamber of the Supreme Court of Justice, dated June 14, 2005. Annex to petitioner’s communication of June 21, 2006.

²⁷⁷ Annex 133. Decision No. 2005-08252 of the Constitutional Chamber of the Supreme Court of Justice, dated June 28, 2005. Annex to petitioner’s communication of June 21, 2006.

²⁷⁸ Annex 127. Submission of motion for review of conviction, dated January 30, 2006. Case File No. 99-000506-062PE. Pages 832-867. Annex to petitioner’s submission of July 16, 2007.

²⁷⁹ Annex 134. Decision No. 2006-00529 of the Third Chamber of the Supreme Court of Justice, dated June 7, 2006. Case File No. 99-000506-062PE. Pages 882-888. Annex to petitioner’s submission of July 16, 2007.

169. With regard to judgment No. 92-2002, on November 4, 2003, a motion for review of conviction was filed alleging failure to provide a basis for the punishment and improper application of the conduct to the criminal offense (*tipificación*).²⁸⁰ The motion was amended and expanded on January 12, 2004, alleging that illegal evidence and a search without a warrant of the court were introduced.²⁸¹

170. On March 11, 2004, the Court of Criminal Cassation granted the motion for review of conviction.²⁸² It held that “based on the analysis set forth in the judgment, it was proven that the defendant (...) impersonated an authority and with a weapon in hand threatened the three occupants of the vehicle (...) whom he forced to hand over to him all of the property they had on them.”²⁸³

171. On April 19, 2005, Mr. Vega filed a motion for review of conviction alleging that he was unable to enjoy his right to appeal judgment to a higher court and, therefore, it constituted a violation of Article 8.2.h of the Convention.²⁸⁴ On May 18, 2005, he also contended that his right to a defense was violated on the grounds that he had just then received the assistance of a public defender days after being arrested and taken into preventive detention.²⁸⁵

172. On October 12, 2005, the Court of Criminal Cassation denied the motion for review of conviction filed by Mr. Damas.²⁸⁶ With regard to the allegation of the violation of the right to appeal judgment, the Court of Criminal Cassation noted that he does not prove, “through the petition for writ of reversal on cassation, what the obstacle is that precludes him from contesting the facts or else proving improper assessment of the evidence.”²⁸⁷ With regard to the allegation on violation of the right to a defense, because he claims he was not assisted by a defender until after he was ordered to be placed in preventive detention, the Court of Criminal Cassation noted that based on the evidence in the case file, it is apparent that “he was always assisted by a technical defense expert.”²⁸⁸ It further noted that said aspect was never raised during the pretrial phase or at the preliminary hearing.²⁸⁹

²⁸⁰ Annex 134. Submission of motion for review of conviction, dated November 4, 2003. Case File No. 01-002231-063PE1. Pages 67-70. Annex to petitioner’s submission of July 16, 2007.

²⁸¹ Annex 134. Amendment and addition to motion for review of conviction, dated January 12, 2004. Case File No. 01-002231-063PE1. Pages 74-82. Annex to petitioner’s submission of July 16, 2007.

²⁸² Annex 134. Decision No. 2004-0232 of the Court of Criminal Cassation, dated March 11, 2004. Case File No. 01-002231-063PE1. Pages 95-99. Annex to petitioner’s submission of July 16, 2007.

²⁸³ Annex 134. Decision No. 2004-0232 of the Court of Criminal Cassation, dated March 11, 2004. Case File No. 01-002231-063PE1. Pages 95-99. Annex to petitioner’s submission of July 16, 2007.

²⁸⁴ Annex 134. Submission of motion for review of conviction, dated April 19, 2005. Case File No. 01-002231-063PE1. Pages 105-110. Annex to petitioner’s submission of July 16, 2007.

²⁸⁵ Annex 134. Case File No. 01-002231-063PE1. Pages 120-123. Annex to petitioner’s submission of July 16, 2007.

²⁸⁶ Annex 135. Decision No. 2005-1030 of the Court of Criminal Cassation, dated October 12, 2005. Annex to petitioner’s communication of May 28, 2007.

²⁸⁷ Annex 135. Decision No. 2005-1030 of the Court of Criminal Cassation, dated October 12, 2005. Annex to petitioner’s communication of May 28, 2007.

²⁸⁸ Annex 135. Decision No. 2005-1030 of the Court of Criminal Cassation, dated October 12, 2005. Annex to petitioner’s communication of May 28, 2007.

²⁸⁹ Annex 135. Decision No. 2005-1030 of the Court of Criminal Cassation, dated October 12, 2005. Annex to petitioner’s communication of May 28, 2007.

173. Mr. Damas Vega filed three motions for review of conviction, which were consolidated into one motion on October 1, 2010, by the Third Chamber. In these motions, he argued violation of the principle of impartiality because the judge, who issued a preventive detention order against him, was the same judge who ruled on the appeal of said measure.²⁹⁰

174. On August 29, 2012, the Third Chamber granted the motion for review of conviction.²⁹¹ It noted that judicial officials misplace the file of precautionary measures [for preventive detention].²⁹² The Third Chamber held that the judge who issued the preventive detention order on August 25, 1999, examined the facts and had direct contact with the testimonial evidence, and subsequently did not recuse himself from hearing the case at the oral and public trial stage.²⁹³ It also noted that “his considerations at the time of ruling on the [preliminary] investigation stage constituted an advance opinion that caused him to lose the objectivity necessary to stand in judgment of the instant case” and that “the principle of impartiality of the trier of fact was affected.”²⁹⁴

175. The Third Chamber also found that the 20-year prison term given to Mr. Vega was not sufficiently supported. It held that “the imposition of that amount of punishment, for a crime of attempted homicide, is unusual (...) it does not lay out the reasons why Damas Vega’s sentence was not reduced (...) nor are the criteria of proportionality, suitability or necessity addressed.”²⁹⁵ For these reasons, the Third Chamber ordered the case to be retried with a new make-up of the panel sitting in judgment.²⁹⁶

176. On February 8, 2013, the Third Chamber decided to extend the preventive detention of Mr. Vega for a term of six months in order to ensure his presence at the hearings of the defendants.²⁹⁷ On May 16, 2013, the Trial Court of the Southern Zone dismissed the case with prejudice because the statute of limitations had lapsed in favor of Damas Vega Atencio, Kattia Sánchez and Dinnier Concepción for the crime of two counts of attempted aggravated homicide in concurrence with aggravated robbery and one count of aggravated robbery. It held that the crimes were time-barred as of October 2, 2007, as

²⁹⁰ Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received at the IACHR on September 3, 2013.

²⁹¹ Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

²⁹² Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

²⁹³ Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

²⁹⁴ Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

²⁹⁵ Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

²⁹⁶ Annex 136. Decision 2012-01340 of the Third Chamber of the Supreme Court of Justice, dated August 29, 2012. Annex to petitioner’s communication received in the IACHR on September 3, 2013..

²⁹⁷ Annex 137. Decision 2013-00071 of the Third Chamber of the Supreme Court of Justice, dated February 8, 2013. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

five years had elapsed since the judgment of October 2, 2002 was handed down, and therefore this judgment was vacated.²⁹⁸

8.2. CAI La Reforma prison facilities

177. Damas Vega and other individuals deprived of liberty filed a complaint with the Ministry of Justice and the Office of the Comptroller of Services alleging that on July 20, 2006, a search was conducted in which they were subjected to cruel, inhuman and degrading treatment, as well as acts of sexual violence.²⁹⁹ On July 18, 2007, the Court of Sentence Execution of Alajuela found it did not have jurisdiction to hear claims on these crimes because it found that it is not its duty but instead is the duty of the Legal Department of the Ministry of Justice and Grace.³⁰⁰ Next, on May 7, 2009, the Department of Administrative Proceedings of the Ministry of Justice and Grace ruled it is unable to prove responsibility of any of the prison guards and therefore it is not appropriate to impose any sanction. It also noted that there is no certainty that the crimes that are the subject of the instant proceeding have actually taken place.³⁰¹

178. On September 22, 2006, the Constitutional Chamber dismissed the petition for constitutional relief on *amparo* filed by Mr. Damas Vega against the director and other officials of CAI La Reforma prison.³⁰² The alleged victim contended that he has not had access to medical care nor has he received treatment for his condition as a diabetic. The Constitutional Chamber noted that “it is evident that (...) he has received periodical medical care.”³⁰³

179. On October 2, 2006, Mr. Vega filed a grievance with the Sentence Execution Judge, calling attention to the poor food provided at the CAI La Reforma prison.³⁰⁴ On March 15, 2007, the Sentence Execution Court denied said grievance on the grounds that “the quantities and types of foods provided to prisoners are appropriate.”³⁰⁵ It found that there is no “inadequate management in the preparation of food for the population deprived of liberty.”³⁰⁶

²⁹⁸ Annex 138. Decision to dismiss with prejudice on grounds of lapsing of statute of limitations of criminal action issued by the Trial Court of the South Zone, dated May 16, 2013. Annex to petitioner’s communication received in the IACHR on September 3, 2013.

²⁹⁹ Annex 139. Complaint dated July 24, 2006. Annex to compact disc attached by the State to its communication of October 25, 2010.

³⁰⁰ Annex 140. Decision No. 103-09 of the Sentence Execution Court of Alajuela, dated July 18, 2007. Annex to compact disc attached by the State in its communication of October 25, 2010.

³⁰¹ Annex 141. Final Decision No. 010-223-2006 of the Department of Administrative Proceedings of the Ministry of Justice and Grace, dated May 7, 2009. Annex to compact disc attached by the State in its communication of October 25, 2010..

³⁰² Annex 142. Decision No. 2006-014040 of the Constitutional Chamber, dated September 22, 2006. Annex to petitioner’s communication of December 11, 2006.

³⁰³ Annex 142. Decision No. 2006-014040 of the Constitutional Chamber, dated September 22, 2006. Annex to petitioner’s communication of December 11, 2006.

³⁰⁴ Annex 143. Submission of grievance, dated October 2, 2006. Annex to petitioner’s communication of December 11, 2006.

³⁰⁵ Annex 144. Decision No. 899-07 of the Sentence Execution Court, dated March 15, 2007. Annex to petitioner’s communication of July 16, 2007.

³⁰⁶ Annex 144. Decision No. 899-07 of the Sentence Execution Court, dated March 15, 2007. Annex to petitioner’s communication of July 16, 2007.

180. On March 22, 2007, the Sentence Execution Court denied the grievance filed by Mr. Vega relating to the lack of medical care. It noted that “it is evident that the individual deprived of liberty has not been restricted in his right to health inasmuch as his ailment has been treated in a timely fashion.” It ordered the person in charge of the area of health at CAI La Reforma prison to take “the pertinent steps so that adequate medical care continues to be provided to him.”³⁰⁷

181. Mr. Vega filed several petitions and motions relating to i) the denial of a request for an operation for the diabetes he suffers from; ii) the lack of access to health care and ambulance service; and iii) being subject to a search in which there was “groping in the genital area and inmates’ belongings were destroyed and stolen. The petitions and motions were denied on November 6 and 9 of 2007, and October 30 of 2008 due to the lack of evidence.”³⁰⁸

182. Subsequently, Damas Vega filed a grievance alleging that on September 28, 2008, he was transferred to maximum security without being apprised of the reasons and that he was held in solitary confinement for 27 hours.³⁰⁹ On November 20, that year, the Court of Sentence Execution of Alajuela accepted his claim.³¹⁰ The Court held that the prison authority did not disprove the allegations of Mr. Vega and, therefore, a variety of situations are apparent, which “take place within the dynamics of the facilities and are troubling and worrying to the undersigning judge.”³¹¹

183. The Court vacated the measure that was in effect on Mr. Vega and ordered “immediate reinstatement of his rights.” It noted that “the necessary security measures must be taken to ensure the physical integrity of the inmate and the rest of the inmate population.”³¹²

V. LEGAL ANALYSIS

184. The Commission will examine the proven facts by first addressing the allegations common to the body of joined petitions, to wit, the alleged violation of the right set forth in Article 8.2.h of the Convention. The Commission notes that some of the petitions address other violations of the American Convention, including allegations on the right to a competent, independent and impartial judge; the right to a defense; the right to personal liberty; and the right to humane treatment. After dealing with the allegation common to all of the petitions, the Commission will examine said rights as they pertain to each particular person or group of persons, who alleged violation of these rights in their case.

³⁰⁷ Annex 144. Decision No. 959-2007 of the Sentence Execution Court, dated March 22, 2007. Annex to petitioner’s communication of July 16, 2007.

³⁰⁸ Annex 146. Decisions Numbers. 2007-015929; No. 2007-016081; and No. 2008-016309 dated November 6 and 9, 2007, and October 30, 2008. Annex to compact disc attached by the State in its communication of October 25, 2010.

³⁰⁹ Annex 147. Decision of the Sentence Execution Court of Alajuela, dated November 20, 2008. Annex to petitioner’s communication received December 9, 2011.

³¹⁰ Annex 147. Decision of the Sentence Execution Court of Alajuela, dated November 20, 2008. Annex to petitioner’s communication received December 9, 2011.

³¹¹ Annex 147. Decision of the Sentence Execution Court of Alajuela, dated November 20, 2008. Annex to petitioner’s communication received December 9, 2011.

³¹² Annex 147. Decision of the Sentence Execution Court of Alajuela, dated November 20, 2008. Annex to petitioner’s communication received December 9, 2011.

A. Right to appeal the judgment to a higher court (Article 8.2.h of the American Convention, in connection with Articles 1.1 and 2 thereof)

185. Article 8.2.h of the American Convention provides that:

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

h. The right to appeal the judgment to a higher court.

1. General considerations on the right to appeal the judgment

186. The right to appeal the judgment to another and higher court is a fundamental guarantee of due process, whose purpose is to avoid a miscarriage of justice from becoming *res judicata*. Under the case law of the inter-American system, the purpose of this right is to make it possible for an adverse judgment to be reviewed by another and higher court³¹³ and prevent a flawed ruling, containing errors unduly prejudicial to a person's interests, from becoming final.³¹⁴ Due process of law would lack efficacy without the right of defense in a trial and the opportunity to defend oneself against an adverse decision by means of adequate review of judgment.³¹⁵

187. The Inter-American Court has held that the right to review by a higher court, expressed by means "of the complete review of conviction, ratifies the grounds and provides more credibility to the judicial acts of the State and, at the same time, offers more security and protection to the rights of the accused"³¹⁶.

188. In this regard, under international human rights law, what matters most is that the remedy for review of judgment fulfills the particular standards required of it, regardless of the label or name given to the existing remedy.³¹⁷ First and foremost, the right to file an appeal against a judgment

³¹³ IA Ct of HR, *Case of Mendoza et al v. Argentina*. Preliminary Objects, Merits and Reparations. Judgment May 14, 2013. Series C No. 260, para. 242; *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment July 2, 2004. Series C No. 107, para. 158, and *Case of Mohamed v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 97.

³¹⁴ IA Ct. of HR, *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment July 2, 2004. Series C No. 107, para. 158.

³¹⁵ IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella (Argentina), November 18, 1997, para. 252.

³¹⁶ IA Ct of HR, *Case of Mendoza et al v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment May 14, 2013. Series C No. 260, para. 242; *Case of Barreto Leiva v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 17, 2009. Series C No. 206, para. 89; and *Case of Mohamed v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 97. I/A Court H. R., *Case of Liakat Ali Alibux v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 30, 2014. Series C No. 276, párr. 85.

³¹⁷ IA Ct of HR, *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 165; UN, Human Rights Committee. *Gómez Vázquez v. Spain*. Communication No. 701/1996. Decision of August 11, 2000, para. 11.1.

must be guaranteed before the judgment becomes *res judicata*³¹⁸ and it must be resolved within a reasonable period of time, meaning, it must be *timely*. Furthermore, it must be an *effective* remedy, in other words, it must provide results or responses to the end that it was intended to serve,³¹⁹ to wit, to avoid a miscarriage of justice from becoming final. Moreover, the remedy must be *accessible*; hence, the kind of complex formalities that would render this right illusory must not be required.³²⁰

189. It is fitting for the Commission to underscore the point that the efficacy of a remedy is closely linked to the scope of the review. This is so because judicial authorities are fallible and can make mistakes that result in injustice. Judicial error is not confined to the application of the law, but may happen in other aspects of the process such as the determination of the facts or the weighing of evidence. Hence, the remedy of appeal will be effective in accomplishing the purpose for which it was conceived if it makes possible a review of such issues without determining *a priori* that review will only be allowed with respect to certain aspects of the court proceedings.³²¹

190. On this score, in the *Abella v. Argentina* case, the Commission noted:

Article 8(2)(h) refers to the minimum characteristics of a remedy that serves as a check to ensure a proper ruling in both substantive and formal terms. From the formal standpoint the right to appeal the judgment to a higher court to which the American Convention refers should apply, in the first place [...] with the purpose of examining the unlawful application, the lack of application, or the erroneous interpretation of rules of law based on the operative part of the judgment. The Commission also considers that to guarantee the full right of defense, this remedy should include a material review of the interpretation of procedural rules that may have influenced the decision in the case when there has been an incurable nullity or where the right to defense was rendered ineffective, and also with respect to the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules.

[...]

The remedy should also allow the higher court a relatively simple means to examine the validity of the judgment appealed in general, as well as to monitor the respect for fundamental rights of the accused, especially the right of defense and the right to due process.³²²

191. Likewise, the Human Rights Committee of the ICCPR (International Covenant on Civil and Political Rights) has consistently held that:³²³

³¹⁸ UN, Human Rights Committee. *Bandajevsky v. Belarus*. Communication No. 1100/202, Decision of April 18, 2006, para. 11.13. IA Ct of HR, *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 158; and *Case of Mendoza et al v. Argentina*. Judgment of Preliminary Objections, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³¹⁹ IA Ct of HR, *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 161; and *Case of Mendoza et al v. Argentina*. Judgment of Preliminary Objections, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³²⁰ IA Ct of HR, *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 164; and *Case of Mendoza et al v. Argentina*. Judgment of Preliminary Objections, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³²¹ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al (Juveniles Sentenced to Life Time Imprisonment), Argentina, November 2, 2010, para. 186.

³²² IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, paras. 261-262.

The right of everyone convicted of a crime to have his conviction and sentence reviewed by a higher tribunal, under Article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. A review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.³²⁴

192. Along this same line of thinking by the ICCPR Human Rights Committee, the IACHR notes that the right to appeal does not necessarily entail a full retrial or a new “hearing,” as long as the court conducting the review can look at the factual dimensions of the case.³²⁵ What the norm requires is the opportunity to point out and get an answer to possible errors of various kinds that the judge or the court may have made, without precluding *a priori* categories such as the facts and weighting and taking of evidence. The manner and means through which the review is conducted will depend on the nature of the questions raised and the characteristics of the criminal procedural system in the State in question.³²⁶

193. It is fitting to mention that the American Convention “does not endorse any specific criminal procedural system. It gives the States the liberty to determine which one they prefer, as long as they respect the guarantees established in the Convention itself, the internal legislation, other applicable international treaties, the unwritten norms, and the imperative stipulations of international law.”³²⁷

194. However, it is the duty of the States to provide for the means that are necessary to bring the particular characteristics of their system of criminal procedure in line with international human rights obligations and, especially, the minimum due process guarantees set forth in Article 8 of the American Convention. Hence, for example, with regard to criminal procedure systems in which oral proceedings (*oralidad*) and the immediacy of disposition (*inmediación*) are the norm, the States are obligated to ensure that said principles do not entail exclusions or restrictions on the scope of the review conducted by the judicial authorities empowered to do so. Likewise, review of the judgment by a higher court must not undermine respect for the principles of the oral nature of proceedings and expedient disposition of matters.

195. These standards regulating the right to appeal the judgment were recently upheld by the Inter-American Court in the case of *Mendoza et al v. Argentina*. Particularly, with regard to the

³²³ The language of Article 14.5 of the ICCPR is substantially similar to that of Article 8.2.h of the American Convention; therefore, any interpretations made by the UN Human Rights Committee on the content and scope of said article are pertinent as a guideline for interpretation of Article 8.2.h of the American Convention.

³²⁴ UN, Human Rights Committee. *Aliboev v. Tajikistan*, Communication No. 985/2001, Decision of October 18, 2005; *Khalilov v. Tajikistan*, Communication No. 973/2001, Decision of March 30, 2005; *Domukovsky et al. v. Georgia*, Communication No. 623-627/1995, Decision of April 6, 1998; and *Saidova v. Tajikistan*, Communication No. 964/2001, Decision July 8, 2004.

³²⁵ UN, Human Rights Committee. General Comment No. 32 “Article 14. Right to equality before the courts and tribunals and to a fair trial.” 2007, para. 48.

³²⁶ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al (Juveniles Sentenced to Life Time Imprisonment), Argentina, November 2, 2010, para. 189.

³²⁷ IA Ct of HR, *Case of Fermín Ramírez v. Guatemala*. Judgment of Merits, Reparations and Costs. June 20, 2005. Series C No. 126, para. 66.

scope of the review, the Court held that regardless of the set of rules or system of appeal adopted by States Parties and of the name given to a means for contesting the conviction, in order for it to be effective, it must constitute an appropriate means for attempting to correct a wrongful conviction.³²⁸ This requires a possibility to analyze questions of fact, evidence, and law upon which the contested judgment is based, since in judicial activity there is interdependence between the factual determinations and the application of law in such a way that an erroneous finding implies a wrong or improper application of law. Consequently the reasons for which the remedy is admissible should allow for extensive control of the contested aspects of the judgment of conviction.³²⁹ The Court also explicitly established, along the same lines as the Commission, that the remedy must ensure that an appeal against a conviction respects the minimum procedural guarantees that are relevant and necessary under Article 8 of the Convention to resolve the alleged lower court error or grievance raised by the appellant, which does not necessarily mean that a new trial must be held.³³⁰

196. Notwithstanding, as for *accessibility* of the remedy, the Commission considers that, in principle, regulation of some of the minimum requirements for an appeal to be admissible is not incompatible with the right set forth in Article 8.2.h of the Convention. Some of these minimum requirements are, for example, the actual submission of the appeal – given that Article 8.2.h does not go as far as to require automatic review – or the regulation of a reasonable period of time within which the filing must be submitted. However, in certain circumstances, denial of the appeals based on the failure to meet procedural requirements of form established under the law or shaped by the practices of the court in a particular region, may result in a violation of the right to appeal the judgment.

197. Lastly, the Commission notes that the right to appeal the judgment is woven into the cluster of procedural guarantees, which are inextricably inter-linked and serve to ensure the due process of law.³³¹ Therefore, the right to appeal the judgment must be interpreted in conjunction with other procedural guarantees, should the characteristics of the case so require. By way of example, we can cite the close connection between the right to appeal the judgment and access to a duly reasoned judgment, as well as the possibility to view the complete record of the proceedings including the trial or hearing transcripts in systems of oral proceedings.³³² Of particular relevance is the connection between the guarantee set forth in Article 8.2.h of the American Convention and the right to an adequate defense, also enshrined in Article 8.2 of the Convention. Likewise, the Human Rights Committee has established that “the right to have one’s conviction reviewed is also violated if defendants are not informed of the intention of their counsel not to put any arguments to the court, thereby depriving them of the

³²⁸ IA Ct of HR, *Case of Mendoza et al v. Argentina*. Judgment of Preliminary Objections, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

³²⁹ IA Ct of HR, *Case of Mohamed v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 100; *Case of Mendoza et al v. Argentina*. Judgment of Preliminary Objections, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

³³⁰ IA Ct of HR, *Case of Mohamed v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 23, 2012. Series C No. 255, para. 101; *Case of Mendoza et al v. Argentina*. Judgment of Preliminary Objections, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

³³¹ IA Ct of HR, *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. *Advisory Opinion* OC-16/99 of October 1, 1999. Series A No. 16, para. 120.

³³² UN, Human Rights Committee. General Comment No. 32 “Article 14. Right to equality before the courts and tribunals and to a fair trial.” 2007, paras. 47-50.

opportunity to seek alternative representation, in order that their concerns may be ventilated at the appeal level.”³³³

198. The determination as to whether or not the right to appeal the judgment has been violated must be examined on a case-by-case basis whereby the specific circumstances of the situation brought before the Commission is assessed, in light of the general standards outlined in the preceding paragraphs regarding accessibility, effectiveness and timeliness of the remedy.

2. Analysis of Specific Cases

199. The Commission notes that all of the convictions against the alleged victims, except for two of them, were handed down when the Code of Criminal Procedure was in force, prior to enactment of the statutes creating the procedure for the writ of reversal of conviction on criminal cassation and of the motion for appeal of 2006 and 2010, respectively.

200. In this regard, the analysis as to whether or not the State is internationally responsible for the majority group of alleged victims who were convicted prior to 2006, will be confined to the legal framework in force at the time and under which they began to pursue an appeal in their criminal proceedings. Next, the Commission will examine the approval of Law No. 8503 and Law No. 8837 in 2006 and 2010, respectively, in order to determine whether these legal frameworks have had the impact on the situation claimed by the alleged victims. In the case of Jorge Martínez Meléndez and in one of the proceedings against Rafael Rojas Madrigal, the Commission will examine whether or not there was international responsibility of the State, using Law No. 8503 as a basis, as it was in force when their convictions were handed down.

2.1 Analysis as to whether the State of Costa Rica violated the alleged victims’ right to appeal the judgment when the Code of Criminal Procedure was in force prior to the legislative changes

201. As was noted in the preceding section, under Inter-American legal precedent, in order for an appeal to be in line with Article 8.2 of the American Convention, one of the major requirements it must fulfill is that it be admissible prior to the judgment of conviction becoming *res judicata*.

202. In the instant case, under the Code of Criminal Procedure in force at the time, the only remedy that was admissible to appeal a criminal conviction that had not become final and conclusive was the writ of reversal on cassation. As such, the Commission’s analysis will focus on said remedy, specifically on whether or not it fulfilled the standards described above.³³⁴

203. The IACHR will not address this issue with regard to the motion for review of conviction, which is regulated under the same Code of Criminal Procedure, inasmuch as this remedy is extraordinary, i.e. judges have discretion to deny leave to appeal, and it is not meant to provide the right to review by a higher court, expressed by means of the complete review of conviction. This is apparent from the fact that the motion for review is only admissible when the conviction has become

³³³ UN, Human Rights Committee. General Comment No. 32 “Article 14. Right to equality before the courts and tribunals and to a fair trial.” 2007, para. 51.

³³⁴ The Commission notes that all of the alleged victims in the instant case filed at least one petition for a writ on cassation, except for Miguel Mora Calvo. Accordingly, the Commission will not examine the situation of this individual.

final and, instead, is designed to cure any judicial errors that may have been committed regarding aspects that were not addressed during the ordinary appeals process.

204. Having made the foregoing distinction, the Commission notes that the Inter-American Court already issued a ruling in the case of *Herrera Ulloa v. Costa Rica* on the writ of reversal on cassation at the time when most of the alleged victims in the instant case were convicted. The Court found that the writ of cassation at that time did not fulfill the requirement of a broad remedy because it imposed *a priori* restrictions that did not enable a comprehensive examination of the issues discussed and analyzed before the lower court.³³⁵

205. Hence, the Commission deems it relevant to address Articles 443, 369 and 445 of the Code of Criminal Procedure, which regulate the scope of and formal procedural requirements to file for writ of cassation. Based on an analysis at Article 443 of said Code, it is apparent that the writ of cassation is only admissible “when the decision failed to observe or erroneously applied a legal precept,” in other words, it was limited to review of potential errors of law, to the exclusion of issues pertaining to the determination of the facts by the lower court, or the assessment of the evidence of that lower court. This restriction can be clearly deduced from the fact that Article 369 of said Code sets forth a close-ended list of grounds under which a writ of cassation could be admissible, which focus on the essential elements constituting a judgment or, as was noted above, potential errors exclusively of law. Additionally, Article 445 of the aforementioned Code requires the appellant at the time of filing the petition for the writ, to lay out in detail the exact provisions of the law that were considered “not observed or erroneously applied.” To not meet that requirement rendered the remedy inadmissible.

206. In this regard, the Commission finds that the writ of cassation, in light of the aforementioned legal provisions, was not effective or accessible to achieve the aim of ensuring the right to appeal the judgment inasmuch as its admissibility was limited *a priori* to particular grounds pertaining to the application of the norm, to the exclusion of factual and evidentiary issues.

207. In view of the fact that the source of the restriction is the text itself of the applicable statute, the Commission finds it unnecessary to delve deeper into the specific allegations raised by the alleged victims in their petitions for reversal on cassation, or into the response to said allegations received by them. As a consequence of the statute itself, which automatically ruled out any arguments that were not confined to errors of law, it is entirely feasible that the victims’ defense, in seeking to get the petition to be admitted and decided, did not necessarily request review of issues of fact or assessment of evidence, but instead made arguments considered by them to perhaps have chance of being successfully admitted. Moreover, the terms of the statute excluded *a priori* a review of a comprehensive scope and, therefore, it did not provide for the remedy as set forth in Article 8.2.h of the Convention. Consequently, the persons named above did not have access to this due process safeguard mechanism.

208. In this respect, it is enough to determine that the alleged victims embarked on the appeals procedure under legal constraints as to what allegations they were able to make. As was noted above, at the time of the events of the petitions, an automatic exclusion of issues of fact or of evidence appraisal was in effect, thus doing away with any examination of the importance or nature of said issues

³³⁵ IA Ct of HR, *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004, Series C No. 107, para. 167.

in light of the concrete case. This exclusion is, in and of itself, incompatible with the comprehensive scope of the remedy as provided for in Article 8.2.h of the American Convention.

209. Without prejudice to the foregoing, the Commission provides examples of the effects that some of these restrictions had on the way in which the petitions for writ of cassation were resolved in the cases under examination.

210. For example, in the case of **Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González and Arturo Fallas**, the Third Chamber rejected the allegations made in the petitions for writ of cassation, noting that they were not “consistent with the factual framework proven [by the trial court].”

211. In the case of **Rafael Rojas Madrigal**, in the context of the two proceedings culminating in a conviction prior to 2006, five petitions for writs of reversal on cassation were filed. The IACHR notes that the Third Chamber rejected several allegations relating to infringements of due process as well as the weighting of evidence on the grounds that no reference was made to the provisions of law that were allegedly violated and that “what is formulated [in this petition] is [his] disagreement with the final outcome of the trial.”

212. In the case of **Carlos Eduardo Yopez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga and Miguel Antonio Valverde**, the petition for writ of reversal on cassation filed by the alleged victims was denied by the Third Chamber, which noted that the determination of the facts and the documentary evidence cited was proven in the trial court judgment of conviction.

213. In the case of **Guillermo Rodríguez Silva and Martín Rojas Hernández**, both filed petitions for writs of cassation, which were denied by the Third Chamber, which noted that as established by the trial court in its judgment, “it is unanimously certain with regard to some of the crimes of the charging document” and it further noted that “the crimes deemed proven (...) are supported in the evidence to sustain the guilt of the defendants.”

214. In the case of **Manuel Hernández Quesada**, the petition for writ of reversal on cassation filed by him was denied because in the view of the Third Chamber it was “overt, subjective disagreement with the decision [of the Trial Court].” In the case of **Damas Vega Atencio**, two petitions for writ of reversal of two convictions on cassation were filed. Both petitions were denied on the basis of the findings of fact previously established by the trial court.

215. Based on the foregoing, the Commission finds that the writ of cassation under the Code of Criminal Procedure in force at the time did not fulfill the requirements of the right to appeal the judgment. Consequently, the Commission concludes that the State violated Article 8.2.h of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González, Arturo Fallas, Rafael Rojas Madrigal, Carlos Eduardo Yopez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga, Miguel Antonio Valverde, Guillermo Rodríguez Silva, Martín Rojas Hernández, Manuel Hernández Quesada, Miguel Mora Calvo and Damas Vega Atencio.

2.2 Analysis of subsequent legislative developments regarding the right to appeal the judgment

216. Based on the foregoing conclusion, in the case of the majority of the victims, international responsibility of the State arose at the point in time when the victims had no opportunity to gain access to a remedy providing for a comprehensive review of their convictions before they became *res judicata*, because those particular provisions of the Code of Criminal Procedure were in force prior to the legislative reforms. As was noted above, on this point the Commission will examine the subsequent amendments to the law, in order to assess whether the violation of the right to appeal the judgment adjudicated above, was or was not cured by the State, in amending the law.

2.2.1. Law No. 8503 of 2006

217. Based on the proven facts, Law No. 8503 amended several articles of the Code of Criminal Procedure pertaining to the writ of cassation. The Commission notes that Articles 443 and 445 of the Code of Criminal Procedure were not amended and, therefore, the admissibility requirements of the writ of cassation continued to be confined to grounds of non-observance or improper application of a provision of law. Likewise, it continued to be a requirement, in filing for the writ, to expressly set forth the legal provisions that were considered to not have been observed or to have been improperly applied. The Commission notes that the only change in the rules of cassation was made to Article 369 of the Code of Criminal Procedure. This change provided for one new ground for admissibility, which read: "When the conviction has not been rendered under due process of law or with an opportunity for a defense."

218. The Commission finds that the addition of these grounds did not remedy the crux of the issue with the writ for reversal of conviction on cassation, to wit, preclusion from review on appeal of issues of fact and evidence examined by the trial court. The Commission also notes that this provision did not amend in any way whatsoever the rigorous procedural formality in filing a petition for this writ. It became obvious that this was still an issue even after this new provision came into force in one of the proceedings of **Rafael Rojas Madrigal**, as well as in the proceeding of **Jorge Martínez Meléndez**.

219. Hence, as was established under the proven facts, in the case of Mr. **Rafael Rojas Madrigal**, the petition for writ of cassation for reversal of judgment No. 614-09 was denied as inadmissible by the Third Chamber, which rejected the arguments made by Mr. Rojas Madrigal, accepting the trial court's finding of the facts as proven, with no regard for any possible examination thereof. Furthermore, Mr. **Jorge Martínez Meléndez** alleged in his case erroneous assessment of the evidence and the Third Chamber denied the petition noting that "it cannot be contested on cassation, as can be gathered by a simple reading of Article 443 of the Code (...), to object to the veracity of the facts set forth in the charging document." The panel of the Third Chamber also rejected other allegations on the grounds that they were previously submitted and settled by the trial court.

220. Based on the foregoing, the Commission concludes that the State also violated Article 8.2.h of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of Rafael Rojas Madrigal and Jorge Martínez Meléndez.

221. Nonetheless, the Commission notes that this legislative reform established that individuals whose petition for writ of cassation were denied prior to it coming into force, should file a motion for review of conviction. In other words, the only option given to the victims named on paragraph 215 of the instant report, as instituted by this legislative reform was said motion for review, the scope of which was not substantially amended either. As was noted *supra* 203, the motion for review of conviction is an extraordinary remedy, and it has a different purpose than right to review by a

higher court. This is evident from the fact that the motion for review of conviction is only admissible when the judgment has already become final and conclusive, and its purpose is to correct any possible judicial errors with regard to aspects, which may have not been addressed during the ordinary appeals stage.

222. Based on the foregoing, it is evident that, for the victims of the instant case, this legislative reform did not cure the violation of the right enshrined in Article 8.2.h of the Convention.

2.2. Law No. 8837 of 2010

223. The proven facts show that Law No. 8837 created a motion for appeal of judgment, to be heard by the new Courts of Appeal, as well as amending the content of the writ of cassation. The transitional provisions provide for two distinct circumstances. For individuals whose petition for writ of cassation was denied prior to the new law coming into force, it provides that they may file, a single time, a motion for review of judgment. For individuals whose petition for writ of reversal on cassation was pending disposition at the time the law came into force, it provides that they may seek to convert the petition for writ of cassation into a motion for appeal under the new law.

224. In the instant case, the vast majority of the victims fall under the first of the two circumstances; in other words, their only option under Law No. 8837 was a single-time filing of a motion for review of judgment. In this regard, the Commission reiterates its holdings of paragraphs 203 and 221 of the instant report.

225. As to Mr. Rojas Madrigal, his petition for a writ of reversal on cassation was pending decision at the time Law No. 8837 was enacted. Accordingly, his case falls under the second circumstance, that is, the opportunity to convert his petition for a writ of cassation into a motion for appeal. Based on the proven facts, Mr. Rojas Madrigal moved for this conversion but his motion was denied on the grounds that “it only references the violation of Article 8.2.h of the American Convention (...) (and) did not explain the reasons that led him to believe that, despite his petition being filed prior to Law No. 8837 came into force, the procedure for appeal of conviction, provided for therein, should be applied to his case.”

226. In conclusion, even though the Commission views as a positive step the change in the law implemented by the State of Costa Rica, which resulted in the creation of a motion for appeal for persons convicted after said statute was enacted, with regard to the victims in the instant case, the reform did not cure the violation of the right set forth in Article 8.2.h of the American Convention.

B. Right to a competent, independent and impartial judge (Article 8.1 of the American Convention, in connection with Article 1.1 thereof)

227. Article 8.1 of the American Convention provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

228. The Court has held that the right to be tried by an impartial judge or court is a fundamental guarantee of due process. In other words, the person on trial must have the guarantee that the judge or court presiding over his case brings to it the utmost objectivity. This way, courts inspire the necessary trust and confidence in the parties to the case and in the citizens of a democratic society.³³⁶

229. The Inter-American Court has taken note of the legal precedents of the European Court with regard to objective and subjective aspects of impartiality. In said legal precedent, the European Court has held:

Firstly, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under the objective test, it must be determined whether, quite apart from the judges' personal conduct, there are ascertainable facts which may raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence that the courts in a democratic society must inspire in the public and above all in the parties to proceedings.³³⁷

230. Hereunder, the Commission will examine the contention made by some of the petitioners pertaining to the alleged violation of this right.

1. Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González and Arturo Fallas

231. The alleged victims claimed that two months into the criminal investigation being conducted against them, the presiding investigating magistrate gave interviews to the news media, wherein he prejudged the facts and the determination of liability, even though he was subsequently removed from office. They also contended that at different stages of the procedure judges felt "enormous social pressure" to convict them and "even though there was no general directive it was evident that an acquittal (...) would have had a bearing on a negative perception of the judicial system."

232. In response, the State noted that the judge referenced by the alleged victims was replaced by another judge who conducted the preliminary investigation and opened the proceedings and, consequently, their right to an impartial judge was not infringed. It contended that there was no public smear campaign against them nor is there evidence that other judges have acted partially. The State also noted that a lack of impartiality of the trial court was not alleged in any petition or motion.

233. The Commission notes that the judge originally assigned to the case was removed from it prior to the issuing of the order to institute investigation proceedings. Additionally, the IACHR does not have concrete information regarding how the judges who decided the criminal case of the alleged victims acted so as to have affected their impartiality. Consequently, in light of the only information available to it, the Commission finds that the State did not violate the right to an impartial judge.

³³⁶ IA Court of HR, *Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004, Series C No. 107, para. 171.

³³⁷ ECHR, *Case of Pabla KY v. Finlad*. Judgment of 26 June, 2004, para. 27; and *Case of Morris v. the United Kingdom*. Judgment of 26 February, 2002, para. 58.

2. Rafael Rojas Madrigal and Jorge Martínez Meléndez

234. Mr. Rojas Madrigal claimed that several judges heard on more than one occasion the petitions for writ of cassation and motions for review submitted by him. In this respect, he contended that the right to an impartial judge was violated inasmuch as said judges had ruled on the merits of his petitions and motions. In response, the State countered that “in light of the many actions of review brought by the appellant, it has become materially impossible not to appoint judges who have previously participated in the settlement of one of the claims (...) which does not mean that such a situation in and of itself, implies the infringement or violation of the principle of judicial objectivity and impartiality.” It further argued that there is no infringement in the same judges intervening in more than one proceeding since they were found inadmissible and did not entail any ruling on the merits of the claims therein.

235. The Commission recalls that the Court held in the case of *Herrera Ulloa v. Costa Rica* that the fact that the same judges have sat on a Panel of Judges before which more than one motion pertaining to the same proceeding was filed and have examined part of the substantive and not only the formal aspect, violates the requirement of impartiality established in Article 8.1 of the American Convention.³³⁸

236. The Commission notes that according to the case file, as well as information provided by both parties, the same judge is identified as sitting in the Third Chamber, where more than one motion related to the same criminal proceeding was heard. The IACHR has established as fact that in some instances this Chamber ruled on the substantive matters. In a dissenting opinion issued on October 19, 2007, this situation was actually raised by two judges of the Third Chamber, who asserted that the members of the court, who resentenced the defendant when the case was sent back to the lower court, were the same judges who had handed down conviction No. 172-2000.

237. In this respect, the Commission finds that the State violated Mr. Rojas Madrigal’s right to an impartial judge under Article 8.1 of the American Convention, in connection with Article 1.1 thereof.

238. The Commission also notes that another argument raised by Jorge Martínez Meléndez and Rafael Rojas Madrigal was that the same judge who issued the preventive detention order sat on the panel that convicted them. The Commission believes that preventive detention must serve purely procedural purposes and that it may not be based on indicia of criminal responsibility. In this regard, the Commission does not find that, in and of itself, it is incompatible with the right to an impartial judge for a judicial authority to decide on preventive detention and, subsequently sit in judgment of the defendant’s guilt at trial. The Commission does not have enough evidence to rule as to whether in this particular case said guarantee was infringed by such a situation.

C. Right to a defense (Article 8.2 of the American Convention in connection with Article 1.1 thereof)

239. Petitioners Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González and Arturo Fallas, made allegations regarding restrictions on the introduction of evidence. However, Mr.

³³⁸ IA Ct of HR, *Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004, Series C No. 107, paras. 174-175.

Rafael Rojas Madrigal submitted several arguments pertaining to the lack of clear and formal notification of the charges, with restrictions on the ability to continue to introduce evidence, difficulty in gaining access to physical copies of the judgments, and deficiency in the public defense. Messrs. Carlos Yépez Cruz, Luis Archbold Jay, Enrique Archbold Jay, Fernando Saldarriaga Saldarriaga and Miguel Valverde alleged lack of clear and formal notification of the charges, bribery of their public defender, preclusion from retaining private defense counsel, failure to understand the Spanish language and inability to attain physical copies of the judgments. Lastly, another group of petitioners made allegations regarding a violation of their right to a defense (see *supra* paragraph 15).

240. The Commission does not have sufficient evidence to determine whether the alleged violations actually took place.

D. Right to personal liberty (Article 7 of the American Convention, in connection with Article 1.1 thereof)

241. Messrs. Jorge Martínez, Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos González Lizano, Arturo Fallas Zúñiga, and Rafael Rojas Madrigal, submitted arguments on the right to personal liberty. Mr. Martínez submitted arguments on the duration of preventive detention, while Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos González Lizano, Arturo Fallas Zúñiga, and Rafael Rojas Madrigal made additional arguments. The Commission will rule separately on these arguments.

1. Duration of preventive detention of Jorge Martínez

242. The Court has held that preventive detention is limited by the principles of legality, the presumption of innocence, need and proportionality, all of which are strictly necessary in a democratic society.³³⁹ It has also asserted that it is a precautionary rather than a punitive measure³⁴⁰ and that it is the most severe measure that can be applied to the person accused of a crime, reason for which its application must have an exceptional nature. In the view of that Court, the rule must be the defendant's liberty while a decision is made regarding his criminal responsibility.³⁴¹ The Court has noted that the personal characteristics of the alleged perpetrator and the seriousness of the crime that he is charged with are not, in themselves, sufficient justification for preventive detention.³⁴²

243. As for the grounds warranting preventive detention, the organs of the system have construed Article 7.3 of the American Convention to the effect that indicia of liability is a necessary requirement but insufficient to impose such a measure. In the words of the Court,

³³⁹ IA Ct of HR, *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 197; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 74.

³⁴⁰ IA Ct of HR, *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 77.

³⁴¹ IA Ct of HR, *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 196; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 74.

³⁴² IA Ct of HR, *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 69; *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 75; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 180.

There must be sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation.³⁴³ Nonetheless, “even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but can only [...] be based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice.”³⁴⁴

244. This also entails the obligation to give sufficient reasons regarding the achievement of a legitimate purpose in line with these standards upon issuance of the preventive detention order. Otherwise, it must be considered arbitrary.³⁴⁵

245. The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the IACHR further establish, under Principle III, subparagraph 2, that:

[...] Preventive deprivation of liberty is a precautionary measure, not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need and proportionality, to the extent strictly necessary in a democratic society. It shall only be applied within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigation nor will evade justice, provided that the competent authority examines the facts and demonstrates that the aforesaid requirements have been met in the concrete case.³⁴⁶

246. As to the duration of preventive detention, the Court has held that Article 7.5 of the Convention guarantees the right of every person in pre-trial custody to be tried within a reasonable time or to be released without prejudice to the continuation of the proceedings. This right imposes temporal limits on the duration of pre-trial detention and, consequently, on the State’s power to protect the purpose of the proceedings by using this type of precautionary measure.³⁴⁷ In the words of the Court: “when the duration of the pre-trial detention exceeds a reasonable time, the State can restrict the liberty of the accused by other measures that are less harmful than deprivation of liberty by imprisonment and that ensures his presence at the trial. This right also imposes the judicial obligation to process criminal proceedings in which the accused is deprived of his liberty with greater diligence and promptness.”³⁴⁸

³⁴³ IA Ct of HR, *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111. Citing. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 101 and *Case of Servellón García et al Vs. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, para. 90.

³⁴⁴ IA Ct of HR, *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111. Citing. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 103; and *Case of Servellón García et al Vs. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, para. 90.

³⁴⁵ IA Ct of HR, *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 116.

³⁴⁶ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Principle III, number 2. Document approved by the Commission at the 131st regular session, held from March 3 to 14, 2008.

³⁴⁷ IA Ct of HR, *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 119.

³⁴⁸ IA Ct of HR, *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 120.

247. In the instant case, the Commission notes that Mr. Jorge Martínez was confined in preventive detention for a total of 4 years and nine months. The IACHR takes note that Mr. Martínez' defense team challenged said measure on the grounds that it exceeded the legal limit established in the Code of Criminal Procedure of Costa Rica. In this respect, under the proven facts, it is noted that the court, which extended the preventive detention, recognized that the legal period of time had been exceeded but that it had "to be extended on an exceptional basis." This situation was subsequently upheld by the Constitutional Chamber.

248. The IACHR notes that the State itself recognized that, under the Code of Criminal Procedure, the regular and special time limits of pre-trial detention were exceeded. However, it noted that in light of the significance of the phase the case was in at that time, it was essential for him to be present at the trial where the conviction was handed down and, therefore, the extension of the time in preventive detention was in line with international standards.

249. The Commission finds that the breach of the legal time period established in the Code of Criminal Procedure as the maximum for preventive detention constitutes, in addition to a violation of Article 7.2, which establishes that any deprivation of liberty must be legal, an indicator that the preventive detention was excessive and, therefore, was a violation of Article 7.5 of the Convention. This conclusion is bolstered by the fact that the judicial authorities, who acknowledged said breach of the legal limit, did not put forward any arguments to explain the procedural purposes pursued by continuing to hold him in preventive detention during the trial phase. The arguments outlined by the State to justify the period of preventive detention are not consistent with the Inter-American standards previously described. Based on the foregoing reasoning, the Commission concludes that the State violated the right to personal liberty as set forth in Articles 7.1, 7.2 and 7.5 of the American Convention, to the detriment of Jorge Martínez.

2. Other arguments pertaining to personal freedom

250. The Commission notes that Messrs. Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos González Lizano and Arturo Fallas Zúñiga alleged that their detention was arbitrary, on the grounds that their convictions did not adhere to due process requirements. In this respect, the Commission finds that this argument is subsumed in the examination on the right established in Article 8.2.h of the Convention, wherein a violation of this due process guarantee to the detriment of the victims was already declared. Because of the nature of this conclusion, the IACHR does not deem it necessary to rule autonomously as to the alleged arbitrariness of the deprivation of liberty as a consequence of the aforementioned violation.

251. Mr. Rafael Rojas Madrigal further argued that his right to personal freedom was violated inasmuch as he was held in detention for more than 72 hours before being advised of the charges by the prosecuting attorney, in violation of the Code of Criminal Procedure. As Mr. Rojas Madrigal himself noted, this situation was addressed in the domestic courts by means of a petition for habeas corpus relief, which was granted. Hence, through its domestic judicial authorities, the State has remedied this violation.

E. Right to humane treatment (Articles 5.1 and 5.2 of the American Convention in connection with Article 1.1 thereof)

252. With respect to Article 5 of the American Convention, the Commission has noted that:

Subparagraphs 1 and 2 of Article 5 of the American Convention establish that “every person has the right to have his physical, mental and moral integrity respected;” that “all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” In interpreting this provision, the Commission has held that among the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms it protects are derived from the attributes of their human personality. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect. Accordingly, Article 5.1 guarantees to each person the right to have his or her physical, mental, and moral integrity respected, and Article 5.2 requires all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person. These guarantees presuppose that persons protected under the Convention will be regarded and treated as individual human beings, particularly in circumstances in which a State Party proposes to limit or restrict the most basic rights and freedoms of an individual, such as the right to liberty.³⁴⁹

253. The Commission recalls that every person deprived of liberty shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees, and strictly in accordance with international human rights instruments.³⁵⁰ Additionally, both bodies of the system have established that with regard to persons deprived of liberty, the State has a special role as guarantor of the rights of those deprived of their freedom, as the prison authorities exercise heavy control or command over the persons in their custody.³⁵¹ Likewise, in the universal and European human rights systems, it has been noted that persons deprived of their liberty are particularly vulnerable and, therefore, the competent authorities have the special obligation to adopt measures to protect their physical integrity and the dignity inherent to human beings.³⁵²

254. Hereunder, the Commission will rule on the conditions of detention at CAI La Reforma prison facilities, as well as on the alleged acts of torture of some of the alleged victims by agents of said facilities.

1. Conditions of detention

255. Based on the proven facts, the Commission finds that some of the alleged victims, who were in custody at the CAI La Reforma prison lived under conditions that were inconsistent with human dignity. Firstly, as established by the Court, overcrowding constitutes in and of itself a violation of the

³⁴⁹ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al (Juveniles Sentenced to Life Time Imprisonment), Argentina, November 2, 2010, para; 252; Report No. 38/00, Case 11.743, Merits, Rudolph Baptiste, Grenada, April 13, 2000, para. 89.

³⁵⁰ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Resolution No. 1/08. March 31, 2008, Principle I.

³⁵¹ IA Ct of HR, *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Judgment of Preliminary Objections, Merits, Reparations and Costs. September 2, 2004. Series C No. 112, para. 152; and *Case of Vera Vera et al v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. May 19, 2011. Series C No. 226, para. 42. See IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, paras. 49 et seq.

³⁵² UN, Human Rights Committee. General Comment No. 21 “Article 10 – Humane Treatment of Persons Deprived of their Liberty.” 1992, para. 3; ECHR, *Case of Slimani v. France*, Judgment of July 27, 2004, para. 28.

right to humane treatment³⁵³ and endangers the routine performance of essential functions at prison facilities.³⁵⁴ The IACHR notes that there are serious conditions of overcrowding and overpopulation at the CAI La Reforma prison, and this situation was denounced by Rafael Rojas to the Constitutional Chamber in 2010. On this score, said court denied his petition for constitutional relief on *amparo* on the grounds that “the main argument of the claimant did not address overcrowding but rather the lack of food.” Furthermore, Mr. Rojas filed another complaint with the Sentence Execution Court about the situation of overcrowding at the facility in 2013. The Commission does not have a copy of the decision on that remedy. In response, the State even recognized that there has been an increase in the number of persons deprived of liberty at prison facilities and noted that more resources have been allocated in the 2013 draft budget for the construction of prison infrastructure.

256. Secondly, the Court has held that every person deprived of liberty must have access to drinking water and water for their personal hygiene. Therefore, the absence of minimum conditions to guarantee the supply of drinking water within a prison constitutes a serious failure by the State in its duty to guarantee the rights of those held in its custody.³⁵⁵ In the instant case, the State claimed that “it is unaware (...) that any health problems have been reported from the ingestion of water” and also contended that the water is used by the prison staff as well.

257. Nonetheless, the IACHR notes that on September 14, 2012, the Constitutional Court granted the petition for constitutional relief on *amparo* filed by Mr. Rojas Madrigal regarding the lack of potable drinking water and water for personal hygiene. The Constitutional Chamber took into consideration the reports and studies of the National Water Laboratory and the Institute of Aqueducts and Sewers, which found that the water supplied at the CAI La Reforma prison is not potable and poses a high risk to the health of users. It was also identified that water service is suspended for several hours per day. The Commission notes that the State did not submit information regarding the measures adopted by it to comply with the order of the Constitutional Chamber in its ruling, even though it dealt with a violation that affected persons deprived of their liberty at the CAI La Reforma facilities for a protracted period of time.

258. Thirdly, the Court directed that the food provided in prison facilities must be of good quality and sufficient nutritional value.³⁵⁶ The Commission takes note of the information submitted by Mr. Damas Vega, who indicated that food was served on the ground, a few meters away from the toilet facilities, which incited the persons deprived of liberty to fight for the food. Likewise, the Commission notes that the Constitutional Chamber concluded in its decision of May 29, 2008 that the way the food was served constituted an affront to the dignity of the persons deprived of liberty at CAI La Reforma

³⁵³ IA Ct of HR, *Case of Tibi v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. September 7, 2004. Series C No. 114, para. 150; and *Case of Fleury et al v. Haiti*. Judgment of Merits and Reparations November 23, 2011. Series C No. 236, para. 85.

³⁵⁴ IA Ct of HR, *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 5, 2006. Series C No. 150, para. 20; and *Case of Vélez Loor v. Panama*. Judgment of Preliminary Objections, Merits, Reparations and Costs. November 23, 2010. Series C No. 218, para. 204.

³⁵⁵ IA Ct of HR, *Case of Pacheco Teruel et al v. Honduras*. Judgment of Merits, Reparation and Costs. April 27, 2012. Series C No. 241, para. 67.c); and *Case of Vélez Loor v. Panama*. Judgment of Preliminary Objections, Merits, Reparations and Costs. November 23, 2010. Series C No. 218, para. 216.

³⁵⁶ IA Ct of HR, *Case of López Álvarez v. Honduras*. Judgment of Merits, Reparations and Costs. February 1, 2006. Series C No. 141, para. 209; *Case of Pacheco Teruel et al v. Honduras*. Judgment of Merits, Reparations and Costs. April 27, 2012. Series C No. 241, para. 67.d).

prison. Additionally, the prison authorities themselves acknowledged that it was not possible this way to supervise the fair delivery of food. The Commission notes that the State did not submit information pertaining to the measures adopted to comply with the orders of the Constitutional Chamber on this issue in its decision.

259. Lastly, the Commission notes that in its 2010 report, the Office of the Ombudsman of the Inhabitants of Costa Rica concluded that the CAI La Reforma prison not only presented deficiencies in the walls and roofs infrastructure, but also the electrical fixtures and sanitation facilities. In response, the State acknowledged that at the CAI La Reforma facilities, the buildings “were built a long time ago” and therefore there is “deterioration” thereof. It claimed that that has happened because of “the use of the buildings, the destruction caused by the inmate population and also by the normal wear and tear on things” and, therefore, repairs would be made. It contended that “the population deprived of liberty itself breaks the rules of hygiene, showing improper hygiene habits (...) which is not attributable to the authorities.”

260. Consequently, the IACHR concludes that the State breached its obligation to provide minimum conditions of detention in keeping with human dignity in violation of Articles 5.1 and 5.2 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the victims in the instant case, who have served their prison term at CAI La Reforma.

2. Mr. Rojas Madrigal’s access to health services

261. Both the Commission and the Court have established that the State has the duty, as guarantor of the health of the persons in its custody, to provide detainees with regular medical checkups and care and adequate treatment whenever needed.³⁵⁷ As for the medical services that must be provided to them, the Court has cited the United Nations Standard Minimum Rules for the Treatment of Prisoners,³⁵⁸ which state that “the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures.”³⁵⁹ Likewise, Principle 24 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment provides that “a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”³⁶⁰

³⁵⁷ IACHR, Application to the Inter-American Court of Human Rights. Case 11.535, Pedro Miguel Vera Vera, Ecuador, February 24, 2010, para. 42. IA Ct of HR, *Case of Tibi v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. September 7, 2004. Series C No. 114, para. 156; and *Case of Vélez Loor v. Panama*. Judgment of Preliminary Objections, Merits, Reparations and Costs. November 23, 2010. Series C No. 218, para. 220.

³⁵⁸ IA Ct of HR, *Case of Raxcacó Reyes v. Guatemala*. Judgment of Merits, Reparations and Costs. September 15, 2005. Series C No. 133, para. 99; and *Case of Vera Vera et al v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. May 19, 2011. Series C No. 226, para. 50.

³⁵⁹ UN, Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Rule 24.

³⁶⁰ UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Adopted by the General Assembly in its resolution 43/173, of December 9, 1988, Principle 24.

262. The Court has held that a lack of medical care for persons deprived of their liberty does not satisfy the minimum material requirements of dignified treatment appropriate to their status as a human being, as established in Article 5 of the American Convention.³⁶¹ In this respect, lack of adequate medical assistance for a person who is deprived of liberty and is in the custody of the State could be considered *per se* a violation of Articles 5.1 and 5.2 of the Convention depending on the specific circumstances of the particular individual, such as his state of health, the type of disease or ailment, the time spent without medical attention and its cumulative physical and mental effects³⁶² and, in some instances, the sex and age of the person, *inter alia*.³⁶³

263. In the instant case, the IACHR notes that, from 2006 to 2013, Mr. Rojas Madrigal has been filing petitions for relief on *amparo*, habeas corpus and grievances regarding the lack of access to health care services, mainly as a result of his condition as a diabetic, as well as for other issues such as dizziness, headaches, hernias, fevers, rectal bleeding, diarrhea, among others.

264. The Commission notes that the remedies were dismissed based exclusively on reports from the prison officials themselves of CAI La Reforma, who claim that Mr. Rojas did indeed receive medical care when he needed it. Notwithstanding, the IACHR has taken note that on July 17, 2012, the Constitutional Chamber granted a petition for relief on *amparo* on the grounds that it believed that there was a violation of Mr. Rojas' right to health and ordered him to be transferred to a hospital to be treated for a hernia he presented. Likewise, on January 18, 2013, said court also granted another petition for constitutional relief on *amparo*, ordering the CAI La Reforma prison authorities to take the necessary actions to ensure that Mr. Rojas receives the medical care he needs. The Commission notes that the State did not submit information pertaining to the measure adopted by it to comply with the order of the Constitutional Chamber in its decision.

265. The Commission finds that the fact that a person deprived of liberty must resort on two opportunities to the judicial authorities to obtain the medical treatment he needs, exposes issues with timely and adequate access to treatment at CAI La Reforma.

266. In this respect, the Commission concludes that the State breached its obligation to provide access to health services to Rafael Rojas Madrigal, in violation of Articles 5.1 and 5.2 of the American Convention, in connection with Article 1.1 thereof.

267. The Commission also notes that Mr. Damas Vega alleged that even though he had diabetes, he did not have access to health care services and he was prevented from having an operation. Likewise, he noted that the Constitutional Chamber denied a petition for *amparo* pertaining to this situation even though no medical case file was made available to him. In response, the State claimed that Mr. Vega was provided the medical care he needed as a result of his condition. The IACHR does not

³⁶¹ IA Court of HR, *Case of De la Cruz Flores v. Peru*. Judgment of Merits, Reparations and Costs. November 18, 2004. Series C No. 115, para. 131; and *Case of Vera Vera et al v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. May 19, 2011. Series C No. 226, para. 44.

³⁶² IA Court of HR, *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 5, 2006. Series C No. 150, para. 103; and *Case of Vera Vera et al v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. May 19, 2011. Series C No. 226, para. 44.

³⁶³ IA Ct of HR, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala*. Judgment of Merits. November 19, 1999. Series C No. 63, para. 74; and *Case of Vera Vera et al v. Ecuador*. Judgment of Preliminary Objections, Merits, Reparations and Costs. May 19, 2011. Series C No. 226, para. 44.

have the Constitutional Chamber's decision before it, which was referenced by Mr. Vega, nor further documentation regarding his condition and the measures that the State did or did not adopt, while he was at the CAI La Reforma prison. In this respect, the Commission does not have sufficient evidence to rule on this allegation.

3. Allegations of torture or cruel, inhuman or degrading treatment

268. Lastly, the Commission notes that Messrs. Rojas Madrigal and Damas Vega, made allegations regarding supposed acts of torture or cruel, inhuman and degrading treatment. The Commission does not have the minimum of evidence required to be able to make a factual determination on these circumstances.

VI. CONCLUSIONS

269. Based on the analysis of the facts and law in the instant report, the Commission concludes that the State of Costa Rica is responsible for:

1. Violation of the right to appeal the judgment as established in Article 8.2.h of the American Convention, in connection with the obligations set forth in Articles 1.1 and 2 thereof, to the detriment of Manfred Amrhein, Ronald Fernández, Carlos Osborne, Carlos González, Arturo Fallas, Rafael Rojas Madrigal, Carlos Eduardo Yopez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga, Miguel Antonio Valverde, Guillermo Rodríguez Silva, Martín Rojas Hernández, Manuel Hernández Quesada, Damas Vega Atencio, Miguel Mora Calvo and Jorge Martínez Meléndez.

2. Violation of the right to an impartial judge as established in Article 8.1 of the American Convention, in connection with the obligations set forth in Article 1.1 thereof, to the detriment of Rafael Rojas Madrigal.

3. Violation of the right to personal liberty as established in Articles 7.1, 7.2 and 7.5 of the American Convention, in connection with the obligations set forth in Article 1.1 thereof, to the detriment of Jorge Martínez.

4. Violation of the right to humane treatment as established in Articles 5.1 and 5.2 of the American Convention, in connection with the obligations set forth in Article 1.1 thereof, to the detriment of Rafael Rojas Madrigal, with respect to the failure to provide access to health services, as well as to the detriment of all the victims of the instant case who have served their sentence at CAI La Reforma prison, because of the conditions of detention in said facility.

VII. RECOMMENDATIONS

270. Based on the conclusions of the instant merits report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE STATE OF COSTA RICA:

1. To order full reparation for the violations declared in the instant merits report, including adequate compensation.

2. To order the necessary measures to be taken so that, as soon as possible, the victims are able to pursue a remedy whereby they obtain a review of their convictions in keeping with Article 8.2.h of the American Convention, under the standards set forth in the instant report.

3. To order the necessary measures to ensure that the conditions of detention at CAI La Reforma prison comply with Inter-American standards on the subject matter. Particularly, ensure that adequate medical care is made available to persons deprived of liberty at said prison facilities, including the victims of the instant case.

Signed in the original
Elizabeth Abi-Mershed
Secretaria Ejecutiva Adjunta