

IACHR

Second Report on the Situation of **Human Rights Defenders** in the Americas

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



Organization of
American States

ISBN 978-0-8270-5742-0



**Organization of
American States**

Inter-American
Commission on
Human Rights **IACHR**

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

OEA/Ser.L/V/II.
Doc. 66
31 December 2011
Original: Spanish

**SECOND REPORT ON THE SITUATION OF
HUMAN RIGHTS DEFENDERS IN THE AMERICAS**

2011

Internet: www.iachr.org

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights

Segundo informe sobre la situación de las defensoras y defensores de los derechos humanos en las Américas /

Comisión Interamericana de Derechos Humanos.

v. ; cm. (OEA documentos oficiales ; OEA/Ser.L)

ISBN 978-0-8270-5742-5

1. Human rights--Americas. 2. Civil rights--America I. Title. II Series. III. Series. OAS official records ; OEA/Ser.L.

OEA/Ser.L/V/II. Doc.66

Document published thanks to the financial support of the Swedish Foundation for Human Rights, the Swedish International Development Cooperation Agency, and Finland. The Positions herein expressed are those of the Inter-American Commission on Human Rights and do not reflect the views of the Swedish Foundation for Human Rights, the Swedish International Development Cooperation Agency or Finland



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**SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS
IN THE AMERICAS**

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SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

I. INTRODUCTION

A. Follow-up to the first report on the situation of human rights defenders in the Americas

1. The purpose of this report is to follow up on the recommendations made by the Inter-American Commission on Human Rights (hereinafter, the Commission, Inter-American Commission, or IACHR) in its *Report on the Situation of Human Rights Defenders in the Americas*,¹ published on March 7, 2006 (hereinafter, the 2006 report), as well as to provide an update on the standards of international law in this area.

2. In the 2006 report, the IACHR analyzed the main problems faced by human rights defenders in the hemisphere² The report also referred to the situation of groups of defenders at particular risk³ and the precautionary measures requested by the IACHR, as one of the protection mechanisms the inter-American system offers for human rights defenders throughout the region. The recommendations made in the 2006 report included measures the States should adopt to guarantee the protection of defenders' lives and safety, as well as those necessary to guarantee the exercise of their work.⁴

3. Since the publication of the 2006 report, the IACHR has followed-up on the issues identified as priorities with respect to the situation of human rights defenders. During the follow-up period, from 2006 through 2011, the IACHR submitted two questionnaires to the States and to civil society (November 2008 and December 2010)⁵ in regards to the recommendations issued in its report. The Commission received responses to the questionnaires from the following States: Argentina, Brazil, Bolivia, Canada, Chile, Colombia, Dominica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela. It also received 91 responses to the questionnaire

¹ IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006. (Hereinafter "Report on the Situation of Human Rights Defenders in the Americas". Available at: <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm>)

² The IACHR considered in its report of 2006 the following obstacles (a) extrajudicial executions and forced disappearances, assaults, threats, and harassment; (b) smear campaigns and baseless judicial actions; (c) home raids and other arbitrary interference; (d) intelligence activities directed against human rights defenders; (e) restrictions on access to information and *habeas data* actions; (f) abusive administrative and financial controls of human rights organizations; and (g) impunity in the investigations of attacks suffered by human rights defenders

³ The IACHR included in its 2006 report as human Rights defenders at particular risk, the following: Readers of organized labor, campesino and community Readers, indigenous and afro-descendant Readers, justice operators and women human rights defenders.

⁴ IACHR, Report on the Situation of Human Rights Defenders in the Americas, See Chapter X.

⁵ The questionnaires published in 2008 and 2010 are available at: <http://www.oas.org/en/iachr/defenders/reports/questionnaires.asp>

from civil society, as well as a response from the Ombudsperson of Guatemala and the Human Rights Commission of the Federal District of Mexico.

4. In addition, the IACHR held 50 public hearings specifically to address the situation of human rights defenders.⁶ During the Commission's 140th and 141st regular sessions, the Unit on Human Rights Defenders held working meetings with activists from across the region to discuss the main challenges they face in their work and to coordinate activities, particularly concerning the follow-up to the 2006 report. In addition, in its 141st session the IACHR held a hearing on "The Situation of Human Rights Defenders in the Americas," which had been requested by more than 30 civil society organizations, in order to receive input for the follow-up report⁷.

5. Finally, also during its 141st period of sessions, the IACHR decided to create the Rapporteurship on Human Rights Defenders to continue monitoring the serious situation faced by human rights defenders in the region.⁸

6. This report is structured based on the content of the 2006 report to update the inter-American standards in this area and to follow up on the recommendations issued on the following subjects: (1) problems faced by human rights defenders in the region; (2) human rights defenders at particular risk; (3) independence and impartiality of justice operators as a guarantee of access to justice; and (4) protection mechanisms for human rights defenders. As is laid out in the report, the States should take the relevant measures in these four areas in order to implement a global protection policy for human rights defenders, as the IACHR specified in its 2006 report.⁹ Each section refers to the Commission's recommendations from the previous report and includes measures that some States have taken to implement the recommendations. The Commission hopes that this report, as was the 2006 report, continues to be used by civil society in the region as a tool to reinvigorate its rights.

7. The Commission recognizes that some Member States have made significant efforts in order to comply with the recommendations established in the 2006 report. In this regard, the IACHR highlights the following good practices: (a) expressions by high-level State authorities supporting the work of human rights defenders in the construction of democratic societies; (b) the creation of specific units and special protocols to investigate crimes committed against human rights defenders; (c) the adoption of

⁶ The hearings held at the IACHR with regard to human Rights defenders in the period 2006/2011 may be consulted at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=30>

⁷ IACHR, Hearing on the Situation of Human Rights Defenders in the Americas, 141st period of sessions, October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=30>

⁸ Since its creation, the Rapporteurship has performed the following tasks: a) receive and analyze Communications, complaints, urgent actions and press releases that the human rights organizations send to the Executive Secretariat; b) provide technical support to the Commission with regards to the individual petitions and precautionary measures requests related to human rights defenders; c) follow-up to the public hearings on this issue; d) draft reports on the situation of human rights defenders in the countries of the region.

⁹ IACHR, Report on the Situation of Human Rights Defenders in the Americas, recommendation 5.

statistical records on the types and patterns of attacks against defenders; (d) the issuance of instructions directing authorities to recognize and facilitate the work of defenders; (e) the creation of national human rights protection mechanisms; (f) the continuation or initiation of dialogue processes with human rights defenders, in order to learn about the problems they face and facilitate their active participation in the adoption of public policies; and (g) the establishment of mechanisms to implement special protection measures issued by the bodies of the inter-American system.

8. Notwithstanding these efforts, the obstacles pointed-out in the 2006 report persist. In some cases, these obstacles have intensified during the period of follow-up. There is a continuance of murders, assaults, forced disappearances, threats, illegal searches, as well as in the statements by high-level authorities discrediting and stigmatizing the work of defending human rights. Moreover, the Commission has noted a growing sophistication of the mechanisms designed to hamper, block, or discourage the work of defending and promoting human rights, which is reflected in baseless criminal charges being filed, financing sources for organizations being restricted, and in the absence of adequate and effective mechanisms for their protection.

9. The IACHR has observed that additional groups other than those already identified in 2006 have been targets of frequent and serious attacks, assaults, and harassment. For this reason, the Commission has decided to also refer in this report to the situation of defenders of the right to a healthy environment; of the rights of lesbian, gay, trans, bisexual, and intersex (LGTBI) persons; and of the rights of migrant workers and their families. Further, the IACHR has decided to devote a chapter of this report to justice operators as defenders of access to justice for thousands of victims of human rights violations.

10. Even though the IACHR has recognized the positive value of the creation of specialized national mechanisms for protecting human rights defenders in some countries, it has also been informed about persisting deficiencies in their design and operation. It has also been informed about the absence of protection mechanisms in other States and the lack of appropriate and effective systems for implementing specialized protection measures issued by the bodies of the inter-American system. These problems are related to the situation of defenselessness in which many human rights defenders find themselves in some parts of the hemisphere and that has led hundreds of them to lose their lives during the last years.

11. Given the large quantity of information provided by civil society related to attacks and harassment directed against human rights defenders, as in the 2006 report, this report refers only to some specific situations by way of example, in no way suggesting that the factual information included is exhaustive or addresses all incidents the Commission has learned about during the follow-up period. The IACHR believes that the trends identified through the examples can provide guidance to the States and civil society as to the most serious patterns of obstacles against human rights defenders, with the aim to promote normative reforms as well as the design and implementation of public policies to guarantee the work of defense and promotion of human rights.

B. Definition of human rights defender and his or her importance in democratic societies

12. In the framework of the analysis contained in Article 1 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (hereinafter, the Declaration on Defenders),¹⁰ the IACHR understands "every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally"¹¹ has to be considered as a human rights defender. As indicated by the Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR), the criterion used to identify whether a person should be considered a human rights defender is the activity undertaken by the person and not other qualities, such as whether or not they are paid for their work or whether or not they belong to a civil society organization.¹²

13. The IACHR reiterates that the work of human rights defenders is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law.¹³ Human rights defenders are an essential pillar for the strengthening and consolidation of democracies, since the purpose that motivates their work involves society in general, and seeks to benefit society. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected.¹⁴

C. International recognition of the right to defend human rights

14. The international recognition of the work of human rights defenders and the resulting development of special mechanisms to protect them had a key turning point on December 9, 1998, when the United Nations General Assembly approved the Declaration on Defenders.¹⁵ Adopted by consensus of the members of the General Assembly, the declaration represented, in the words of the then Special Representative of the UN Secretary-General on human rights defenders, "a clear commitment to

¹⁰ Article 1 of the Declaration establishes that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Approved by the UN General Assembly, through Resolution A/RES/53/144 of March 8, 1999. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

¹¹ IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 13.

¹² Office of the United Nations High Commissioner for Human Rights. Informative Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights. Geneva 2004. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

¹³ IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 1.

¹⁴ *Ibid.*, para. 34.

¹⁵ Declaration approved by the UN General Assembly, through Resolution A/RES/53/144 of March 8, 1999. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

acknowledge, promote and protect the work and rights of human rights defenders around the world" and "a turning point in improving the protection of human rights defenders."¹⁶

15. The Declaration on Defenders is the first international instrument "formally to define the 'defence' of human rights as a right in itself"¹⁷. In this regard, it recognizes that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."¹⁸ Based on this acknowledgment on the part of the UN General Assembly, the right to defend human rights has also been recognized in the regional systems of protection of human rights.¹⁹

16. In the case of the inter-American system, the right to defend human rights has been recognized by both the Commission and the inter-American Court of Human Rights (hereinafter "the Court" or the "inter-American Court"). The IACHR understands that the exercise of the right to defend human rights cannot be subject to geographical restrictions, and that it implies the possibility of freely and effectively promote and defend any right whose acceptance is unquestioned,²⁰ the rights and freedoms contained in the Declaration on Defenders itself,²¹ as well as any "new rights or components of rights whose formulation is still a matter of debate."²² The Inter-American Court, for its part, has pointed out that, in accordance with the principles of indivisibility and interdependence of human rights, the defense of human rights "is not limited to civil

¹⁶ Economic and Social Council, promotion and protection of human rights human rights defenders, Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61. E/CN.4/2001/94, 26 January 2001, para. 2.

¹⁷ Special Representative of the UN Secretary General, Hina Jilani, Fact Sheet 29: Human Rights Defenders: Protecting the right to defend human rights. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

¹⁸ Article 1 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.53.144.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.53.144.en)

¹⁹ For example, in Europe were adopted the European Union Guidelines on Human Rights Defenders, with the purpose of: "support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights", Brussels, June 10, 2009. Available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>. The African Union adopted in 1999 the *Grand Bay Declaration and Plan of Action*, recognizing the UN Declaration on Human Rights Defenders and the importance of the development and energizing of civil society as essential elements for creating a favorable background for human rights in Africa. Cfr. *Grand Bay Declaration and Plan of Action*, adopted at the OAU Ministerial Conference on Human Rights, held on April 12 through 16, 1999, in Grand Bay, Mauritius. Available at: http://www.achpr.org/english/declarations/declaration_grand_bay_en.html.

²⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 36.

²¹ Special Representative of the UN Secretary General, Hina Jilani, Fact Sheet 29: Human Rights Defenders: Protecting the right to defend human rights. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

²² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 36.

and political rights, but necessarily involves economic, social and cultural rights."²³ It has also stated that the fear caused to defenders by the murder of another defender in retaliation of his or her work can directly reduce the possibility of human rights defenders exercising their right to perform their work by means of denunciations.²⁴

17. The UN Declaration on Defenders refers to various measures the States should take to enable and not hinder the exercise of activities of defense and promotion of human rights. Several of the acts or omissions that the States should observe to respect and guarantee the right to defend human rights, under the Declaration, correspond to obligations whose fulfillment underpins rights recognized in several binding international agreements and declarations.²⁵

18. In the inter-America System, the Court has noted that "the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity."²⁶

19. The aforementioned duties of the State are related to the enjoyment of several rights contained in the Declaration of Rights and Duties of Men (hereinafter "American Declaration") and in the American Convention on Human Rights (hereinafter the "Convention", or "American Convention"), such as the rights to life, personal integrity, freedom of expression, judicial guarantees, and judicial protection, among others—rights which, taken together, allow for the free exercise of activities of defense and promotion of human rights. Thus, the attack to a human rights defender in reprisal for his or her activities can have the effect of violating several rights recognized in the inter-American instruments.

II. OBSTACLES FACED BY HUMAN RIGHTS DEFENDERS

20. In this chapter, the Commission will analyze the actions that are most frequent and most representative of violations of the rights of human rights defenders, as well as some of the restrictions to the work of defending human rights in the region. As was done in 2006, this report establishes patterns based on the nature of the disturbing

²³ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 147; I/A Court H.R., *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 77.

²⁴ I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96.

²⁵ Economic and Social Council, promotion and protection of human rights human rights defenders, Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61. E/CN.4/2001/94, 26 January 2001, para. 14.

²⁶ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits*. Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 45.

incidents or incidents that constitute violations of rights, and not based on the source of those actions or the moment in which they are committed.²⁷

21. One of the most serious consequences of the patterns identified below is that they send an intimidating message to society as a whole, putting it in a defenseless situation. These acts are aimed at causing widespread fear and thus at discouraging all other human rights defenders and intimidating and silencing the denunciations, claims, and grievances of the victims of human rights violations, fueling impunity and impeding the full realization of the rule of law and democracy.²⁸

A. Murders, extrajudicial executions, and forced disappearances

22. Murders, extrajudicial executions, and forced disappearances committed against human rights defenders are one of the most serious obstacles to the exercise of promoting and protecting human rights.²⁹ In its 2006 report, the IACHR observed that human rights defenders were "frequent victims of violations of the right to life"³⁰ and recommended that the States "[u]rgently adopt effective measures to protect the life and physical integrity of human rights defenders."³¹ The IACHR will now discuss the standards that apply to the protection of human rights defenders' right to life, as well as their impact on the activity of defending human rights. It will then will provide follow-up to the situation in the hemisphere with regard to this obstacle.

23. The right to life is protected by Article I of the Declaration³² and Article 4 of the American Convention.³³ This is "a fundamental and basic right for the exercise of any other right, including the right to defend human rights."³⁴ Both the right to life and the right to physical integrity constitute essential minimums for the exercise of any activity,³⁵ including that of defending human rights.³⁶

²⁷ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 139.

²⁸ *Ibid.*, para. 140.

²⁹ *Ibid.*, para. 148.

³⁰ *Idem.*

³¹ *Ibid.*, recommendation 6.

³² Article I of the American Declaration establishes that "Every human being has the right to life, liberty and the security of his person".

³³ Article 4 of the Convention establishes that "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...]"

³⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 42.

³⁵ *Ibid.*, para. 42; See also I/A Court H.R., *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 152.

³⁶ *Ibid.*, para. 45. In similar sense I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 74.

24. The protection of human rights defenders' right to life, in accordance with the State's obligation to guarantee human rights, implies not only negative obligations but also positive ones. In this regard, in addition to an absolute prohibition on arbitrary executions and forced disappearances, States are obligated to carry out positive actions that translate into doing away with environments that are incompatible with or dangerous for the protection of human rights³⁷ and bringing about the conditions for eradicating violations by State agents or private persons,³⁸ so that human rights defenders can freely carry out their activities.

25. The bodies of the inter-American system have indicated that attacks on the lives of human rights defenders have a multiplier effect, which goes beyond the person of the defender. When an assault is committed in reprisal for a defender's actions, it produces a chilling effect on those connected to the defense and promotion of human rights, which directly diminishes their possibilities of carrying out this activity.³⁹ The Inter-American Court has indicated that the fear caused by such an event "can directly reduce the possibility of human rights defenders exercising their right to perform their work [...]"⁴⁰

26. In the specific case of those organized to defend and promote a human right, the IACHR and the Inter-American Court have identified a close relationship between the right to life and the exercise of freedom of association, so that acts against the life of a defender may in turn involve a violation to freedom of association, when these acts result from the victim's legitimate exercise of that freedom,⁴¹ that is, through his or her activities to defend and promote human rights.

27. Thus, the chilling effect that the violation of the right to life has on the activity of human rights defenders organized behind a common cause has been analyzed

³⁷ *Ibid.*, para. 45. In similar sense I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 74.

³⁸ The UN Special Rapporteur on human Rights defenders, Margaret Sekaggya, has expressed her concern over the continuous attacks to which human rights defenders are subject by non-State agents. For that reason, she decided to center one of her thematic reports to the General Assembly on the question of human rights violations committed against human rights defenders by non-State agents and their consequences for the full enjoyment of human rights of the defenders. Cfr. UN General Assembly, A/65/223, Report of the Special Rapporteur on the situation of human rights defenders, August 4, 2010.

³⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 43; I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 153; I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 78.

⁴⁰ I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96.

⁴¹ I/A Court H.R., *Case of Manuel Cepeda-Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 172; I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 150; IACHR, Report No. 13/96, Case 10.948 (El Salvador), March 1, 1996, para. 25;

from the perspective of the violation of the right of association.⁴² Along these same lines, the Inter-American Court has found that " the execution of a trade union leader...not only restricts the freedom of association of an individual, but also the right and freedom of a determined group to associate freely, without fear."⁴³ Moreover, the Court established a violation of the right of association in the case of a defender whose death, motivated by her work in defense of the environment, "evidently...resulted in the deprivation of her right to associate freely with others" and at the same time "had an intimidating effect on other people who are engaged in the defense of the environment...or that are related to this type of causes."⁴⁴

28. To protect the defense of human rights the Court has noted a series of specific obligations that are closely related to the enjoyment of various rights of human rights defenders, particularly the right to life. In that respect, the Court has established that "the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity."⁴⁵

29. The IACHR has received information concerning attacks on the lives of human rights defenders. Murders, extrajudicial executions, and forced disappearances have been on the rise in the region,⁴⁶ particularly in those countries where there have been democratic breakdowns; where an internal armed conflict persists; or where there are ongoing confrontations with organized crime groups or sectors with considerable economic power, as in the case of companies that manage projects in the extractive industries.

30. The information received by the Commission indicates that in several countries of the region, attacks on the lives of human rights defenders persist; however, in some of these countries, the situation is especially serious. In this regard, the IACHR has received troubling information regarding Brazil, Colombia, El Salvador, Guatemala, Honduras, Mexico, and Venezuela, where the attacks against human rights defenders seriously affect respect for human rights.⁴⁷

⁴² Protected by Articles 16 of the American Convention and XXII of the American Declaration.

⁴³ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69. The IACHR has considered that the same consequence takes place for any person that defends any kind of right or human Rights issue. Cfr. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 71.

⁴⁴ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 153.

⁴⁵ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145.

⁴⁶ IACHR, *Hearing on the Situation of Human Rights Defenders in the Americas*, 141st session, March 29, 2011.

⁴⁷ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 20.

31. With regard to Brazil, the IACHR has learned that some of the murders of human rights defenders have reportedly come as a result of retaliation by private parties for their activities to defend the environment and the ownership of their lands. In just five days (May 24-28, 2011), at least 4 persons lost their lives in connection with activities to defend forests against tree cutting.⁴⁸ Civil society organizations gave the Brazilian government a list requesting security for 125 campesino activists and leaders who were said to have received death threats because of their activities to defend their territories and the environment.⁴⁹ In 2009, the IACHR condemned the murder of a defender who had denounced the actions of some death squads in the states of Paraíba and Pernambuco.⁵⁰ In 2008, the Commission received information on the murder of defenders connected to an investigation into the dismantling of armed militias in the State,⁵¹ and in 2007, it received information on the murder of defenders who belonged to the *Movimento dos Trabalhadores Rurais sem Terra* (MST) and *Comissão Pastoral da Terra*, organizations active in agrarian reform and the right to land.⁵²

32. In Colombia, according to records kept by civil society organizations, 68 violations of human rights defenders' right to life were committed between 2006 and 2010, including at least 5 forced disappearances.⁵³ According to the Nongovernmental Program to Protect Human Rights Defenders, in 2010, 18% of the attacks suffered by defenders were murders and in the first three months of 2011, 96 cases of attacks on defenders were reported, including 9 murders and 4 disappearances.⁵⁴ The IACHR has learned that labor union leaders, indigenous people and people of African descent, as well as displaced

⁴⁸ Comissão Pastoral da Terra (CPT), *CPT acaba de enviar à ministra Maria do Rosário novas ameaças contra defensores dos direitos humanos*, June 7, 2011. Available [in Portuguese] at: http://www.cptnacional.org.br/index.php?option=com_content&view=article&id=664:cpt-acaba-de-enviar-a-ministra-maria-do-rosario-novas-ameacas-contra-defensores-dos-direitos-humanos&catid=12:conflitos&Itemid=54; Amnistía Internacional, *Las autoridades deben actuar para detener muertes en el Amazonas*, June 2, 2006. Available [In Spanish] at: <http://www.amnistia.org.pe/2011/06/02/las-autoridades-deben-actuar-para-detener-las-muertes-en-el-amazonas/>

⁴⁹ El Universal, *Brasil, medidas especiales para ambientalistas amenazados*, May 30, 2011. Available [in Spanish] at: <http://www.eluniversal.com.co/cartagena/ambiente/brasil-medidas-especiales-para-ambientalistas-amenazados-26812>; Terra de Direitos, *Gaceta de Povo: Ameaçados sem proteção*, June 19, 2011. Available [in Portuguese] at: <http://terradedireitos.org.br/biblioteca/gazeta-do-povo-ameaçados-sem-protecao/>

⁵⁰ IACHR, press release 4/09, IACHR Condemns Murder of Human Rights Defender in Brazil. Washington, D.C., February 6, 2009.

⁵¹ FIDH, *Asesinato del Sr. Eli Dallemole, dirigente del Movimiento de los Sin Tierras*, April 3, 2008. Available [in Spanish] at: <http://999.fidh.org/Asesinato-del-Sr-Eli-Dallemole-dirigente-del>

⁵² FIDH/OMCT, *Steadfast in Process*. Annual Report 2007, June 19, 2008, p. 113. Available at: http://www.omct.org/files/2008/09/4907/report2007obs_eng.pdf

⁵³ Colombian Commission of Jurists, *Violations against Human Rights defenders in Colombia, July 1996 to December 2010*. Available [In Spanish] at: http://www.coljuristas.org/documentos/cifras/cif_2011-02-22.pdf

⁵⁴ Non Governmental Program of Protection for Human Rights Defenders, *Protección a defensores(as) de derechos humanos en Colombia: Saldo pendiente*, June 8, 2011. Available at: http://www.somosdefensores.org/index.php?option=com_content&view=article&id=78:proteccion-a-defensores-de-derechos-humanos-en-colombiasaldo-pendiente&catid=8:novedades&Itemid=3

persons, are at particular risk for attacks on their life. The OHCHR has documented attacks on women leaders of displaced persons have been documented with particular frequency in Cauca, Sucre, and the Urabá region.⁵⁵ In addition, according to the OHCHR, the responsibility for many of these violations has reportedly been attributed to agents of the State, members of post-demobilization paramilitary groups, and members of the FARC-EP and the National Liberation Army (ELN).⁵⁶ The IACHR has received information on killings that have been preceded by notes with threats and intimidations which declare human rights defenders or their organizations to be targets of paramilitary groups such as the self-described "águilas negras"⁵⁷ or "rastros."⁵⁸

33. With respect to El Salvador, the IACHR has been informed about the murder of several human rights defenders who had opposed the development of mining industries that could harm the environment and their communities' territories. From June to December of 2009, at least three defenders who were opposed to the development of a mining complex in the department of Cabañas were killed,⁵⁹ and another defender was killed in the same region in 2011.⁶⁰

34. In terms of Guatemala, according to information received, since 2006 59 human rights defenders were murdered, and in 2006 a forced disappearance presumably took place.⁶¹ The IACHR has been aware of the particular exposure to risk reportedly faced by labor union leaders, as well as defenders of environmental rights in that country. Moreover, it has received information about the situation of defenders participating in processes to denounce human rights violations perpetrated during the internal armed conflict. Taking into account that general figures on impunity in Guatemala are between 95 and 99%,⁶² the role of defenders who promote investigation processes on violations committed during the armed conflict is invaluable in terms of knowledge of the facts alleged and punishment of those who are responsible. The IACHR is concerned over

⁵⁵ UN General Assembly, *Report of the High Commissioner For Human Rights on the situation of human rights in Colombia*, A/HRC/16/22, February 3, 2011, para. 11.

⁵⁶ *Idem*.

⁵⁷ IACHR, 2010 Annual Report, Chapter IV- Colombia, para. 199. IACHR, *Hearing on the situation of human rights defenders in Colombia and implementation of precautionary measures*, 140th session, October 28, 2010.

⁵⁸ IACHR, press release 59/11, *IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia*, Washington, D.C., June 20, 2011.

⁵⁹ Marcelo Rivera Moreno, 37 years old and member of the organization "Asociación Amigos de San Isidro Cabañas (ASIC)", activist against mining operations of Mine El Dorado; Ramiro Rivera Gómez, 53 years old, of the de "Comité Ambiental de Cabañas (CAC)"; Dora Alicia Sorto, 32 years old and also member of the CAC. Agencia Prensa Rural, *El Salvador: Activistas antiminería y defensores del medio ambiente asesinados*, February 5, 2010. Available [in Spanish] at: <http://www.prensarural.org/spip/spip.php?breve2122>

⁶⁰ IACHR, press release 62/11, *IACHR Condemns Murder of Human Rights Defender in El Salvador*, Washington D.C., June 24, 2011.

⁶¹ UDEFEGUA, *2010 report*, Available [in Spanish] at: www.udefegua.org

⁶² Noticias de Guatemala, [Impunidad en Guatemala sigue siendo horrible pero hay avances, afirma Castresana](http://www.noticiasdeguatemala.com/impunidad-en-guatemala-sigue-siendo-horrible-pero-hay-avances-afirma-castresana), Abril 2010.

information it received during the public consultation process for the preparation of this report indicating that close to 15% of the total number of attacks against defenders are reportedly directed against those who promote the clarification of human rights violations committed during the armed conflict.

35. The IACHR has constantly monitored the situation of human rights defenders in Honduras. In 2008 the IACHR condemned the death of two labor union leaders.⁶³ Following the 2009 coup, the situation of human rights defenders worsened, and according to information received by the IACHR, between 2009 and 2010, the organizations recorded 675 cases of attacks against defenders, and approximately 65 from January to March of 2011. Civil society organizations reported that in the context of the political crisis created by the coup d'état, 9 defenders of civil and political rights were reportedly killed, as well as 3 union leaders, 14 defenders of the rights of indigenous peoples, 5 defenders of the rights of LGTBI persons, 19 environmental defenders, 13 teachers' leaders, and 12 social leaders linked to the National Resistance Front.⁶⁴

36. With respect to Mexico, the OHCHR has indicated that in the period from January 2006 to August 2009, there were 128 cases in which defenders were attacked or restricted from being able to do their work; of those, 6% reportedly involved arbitrary deprivation of life.⁶⁵ In one report to update earlier figures, the OHCHR noted that 37 attacks had been added in the period from September 2009 to October 2010, with acts involving arbitrary deprivation of life rising to 13% the total number of attacks.⁶⁶ For its part, the National Human Rights Commission (hereinafter, the CNDH) documented 27 cases in which defenders had been deprived of their life in the period from January 2005 to May 2011.⁶⁷ Civil society organizations have reported that from 2006 to 2010 in Mexico, some 61 human rights defenders were killed and at least 4 were disappeared.⁶⁸ The IACHR has observed that defenders of environmental rights, indigenous leaders, and defenders of

⁶³ Rosa Altagracia Fuentes, Secretary General of the Workers Confederation of Honduras (CTH) and Second Vice-president of the Central American region of the recently founded Union Confederation of workers of the Americas (CSA), of Virginia García de Sánchez, member of the *Unión de Mujeres Campesinas de Honduras* (UMCAH), and her driver, Juan Bautista Aceituno Estrada. IACHR, Press release 19/08, *IACHR condemns murders in Honduras*, May 5, 2008.

⁶⁴ IACHR, *Situation of human rights defenders in Honduras*, 141st Session, March 25, 2011.

⁶⁵ OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2009, para. 33. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/informepdf.pdf>

⁶⁶ OHCHR, *2010 update: Report on the Situation of Human Rights Defenders in Mexico, 2010*, pp. 6-7. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>

⁶⁷ CNDH, *The right to defend. Special Report of the Situation of Human Rights Defenders in Mexico*, July 2011, p. 42. Available in Spanish at: <http://www.cndh.org.mx/sites/all/fuentes/documentos/Index/20110706.pdf>

⁶⁸ Contralínea, *Con Calderón 61 defensores de derechos humanos asesinados*, December 19, 2010. Available in Spanish at: <http://contralinea.info/archivo-revista/index.php/2010/12/19/con-calderon-61-defensores-de-dh-asesinados/>

women's rights have particularly been targets of attacks on their life.⁶⁹ According to the OHCHR, the states in which the greatest number of attacks have taken place are: Chihuahua, Chiapas, Oaxaca, and Guerrero.⁷⁰ In some parts of these states where more attacks on defenders have reportedly occurred, such as in Ciudad Juárez,⁷¹ there is an elevated presence of the armed forces as part of the government's strategy to combat organized crime.⁷² According to the information received by the IACHR, the attacks reportedly come from non-State actors that belong to organized crime,⁷³ as well as from sectors opposed to the causes led by the defenders, and the authorities have not prevented the attacks; to the contrary, according to the information received, there have reportedly been occasions in which the authorities themselves asked organized crime to do the "dirty work" as a way to evade responsibility.⁷⁴ According to the CNDH, murders of defenders have been committed in their homes, communities, or public places, by means of acts of torture or blows that have caused them serious injuries. Murders have been perpetrated by criminal groups and even by authorities who have resorted to the arbitrary use of law enforcement and have caused the victims fatal injuries.⁷⁵

37. With respect to Venezuela, the IACHR has received troubling information about the murder of labor union leaders. According to the Inter-American Platform on Human Rights, Democracy and Development, 48 union leaders were reported killed in 2007 and 19 leaders were killed in 2008, for a total of 67 homicides in the space of 2 years.⁷⁶

⁶⁹ See Chapter III, Especially exposed groups of human rights defenders.

⁷⁰ OHCHR, *2010 update: Report on the Situation of Human Rights Defenders in Mexico, 2010*, p. 11. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>

⁷¹ Center for Women's Right C.A., and Justice for Our Daughters C.A., Report on femicide and disappearances in Ciudad Juarez and Chihuahua and on violations in the context of militarization and trafficking-violence presented for the consideration of the UN Committee on Human rights (2010). Available in Spanish at: http://www.google.com/url?q=http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CDHM_Mexico_98.doc&sa=U&ei=cml5T6OZLeHy0gG-5vXQAg&ved=0CBAQFiAA&usg=AFQjCNEQ7F6sYlv3teVL-bwul8NeCDw7TQ. See also, Increasing feticides in Juarez in 2010, Increase in murders of women in Juarez due to the rise in drug trafficking. The organization Justice for Our Daughters indicates that since January 1, 2010 to October 4 of that year, has recorded a total of 335 violent deaths of women in that place. Justice for Our Daughters indicates that this information was obtained through hemerographic monitoring and requests for access to public information. Cfr. "335 feminicides in Chihuahua", October 6, 2010, available in Spanish at: <http://justiciaparanuestrashijas.blogspot.com/2010/10/335-femicidios-en-chihuahua.html>

⁷² Human Right Watch, Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations, April 2009. Available at: <http://www.hrw.org/reports/2009/04/28/uniform-impunity>

⁷³ See chapter III, Especially Exposed Human Rights Defenders.

⁷⁴ OHCHR, *2010 update: Report on the Situation of Human Rights Defenders in Mexico, 2010*, P.44.. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>

⁷⁵ CNDH, *The right to defend. Special Report of the Situation of Human Rights Defenders in Mexico*, July 2011, p. 42. Available in Spanish at: <http://www.cndh.org.mx/sites/all/fuentes/documentos/Index/20110706.pdf>

⁷⁶ Inter-American Platform of Human Rights, Democracy and Development, *Trade union violence in Venezuela*, April 15, 2009. Available in Spanish at: http://www.pidhdd.org/index.php?option=com_content&task=view&id=347&Itemid=1

During its 140th session, the IACHR also learned of the murders of at least 30 union leaders in the period from June 2009 through May 2010.⁷⁷

38. The IACHR appreciates the information provided by the States of Colombia, Guatemala, Honduras, El Salvador, Mexico, and Venezuela which indicates the development of protection mechanisms for human rights defenders; however, the IACHR has noted with concern that some mechanisms are inappropriate or ineffective, and there is a lack of coordination among the authorities in charge of implementing them, which facilitates the continuation of the attacks. On that point, the IACHR will address the subject of protection mechanisms in another chapter of this report.

39. Despite the efforts carried out by some States of the region, given the persistence of violations of human rights defenders' right to life, which has an impact in terms of the risk to which defenders are exposed in some countries, the IACHR considers that its recommendation has not been complied with and urges the States to urgently adopt effective measures to protect the life of human rights defenders.⁷⁸

B. Attacks, threats, and other forms of harassment

40. In its 2006 report, the Commission referred to the attacks, threats, and acts of harassment against the personal integrity of human rights defenders, and recommended that the States "[u]rgently adopt effective measures to protect the life and physical integrity of human rights defenders who are threatened, and to ensure that these measures are decided on in consultation with the defenders."⁷⁹ The Commission will now refer to the content of defenders' right to physical integrity, and will provide follow-up to the situation human rights defenders face.

41. The right to physical integrity is established in Article I of the Declaration⁸⁰ and Article 5 of the American Convention on Human Rights.⁸¹ The physical or psychological attacks, threats, and harassment used for the purpose of diminishing the physical and mental capacity of human rights defenders is a violation to the right to personal integrity; in fact, when such attacks or threats could be considered torture⁸² or

⁷⁷ IACHR, 2010 Annual Report, Chapter IV- Venezuela, March 7, 2011, para. 653.

⁷⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 6.

⁷⁹ *Idem*.

⁸⁰ Article I of the American Declaration establishes that "Every human being has the right to life, liberty and the security of his person".

⁸¹ Article 5 of the American Convention establishes that: "1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment [...]"

⁸² In this regard, the Inter-American Court has expressed that "'the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered "psychological torture." I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, para. 92.

cruel, inhuman, or degrading treatment,⁸³ they may constitute not only violations of the American Convention and Declaration, but also violations of other inter-American instruments.⁸⁴

42. States have the obligation to respect the right to personal integrity in such a way that their agents do not interfere with its enjoyment. Moreover, based on their obligation to guarantee human rights,⁸⁵ States are obligated to act reasonably to prevent threats, attacks, and harassment carried out against human rights defenders; seriously investigate facts of which they are made aware; and, where applicable, punish those responsible and provide adequate compensation to the victims,⁸⁶ regardless of whether these acts are committed by State agents or by private persons.⁸⁷ The failure to meet one of the foregoing obligations could give rise to a State's international responsibility for violating the right to personal integrity.

43. In terms of the State's prevention duty, when defenders have reported to the authorities threats they have received, or when the State has received word by other means of such threats, this should be enough for the State to activate protection mechanisms to the benefit of the defender at risk. In this regard, the Commission has followed the case law of the European Court, which indicates that:

For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party [...]⁸⁸

44. In accordance with the foregoing, a State's prevention and protection obligations are conditioned on the knowledge of a situation of real and immediate risk to a

⁸³ As the Inter-American Court has established, “[t]he violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation”. I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Judgment of September 17, 1995, para. 57.

⁸⁴ The absolute prohibition of torture is established in the Inter-American Convention to prevent and Punish Torture, in Articles 1, 2 and 3.

⁸⁵ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 173-174.

⁸⁶ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174.

⁸⁷ UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/65/223 August 4, 2010. Available at: <http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>; Cfr. I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177.

⁸⁸ ECHR, *Kiliç v. Turkey*, Judgment of March 28, 2000. Application No. 22492/93, paras. 62 - 63; *Osman v. the United Kingdom*, Judgment of October 28, 1998, *Reports of Judgments and Decisions 1998-VIII*, paras. 115 – 116.

given individual or group of individuals and the reasonable possibilities of preventing or avoiding that risk.⁸⁹ The Court has determined, for example, that the lack of a State response to "a campaign of threats, harassment, surveillance, arrests, searches and attempts against their lives and their physical integrity," about which the authorities were aware and which produced "constant fear, distress and family separation," amounts to a violation of the personal integrity of those who are affected.⁹⁰

45. The State's obligation to prevent is not limited to providing material measures to protect life and personal integrity, but also entails the obligation to address the structural causes that affect the security of the persons threatened.⁹¹ To meet this obligation, the State must investigate and punish the persons responsible for harassment, threats, and attacks against human rights defenders.⁹² The investigation must be done immediately and must be thorough, serious, and impartial in order to identify the source of the threats and punish those responsible, with the aim of trying to prevent the threats from being carried out.⁹³ In terms of the obligation to punish those responsible, the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.⁹⁴

46. Just as with the right to life, respect for and guarantee of personal integrity is directly related to the free exercise of the activity of defending and promoting human rights. The defense of human rights can be exercised freely only when the persons engaged in it are not victims of any threats or of any type of physical, psychological, or moral aggression, or other forms of harassment.⁹⁵ As a result, threats or acts of physical, psychological, or moral aggression that keep defenders from doing their work could also constitute violations of defenders' right to association.

47. Further, when acts of intimidation reach the point at which a defender is forced to leave the place where he or she is carrying out the work of defending human

⁸⁹ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 123. See also Application to the Inter-American Court in the Case "Cotton Field" (cases 12.496, 12.497 and 12.498) v. Mexico, November 4, 2007, para.159.

⁹⁰ I/A Court H.R., *Case of Gutiérrez-Soler v. Colombia*. Merits, Reparations and Costs. Judgment of September 12, 2005 Series C No. 132, paras. 56-57. See also I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 147

⁹¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 47.

⁹² *Idem*.

⁹³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 45. In this regard, the Inter-American Court has expressed, for example, that as "an essential element of the duty to protect, the State has to take effective measures to investigate and, in its case, punish those responsible of the facts that motivated the adoption of provisional measures" (I/A Court, *Case Giraldo Cardona*, Provisional Measures, Order of June 19, 1998, Operative para. 4).

⁹⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 109.

⁹⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 46.

rights, the person's freedom of movement and residence may be infringed.⁹⁶ In this regard, the inter-American Court has found that this right could be violated when a defender is a victim of threats or harassment and the State does not provide the guarantees necessary to allow the person to move about freely and reside in the territory in question, even when those threats and acts of harassment are carried out by non-State actors.⁹⁷ The close relationship between human rights defenders and the victims they represent is necessary for the defenders to better understand the problems that affect the victims, and to be able to propose appropriate lines of action and denunciation.⁹⁸

48. The Commission has observed with concern the systematic continuity in which assaults, threats, and other acts of harassment against the personal integrity of human rights defenders take place in the hemisphere.

49. Threats are generally intimidating notices that an act may be committed that will produce serious pain, such as torture, kidnapping, rape, or death. The aim is to intimidate human rights defenders or their family members, so as to get the defenders to refrain from pursuing certain investigations or complaints.⁹⁹ During the follow-up period, threats have continued to seriously obstruct human rights defenders' ability to perform their work in some countries of the region. Given the repetition and magnitude of the threats, and the fact that in some cases they are effectively carried out, they manage to create hostile environments that take a psychological and physical toll and at the same time force the person who has been threatened to expend a great deal of effort in ensuring that he or she can work as safely as possible. Many threats go on for long periods of time, creating a life of uncertainty and fear for the victims and their family members. According to the United Nations Special Rapporteur on the Situation of Human Rights Defenders, of the total number of communications received by her office in the 2004-2009 period, more than half concerned defenders working in the Americas, and of these, a significant number involved explicit death threats.¹⁰⁰

50. In this sense, with regard to Brazil for example, the IACHR has observed the persistence of threats against activists and campesino leaders defending their territories and the environment. According to information received, in May 2011 civil society organizations gave the government a list requesting security for 125 activists and campesino leaders who reportedly had received death threats.¹⁰¹ With respect to

⁹⁶ Protected by Article VIII of the Declaration and 22 of the American Convention.

⁹⁷ I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 139.

⁹⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 101.

⁹⁹ *Ibid.*, para. 158.

¹⁰⁰ UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, *Margaret Sekaggya*, A/HRC/16/44, December 20, 2010, para. 57.

¹⁰¹ El Universal, *Brasil, medidas especiales para ambientalistas amenazados*, May 30, 2011. Available at: <http://www.eluniversal.com.co/cartagena/ambiente/brasil-medidas-especiales-para-ambientalistas->

Colombia, the IACHR received information indicating that from January to June 2011, every day and a half a human rights defender was subject to attack¹⁰²; a total of 93 threats and 10 physical assaults were reported.¹⁰³ In 2010, meanwhile, The Non governmental program somos Defensores pointed out that a total of 109 threats and 10 assaults were reported against individuals dedicated to defending human rights.¹⁰⁴ In terms of Guatemala, information provided by the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEQUA) indicates that in the 2006-2011 period, 111 threats had been received in person; 361 had been received in writing; and 167 by telephone. In addition, 3 failed attempts at kidnapping had been made, 7 acts of alleged torture, and 61 cases of alleged surveillance.¹⁰⁵ With regard to Honduras, following the coup d'état, from January 2010 to January 2011 the Committee of Relatives of the Detained-Disappeared in Honduras (COFADEH) recorded 138 death threats directed against human rights defenders.¹⁰⁶ With respect to Ecuador, during his 2011 mission the UN Special Rapporteur on extrajudicial executions expressed his concern over the number of threats received by humanitarian actors, union activists, and social movement and indigenous leaders. He noted in particular that he had received information about activists working for women's rights on the northern border who were told they would be burned alive if they continued their work, as well as from LGBTI activists in Guayas who received notices about a "social cleansing" campaign if they continued their work of denouncing human rights violations.¹⁰⁷ According to a report by the OHCHR in Mexico, from January 2006 to August 2009 threats against life and safety represented 27% of the total number of events against defenders, while physical attacks accounted for 3%.¹⁰⁸ In an update report that covers the period from September

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[amezados-26812](http://www.amezados-26812); Terra de Direitos, *Gaceta de Povo: Ameaçados sem proteção*, June 19, 2011. Available at: <http://terradedireitos.org.br/biblioteca/gazeta-do-povo-ameaçados-sem-protecao/>

¹⁰² Non Governmental Program We are Defenders, *Amenazas Cumplidas*, August 8, 2011. Available in Spanish at: http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3

¹⁰³ Non Governmental Program We are Defenders, *Amenazas Cumplidas*, August 8, 2011. Available in Spanish at: http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3

¹⁰⁴ Non Governmental Program We are Defenders, 2010 Report- *System of Information on attacks against human Rights defenders in Colombia- SIADDHH*. Available in Spanish at: <http://www.somosdefensores.org/attachments/article/90/SIADDHH%20TOTAL%202010.pdf>

¹⁰⁵ See Report UDEFEGUA 2010 at: www.udefegua.org

¹⁰⁶ COFADEH, *Informe de COFADEH: Es la peor arremetida contra los derechos humanos en Honduras*, March 9, 2011. Available in Spanish at: http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=1212%3AInforme-de-cofadeh-es-la-peor-arremetida-contra-los-derechos-humanos-en-honduras&Itemid=150

¹⁰⁷ UN General Assembly, Report of the Special Rapporteur on Extrajudicial Executions, Phillip Alston, A/HRC/17/28/Add.2, May 9, 2011, p. 17.

¹⁰⁸ OHCHR, *2010 update: Report on the Situation of Human Rights Defenders in Mexico, 2010*, para. 36. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>

2009 to October 2010, the OHCHR indicated that threats represented 26% of acts committed against defenders, and physical attacks rose to 13%.¹⁰⁹

51. A great number of the threats in some countries of the hemisphere are delivered through pamphlets, email; text messages, or anonymous messages left in the workplace, aside from those received by telephone or in person. The threats are directed against certain defenders or collectively against an organization or entire community. According to the information received by the IACHR, in many cases the threats come from paramilitary or para-police groups, or from private security forces of sectors that oppose the defenders' causes, or even from agents of the State itself. While the investigations manage to move forward in some cases, the majority of the threats remain in impunity, and the authorities quickly tend to dismiss them without any investigation. This gives rise to an atmosphere of hostility and fear for the defenders, and erodes trust in the effectiveness of the State's management of security.

On August 11, 2006, the IACHR granted precautionary measures in favor of Margarita Pérez Anchiraico, Chair of the Committee for those Affected by Mining in Mayoc, Peru. The available information states that Mrs. Pérez Anchiraico has been the target of harassment because of her activism concerning the situation in the San Mateo de Huanchor Community, a matter that is the subject of a petition awaiting final judgment by the IACHR. It is stated that on the night of July 16, 2006, Margarita Pérez was threatened with death: she was told that she would be blown up if she continued to oppose the re-opening of the mine. In view of the information, the Commission requested that the Government of Peru adopt the measures necessary to protect the life and physical integrity of the beneficiaries and report on action taken to investigate judicially the events that gave rise to the precautionary measures.

52. According to the information received by the IACHR, many of the threats take on greater force in cases in which defenders are actively involved in criminal cases or mass demonstrations to defend a right; when legislation of interest to certain sectors is being discussed; or in the periods preceding an electoral process.¹¹⁰

On April 6, 2009, the IACHR granted precautionary measures for Inés Yadira Cubero González, in Honduras. The request seeking precautionary measures alleges that Mrs. Inés Yadira Cubero González had been the target of an attempted shooting on March 16, 2009, allegedly due to her work as President of the Transparency and Anti-Corruption

¹⁰⁹ OHCHR, *2010 update: Report on the Situation of Human Rights Defenders in Mexico, 2010*, graph 2. p.7. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>

¹¹⁰ OHCHR, *2010 update: Report on the Situation of Human Rights Defenders in Mexico, 2010*, para. 36. Available in Spanish at: <http://www.hchr.org.mx/files/doctos/Libros/2010/L241110b.pdf>

Commission of the Municipal Corporation of San Pedro Sula. The request further indicates that these acts were reported to the Office of the Public Prosecutor for Common Crimes in San Pedro Sula, but that Mrs. Inés Yadira Cubero had not been informed of the results of the investigation and had not been given any protection measures. The Inter-American Commission asked the State of Honduras to adopt the measures necessary to guarantee the life and physical integrity of the beneficiary, and to inform the IACHR about any actions taken to investigate the facts.

53. In terms of physical attacks that continue in the region, the IACHR has taken note that these include both those acts of physical violence aimed at causing the defender's death, and those acts of physical violence whose sole purpose is to inflict pain, fear, anguish, and a sense of vulnerability in order to humiliate and degrade the victims and break their physical and moral resistance.¹¹¹ The IACHR has observed that the attacks and assaults on defenders continue and tend to vary in the intensity of the violence used, and are frequently carried out by hit men. Sometimes those who make the threats do not act in person but by using explosives placed in the victims' offices, residences, or vehicles.

In Nicaragua, in the early morning of September 26, 2008, unknown persons parked a dark pick-up truck in front of the residence of Human rights defender Vilma Nuñez de Escorcía, located in the neighborhood of San Jose, City of Leon. These persons allegedly threw light bulbs filled with oil paint to her house, leaving 10 red stains simulating bloodstains. Vilma Nuñez denounced the facts to the National Police but did not get any response. On November 11, 2008, the IACHR granted a request for precautionary measures for human rights defender Vilma Nuñez de Escorcía and the members of the Centro Nicaragüense de Derechos Humanos (CENIDH) [Nicaraguan Human Rights Center]. The Commission continues to monitor the situation of Mrs. Nuñez de Escorcía and the members of the CENIDH, who have denounced in the frame of the precautionary measure in force, to be victims of a discrediting campaign in the media of their work as defenders of human rights.

54. In addition, another type of assault that continues to occur in the region has to do with defenders and their family members being followed, as well as their organizations, residences, or workplaces kept under surveillance. The IACHR has seen that the methods used for following people vary, since at times they are virtually imperceptible, while in other cases they are easily detected, the perpetrator's intent being to intimidate the defender being kept under surveillance. Moreover, in many cases those in charge of doing the surveillance approach people trusted by the defenders, asking about the defenders' activities or itineraries, or leaving messages that fill the defenders with fear and lead them to suspend their activities.

55. The IACHR has attested that in some countries private groups or paramilitary or para-police groups, acting outside the law or with the State's acquiescence, continue to identify defenders or organizations as "enemies" or the next military targets to be attacked, due to actions the defenders have taken against certain interests. Sometimes

¹¹¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 155 and 157.

these messages point to these individuals or organizations as belonging to groups of guerrillas or terrorists.

According to the information available, days before the murder, dozens of organizations that work to defend the rights of the displaced population—including Ruta Pacífica de las Mujeres, to which the human rights defender belonged—received a death threat dated June 2. It was signed by the armed group "Rastrojos" and targeted those who had played an active role in the framework of Colombia's Victims and Land Restitution Law, passed on Friday, June 10. The organizations targeted by the threat include CREAM, Arco Iris, Fundación Social, Sisma Mujer, Red de Empoderamiento, Colectivo de Abogados José Alvear Restrepo, FUNDEPAZ, Casa Mujer, Ruta Pacífica de las Mujeres, FUNDHEFEM, CODHES, FUNDEMUD, MOVICE, UNIPA, and Fundación Nuevo Amanecer. The threat also mentioned several individuals by name, including Viviana Ortiz, Angélica Bello, Ruby Castaño, María Eugenia Cruz, Piedad Córdoba, Lorena Guerra, and Iván Cepeda. Members of several of the aforementioned organizations as well as several of those named individually in the threat are beneficiaries of precautionary measures granted by the IACHR.¹¹²

56. The IACHR observes that attacks on the personal integrity of human rights defenders continue to be a serious obstacle to the defense of human rights, particularly in some countries of the region. This situation gives rise to insecurity and fear for defenders, which is further aggravated due to the impunity in which these acts remain. Due to this situation, the IACHR considers that its recommendation has not been met, and it urges the States to "[u]rgently adopt effective measures to protect the...physical integrity of human rights defenders who are threatened, and to ensure that these measures are decided on in consultation with the defenders."¹¹³

C. Intelligence activities and other illegal, abusive, or arbitrary types of interference

57. In its 2006 report, the Commission noted that in some States, illegal searches of the offices of human rights organizations or the homes of their members constituted a common practice. It also observed that illegal searches resulted in the collection of private information, and at the same time instilled fear and had a negative impact on the institutional operations of human rights organizations.¹¹⁴ In light of the situation in 2006, the Commission recommended that the States "[r]efrain from engaging in any type of arbitrary or abusive meddling in the home or offices of the organizations of human rights defenders, or in their correspondence and telephone and electronic communications. Instruct the authorities affiliated with the state security agencies to

¹¹² IACHR, Press Release 59/11, IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia, Washington, D.C., June 20, 2011.

¹¹³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 6.

¹¹⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 182.

respect these rights, and impose disciplinary and criminal sanctions on those who engage in such practices.”¹¹⁵

58. Based on the standards of the inter-American system, any type of arbitrary or abusive interference that might affect the privacy of human rights defenders and their organizations is prohibited under the Declaration and the American Convention. Article 11 of the Convention includes State protection against acts of interference with a person's correspondence or telephone and electronic communications, and against unlawful intelligence activities.¹¹⁶ Moreover, the American Declaration, in its provisions related to the protection of private life, includes a special provision geared toward protecting the right to the inviolability of the home.¹¹⁷

59. The right to privacy implies the prohibition of all arbitrary or abusive interference in the private life of individuals, including the privacy of their families, their home, or their correspondence.¹¹⁸ It also protects conversations using telephone lines installed in private homes or in offices, whether their content is related to the private affairs of the speakers, or to their business or professional activity.¹¹⁹ The Inter-American Court has emphasized that “the sphere of privacy is characterized by being exempt and immune from abusive and arbitrary invasion by third parties or public authorities.”¹²⁰

60. As derived from Article 11.2 of the American Convention, the right to private life is not an absolute right, and thus not every restriction in and of itself is incompatible with the Convention. For an interference not to be arbitrary, it must meet the following requirements: a) it must be established by law; (b) it must have a legitimate purpose; and (c) it must be appropriate, necessary, and proportionate.¹²¹

¹¹⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 13.

¹¹⁶ Article 11 of the Convention establishes “1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks”. See IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 94.

¹¹⁷ The American declaration also contains provisions that protect private life, including residence and correspondence (Articles V, IX y X).

¹¹⁸ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 113.

¹¹⁹ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 114.

¹²⁰ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 113; Also I/A Court H.R., *Case of Tristán-Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 55.

¹²¹ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 129.

61. With respect to the principle of legality, the general conditions and circumstances under which a restriction to the exercise of a particular human right is authorized must be clearly established by law¹²² in a formal and substantial sense,¹²³ that is, by a law passed by the legislature in accordance with the Constitution.¹²⁴ When it comes to, for example, the interception of a telephone conversation, the Court has stated that for this requirement to be met, the measure must be based on a law that must specify and indicate "the corresponding clear and detailed rules,"¹²⁵ such as "the circumstances in which this measure can be adopted, the persons authorized to request it, to order it and to carry it out, and the procedure to be followed."¹²⁶

62. With regard to the requirement of the legitimate purpose of the interference, the reason for the guarantee against arbitrariness is to ensure that the measure "be congruent with the norms and objectives of the Convention."¹²⁷ In line with the case law of the European Court, the IACHR has indicated that measures to interfere with private communications "may be taken only where there are factual indications for suspecting a person of planning, committing or having committed certain criminal acts"¹²⁸ or that there is "strong suspicion that offences are about to be committed."¹²⁹ The Commission has found, for example, that it would be incompatible with the purposes of the Convention to intercept, monitor, or record the telephone communications of members of an organization for the purposes of monitoring their activities, as well as to

¹²² Article 30 of the American Convention establishes: "The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established". I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 130.

¹²³ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 130; I/A Court, *The Word "Laws" in the Article 30 of the American Convention On Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A, No. 6, paras. 27 and 32.

¹²⁴ I/A Court, *The Word "Laws" in the Article 30 of the American Convention On Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A, No. 6, para. 22.

¹²⁵ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 131. *Cfr.* ECHR *Case of Kruslin v. France*, judgment of 24 April 1990, Serie A, No. 176-A, para. 33, y *Case of Huvig v. France*, judgment of 24 April 1990, Serie A No. 176-B, para. 32.

¹²⁶ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 131.

¹²⁷ IACHR, Application to the Inter-American Court in the Case *Escher et al. v. Brazil*, December 20, 2007, para. 65.

¹²⁸ IACHR, Application to the Inter-American Court in the Case *Escher et al. v. Brazil*, December 20, 2007, para. 87. See also ECHR, *Case of Klass v. Germany*, (1978), 2 EHRR 214.

¹²⁹ IACHR, Application to the Inter-American Court in the Case *Escher et al. v. Brazil*, December 20, 2007, para. 87.

publish such communications, which are protected by judicial confidentiality, when this is done expressly to discredit the work of the associations to which the victims belong.¹³⁰

63. Likewise, the Commission believes that the determination regarding suitability is not in principle a value judgment; instead, it is an objective assessment, which determines whether a logical cause-and-effect relationship exists, and therefore whether the measure is suitable to accomplish the purpose.¹³¹ To prove the need for the measure, the State must verify that it did not have other less restrictive but equally suitable means to achieve the legitimate end it was pursuing with the interference.¹³²

64. Finally, in terms of the proportionality requirement, the Commission has stated that in weighing the sacrifice of the right restricted by the measure against the benefits gained by accomplishing the end being sought, the result must indicate that the benefits obtained through the measure warrant the restriction of the exercise of the right or rights in question. The result of this calculation will depend on the particulars of each case.¹³³

65. If a State conducts interference into the private life of human rights defenders in any sphere (family, home, correspondence, or private communications), it must provide justification that the measure meets the aforementioned requirements to be compatible with the Convention. The Commission has observed that a great number of interferences in the private life of human rights defenders in the region have been carried out without meeting the aforementioned requirements and have even been conducted without judicial authorization that includes the grounds and reasons provided by the relevant authorities.

66. Prior judicial authorization, in addition to constituting a guarantee of the right to privacy, guarantees due process¹³⁴ insofar as it establishes a legal limit on the collection of evidence that incriminates an individual accused of a crime.¹³⁵ The Commission has stated, for example, that when a search of a domicile is conducted without observing the proper constitutional procedures, that guarantee prevents any evidence thus obtained from being used to arrive at a subsequent court decision. Thus, in practice this guarantee functions as an exclusionary rule for illegally obtained evidence.¹³⁶

¹³⁰ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 166.

¹³¹ IACHR, note of submission of the case 12.361 to the Court and Merits Report of the Case Gretel Artavia Murillo *et al.* (In Vitro Fertilization) v. Costa Rica, July 29, 2011, para. 126.

¹³² IACHR, note of submission of the case 12.361 to the Court and Merits Report of the Case Gretel Artavia Murillo *et al.* (In Vitro Fertilization) v. Costa Rica, July 29, 2011, para. 126.

¹³³ IACHR, note of submission of the case 12.361 to the Court and Merits Report of the Case Gretel Artavia Murillo *et al.* (In Vitro Fertilization) v. Costa Rica, July 29, 2011, para. 126.

¹³⁴ Protected by Article XXVI of the American Declaration and 8 of the American Convention.

¹³⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 97.

¹³⁶ IACHR, Report 1/95 (Merits), Case 11.006 (Peru), February 7, 1995.

67. During the follow-up period, human rights defenders in the region have continued to be victims of home raids and searches, as well as of arbitrary or abusive intelligence activities through the interception of their organizations' private communications. These activities continue to be among the many forms of harassment used to hamper defenders in their work.

68. The violation of domicile of human rights defenders or their organizations through raids or searches conducted by authorities without a court order, or even by private individuals, is often characterized by the removal of information about their persons, the victims, and the defenders' causes, and not necessarily by the removal of objects of value from the institutions or homes. According to the information received by the Commission, when these practices are reported to the relevant authorities, the investigations are conducted on the assumption that what was removed was motivated by economic reasons and not in retaliation for their work or with the goal of putting a brake on the causes defended by the organization or human rights defender, making it very difficult to identify and punish the perpetrators.

The IACHR received information on two breaks-in to human rights defenders offices in Argentina in 2007. According to available information, on February 18, 2007, in Buenos Aires, unknown persons violently entered the office of Horacio Meguira, member of the Committee of Juridical Action (CAJ) and founder and director of the legal department of the Central de Trabajadores de la Argentina (CTA for the initials in Spanish of this union workers organization). The office door was destroyed, the hard disc of the lawyer's computer was stolen together with the fax machine with the memory of all the documents sent and received by him. No other object of value was stolen and no other office of the area was broken in.¹³⁷ Likewise, the IACHR received information regarding an assault by armed individuals to the office in Buenos Aires of the Directive Commission of the Committee for the Defense of the Health (CODESEDH for its initials in Spanish). As a result of the robbery, a computer that had information and evidence regarding the trials against the dictatorship in Argentina was stolen together with a video. In addition, on July 2, 2007, swastika crosses were painted in the office of the Center of Professionals for Human Rights (CEPRODEH for its initials in Spanish), very similar to those painted in the Church of Santa Cruz, where the founders of the Organization Mothers of Plaza de Mayo had been held captive during the dictatorship.¹³⁸

69. The IACHR has received information to the effect that authorities who, acting under a warrant, have conducted searches of organizations or seizures involving human rights defenders have at times exceeded the scope of the warrant, removing information of value to the defense of the organization's or defender's causes. Further, several civil society organizations indicate that at times authorities on the opposing side in

¹³⁷ World Observatory against Torture, urgent Appeal ARG/001/0207/OBS 022, February 22, 2007. Available in Spanish at: <http://www.fidh.org/Allanamiento-y-robo-ARG-001-0207>

¹³⁸ World Observatory against Torture, urgent Appeal ARG 004/0707/OBS 078, July 2, 2007, Available in Spanish at: http://www.omct.org/files/2008/09/4907/compilacion_americas_2007_esp.pdf

cases have prior knowledge of the legal strategy or the arguments that will be put forth in the hearings, based on these abusive inspections and seizures.

70. The Commission has observed that in some countries, the practice of illegally intercepting human rights defenders' correspondence and telephone and electronic communications continues. The IACHR is profoundly concerned because in some instances military or police intelligence may have been used to facilitate the executions of human rights defenders at the hands of the security forces of the State or through illegal armed groups that operate with the approval or acquiescence of State agents.¹³⁹

71. The IACHR has particularly monitored the situation involving the use of intelligence techniques against human rights defenders in Colombia. This came to light in February 2009 when it was learned through the media that the Administrative Security Department (DAS) had intercepted the telephone conversations of many well-known individuals, including members of the executive, legislative, and judicial branches, members of political parties, human rights defenders, and journalists.¹⁴⁰ In July 2009, the Commission received information concerning the existence in the DAS of a Special Strategic Intelligence Group, known as "G3," whose work reportedly consisted of, *inter alia*, undertaking intelligence operations on activities linked to cases at the international level and on the international contacts of organizations dedicated to the defense of human rights.¹⁴¹

72. The State of Colombia informed the IACHR in July 2009 that "the alleged unlawful intelligence activities pursued by persons linked to the Administrative Department of Security are the subject of judicial proceedings, both criminal and disciplinary, and are being [led] by organs independent of the Executive power, with the full support of the national Government."¹⁴² According to information in the public domain, 52 DAS operatives and former operatives are under criminal investigation, 18 indictment decisions have been issued, and 7 former operatives have confessed to their participation in the unlawful intelligence activities.¹⁴³ The Commission has expressed its concern over the fact that those

¹³⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 186.

¹⁴⁰ IACHR, press release 09/09, IACHR Concerns about Intelligence Activities in Colombia. Washington, D.C., February 26, 2009, February 26, 2009.

¹⁴¹ IACHR, 2010 Annual Report, Chapter IV- Colombia, March 7, 2011, para. 199. According to the information received by the IACHR, among the intelligence operations undertaken by the G-3 were the following: i) undertake strategic intelligence (in order to detect the risks and threats to the Government and national security, as well as organizations or individuals that constitute a threat to the stability of the State); ii) neutralize or restrict the activities of organizations or individuals considered to be of "an opposition tendency to the Government"; iii) Obtain the processing of the selected "targets or objectives" with the aim to link them to judicial processes; iv) restrict and neutralize the work of defense and promotion of human rights, through tactics of sabotage; v) undertake actions of psychological war in order to generate sensations of fear and helplessness. IACHR, 2009 Annual Report, Chapter IV- Colombia, Para. 125.

¹⁴² Note VAM/DDH/OEA No. 41362/2052 from the Ministry of Foreign Affairs of Colombia, dated July 31, 2009.

¹⁴³ IACHR, 2010 Annual Report, Chapter IV- Colombia, March 7, 2011, para. 213.

under investigation resorted to alternatives such as political asylum in the face of imminent indictment of charges.¹⁴⁴ In terms of progress in the investigation and punishment of those responsible, the IACHR received word that in September 2011 the Supreme Court of Justice imposed a 25-year prison sentence on the former DAS Director for ordering information to be collected for the Northern Bloc of the United Self-Defense Forces of Colombia (AUC).¹⁴⁵

73. According to information received by the IACHR, the government has indicated that the decree dissolving the DAS would be postponed until a new intelligence law was passed.¹⁴⁶ Likewise, in June 2011 the plenary of the Senate of the Republic passed the Law on Intelligence and Counterintelligence in final debate. The legislation reportedly is pending reconciliation between the Senate and the House and will then be subject to constitutional scrutiny by the Supreme Court.¹⁴⁷

74. The Commission has repeatedly expressed its concern over the lack of mechanisms by which individuals can gain access to intelligence information kept on them and thereby can request that it be corrected, updated, or, if applicable, removed from the intelligence files.¹⁴⁸ The IACHR is concerned because in September 2011 it was publicly made known that in the transition process from the DAS, some operatives who were facing dismissal decided to sell or leak information in their possession to individuals, illegal groups, or other interested groups.¹⁴⁹ The information leaked allegedly included DAS operatives' "front names" along with their real names; the year they began and the office to which they were assigned; and information about Supreme Court justices, diplomats, alleged foreign spies, and citizens of other nationalities.¹⁵⁰ The IACHR will continue its follow-up on the measures aimed at a judicial clarification of unlawful intelligence activities

¹⁴⁴ In this regard, according to public information, on November 26, 2010, the criminal charges against the former Director of DAS, Maria del Pilar Hurtado, were confirmed. Maria del Pilar Hurtado is in Panama under political asylum since November 19, 2010. Press release of the National Government of Panama. Available in Spanish at: <http://www.presidencia.gob.pa/noticia-presidente-numero-2038.html>; IACHR, 2010 Annual report, Chapter IV- Colombia, March 7, 2011, para 213.

¹⁴⁵ El Tiempo, *25 años a Noguera por poner al DAS a órdenes de "paras"*, September 14, 2011. Available in Spanish at: http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10365226.html

¹⁴⁶ *Semana, Reforma al Estado, más que tres nuevos ministerios*, July 7, 2011. Available in Spanish at: <http://www.semana.com/politica/reforma-estado-tres-nuevos-ministerios/159879-3.aspx>

¹⁴⁷ *Semana, Congreso aprueba ley para poner fin a "chuzadas ilegales"*, June 14, 2011. Available in Spanish at: <http://www.semana.com/politica/congreso-aprueba-ley-para-poner-fin-chuzadas-ilegales/158489-3.aspx>; El Tiempo, *Congreso aprueba en último debate ley de inteligencia*, June 14, 2011. Available at: http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-9622612.html

¹⁴⁸ IACHR, 2009 Annual Report, Chapter IV – Colombia, para. 137.

¹⁴⁹ El Tiempo, *El costo de la improvisación*, September 19, 2011. Available in Spanish at: http://www.eltiempo.com/opinion/columnistas/pedromedelln/ARTICULO-WEB-NEW_NOTA_INTERIOR-10394527.html

¹⁵⁰ *Semana, Los papeles secretos del DAS*, September 17, 2011. Available in Spanish at: <http://www.semana.com/nacion/papeles-secretos-del-das/164304-3.aspx>

against human rights defenders, the establishment of the new intelligence agency and its mandate, and the end of unlawful activities carried out by any State agency.¹⁵¹

75. The IACHR has received information regarding other States in the region in which intelligence activities may be being conducted against human rights defenders, but it does not have sufficient information to state that this practice exists¹⁵². In light of the continuing intelligence activities and other arbitrary and abusive interference in the work of defenders in some countries and the complaints regarding indications of intelligence activities in others, the IACHR considers that its recommendation has not been met. It reiterates to the States that may have engaged in these practices that they have an obligation to refrain from engaging in any type of arbitrary or abusive meddling in the home or offices of organizations of human rights defenders, or in their correspondence and telephone and electronic communications. It also urges States that have engaged in abusive practices through the use of intelligence tactics to revise the premises and procedures governing intelligence-gathering activities so as to ensure due protection of defenders' right to private life as well as a mechanism for periodic, independent review of relevant archives.

D. The criminalization of human rights defenders

76. In addition to their duty to investigate and punish those who break the law within their territories, States have the obligation to take all necessary measures to avoid having State investigations lead to unjust or groundless trials for individuals who legitimately claim the respect and protection of human rights. Opening groundless criminal investigations or judicial actions against human rights defenders not only has a chilling effect on their work but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.¹⁵³ In its 2006 report, the IACHR recommended that the States "ensure that their authorities or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders [...]"¹⁵⁴

77. The IACHR reiterates that, under the UN Declaration on Defenders, States have a duty to protect everyone who engages in the defense of human rights from "any [...]"

¹⁵¹ IACHR, 2010 Annual Report, Chapter IV- Colombia, March 7, 2011, para. 219.

¹⁵² The Commission observes that in responding to the public questionnaires for the preparation of this report, the States of Bolivia; Ecuador; El Salvador; Guatemala; Paraguay; Peru and Venezuela expressly indicated that they do not undertake any intelligence activities against human rights defenders. Specifically, the question of the 2010 questionnaire was: "7. Indicate whether the State carries out intelligence activities with respect to human rights defenders and their organizations. The questionnaire is available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Def2011EstEN.pdf>

¹⁵³ IACHR, *Democracy and Human Rights in Venezuela*, para 619.

¹⁵⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 11.

pressure or any other arbitrary action."¹⁵⁵ Based on that, States must guarantee that the right to defend human rights is carried out as freely as possible, with no type of arbitrary or abusive pressure that could restrict its legitimate exercise, which includes the right not to be subjected to harassment through the initiation of baseless criminal actions. In this sense, the United Nations Special Rapporteur on the Situation of Human Rights Defenders has noted that among their obligations under the Declaration, States "should refrain from criminalizing the peaceful and legitimate activities of defenders and ensure that they can work in a safe environment without fear of being prosecuted [...]"¹⁵⁶

78. The increasingly systematic and recurring way in which baseless criminal actions are brought against human rights defenders has caused this obstacle to gain visibility in the region¹⁵⁷ and to become a problem that merits urgent attention on the part of the States, as it undermines the leading role defenders play in the process of pursuing the full attainment of the rule of law and the strengthening of democracy.¹⁵⁸ At the same time, it takes away credibility and legitimacy from the work of defenders, making them more vulnerable to attacks.¹⁵⁹

79. The phenomenon of criminalization affects defenders both individually and collectively. For a human rights defender personally, it can cause anguish, insecurity, frustration, and a feeling of powerlessness before State authorities; deprivation of liberty; unexpected economic burdens; and damage to the defender's reputation and credibility. In addition, criminalization stigmatizes human rights defenders collectively and sends an intimidating message to anyone who intended to denounce or had already denounced human rights violations.¹⁶⁰

¹⁵⁵ Article 12.2 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.53.144.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.53.144.en)

¹⁵⁶ UN General Assembly, Report of the Special Rapporteur Margaret Sekaggya on the situation of human rights defenders. Human Rights Council, 13th Session, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/13/22, December 30, 2009, para. 36. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22.pdf>

¹⁵⁷ The Special Representative of the Secretary-General on human rights defenders, Ms. Hina Jilani, when analyzing the responses by several States in regard to alleged illegal acts committed by human rights defenders, pointed out that: "Governments have rarely acknowledged the human rights activities of defenders and their responses usually fail to address or meaningfully comment on the possible link between a human rights activity and reported violations. Replies that repeatedly and exclusively focus on the presumed illegality of the activities of defenders indicate alarming patterns of criminalization of defenders". Human Rights Council, 7th Session, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, A/HRC/7/28, January 31, 2008, para. 45. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/104/99/PDF/G0810499.pdf?OpenElement>

¹⁵⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 23.

¹⁵⁹ Report of Mrs. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, A/HRC/10/12/Add.3, February 16, 2009, para. 26.

¹⁶⁰ On this matter see IACHR Hearing on criminalization of human Rights defenders, 140th Session, October 26, 2010.

80. The criminalization of activities to defend human rights therefore constitutes a complex obstacle that in a variety of ways affects the free exercise of the defense of human rights. Due to the nature of the violations involved in bringing baseless criminal actions against human rights defenders, a State that engages in this practice may bear international responsibility for violating various rights protected by inter-American instruments, by failing to meet its obligation to respect and guarantee the rights involved as a result of the criminalization.

81. In this regard, the Commission observes that the initiation of baseless criminal actions may violate the rights to personal integrity, judicial protection, and judicial guarantees, as well as the honor and dignity of human rights defenders,¹⁶¹ apart from the violations of the legitimate exercise of any right that has been improperly restricted through the inappropriate use of the criminal system, such as personal freedom, freedom of thought and expression, or the right of assembly. Moreover, the Commission cautions that defining a crime in a way that is ambiguous or runs contrary to democratic standards so as to criminalize legitimate actions carried out by defenders would also constitute a violation of the principle of legality.¹⁶²

82. The Commission considers that in light of the criminalization problem that continues in several States in the region, it is a matter of priority that they adopt measures of an administrative, legislative, and judicial nature to ensure that crimes are not defined in such a way that they violate the principle of legality. In addition, States must ensure that any criminal proceedings brought against defenders respect personal integrity, judicial protection, and judicial guarantees, as well as the honor and dignity of human rights defenders, in addition to personal freedom, freedom of thought and expression, or the right of assembly.

83. While several States have implemented some measures, such as amnesty laws, to reduce the problem of criminalization of human rights defenders, the IACHR observes that, in accordance with the information it has received, such measures have not been effective in terms of the defense of human rights, as they neither determine that the crime does not exist nor eliminate the stigma already created for the defender, but simply suspend prosecution. In addition, the IACHR has received information indicating that in the places where these amnesties have been implemented, the criminal prosecution of defenders continues, based on the same types of criminal charges.

¹⁶¹ All of these are respectively protected by Articles I, XVIII, XXVI and V of the American Declaration, as well as Articles 5, 8, 25 and 11 of the American Convention.

¹⁶² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 114. In this regard, the Court has indicated that “the elaboration of penal categories presumes a clear definition of the criminalized conduct, which establishes its elements, and allows it to be distinguished from behaviors that are either not punishable or punishable but not with imprisonment.” I/A Court, *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 174.

84. Thus, for example, in Ecuador, the National Constituent Assembly in Montecristi issued two Amnesty Resolutions in 2008¹⁶³. The resolutions aimed to put an end to a criminal action that had led to judicial proceedings over resistance and protest actions carried out by human rights defenders and social leaders in defense of their communities and of a healthy environment, in response to projects to exploit natural resources.¹⁶⁴

85. According to the information available, these resolutions benefited at least 357 leaders and human rights defenders who had been criminalized by their protest and resistance actions.¹⁶⁵ However, as of January 2011, at least 7 individuals on the amnesty list, members of the Azuay communities, reportedly continued to be subject to criminal proceedings.¹⁶⁶ Another case involved the release of a person who, in addition to the charges that would constitute criminalization of activities to defend the environment, faced charges for the crime of raping a 12-year-old girl.¹⁶⁷

86. The Commission notes that the text of the amnesty indicates that its legal grounds include, among others, Recommendation 11 from the 2006 Report on the Situation of Human Rights Defenders, which recommended that the States "ensure that

¹⁶³ Constitutional Assembly of Ecuador, *Informe Definitivo de Mayoría sobre Amnistías a personas involucradas en hechos acaecidos en el cantón Chillanes, provincia de Bolívar, en el paro nacional minero y casos de criminalización por defender la territorialidad, derechos colectivos y de los pueblos*, Montecristi, July 11, 2008. Available in Spanish at: http://constituyente.asambleanacional.gov.ec/documentos/aministia_personas_chillanes_bolivar.pdf

¹⁶⁴ According to Amnesty resolutions, among people who were liberated from facing criminal proceedings, were defenders of: a) territoriality, and collective rights of peoples; b) forests, mangroves and peasant holdings, c) mining intervention d) oil exploitation and d) water. The criminal offenses that were identified in the resolutions, as a method of persecution of social leaders and human rights defenders, were rebellion, promotion and organization of public demonstrations without permission, terrorism, attacks against public officials, obstacles to the implementation of public works, conspiracy, intimidation, incitement to crime, advocacy of crime, fire, different property crimes such as robbery, kidnapping or abduction, among others. See Constituent Assembly of Ecuador, *Final Majority Report on amnesties for people involved in events in the canton of Chillanes, province of Bolivar, national strike mining and criminalization to defend territoriality, collective rights and of peoples*, Montecristi, July 11, 2008. Available in Spanish at: http://constituyente.asambleanacional.gov.ec/documentos/aministia_personas_chillanes_bolivar.pdf

¹⁶⁵ Ecuador Inmediato, *Asamblea concede amnistía para defensores de derechos humanos criminalizados*, March 14, 2008. Available at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=73709&umt=asamblea_concede_amnistia_para_defensores_derechos_humanos_criminalizados

¹⁶⁶ Frente Ecuatoriano de Derechos Humanos, *La Amnistía Irrespetada en Ecuador*. Available in Spanish at: http://fedhu.org/index2.php?option=com_content&do_pdf=1&id=86; El Ecuador Inmediato, *Sentencia judicial es rechazada por dirigencia indígena del Azuay*, January 14, 2011. Available in Spanish at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=141731&umt=SentenciajudicialesrechazadaporDirigenciaind%C3%ADgenaenAzuay

¹⁶⁷ Ecuadorecuatoriano, *Violador de una menor liberado por Corte Constitucional*, March 3, 2011. Available in Spanish at: <http://ecuadorecuatoriano.blogspot.com/2011/03/violador-de-una-menor-liberado-por.html>; Ecuador Inmediato, *Jueces en manos de Justicia Ordinaria*, March 23, 2011. Available in Spanish at: http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=146194&umt=jueces_en_manos_justicia_ordinaria

their authorities or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders." Moreover, the IACHR notes that based on this measure, a number of leaders and human rights defenders are no longer being harassed by the criminal cases they were undergoing due to their resistance activities in occupying territories and defending the right to a healthy environment and to their territories.

87. Despite the State's recognition, in the aforementioned resolution, of the problem of criminalization of human rights defenders, the Commission continues to be concerned that the criminal system is still being used to harass defenders.¹⁶⁸ The Commission believes that while the resolutions adopted by the Assembly enabled defenders who were facing criminal proceedings to continue carrying out their work, the fact that criminal actions continue to be brought against human rights defenders requires the adoption of comprehensive measures that ensure that this practice, in the case of baseless charges, does not translate into the criminalization of activities to defend human rights.

88. The IACHR will now indicate how criminalization can end up violating the rights that have been mentioned, and will identify some of the trends that have come to its attention during the follow-up period to the 2006 report.

1. The principle of legality in the formulation and application of criminal charges

89. In a democratic system, criminal law is the most restrictive and harshest means to establish liability for an illegal conduct.¹⁶⁹ As has been held repeatedly in case law

¹⁶⁸ In this regard, the Commission has been informed of the indictment on charges of sabotage and terrorism against community leaders Carlos Perez Guartambel and Federico Guzman in the Azuay province, since May 2010. The charges would be related to their participation in a roadblock as a protest against a bill of law on water. According to available information, after no evidence for the crimes they were initially charged was found, the prosecutor changed the indictment for the crime of "suspension of public services and obstruction of public roads." The criminal proceedings of the two community leaders have been stayed by a judge until August 2010. El Universo, *Absueltos líderes campesinos*, August 21, 2010. Available in Spanish at: <http://www.eluniverso.com/2010/08/21/1/1355/absueltos-dirigentes-campesinos.html>.

The Commission also received information about the arrest of Vicente Zhunio Samaniego, a member of the National Coordinator for the Defense of Life and Sovereignty, an organization dedicated to the protection of the environment in Ecuador, who was allegedly arrested on January 5, 2009 and later, on January 20, 2009 in the context of demonstrations against a new mining law. Vicente Zhunio was allegedly detained and assaulted by a police officer on 20 January, 2009 and transferred to the prison of Macas. Finally, as was informed, he obtained his release on February 5, 2009, when the provisional dismissal order was issued in his favor. On the day of the release of Victor Zhunio, according to available information, Ms. Yolanda Gutama, Virginia and Etelvina Chuñir Misacango, leaders of Front Women Defenders of the Pachamama, were imprisoned and released on the next day. However, the Provincial Court of Cuenca allegedly revoked the decision and issued arrest warrants. Since late 2009, the two leaders are allegedly fugitives and with open processes. OMCT-FIDH, *Steadfast in Protest*, Annual Report 2010, p 123-124. Available in Spanish at: <http://www.fidh.org/IMG/pdf/informe.pdf>

¹⁶⁹ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 76.

of the inter-American system, for any limitation or restriction of a right to be in line with the Convention and not involve State responsibility, it must comply with the principle of legality,¹⁷⁰ which prescribes that any measure restricting or limiting a right through the use of a definition of a crime must meet the requirements provided for by law, both in the formal and material sense, and must have been formulated previously, in an express, accurate, and restrictive manner.¹⁷¹

90. In terms of the requirements for codifying crimes, the States must use precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of legality in criminal law. As the Inter-American Court has indicated, this means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offenses or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power.¹⁷²

91. The Court has also stated that a lack of specificity leads to vague definitions of crimes, which include broad methods of participation, altering the definition of the crime involved.¹⁷³ It has also found that when the definition of a crime does not specify the level of intent required, it allows the subjectivity of the offended party to determine the existence of a crime.¹⁷⁴ Also, for the sake of legal certainty, it is essential for any punitive provision, whether criminal or administrative, to exist and to be known, or to be able to be known, before any action or omission occurs in violation of it and for which punishment is intended.¹⁷⁵

92. Many of the definitions of crimes used to harass the work of human rights defenders run contrary to the principle of legality, as they are written ambiguously or vaguely, leaving unclear the methods for participation in the crime or, by not specifying the level of intent required for the conduct to become unlawful, making it impossible to adequately identify the conduct being punished. That gives the judges and authorities handling the criminal complaint a broad margin of discretion when it comes to determining

¹⁷⁰ Protected by Articles 9 of the Convention and XXVI of the American Declaration.

¹⁷¹ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 63.

¹⁷² I/A Court H.R., *Case of Castillo-Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 121.

¹⁷³ In relation to Article 2 of the Law Decree No. 25.475, this defined the crime of High treason in Peru. The definition of such crime, included vague modalities of participation, such as “lend assistance” without specifying the concrete conducts criminalized. See I/A Court H.R., *Case of Cantoral-Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 155; and I/A Court H.R., *Case of Lori Berenson-Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, paras. 117 and 118.

¹⁷⁴ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para 56.

¹⁷⁵ I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 106.

whether the defenders' conduct meets the definition of a particular crime. This involves psychological, social, and economic costs, which the defenders subjected to these proceedings, should not have to bear.¹⁷⁶

93. Based on the information it has received, the Commission has observed a growing implementation of different types of criminal charges in some States, in order to hamper activities to defend human rights. Criminal charges identified as having been used by States to punish the legitimate work of human rights defenders include: "forming criminal gangs"; "obstructing public roads"; "inciting crime"; "creating civil disobedience"; "threatening the State security, public safety or the protection of health or morals"; "defamation"; "libel" and "false charges."¹⁷⁷ Likewise, in some countries of the region the IACHR has observed the proliferation of "antiterrorist" laws that have had the effect of criminalizing community leaders who engage in resistance in the defense of what they consider to be their ancestral territories. A number of the criminal charges in these laws do not include a specific definition of the punishable conduct or conduct that is aggravated due to its "terrorist" nature, and thus leave their classification to the discretion of judges.

94. According to information collected by the IACHR, a great number of the criminal cases that have been brought based on vague or ambiguous definitions of crimes have arisen in the context of resistance and defense of rights by communities that occupy territories involved in the development of megaprojects such as mining, hydroelectric, or forestry operations. Often, the owners who manage these megaprojects or the staff who work on them are the ones lodging criminal complaints against defenders for the purpose of reducing their activities of defense of their rights. Moreover, the authorities in charge of investigating the crime—perhaps due to a lack of precision in the criminal codes themselves, or due to a lack of diligence in the investigation—do not verify, when gathering evidence before a criminal indictment is issued, that unlawful conduct has definitely occurred.

The Commission has been informed that in Guatemala, for example, there is an excessive and unwarranted use of criminal law to the detriment of indigenous people and campesinos who carry out resistance on lands which they claim as theirs and which landholders [terratenientes] or companies consider to be their own property,¹⁷⁸ According to the information provided to the IACHR, even when no legal clarity exists with respect to the ownership of the lands in question, in order to undermine the campesino or indigenous groups, sometimes people who are close to or share interests with the

¹⁷⁶ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzcatogui *et al.*", October 22, 2010, para. 279.

¹⁷⁷ UN General Assembly, Report of the Special Rapporteur Margaret Sekaggya on the situation of human Rights defenders. Human Rights Council, 13th Session, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/13/22, December 30, 2009, para. 31.

¹⁷⁸ IACHR, Hearing on the Situation of Human Rights Defenders in Guatemala, 141st Session, March 29, 2011.

landholders or companies bring criminal actions against the leaders of the groups occupying the land and promoting resistance, based on the crime of "aggravated usurpation," established in Articles 256 and 257 of the Guatemalan Criminal Code.¹⁷⁹

Based on these provisions, the Commission observes that the crime of usurpation is committed by whosoever "unlawfully, for any reason...occupies a property"; that this crime is considered "flagrant" in the case of "remaining on the property"; it is aggravated by "inciting," "proposing," or "inducing" others to "commit this crime or cooperate in its planning, preparation, or execution"; and that if such a crime is committed, the police, the Public Ministry, or the judge must carry out "immediate eviction." In that regard, the IACHR has received information indicating that, as the definition of the crime of usurpation does not specify what is meant by the adverb "unlawfully, for any reason," nor does it clearly describe the degree of intention required by the party for this to be considered a crime, some authorities reportedly file criminal complaints against the indigenous and campesino people who, though they do not have formal title to the property, have for years been in possession of the lands they consider theirs by ancestry or by law. According to a broad interpretation of the crime of usurpation, merely by remaining on the land, however peacefully, the indigenous and campesino groups are considered to be committing a crime, a flagrant one besides, which carries "immediate" eviction from the lands they possess, without a judicial proceeding first being allowed to determine the legal ownership of the lands.

It should be noted that in accordance with Guatemalan criminal law, in order to prevent the occupation from continuing to cause further consequences, not only the judge but also the police and the Public Ministry have the obligation to proceed with "immediate" eviction, and the criminal statute does not specify what procedural step is available for the person occupying the property to exercise his or her right to a defense. Although under the Criminal Procedural Code it falls to the Public Ministry to conduct an investigation to gather sufficient evidence to present the case to the appropriate court, according to information received by the IACHR, in most cases a certificate of ownership is considered proof enough. This certificate, given its age, may not refer to exact measures but merely to adjoining rivers or other properties, information that is often verified through statements of witnesses connected with the landholders, with no thorough investigation of the evidence conducted to learn why the persons occupying these properties consider themselves to be longstanding owners. In some cases this status is even reflected in property registries, or else they may believe they have acquired the property legally or have legal right to their lands¹⁸⁰.

Specifically, with respect to the activities by campesino and indigenous leaders to defend and promote the right to property, it is troubling that under the criminal statute, the crime of usurpation is considered "aggravated" by those "inducing others" or "proposing" occupation of the property, or by those who cooperate in the "planning, preparation, or execution" of the occupation. According to civil society, the definition of the crime leads to

¹⁷⁹ This crime, which resulted from a legal amendment in 1997, takes place according to Articles 256 and 257 of the Criminal Code of Guatemala.

¹⁸⁰ Protection Desk- UDEFEGUA, *criminalization against human rights defenders*, December 2009, p.20. Available in Spanish at: http://www.protectionline.org/IMG/pdf/criminalizacion_en_contra_de_ddddhh.pdf

the indiscriminate criminal prosecution of human rights defenders who support indigenous or campesino communities in peaceful resistance activities or induce the communities or propose that they resist eviction.

2. Protracted criminal proceedings instituted based on criminal definitions that contravene the principle of legality

95. Even when a criminal case does not lead to concrete sanctions, the IACHR has found that the mere fact of someone's being subjected to a protracted case based on an ambiguous or vague definition of a crime gives rise to the State's responsibility for violating the principle of legality.¹⁸¹ With respect to individuals who have denounced human rights violations in particular, the Commission has found that subjecting human rights defenders to criminal proceedings as a result of their having reported violations has an inhibiting effect on the victim. This also translates into an intimidating message to anyone who might intend to lodge or has already lodged similar complaints involving human rights violations.¹⁸²

96. Subjecting human rights defenders to unwarranted criminal prosecution based on a law that does not meet the principle of legality also produces a violation with respect to the activity of defending human rights and, consequently, with respect to the free exercise of the right to defend those rights. In this regard, the Commission has found that:

"[...] it is understandable that the mere existence of the criminal law invoked for five years [...] [against the person denouncing human rights violations] would deter others from filing human rights complaints and from even uttering any opinion critical of the authorities' conduct. This is because of the ever looming threat of being subjected to criminal prosecution that could result in severe penalties and fines."¹⁸³

According to information presented by civil society in a hearing during the 140th session of the IACHR,¹⁸⁴ a great many of the threats and acts of intimidation and harassment against human rights defenders in Colombia reportedly come from criminal groups, particularly the self-described Águilas Negras. As the Commission was told, when they receive complaints from human rights defenders about acts presumably committed by this group, the authorities simply deny their existence and do not take action on the

¹⁸¹ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzategui *et al.*", October 22, 2010, para. 295

¹⁸² IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzategui *et al.*", October 22, 2010, para. 295

¹⁸³ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzategui *et al.*", October 22, 2010, para. 279

¹⁸⁴ IACHR, Hearing on the Situation of Human Rights Defenders in Colombia and implementation of precautionary measures, 140th Session, October 28, 2010.

investigations; to the contrary, they proceed to initiate criminal proceedings against the complainants for "making false accusations." Such proceedings become protracted over time and keep the defenders from being able to lodge complaints against these types of groups.

The Colombian Criminal Code states in Article 435 that the crime of false accusation is committed by "whosoever under oath accuses before the authority a certain conduct which has not occurred, shall be sentenced to prison for between one (1) and two (2) years and multiples of between two (2) and ten (10) current monthly minimum legal wages." According to information presented to the IACHR, the Colombian authorities' refusal to recognize groups classified by human rights defenders as "paramilitary" groups has made defenders vulnerable to the abusive use of criminal proceedings against those who denounce acts allegedly committed by groups of this nature.¹⁸⁵

3. The criminalization of speech denouncing human rights violations and the right to peaceful protest

97. The Commission has become aware of the growing number of criminal actions being brought against human rights defenders for the allegedly improper exercise of freedom of thought and expression,¹⁸⁶ as well as the right to assembly and association.¹⁸⁷

98. In several countries of the region, human rights defenders often face the institution of criminal actions on grounds of protecting the honor or reputation of public servants, allegedly violated by statements made about their actions. In this regard, the Commission reiterates that the coercive power of the State may not be exercised so as to negatively affect the freedom of expression of human rights defenders by using criminal laws to silence or intimidate those who exercise their right to express themselves critically or to lodge complaints of alleged human rights violations.¹⁸⁸

99. The freedom of thought and expression protected by Article IV of the Declaration and Article 13 of the American Convention is a right with two dimensions: an individual dimension, which consists in the right of each person to express his or her own thought, ideas, and information; and a collective or social dimension, which consists in society's right to seek and receive any information, to hear the thoughts, ideas, and information of others and to be well-informed.¹⁸⁹ In the case of human rights defenders, it

¹⁸⁵ IACHR, 2010 Annual Report, Chapter IV – Colombia, para. 200.

¹⁸⁶ Freedom of expression and thought is protected by Articles IV of the Declaration and Article 13 of the American Convention.

¹⁸⁷ Right of Assembly is recognized by Article XXI of the Declaration and Article 15 of the American Convention.

¹⁸⁸ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzcategui *et al.*", October 22, 2010, para. 288. See also, IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para 80.

¹⁸⁹ IACHR, 2009 Annual Report of the Special Rapporteur on Freedom of Expression, December 2009, p. 239. See also *cfr.* I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, Continued...

is possible for the exercise of this right to be restricted not only in its individual aspect, but also in its social or collective aspect.¹⁹⁰

100. Both the Commission¹⁹¹ and the Court¹⁹² have found that the operative verbs used to define offenses such as defamation in several countries of the region are so ambiguous that they prevent certainty and predictability on what conduct is prohibited and what conduct is protected by the right to freedom of expression. This enables any complaint, criticism, or objection to actions by public authorities to give rise in some countries to protracted criminal cases, which constitute a serious infringement on the freedom of thought and expression of anyone who may criticize actions taken by public officials.

*On November 7, 2011, in response to news stories published by Teobaldo Meléndez Fachín about acts of corruption allegedly committed by a public official, a judge from Peru sentenced Meléndez Fachín to 3 years in jail with suspended execution of the sentence, to the payment of 30,000 nuevos soles (approximately US\$ 11,100) as civil compensation, and to a fine of 60 days at the stipulated daily rate. The case stemmed from a news story that ran last February on the radio and television program "La Ribereña Noticias", in which the journalist questioned the mayor of Alto Amazonas-Yurimaguas because of supposed irregularities in the use of public funds. The journalist, who is now the news director of Radio Activa de Yurimaguas, is appealing the verdict. The Office of the Special Rapporteur for Freedom of Expression of IACHR expressed its concern over the conviction on November 21, 2011.*¹⁹³

101. Some States have continued using libel laws that could lead to the imposition of disproportionate sanctions to persons who have publicly expressed critical opinions against high ranking public officials. The existence and application of laws that criminalize the offensive expression against public official or the libel laws in any of their forms or under any name, are contrary to the inter-American standards of freedom of expression.¹⁹⁴

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2008 Series C No. 177, para. 53; I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 75.

¹⁹⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 79.

¹⁹¹ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzcátegui et al.", October 22, 2010, para. 279

¹⁹² I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177.

¹⁹³ IACHR Special Rapporteurship on Freedom of Expression, press release R123/11, November 21, 2011.

¹⁹⁴ In this regard, principle 11 of the Declaration of Principles on Freedom of Expression establishes that "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information". Also, principle 10 of the declaration establishes that: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be

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Articles 489, 491, and 493 of TITLE VII of the Ecuadorian Criminal Code, entitled "CRIMES AGAINST HONOR," establish, inter alia, enhanced penalties for persons who make "a false criminal accusation" or "any other expression made to discredit, dishonor, or disparage" an "authority." In particular, under Article 493, persons who "make defamatory accusations against an authority" may be punished by a fine and one to three years in prison. Likewise, Article 128 of the Criminal Code establishes the criminal offense of insult, whereby a person who, publicly and outside the cases provided for in the Code, "offends or insults public institutions or law enforcement agencies, who mocks or disrespects the nation's flag, coat of arms, or anthem," shall be punished by a fine and a term of imprisonment ranging from six months to three years. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has repeatedly expressed its concern over the application of these norms to journalists and human rights defenders that have expressed criticism of the most of public officials.¹⁹⁵

102. The Commission calls to mind that Article 13.2 of the American Convention requires that three basic conditions be met for limitations to freedom of expression to be admissible: (1) the limitations must be set forth in laws that are drafted clearly and precisely; (2) they must serve compelling objectives authorized by the American Convention; and (3) they must be necessary in a democratic society to satisfy the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to serve such compelling objective.¹⁹⁶

103. The Commission, through its system of petitions and cases, has analyzed criminal sanctions and expression in some countries of the region by means of the aforementioned test, and has concluded that using criminal laws to protect the honor of public servants from complaints that may be made against them for serious human rights violations is disproportionate, as it could thwart or inhibit necessary critical work of human rights defenders when they scrutinize persons who hold public office.¹⁹⁷

104. In order to ensure that a human rights defender or any person can exercise his or her freedom of expression, States should amend their laws on defamation,

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proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news". See Declaration of Principles on Freedom of Expression, adopted by the IACHR in the 108^o period of sessions, October 2 to 20, 2000. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>

¹⁹⁵ IACHR Special Rapporteurship on Freedom of Expression, press release R104/11, September 21, 2011; press release R72/11, July 21, 2011; press release R32/11, April 15, 2011.

¹⁹⁶ IACHR, 2009 Annual Report of the Special Rapporteur on Freedom of Expression, Chapter III, Inter-American legal Framework on Freedom of Expression, December 2009, para. 68.

¹⁹⁷ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzcategui et al.", October 22, 2010, para. 288; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 81.

libel, and slander so that only civil sanctions may be imposed, which in addition, should not be disproportionate¹⁹⁸

105. The Commission reiterates the vital importance of protecting the right of victims of human rights violations to lodge public complaints about those violations without fear of being persecuted or punished for doing so.¹⁹⁹ In this regard, the IACHR has stated: "Protecting those who lodge complaints against public officials or civil servants alleging human rights violations, even though it may mean that public officials will have to be more tolerant of criticism, is essential to averting double victimization, to enabling society to know these facts and debate them freely, and to ensuring the conditions necessary for justice to be served."²⁰⁰

106. With regards to the frequent detentions of human rights defenders for their participation in protest demonstrations, the Commission notes that public protest is one of the usual ways of exercising the right of assembly and the right to freedom of expression, and that it has an essential social interest in guaranteeing the proper functioning of the democratic system. Thus, expressions against the government's proposed laws or policies, far from being an incitement to violence, are an integral part of any pluralistic democracy.²⁰¹

107. During the last years, there is a growing trend in some countries to bring criminal charges against people who participate in social protests to demand their rights, on grounds that these protests are allegedly disturbing public order or threatening the security of the State. In view of the importance of social protest in a democratic system, the IACHR reiterates that the State has a limited framework to justify any restriction in this regard; while the right to assembly is not absolute and may be subject to certain restrictions, these restrictions must be reasonable in order to ensure that the demonstrations are peaceful, and must be "informed by the principles of legality, necessity and proportionality."²⁰²

108. In several countries, concepts such as "public order" and "national security" included in the definitions of offenses that restrict the exercise of social protest are not defined precisely, and their vagueness and ambiguity enable the relevant authorities to interpret and apply them with complete discretion. In addition, the IACHR

¹⁹⁸ IACHR, *Situation of Human Rights in Venezuela*, 2003, October 24, 2003, para. 465; IACHR, 2009 Annual Report of the Special Rapporteur on Freedom of Expression, Chapter III, Inter-American Legal Framework on Freedom of Expression, December 2009, para. 80.

¹⁹⁹ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzategui *et al.*", October 22, 2010, para. 297

²⁰⁰ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 "Nestor Jose and Luis Uzategui *et al.*", October 22, 2010, para. 297

²⁰¹ IACHR, 2009 Annual Report of the Special Rapporteur on Freedom of Expression, Chapter II, Evaluation of the state of Freedom of Expression in the Hemisphere, December 2009, para. 708.

²⁰² IACHR, 2007 Annual Report, Chapter IV- Venezuela, December 29, 2007, para. 260.

has received information from civil society organizations in several countries regarding definitions of criminal offenses having to do with "attacks," "rebellion," or "obstruction of public roadways," which are used to prosecute human rights defenders. Such criminal prosecutions do not tend to comply with the principle of legality in the way that they are formulated. The IACHR requests the States that have wide or ambiguous definitions of criminal offenses to amend their laws.

According to information received, Guillermo Fariñas was detained in Cuba on several occasions in the frame of social protests. On January 27, 2011, Fariñas was arrested twice in less than 24 hours, together with other political dissidents, accused of "public scandal" for participating in protests against Government.²⁰³ On February 23, 2011, Fariñas was detained again together with other 46 activists that were trying to commemorate in Santa Clara the first anniversary of the death of the also dissident Orlando Zapata. Fariñas was released 27 hours later. In such occasion, around 200 followers of the Government surrounded women from the organization "Damas de Blanco" whom they insulted and to whom they expressed pro-government slogans. On April 6, 2011, Fariñas was arrested once more together with a dozen activists from the Anti-totalitarian forum and the Central Coalition in Santa Clara, after having gone to a prison to protest against the arrest of several opposition activists. The authorities ordered domiciliary arrest to Fariñas and took his travel document.²⁰⁴ Fariñas and other 25 dissidents were arrested again on September 15, 2011, in Santa Clara, when he was preparing a public demonstration, and was released hours after.²⁰⁵

4. The excessive prolongation of the criminal proceedings

109. Unwarranted prosecutions of human rights defenders entail psychological and financial burdens, which harass and frighten them and diminish their work. These burdens are aggravated by the unreasonable prolongation of the criminal processes. The Commission reiterates that the rights protected by Article XVIII of the Declaration (right to a fair trial), as well as Article 8 of the American Convention, give every person subject to a judicial proceeding the right to a hearing by a competent judge or court, with due guarantees and within a reasonable time.²⁰⁶

110. According to the Court's jurisprudence, the reasonableness of time of a proceeding should be determined by the following considerations: (a) the complexity of the matter, (b) the procedural activities carried out by the interested party, (c) the conduct of

²⁰³ Inter-American Press Society (IPS), [Periodista arrestado dos veces en menos de 24 horas](#); January 28, 2011; French Press Agency (AFP), [Cuba: Guillermo Fariñas liberado tras segundo arresto en 24 horas](#), January 28, 2011.

²⁰⁴ Agencia Española de Noticias EFE, [Disidente cubano Guillermo Fariñas, de nuevo preso](#), April 7, 2011.

²⁰⁵ Europa Press, [Arrestan a unos 150 opositores cubanos en los últimos días](#); EFE. September 16, 2011. [Más de 20 opositores fueron detenidos en Cuba.](#)

²⁰⁶ IACHR, Application to the Inter-American Court of the Case 11.219 (Nicholas Chapman Blake), August 3, 1995, p. 32

judicial authorities,²⁰⁷ and (d) the impairment to the legal situation of the person involved in the proceedings.²⁰⁸ In criminal matters, the term begins on the date when the individual is detained. When this measure is not applicable, but there is an ongoing criminal proceeding, the term begins when the judicial authority takes cognizance of the case, and it "must include the whole proceeding, including the appeals that may be filed."²⁰⁹

111. No human rights defender may be subject to a criminal proceeding indefinitely; such a situation would infringe on the guarantee of a reasonable time period. This guarantee, in addition to being a basic element for the right to a trial in accordance with the rules of due process, is especially essential to prevent unwarranted criminal proceedings from preventing defenders from doing their work. The Commission considers that a timely judicial decision contributes to the public and complete disclosure of truth, making it less likely for defenders subject to proceedings to be stigmatized by the proceedings, and also making it less likely that the community of human rights defenders will be hampered from continuing to report human rights violations.

5. The arbitrary detention of human rights defenders and the unwarranted prolongation of pretrial detention.

112. The Commission has learned about human rights defenders who are detained without being told of the reasons for their detention,²¹⁰ as well as about the excessive use and duration of pretrial detention against human rights defenders in some countries of the region as a mechanism to keep them from doing their work or to hold them in custody at crucial times for the defense of their causes.

113. The right to personal liberty²¹¹ includes the right to be informed of the reasons for detention and to be notified, without delay, of the charges brought against one.²¹² Following the jurisprudence of the Inter-American Court, the State has the burden

²⁰⁷ I/A Court H.R., *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 105; I/A Court H.R., *Case of Escué-Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 102; I/A Court H.R., *Case of Acosta-Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 105.

²⁰⁸ I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para.127; I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 112.

²⁰⁹ I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 168 and 169.

²¹⁰ This aspect has also been of concern to the UN Special Rapporteur on the Situation of Human Rights Defenders. Human Rights Council, 13th Session, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/13/22, December 30, 2009, para. 31.

²¹¹ The right to personal liberty against arbitrary arrest or detention is established in Article XXV of the American Declaration and Article 7 of the American Convention.

²¹² Article 7 of the American Convention.

of proof in demonstrating that it has informed the person of the reasons for his or her arrest.²¹³ The right to be informed of the reasons for detention is a mechanism to avoid unlawful or arbitrary conduct, beginning with the very act of deprivation of liberty, and to ensure the defense of the person being detained.²¹⁴

114. For a detention not to be incompatible with international standards, the judicial body hearing the criminal case must undertake a prompt judicial review of the legitimacy and legality of the detention,²¹⁵ and anyone “deprived of his or her liberty without a court order must be set free or immediately brought before a judge.”²¹⁶ The IACHR has stated that a detention is arbitrary and unlawful if it is not done on the grounds and by the formalities prescribed by law.²¹⁷ The appropriate judicial body should evaluate these elements through a judicial review of the detention; this constitutes a safeguard against the arbitrary or unlawful detention of human rights defenders or any other person.

115. In addition, in terms of the use and duration of preventive detention as mechanisms to keep human rights defenders from doing their work, the Commission would like to emphasize that a person whose liberty is unlawfully restricted because of his actions to defend the rights of other persons is directly limited in his ability to do his work.²¹⁸ This also has the effect of violating his right to defend human rights as well as the right of the victims on whose behalf the defender is seeking justice.

116. The IACHR, in line with the Court's case law, reiterates that preventive detention is a precautionary rather than a punitive measure.²¹⁹ It constitutes the most severe measure that can be applied to someone charged with a crime and thus its application must be an exception, limited by the principles of legality, presumption of innocence, need, and proportionality that are essential in a democratic society.²²⁰

²¹³ I/A Court H.R., *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. 73.

²¹⁴ I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 109; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 128.

²¹⁵ I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 129

²¹⁶ IACHR, Submission note of the Case to the Court and Report on the Merits of Case 12.661 “Nestor Jose and Luis Uzategui *et al.*”, October 22, 2010, para. 223.

²¹⁷ IACHR, Report 35/08, Case 12.019 (Brazil), July 18, 2008, para. 68; IACHR, Report 33/04, Case 11.634, Jailton Neri Da Fonseca (Brazil), March 11, 2004, para. 53.

²¹⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 48.

²¹⁹ I/A Court H.R., *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. 145; I/A Court H.R., *Case of Acosta-Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 111.

²²⁰ I/A Court H.R., *Case of Suárez-Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 77.

117. Pursuant to IACHR Resolution 1/08, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, preventive deprivation of liberty shall be applied only within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigations 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. The aforementioned resolution states that "there shall be sufficient evidentiary elements that associate the accused with the facts of the case, in order to justify an order of preventive deprivation of liberty."²²¹ Based on its exceptional nature and the rigorous standard for preventive deprivation of liberty, both the Commission and the Court have found that when pretrial detention lasts for an excessive period of time, it runs the risk of inverting the presumption of innocence, turning a precautionary measure into an advance sentence.²²²

118. The Commission observes that the use of arbitrary detention, as well as the prolongation of preventive detention for human rights defenders, constitutes violations both to the right to personal liberty and to judicial guarantees in the criminal process. In the case of human rights defenders, the Commission has also found that a systematic and reiterated practice of attacks on the life, physical integrity, and liberty of the members of a human rights organization, in an environment of hostility to their work, may entail a violation of the freedom of association.²²³

6. The violation of personal integrity as a result of criminalization

119. Unwarranted criminal proceedings to which human rights defenders are subjected produce a series of psychological effects that are manifested through anguish, fear, insecurity, stigmatization, tension, and frustration on the part of the accused defender.²²⁴ The Commission has stated that "[unwarranted] criminal proceedings are converted into a tool of harassment directed at human rights workers," and has found that as a result of this harassment, "the victims' right to mental and moral integrity is compromised, in violation of Article 5 of the Convention."²²⁵

²²¹ See Principle III. 2Ver Principio III. 2 "Exceptional use of preventive deprivation of liberty". CIDH, *Resolution 1/08. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, March 13, 2008.

²²² IACHR, Report No. 86/09 (Merits), Case 12.553 (Uruguay), August 6, 2009, para. 70; See also, I/A Court H.R., *Case of López-Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 01, 2006. Series C No. 141, para. 69.

²²³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 44.

²²⁴ On the problems that are caused to a human rights defenders when being subject to baseless criminal processes, see IACHR Hearing on Criminalization of human Rights defenders, 140th Session, October 26, 2010.

²²⁵ IACHR, Third Report on the Situation of Human Rights in Colombia, February 29, 1999, para. 43. See also IACHR, Second Report on the Situation of Human Rights in Peru, Chapter III, June 2, 2000, para. 149.

120. In this regard, the accumulation of several baseless criminal cases against a defender can lead to a violation of the right to personal integrity when the harassment caused by bringing criminal actions affects the normal development of daily life and causes great tumult and perturbation to the person subject to legal proceedings and to his family.²²⁶ The severity of the harassment is verified by the person's uncertainty about his future.²²⁷

In the report No. 43/96 (Merits), Case 11. 430 (Mexico), the Commission concluded that the fact that 15 preliminary inquiries and 9 criminal indictments were brought against the same person, which resulted in his ultimately being absolved in all these cases, subjected the victim to the constant annoyance of having to defend himself before the courts, the degradation of being detained on several occasions, and the humiliation of being the target of attacks by military authorities in the media.²²⁸ In that case, the Commission concluded that the State violated the moral and psychological integrity protected by Article 5.1. of the Convention.

121. Moreover, if criminal proceedings are manipulated for the purpose of publicly accusing defense attorneys as "enemies of the State," the IACHR has found that not only the physical security but also even the life of these attorneys can be placed at risk.²²⁹ As a result of such stigmatization, "[c]ertain members of the State's security forces and/or members of paramilitary groups then treat these individuals as military targets. The criminal proceedings thus sometimes place in danger the physical integrity and the life of those accused, in violation of the rights set forth in Articles 4 and 5 of the Convention."²³⁰

7. Stigmatization and disparagement of human rights defenders as a result of criminalization

122. As to defenders' right to honor and dignity, protected by Article V of the Declaration²³¹ and Article 11 of the American Convention,²³² the Commission has stated that sometimes criminal complaints made against human rights defenders and their organizations are accompanied by smear campaigns against them personally and against their work, which undermine the credibility and integrity of human rights work in the

²²⁶ IACHR, Report No. 43/96 (Merits), Case 11.430 (Mexico), October 15, 1996, para. 79.

²²⁷ *Idem.*

²²⁸ *Idem.*

²²⁹ CIDH, Second Report on the Situation of Human Rights in Peru, Chapter III. Administration of Justice and Rule of Law, June 2, 2000, para. 149.

²³⁰ IACHR, Third Report on the Situation of Human Rights in Colombia, February 29, 1999, para. 43.

²³¹ Article V of the American Declaration establishes that "[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."

²³² Article 11 of the Convention establishes that "[e]veryone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks."

public eye.²³³ The United Nations Special Rapporteur on the situation of human rights defenders has expressed her concern in this regard and has stated that "[t]he multitude of arrests and detentions of defenders also contributes to their stigmatization, since they are depicted and perceived as troublemakers by the population."²³⁴

In Dominican Republic, some days before Sonia Pierre, member of the Movement of Dominico Haitian Women (MUDHA per its initials in Spanish) participated in the hearing before the IACHR entitled "Judicial response in cases of nationality remotion in Dominican Republic", the Commission received information indicating that the Minister of Interior and Police, José Ramón Fadul, had expressed to the media that Mrs. Pierre had requested the hearing with the purpose of making a "show" and obtain benefits for herself. Likewise, according to the media, Mrs. Pierre had been summoned by the Constable of the Fourth Criminal Chamber of First Instance of the National District to present information related with the cases of removal of nationality that she would present in the hearing before the IACHR. Such summoning allegedly took place as a result of a request by the Executive President of the Legal Consulting Group GSV and member of the National Progressive Force (FNP for its initials in Spanish), who suggested to the media that if Mrs. Pierre did not provide the information requested within 10 days, she could be committing the crime of terrorism. On October 14, 2011, based on Article 41 of the American Convention, the IACHR submitted a communication to the State.

123. The Commission has indicated that "cases in which state authorities make statements or issue communiqués publicly incriminating a human rights defender of acts that have not been legally proven constitute a violation of the human rights defender's right to honor."²³⁵ Along these lines, the Commission established that government statements and communiqués issued repeatedly against a person for unproven criminal acts attacked his dignity and honor, as they directly injured his good name and reputation, particularly considering that there were judicial decisions acquitting him. This demonstrated that he had been subjected to public harassment.²³⁶

The IACHR received information on statements made by High-level representatives of the State of Colombia regarding an alleged fraud on the part of one of the individuals identified as a victim in the Mapiripán Massacre.²³⁷ It was known that the President of the

²³³ UN, Human Rights Commission, Report presented by the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101, para. 55; Cfr. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 95.

²³⁴ UN General Assembly, Report of the Special Rapporteur Margaret Sekaggya on the situation of human rights defenders. Human Rights Council, 13th Session, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/13/22, December 30, 2009, paras. 32-33.

²³⁵ IACHR, *Democracy and Human Rights in Venezuela*, para. 616.

²³⁶ IACHR, Report 43/96, Case 11.430, Jose Francisco Gallardo (Mexico), October 15, 1996, para. 76.

²³⁷ IACHR, press release 114/11, *With Regard to Recent Events Surrounding the Mapiripán Massacre in Colombia*, October 31, 2011.

Republic stated that with the alleged fraud "it confirmed what many people were saying about dark interests, economic interests, who use that system, that fool it in order to take economic advantage of the public resources of the State, which belong to the citizens".²³⁸ Also, the Attorney General pointed out that the members of the organization Corporación Colectiva de Abogados José Alvear Restrepo ("CCAJAR") could have committed the crime of fraud and falsification for having represented false victims of the massacre perpetrated by paramilitaries in Mapiripán, and that "behaviors such as the ones that have been known are typical of criminal gangs specialized in defrauding the Colombian State".²³⁹ The Commission considers that statements such as these, made before conducting proper investigations, can have a negative impact in the work of Colombian human rights organizations, which over these last decades have carried out their work of defending human rights in situations of serious risk and has cost many lives, which has led the Inter-American Commission to repeatedly ask the Colombian State to respect and protect their efforts.²⁴⁰

124. Based on the principle of presumption of innocence, States must refrain from public incrimination of a defender whose alleged crimes have not been legally proven.²⁴¹ "The governments should not tolerate any effort on the part of state authorities to cast in doubt the legitimacy of the work of human rights defenders and their organizations." The IACHR has indicated that public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights.²⁴²

In 2011, the IACHR followed the situation in Venezuela of Humberto Prado, Director of the Venezuelan Observatory of Prisons, who, according to available information, has been singled out repeatedly as the person responsible for "organizing prisons strikes," "benefitting economically from the inmates' problems," "being financed by the opposition," and "serving the interests of the United States."²⁴³ According to information available in various media outlets, in June 2011 the Minister for Interior Affairs and

²³⁸ El Informador, *Presidente y vicepresidente pidieron llevar caso de Mapiripán a la OEA*, October 28, 2011. Available [in Spanish] at: http://www.elinformador.com.co/index.php?option=com_content&view=article&id=27159:presidente-y-vicepresidente-pidieron-llevar-caso-de-mapiripan-a-oea&catid=79:nacional-e-internacional&Itemid=422; Nuevo Siglo, *Caso Mapiripán es una burla a los DH: Santos*, October 27, 2011. Available [in Spanish] at: <http://elnuevosiglo.com.co/articulos/10-2011-caso-mapirip%C3%A1n-es-una-burla-los-dh-santos.html>

²³⁹ Nuevo Siglo, *Caso Mapiripán es una burla a los DH: Santos*, October 27, 2011. Available [In Spanish] at: <http://elnuevosiglo.com.co/articulos/10-2011-caso-mapirip%C3%A1n-es-una-burla-los-dh-santos.html>

²⁴⁰ IACHR, press release 114/11, *With Regard to Recent Events Surrounding the Mapiripán Massacre in Colombia*, October 31, 2011.

²⁴¹ IACHR, *Democracy and Human Rights in Venezuela*, para. 616.; IACHR, Report 43/96, Case 11.430, Jose Francisco Gallardo (Mexico), October 15, 1996, para. 76.

²⁴² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 10.

²⁴³ FIDH, *Hostigamiento contra el sr. Humberto Prado*, June 2, 2010. Available in Spanish at: <http://www.fidh.org/Hostigamiento-contra-el-Sr-Humberto-Prado-VEN-003>

Justice, Mr. Tareck El Aissami, in statements made to the State-run TV channel, Venezolana de Televisión, reportedly accused Mr. Prado of lying about the situation in El Rodeo II prison, linking it to political opposition groups.²⁴⁴ The previous statements were reportedly made following the events that took place June 12, 2011, in the Capital Rodeo I Judicial Confinement Center, where at least 19 prisoners died and 25 suffered serious injuries as a result of a clash among inmates.²⁴⁵ The Inter-American Court, in its decision on provisional measures granted to Mr. Humberto Prado, indicated that the State "must implement the protection measures and grant effective and appropriate guarantees so he can freely carry out his activities, avoiding any actions that could limit or obstruct his work."²⁴⁶

125. The discrediting of the work of human rights defenders and their organizations in a context of criminal processes that may be unjustified creates a stigmatization that can impose psychological loads that violate the right to personal integrity of the defender. Further, this situation can generate a hostile environment that hinders the legitimate enjoyment of freedom of association of human rights defenders.

The IACHR received information about a public declaration made by the Secretary of the Marina of Mexico in July 2011, in which he expressed that "criminal groups try to stain the prestige and good name of institutions by using citizen groups through deceptions, pretending to make them fall in the perverse game of the criminals, because when using the human rights flag, they try to damage the image of the institutions". As a result of this declaration, around 80 human rights organizations announced that they were withdrawing from the negotiations that were taking place with representatives of the Sub secretariat of Juridical Affairs and Human Rights of the Secretariat of government, for the construction of a protection mechanism for human rights defenders in Mexico.²⁴⁷

126. Given the vast quantity of information received from several countries of the region related to allegedly baseless criminal actions being instituted against human rights defenders, as well as the absence of measures to put an end to this practice, the IACHR again urges the States to "ensure that their authorities or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders."²⁴⁸

²⁴⁴ Front Line, *Venezuela: el Dr. Humberto Prado Sifontes, defensor de derechos humanos, objeto de difamación tras las declaraciones de un funcionario público*, June 24, 2011. Available in Spanish at: <http://www.frontlinedefenders.org/es/node/15387>; FIDH, *Campaña de difamación en contra de defensores y organizaciones de derechos humanos*, June 24, 2011. Available in Spanish at: <http://www.fidh.org/Campana-de-difamacion-en-contra-de-defensores-y>

²⁴⁵ IACHR, press release 57/11, *IACHR Deplores Violent Deaths in Venezuelan Prison*, June 16, 2011.

²⁴⁶ *Diario del Pueblo Región Oriente, Prado: Defensa de Ddhh es una actividad peligrosa en Venezuela*, October 16, 2011. Available in Spanish at: <http://www.diarioregion.com/2011/10/16/prado-defensa-de-ddhh-es-una-actividad-peligrosa-en-venezuela/>

²⁴⁷ CNN México, *Las declaraciones de la Marina tensan relación-activistas gobierno*, July 28, 2011. Available at: <http://mexico.cnn.com/nacional/2011/07/28/las-declaraciones-de-la-marina-tensa-la-relacion-activistas-gobierno>

²⁴⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 11.

E. Abusive use of force in protest demonstrations

127. In 2006 the Commission recommended that the States "[a]dopt mechanisms to prevent the excessive use of force during public demonstrations."²⁴⁹ Specifically, the Commission indicated that the State should establish comprehensive measures including planning, prevention, and investigation measures, to determine any abusive use of force in social protest demonstrations. Below the IACHR will explain the content of the right of assembly, which the States are obligated to respect and guarantee. It will also note some of the obstacles that, according to the public consultation done for the preparation of this report, continue to be faced in several countries of the region.

128. The right of assembly is protected by Article XXI of the Declaration²⁵⁰ and Article 15 of the American Convention.²⁵¹ This right, which is also recognized in other international instruments,²⁵² is essential to the enjoyment of various rights such as freedom of expression, the right of association, and the right to defend human rights. Political and social participation through the exercise of freedom of assembly is critical to the consolidation of democratic life in societies and thus contains a keen social interest.²⁵³

129. Peaceful social protest, as a manifestation of freedom of assembly, is a fundamental tool in the defense of human rights, essential for engaging in political and social criticism of authorities' activities, as well as establishing positions and plans for action with regard to human rights. The IACHR has said that without the enjoyment of this right, it is difficult to exercise the defense of human rights.²⁵⁴ Thus, States are obligated to ensure that no human rights defender is prevented from meeting or publicly expressing him or herself,²⁵⁵ which includes both organizing and participating in public processions.²⁵⁶

²⁴⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 12.

²⁵⁰ "Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature."

²⁵¹ "The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others."

²⁵² This right is recognized also in Article 20.1 of the Universal Declaration of Human Rights; Article 21 of the International Covenant on Civil and Political Rights and Article 5 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

²⁵³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 60.

²⁵⁴ *Ibidem*, para. 52.

²⁵⁵ *Ibidem*, para. 54.

²⁵⁶ ECHR, *Christian against Racism and Fascism vs. The United Kingdom*, no. 8400/78, Commission decision of 16 July 1980, DR 21 pp. 138, 148.

The right to hold public demonstrations will be protected by the American Convention as long as this right is exercised peacefully and without arms.²⁵⁷

1. **Obligation to respect and guarantee freedom of assembly in protest demonstrations**

130. The protection of the right of assembly involves not only the State's obligation not to interfere arbitrarily in its exercise, but also, in some circumstances, the obligation to adopt positive measures to guarantee this right. Thus, the States have both positive and negative obligations to respect and guarantee human rights defenders' freedom of assembly.

131. The Commission has noted that, historically, the failure by States in the region to meet their obligations to respect and guarantee the right of assembly has triggered widespread violence, which in turn has led to serious violations of this right and violations of the rights to life, physical integrity, and personal liberty and security of those participating in the social protest demonstrations.²⁵⁸

132. This situation, as in the 2006 report, continued to be seen in some States of the region during the follow-up period. Along these lines, the IACHR pronounced itself with regard to the acts of violence that took place in Bolivia on September 25, 2011, in the context of a protest against the construction of a highway that was to go through the Indigenous Territory of the Isiboro Sécore National Park (TIPNIS).²⁵⁹ Likewise with respect to Cuba, in reference to the repression of the "pots and pans" demonstration (*toque de cazuela*) on September 24, 2011, in town of Río Verde, in the municipality of Boyeros, and to the march in front of the provincial court of Villa Santa Clara, in which demonstrators were on their way to try to get into the trial of Dailin Hernández Caballero and Pedro Antonio Blanco Fleitas, on September 25, 2011.²⁶⁰ Likewise with respect to Chile, over the acts of violence that took place in the student demonstrations held on August 4, 2011, to protest educational policies.²⁶¹ Likewise with respect to Honduras, in the context of the repression of demonstrations that took place in September 2009 in Tegucigalpa, days after the coup d'état.²⁶² Also with respect to Panama, over the serious acts of violence that took place during a demonstration held on July 8, 2010, in Changuinola, Bocas del Toro, by workers from banana plantations who called a general strike beginning July 2,

²⁵⁷ Article 15 of the American Convention.

²⁵⁸ IACHR, Citizen Security and Human Rights, December 31, 2009, para. 192.

²⁵⁹ IACHR, press release 108/11, CIDH, *IACHR Urges Bolivia to Guarantee Protesters' Physical Integrity and Security*, October 17, 2011.

²⁶⁰ In this regard, the IACHR requested information to Cuba based on Article 18 of its Statute, on October 12, 2011. No response was received.

²⁶¹ IACHR, press release 87/11, IDH, *IACHR Expresses Concern for Violence Against Student Protests in Chile*, August 6, 2011.

²⁶² IACHR, press release 65/09, *IACHR condemns excessive use of force in repression of protests in Honduras*, September 22, 2009.

2010, to protest the approval of Law 30;²⁶³ with respect to Peru, over the acts of violence that took place June 5, 2009, to break up a blockade that indigenous groups had maintained on the highway leading to the city of Bagua in response to legislative decrees affecting their property rights over their lands;²⁶⁴ and with respect to Venezuela, over the repression of several social protests by workers seeking better working conditions, including one by company employees of Siderúrgica del Orinoco, held in March 2008, to request better working conditions, and another held on August 26, 2009, by workers from the Metropolitan Mayor's Office to demand their job security, which they believe would be affected by the Law on the Special Municipal Regime of a Two-Tier System for the Metropolitan Area.²⁶⁵

133. In order to meet their obligations to respect and guarantee the right of assembly, the States have the obligation not to obstruct and to adopt positive measures to guarantee the exercise of this right. This begins from the time administrative authorities are notified of the wish to hold a demonstration and continues during the demonstration itself, to protect the rights of the participants and any third parties who may be involved, as well as after the demonstration, to investigate and punish any person, including agents of the State, who commit acts of violence against the life or physical integrity of demonstrators or third parties.

134. For the purpose of being able to guarantee and protect the right of assembly ahead of time, the States should adopt regulatory and administrative measures, designing appropriate operational plans and procedures to facilitate and not obstruct the exercise of the right of assembly. This involves everything from setting application requirements for demonstrations, to rerouting pedestrian and vehicle traffic in certain areas during the demonstration, to escorting those participating in the gathering or demonstration in order to guarantee their safety and make it possible for the activities in question to take place.²⁶⁶ States also have the obligation to protect demonstrators from physical violence by persons who may hold opposite opinions.²⁶⁷

135. Below the IACHR will discuss the State's concurrent obligations regarding the requirements it may impose for a social protest demonstration to be held; the preventive measures that should be adopted to prevent an inappropriate intervention of State forces during the protest demonstration; and finally, with regard to the use of permissible force by the State in accordance with international human rights law. In each of

²⁶³ IACHR, press release 77/10, *IACHR expresses concern over deaths and injuries during demonstrations in Panama*, August 3, 2010.

²⁶⁴ IACHR, press release 35/09, *IACHR Condemns Acts of Violence in Peru*. Washington, D.C., June 8, 2009.

²⁶⁵ IACHR, *Democracy and Human Rights in Venezuela*, para. 154.

²⁶⁶ IACHR, *Citizen Security and Human Rights*, December 31, 2009, para 192.

²⁶⁷ IACHR, 2007 Annual Report, Chapter IV- Venezuela, December 29, 2007, para. 259; IACHR, *Citizen Security and Human Rights*, December 31, 2009, para 192.

these aspects it will give examples of continuing obstacles it has identified in some countries of the region.

2. Right to hold a demonstration without prior permission

136. In a democratic society, "the urban space is not only an area not only for circulation, but also a space for participation."²⁶⁸ States must guarantee and not obstruct the right of demonstrators to meet freely both in private and in public spaces and in workplaces. With regard to private spaces, the right to freedom of assembly should not be obstructed when it is being exercised with the consent of the owners; with regard to public places, the States may establish relevant requirements that do not impose excessive demands that invalidate the exercise of the right;²⁶⁹ and finally, with regard to workplaces, international law guarantees to workers and professional organizations the right to hold meetings on their sites to examine professional issues, without prior authorization and without interference from the authorities.²⁷⁰

137. The requirement established in some laws that advance notice be given to the authorities before a social protest may be held in public places is compatible with the right of assembly, as long as this requirement has the purpose of informing the authorities and allowing them to take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community,²⁷¹ or making it possible for the State to take necessary steps to adequately protect those participating in the demonstration.²⁷² However, any requirement that creates the basis for prohibiting or restricting a meeting or demonstration, for example through a requirement for an advance permit, is not compatible with this right.²⁷³ The IACHR has indicated, in this

²⁶⁸ Supreme Constitutional Tribunal of Spain, Decision 66/1995, p. 3, cited in IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 56.

²⁶⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 56.

²⁷⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 53.

²⁷¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 57.

²⁷² IACHR, *Democracy and Human Rights in Venezuela*, para. 142.

²⁷³ For example, the Commission has found a restriction incompatible with freedom of assembly in the legislation that requires a police permission that must be requested ten days prior to any public act, assembly, selection, conference, show, conference or sporting event, cultural, artistic family. See IACHR, Annual Report 1979-1980, OEA/Ser.L/V/II.50, October 2, 1980, pp. 119-121. Available at: <http://www.cidh.oas.org/annualrep/79.80sp/indice.htm>. As an example, the Commission also has cited the position of the United Nations Human Rights Committee that has stated its opinion in this regard when it asserted that the requirement to notify the police prior to a demonstration is not incompatible with Article 21 of the ICCPR (right of assembly). Nonetheless, the requirement of previous notification should not be transformed into a demand for the prior issuance of a permit by an agent with unlimited discretionary powers. That is to say that a demonstration may not be prevented because it is considered likely to jeopardize the peace or public security or order, without taking into account whether it is possible to prevent the threat to peace or the risk of disorder by altering the original conditions of the demonstration (time, place, etc). Restrictions on public demonstrations must be intended exclusively to prevent serious and imminent danger, and a future, generic danger would be insufficient. Human Rights Committee, Case Kivenmaa v. Finlandia, Judgment of June 10, 1994, available at

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regard, that the requirement of prior notification must not be confused with the requirement of prior authorization granted as a matter of discretion,²⁷⁴ which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.²⁷⁵

138. According to the information received by the IACHR, some States require the following to be able to hold a demonstration: naming someone responsible for any damage to property that may occur during a demonstration and identifying the reason for the demonstration, as well as the name and address of each person participating in the demonstration, or the identities of speakers at the event. The IACHR observes that these requirements, taken together, could obstruct the exercise of this right and the chance to produce the effects the demonstrators are seeking. In addition, as civil society organizations have informed the Commission, in many cases even when the requirements established by the authorities are met, in some States there is a practice of denying a permit or else changing the places or routes requested for the demonstrations, invoking grounds of public order, security, or peace without providing adequate grounds or basis. According to the Commission's information, once a permit is denied, in many cases no effective remedy is available to challenge the decision, and the body in charge of reviewing the decision tends to be the same authority that denied it in the first place.

139. The IACHR reiterates that the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out. In cases in which it is considered that circumstances related to time, means, or space pose a danger to the demonstrators, the authorities should explain the reasons for their decision in order to seek a better alternative. The IACHR reiterates that public demonstrations in which human rights defenders or other people are participating may be restricted only to prevent serious and imminent danger, and a future, generic danger would be insufficient.²⁷⁶ If the authority in question decides it is pertinent to change the circumstances of time and place, an appropriate and effective remedy must be provided to challenge the decision, a remedy that should be resolved a different authority than the one that issued it.

140. The Commission welcomes the constitutional recognition that several States in the region have granted the right of assembly, in the sense that exercising the right does not require prior authorization. Along these lines, it is worth mentioning the constitutions of Brazil, Chile, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, and Venezuela. Nevertheless, despite this constitutional recognition, the IACHR has observed that some legal systems have regulated this right through various requirements

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[http://www.unhchr.ch/tbs/doc.nsf/.Communication No. 412/1990: Finland. 10/06/94. CCPR/C/50/D/412/1990](http://www.unhchr.ch/tbs/doc.nsf/.Communication%20No.%20412/1990:Finland.10/06/94.CCPR/C/50/D/412/1990) (jurisprudence), para. 9.2.

²⁷⁴ IACHR, *Democracy and Human Rights in Venezuela*, para. 142.

²⁷⁵ ACHR, *Democracy and Human Rights in Venezuela*, paras. 140 and 142.

²⁷⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 58.

that hamper its exercise, or the authorities have been given the power to authorize demonstrations to be held, making the exercise of the right of assembly subject to the ability to obtain a permit, which is often denied as a matter of discretion.

According to information received by the Commission, in Chile, Supreme Decree No. 1.086 (September 16, 1983) regulated the conditions for carrying out social protest demonstrations. While Article 1 of the decree recognizes the right to assemble without prior authorization, provided it is without arms, Article 2 of the decree empowers a mayor or governor to disallow assemblies or marches held under two circumstances: (a) on streets that are "heavily travelled and on streets that would disrupt public transit"; and (b) "in the plazas and esplanades that people usually use for rest and relaxation, and those held in parks, plazas, gardens, and avenues landscaped with plants." As provided in Article 3 of the decree, it is the mayors or governors themselves who have the authority to designate, "by means of a resolution, the streets and places in which public assemblies are not allowed," in accordance with the aforementioned circumstances. Moreover, the requirements under Article 2 for being able to hold a demonstration include indicating the name of the organizers and their address, profession, and identification document number. They must also indicate who will be the speakers during the demonstration.

According to the information provided by civil society, in practice this Supreme Decree has had the effect of establishing a requirement for prior authorization to exercise the right of assembly in Chile. As was reported to the Commission, this decree has enabled mayors or governors to use their discretion to restrict protest demonstrations from being held, as they have the authority to deny authorization and to define the circumstances and places under which permission may be denied. In addition, applications presented to the authorities are said to be rejected frequently, or modified at the authorities' discretion in terms of the time and place indicated, without any reason provided. In light of the obstacles for obtaining authorization to hold protest demonstrations, some sectors of society have opted to demonstrate in public areas without obtaining permission from the authorities, which under Article 2, paragraph (e) of the decree, enables the demonstration to be "broken up by Law Enforcement and Public Security Forces," with the result that demonstrations that begin peacefully often end in incidents with the State police forces²⁷⁷.

3. Measures to prevent the excessive use of force

141. In order to prevent an inappropriate intervention by State forces that could infringe on the human rights of demonstrators, the States should adopt measures both of a regulatory as well as an administrative nature that enable police forces to have clear rules of conduct and the professional training needed to perform their jobs in situations involving mass concentrations of people.²⁷⁸ The IACHR considers that the States should carry out activities to train and equip law enforcement officers; handle coordination and communication between authorities and civil society; and make a clear distinction between internal security as the function of the police and national defense as the function of the armed forces. Law should ensure all these measures in order to prevent human

²⁷⁷ IACHR, press release 87/11, *IACHR Expresses Concern for Violence Against Student Protests in Chile*, August 6, 2011.

²⁷⁸ IACHR, *Citizen Security and Human Rights*, December 31, 2009, para. 193.

rights violations resulting from undue State intervention during social protest demonstrations.

142. With regard to training, the police forces must receive clear and unequivocal instructions that their job is to protect the participants in a public meeting or a demonstration or mass gathering so long as the participants are exercising their right.²⁷⁹ Moreover, States must guarantee that the police are prepared to handle situations involving public disturbances by applying means and methods that respect human rights. The State must adopt all necessary provision to this end, and specifically those for education and training of all members of its armed forces and its security agencies on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency.²⁸⁰

143. Pursuant to the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, States should provide appropriate equipment to law enforcement officials who would be participating in controlling public demonstrations. According to these principles, States should equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bulletproof vests and bulletproof means of transportation, in order to decrease the need to use weapons of any kind.²⁸¹ Moreover, the State has the obligation to provide its police forces with adequate communications resources and vehicles to intervene in these circumstances.²⁸²

144. In terms of mechanisms for coordination between authorities and demonstrators, such as has been established in the IACHR Report on Citizen Security and Human Rights (2009), the States must set clear criteria, which are to be properly disseminated so that as many people as possible may know that the systems are for coordination and communication between the police authorities and the persons participating in the demonstration or mass public gathering. The goal is to do as much as possible to accommodate the right of assembly, while at the same time limiting the negative consequences that these events can have on the rights of other members of the same community whose rights the State must also protect and ensure.²⁸³

²⁷⁹ *Idem*.

²⁸⁰ I/A Court H.R., *Case of the Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 127.

²⁸¹ Article 2 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Available at: <http://www2.ohchr.org/english/law/firearms.htm>

²⁸² IACHR, *Citizen Security and Human Rights*, December 31, 2009, para. 193.

²⁸³ *Ibid.* para. 196.

145. In addition, a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces is essential to guarantee a use of force that does not violate human rights defenders' right of assembly. The IACHR has stated that the police and armed forces are two substantively different institutions insofar as the purposes for which they were created and their training and preparation are concerned. Thus, the armed forces are trained "to fight against enemies and not to protect and control civilians, a task that is typical of police forces."²⁸⁴ Broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances; therefore, the IACHR has stated that it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.²⁸⁵ Therefore, law-enforcement control of violence in the context of a social protest falls exclusively to civilian police forces that are properly organized and trained, and not to military armed forces.

146. It is of concern to the IACHR that, in the framework of consultations for the preparation of this report, it received information regarding some States that reportedly use in practice or else maintain in their legal framework the possibility of intervention by the armed forces in protest demonstrations. In this regard, there are apparently laws that allow the use of the armed forces to protect the operations of private companies in areas considered strategic, such as those that help to provide public services, when the operation of these companies "is placed at risk" or is "in grave danger." As the Commission was informed, the lack of definition of conditions to allow the intervention of the armed forces makes it possible for the authorities to apply a broad interpretation that has enabled the use of force to put down peaceful social protests or labor strikes. The IACHR urges these States to adjust their laws and administrative practices in accordance with the aforementioned standards so that the armed forces are not used to repress social protest demonstrations.

In its 137th session, the IACHR received information from Ecuador on the Law on Public Security and the State, which, under its Article 43, allows for the intervention of the armed forces "under critical circumstances of insecurity that endanger or seriously jeopardize the operations of public and private companies responsible for the management of strategic sectors."²⁸⁶ According to the petitioners who requested the hearing, the State of Ecuador has a troubling history with respect to the use of the state of emergency to quell social protests, and through this article it obligates the armed forces to provide security in situations that may be considered unsafe, both in public companies and in private companies in strategic sectors, that is, mining, petroleum, water, and biodiversity. Thus, in

²⁸⁴ *Ibid.* para. 102.

²⁸⁵ IACHR, *Report on the Situation of Human Rights in Venezuela*, 2003, Chapter III, para. 272; IACHR, *Citizen Security and Human Rights*, December 31, 2009, para. 101.

²⁸⁶ Public Security and State Law, July 24, 2009. Available in Spanish at: <http://docs.ecuador.iustia.com/nacionales/leyes/ley-de-seguridad-publica-y-del-estado.pdf>

*demonstrations in which human rights defenders might participate, on issues such as the right to water and on environmental impacts, among others, the armed forces could be used as a measure to discourage peaceful social protest.*²⁸⁷

147. When it comes to the prohibition on using the armed forces in the context of protest demonstrations, a matter of internal law enforcement and therefore within the functions of the police, some States usually declare a state of emergency in the provinces where demonstrations are being held, enabling the intervention of the armed forces under domestic law. It is a recurring practice that some States propose, or directly establish, that military forces should assume internal security on grounds of an increase in violent or criminal activities, even due to roads being cut off or obstacles blocking transportation routes.

148. The IACHR reiterates that a state of emergency and resulting suspension of guarantees is for exceptional situations only and applies "in time of war, public danger, or other emergency that threatens the independence or security of a State Party."²⁸⁸ However serious the internal security situation may be, including the level of ordinary crime, it does not constitute a military threat to the sovereignty of the State.²⁸⁹ Based on the foregoing, controlling disturbances that may be produced internally by social protest demonstrations is up to the police, whose function is geared toward public security and not the security of the State.

The IACHR received information from Peru indicating that in Chala, Arequipa, in April 2010, more than 6,000 miners in Madre de Dios²⁹⁰ were demonstrating to protest Emergency Decree 012-2010, which contemplates a restructuring process for mine workers.²⁹¹ The executive branch, through Supreme Decree 042-2010-PCM, dated March 31, 2010, declared a state of emergency for 60 days in six provinces for the purpose of "maintaining and/or reestablishing internal order and defending the rights of the citizens" who had been affected by the indefinite strike of the workers on the aforementioned highway. Under the Supreme Decree, the Ministry of the Interior would maintain "control of internal security with the support of the Military Forces," and the objective of the emergency decree would be "to ensure the provision of public transportation and transportation of merchandise, as well as to safeguard the installations belonging to

²⁸⁷ IACHR, *Hearing on the Situation of Human Rights Defenders in Ecuador*, 137th Session, November 3, 2009.

²⁸⁸ I/A Court H.R., *Habeas corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 19

²⁸⁹ IACHR, *Citizen Security and Human Rights*, December 31, 2009, para. 103.

²⁹⁰ La República, *Aumentan a cinco los fallecidos tras desalojo en Chala*, April 4, 2010. Available in Spanish at: <http://www.larepublica.pe/04-04-2010/aumentan-cinco-los-fallecidos-tras-desalojo-en-chala>

²⁹¹ Perú 21, *Arequipa, suben a 5 los muertos durante protesta de mineros informales*, April 4, 2010. Available in Spanish at: <http://peru21.pe/noticia/456568/arequipa-al-menos-muerto-deja-paro-mineros-informales>

public and private institutions."²⁹² According to the information available, in the context of the State's intervention to break up the strike, 5 demonstrators lost their lives and 29 were injured.²⁹³

4. Obligation to investigate and punish those responsible for acts of violence in protest demonstrations

149. If in the course of a demonstration acts of violence occur, it is particularly important for the State to adopt measures to investigate the events that may have arisen during the social protest as a result of an abusive use of force by State agents, or else acts of aggression by third parties to the demonstration or among participants themselves, so as to punish those responsible and provide adequate recourse to anyone whose rights may have been violated. States "have the duty to investigate human rights violations and to punish the perpetrators and accessories after the fact in said violations. And any person who considers himself or herself to be a victim of such violations has the right to resort to the system of justice to attain compliance with this duty by the State, for his or her benefit and that of society as a whole."²⁹⁴

150. The IACHR has expressed its concern over the acts of violence that continue to arise in some countries during various social protest demonstrations, which points to the fact that this continues to be an obstacle. It has placed particular emphasis on demonstrations related to demands over labor rights,²⁹⁵ the defense of territories that belong to indigenous groups,²⁹⁶ and student protests,²⁹⁷ as well as acts of violence that have been reported in social protest demonstrations in the context of States that have had democratic ruptures, such as Honduras, where women defenders were especially subject to attacks.²⁹⁸ The IACHR has urged the States that have undergone these events to

²⁹² Available in Spanish at: <http://www.elperuano.pe/Edicion/>

²⁹³ La República, *Aumentan a cinco los fallecidos tras desalojo en Chala*, April 4, 2010. Available in Spanish at: <http://www.larepublica.pe/04-04-2010/aumentan-cinco-los-fallecidos-tras-desalojo-en-chala>

²⁹⁴ I/A Court H.R., *Case of the Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 115.

²⁹⁵ IACHR, press release 77/10, *IACHR expresses concern over deaths and injuries during demonstrations in Panama*, August 3, 2010. IACHR, *Democracy and Human Rights in Venezuela*, para. 154.

²⁹⁶ IACHR, press release 35/09, *IACHR Condemns Acts of Violence in Peru*, June 8, 2009; IACHR, press release 108/11, *IACHR Urges Bolivia to Guarantee Protesters' Physical Integrity and Security*, October 17, 2011.

²⁹⁷ IACHR, press release 87/11, *IACHR Expresses Concern for Violence Against Student Protests in Chile*, August 6, 2011.

²⁹⁸ In its report *Honduras: Human Rights and Coup d'Etat*: The Commission noted numerous testimonies that revealed that during the repression of demonstrations against the Coup d'Etat and in the illegal detentions, women were subjected to verbal and sexual violence perpetrated by the security forces. In early 2010, the Commission noted with concern that in February 9, 2010 was kidnapped along with four members of his family a young woman who in August 2009 reported had been raped by four policemen after been stopped at a demonstration against the coup. See IACHR, Preliminary observations of the Inter-American Commission on Human Rights on his visit to Honduras on 15 to May 18, 2010, June 3, 2010, para. 93, available at: <http://www.cidh.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm>. See also, IACHR, Press Release

investigate the human rights violations, in keeping with due process, until the facts are clarified; prosecute the perpetrators; and remedy the consequences of the violations.

According to public information, in Argentina on December 10, 2010, hundreds of homeless immigrants, mainly from Bolivia and Paraguay, occupied the Park "Indoamericano", located in Villa Soldati, demanding decent housing to the authorities. According to available information, in the frame of the violence that erupted during the removal of the occupiers by the police, lost their lives Bolivian citizens Rosemary Chura Puña and Juan Castañares Quispe, Paraguayan Bernardo Salgueiro and an unidentified person of 19 years.²⁹⁹ During the removal, the director of the Health Emergency Services indicated that the ambulances were unable to enter because they were also being attacked with gunshots.³⁰⁰ Afterwards, the President of the Republic requested Argentinean society to make a profound reflection about migrants in the country and apologized to the offended countries for what had happened.³⁰¹

151. Based on the information received from several States, indicating that the exercise of freedom of assembly is being restricted due to an excessive use of force, the Commission considers that these States face challenges in meeting the recommendation provided in its 2006 report. Along these lines, the IACHR reiterates to the States its recommendation that they "[a]dopt mechanisms to prevent the excessive use of force during public demonstrations."³⁰²

F. Restrictions to the exercise of freedom of association

152. In its 2006 report, the IACHR underscored the role of freedom of association as a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact.³⁰³ In light of the restrictions identified in its report, the Commission provided a series of recommendations to the States to facilitate human rights defenders' right of association.³⁰⁴ Below, the IACHR will review the standards the States must observe to respect and

...continuation

26/10: IACHR deplores killings, kidnappings and attacks in Honduras, March 8. Available at: <http://www.cidh.org/Comunicados/English/2010/26-10eng.htm>

²⁹⁹ CNNMéxico, *Un desalojo en Argentina causa cuatro muertes y acusaciones de xenofobia*, December 11, 2010. Available in Spanish at: <http://mexico.cnn.com/mundo/2010/12/11/un-desalojo-en-argentina-causa-cuatro-muertes-y-acusaciones-de-xenofobia>

³⁰⁰ El Universal, *Noche de terror por violencia social en Argentina*, December 10, 2010. Available in Spanish at: http://www.eluniversal.com/2010/12/10/int_ava_noche-de-terror-por_10A4840571.shtml

³⁰¹ CNNMéxico, *Un desalojo en Argentina causa cuatro muertes y acusaciones de xenofobia*, December 11, 2010, Bolpress, *El gobierno argentino pide disculpas por la violencia xenófoba en Buenos Aires*, December 10, 2010. Available in Spanish at: <http://www.bolpress.com/art.php?Cod=2010121101>

³⁰² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 12.

³⁰³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 69.

³⁰⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendations 16, 17, 18 and 51.

guarantee the right of association, and will provide examples of some of the obstacles to this right that have continued to exist during the follow-up period.

153. Freedom of association is recognized in various international instruments of a universal³⁰⁵ and regional³⁰⁶ nature. Specifically with regard to activities to promote and defend human rights, the UN Declaration on Defenders establishes that "[e]veryone has the right, individually and in association with others, at the national and international levels...to form, join and participate in non-governmental organizations, associations or groups."³⁰⁷

154. In the inter-American system, freedom of association is protected by Article XXII of the Declaration³⁰⁸ and by Article 16 of the American Convention.³⁰⁹ In the case of human rights defenders, this includes the right to "set up and participate freely in non-governmental organizations, associations or groups involved in human rights monitoring, reporting and promotion."³¹⁰

155. In accordance with the duties to respect and guarantee human rights, the effective exercise of freedom of association implies that the State must comply with both negative as well as positive obligations.³¹¹ These obligations should not be limited to the organization's formation, but should also extend to the possibility of carrying out the purposes for which it was established. As the European Court of Human Rights has stated, the protection afforded by freedom of association lasts for an association's entire life.³¹²

156. The guarantee of the right to associate freely with other persons implies, on the one hand, that the public authorities may not limit or impair the exercise of such right; as long as the association's purpose is lawful, the State must allow it, without pressure or interference that may alter or impair the nature of such purpose.³¹³ When a

³⁰⁵ See International Covenant on Civil and Political Rights (Article 22), ILO Convention No. 87 (Article 2), European Convention on Human Rights (Article 11.1) and African Charter on Human and Peoples Rights (Article 10.1).

³⁰⁶ See American Convention (Article 16); European Convention on Human Rights (Article 11.1) and African Charter on Human and Peoples Rights (Article 10.1).

³⁰⁷ Article 5 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999.

³⁰⁸ Article XXII of the American Declaration.

³⁰⁹ Article 16 of the American Convention.

³¹⁰ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para 146.

³¹¹ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 76.

³¹² ECHR, *United Communist Party of Turkey and Others v. Turkey*, núm. 19392/92, para. 33.

³¹³ I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 156; I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 143.

State impedes this right, it not only restricts defenders' freedom of association, but also obstructs the work of promoting and defending human rights³¹⁴ and consequently the free exercise of the right to defend those rights.

157. The free and full exercise of freedom of association also imposes upon the State the duty to create the legal and factual conditions for human rights defenders to be able to freely perform their work.³¹⁵ The State also has the duty to prevent attacks on this freedom, protect those who exercise it, and investigate any violations.³¹⁶ These positive obligations should be adopted even in the sphere of relations between individuals, should the case merit it.³¹⁷

158. Freedom of association has two dimensions, one individual and the other social.³¹⁸ In its individual dimension, the exercise of this right implies that human rights defenders may associate freely, without the interference of the public authorities limiting or obstructing the exercise of the respective right, a right of each individual.³¹⁹ This right is not exhausted with the theoretical recognition of the right to form trade unions or organizations, but also encompasses, inseparably, the right to use any appropriate means for exercising that liberty.³²⁰

159. In terms of the social dimension of this right, human rights defenders enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.³²¹ In this dimension, the right of association enables the members of a group or society to attain certain purposes together, and to benefit from them.³²² The freedom to associate and to pursue certain collective goals are indivisible, so that a limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to

³¹⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 69.

³¹⁵ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 146.

³¹⁶ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 76.

³¹⁷ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 76.

³¹⁸ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69-72.

³¹⁹ Co I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69.

³²⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 72.

³²¹ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69.

³²² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 75.

achieve its proposed purposes.³²³ Consequently, the individual and social dimensions of freedom of association must be guaranteed simultaneously.³²⁴

160. The Commission has stressed throughout this report that the harmful effect of an attack on a defender's right—such as the right to life, integrity, or privacy—has a negative impact on the activity of defending and promoting human rights, which if a person belongs to an organization, also violates the free exercise of freedom of association. In this regard, the Inter-American Court has deemed, for example, that the execution of a trade union leader restricts not only an individual's freedom of association, but also the right and freedom of a determined group to associate freely, without fear.³²⁵ It has also ruled that the monitoring of associations' telephone communications without respecting legal requirements—which caused fear and tensions and affected the image and credibility of the associations—"altered the free and normal exercise of the right to freedom of association" of the members of the organizations, entailing an interference that is contrary to the freedom of association.³²⁶ Finally, on another occasion, the Court established that a violation of the right of association had occurred in the case of a human rights defender whose death, due to her work in defense of the environment, clearly resulted in the deprivation of her right to associate freely with others,³²⁷ and also had an intimidating effect on other people engaged in the defense of the environment or connected to these types of causes.³²⁸

161. Based on the relevance of freedom of association to the work of human rights defenders, the Inter-American Court has established specific obligations that the State must fulfill in the case of those who are organized to defend and promote human rights. In this respect, it has established that States have the duty to provide the resources necessary for human rights defenders to conduct their activities freely; to protect them when they are subject to threats and thus ward off any attempt against their life and safety; to refrain from setting up hindrances that might make their work more difficult; and

³²³ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 70.

³²⁴ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 71.

³²⁵ I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 69. The Commission has considered that the same consequence occurs to any person defending any right or human rights issue. Cfr. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 71.

³²⁶ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 180.

³²⁷ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 152.

³²⁸ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 153.

to conduct conscientious, effective investigations of violations against them, thus preventing impunity.³²⁹

162. The IACHR will now address only those State obligations derived from freedom of association that have to do with administrative and financial controls over human rights organizations. These fall under the State's obligations to facilitate the necessary means so defenders can freely carry out their activities and to refrain from imposing obstacles that make it difficult for defenders to perform their work.

1. Restrictions to freedom of association in conformity with international law standards

163. While States are free to regulate the registration and oversight of organizations within their jurisdictions, including human rights organizations, the right to associate freely without interference requires that States ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations.³³⁰

164. The exercise of the right of association may be subject only to such restrictions established by law that have a legitimate purpose and that, ultimately, may be necessary in a democratic society.³³¹ The Court has deemed that the system established by the Convention is balanced and appropriate for harmonizing the right to associate with the need to prevent and investigate possible conduct that domestic law characterizes as criminal.³³²

165. With respect to the requirement that the restriction be established by law, any restriction on the right to freedom of association is permissible only if prescribed by law (through an act of Parliament or an equivalent unwritten norm of common law) and is not permissible if introduced through government decrees or other similar administrative orders.³³³ The Commission reiterates that the principle of legality also requires restrictions to be formulated previously, in an express, accurate, and restrictive manner to afford legal certainty to individuals.³³⁴ The law containing the restriction must

³²⁹ I/A Court H.R., *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 77; and I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paras. 62 and 91.

³³⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 69.

³³¹ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 173.

³³² *Idem*.

³³³ UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/64/226, 64th Session, August 4, 2009, para. 27.

³³⁴ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

also have been enacted for reasons of general interest and in accordance with the purpose for which such restriction has been established.³³⁵ The States should refrain from promoting laws and policies that use vague, imprecise, and broad definitions of the legitimate motives for restricting the establishment and operation of human rights organizations.³³⁶

166. The exercise of the right of association may be subject only to such restrictions as may be in the interest of national security, public safety, or public order, or to protect public health or morals or the rights and freedoms of others.³³⁷ The United Nations Human Rights Committee has stated, with respect to these requirements, that the State must demonstrate that the prohibition of the association is in fact necessary to avert a real and not only hypothetical danger to the national security or democratic order, and that less intrusive measures would be insufficient to achieve this purpose.³³⁸

167. In the case of organizations dedicated to the defense of human rights, in invoking national security it is not legitimate to use security or anti-terrorism legislation to suppress activities aimed at the promotion and protection of human rights.³³⁹ The concept of civil society must be understood by the States in democratic terms, in such a way that organizations dedicated to defending human rights may not be subject to unreasonable or discriminatory restrictions.³⁴⁰

168. In addition, the States should provide an appropriate and effective remedy, based on the rules of due process,³⁴¹ that makes it possible to challenge any decision restricting the exercise of the right of assembly—such as a decision to suspend an organization's operations, dissolve an organization, or disallow its registration—before a court that is independent of the body that established the restriction. The IACHR considers that a resolution that results in the dissolution of an organization must be based on a judicial decision.

³³⁵ I/A Court, *The Word "Laws" in the Article 30 of the American Convention On Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series. A No. 6 para. 28.

³³⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 17.

³³⁷ Article 16 of the American Convention.

³³⁸ Case No. 1119/2002, *Lee v. The Republic of Korea*, 824 of the 2005 Report of the Human Rights Committee, Vol. II, Annex V, Section U, para. 7.2 and 7.3.

³³⁹ UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/64/226, 64th Session, August 4, 2009, para. 52.

³⁴⁰ IACHR, *Democracy and Human Rights in Venezuela*, para. 564 IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para 223.

³⁴¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 18.

2. Restrictions to the registration and operation of civil society organizations

169. The Commission has observed, during the follow-up period, that some States have continued to impose obstacles and arbitrary and abusive controls over the establishment and operation of organizations dedicated to the defense of human rights. Such obstacles may be found in the law itself as well as in the practice of administrative authorities. The Special Rapporteur on the situation of human rights defenders has noted that the means applied to restrict the right to freedom of association by members of civil society organizations "are now even more widely used in all regions of the world."³⁴²

170. The exercise of the right of assembly includes the right to set up nongovernmental organizations, associations, or groups involved in promoting and defending human rights.³⁴³ For this right to involve obligations for the State, an association must have some kind of institutional structure, if only an informal one,³⁴⁴ but it is not necessary for an organization to have legal personality, and thus *de facto* associations are also protected by the right to freedom of association.³⁴⁵

171. The States must promote the exercise of freedom of association³⁴⁶ and thus ensure that the procedure for registering human rights organizations in public registries will not impede their work, also facilitating the process of organizations obtaining recognition of their legal personality. The registration of a human rights organization should have a declaratory and not constitutive effect,³⁴⁷ geared toward facilitating its development in line with the purpose put forward by its members in accordance with its internal rules and procedures. In the case of labor unions specifically, workers have the right to set up, without prior authorization, the organizations of their choice and to freely affiliate themselves with them.³⁴⁸ This right is of the utmost importance for the defense of the legitimate interests of the workers, and falls under the *corpus juris* of human rights.³⁴⁹

³⁴² UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/64/226, 64th Session, August 4, 2009, para. 50.

³⁴³ I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 146.

³⁴⁴ Thematic monitoring report presented by the Secretary General and decisions on follow-up action taken by the Committee of Ministers, CM/Monitor (2005) 1 Volume III final revised 11 October, para. 1.b.4; cited in UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/64/226, 64th Session, August 4, 2009, para.19.

³⁴⁵ UN General Assembly, Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/64/226, 64th Session, August 4, 2009, para. 27.

³⁴⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 40.

³⁴⁷ *Ibid.*, recommendation 16.

³⁴⁸ Committee on Freedom of Association, *Compilation of decisions and principles of the Committee on Freedom of Association*, Third Edition, 1985, para. 222.

³⁴⁹ I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 158.

172. The IACHR has observed that during the follow-up period some States have implemented national registration systems for civil society organizations. On this point, the IACHR considers that a registration system that seeks to promote transparency does not necessarily contravene international standards. However, laws that go against those standards are those that give the authorities discretionary power to authorize the establishment and operation of organizations through registration records.³⁵⁰ States that have bodies responsible for handling the registration of associations should ensure that neither these bodies nor the authorities in charge of regulating the laws governing registration have broad discretion or provisions containing vague or ambiguous language that might create a risk that the law could be interpreted to restrict the exercise of the right of association.³⁵¹

173. The States must also ensure that the registration of human rights organizations will be processed quickly and that only the documents needed to obtain the information appropriate for registering will be required. Domestic laws should clearly establish the maximum time frames for state authorities to answer requests for registration.³⁵²

174. The registration of organizations dedicated to the defense of human rights may not be subject to unreasonable or discriminatory restrictions.³⁵³ Along these lines, the States may not deny registration because organizations receive subsidies from abroad or have foreigners or agents of organized religions on their boards; nor may they restrict their participation, under these circumstances, so that they are ineligible to participate in activities to provide consultation or oversight regarding public policies of the States in matters involving particular human rights.³⁵⁴

With regard to administrative and financial oversight over human rights organizations, in its 2009 Report on Democracy and Human Rights in Venezuela, the Commission noted with concern that even though civil society organizations in Venezuela may be established by foreigners and external financing is allowed, participation by certain organizations in public affairs continues to be restricted by virtue of their financing, their members' national origin, the type of organization, or the absence of laws governing their activity.³⁵⁵ These restrictions are based on judgments handed down by the Supreme Court of Justice

³⁵⁰ IACHR, *Democracy and Human Rights in Venezuela*, para 579.

³⁵¹ *Ibid.*, para. 577.

³⁵² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 16.

³⁵³ IACHR, *Democracy and Human Rights in Venezuela*, para. 564. IACHR, *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 223.

³⁵⁴ IACHR, *Democracy and Human Rights in Venezuela*, para. 564. IACHR, *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 223.

³⁵⁵ IACHR, *Democracy and Human Rights in Venezuela*, para 562.

*of the Republic on June 30, 2000; August 21, 2000; and November 21, 2000.*³⁵⁶ *In these judgments, the Venezuelan Supreme Court stated that the representative authority of these organizations depends on the size of their membership, and they must meet the same prerequisites as political parties.*³⁵⁷ *The Supreme Court also established the following:*

*[...] that civil society, as considered by the Constituent Assembly, is Venezuelan civil society, wherefrom arises the principle of its general joint responsibility with the State, and its particular responsibility toward the economic, social, political, cultural, geographical, environment, and military arenas. The consequence of this national character is that its representatives may not be foreigners or bodies affiliated with, or led, subsidized, financed, or sustained, either directly or indirectly, by states or by movements or groups influenced by states; nor by cross-border or global associations, groups, or movements that pursue political or economic goals to their own benefit [...].*³⁵⁸

175. The State's obligations are not limited only to the establishment of an association but rather last through the association's entire life.³⁵⁹ In this regard, in addition to facilitating the registration of organizations, freedom of association includes the right "to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right."³⁶⁰

176. The Commission has observed that some States, through routine reviews, require organizations to take additional procedural steps or to submit documents to keep their registration up to date or to allow their files to be searched at any time by the relevant authorities without a court order. Some forms that include requests for information about where the organizations' funds come from, how many employees they have, where the employees are from, what activities are carried out, the purpose for which each of the funds is earmarked, a detailed accounting of financial status, personnel employed and all their compensation, and the organization's fixed assets, among other aspects, and subjecting the submission of these documents to the condition that they could be turned over to tax authorities and the organizations' registration could be withdrawn, would seem to exceed the limits of confidentiality that human rights organizations require to be able to operate.

³⁵⁶ *Idem.*

³⁵⁷ Supreme Tribunal of Justice, Constitutional Chamber, Decision "Defensoría del Pueblo contra la Comisión Legislativa Nacional" of June 30, 2000 and decision "Gobernadores contra el Ministro de Finanzas" of November 21, 2000.

³⁵⁸ Supreme Tribunal of Justice, Constitutional Chamber, decision "Gobernadores contra el Ministro de Finanzas" of November 21, 2000.

³⁵⁹ ECHR, *United Communist Party of Turkey and Others v. Turkey*, num. 19392/92, para. 33.

³⁶⁰ I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 156.

177. The IACHR considers that even though it legitimate to request information to non governmental organizations for statistical or tax purposes, or to update macroeconomic information on the country, in their reviews and requests for information from organizations, the States should not exceed the limits of confidentiality that human rights organizations require to be able to operate freely and independently³⁶¹, nor to condition the registration exclusively on the presentation of this information.

178. In addition, during the follow-up period the IACHR has observed the entry into force of "anti-terrorist" laws that prevent human rights organizations from providing assistance or specialized advice to groups characterized as terrorists by the executive branch of the State, even when the assistance or advice does not pertain to terrorism-related issues but rather to other issues having to do with defending human rights, such as advising them as to communications they could have with international bodies in order to protect their rights. In this regard, the IACHR reiterates that the criminalization of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them)³⁶². Vague notions such as providing communications support to terrorism or extremism, the "glorification" or "promotion" of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalized.

On June 21, 2010, in the case of Holder v. Humanitarian Law Project, the Supreme Court rejected a First Amendment challenge to a provision of the criminal prohibition on knowingly providing "material support or resources to a foreign terrorist organization." The plaintiffs in the case challenged the prohibition on four types of material support—"training", "expert advice or assistance", "service" and "personnel"—claiming the statute violated their First Amendment freedom of speech and association rights by prohibiting them from supporting the lawful, nonviolent activities of groups such as the Partiya Karkeran Kurdistan and the Liberation Tigers of Tamil Eelam. The Supreme Court rejected the claim, finding that the Government's interest in combating terrorism is an "urgent objective of the highest order" which justifies the statute's prohibition on forms of speech such as training designated terrorist organizations regarding international law and international bodies.³⁶³

³⁶¹ IACHR, *Democracy and Human Rights in Venezuela*, para. 572.

³⁶² 2008 Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=735&IID=1>

³⁶³ U.S. Supreme Court, *Holder, Attorney General et al. v. Humanitarian Law Project et al.*, June 21, 2010. Available at: <http://www.supremecourt.gov/opinions/09pdf/08-1498.pdf>. See also IACHR, Annual Report of the Special Rapporteurship on Freedom of Expression, 2010, para. 240.

3. Financial controls over human rights organizations

179. One of the State's duties stemming from freedom of association is to refrain from restricting the means of financing of human rights organizations. States should allow and facilitate human rights organizations' access to foreign funds in the context of international cooperation.³⁶⁴

180. The IACHR has received information on law bills that authorize any authority or any person, through the so-called "citizen control" to request financial information to an organization when its activities are of "public interest".³⁶⁵ Because of the wideness of the concept of "public interest" and of its relation with the defense of human rights, some of these requirements could exceed the confidentiality limits that are needed by the organizations in relation to the causes they promote³⁶⁶ and subject them to a disproportionate burden that they are in no obligation to bear.

181. With regard to the "transparency" argument used by the States to justify having knowledge of the source of the organizations' funding, the IACHR reiterates that the right of access to information gives rise to obligations for all public authorities from all branches of government and autonomous agencies. This right also involves those who carry out public functions, provide public services, or manage public funds in the name of the State. Regarding the latter group, the right of access obligates them to turn over information exclusively related to the handling of public funds, the provision of services in their care, and the performance of public functions.³⁶⁷

182. In this regard, funds that the organizations receive in the framework of international cooperation are not, in principle, public. Along these lines, based on the transparency argument, the guarantee of the right of access to information should not force organizations to disclose their funding beyond public resources or beyond activities related to such funding or with respect to the provision of a public service. This should not be understood as a barrier when an entity is required to reveal its private legal relations in

³⁶⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 51.

³⁶⁵ For example, the Commission learned about the Draft Regulations of legal persons of private law with social purposes and nonprofit, proposed since 2010 by the President of Ecuador, which provides in Article 35 that in the matter of control and performance evaluation of the operation of organizations with social and nonprofit, the citizen control could be exercised either individually or collectively by any citizen to seek accountability from an organization that a) provides a public service, b) manages public resources c) develops public interest activities. The Commission in exercise of the attributions conferred by Article 41 of the Convention, requested information from the State of Ecuador on this project on January 4, 2011. The Draft Rules of legal persons and private entities with Social Nonprofit is available in Spanish at: http://www.google.com.ec/url?q=http://www.infodesarrollo.ec/recursos/documentos/doc_download/196-reglamento-organizaciones-sociedad-civil.html&sa=U&ei=RB9yTv2xLKHK0AG3mf3uCQ&ved=0CA8QFJAB&usg=AFQjCNF93H2zWjegOqb7Li4XJXhBGEEzxQ

³⁶⁶ IACHR, *Democracy and Human Rights in Venezuela*, para. 572.

³⁶⁷ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 19.

the context of financial cooperation so that the State can carry out its function of investigating a crime or providing tax oversight.

The IACHR in 2010 received information from Bolivia regarding the draft Law on Transparency and Access to Public Information, which was submitted by the national government to the Plurinational Legislative Assembly. It establishes in its Article 3 that the law is applicable not only to authorities but also to private entities that receive funds or assets, "regardless of the source, to pursue goals in the public interest or social goals," and that the provisions of the law "shall not be limited to social organizations, social actors, or other civil society organizations."³⁶⁸ The IACHR observes that the aforementioned provision includes civil society organizations, regardless of the source of their funding, in the obligations regarding access to information that correspond to the authorities. The IACHR reiterates that the right of access to information obligates civil society organizations to turn over information exclusively on the handling of public funds, the provision of services for which they are responsible, and the performance of public functions that may be entrusted to them.³⁶⁹ The IACHR considers that including civil society organizations along with authorities when the civil society organizations do not manage public funds or provide public services, in order to supposedly guarantee access to information, could exceed the limits of confidentiality that human rights organizations require to be able to operate freely and independently, and could disproportionately affect the right to freedom of association.³⁷⁰

183. According to civil society, the agencies that administer special funds to pool resources that are received in the context of international cooperation also tend to restrict or direct the activities of the organizations that receive international funding so that they are in line with the priorities defined by the authorities. The Inter-American Court has indicated that the exercise of freedom of association includes the right "to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right."³⁷¹ The IACHR considers that human rights defenders should be able to exercise this right regardless of whether the goals they are pursuing are being carried out with foreign or domestic funding. In this regard, the IACHR considers that the scope of these bodies or agencies should be limited so that their powers are limited to executing and supporting the government's international cooperation policies when the State has raised the funds, and not when the international cooperation funds are raised by and designated for civil society organizations.

³⁶⁸ Article 3 of the Bill of Law on Transparency and Access to Public Information, August 2010. Available in Spanish at: http://anpbolivia.com/index.php?option=com_content&task=view&id=168&Itemid=42

³⁶⁹ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 19.

³⁷⁰ IACHR, *Democracy and Human Rights in Venezuela*, para. 572.

³⁷¹ I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 572.

In Peru, the Peruvian International Cooperation Agency (APCI), created by Law No. 27692, is the body that governs international technical cooperation and is responsible for directing, planning, organizing, and overseeing non-reimbursable international cooperation, in accordance with national development policy, in the framework of the legal provisions regulating international technical cooperation.³⁷² In its 126th session, in 2006, the IACHR received information on draft Law No. 25/2006-PE, which would amend Law No. 27692, and expressed its concern that if the bill passed, it would have a negative impact on the work of human rights organizations.³⁷³ After strong criticism from civil society, on December 8, 2006, the State approved the law, which in 2007 was declared unconstitutional in some of its particulars by the Constitutional Court of Peru.³⁷⁴ Among the aspects that concerned civil society with respect to the law was that any international financing and donations to organizations operating in Peru would have to be registered with the State-run APCI; that under the law, before contracting international cooperation funds, whether public or private, organizations would be required to notify the APCI; and that a condition for this type of technical cooperation contract would be that it must be in accordance with the State's national development policy.³⁷⁵ In its judgment on the law's unconstitutionality, the Constitutional Court of Peru stated that the law must be interpreted in such a way that registration with the APCI is not "mandatory" for the organizations, which in the exercise of their autonomous free will may register in order to execute projects in the priority areas indicated in the development plans and receive the tax-related and technical benefits the law provides.³⁷⁶ In addition, the court indicated that while this agency could establish public-sector planning in the area of international technical cooperation by setting priorities in certain areas, this could only be the case with regard to funds raised by the State, whereas when the funds are raised from the private sector, the government's approval would be merely advisory.³⁷⁷ The Commission has

³⁷² Article 3 of the Law that created the Peruvian Agency for International Cooperation (APCIR for its initials in Spanish) – Law 27692. Available in Spanish at: <http://www.regionjunin.gob.pe/documents/pdf/normas%20legales/LEY%20N27692.pdf>

³⁷³ IACHR, press release 42/06, *IACHR calls on Peru to take steps to protect human rights defenders*. Washington, D.C., November 3, 2006.

³⁷⁴ Constitutional Court of Peru, Luis Miguel Unconstitutionality Process Sirumbal Ramos and 8,438 citizens and Congress of the Republic of Peru (plaintiffs) c. Congress (defendant), August 29, 2007. Available in Spanish at: <http://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%2000010-2007-AI.pdf>

³⁷⁵ FIDH, *Adopción de una ley restrictiva contra las ONG de derechos humanos/ publicación de un informe de misión internacional de investigación del observatorio*, December 18, 2006. Available in Spanish at: <http://www.fidh.org/Adopcion-de-una-ley-restrictiva-contra-las-ONG-de>

³⁷⁶ The benefits granted by this law are: a) To qualify for a refund of taxes paid for the acquisition of goods and services with funds from non-reimbursable technical cooperation; b) able to count with the official presence of volunteers and foreign experts in the framework of projects using technical international cooperation; c) Recognition of the State as recipients of international technical cooperation. Constitutional Court of Peru, Luis Miguel Unconstitutionality Process Sirumbal Ramos and 8,438 citizens and Congress of the Republic of Peru (plaintiffs) c. Congress (defendant), August 29, 2007, 33. Available in Spanish at: <http://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%2000010-2007-AI.pdf>

³⁷⁷ Constitutional Court of Peru, Luis Miguel Unconstitutionality Process Sirumbal Ramos and 8,438 citizens and Congress of the Republic of Peru (plaintiffs) c. Congress (defendant), August 29, 2007, 84. Available in Spanish at: <http://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%2000010-2007-AI.pdf>

*continued to receive information regarding draft legislation in Peru or alleged statements on the part of public officials, which apparently are intended to create obstacles for civil society organizations that receive funds from foreign sources.*³⁷⁸

184. In addition, the IACHR has learned that some States have restricted the participation of human rights organizations through requirements that are similar to those of political parties, such as limiting participation exclusively to nationals or requiring that funding resources be national in cases in which part of their purpose is to protect democracy or political rights. Some countries have even established sanctions on foreigners who provide funding to national organizations or on national organizations that receive international funding for the defense of political rights.

185. The IACHR reiterates that, in accordance with the Declaration on Defenders, "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms,"³⁷⁹ and that the exercise of that right implies the possibility of freely and effectively promoting and defending any right.³⁸⁰ From the perspective of the inter-American system, the IACHR observes that political rights are recognized in the American Convention (Article 23) and are essential to the preservation and development of democratic systems; therefore, human rights defenders have the right to promote and defend these rights whether they are nationals or foreigners with relation to the State in which they are carrying out their activities. The IACHR observes that a restriction of that nature is prohibited under international law. Nevertheless, it does not escape the Commission's attention that a situation different from the one just described would be one in which an organization was proselytizing on behalf of a certain political party or candidate to a particular post. Under this circumstance, the activity would not be protected by the aforementioned standard.

*The "Law on Defense of Political Sovereignty and National Self-Determination," enacted by the State of Venezuela in December 2010, aims to protect the exercise of political sovereignty and national self-determination from foreign interference.*³⁸¹ *This law states that the "assets and other income of political organizations or organizations that defend*

³⁷⁸ Review of the Legal Defense Institute, *Continua persecución contra ONG*, July 27, 2010, No. 199, 2010. Available in Spanish at: <http://www.revistaideele.com/archivo/comment/reply/516>

³⁷⁹ Article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.53.144.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.53.144.en)

³⁸⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 36.

³⁸¹ Article 1, *Law for the Defense of the Political Sovereignty and National Self-determination*, December 23, 2010.

political rights must be made up exclusively of national assets and resources.³⁸² The law imposes sanctions on organizations that receive foreign funding, with a fine equivalent to double the amount they received³⁸³; on natural persons who receive economic help or financial support from foreign individuals or bodies for the exercise of political activities, with "a fine equivalent to double the amount received"³⁸⁴; and on foreign citizens who participate in activities of foreign funding, with expulsion from the territory of the Republic,³⁸⁵ without prejudice to any other sanctions provided for in other laws or any additional or specific sanctions in case of a repeat offense.³⁸⁶

186. The IACHR expresses its concern over those States that have initiated criminal investigations against human rights defenders who belong to organizations for allegedly receiving funds from foreigners. The right to receive international funds in the context of international cooperation for the defense and promotion of human rights is protected by freedom of association, and the State is obligated to respect this right without any restrictions that go beyond those allowed by the right to freedom of association.³⁸⁷

187. The States must guarantee the exercise of the right of association in the broadest possible manner, which includes the obligation to promote it. The IACHR has considered that one way to comply with this obligation is through tax exemptions to organizations dedicated to protecting human rights.³⁸⁸ During the follow-up period, the IACHR has received information indicating that the benefit of tax exemption is apparently subject to the discretion of some authorities. The IACHR believes that those benefits should be clearly defined in laws or programs and should be administered with no discrimination whatsoever.

In Bolivia, Article 2 of Law No. 2493, dated August 4, 2003, establishes as exempt from taxes "any profits obtained by civil associations, foundations, or nonprofit institutions that are legally authorized, have subscribed agreements, and carry out the following types of activities: religious, charitable, welfare, social assistance, educational, cultural, scientific, environmental, artistic, literary, sports-related, political, professional, trade-union, or related to professional associations. This exemption shall apply as long as: no financial brokerage activities or other types of commercial activities are involved; the totality of the

³⁸² Article 4, *Law for the Defense of the Political Sovereignty and National Self-determination*, December 23, 2010.

³⁸³ Article 6, *Law for the Defense of the Political Sovereignty and National Self-determination*, December 23, 2010.

³⁸⁴ Article 7, *Law for the Defense of the Political Sovereignty and National Self-determination*, December 23, 2010.

³⁸⁵ Article 8, *Law for the Defense of the Political Sovereignty and National Self-determination*, December 23, 2010.

³⁸⁶ Articles 9 and 20, *Law for the Defense of the Political Sovereignty and National Self-determination*, December 23, 2010.

³⁸⁷ IACHR, *Democracy and Human Rights in Venezuela*, para. 585.

³⁸⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 40.

income and assets of the aforementioned institutions are earmarked exclusively for the purposes indicated, by express provision of their statutes; in no case are these distributed directly or indirectly among their associates; and in case of liquidation, the assets would be distributed among entities with similar purposes or donated to public institutions, with such conditions reflected in their balance sheets." The IACHR has received information from civil society in Bolivia indicating that these benefits apply only if the organizations have gone through a process to obtain an administrative resolution declaring that the organization, as a nonprofit, is expressly exempt from taxes. According to what the IACHR has been told, in recent years there have been a growing number of cases involving applications that have been rejected based on decisions by the tax administration that are said to be broadly discretionary. These are based on a restrictive interpretation of what constitutes "nonprofit," with organizations whose statutes establish the payment of honorariums or allowances to their directors or members of the assembly of associates being disqualified from the benefit, without differentiating whether such payments constitute a distribution of profits among its members or whether, as reportedly happens in reality, they constitute payments for personal services by their members for work that contributes to the achievement of the social purpose. The IACHR reiterates that the States should promote the exercise of freedom of association and activities to promote and defend human rights in the broadest sense. The authorities should not use their discretion to restrict tax benefits in such a way that the free exercise of this right is discouraged.

G. Undue restrictions to access to State-held information

188. In its 2006 report the Commission expressed concern that governmental authorities, and the armed forces in particular, refused to release information, even at the request of the justice system or institutions such as Truth Commissions.³⁸⁹ In view of that situation, the Commission recommended that the States "[a]llow and facilitate the access of defenders, and the general public, to public information held by the state.... The state should establish an expedited, independent, and effective mechanism for this that includes review by civilian authorities of decisions taken by the security forces to deny access to information."³⁹⁰ Based on the information received and the recommendation cited, the Commission will now proceed to indicate and give examples of some of the obstacles that human rights defenders continue to face with respect to the right of access to information.

189. The right of access to information constitutes one of the manifestations of freedom of thought and expression protected at the regional level by Article 13 of the

³⁸⁹ In particular, the Commission referred to information received in its visit in loco to Guatemala in 2003, in where the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, received information indicating that sectors of the press and human rights organizations condemned the attitude of the President of Congress, Efraín Ríos Montt, to block access to documents related to the approval and the budget of 2000 and 2001. (see, Report on the human rights situation in Guatemala, OEA/Ser.L/V/II.118).).

³⁹⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 15.

American Convention,³⁹¹ Article IV of the American Declaration,³⁹² and Article 4 of the Inter-American Democratic Charter.³⁹³ This right should be respected and guaranteed to everyone equally, without discrimination of any kind,³⁹⁴ both in its individual and its social dimensions.³⁹⁵

190. The Court has stated that by expressly stipulating the right to "seek" and "receive" "information," Article 13 of the American Convention protects the right to access State-held information.³⁹⁶ The exercise by human rights defenders or anyone else of the right of access to information includes the right to receive the information requested and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case.³⁹⁷

191. The right of access to information by human right defenders is essential for the exercise of the right to defend human rights, since it permits participation in public administration through the social control that can be exercised through such access.³⁹⁸ Moreover, access to information is a fundamental tool for control of corruption, for citizen participation, and for the general fulfillment of other human rights, especially for the most

³⁹¹ Article 13 of the American Convention establishes that: "1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers [...]"

³⁹² Article IV of the American Declaration establishes that: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever".

³⁹³ Article 4 of the Inter-American Democratic Charter states that: "[t]ransparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy."

³⁹⁴ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 2.

³⁹⁵ The Court has recognized that States must respect and ensure two dimensions of freedom of expression, in this sense has established that freedom of expression "requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others." *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Art. 13 and 29 American Convention on Human Rights, Advisory Opinion OC-5/85, November 13, 1985, I/A Court H.R., Series A No. 5, para. 30.

³⁹⁶ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

³⁹⁷ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

³⁹⁸ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 86.

vulnerable groups.³⁹⁹ For States to be able to guarantee the full and effective exercise of the right of access to information by human rights defenders or anyone else, the Commission has stated that the State's actions should be governed by the principles of maximum disclosure⁴⁰⁰ and good faith.⁴⁰¹

192. The principle of maximum disclosure implies that when a human rights defender requests certain information, the presumption should exist that all information is accessible, subject to a limited system of exceptions.⁴⁰² For a restriction to the exercise of this right to be imposed, it must have been established by law,⁴⁰³ respond to a purpose allowed by the American Convention,⁴⁰⁴ and be necessary in a democratic society, which means it must be intended to satisfy a compelling public interest.⁴⁰⁵

193. The IACHR Office of the Special Rapporteur for Freedom of Expression has stated that the following consequences are derived from the principle of maximum disclosure: (1) the right of access must be subject to a limited regime of exceptions, and these exceptions must be interpreted restrictively, in such a way that favors the right of access to information; (2) grounds must be given for decisions to deny information, and the State has the burden to prove that the information being requested may not be released; and (3) in the event of a doubt or legal vacuum, the right of access to information must hold sway.⁴⁰⁶

³⁹⁹ IACHR, Report of the Special Rapporteur for Freedom of Expression 2009, chapter IV "the Right of Access to Information, December 30, 2009, para. 4; IACHR, 2008 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "A hemispheric Agenda for the Defense of Freedom of Expression", para. 147.

⁴⁰⁰ Paragraph 1 of resolution CJI/RES.147 (LXXIII-O/08) ("Principles on the Right of Access to Information") of the Inter-American Juridical Committee, established that "[i]n principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies subject only to a limited regime of exceptions," IACHR, Report of the Special Rapporteur for Freedom of Expression 2009, chapter IV "the Right of Access to Information, December 30, 2009, para. 9.

⁴⁰¹ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 8.

⁴⁰² I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 92. In the same sense, in the Joint Declaration of 2004, the Rapporteurs of Freedom of Expression of the UN, OAS and OSCE, have explained that this principle "establishes the presumption that all information is accessible, subject only to a limited system of exceptions".

⁴⁰³ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 89.

⁴⁰⁴ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 90.

⁴⁰⁵ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 91. See also, I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 96; I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 121 and 123.

⁴⁰⁶ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 10.

194. Information that is requested from any authority should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction applies.⁴⁰⁷ In that case, it is up to the authority to establish that the information being requested is confidential.⁴⁰⁸

195. Moreover, once information has been received, the person who receives it may permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it.⁴⁰⁹ In any case, if there is any inconsistency between laws, and based on the principle of maximum disclosure, the access to information law should prevail over other legislation.⁴¹⁰ This requirement helps to ensure that States comply effectively with the obligation to establish a law on access to public information and that the law is interpreted so as to in effect favor the right of access.⁴¹¹

196. Furthermore, the authorities who are required to respond to requests for information must act in good faith. As part of this obligation, public officials who respond to requests should interpret the law so as to meet the aims sought by the right of access, ensure the strict application of the right, provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty. In other words, they must take any actions necessary to serve the general interest and must not betray people's confidence in State administration⁴¹².

197. The State has the obligation to respond to requests for information in a timely, complete, and accessible manner.⁴¹³ As part of this obligation, the State must produce appropriately disaggregated information in order to determine sectors that have been disadvantaged or have in the exercise of their rights. For example, the State should

⁴⁰⁷ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

⁴⁰⁸ According to the Inter-American Juridical Committee in its Resolution CJI/RES.147 (LXXIII-O/08), *Principles on the Right to Access to Information*, "the burden of proof for justifying a denial of access to information is on the organ from which the information is requested"

⁴⁰⁹ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

⁴¹⁰ Joint Declaration of the Rapporteurs of Freedom of Expression of the UN, OAS and OSCE (2004).

⁴¹¹ IACHR, Arguments before the Inter-American Court in the case *Claude Reyes et al. v. Chile. Transcription in I/A Court H.R., Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 58 d).

⁴¹² IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 15.

⁴¹³ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77; IACHR, Arguments before the Inter-American Court in the case *Claude Reyes et al. v. Chile. Transcription in I/A Court H.R., Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 58 a) and b).

disaggregate data by sex, race, or ethnicity.⁴¹⁴ In cases in which the State denies access to information, it should provide, within a reasonable time, the legitimate grounds for preventing access.⁴¹⁵ On this point, it should be recalled that the system of exceptions to access to information should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.⁴¹⁶ Restrictions imposed on the right of access to information will be compatible with the Convention only when they are established by law, are appropriate for accomplishing the objective being sought, and are strictly proportionate to the purpose being sought.⁴¹⁷

198. That means that restrictions to the right of access to information must be clearly and precisely defined and be in keeping with the standards of a democratic society.⁴¹⁸ The only restrictions to this right that are admissible are those that respond to a purpose allowed by the American Convention, in Article 13(2), that is, to ensure respect for the rights or reputation of others, protect national security, public order, or public health or morals.⁴¹⁹ Also, if there are various options to achieve this objective, that which least restricts the right protected must be selected.⁴²⁰ With specific regard to the requirement of proportionality, the IACHR has established that, for any restriction on access to State-held information to be compatible with the American Convention, it must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to the legitimate aim being pursued and that the harm to that objective is greater than the public's interest in having the information.⁴²¹

199. If a restriction to the right of access meets those requirements, the material may be kept confidential only as long as there is a certain and objective risk that revealing the information would disproportionately affect one of the interests that Article

⁴¹⁴ IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights* (2008), para. 58.

⁴¹⁵ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77; IACHR, Arguments before the Inter-American Court in the case *Claude Reyes et al. v. Chile*. *Transcription in I/A Court H.R., Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 58 a) and b).

⁴¹⁶ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 48.

⁴¹⁷ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 91.

⁴¹⁸ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 52.

⁴¹⁹ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 90.

⁴²⁰ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 91.

⁴²¹ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 53.

13(2) of the Convention orders protected.⁴²² In this regard, the exception should be in effect only for a reasonable time period, and after that expires, the information must be made available to the public.

200. The Commission has noted that most laws regarding access to information contain exceptions based on potential harm to national security or the State's ability to maintain public order.⁴²³ The Commission has explained previously under what circumstances national security may be used to limit access to information. Along these lines, citing the Johannesburg Principles on National Security, Freedom of Expression and Access to Information,⁴²⁴ the IACHR has indicated that (a) an attempt to establish a restriction based on national security "is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government"; and (b) "a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest."⁴²⁵

201. Specifically, with regard to restrictions to access to State-held information concerning human rights violations, State authorities may not resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of an ongoing investigation or proceeding.⁴²⁶ The IACHR has also used this criterion with respect to access to information in the context of a criminal proceeding over illegal acts attributed to security forces.⁴²⁷

202. Given the importance that the right of access to information plays in knowing the truth about cases related to human rights violations, when the information being requested has been destroyed, the State must take all measures to reconstruct it, and when information has been unlawfully removed from official archives, the State must adopt any necessary mechanisms to find it. The obligation to produce or recover

⁴²² IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 54.

⁴²³ IACHR, *Report on Terrorism and Human Rights*, October 22, 2002.

⁴²⁴ *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (November 1996).

⁴²⁵ Principle 2 of the *Johannesburg Principles*.

⁴²⁶ I/A Court H.R., *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 180.

⁴²⁷ Arguments of the Application of the Inter-American Commission on Human Rights on June 19, 2001, reproduced by the Inter-American Court on I/A Court H.R., *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 181.

information that has been destroyed or illegally removed is part of the right of access to the relevant information.⁴²⁸

203. The Commission reiterates that in order to guarantee that human rights defenders can exercise the right of access to information, in accordance with the obligation regarding domestic legal effects,⁴²⁹ the States have the obligation to incorporate in their legal systems an adequate and effective recourse that can be used by all individuals to request the information they need.⁴³⁰ At the same time, this recourse must be simple, effective, appropriate, quick, and non-onerous,⁴³¹ processed in accordance with the rules of due process to be able to challenge decisions by public officials who deny the right to access to specific information or simply neglect to fully answer the request.⁴³²

204. The Commission observes that in several States in the region, access laws have been passed or a legal or regulatory framework exists to guarantee this right. These States include Antigua and Barbuda, Argentina, Canada, Chile, Colombia, Ecuador, the United States, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, Trinidad and Tobago and Uruguay. The IACHR notes with concern that some other States do not yet have a legal framework for this issue. Along these lines, the IACHR is concerned that in countries such as Brazil, Cuba, Costa Rica, Guyana, Haiti, Paraguay, and Venezuela, no specific legal framework exists as yet to guarantee the right of access to information. It is also concerned because in some of the countries where there is a constitutional and legal recognition of the right of access to information, many obstacles continue to prevent human rights defenders from exercising this right. The IACHR will now refer to some of those obstacles.

205. The United Nations Special Rapporteur on the situation of human rights defenders has identified that in some States, laws on internal security, official secrets, and sedition have been used to deny freedom of information to defenders on the basis of the need to ensure national security and promote counter-terrorism. The Rapporteur has received information from some countries where the executive, after designating

⁴²⁸ See IACHR, final written arguments in Case 11,552, Julia Gomes Lund and others (Guerrilla do Araguaia) v. Brazil, June 21, 2010, para. 81. See also, IACHR, The Inter-American Legal Framework regarding the Right to Freedom of Expression, OEA / Ser.L / V / II Commission / RELE / INF. 1/09, December 30, 2009, paras. 82-87. Also, IACHR, Letter of submission to the Court and Merits Report of Case 12.590 Miguel Gudiel Álvarez and Others ("Diario Militar") v. Guatemala, February 18, 2011, para. 462

⁴²⁹ Article 2 of the American Convention.

⁴³⁰ Cfr. IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 26.

⁴³¹ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 26.

⁴³² I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 137. Cfr. IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 29.

detainees as terrorists, has refused to share information or to provide evidence to support that designation, even to the legislature and courts.⁴³³

206. Along the same lines, in its public consultations for this report, the IACHR has received information concerning officials who reportedly refuse to provide information, citing reasons such as "national security" as grounds for the confidential nature of the information, even though in reality that is not the case under domestic law. The purpose of doing so is reportedly to force human rights defenders to file additional requests to obtain the information they are seeking and in that way to wear them down. According to the information the IACHR received through the public consultation, this practice is prevalent in requests for information concerning mining concessions; requests for information having to do with providing reparation to victims of human rights violations at the hands of the armed forces; and particularly in cases in which defenders request information regarding risk-assessment instruments used by the authorities to evaluate the level of risk to beneficiaries of national protection programs.

207. Moreover, according to the information that has been received, there are excessive delays, exceeding the legal time limits, on the part of the authorities responsible for responding to requests for information. Responses to requests are often vague and imprecise, and make it necessary to file court appeals in order to compel the authorities to issue an adequate response.

208. Another obstacle pointed out by civil society is that several States do not have sex-disaggregated information on various human rights issues. This practice seriously hampers the work of several organizations, not only because public entities reportedly are not processing data with a gender focus, but also because when they are asked to produce information with that focus, the authorities are said to be using "complexity" as grounds for not providing the information. In fact, in some cases in which a response has been provided, some authorities reportedly have indicated to the petitioners that answering their requests for information has increased their workload and distracted them from their regular duties.

The IACHR received information from Colombia with respect to a request an organization had made to the Office of the Prosecutor General—the National Unit on Human Rights and International Humanitarian Law—in which it was seeking information related to the number of investigations assigned to that unit that had to do with sex crimes, both in the context of Law No. 600 of 2000 and Law No. 906 of 2004. In the February 25 response, it was stated that, because they had to respond to this request, several prosecutors had not been able to fulfill their respective duties. According to the organization making the complaint, the official response stated: "...even though we lack the staff to undertake the detailed study you are demanding and even though several prosecutors had to set aside their investigative duties to do so, I am hereby responding...."

⁴³³ Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July, 2011.

209. On another point, in some States the hindrance to access to information is the States' imposition of an excessive economic burden that discourages human rights defenders from requesting information. According to civil society organizations, public entities often charge for the information in their archives, even when such information is not requested in printed form but electronically.

210. The IACHR observes that these obstacles continued during the follow-up period in some States. In light of this situation, the IACHR reiterates its recommendation to "[a]llow and facilitate the access of defenders, and the general public, to public information held by the state"...and to "establish an expedited, independent, and effective mechanism for this that includes review by civilian authorities of decisions taken by the security forces to deny access to information."⁴³⁴

H. Restrictions to *habeas data* actions

211. Based on information the Commission has received regarding human rights defenders' access to information about them held in State archives, the Commission recommended in its 2006 report that the States: "[a]llow and facilitate the access of defenders, and the general public, to public information held by the state, as well as private information about them. The state should establish an expedited, independent, and effective mechanism for this that includes review by civilian authorities of decisions taken by the security forces to deny access to information."⁴³⁵ The Commission will now proceed to indicate the standards in international human rights law that pertain to *habeas data*, and will refer to some of the obstacles that continue to exist in some States of the region with regard to the enjoyment of this right.

212. Principle 3 of the Declaration on Principles of Freedom Expression⁴³⁶ establishes: "Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it."⁴³⁷ Through a *habeas data* action, anyone has the right to have access to information about himself or herself and to modify, remove, or correct information⁴³⁸ considered sensitive, erroneous, biased, or discriminatory.⁴³⁹ The IACHR has indicated the States should

⁴³⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 15.

⁴³⁵ *Idem*.

⁴³⁶ Approved by the IACHR in 2000.

⁴³⁷ See also IACHR, *Report on Terrorism and Human Rights*, October 22, 2002, para. 289.

⁴³⁸ Cfr. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 87.

⁴³⁹ IACHR, *Report on Terrorism and Human Rights*, October 22, 2002, para. 289.

guarantee the right of *habeas data* to all citizens, this being an essential element of freedom of expression and an oversight mechanism in a democratic system.⁴⁴⁰

213. With regard to the activity of defending and promoting human rights, *habeas data* has become an essential tool for investigating human rights violations committed in many countries during past military dictatorships in the hemisphere. *Habeas data* actions brought by family members of disappeared persons have become a mechanism for exacting accountability in the search for information concerning government conduct and for learning the fate of the disappeared.⁴⁴¹ Moreover, *habeas data* is an essential mechanism for ensuring the accountability of security and intelligence agencies, as it provides a means to verify that personal data has been gathered legally⁴⁴², and to correct, update, or remove information that could have a direct impact on the right to privacy, honor, personal identity, property, and accountability.⁴⁴³

214. Human rights defenders have the right to know the intelligence information that has been gathered on them, especially when they are not faced with a criminal proceeding based on that information.⁴⁴⁴ The action of *habeas data* entitles the injured party, or his family members, to ascertain the purpose for which the data was collected and, if collected illegally, to determine whether the responsible parties are punishable. Public disclosure of illegal practices in the collection of personal data can have the effect of preventing such practices by these agencies in the future.⁴⁴⁵

215. The owner of the registered or published information does not have to prove the existence of any special requirement in order to access it and request its correction or removal when appropriate. In all cases, the burden of proof in a dispute over access to personal information lies with the party that administers or publishes the information, and not with its owner.⁴⁴⁶

216. The States must ensure that anyone can have access to a recourse that is effective, easy to use, and accessible to exercise this right. The State must ensure that concrete channels exist to provide rapid access to information for the purpose of modifying

⁴⁴⁰ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter VII "Conclusions and Recommendations", para. 15.

⁴⁴¹ IACHR, 2001 Report of the Special Rapporteurship on Freedom of Expression, Chapter III "habeas Data and Access to Information", para. 34.

⁴⁴² IACHR, 2001 Report of the Special Rapporteurship on Freedom of Expression, Chapter III "habeas Data and Access to Information", para. 36.

⁴⁴³ Cfr. IACHR, *Report on Terrorism and Human Rights*, October 22, 2002, para. 289.

⁴⁴⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 88. IACHR, Report on the Human Rights Situation in Colombia, 1999, Chapter VII Human Rights Defenders, para. 58.

⁴⁴⁵ IACHR, 2001 Report of the Special Rapporteurship on Freedom of Expression, Chapter III "habeas Data and Access to Information", para. 36.

⁴⁴⁶ IACHR, 2008 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "A hemispheric Agenda for the Defense of Freedom of Expression", para. 96.

inaccurate or outdated information contained in electronic databases, protecting the right to individual privacy.⁴⁴⁷ Moreover, the State must ensure that prompt and suitable judicial recourse is available to challenge decisions concerning access and content of information, in order to effectively prevent private or government arbitrariness in this area.⁴⁴⁸

217. To guarantee the action of *habeas data*, States must have laws on personal information that regulate such matters as the custody, archiving, and management of the information.⁴⁴⁹ However, in States where a law of this nature still does not exist, the person whom the data concerns may, in the absence of any other recourse, access the information through the mechanisms set forth in access to information laws. In this hypothetical situation, the administrators of the databases and records in question would be obliged to turn over the information, but only to those with legal standing to request it.⁴⁵⁰

218. The IACHR has noted with satisfaction the progress made in States such as Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, and Venezuela, which have constitutional provisions guaranteeing *habeas data*. Nonetheless, it notes with concern that only some States have passed special laws to enable access to this right⁴⁵¹. Thus in reality, there are a number of States in the hemisphere where human rights defenders continue to face serious restrictions in gaining access to this right.

219. During the follow-up period, the IACHR expressed its concern over the lack of mechanisms that enable individuals on whom intelligence information exists to gain access to that information and thus be able to request that it be corrected, updated, or removed, as the case may be, from intelligence files. Especially when the information was gathered through interference in someone's private life, the effective exercise of *habeas data* is especially important not only to ensure the accountability of public authorities' actions, but also to safeguard the life and safety of individuals whose information is kept in their files.

⁴⁴⁷ IACHR, 2001 Report of the Special Rapporteurship on Freedom of Expression, Chapter III "habeas Data and Access to Information", para. 29.

⁴⁴⁸ IACHR, 2008 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "A hemispheric Agenda for the Defense of Freedom of Expression", para. 96.

⁴⁴⁹ IACHR, 2008 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "A hemispheric Agenda for the Defense of Freedom of Expression", para. 89.

⁴⁵⁰ IACHR, 2009 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "The Right to Access of Information", para. 61.

⁴⁵¹ The IACHR has received information indicating that in Argentina, Colombia, Chile, Ecuador, United States, Guatemala, Mexico, Panama, Paraguay, Peru and Uruguay there are legal frameworks that regulate the *habeas data*.

For several years, the IACHR has observed that in Colombia, human rights defenders have been denied access to personal information about them that could be in the intelligence files of the Department of Administrative Security (DAS). The IACHR observes that despite recommendations made by the IACHR and the UN,⁴⁵² the State has not adopted a law that would enable the effective exercise of the right of habeas data so that individuals who may have been subject to arbitrary intelligence activities can have access to the data about them and in that way be able to request that it be corrected, updated, or, if applicable, removed from the intelligence files.⁴⁵³ According to the information received by the IACHR, in a new legislative development, in June 2011 the plenary of the Senate of the Republic passed the Law on Intelligence and Counterintelligence in final debate. The legislation reportedly is pending reconciliation between the Senate and the House and will then be subject to constitutional scrutiny by the Supreme Court.⁴⁵⁴ The IACHR is especially concerned about information that was made public in September 2011, indicating that in the transition process from the DAS, some operatives who were facing dismissal reportedly decided to sell or leak information in their possession.⁴⁵⁵ The IACHR considers that the disclosure of personal data that could be in the possession of illegal groups could increase the situation of risk to the life and safety of individuals whose data is found in the files. The Commission once again urges the State to ensure that the law that is issued satisfies the concerns of various segments of society with respect to the mechanisms to access, remove, and correct intelligence files.⁴⁵⁶ It also urges the State to review the time periods for classifying the information as confidential so that these are proportionate, and with regard to information leaks, it reiterates that the State is responsible for the custody, archiving, and management of the information in its possession.⁴⁵⁷

220. In view of the lack of guarantees of access to *habeas data* for human rights defenders in some legal systems, the Commission reiterates its recommendation from the 2006 report, to "[a]llow and facilitate the access of defenders, and the general public, to public information held by the state, as well as private information about them. The state should establish an expedited, independent, and effective mechanism for this

⁴⁵² Commission on Human Rights, Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, E / CN.4/2006/9, 62nd session, 20 January 2006, Recommendation prevention and protection, para 6; Human Rights Council, Report of the High Commissioner for human rights on the situation of human rights in Colombia, A / HRC/4/48, Fourth session, 5 March 2007, Chapter VII - Recommendations, para. 125; Human Rights Council, Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, A / HRC/7/39, Seventh Session, February 28, 2008, para 63.

⁴⁵³ IACHR, 2009 Annual Report, Chapter IV. Colombia, para. 137.

⁴⁵⁴ *Semana*, *Congreso aprueba ley para poner fin a "chuzadas ilegales"*, June 14, Available in Spanish at: <http://www.semana.com/politica/congreso-aprueba-ley-para-poner-fin-chuzadas-ilegales/158489-3.aspx>; *El Tiempo*, *Congreso aprueba en último debate ley de inteligencia*, June 14, 2011. Available in Spanish at: http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-9622612.html

⁴⁵⁵ *Semana*, *Los papeles secretos del DAS*, September 17, 2011. Available in Spanish at: <http://www.semana.com/nacion/papeles-secretos-del-das/164304-3.aspx>

⁴⁵⁶ IACHR, 2010 Annual Report, Chapter IV- Colombia, March 7, 2010, para. 217.

⁴⁵⁷ IACHR, 2008 Report of the Special Rapporteurship on Freedom of Expression, Chapter IV "A hemispheric Agenda for the Defense of Freedom of Expression", para. 89.

that includes review by civilian authorities of decisions taken by the security forces to deny access to information."⁴⁵⁸

I. Restrictions on the exercise of activities by foreign citizens to defend and promote human rights

221. In its 2006 report, the IACHR expressed its concern over a number of obstacles that foreigners face in exercising activities to defend and promote human rights. The IACHR indicated that States are required to "grant – in keeping with their domestic law provisions – the permits and conditions necessary for human rights defenders to be able to develop their work in their territory, independent of a person's national origin."⁴⁵⁹

222. The observance of human rights is a matter of universal concern; accordingly, the right to defend those rights may not be subject to geographical restrictions.⁴⁶⁰ The UN Declaration on Defenders establishes that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms⁴⁶¹"; thus the exercise of the right to defend those rights should be guaranteed both to nationals and to foreigners.

223. Human rights defenders should enjoy adequate protection to ensure that they will not be subject to improper interference with the exercise of their freedom of movement and residence.⁴⁶² The IACHR has indicated the State's obligations in this regard include: (a) refraining from restricting, by any means, the work in which defenders may collect field information and verify first-hand the situations in which human rights are alleged to be violated; (b) ensuring that third parties not impede human rights organizations from verifying the situation of persons on the ground, if this is something they need to do; (c) granting, in keeping with their domestic law provisions, the permits and conditions necessary for foreign human rights defenders to be able to carry out their work; and (d) facilitating visas for access to the jurisdiction for those cases in which the human rights defenders must travel in the course of their work.⁴⁶³

224. Pursuant to the content of the right to freedom of circulation and residence, "an alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law." In expulsion proceedings, the person "shall be allowed to submit the reasons why he or she should not be expelled and

⁴⁵⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 15.

⁴⁵⁹ *Ibid.*, para. 105.

⁴⁶⁰ *Ibid.*, para. 36.

⁴⁶¹ Article 1 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999.

⁴⁶² This right is protected by Article VIII of the American Declaration and Article 22 of the American Convention.

⁴⁶³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 103 and 105.

to have the case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority."⁴⁶⁴ The IACHR maintains that Article XXVI of the Declaration and the corresponding Article 8 of the American Convention, which establish the right to an impartial and public hearing, also apply to administrative immigration proceedings.⁴⁶⁵

225. The IACHR reiterates that the close relationship between human rights defenders and the victims they represent is necessary for the defenders to be able to propose appropriate lines of action and denunciation. When that bond is broken, it also seriously limits the possibility that victims of human rights violations will have access to justice.⁴⁶⁶

226. During the follow-up period, the Commission has observed restrictions of a legislative or administrative nature that have been established in some States on foreigners who engage in the work of defending and promoting human rights.

227. In this report, the Commission has already addressed the matter of restrictions established by law in some States regarding the purpose or financing of organizations when human rights defenders who are foreigners participate in them. With regard to administrative obstacles, the IACHR has received information indicating that some States deny visas or access to locations to human rights defenders who are foreign citizens, or even to victims of human rights violations who wish to present their cases before international forums or bodies. Moreover, in the follow-up period the IACHR learned of the arbitrary expulsion of human rights defenders from some countries in open retaliation of their activities. In such cases, reasons are usually not given for their expulsion; nor are the constitutional guarantees of due process safeguarded.

*On September 22, 2008, the Inter-American Commission on Human Rights condemned the expulsion from Venezuela of José Miguel Vivanco and Daniel Wilkinson, Executive Director and Deputy Director of the Americas Division of Human Rights Watch, a nongovernmental organization that works in the protection of human rights. The expulsion was ordered by the Venezuelan government on the night of Thursday, September 18, 2008, hours after Human Rights Watch had presented a report on the human rights situation in Venezuela. The IACHR indicated that the measure affected the right to freedom of expression of that organization's representatives and constituted an act of intolerance toward criticism, which is an essential component of democracy.*⁴⁶⁷

⁴⁶⁴ Article 7 of the UN Resolution 40/144, Declaration of Human Rights of Individuals who are no Nationals of the Country in Which They Live, December 13, 1985.

⁴⁶⁵ IACHR, *Report on immigration in United States: Detention and Due Process*, December 30, 2010, p. 21.

⁴⁶⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 101.

⁴⁶⁷ IACHR, press release 42/08, *IACHR Condemns the Expelling of Human Rights Defenders by the Government of Venezuela*. Washington, D.C., September 22, 2008.

228. The IACHR has received complaints concerning foreign human rights defenders whose residency in the country has been cancelled or threatened to be cancelled for defending human rights in the country. It has also received information concerning human rights defenders who were reportedly forced under pressure to request their voluntary repatriation in order to avoid greater harassment, as well as information concerning foreign human rights defenders who, having entered the country without a specific immigration status to carry out activities for the defense of human rights, are reportedly expelled for engaging in speech critical of the government or investigating situations involving human rights violations.

Since its 140th session, the IACHR has received information on Panama concerning alleged acts of harassment, based on nationality, targeting the Spanish journalist and human rights defender Francisco Gómez Nadal, a member of the organization Human Rights Everywhere, who had obtained his residency in Panama six years earlier.⁴⁶⁸ According to the information available,⁴⁶⁹ on February 26, 2011, Gómez Nadal was with his wife, María del Pilar Chato, filming events related to a protest held by the Ngöbe Bugle people to demand the repeal of a law reforming the Mining Code, when the police that were trying to disperse the protesters arrested him and his wife and took them to the Chorrillo Police Station and eventually, on February 27, to the National Immigration Service and to the Administrative Police Station of the Ancón Magistrate's Office. Between February 27 and 28, he was reportedly told that the reason for his detention was that he had been disturbing the public order, for which the National Immigration Service (SNM) would proceed to verify his immigration status. Through a resolution of the SNM, Mr. Nadal was reportedly informed that because of the acts he had committed, he would be subject to "voluntary repatriation" to Spain, in accordance with Article 84 of Decree-Law No. 3 of 2008, which establishes voluntary repatriation as an administrative sanction that can be applied in the case of irregular immigrants who request their return.⁴⁷⁰ The SNM reportedly informed Mr. Gómez Nadal that his status was irregular because he did not have permission to work in the country, and that Mrs. María del Pilar Chato had entered the country as a tourist. According to the information available, given the authorities' actions, Mr. Gómez Nadal requested his voluntary repatriation, and under the law he would be barred from entering Panama for a period of at least two years and no more than five. The Inter-American Commission on Human Rights, using its powers under Article 41 of the American Convention, requested information from the government of Panama with regard to these events. Panama sent its response to the IACHR on March 8, 2011, in which it explained that Mr. Gómez Nadal and his wife, María Pilar Chato Carral, had at all times been guaranteed their human rights and fundamental guarantees, and that their departure from Panama had been carried out according to the foreigners' wishes.

⁴⁶⁸ Cfr. IACHR, *Hearing on the Risk for Environmental Human Rights Defenders in Mesoamerica*, 140th Session, October, 2011.

⁴⁶⁹ Human Rights Foundation, *Detención y expulsión arbitraria de periodistas y defensores de derechos humanos extranjeros de Panamá, Caso de Francisco José Gómez Nadal y María Pilar Chato Carral*, April 5, 2011, p. 7. Available in Spanish at: <http://www.hrev.org/wp-content/uploads/2011/04/Informe-Jurídico-Panamá-final.pdf>; Cfr. Human Rights Everywhere, *Informe sobre violación de derechos humanos en Changuinola del 7 al 11 de julio de 2010*, August 2, 2010. Available in Spanish at: <http://www.hrev.org/procesos2/informe-sobre-la-crisis-de-changuinola-julio-2010/>

⁴⁷⁰ Law Decree 3 of February 22, 2008. Available in Spanish at: <http://visaspanama.com/decreto-ley-3-de-2008.pdf>

229. The IACHR has observed that some legal systems enable the expulsion of foreigners, or the punishment of nationals who sponsor or invite them, in cases involving attacks against national "sovereignty," "public order," "security," or "independence," or cases involving the defense or promotion of certain rights, as with political rights. The IACHR considers that the ambiguity and vagueness of these concepts in laws allows a great deal of discretion on the part of the authorities responsible for enforcing them. The Commission also reiterates that the right to defend human rights includes all rights, and may not be denied based on the defender's nationality without incurring in discriminatory treatment.

230. In its response to this report, for example, El Salvador acknowledged that its Law on Alien Status establishes that foreigners who directly or indirectly participate in the country's domestic politics lose the right to live in the country, "there being broad room for discretion for the administrative authorities to determine whether the foreigner's activities in the area of promotion of human rights constitute an involvement in domestic politics." The IACHR welcomes this acknowledgment and urges the Salvadoran State to adapt its legislation to inter-American standards related to the principle of legality. At the same time, it notes with concern that laws exist in other States that constitute serious restrictions to the exercise of the defense of human rights on the part of foreigners.

*Venezuela's Law on Defense of Political Sovereignty and National Self-Determination*⁴⁷¹ establishes, in its Article 8, that "representatives of organizations that defend political rights or individuals who invite foreign citizens or organizations to, under their auspices, issue opinions that offend the institutions of the State or its high-level officials or attack the exercise of sovereignty, shall be punished with a fine.... Foreign citizens who participate in the activities established in this article shall be subject to the procedure of expulsion from the territory of the Republic, pursuant to the provisions of the laws that govern these matters." The law also establishes that the president of an organization that engages in "the defense of political rights, or anyone who receives economic assistance or financial support or sponsors the presence of foreign citizens who attack the sovereignty [or] independence of the Nation and its institutions shall be subject to the additional punishment of being barred from political activity for a period of between five and eight years."

J. Impunity in investigations related to violations of the rights of defenders

231. The Commission has expressed its concern over "the high levels of impunity that persist in the region, due to the judicial practices that surround determinations of jurisdiction, the violence, the intimidation of judicial officers, the removal of evidence in the proceedings, and the bogging down of proceedings related to

⁴⁷¹ *Law for the Defense of the Political Sovereignty and National Self-determination*, published in the official gazette on December 23, 2010. Available in Spanish at: <http://www.minamb.gob.ve/files/leves-2011/No6013ledespan.pdf>

cases that involve the responsibility of state agents."⁴⁷² In view of the problem of impunity identified in the region, the IACHR recommended in its 2006 report that the States, among other things, "[u]ndertake, as a matter of public policy, the struggle against impunity for violations of the rights of human rights defenders."⁴⁷³ It also called on the States to "undertake exhaustive and independent investigations into the attacks suffered by human rights defenders, and to punish their perpetrators, as a fundamental means of preventing such attacks."⁴⁷⁴ The IACHR will now refer to the State's obligations with regard to their duties to provide judicial protection and judicial guarantees, and will refer to some of the actions carried out by the States during the follow-up period.

1. The right to an effective remedy compatible with due process

232. The Inter-American Court has referred to impunity as "the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention."⁴⁷⁵ In the specific case of human rights defenders, impunity "constitutes the factor that most increases the risk to defenders, because it leaves them in a situation of defenselessness and vulnerability."⁴⁷⁶

233. The most effective way to protect human rights defenders in the hemisphere is by effectively investigating the acts of violence against them, and punishing the persons responsible.⁴⁷⁷ The State has the obligation to combat impunity by all available legal means, because impunity encourages the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin.⁴⁷⁸ The Commission emphasizes that the observance of the State obligations contained in Articles XVIII (right to a fair trial) and XXVI (right to due process of law) of the Declaration and Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention is essential to combat impunity in matters related to the violation of the rights of human rights defenders. Further, based on the duty to guarantee the rights protected by Article 1 of the Convention, the State has positive obligations "not only [to] prevent but

⁴⁷² IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 203.

⁴⁷³ *Ibid.*, recommendation 21.

⁴⁷⁴ *Ibid.*, recommendation 21.

⁴⁷⁵ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148, para. 299; I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 237; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 203; and I/A Court H.R., *Case of Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 170.

⁴⁷⁶ OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2009. Executive Summary, para.7.

⁴⁷⁷ IACHR, Report on the Situation of Human Rights Defenders in the Americas, para.202.

⁴⁷⁸ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148, para. 299; I/A Court H.R., *Case of Baldeón-García v. Peru*. Merits, Reparations and Costs. Judgment of April 06, 2006. Series C No. 147, para. 168.

also [to] investigate the violations of human rights embodied in the Convention...[to] reestablish, if possible, the right violated, and, when appropriate, redress the damages which resulted from the violations of human rights."⁴⁷⁹

234. The Commission considers that full compliance with the aforementioned obligations to investigate, punish, and provide redress, in accordance with the due process that must govern judicial proceedings, is essential to combat impunity in matters related to human rights defenders, which it views as a serious situation in several States of the region⁴⁸⁰.

235. In terms of the duty to investigate human rights violations, once State authorities have knowledge of a violation "they should initiate a serious, impartial and effective investigation, *ex officio* and without delay."⁴⁸¹ While the duty to investigate is an obligation of means and not results, it nevertheless must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective⁴⁸² or simply a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.⁴⁸³

236. Investigations of human rights violations should be carried out with diligence, that is, using all legal means available and oriented toward determining the truth.⁴⁸⁴ States have the obligation to ensure that all necessary steps are taken⁴⁸⁵ to

⁴⁷⁹ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 99.

⁴⁸⁰ IACHR, Hearing on the Situation of Human Rights Defenders in the Americas, 141st Session, March 29, 2011.

⁴⁸¹ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101; I/A Court H.R., *Case of the Gómez-Paquiyaui Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 146.

⁴⁸² I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

⁴⁸³ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

⁴⁸⁴ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

⁴⁸⁵ The Protocol for a legal investigation of extra-legal arbitrary and summary executions ("Minnesota Protocol") indicates some of the guidelines that State agents should observe in the investigation into violations of human rights, in this sense provides as some minimum steps: a) to identify the victim; b) to recover and preserve the probative material related to the death in order to assist in any potential criminal investigation of those responsible; c) to identify possible witnesses and obtain their statements in relation to the death under investigation; d) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, e) to distinguish between natural death, accidental death, suicide and homicide; f) to identify and apprehend the person or persons involved in the death, and g) to present the alleged perpetrators to a competent tribunal, previously established by law. See, U.N. Doc E/ST/CSDHA/.12 (1991).

uncover the truth about what happened and to ensure that those responsible are punished,⁴⁸⁶ which requires involving every relevant State institution.⁴⁸⁷ Along these lines, the authorities should also adopt all reasonable measures to guarantee the probative material necessary to carry out the investigation.⁴⁸⁸

237. The obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds⁴⁸⁹. The Commission has found that partial investigation and punishment increases impunity, and with it, the risk affecting many human rights defenders in the hemisphere.⁴⁹⁰ Compliance with the duties to investigate and to punish those responsible is closely linked to "the right of the next of kin of the alleged victims to know what happened and to know who was responsible for the respective events"⁴⁹¹; thus, the authorities must ensure that the family members of human rights defenders who have been irreparably harmed can learn the truth.

238. Moreover, it is necessary to reiterate the importance that States observe the rules of due process in order to reduce undue delays and the resulting serious levels of impunity. In that regard, one of the guarantees included in due process has to do with the reasonableness of the time period for proceedings concerning human rights violations to be conducted. As the Inter-American Court has stated, the reasonableness of the delay must be examined in relation to the total duration of the proceedings, from the first step in the proceedings until a final judgment is handed down.⁴⁹² In criminal matters, the time period begins on the date when the individual is detained. When this measure is not applicable, but there is an ongoing criminal proceeding, the period begins when the judicial

⁴⁸⁶ I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

⁴⁸⁷ I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130; I/A Court H.R., *Case of Huilca-Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 66.

⁴⁸⁸ I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 122.

⁴⁸⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 109.

⁴⁹⁰ *Idem*.

⁴⁹¹ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 102; I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 105.

⁴⁹² I/A Court H.R., *Case of Valle-Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 62; I/A Court H.R., *Case of Ticóna-Estrada et al. v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 79; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 148.

authority takes cognizance of the case⁴⁹³ and "must include the whole proceeding, including the appeals that may be filed."⁴⁹⁴

239. The right to effective judicial protection requires that the judges direct the proceeding in such a way as to avoid undue delays and obstructions that lead to impunity, thus frustrating due judicial protection of human rights.⁴⁹⁵ In this regard, the judge in charge of hearing a case, including cases related to the violation of human rights defenders' rights, must be competent, as well as independent and impartial.⁴⁹⁶

240. On another point, based on the rules that must govern legal due process, the inter-American system has addressed the use of the military jurisdiction in matters related to human rights violations. In that regard, the Court has stated that "only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself."⁴⁹⁷ Thus, "military criminal jurisdiction is not the competent jurisdiction to investigate and, in its case, prosecute and punish the authors of violations of human rights,"⁴⁹⁸ but rather "the processing of those responsible always corresponds to the ordinary justice system."⁴⁹⁹

241. The Commission would like to emphasize that the States should pay particular attention to matters related to the violation of the rights of human rights defenders, and should direct their efforts toward reducing the continuing impunity in these matters. As has been mentioned in other parts of this report, violations to a human rights

⁴⁹³ I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 168.

⁴⁹⁴ I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 169. The Court has indicated that it is necessary to consider the following elements to define the reasonability of time: a) the complexity of the matter, b) the procedural activity of the interested party, c) the conduct of judicial authorities, and d) the impairment to the legal situation of the person involved in the proceedings considering, among other things, matter controversial. I/A Court HR, *Case of Kawas v. Honduras*. Judgment of 3 April 2009. Series C No.196, para. 112

⁴⁹⁵ I/A Court H.R., *Case of Myrna Mack-Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 210; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 115.

⁴⁹⁶ I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 273.

⁴⁹⁷ I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 272; *Cfr.* I/A Court H.R., *Case of Durand and Ugarte v. Peru*. Merits. Judgment of August 16, 2000. Series C No. 68, para. 117; I/A Court H.R., *Case of Cantoral-Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 112.

⁴⁹⁸ I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 273; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para.200.

⁴⁹⁹ I/A Court H.R., *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 273; *Cfr.* I/A Court H.R., *Case of Durand and Ugarte v. Peru*. Merits. Judgment of August 16, 2000. Series C No. 68, para. 118.

defender's right to life or integrity have an intimidating effect,⁵⁰⁰ which is reinforced and exacerbated by the fact that the crime remains unpunished.⁵⁰¹

242. In some States of the region, impunity in cases related to complaints involving the responsibility of government agents and private individuals against human rights defenders and their organizations is one of the most serious and persistent obstacles to the activity of defending human rights. Impunity also "corrodes the foundations of a democratic state."⁵⁰² The IACHR has followed the situation of impunity for human rights violations of human rights defenders, and it has observed that in a great many of the cases, the systems for administration of justice have not managed to investigate the facts, punish those responsible, or provide redress to the victims.

243. Despite that, the IACHR has received information from some States that have implemented some measures to reduce the impunity that persists in cases involving human rights defenders. Some of these practices can be seen as positive, and could be adopted by other States that are also experiencing a serious situation of impunity in relation to violations of the rights of human rights defenders, as long as in addition to the legal sphere, policies are established for monitoring, promotion, and oversight so as to guarantee the effectiveness of these measures.

244. The IACHR indicated in its 2006 report that public authorities and officials should be aware of the principles regarding the activities of human rights defenders and their protection; it also recommended that States instruct their authorities to ensure that, from the highest level, forums for open dialogue are generated with human rights organizations.⁵⁰³ The IACHR believes that an important step toward ending impunity would be for officials responsible for investigating crimes and administering justice, from the highest levels, are made aware of the leading role human rights defenders play in democratic systems, in order to act with diligence in cases in which violations are alleged against defenders.

The Commission takes note of the efforts undertaken by the State of Colombia through its Directive No. 012, "Guidelines to guarantee the right of human rights defenders to perform their work," dated July 15, 2010, and issued by the Office of the Prosecutor General of the Nation. The directive recognizes as a "constitutional and legal obligation of all authorities to respect, encourage, and protect the work of human rights defenders."

⁵⁰⁰ I/A Court H.R., *Case Kawas Fernández v. Honduras*. Merits, reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 153; I/A Court H.R., *Case Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objections, Merits, reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 147.

⁵⁰¹ I/A Court H.R., *Case Kawas Fernández Vs. Honduras*. Merits, reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 153

⁵⁰² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 107.

⁵⁰³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendations 2 and 4.

*It also urges the authorities to "refrain from conduct that would delegitimize, discredit, harass, or incite to harassment or stigmatization the work of human rights defenders and their organizations." The Commission observes that the directive also contains a series of guidelines designed to facilitate human rights defenders' work of denouncing violations; investigate acts committed against them; and urge the authorities to adopt timely, appropriate, and effective protection measures for defenders. In addition, the State informed the Commission that the National Office of the Office of the Prosecutor General of the Nation issued Memorandum No. 080, dated June 3, 2008, establishing guidelines for pursuing criminal investigations into threats against human rights defenders, among other crimes. The Commission reiterates that these directives could effectively support respect for the work of human rights defenders as long as they are widely known and adequately implemented in rural, indigenous, and Afro-descendant territories.*⁵⁰⁴

245. During the follow-up period, the IACHR learned of the existence of some prosecutor's offices that are specialized in addressing violations against human rights defenders. This is a step toward complying with the recommendations from the 2006 report concerning the establishment of "specialized units of the police and public ministry with the necessary resources and training to act in a coordinated fashion and respond with due diligence in investigating attacks on human rights defenders."⁵⁰⁵

The IACHR received information from the State of Guatemala regarding the existence of a Unit for Crimes against Human Rights Defenders, Justice Operators, and Trade Unionists, which became a part of the Public Ministry's Human Rights Prosecutor's Office under Agreement No. 03-2005 of the Public Ministry Council, dated March 9, 2005. The State of Guatemala reported that the unit's objectives include investigating, identifying, and prosecuting those accused of committing crimes against members of different groups of persons who are associated to advocate for, defend, and promote human rights, among other things. The State also indicated that Organization Regulation No. 37-2010 of the Prosecutor General of the Republic and Interim Head of the Public Ministry, dated September 6, 2010, ensures that the Human Rights Prosecutor's Office has a Unit for Crimes against Human Rights Defenders, Justice Operators, and Trade Unionists.

246. The IACHR views as positive the information it received from some States indicating that in the specialized prosecutor's offices for matters related to human rights defenders, investigation protocols have been implemented to take into account the defenders' activities so as to identify the rights that may have harmed because of their activity, in order to establish avenues of investigation and theories regarding the crime. The IACHR considers that these specialized protocols and their effective implementation contribute to the realization of a diligent investigation into crimes committed against human rights defenders.

⁵⁰⁴ IACHR, 2010 Annual Report, Chapter IV- Colombia, March 7, 2010, para. 201.

⁵⁰⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 23.

The IACHR received information from Mexico concerning a 2010 agreement of the Office of the Prosecutor General of Justice of the Federal District, establishing guidelines for investigation and institution of preliminary inquiries in cases in which human rights defenders are involved as victims of crimes, due to the exercise of their work or for reasons based on their work. The agreement assigns responsibilities to a specialized prosecutor's office to intervene in cases in which there are crimes that attack or seek to attack defenders' physical integrity, crimes against freedom, and crimes against property, taking into account the analysis of information about the work of the human rights defender in question in establishing avenues of investigation and identifying potential suspects. In addition, the agreement establishes that a decision to institute a preliminary inquiry should take into account the UN Declaration on Defenders, which calls for the implementation of specialized, continuous human rights training, and assigns this task to the Institute for Professional Education.⁵⁰⁶ The IACHR observes that one of the weaknesses of this Prosecutor's Office is that it shares assignments with the investigation of electoral crimes, and that its legal basis is an agreement with the Public Prosecutor. In addition, this involves a local policy, and the State of Mexico could implement a Prosecutor's Office of this nature at the federal level.

247. In addition, the IACHR expresses its satisfaction over the information received with respect to units that are reportedly specialized in particular types of human rights defenders who have been identified by the IACHR in this report as being at special risk. These units reportedly have particular investigation protocols that address the nature and usual sources of the crimes, depending on the type of defender who is attacked. The IACHR received information regarding a Specialized Unit on Members of the LGBTI Community in Mexico,⁵⁰⁷ as well as a directive in Colombia designed to promote respect and protection for the LGBTI community among members of the police.⁵⁰⁸ It also received information from the State of Colombia regarding various measures that had been adopted to protect trade unionists, including the formation of a specialized investigative body to participate in investigating crimes against them.

248. In addition, the Commission views as positive the information provided by some States that have established specialized units to determine patterns of attacks, assaults, and harassment directed against human rights defenders. The IACHR considers it extremely important that these units involve a wide range of organizations that are representative of national civil society.

⁵⁰⁶ Office of the Attorney General of the Federal District. Agreement Number A/010/2010 of the Attorney General of the Federal District, which establishes guidelines regarding the investigation and integration of preliminary findings involving human rights defenders as victims of crimes, for the exercise of their work or as a result of them. April 23, 2010. Available [in Spanish] at: <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo47411.pdf>.

⁵⁰⁷ El Universal, *Una lucha a favor de los suyos*, February 22, 2011. Available [in Spanish] at: <http://www.eluniversal.com.mx/ciudad/105289.html>

⁵⁰⁸ National Ministry of Defense, National Police, *Directiva Administrativa Permanente No. 00. Garantías y respeto a los derechos de la comunidad LGBT*, February 6 to 24, 2006. Available [in Spanish] at: <http://www.caribefirmativo.com/wp-content/uploads/2010/05/DIR-LGTBI-2010.pdf>

In Guatemala, the Office of Analysis of Attacks against Human Rights Defenders is connected to the First Deputy Minister of the Interior Ministry, and has the job of "analyzing, in context, the patterns of attacks against human rights observers, if such attacks exist, through a methodology that is defined, approved, and agreed upon with the members of the office being created." Under the agreement creating the Office of Analysis of Attacks on Human Rights Defenders,⁵⁰⁹ its mandate ends in January 2012. While this office is a step welcomed by civil society, its institutional status is fragile, temporary, and without the support needed from authorities in the Interior Ministry. This has reportedly led to a lack of results and a failure to identify patterns of attacks. Nevertheless, the IACHR considers that this office could contribute significantly to improving the situation of human rights defenders if the State grants appropriate guarantees for its operations, such as institutional autonomy.

249. Notwithstanding some exceptions, such as those that have been mentioned, most of the States in the region have informed the IACHR that they do not have specialized prosecutor's offices or specialized investigation protocols related to violations of human rights defenders' rights; thus, these cases are handled the same as cases involving human rights violations committed against anyone else. According to civil society, in many cases there continues to be a lack of political will, impartiality, and independence in the investigation of attacks against them; likewise, progress in the investigation of cases in which defenders are victims is reported to be much slower than in other cases.

250. Several States informed the IACHR that they do not have statistical records or accurate information regarding crimes in which the victim or alleged victim is a human rights defender. This seriously impairs the States' ability to have a clear picture of the magnitude of the events and patterns of attacks or acts of aggression or harassment against defenders. In the vast majority of States in the region, it is the organizations of human rights defenders that have taken it upon themselves to keep records and statistics on the crimes committed against them, many of which are challenged by the State even though they do not have their own records.

251. In addition, contrary to the recommendations from the 2006 report that indicate that the State has a duty to ensure that the military courts not have jurisdiction when crimes are committed against human rights defenders,⁵¹⁰ the IACHR has observed that some States of the region continue to resort to military jurisdiction to prosecute members of the military who have committed crimes against civilians. During the follow-up period, some States have resorted to military jurisdiction in cases involving *crimes against humanity*, but not for any type of violation committed against civilians, including human rights defenders. The IACHR reiterates its satisfaction over the information received from some States indicating that, in compliance with the standards of the inter-American

⁵⁰⁹ Article 1 of the Ministerial Agreement No. 103-2008 of January 10, 2008.

⁵¹⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 24.

system, during the follow-up period they restricted the use of military jurisdiction in cases in which members of the armed forces commit human rights violations.⁵¹¹

252. In view of the lack of progress in terms of investigations involving violations of defenders' rights and in terms of a structural design that would enable such crimes to be addressed, as well as the fragility and inefficacy of some State policies, the IACHR considers that its recommendation has not been met with regard to urging the States to "[u]ndertake, as a matter of public policy, the struggle against impunity for violations of the rights of human rights defenders."⁵¹²

III. ESPECIALLY EXPOSED GROUPS OF HUMAN RIGHTS DEFENDERS

253. The Inter-American Commission has, by several means, continued to monitor the situation of those groups of human rights defenders that the Commission's 2006 *Report* described as more exposed to violations of their rights than other defenders.⁵¹³ At the time, the Commission identified the following groups as those most at risk of having their human rights violated: a) union leaders; b) campesino and community leaders; c) indigenous and Afro-descendant leaders; d) officers of the court and law enforcement, and e) women human rights defenders.⁵¹⁴

254. In the follow-up period, the IACHR has observed how the risks to which those groups of human rights defenders are exposed have become more severe in the region, particularly in countries where democratic government has broken down or coup d'état have been staged, as in the case of Honduras,⁵¹⁵ or in those states where issues critical to the defense of human rights are being debated and in which a specific group of human rights defenders is pitted against other groups opposed to the causes that the human rights defenders are championing.

255. Based on the severity of the human rights violations committed and their repeated recurrence and in monitoring the situation, the IACHR was able to identify other especially exposed groups of human rights defenders apart from those described in the 2006 report. The perils facing these groups have been evident in the complaints and reports the IACHR has received concerning murders, assaults, persecution, harassment and even the criminalization of their activities of defending and promoting human rights. In this report, the IACHR will include defenders of the right to a healthy and healthful environment, defenders of

⁵¹¹ According to the information received by the IACHR from the Permanent Mission of Mexico to the OAS, the Supreme Court of Justice decided on July 12, 2011 to adopt as guiding criteria the restriction of military justice in cases in which members of the armed forces violate human rights. All the judges of the country must apply this decision. IACHR, Press release 73/11, 22 July, 2011.

⁵¹² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 21.

⁵¹³ *Ibid.*, para. 208.

⁵¹⁴ *Ibid.*, paras. 208-232.

⁵¹⁵ Cf. IACHR, *Honduras: Human Rights and the Coup d'Etat*, December 30, 2009, paras. 165-206.

the rights of LGBTI (lesbian, gay, trans, bisexual and intersex) persons, and defenders of the rights of migrant workers and their families.

256. The IACHR will now examine the following groups of human rights defenders, which it considers are especially at risk: 1) leaders of organized labor; 2) women human rights defenders; 3) campesino and community leaders; 4) indigenous and Afro-descendant leaders; 5) defenders of the right to a healthy and healthful environment; 6) leaders of the LGBTI persons, and 7) defenders of the rights of migrant workers. The IACHR believes it is imperative that the States take all appropriate measures to actively protect the right to life of especially exposed human rights defenders. This duty to protect is incumbent not only upon lawmakers, but upon the entire apparatus of the State whose duty is to safeguard security, which includes both law enforcement institutions and the armed forces.⁵¹⁶

A. Leaders of organized labor

257. Union leaders play a key role in defending the human rights of thousands of workers striving for better working conditions and are the political voice through which organized labor articulates its labor-related and social demands.⁵¹⁷ The right to form unions and the right to collectively bargain and otherwise strive to protect one's labor rights are protected under the freedom of association. Freedom of association means the power to form unions and set in motion their internal structure, activities and programs of action without interference from government authorities that would limit or encumber the exercise of that right; it presupposes that every individual is free to decide, without any form of coercion, whether he or she wants to join a union.⁵¹⁸

258. In addition to recognizing the autonomy and independence of labor unions⁵¹⁹ and allowing free exercise of union rights, States must also ensure that human life and personal safety are fully respected when an individual exercises his or her union activities.⁵²⁰ The extrajudicial execution of a leader of organized labor is not just a violation of the right to life; it can have an intimidating effect on unionized workers, which diminishes the freedom that a certain group has to exercise its right to freedom of association.⁵²¹

⁵¹⁶ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 5, 2003. Series C No. 101, para. 153.

⁵¹⁷ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 209.

⁵¹⁸ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001 Series C No. 72, para. 156.

⁵¹⁹ IACHR, *Democracy and Human Rights in Venezuela*, para. 1092.

⁵²⁰ ILO. Resolutions of the Committee on Freedom of Association: 233rd Report, Case No. 1233 (El Salvador), para. 682; 238th Report, Caso No.1262 (Guatemala), para. 280; 239th Report, Cases Nos. 1176, 1195 and 1215 (Guatemala), para. 225, c); 294th Report, Case No. 1761 (Colombia), para. 726; 259th Report, Cases Nos. 1429, 1434, 1436, 1457 and 1465 (Colombia), para. 660.

⁵²¹ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121, para. 78.

259. In its 2006 report, the IACHR singled out personal reprisals like persecution, threats, assaults and attempts made on the life and personal integrity of organized labor leaders, as well as job-related reprisals that affect the pay, economic, social and “fringe” benefits of those who decide to join unions.⁵²² In view of the serious dilemma facing union leaders in 2006, the Commission recommended to the States the following: “Guarantee effective administrative and legal measures for the protection of union delegates, including mainstream and minority unions and those in formation, against discrimination and harassment associated with carrying out their functions.”⁵²³

260. Throughout the follow-up period, the Commission has observed that in a number of countries of this hemisphere, persons engaged in union activities continue to be the target of job-related and personal reprisals. Furthermore, in some States legal obstacles continue to obstruct the free and full exercise of union rights.

261. With regards to legal obstacles, the Commission has received information to the effect that in some States the right to strike is not recognized in law and there are restrictions to prevent the creation of unions or membership in unions other than the government-controlled unions. Cuban law, for example, does not explicitly recognize the right to strike and there is only one union that Cuban workers can join, which is the *Central de Trabajadores de Cuba*, which has a monopoly on representation of labor vis-à-vis the institutions of government. At a number of its sessions, the Commission received reports of organized labor leaders who have established independent unions in Cuba.⁵²⁴ According to what the Commission was told, the gaps and weaknesses in the law have been exploited in practice to foment a policy bent on harassing independent union leaders, who are branded as criminals and opponents of the regime itself. The result is that they frequently end up being deprived of their freedom, under conditions incompatible with the standards of international law.⁵²⁵

262. As for the attacks, assaults and harassment perpetrated against union leaders, the IACHR observes that some States have taken measures to protect union leaders. Even so, the American hemisphere is still the most dangerous part of the world for those exercising trade union rights because of the attacks made on trade unionists’ lives.⁵²⁶

⁵²² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paras. 209-214.

⁵²³ *Ibid.*, recommendation 20.

⁵²⁴ The IACHR was informed of the situation of union leaders in Cuba at the following sessions: 128th regular session, hearing titled “Situation of the union members deprived of liberty in Cuba”; 133rd regular session, hearing on “Situation of imprisoned union members in Cuba”; 137th session, Hearing on “Situation of Independent Union Leaders in Cuba”; and 140th session, Hearing “Human Rights Situation of Independent Union Leaders in Cuba”.

⁵²⁵ IACHR, Hearing on Situation of Labor Union Rights in the Americas, 143rd session, October 28, 2011. IACHR, *Hearing on the “Human Rights situation of Independent Union Leaders in Cuba*, 140th session, October 28, 2010. See also, ITUC, Annual Survey of violations of trade union rights, Cuba. Available at: <http://survey10.ituc-csi.org/Cuba.html?lang=en>

⁵²⁶ ITUC, *Annual Survey of Violations of Trade Union Rights*, 2010. Available at: <http://survey.ituc-csi.org/+Americas-Global+.html>

According to reports by the International Trade Union Confederation (ITUC), of all countries in the world, Colombia is the one with the highest number of killings or attempted killings of persons associated with a union.⁵²⁷

263. At the hemispheric level, the ITUC's reports indicated that in 2006, some 55.5% of the 144 murders of union members that year occurred in the Americas;⁵²⁸ in 2007, out of a total of 91 union members murdered, 48 were in the American hemisphere;⁵²⁹ in 2008, there were reportedly 76 trade unionists murdered worldwide, 86% of which were in the Americas;⁵³⁰ in 2009, globally 101 trade unionists were killed, 88% percent of those killings were in the Americas;⁵³¹ finally, in 2010, out of 90 killings worldwide,⁵³² 83% were said to have been committed in the Americas. The IACHR received consistent reports to the effect that the harassment, assault and killing of trade unionists continued to be a serious problem in Colombia, Honduras, Guatemala and Venezuela.

264. In the specific case of Colombia, the IACHR has watched with concern as the attacks on trade unionists have continued and has reported these developments in Chapter IV of its annual reports. It has also made a number of recommendations to the State.⁵³³ From the information available, the number of murders committed in the last five years is troubling. According to the National Trade Union Movement School, in 2010, 51 trade unionists were killed in Colombia; of these 29 were teachers.⁵³⁴ According to the Observatory of Colombia's Presidential Human Rights Program, in 2009, 32 teachers were murdered, some of whom were members of unions, some not; this figure was 32% less

⁵²⁷ The surveys of the International Trade Unions Confederation point out that during the follow-up period, Colombia had the highest number of murders of trade unionists in the world. According to ITUC's figures, in 2009 48 trade unionists were murdered; in 2008, 49 union leaders were killed; 39 in 2007; and 78 in 2006. See the ITUC's annual surveys for 2006, 2007, 2008, 2009 and 2010. Available at: http://www.ituc-csi.org/spip.php?page=morenews&id_mot=43

⁵²⁸ ITUC, *Annual Survey of Violations of Trade Union Rights*, 2007. Available at: <http://survey07.ituc-csi.org/getcontinent.php?IDContinent=2&IDLang=EN>

⁵²⁹ ITUC, *Annual Survey of Violations of Trade Union Rights*, 2008. Available at: <http://survey08.ituc-csi.org/survey.php?IDContinent=2&IDCountry=PER&Lang=EN>

⁵³⁰ ITUC, *Annual Survey of Violations of Trade Union Rights*, 2009. Available at: <http://survey09.ituc-csi.org/survey.php?IDContinent=0&Lang=EN>

⁵³¹ ITUC, *Annual Survey of Violations of Trade Union Rights*, 2010. Available at: <http://survey.ituc-csi.org/+Americas-Global+.html>

⁵³² ITUC, *Annual Survey of Violations of Trade Union Rights*, 2011. Available at: <http://survey.ituc-csi.org/>

⁵³³ Cf. Recommendation 10 of the IACHR 2010 Annual Report, Chapter IV Colombia, March 7, 2010; Recommendation 8 of the IACHR 2009 Annual Report, Chapter IV, December 30, 2009; Recommendation 8 of the IACHR 2008 Annual Report, Chapter IV Colombia, February 25, 2009.

⁵³⁴ Escuela Nacional Sindical-Trabajo Decente, Vida Digna Colombia. *No cesan los ataques en contra de los derechos humanos de los sindicalistas. En 2010 fueron asesinados 51 sindicalistas en Colombia*, March 11, 2011. Available [in Spanish] at: <http://www.ddhh-colombia.org/html/noticias%20sindicales/informeescuela11032011.pdf>

than in 2008;⁵³⁵ however, between April and May of 2009, five trade unionists were reportedly murdered.⁵³⁶ It should be noted that these figures from the Observatory do not match the figures recorded by certain organizations, which indicate that in 2009, some 47 trade unionists were murdered, 22 of whom were unionized teachers.⁵³⁷ Between January and August of 2008, close to 40 trade unionists were killed;⁵³⁸ according to figures from the Observatory of the Presidential Human Rights Program, between January and September 2008, 16 unionized teachers were murdered, as were 16 trade unionists in other sectors.⁵³⁹ Finally, in 2006 and 2007, the Commission received reports that a total of 111 union and non-union teachers and trade unionists in other sectors had been murdered; 78 of the victims (or 70%) were teachers.⁵⁴⁰

265. In the case of Guatemala, the *Movimiento Sindical Indígena y Campesino Guatemalteco* (MSICG) [Guatemalan Indigenous and Campesino Union Movement] reported that between 2007 and 2011, 50 trade unionists and defenders of union rights had been murdered; 45 of these were reportedly members of the MSICG at the time of their murder.⁵⁴¹ In Honduras, two trade unionists were reportedly killed in 2008;⁵⁴² at the time of the coup

⁵³⁵ Observatorio del Programa Presidencial de Derechos Humanos, Informe sobre la Situación de Derechos Humanos 2009, December 2009, p. 8. Available [in Spanish] at: http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/documents/2010/Indicadores/obs_indicadores_dic2009_100528.pdf

⁵³⁶ The Observatory for the Protection of Human Rights Defenders, “Open Letter to Mr. Álvaro Uribe Vélez, President of the Republic of Colombia. Murders of trade unionists in Colombia continue”, July 28, 2009.

⁵³⁷ Escuela Nacional Sindical-Trabajo Decente, Vida Digna Colombia. *No cesan los ataques en contra de los derechos humanos de los sindicalistas. En 2010 fueron asesinados 51 sindicalistas en Colombia*, March 11, 2011. Available [in Spanish] at: <http://www.ddhh-colombia.org/html/noticias%20sindicales/informeescuela11032011.pdf>

⁵³⁸ The Observatory for the Protection of Human Rights Defenders, “Open Letter to Mr. Álvaro Uribe Vélez, President of the Republic of Colombia. Murders of union leaders continued in recent months in Colombia,” September 2, 2008.

⁵³⁹ Observatorio de los Derechos Humanos de la Vicepresidencia de la República. *Cifras situación de derechos humanos y resultados operacionales de la Fuerza Pública comparativo enero – septiembre 2007 y 2008*.

⁵⁴⁰ Observatorio del Programa Presidencial de Derechos Humanos y DIH en Colombia, *Indicadores sobre Derechos Humanos y DIH en Colombia*, December 2007, p. 10. Available [in Spanish] at: http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/documents/2010/Indicadores/obs_indicadores_dic2007.pdf

⁵⁴¹ Movimiento Sindical, Indígena y Campesino Guatemalteco (MSICG), *Guatemala: El paradigma de la ausencia de libertad sindical, el fracaso sistémico y la falta de voluntad política*, 2011, p. 17. Available [in Spanish] at: http://www.movimientosicg.org/index.php?option=com_phocadownload&view=category&download=30:el_paradigma_de_la_ausencia_de_libertad_sindical&id=2:informes&Itemid=94

⁵⁴² Rosa Altagracia Fuentes, Secretary General of the Workers Confederation of Honduras (CTH) and Second Vice-president of the Central American region of the recently founded Union Confederation of workers of the Americas (CSA), of Virginia García de Sánchez, member of the *Unión de Mujeres Campesinas de Honduras* (UMCAH), and her driver, Juan Bautista Aceituno Estrada. IACHR, Press release 19/08, *IACHR condemns murders in Honduras*, May 5, 2008.

d'état, the IACHR learned of three other union-related killings⁵⁴³ and granted precautionary measures for members of trade unions who in many cases were in peril because of actions they took to protest the coup d'état.⁵⁴⁴

266. In the case of Venezuela, according to the Inter-American Platform of Human Rights, Democracy and Development, 48 union leaders were killed in 2007 and 19 in 2008, for a total of 67 murders in a two-year period.⁵⁴⁵ During its 140th session, the IACHR learned that at least 30 union leaders had been killed between June 2009 and May 2010.⁵⁴⁶

267. Many of the union leaders in the region received verbal or written threats before being killed; some of these cases were reported, but the State failed to provide adequate and effective protection. In several cases, the union leaders were summoned to working meetings and executed on route to or during the meetings.

The IACHR received reports of union leaders who had received threats and ended up being murdered. In the case of Colombia, the IACHR learned of the threats made against leaders of the Federación Agrominera del Sur de Bolívar (FEDEAGROMISBOL). According to the information provided, Mr. Edgar Martínez Ruiz, one of the leaders of the Federation who had previously been threatened, was murdered on April 22, 2009. In the case of Guatemala, the IACHR condemned the murder of Mr. Pedro Zamora, Secretary General of the Quetzal Stevedores Union, who was on his way home when a number of men shot him to death on January 15, 2007; he was headed home with his children when a number of men shot him to death and severely injured his three-year-old son. Mr. Zamora was killed even though he was under police protection at the time because of a number of threats he had been receiving for some time related to his union activities.⁵⁴⁷ The IACHR also learned of the murder of Juan Fidel Pachecho Coc, Secretary General of the Union Sindical General de Empleados de la Dirección General de Migración de Guatemala (USIGEMIGRA)[General Trade Union of Employees of the General Bureau of Immigration of Guatemala], who was killed on July 31, 2010, after having received a number of threats.

268. The fact that in some States the attacks were perpetrated by persons who not agents of the State does not relieve the State of its obligation to protect the lives and personal integrity of trade union leaders. In the specific case of Venezuela, between June 2009 and May 2010, at least 30 union leaders were reportedly killed, either as a result of disputes between unions or infighting within the ranks of the same union; many of these

⁵⁴³ IACHR, Press release 26/10, *IACHR Deplores Murders, Kidnappings, and Attacks in Honduras*, March 8, 2010.

⁵⁴⁴ Cf. IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15-18, 2010*, para. 19.

⁵⁴⁵ Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo, *Violencia sindical en Venezuela*, April 15, 2009. Available [in Spanish] at: http://www.pidhdd.org/index.php?option=com_content&task=view&id=347&Itemid=1

⁵⁴⁶ Cf. IACHR, 2010 Annual Report, Chapter IV, Venezuela, March 7, 2011, para. 653.

⁵⁴⁷ IACHR, Press Release 3/07 – IACHR condemns murder of union leader Pedro Zamora in Guatemala. Washington, D.C., January 19, 2007.

killings were reportedly related to so-called “job peddling” in a number of sectors, but mainly in the construction sector.⁵⁴⁸ There is a pattern to the way in which many trade unionists are killed, which is that their murders are the work of contract killers and the authorities’ investigations invariably encounter repeated delays.⁵⁴⁹

The following are among the most emblematic cases brought to the Commission’s attention: 1) the case of Wilfredo Rafael Hernández Avilés, Jesús Argenis Guevara and Jesús Alberto Hernández, officials of the Bolivarian Union of Workers in the Construction, Timber, Heavy Machinery, and Similar Industries, who were found shot to death in the vehicle in which they were traveling along the El Tigre-Pariaguán highway (state of Anzoátegui) on June 24, 2009; 2) the case of David Alexander Zambrano and Freddy Miranda, members of the Single Construction Industry Trade Union (SUTIC), who were murdered on October 29, 2009; 3) the case of Héctor Montaña López, President of the Metam Petrol Bolívar trade union, who was murdered in San Félix (state of Bolívar) on December 23, 2009, when unidentified persons fired on him as they passed him on a motorcycle; 4) the case of Vilma Yenitza Zambrano and Rafael Antonio García, officials in the Venezuelan Workers Union for Construction and Related Industries of the Capital District (SOVICA), who were employed in the construction work being done on the Caracas-Los Teques metro line and were murdered on March 10, 2010, by someone who shot them at close range; 5) the case of Francisco Ferreira, delegate for oversight of working conditions and environment and union delegate workers claims secretary in the workers union of the company SIDETUR (Siderúrgica del Turbio), who was murdered on March 27, 2010, shot by persons unknown; and 6) the case of Jerry José Díaz, who was public information secretary for the union of the Manpa company (Sintrampa) and a member of the Ccura union movement, who was killed by two unidentified persons on April 24, 2010, in the La Barraca sector of Maracay (state of Aragua) as he was in a car waiting for his wife and children. The IACHR recommended that the Venezuelan State take the specific measures necessary to protect trade unionists and to strengthen the

⁵⁴⁸ The following are some of the cases singled out by name in the documentation submitted to the Commission involving union leaders whose death was reportedly associated with the practice of “jobs peddling”: Héctor Francisco Jaramillo, Secretary of Professionals and Technicians in the Sutrabolívar labor confederation; Alexis García, member of the Bolívar Disciplinary Tribunal; Nibardo Antonio Gómez Morales, a leader of a construction workers union; Alexander Irigoyen Villaroel, a member of a petroleum industry union; Robert José Figuera, a member of a petroleum industry cooperative; Héctor Francisco Jaramillo, Secretary of Professionals and Technicians enrolled in the Sutrabolívar labor confederation; Neomar Rodríguez, a SutraBolívar delegate; Robert Rivero, a SutraBolívar delegate; Darwin LaRosa, director of the group of unemployed persons fighting for the right to work; Douglas Ulacio Rojas, a leader of the unemployed petroleum industry workers group; Rochard José Rivas Rodríguez, a member of the Anzoátegui Construction, Wood and Related Materials Workers Union; Yesmer Enrique Gil, a union member from San Félix; Néstor Ramón Cequea Jiménez, leader of a construction workers union in Macapaima province in the state of Anzoátegui, and Miguel Frente, an activist and leader of an Alcasa union. The Commission does not have the details of the circumstances of the events that led to the death of these trade unionists. Nevertheless, it is concerned over the number of trade unionists who fell victim to attacks and threats to the lives and personal integrity. IACHR, Annual Report 2007, Chapter IV – Venezuela, December 29, 2007, paragraph 236. Available at: <http://www.IACHR.oas.org/annualrep/2007eng/Chap.4f.htm>; PROVEA, *Derechos Humanos y Coyuntura. Boletín Electrónico No. 190*, August 20, 2007. Article: Lorenzo Labrique: “Violencia sindical e indiferencia estatal” [Trade Union Violence and State Indifference].

⁵⁴⁹ IACHR, 2010 Annual Report, Chapter IV- Venezuela, March 7, 2011, para. 653.

*institutions in the judicial sector so that they are able to combat the pattern of impunity that attends cases of violence and thereby ensure due diligence and effective investigations into these events.*⁵⁵⁰

269. The IACHR was also troubled to learn that abductions and physical assaults on union members are still a problem in some countries of the region; these abductions and assaults are often intended to intimidate the persons who have risen to leadership positions in the unions, and are a way to get them to back down from their demands.

In connection with the abductions of union leaders, the Commission was told that on July 27, 2006 Mr. Erwin Estuardo Orrego Borrayo, leader of the Emergency Front for Guatemalan Market Vendors (FEMVEMEGUA), was abducted by armed men who claimed to be police officers. According to the information available, after being held by his abductors for several hours, Mr. Erwin Orrego had allegedly been abandoned in a ditch in Boca del Monte, Villa Nueva, after he overheard a message that came over his assailants' radio to the following effect: "abort mission, abort mission, someone's watching." One of the assailants answered by asking, "Do we execute?" The answer from the other end was "no execution."⁵⁵¹

270. The IACHR confirmed during the follow-up period that illegal intelligence activities have targeted members of trade unions. The intelligence gathered could be used for harassment, assault and other forms of aggression against union members. The IACHR has condemned these activities and has urged the States that have engaged in this type of intelligence work to investigate these practices and determine who the responsible parties are and their blame.

On February 2009, the IACHR expressed in a press release⁵⁵² its concern about intelligence activities that, according to information that is publicly known, were carried out by the Administrative Security Department (DAS) of Colombia with respect to human rights defenders and public figures. In relation to illegal intelligence activities carried out against union leaders in Colombia, the IACHR received information on phone tapping to several

⁵⁵⁰ IACHR, 2010 Annual Report, Footnote 934 and Recommendation 4, Chapter IV- Venezuela, March 7, 2011.

⁵⁵¹ Amnesty International, *Guatemala. Fear for Safety*, Erwin Estuardo Orrego Borrayo, (m) of *Frente de Emergencia Vendedores de Mercados de Guatemala*, Emergency Front of Market Sellers of Guatemala (FEMVEMEGUA), August 1, 2006. Available at: <http://www.amnesty.org/en/library/asset/AMR34/029/2006/en/b34a38cb-fa01-11dd-b1b0-c961f7df9c35/amr340292006en.pdf>; OMCT, *Llamado urgente, Secuestro Intimidación GTM 006/ 0806/ OBS/90*, August 4, 2006. Available [in Spanish] at: <http://www.fidh.org/Secuestro-Intimidacion-GTM-006-0806-OBS-090>

⁵⁵² IACHR, Press Release 09/09, *IACHR Concerns about Intelligence Activities in Colombia*. Washington, D.C., February 26, 2009.

*labor unions: Central Unitaria de Trabajadores (CUT), the Workers Confederation of Colombia (CTC for its initials in Spanish), the National Union of Health and Social Security Workers, and the Union of the workers of the Telephone Company of Bogota.*⁵⁵³

271. The situation of the women union leaders is particular disturbing. In some States, they are victims of violence in the form of harassment and assaults that imperil their lives and personal integrity; but they are also the victims of labor reprisals by virtue of their gender.⁵⁵⁴ The IACHR has learned of women who were fired from their job rather than give them maternity leave, or were victims of discrimination for having served in leadership positions within labor organizations. A number of States do not have a clear set of laws that steers the practice of organized labor from a gender perspective by making that perspective a crosscutting theme in statutes, regulations and collective bargaining agreements.

*At its 141st session, the IACHR received information from El Salvador concerning women in trade unions who were the targets of specific threats and attacks by virtue of their gender. The aggression included systematic intimidation, persecution, abduction, torture, sexual abuse, and other crimes related to their work. As context that would be helpful in explaining women's lack of participation in trade unions, it was reported that in 2006 and 2009, 239 new trade unions had been registered; however, men far outnumbered women; in 2006, women accounted for only 8.8% of the membership; in 2007 they accounted for just 14%. This imbalance persisted in 2008, when women accounted for just 14.9% of union membership. Furthermore, of the 138,732 workers who are members of a union, 79.20% are men, whereas only 20.80% are women. Civil society organizations complained that in El Salvador, reliable, up-to-date information, classified by age and production sector, are not available, nor are specialized studies that could be indicative of women's participation in trade unions. Such data and studies would be invaluable in adopting legal and policy-related measures.*⁵⁵⁵

⁵⁵³ Colombian Commission of Jurists, *Escuela Nacional Sindical, Que os duelan las sangres ignoradas. Informe sobre violaciones a los derechos de los y las sindicalistas y la situación de impunidad 2009-2010, 2002-2010. Cuaderno de Derechos Humanos No. 22, Colombia, October 2010, p. 10.*

⁵⁵⁴ According to information received by the IACHR, in 2009 women trade unionists in Colombia were reportedly the victims of 25.3% of the total violations committed against unionized workers. This year, unionized women were the victims of 106 threats, 51 forced displacements, 7 attacks, 5 homicides and four acts of harassment. According to the organizations, the attacks perpetrated against unionized women were not just acts of violence; instead, they had a degrading intent that attacked the women's dignity. According to civil society, a woman's beauty, her family's protection and motherhood reportedly were used as weapons of intimidation by those who engaged in violence against women. To illustrate the risk that women union leaders face, on September 22, 2006, the IACHR granted precautionary measures for Marta Cecilia Díaz Suárez and María Paz Mancilla Gamboa, President and Vice President, respectively, of the Santander Association of Public Servants [Asociación Santandereana de Servidores Públicos] (ASTDEMP) in the Republic of Colombia. The information available indicates that Marta Cecilia Díaz Suárez and María Paz Mancilla were threatened, harassed, abducted and suffered serious physical assaults because of their trade union work on behalf of state workers. The Commission therefore asked the Government of Colombia to take the measures necessary to ensure the life and physical integrity of the beneficiaries and to inform the Commission of the measures adopted to investigate and prosecute the events that warranted the adoption of precautionary measures.

⁵⁵⁵ IACHR, *Hearing on Guarantees for the Exercise of Union Freedom, and Anti-Union Practices against Organized Women in Mesoamerica*, March 29, 2011.

272. The IACHR has closely monitored the heightened risk to which union leaders in Honduras are exposed since the collapse of democratic institutions as a result of the 2009 coup d'état.⁵⁵⁶ In 2010, the IACHR was called upon to grant a number of precautionary measures for union members who were at risk; in most of these cases, the risk was directly associated with actions taken to protest the coup d'état or attempts to brand union leaders as opponents of the *de facto* regime.⁵⁵⁷ In many cases involving aggression, the Honduran justice system has failed to act with the due diligence necessary to shed light on the facts surrounding the attacks against union leaders and thereby reliably determine whether or not their murders were in any way related to the coup and the environment it created.⁵⁵⁸ The lack of an effective and diligent investigation of the facts and punishment of those responsible for these murders instills fear in the community of persons associated with the murdered union leaders.

On March 8, 2010, through press release 26/10,⁵⁵⁹ the IACHR condemned the murders of union members who were active in the resistance to the coup d'état, which took place in February 2010. In this regard, the IACHR condemned the murder of Vanessa Zepeda Alonzo, who was active in the Resistance Front and was affiliated with the Social Security Employees Union, whose murder took place in Tegucigalpa on February 3, 2010; the murder on February 15, 2010, of Julio Funez Benitez, an active member of the resistance who belonged to the SANAA Workers Union, who was killed with two shots when holding a conversation on the sidewalk outside his residence in the Colonia Brisas neighborhood of Olancho; and the murder on February 24, 2010, of Claudia Maritza Brizuela, daughter of union and community leader Pedro Brizuela, who participates actively in the resistance. Two unknown individuals came to her door, and when she opened it, Claudia Brizuela was shot and killed in front of her children, ages 2 and 8.

⁵⁵⁶ Through precautionary measure 196/09, the IACHR asked the State of Honduras to protect the lives and personal integrity of the following union leaders: Norma Estela Mejía, vice president of the Sitrajerzeesh trade union, which is affiliated with the Central General de Trabajadores (CGT), reportedly received death threats because of her opposition to the coup d'état; Daniel Durón, a national leader of the Central General de Trabajadores (CGT), had reportedly received death threats; Evangelina Argueta an official of the Central General de Trabajadores (CGT), had allegedly received telephone threats because of her opposition to the coup d'état; Elsy Benegas, President of the Union of Workers of the National Agrarian Institute and a director of the Steering Committee of the Aguan Grassroots Organizations, COPA; Manuel Montoya, an official of the Union of Workers of the National Electric Power Enterprise; Daniel Durón; Eliseo Hernández; Hilario Espinoza; Idalmi Cárcamo; Jaime Vallecillo Turcios; Javier Alonso Valladares Aciego; José Marcial Zúñiga Rodríguez; José Zuñiga; Luis Alonzo Mayorga Galvez; Marco Tulio Sanchez del Cid; Mauro Enrique Soto Gómez; Roque García Solórzano; Rufino García Espinoza; Víctor Arita Petit; Víctor Manuel Izaguirre Varela; Vladimiro Santos Espinal; Israel Salinas, a member of the Sindicato Mayoritario; Rafael Alegría, national director of the Via Campesino; Roger Ulises Peña, a union member beaten up on Monday, June 29, 2009, by a military unit, and who was in very serious condition.

⁵⁵⁷ IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010*, para. 19.

⁵⁵⁸ IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010*, para. 52.

⁵⁵⁹ IACHR, Press Release 26/10: *IACHR Deplores Murders, Kidnappings and Attacks in Honduras*. Washington, D.C., March 8, 2010.

273. According to information the Commission has obtained, during the follow-up period union leaders in some States of the hemisphere continued to be targeted for elimination by self-defense or paramilitary organizations. The practice of contracting vigilante groups to commit acts of violence against union leaders also continues.

The Commission learned that a number of unions reported information to the ILO Committee on Freedom of Association in 2010 concerning the plan known as “Operation Dragon” in Colombia, whose objective was allegedly to eliminate trade union leaders. The Government stated that the Office of the Inspector General, through the National Director of Special Investigations, had ordered an inquiry into a complaint lodged by Senator Alexander López Maya (file No. 009-152804-06). According to information supplied by the Office of the Public Prosecutor, a formal investigation was ordered into six former officials of the municipal enterprises of Cali (EMCALI). The Office of the Public Prosecutor carried out a series of searches, inquiries and interviews and ordered that the case be linked to an investigation into Lieutenant Colonel Julián Villate Leal, a contract worker employed by a multinational enterprise as chief of port security, and Mr. Carlos Potes, former manager of EMCALI. The inquiries also implicated Mr. Germán Huertas, EMCALI’s chief of security, and contract workers Mr. Hugo Abondano Mikán, Mr. Marco Fidel Rivera and Mr. Húber Botello, who are being investigated for aggravated conspiracy to commit a felony and violation of the right to hold meetings and of the right of association. The ILO Committee urged Colombia to take all the necessary measures for the investigation to produce concrete results as soon as possible and to send its observations in that regard to the Committee.⁵⁶⁰

274. Another source of particular concern to the IACHR is the abusive use of criminal law in the region by instituting unfounded legal actions against union leaders as a way to harass them and thereby discourage them from engaging in their union activities. Many of the descriptions of the crimes with which union leaders were charged and for which they were prosecuted were vague and ambiguous, giving the authorities ample latitude and broad discretion when the time came to charge union leaders of having committed a crime. The Commission has observed that a crime called “obstruction of work”⁵⁶¹ has frequently been invoked to charge persons who call for and lead labor strikes.

The Commission was informed that organized labor leader Rubén González, Secretary General of the Orinoco Iron Miners’ Union (Sintraferrominera) was taken into custody on September 24, 2009, together with other union members, after heading up a work stoppage at the Orinoco Iron Mine Company to protest the failure to honor commitments

⁵⁶⁰ ILO Committee for Freedom of Association, 356th Report, Case 1787, March 2010. Available at: [http://www.ilo.org/ilolex/cgi-lex/pdconvs2.pl?host=status01&textbase=ilospa&document=4977&chapter=3&query=\(Colombia\)+%40ref&highlight=&querytype=bool&context=0](http://www.ilo.org/ilolex/cgi-lex/pdconvs2.pl?host=status01&textbase=ilospa&document=4977&chapter=3&query=(Colombia)+%40ref&highlight=&querytype=bool&context=0)

⁵⁶¹ The IACHR has received information from Venezuela to the effect that this offense is criminalized in Article 192 of the Venezuelan Criminal Code. The provision reads as follows: “Anyone who, through violence or threats, in any way restricts or suppresses free commerce and industry shall face a penalty of imprisonment for one to ten months.” This was the provision used to criminalize the activities of union leaders. IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd session, October 28, 2011.

made in the collective bargaining agreement. According to the information received, Mr. González is still under arrest, having been charged with the crimes of conspiracy to commit crime, instigating the commission of criminal acts, restricting the right to work and failure to comply with the special regime governing security zones.⁵⁶² The Commission concurs with the International Labour Organisation's Committee on Freedom of Association observation that "the multiple charges laid against these unionists for activities connected with the exercise of trade union rights" is cause for concern. Subsequently, on November 18, 2010, the ILO's Governing Body, based on the 358th Report of the Committee on Freedom of Association, asked the Venezuelan Government that Mr. González "be released without delay pending judgment."⁵⁶³

275. The Commission has received information from the region concerning the excesses committed by police when suppressing peaceful protests by union members demanding their union rights, such as protection of their collective bargaining agreements and exercise of the right to strike. The IACHR has received reports to the effect that at times, employers send provocateurs to stir up disturbances that cause the demonstrations to be broken up.

The Inter-American Commission on Human Rights (IACHR) learned of acts of violence that occurred during a demonstration on July 8, 2010, in Changuinola, Bocas del Toro, Panama. According to information received by the Commission, workers from banana plantations in the province of Bocas del Toro called a general strike beginning July 2, 2010, to protest the Panamanian National Assembly's passage of Law 30 on June 12, which was then signed into law by the President on June 16. The information available indicates that on July 8, a demonstration—organized as part of a protest against certain aspects of the law related to labor union rights and the right to strike—was suppressed by security forces, leaving several persons dead, more than a hundred injured, and another hundred detained. The Commission was informed that arrest warrants had allegedly been issued against at least 17 unionists, and that these orders had later been rescinded. Also, on July 21 the government of Panama reported that a special commission had been created to investigate the facts.⁵⁶⁴

276. Another type of reprisal that affects union leaders' practice of their activities in the region is the authorities' unwarranted interference in unions. This is a violation of the principle of trade union freedom which, under international human rights law, must be respected. The State's interference in the operation of trade unions is in the form of measures intended to obstruct the work of union officials and ultimately wrest control of unions away from their members and into government hands. Another form of interference are regulations that allow government institutions to exercise some influence on the election of union officials.⁵⁶⁵

⁵⁶² Information provided at the hearing on "Democratic Institutions and Human Rights Defenders in Venezuela", held during the 140th session of the IACHR.

⁵⁶³ Available at: <http://www.derechos.org/ve/proveaweb/?p=8636>

⁵⁶⁴ IACHR, Press Release 77/10, *IACHR Expresses Concern over Deaths and Injuries during Demonstrations in Panama*, August 3, 2010.

⁵⁶⁵ IACHR, *Democracy and Human Rights in Venezuela*, para. 1082.

Regarding the laws and regulations governing trade unions in Venezuela, the IACHR has expressed concern over articles 95 and 293 of the Venezuelan Constitution.⁵⁶⁶ Article 95 provides that trade union statutes and bylaws are to establish term limits and ensure the rotation of union representatives and leaders. Article 293 of the Venezuelan Constitution authorizes the State, through the Electoral Council, to organize elections for trade unions and professional guilds. The Commission believes that Article 95 violates the right of trade unions to establish the conditions for re-election of their delegates, without arbitrary interference from the State, whereas Article 293 violates the right to form labor unions without any form of State interference.⁵⁶⁷

The Commission commends the fact that Article 33 of the Organic Law on the Electoral Power recognizes the autonomy and independence of labor unions⁵⁶⁸ and the IACHR takes a positive view of the State's interpretation of this article, according to which the participation of the National Electoral Council is limited to cases in which the labor unions request its assistance.⁵⁶⁹ However, it nonetheless notes that Article 293 of the Constitution gives the National Electoral Council the authority to "organize union elections"; there is no language in this provision that clearly states that this authority shall be limited to those cases in which unions have expressly requested the Council's involvement. Thus, the IACHR has recommended that the Venezuelan State amend these articles in such a way as to guarantee the principle of trade union freedom.⁵⁷⁰

277. Other obstacles that union leaders have encountered are the speeches and statements made by public officials, even high-ranking officials, intended to discredit the work of the unions. The IACHR considers that the purpose of such statements is to persuade the public to reject the legitimate work of persons who are demanding observance of labor-related rights through exercise of the right to organize; they are also intended to lessen the chances that organized labor's measures will be effective.⁵⁷¹

⁵⁶⁶ *Idem.*

⁵⁶⁷ *Ibid.*, para. 1088.

⁵⁶⁸ In paragraph 2 of Article 33, the National Electoral Council is given the authority to "[o]rganize trade union elections, while respecting their autonomy and independence and the international treaties that Venezuela has signed on the subject, and to provide them with the appropriate technical and logistical support. Elections in professional guilds, in political organizations and in civil society organizations; in the case of civil society organizations it shall act at their request or when so ordered by the Electoral Chamber of the Supreme Court."

⁵⁶⁹ The IACHR has also observed that in practice, the understanding of this election authority has been that the National Electoral Council does not have the authority to organize union elections unless a request has been made to that effect. In December 2004, the National Electoral Council issued a decision containing the regulations to govern the elections of officials of union organizations; these regulations confirm that the electoral body acts only when it has a request to call elections, received from the authority of the union organization or from a group of members, upon the conclusion of the elected authorities' term of office or in accordance with the union's bylaws and statutes. Cf National Electoral Council, Decision No. 041220-1710. Regulations for the Election of Officers of Union Organizations, December 20, 2004. Available [in Spanish] at: http://www.cne.gov.ve/documentos/REGLAMENTO_ELECCIONES_SINDICALES.pdf.

⁵⁷⁰ Cf. IACHR, *Democracy and Human Rights in Venezuela*, para. 1082.

⁵⁷¹ Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 214. According to the report filed with the ILO Committee on Freedom of Association, an example of this kind of obstruction in Guatemala occurred after the security forces violently suppressed the union demonstrations held in March 2005

278. Another recurring problem in the States of the region is the lack of a specialized line of investigation to determine whether the aggressions committed were in retaliation for the practice of union activities. While the IACHR applauds the fact that some States have established special prosecution units to investigate attacks against union leaders, it is essential that those prosecution offices follow specialized protocols that enable them to establish that the perpetrators are targeting union activities.

The Guatemalan State informed the IACHR of the creation of a Unit to Prosecute Crimes against Human Rights Defenders, Officers of the Court, Journalists and Union Members. Under decision 03-2005 of the Council of the Public Prosecutor's Office, dated March 9, 2005, the unit is attached to the Office of the Prosecutor for Human Rights, which is part of the Public Prosecutor's Office. The Guatemalan State reported that the objectives of the Unit will be to investigate crimes committed against members of various groups who advocate, defend and promote human rights. The Commission does not have the kind of information it would need to assess how effective this Unit is and whether special protocols are being used for effective investigation of assaults. Nevertheless, the creation of this unit was necessary given the situation of union leaders in that country.

279. A number of States in the region that are grappling with the problems created by the serious obstacles that obstruct union activity have failed to adopt the kinds of comprehensive strategies that not only legitimize union activities, but also protect union leaders and provide for specific measures to ensure diligent and effective investigations into attacks committed against unions and their members. The Commission applauds the fact that some States have made efforts to build a public policy that enables them to deal with the problems that organize labor leaders encounter by adopting some of the measures cited above; nevertheless, it is still troubled by the fact that assaults and harassment of trade unionists persist, which means that the strategies used by those States have to be strengthened and their implementation constantly evaluated to check for their effectiveness.

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to protest the signing of a free-trade agreement. The violence left four workers dead (one of whom was the leader of campesino workers) and another 11 injured. According to the complaint filed with the Committee, on March 14, 2005, the President of the Republic used the media to refer in disrespectful terms to the leaders of the CGTG and the CNSP trade union organizations and stated that he was sorry that only one person had died during the demonstration. Regarding the statements allegedly made by the President of the Republic, the ILO Committee on Freedom of Association requested that an independent investigation of these allegations be conducted and that it be kept informed of the investigation and its findings. ILO Committee on Freedom of Association, Guatemala (Case No. 2413) (Union Sindical de Trabajadores de Guatemala) 340th Report, March 14, 2005, para. 893, 904. Available at: <http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsggetparasbycase.cfm?PARA=7832&FILE=2433&SEARCTEXT=huelga&hdroff=1&DISPLAY=CONCLUSION,RECOMMENDATION,BACKGROUND#BACKGROUND>

The Colombian State informed the IACHR of a number of measures it has taken to protect union leaders. Among the measures deployed prior to the follow-up period was the adoption of Defense Ministry Directives 009 (2003) and 800 (2003).⁵⁷² During the follow-up period, the State reported that a) on July 17, 2008 the Ministers of the Interior, Justice and Social Protection and the presidents of the Central Unitaria de Trabajadores (CUT) and the Confederación de Trabajadores de Colombia (CTC), the Secretary General of the Confederación General del Trabajo (CGT), the Office of the Attorney General, the DAS and the National Police had signed a joint statement to condemn the attacks on members of organized labor, express their repudiation of any act that could restrict trade union rights, and undertake a number of commitments intended to prevent human rights violations committed against organized labor, to protect it from existing threats and investigate and punish the perpetrators of any attacks consummated;⁵⁷³ b) on December 29, 2010, Law 1426 was enacted, which “amends Law 599 of 2000, concerning punishable offenses that violate the legally protected rights of human rights defenders and journalists” and the resulting amendment of Article 83 of the Criminal Code to raise the statute of limitations for the murder of a member of a legally recognized labor union to thirty (30) years; c) on June 12, 2008, the Attorney General approved resolution No. 3546 in which he ordered the creation of Juridical Technical Sectional Committees that would expose the difficulties encountered in criminal investigations, design strategies and assign tasks to participants in order to spur the criminal investigations the Committee had underway; d) on September 15, 2006, the National Government and Office of the Attorney General of the

⁵⁷² The State reported the following: 1) Directive 009 of 2003 states that in exercise of their functions, the military and police shall at all times respect the work of union leaders and human rights defenders, and specifies a basic set of measures that are the minimum that the General Command of the Military Forces and the General Bureau of National Police must perform; 2) the purpose of Directive 800 of 2003 of the General Command of the Military Forces is to protect the work of union leaders and human rights defenders through such measures as: a) compiling all the complaints that military units file against illegal armed groups for violence against union members and human rights defenders; b) investigating all complaints filed against military personnel for this same crime; c) acting promptly to carry out the precautionary and/or provisional measures granted by the Inter-American Commission and/or Inter-American Court for union leaders or human rights defenders; d) maintaining up-to-date information on the outcome of operations conducted by the military forces that have neutralized the violations of the rights of union members and human rights defenders, and e) conducting awareness campaigns, and providing training and instruction to bolster the military forces’ commitment to protecting and defending unions and human rights organizations.

⁵⁷³ Among the commitments that the Colombian State reported would be undertaken in the declaration are the following: a) strengthen the group of special prosecutors to combat criminal gangs, and especially the cases of crimes committed against union members; b) increase the preventive measures to prevent the commission of further crime against union members; c) wage a campaign in all the communications media, defending the rights of union members; d) convene a meeting of entrepreneurs, union leaders and the government to establish a joint mechanism to prevent constraints on trade union freedom and take measures to punish those who violate this right; e) take an inventory of the cases in which union members have been attacked, so that the court authorities can ascertain the real motives; f) fine-tune the early-warning mechanism and the prevention protocol in order to identify the critical cases; g) the heads of the departmental police forces pledge to provide monthly reports to the DAS, the Attorney General’s Office, the government and union leaders about the risks and protection of union members in their jurisdictions; h) the Director of Human Rights at the Ministry of the Interior and Justice undertakes to work with the leaders of the union confederations to further perfect the mechanisms for protecting union members; i) create a virtual network to address threat warnings in real time; j) the National Government is offering rewards for information leading to the apprehension of those convicted of crimes against union members and who have not been taken into custody.

Nation signed Inter-Administrative Agreement No. 15406 to move forward investigations into cases involving violations of trade unionists' human rights;⁵⁷⁴ e) the Attorney General's Office designated 13 prosecutors, each with a team of investigators from the Judicial Police and the Technical Investigations Corps, consisting of 78 persons, and a group of 24 attorneys assigned to prosecute the investigations into cases in which the victims were members of trade unions; g) a project was launched to deal with cases reported to the ILO under Case 1787, instituted in 1994 by a complaint filed by the International Confederation of Free Trade Unions (ICFTU) for murders and other acts of violence committed against labor leaders and members of unions in Colombia. To assist the Colombian State's Strategy, by way of the Superior Council of the Judiciary three Special Judges were appointed to handle the cases reported by the Office of the Attorney General under case 1787. The IACHR applauds the measures taken by Colombia and believes that this will help advance compliance with the recommendation that the Commission made in this regard in 2006.

B. Women human rights defenders

280. At the regional and global levels, women's right to live free of violence and discrimination is universally recognized.⁵⁷⁵ Within the inter-American system, the States have recognized and specifically codified in law that women victims of human rights violations have a right of access to justice. One prominent example are the provisions of the "Convention of Belém do Pará," which provides that every woman has the right to be free from violence,⁵⁷⁶ to be free from all forms of discrimination, and to be valued and educated free of stereotype patterns of behavior;⁵⁷⁷ the right to equal protection before the law and of the law, and the right to a simple and prompt recourse to competent courts when her rights are violated.⁵⁷⁸

⁵⁷⁴ The State reported that the objectives of the Agreement include: 1. develop strategies that serve to solve the events; 2. to identify and punish the perpetrators of these violations and anyone who aids and abets them; 3. to prevent crimes that violate union members' human rights by adopting the necessary inter-institutional, national and local programs and plans

⁵⁷⁵ The fact that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará") has been ratified by more States than any other instrument of the inter-American system and that most States of this hemisphere have also ratified the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") and its optional protocol, signals a regional consensus to the effect that gender-based violence is an open and widespread problem requiring State action to ensure its prevention, investigation, punishment and redress. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, paragraph 3 of the Executive Summary.

⁵⁷⁶ Article 3 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Pará".

⁵⁷⁷ Article 6 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Pará."

⁵⁷⁸ Article 4 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Pará".

281. All women have a right to defend and promote human rights,⁵⁷⁹ including the rights of women. In its resolution AG/RES. 2579 (XL-0/10), the OAS General Assembly recognized the work that women human rights defenders are doing within the region and resolved to recognize that, in view of their gender-specific role and needs and the particular risks they face by virtue of the discrimination they have traditionally suffered, women human rights defenders should be accorded special attention to ensure that they are fully protected and effective in carrying out their important activities.⁵⁸⁰

282. In view of the perils that defenders of women's rights face, as identified by the Commission, in its 2006 report the Commission recommended that the States of the region "[g]uarantee in particular the security of women human rights defenders whenever they are at risk of attack through specific mechanisms because of their gender, and to undertake measures to obtain recognition of the importance of their role within the movement to defend human rights."⁵⁸¹

283. In various countries of the region, women defenders of women's rights continue to be especially vulnerable to human rights violations when compared to other groups of human rights defenders. In addition to the discrimination that they suffer because of their traditional role in society and the gender stereotypes attached to women, their situation is made all the worse because the specific causes they champion expose them to even greater peril.⁵⁸² During the follow-up period, the IACHR has continued to receive numerous complaints of the violence that women defenders of women's rights suffer in patriarchal communities, where they endure degrading social stereotypes of their sex life or are accused of undermining moral values or social institutions like the family.⁵⁸³

284. The vast majority of acts of violence committed against women go unpunished, which merely perpetuates such violence and social acceptance of the phenomenon. For example, during the *in loco* visit that the Rapporteurship for Women's Rights made to Ciudad Juárez, Mexico, it was discovered that only 20% of the cases of murdered women had gone to trial and ended in a conviction.⁵⁸⁴ While the impunity that attends the majority of cases of violence against women was already a matter of grave

⁵⁷⁹ Art. 7 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.53.144.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.53.144.en)

⁵⁸⁰ OAS General Assembly, Human Rights Defenders: Support for Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, approved at the plenary session held on June 8, 2010.

⁵⁸¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 7.

⁵⁸² *Ibid.*, para. 227.

⁵⁸³ *Ibid.*, para. 228. See also IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006.

⁵⁸⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 20; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003.

concern, during the follow-up to the 2006 report complaints were received concerning murders of women human rights defenders who were killed for having been the driving force behind the criminal cases prosecuted against men who violated other women's rights. Attacks of this kind not only affect the rights of the human rights defender in question, but also the role that women human rights defenders play within democratic systems; they also compound the problem of all the women victims of violence on whose behalf the women human rights defenders work.

The IACHR has learned of various women human rights defenders who have been killed in the state of Chihuahua, Mexico, in the quest for justice for the murders of other women.

For example, on December 16, 2010, Marisela Escobedo was killed outside the governor's palace in the state of Chihuahua, where she was campaigning for justice over the violent death of her daughter, Rubí Marisol Frayre, who was killed in September 2008 at the age of 16.⁵⁸⁵ On January 6, 2011, Susana Chávez was killed; she had been active in the campaign to protest the murders of women in Ciudad Juárez.⁵⁸⁶ On February 25, 2011, the bodies of Malena Reyes and Luisa Ornelas were discovered. They had been missing since February 7, and had previously filed a complaint concerning the harassment of their family in its quest for justice in the murder of their sister, Josefina Reyes,⁵⁸⁷ a human rights defender who had protested abuses by the military in Ciudad Juárez. She was murdered on January 3, 2010.⁵⁸⁸

285. The IACHR has observed that the work of women human rights defenders is particularly difficult in countries that have experienced armed conflict or widespread violence. National and regional women's organizations active in these areas tend to become targets of harassment and threats by armed persons who regard the leadership that these women exercise as an obstacle to their social control of the territories they occupy.⁵⁸⁹

⁵⁸⁵ IACHR, Press Release 123/10, IACHR Condemns Murder of Human Rights Defender in Mexico, Washington D.C., December 21, 2010.

⁵⁸⁶ Amnesty International, *Repudia Amnesty International Asesinato de la Activista Susana Chávez*, January 13, 2011. Available [in Spanish] at: <http://www.amnistia.cl/web/ent%C3%A9rate/repudia-amnist%C3%AD-internacional-asesinato-de-la-activista-susana-ch%C3%A1vez>

⁵⁸⁷ El Universal, *Hallan muertos a hermanos Reyes*, February 25, 2011. Available [in Spanish] at: <http://www.eluniversal.mx/notas/747693.html>

⁵⁸⁸ OMCT, *México: Asesinato de la Sra. Josefina Reyes*, January 8, 2010. Available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/mexico/2010/01/d20479/>

⁵⁸⁹ IACHR, Press Release 27/05 "The armed conflict aggravates the discrimination and violence suffered by Colombian women. Washington D.C., July 25, 2005; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 230.

On April 8, 2010, the IACHR granted precautionary measures for the members of the Corporación SISMA Mujer and two women that participate in a program coordinated by that organization, Tránsito Jurado and María Eugenia González and her minor children, who had been subject to threats, harassment, and one act of violence, allegedly as a result of their work.⁵⁹⁰ On March 25, 2010, the IACHR granted precautionary measures for 14 women, leaders of the displaced community in Bogotá and that as a result of these activities, they have been victims of sexual violence, physical attacks, threats, acts of harassment. Such measure was expanded on May 6, 2010, for Ana María Perea Incel, member of the Association of Afro Women for Peace and a participant in talks with the government of Colombia on the issue of the rights of the displaced population and who was threatened as a result of work.⁵⁹¹

286. As it underscored in its 2006 report, the IACHR is concerned over the situation of women defenders of indigenous and Afro-descendant rights, who are already victims of discrimination by virtue of their gender, their race and their ethnic origin. The dual discrimination suffered by virtue of being a woman and either indigenous or Afro-descendant, is compounded in the case of women who promote and defend women's rights. They are exposed to ridicule and stigmatized not just by the broader community, but also by public officials and even their own communities.⁵⁹²

On July 20, 2010, the IACHR granted precautionary measures for Reina Luisa Tamayo Danger,⁵⁹³ mother of Orlando Zapata Tamayo in Cuba, one of the victims of Case 12.476, decided by the IACHR on October 21, 2006⁵⁹⁴ and who died of starvation after 85 days of hunger strike.⁵⁹⁵ The request for precautionary measures alleges that the beneficiary was suffering constant threats and acts of harassment, in light of her involvement in various public protests since the death of her son. The request further indicated that she had been

⁵⁹⁰ PM 99/10 - Tránsito Jurado, María Eugenia González, and Members of the Corporación Sisma Mujer, Colombia. Available at: <http://www.IACHR.org/medidas/2010.eng.htm>

⁵⁹¹ PM 1/10 - 14 Women in a Situation of Displacement, Colombia. Available at: <http://www.IACHR.org/medidas/2010.eng.htm>

⁵⁹² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 231. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 198 and 208.

⁵⁹³ The Inter-American Commission asked the State of Cuba to take the measures necessary to guarantee the life and physical integrity of Reina Luisa Tamayo Danger, to arrange the measures to be taken with the beneficiary and to report what measures it has taken to investigate the facts that necessitated the adoption of precautionary measures.

⁵⁹⁴ In this case, the IACHR recommended to the Cuban State that it order the immediate and unconditional release of all the victims, and overturn their convictions inasmuch as they were based on laws that unlawfully restricted their human rights. The report also recommended that the necessary measures be taken to adapt Cuba's laws, procedures and practices to conform to international human rights standards, that the victims and their next of kin be compensated for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration established in the report, and that the Cuban State take the necessary steps to prevent a recurrence of similar acts.

⁵⁹⁵ IACHR, Press Release 22/10 dated February 26, 2010 - IACHR Condemns Death of Orlando Zapata in Cuba. Washington, D.C.

the victim of acts of violence, in which she allegedly was beaten and one of her arms was fractured. According to the testimony of Reina Luisa Tamayo Danger, together with her daughter and other members of the White Dames, she was beaten when exiting the Church of Santa Barbara (Parra neighborhood). She informed the IACHR that while the authorities were beating and kicking her, they were calling her “negra de mierda” (fucking negro).⁵⁹⁶

287. During the follow-up period, the Commission was informed of the way in which criminal law is used against women defenders of women’s rights. The institution of these criminal cases is viewed as retaliation for the work they do that challenges long-standing social concepts or stereotypes in the States. The prospect of prosecution has a significant chilling effect on defenders of sexual and reproductive rights, whose activities are even prohibited in some countries. According to the information provided by civil society during the Commission’s 140th session, criminalization of women human rights defenders who promote therapeutic abortions is a pattern in Nicaragua, El Salvador and Honduras, where abortion, irrespective of the circumstances, is a criminal offense.⁵⁹⁷

During its 140th session, the Commission received information on the situation of Ana María Pizarro, Juanita Jiménez, Lorna Norori, Luisa Molina Arguello, Marta María Blandón, Martha Munguía, Mayra Sirias, Violeta Delgado and Yamileth Mejía, nine human rights defenders who were prosecuted in Nicaragua in 2007 for the crime of incitement to commit crime and conspiracy to commit crime. According to the information available, the criminal cases were brought because the nine women human rights defenders had taken measures to squire a nine-year-old girl through the process of getting an abortion; the girl was pregnant as a result of being raped. A number of organizations expressed concern over the fact that criminal cases had been brought against the women human rights defenders because of their activities to defend and promote a woman’s human rights.⁵⁹⁸ According to what the organizations reported, on March 24 it was announced that the criminal cases instituted against the nine women had been dismissed.⁵⁹⁹

288. The IACHR has observed how human rights defenders must contend with a number of structural problems in order to promote equal protection of the law for women victims of violence and other human rights violations within the justice systems.

⁵⁹⁶ Audio presented by the Directorio Democrático Cubano, July 1, 2010. Taped by the newspaper *La Habana*.

⁵⁹⁷ IACHR, Hearing on the reproductive rights of women in Latin America and the Caribbean, 141st Session, March 28, 2011.

⁵⁹⁸ Amnesty International, *Nine Women’s Rights Defenders*. Available at: <http://www.amnesty.org/en/individuals-at-risk/write-for-rights/nine-whrds>; CENIDH, Urgent action for political persecution against organizations that promote and defend human rights of children and women in Nicaragua,, <http://www.cenidh.org/casodetalle.php?idinforme=30>

⁵⁹⁹ International Federation of Human Rights, *Desestimada la acusación contra nueve defensoras de derechos humanos de las mujeres*, April 8, 2010. Available [in Spanish] at: <http://999.fidh.org/Desestimada-la-acusacion-contra-nueve-defensoras>; Amnesty International, *Nine Women’s Rights Defenders*. Available at: <http://www.amnesty.org/en/individuals-at-risk/write-for-rights/nine-whrds>.

Examples include the absence of institutions for the administration of justice in rural, poor and marginalized areas; the lack of court-appointed attorneys for victims of violence who are without economic means; the lack of human and financial resources with which to address the persistent and structural problems; the institutional failings of the public prosecutors offices and the police who investigate the crimes; and the lack of specialized units within the public prosecutors offices, the police and the courts, equipped with the technical skills and specialized expertise required for such cases. Yet another important obstacle is that the data systems needed to compile statistics on incidents and cases of violence against women are scarce and are not coordinated with each other. Data systems are essential in order to be able to analyze possible causes and trends and to evaluate the response of the justice system to acts of violence against women.⁶⁰⁰

289. One very serious problem with which defenders of women's rights must contend are the gender stereotypes engrained in the language and reasoning of the officers of the court and law enforcement personnel in charge of investigations into violations of women's rights.⁶⁰¹ These gender stereotypes becomes both a cause and a consequence of the gender violence committed against women. The Inter-American Court has written that the authorities' use of gender stereotypes against women and the resulting inaction on the part of the State when investigating cases involving gender violence, perpetuates the very violence they are purportedly going after, and constitutes discrimination in terms of women's access to justice.⁶⁰²

290. Compounding the problem is the stigmatization and ostracism that women who have been victims of violence can suffer in their communities, and the embarrassment and shame they feel when having to report what happened. These can become serious obstacles to the cause of defending their human rights.⁶⁰³ The Commission has observed that, on occasion, women victims of human rights violations express reservations at the prospect of instituting court proceedings, which means that the victims' own fear can be a major complication for human rights defenders.⁶⁰⁴

⁶⁰⁰ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 181.

⁶⁰¹ The Inter-American Court has established that "the Tribunal finds that gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. [...] the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities, [...]. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women." I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009. Series C No. 205, para. 401.

⁶⁰² I/A Court H.R., *Case of González y otras ("Cotton Field") v. Mexico*. Judgment of November 16, 2009. Series C No. 205, para. 400.

⁶⁰³ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 179. See also IACHR, Merits Report No. 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996.

⁶⁰⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 204.

291. In some States, the justice system itself may have serious problems and handicaps when it comes to processing and recording data on cases involving violence against women. With such problems and handicaps, the full dimensions of the problem of violence against women cannot be grasped.⁶⁰⁵ Then, too, a number of countries in the region reportedly do not have personnel trained in gender issues so that they are able to perform their functions with the due diligence and sensitivity required in cases involving violence against women; those countries that do have public prosecutors, units and courts that specialize in the investigation and prosecution of cases involving violence against women often do not have the human, technical and financial resources they need to perform their functions.⁶⁰⁶ In some areas, the widespread belief is that violence against women is essentially a private matter.⁶⁰⁷ Such attitudes and behaviors on the part of the officers of the court, law enforcement and society in general, are difficult obstacles for women who defend women's rights.

*The Commission has identified a number of structural obstacles that make it difficult for indigenous women whose rights have been violated to get access to justice in Guatemala. The Commission has expressed concern over the fact that the officers of the court lack any understanding of the various cultural differences associated with the indigenous languages; the majority of the officers of the court are monolinguals and the translations of judicial proceedings are incomplete. According to the information the IACHR has available, evidence is difficult to obtain, and the judicial proceedings are long, costly and exhausting for the women victims of violence, most of whom live in extreme poverty. Then, too, indigenous women frequently have no identification papers. Geography, too, can become a factor limiting access to judicial protection. While all this is disturbing enough, there are problems within the indigenous peoples themselves, which tend to deny indigenous women's rights, making indigenous women mistrustful of the justice system's ability to remedy what was done to them.*⁶⁰⁸

C. Campesino and community leaders

292. In its 2006 report, the Commission expressed concern over the abusive use of force by some States within the region and the abuse of the justice system to criminalize the right of assembly of community, social and student leaders who participate in protest demonstrations.⁶⁰⁹ It also commented that rural and community leaders tended to be identified as targets and used as examples to dissuade others from taking up their cause.⁶¹⁰ The IACHR will now examine the obstacles that persist within the region and will place particular emphasis on certain States where the situation of these campesino and community leaders has become perilous.

⁶⁰⁵ *Ibid.*, para. 188. See also IACHR, Merits Report No. 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996.

⁶⁰⁶ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, paras. 186-188.

⁶⁰⁷ *Ibid.*, para.174.

⁶⁰⁸ *Ibid.*, para. 207.

⁶⁰⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paras. 215-219.

⁶¹⁰ *Ibid.*, para. 218.

293. The IACHR has received information confirming the persistence of the attacks, aggression and harassment targeted at leaders of those populations that live in communities composed of families who are victims of forced displacement in Colombia, where the problem of displacement has taken a serious toll on the civilian population.⁶¹¹ Frequently, the resettlement locations do not have adequate infrastructure, utilities, or legal permits for habitation. They tend to be in conflict areas where the authorities have little control when urban militias crop up. In areas like this, the work that the community leaders perform focuses on filing complaints of violations of the displaced population's rights, and protecting and reclaiming their lands. The IACHR has observed that attacks on leaders of displaced communities are related to the violence generated by clashes with armed groups in the displacement area and the interests of groups opposed to the activities and rights being claimed by the displaced persons. According to information supplied by civil society, between 2002 and 2011 at least 45 leaders of displaced communities were murdered in Colombia; these leaders were involved in proceedings seeking restitution of properties.⁶¹² The IACHR has observed that as a way of deterring them in their work, many of the attacks were aimed at the community leaders' family members:⁶¹³

⁶¹¹ The Constitutional Court has defined an 'unconstitutional state of affairs' as a finding of "repeated and constant violations of human rights, affecting a multitude of persons and requiring the intervention of multiple agencies to address structural problems; this Court has held that an unconstitutional state of affairs exists and has ordered remedies to protect not just those who have turned to the courts for protection of their rights, but also other persons in the same predicament, who have not brought an action seeking the court's protection." Judgment T-025 of 2004, Justice Manuel José Cepeda Espinosa writing, January 22, 2004. According to the Single Displaced Population Register, the number of internally displaced persons was 3,486,305 as of the end of 2009; the Consultancy for Human Rights and Displacement (COHES) put the total as of the end of 2009 at 4,915,579. CODHES, *Boletín* 76, January 27, 2010. Available [in Spanish] at: http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=62&Itemid=50.

⁶¹² CODHES, *Asesinan otro líder de restitución de tierras*, March 24, 2011. Available [in Spanish] at: http://www.codhes.org/index.php?option=com_content&task=view&id=1019; Consultoría para los Derechos Humanos y el Desplazamiento, *Líderes y personas en situación de desplazamiento asesinadas del 1 de marzo de 2002 a abril 29 de 2010*. Available [in Spanish] at: <http://www.codhes.org/images/stories/pdf/cld%20asesinados%20abril%20%202011.pdf>; CODHES - Consultoría para los Derechos Humanos. *¿Consolidación de qué? Informe sobre desplazamiento, conflicto armado y derechos humanos en Colombia en 2010*. *Boletín informativo No.77*, Bogotá, February 15, 2011. Available [in Spanish] at: www.codhes.org

⁶¹³ For example, at the Commission's request, on July 5, 2006 the Court granted provisional measures to protect the life and personal integrity of Mery Naranjo Jiménez and María del Socorro Mosquera Londoño, both women human rights defenders. While that provisional measure was in effect, a number of events transpired that have affected members of the nuclear families of both human rights defenders. These include the following: 1) the murder, under mysterious circumstances, of two other beneficiaries: Javier Augusto Torres Durán and the boy Sebastián Naranjo Jiménez, Mery Naranjo's son-in-law and grandson, respectively; 2) the threats to "smear the record" of one of her nephews, Francisco Javier Escudero and, in 2008, the launch of an inquiry in the Medellín Military Court; 3) a series of harassments targeting Juan David Naranjo (son of Mery Naranjo) while he was deprived of his liberty; the harassment was the work of certain persons being held in connection with the events that prompted the Court to grant provisional measures; 4) on August 25, 2010, 20 armed men in civilian dress and two police agents entered the home of Mery Naranjo supposedly in search of weapons, while the police guard post and checkpoint at her residence "was vacant, thereby facilitating the illegal entry"; 5) the murder of Lubin Alfonso Villa Mosquera, 14-year-old grandson of Socorro Mosquera on February 1, 2011. This most recent event prompted the Court to amplify the provisional measures to include the relatives of Socorro Mosquera on

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The Commission has received information concerning the murders of leaders of displaced communities in Colombia. Óscar Maussa, a campesino leader of families displaced from the “La Esperanza” estate and a beneficiary of precautionary measures granted by the IACHR, was murdered on September 1, 2010.⁶¹⁴ Bernardo Ríos Londoño, a social leader and member of the Peace Community of San José de Apartadó, was shot to death on March 22, 2011.⁶¹⁵ Eder Verbel Rocha, whose family had filed a complaint concerning paramilitary groups in San Onofre, Sucre, was shot and killed on March 23, 2011.⁶¹⁶ David de Jesús Góez, who was claiming restitution of 20 hectares of land in the Tulapa sector, was killed on March 23, 2011, in a shopping center southwest of Medellín.⁶¹⁷

294. As for community and campesino leaders in Honduras, the IACHR confirmed that amid the 2009 coup d'état, teachers, campesinos and students were threatened, harassed and murdered. Because of the hundreds of complaints filed concerning serious violations of human rights, the IACHR granted precautionary measures to protect the lives of hundreds of persons as a result of the 2009 coup d'état.⁶¹⁸ In the specific case of community leaders, the IACHR received reports of attacks committed as a strategy of intimidation to persuade these community leaders to abandon their causes.⁶¹⁹ The authorities stigmatized leaders' fight to reclaim their rights, and branded them as

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March 4, 2011. *Matter of Mery Naranjo et al. regarding Colombia*. Order of the Inter-American Court of Human Rights, January 31, 2008, *consideranda* 22; *Matter of Mery Naranjo et al. regarding Colombia*. Order of the Inter-American Court of Human Rights, November 25, 2010, *Consideranda* 47; *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2010, *Consideranda* 13, 65(b) and (f); *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 4, 2011, preambular para. 5 and operative para. one.

⁶¹⁴ IACHR, Press Release 117/10, IACHR Condemns Murder of Óscar Maussa in Colombia, Washington, D.C., November 30, 2010.

⁶¹⁵ Amnesty International, *Urgent Action, Colombian Peace Community Threatened*, April 5, 2011. Available at: <http://www.amnesty.org/en/library/asset/AMR23/009/2011/en/ed26366c-bf4d-4367-a837-f6068c224b59/amr230092011en.html>; Protectionline, Bernardo Ríos Londoño, human rights defender: murdered by paramilitaries, March 23, 2011. Available at: <http://www.protectionline.org/Bernardo-Rios-Londono-human-rights.html>

⁶¹⁶ Amnesty International, *Urgent Action. Paramilitaries Kill Human Rights Defender*, March 30, 2011. Available at: <http://www.amnesty.org/es/library/asset/AMR23/007/2011/es/d86cbfff-d025-4e04-bffa-fe55454baba4/amr230072011en.html>

⁶¹⁷ CODHES, *Asesinan otro líder de restitución de tierras, March 24, 2011*. Available [in Spanish] at: http://www.codhes.org/index.php?option=com_content&task=view&id=1019

⁶¹⁸ Given the sheer number of complaints, the IACHR instituted precautionary measure 196-09 on July 28, 2009, for the Minister of Foreign Affairs of Honduras, and requested information about other persons. Precautionary measure 196-09 was extended to additional persons multiple times.

⁶¹⁹ According to the information presented to the IACHR, on February 17, 2010 Dara Gudiel, who was 17, was found hanged in the city of Danlí, in the department of Paraíso. Dara Gudiel was the daughter of journalist Enrique Gudiel, who runs a radio program called “Siempre al Frente con el Frente” (“Always Upfront with the Front”), which broadcasts information about the resistance. Days before she was found hanged, Dara Gudiel had been released after having been kidnapped and held for two days, during which time she was alleged to have been physically mistreated. IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its visit to Honduras, May 15-18, 2010*, June 3, 2010, para. 73.

opponents of the regime established as a result of the coup, which only placed them in an even more vulnerable position and exposed them to more attacks. The IACHR also received information concerning the disproportionate use of force against protest demonstrations in which various leaders of teachers and students participated.⁶²⁰ The Commission received repeated complaints about the use of military forces in the Bajo Aguan region, who intervened to force people from their homes; it also received complaints concerning attacks perpetrated by private parties to take reprisals against a number of campesino leaders for their opposition to the forced displacements.

In 2010, the Commission received information complaining of the militarization of the Bajo Aguán area of conflict in Honduras, and of abuses and acts of aggression committed against members of the communities involved in the matter.⁶²¹ According to the information received, 18 campesinos who were members of the Aguán Unified Campesino Movement –MUCA– were murdered in 2010 presumably as a consequence of the land dispute: i) Juan Ramón Mejía⁶²² on January 31; ii) on February 4, Francisco Montes and Isidro Cano –members of the Buenos Aires cooperative–⁶²³; iii) on February 14, Feliciano

⁶²⁰ The IACHR received information concerning a Honduran police raid to break up a demonstration staged by professors at the Universidad Pedagógica Francisco Morazán on August 20, 2009. According to the information available, the educators were the targets of shots and tear gas grenades; the leaders of the teachers' movement were then detained and some were hospitalized as a result of the treatment received at the time of their arrest. The testimony received by the IACHR indicates that on the night of August 11, a white, dual-cabin pickup was circulating in the vicinity of the Universidad Pedagógica Nacional Francisco Morazán, even though a curfew was then in effect from 10:00 p.m. to 5:00 a.m. The people inside the pickup threw tear gas grenades and Molotov cocktails, which were then picked up by people inside the University grounds. On August 12, these people contacted the prosecutors at the Public Prosecutor's Office to report the tear gas grenades and Molotov cocktails as evidence. When the prosecutors left the grounds of the university, it was invaded by police and Army personnel, in violation of university autonomy. They threw tear gas grenades and beat up the students. Ten people who were on the grounds of the university at the time were held for several hours at gunpoint. They robbed them of their belongings, hit them with batons, took their photographs in order to identify them and threatened to "disappear" them. For the hours that they were in custody, these people had no access to water or food, and were not given medical attention, even though the Red Cross and the Green Cross were inside the University. Cf. IACHR. Honduras: Human Rights and the Coup d'État, December 30, 2009, para. 298; Comité de Familiares de Detenidos Desaparecidos en Honduras "[Comunicación de 22 de agosto de 2010](#)". See also, Periódico Hondudiario, "[Desalojo de maestros provoca caos en la capital](#)", August 20, 2010.

⁶²¹ Information supplied by the *Centro de Prevención, Tratamiento y Rehabilitación de las víctimas de la Tortura y sus familiares*, December 1, 2010.

⁶²² ACSUR-Las Segovias, "[Represión militar contra campesinos en Honduras](#)" [Military repression against campesinos in Honduras]; CEJIL, "[Honduras: Stop violence against peasant groups in the lower Aguan](#)", April 14, 2010.

⁶²³ *Idem*.

Santos –a member of the 21 de julio cooperative-⁶²⁴; iv) on March 17, José Antonio Cardoza and José Carias –directors of COHDEFOR’s Brisas cooperative-⁶²⁵; v) on April 1, Miguel Ángel Alonso Oliva⁶²⁶; vi) on April 7,, José Leonel Álvarez Guerra⁶²⁷; vii) on June 20, Oscar Geovanny Ramírez, age 17 and a member of the EAC of the La Aurora settlement;⁶²⁸ viii) on August 17, Víctor Manuel Mata Oliva, Sergio Magdiel Amaya and the boy Rodving Omar Villegas (age 15),⁶²⁹ ix) on September 10, Francisco Miranda Ortega,⁶³⁰ and x) on November 15, Ignacio Reyes, Teodoro Acosta, Siriaco Muños, Raúl Castillo and José Luis Saucedo.⁶³¹

295. One concern for the region as a whole are the reprisals taken against community leaders if they file complaints alleging corruption on the part of public officials. According to the information the IACHR has available, on occasion, when the complaints are successful and the accused public officials are ousted, reprisals are taken by criminal groups operating with the acquiescence of the officials affected by the complaints.

The IACHR learned of the situation of René Gálvez and other members of the board of directors of ASIDECQ (the Integrated Association for the Development of Quetzal City and Neighboring Colonies) in Guatemala. The information available states that the members of the board of directors of ASIDECQ were subjected to serious acts of violence, intimidation, and threats as a consequence of their work. Specifically, it is stated that Oscar Humberto Duarte, one of the members of the board of directors, was abducted and disappeared on May 24, 2006, with no further trace of him has since been found. Furthermore, other members of the organization have been harassed and followed, and members of their families threatened by telephone. In view of this, the Commission requested that the Government of Guatemala adopt the measures necessary to protect the life and physical integrity of the beneficiaries and report on the action taken to investigate judicially the events that gave rise to the precautionary measures. The Commission is monitoring the beneficiaries’ situation.

296. The IACHR has followed the situation of student leaders that in the process of demanding their rights to education have been subject to aggressions from the

⁶²⁴ *Idem.*

⁶²⁵ *Idem.*

⁶²⁶ Vos el Soberano, “[Comunicado CODEH: ante el asesinato de Miguel Alonso Oliva del Muca](#)”, April 1, 2010. CEJIL, “[Honduras: Stop violence against peasant groups in the lower Aquan](#)”, April 14, 2010.

⁶²⁷ Communique from FIAN Honduras “[Ante el asesinato de José Leonel Álvarez Guerra](#)”, April 8, 2010.

⁶²⁸ Diario El Libertador, “[Militares y policías hondureños asesinan a campesino adolescente y capturan a cinco](#)”, July 21, 2010; MUCA, Communique: “[Asesinan a campesino del MUCA en el asentamiento La Aurora](#)” of June 20, 2010.

⁶²⁹ Comité para la defensa de los Derechos Humanos en Honduras, “[Atentado contra miembros del MUCA](#)”, August 22, 2010.

⁶³⁰ FIAN Honduras, “[Asesinan campesino de la Cooperativa La Aurora](#)”, of September 10, 2010. Diario La Prensa, “[Asesinan a otro campesino](#)”, September 13, 2010; Diario Tiempo, “[Asesinan a coordinador de MUCA en Tocoa](#)”, September 15, 2010.

⁶³¹ MUCA, [Comunicado](#) dated November 16, 2010.

part of public security forces. The IACHR considers of great concern that some States have not adopted special measures of protection for the free exercise, in secure conditions, by children and adolescents of their right to defend human rights and their right of assembly.

In its 143 Session, in the hearing "Human Rights and Public Demonstrations in Chile", the IACHR received information according to which the riot police intervene under Decree 1086 (September 16, 1983) to dissolve public demonstrations in public places or schools of students demanding a free, non-discriminatory and qualified education.⁶³² According to public information, on Thursday, August 4th, 2011, in order to break up a series of unauthorized protests, organized in response to educational policies, law enforcement used personnel on foot, on horseback, and in vehicles, who allegedly beat the protesters and used teargas and fire hoses. State spokespersons confirmed that during the dissolution of the protests hundreds of people were detained and almost a hundred police officers were injured. According to available information, a high number of high school students, including minors, and university students, were among those apprehended.⁶³³

D. Indigenous and Afro-descendant leaders

297. The assaults, attacks and harassment targeted at the leaders of ancestral and native peoples affect their communities' development in a variety of ways, as these leaders are more than their communities' political authorities; they are also their spiritual authorities and are regarded as founts of ancestral wisdom and as essential to their peoples' spiritual and cultural development. In its 2006 report, the IACHR expressed concern over the considerable increase in the number of requests for precautionary measures to protect the life and personal integrity of members of indigenous and Afro-descendant peoples, and for the lack of respect for the special relationship that these peoples have to their ancestral territories.⁶³⁴ During the follow-up period, the Commission continued to receive information concerning serious violations of or threats to the basic individual and collective rights of indigenous and Afro-descendant leaders in the region.

298. The IACHR has observed that the attacks on these leaders' right to life and their right to personal integrity persist; many of these attacks are intended to dissuade them from engaging in activities to defend and protect their lands and natural resources, and to defend their right to autonomy and cultural identity.⁶³⁵ The IACHR must emphasize yet again that the murders of these leaders not only seriously affect the cultural integrity of their peoples, but also break down the sense of community that binds them together in their struggle to defend their human rights.

⁶³² IACHR, Hearing "Human Rights and Public Demonstrations in Chile", 143rd session, October 28, 2011.

⁶³³ IACHR, *Press release 87/11- IACHR Expresses Concern for Violence Against Student Protests in Chile*, August 6, 2011.

⁶³⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 220-222.

⁶³⁵ *Idem*.

A number of murders of leaders and traditional authorities were brought to the IACHR's attention in 2010.⁶³⁶ On February 23, the leader and educator of the Nasa people, Andrés Fernando Muelas, was murdered; he was coordinating the youth and adult education program run by the Asociación de Cabildos Indígenas del Norte del Cauca. On July 27, a hired gunman killed Luis Alfredo Socarrás Pimenta, a Wayúu leader and defender of human rights. Indigenous leader U'wa Carmen Elisa Mora was killed on August 13; she was the coordinator of the Office of Indigenous Affairs of the Municipal Government of Saravena (Arauca). The leader of the Sikuani people, Jaime Reyes, was killed on August 14; at the time he was in forced displacement. On August 26, Pasto indigenous leader and council member Ramiro Inampues was killed, along with his wife. On October 14, gunmen killed the indigenous leader and broadcaster Rodolfo Maya Aricape; he was secretary of the indigenous government on the López Adentro reservation in the department of Cauca. On December 5, men wearing hoods killed Ariel Antonio Taba Morales, of the Embera-Chamí people and president of the Asociación de Fruticultores del Resguardo de Nuestra Señora Candelaria de la Montaña, in Ríosucio (Caldas). These murders were politically motivated and associated with the armed conflict. In a number of press releases, the IACHR has voiced concern over these crimes.⁶³⁷

299. At the regional level, the IACHR has observed that assassinations of indigenous and Afro-descendant leaders are frequently followed by threats and tailing of members of their communities or family members who want their deaths investigated. These attacks are clearly targeted at the integrity of the indigenous and Afro-descendant peoples and make access to justice for victims all the more difficult; the terror that such killings instills makes communities fearful of taking up the causes championed by their murdered leaders.

The IACHR received information from Mexico on the threats that State agents and unknown persons were making against the family of Raúl Lucas Lucía and Manuel Ponce Rosas, two Mixtec indigenous leaders who were officials in the Organization for the Future of the Mixtec Peoples [Organización para el Futuro de los Pueblos Mixtecos] (OFPM), who were detained on February 13, 2009 by three persons claiming to be police officers. Their lifeless bodies were found on February 20, 2009, and showed obvious signs of torture. According to the information presented by the beneficiaries of the provisional measures ordered by the Inter-American Court, following the disappearance of the two indigenous leaders their next of kin were reportedly harassed and threatened, in person and by phone, by State agents and strangers to get them to abandon their quest for justice. Furthermore, the state government has not conducted a serious, independent and

⁶³⁶ See IACHR, 2010 Annual Report, Chapter IV – Colombia, March 7, 2011, para. 137.

⁶³⁷ IACHR, Press Release 89/10-IACHR condemns murder of indigenous leaders in Colombia, Washington, D.C., September 1, 2010; IACHR, Press Release 73/10- IACHR condemns murder of human rights defender in Colombia, Washington, D.C., August 2, 2010.

*effective investigation into the facts of the disappearance and execution of Raúl Lucas Lucía and Manuel Ponce Rosas, which places the next-of-kin and the other defenders in a situation of extreme vulnerability.*⁶³⁸

300. Especially troubling to the Commission are the accusations alleging that indigenous and Afro-descendant leaders and their organizations are collaborating with some of the parties in the armed conflict. The Commission believes that such accusations pose an immediate risk for the persons, families and communities concerned.⁶³⁹ This practice is most acute in those states that have problems with organized crime.

Numerous organizations complained that in April 2010, various chiefs, leaders and members of the Guambiano (Misak) people, in the Department of Cauca, were declared to be military targets in leaflets and threatening emails originating from a paramilitary group and signed by the AUC.⁶⁴⁰ Then, in May 2010, the Caldas Indigenous Regional Council, the leaders and organizations belonging to the Embera-Chamí people complained of having been the victims of a threat issued by the paramilitary group Aguilas Negras, declaring them to be a military target.⁶⁴¹ There was also a report made public that a leader of the Embera-Katio people of the Alto Sinú, and daughter of the disappeared leader Kimy Pernía, received threatening telephone calls in July 2010 from an unknown individual calling himself the leader of "the Rastrojos."⁶⁴² Again in Colombia, the information available indicates that the inhabitants of six communities in the Department of Nariño, particularly the leaders of the Council of Black Communities of the Cordillera Occidental de Nariño (COPDICONC), have been harassed, threatened with death and abducted by armed outlaw groups and by the police. It is also alleged that the leaders of COPDICONC are harassed by members of paramilitary groups and the guerrilla movement, who accuse them of collaborating with the other side.

301. The IACHR has been informed of a number of violent measures taken by police to evict indigenous peoples occupying ancestral lands that they believe were unjustly taken from them. This type of repression obstructs the work of indigenous leaders; the repression itself poses an obstacle in those places where these acts of violence are committed; frequently, the demonstrators are unlawfully detained; those responsible for the violence are not punished, and the victims who have been physically mistreated do not receive proper medical attention. All this serves to further weaken the

⁶³⁸ I/A Court H.R., *Matter of Fernández Ortega et al. regarding the United Mexican States*. Order of the Inter-American Court of Human Rights, April 30, 2009. *Visto* 2 f).

⁶³⁹ See IACHR, 2010 Annual Report, Chapter IV – Colombia, March 7, 2011, para. 140.

⁶⁴⁰ Threats denounced, among others, in: "Indigenous Guambiano leaders threatened by paramilitaries", *El Pais* newspaper, April 29, 2010: <http://www.elpais.com.co/paisonline/notas/Abril282010/guambianosamenazados.html>; and <http://www.colectivodeabogados.org/Las-autoridades-del-pueblo-MISAK>.

⁶⁴¹ Urgent Action of the Caldas Indigenous Regional Council (CRIDEC), May 24, 2010. Available at: <http://www.onic.org.co/comunicados.shtml?x=36629>.

⁶⁴² See IACHR, 2010 Annual Report, Chapter IV - Colombia, March 7, 2011, para. 140.

indigenous organization whose purpose is to protect and defend its people's rights, a mission that must generally be a collective effort.

Since July 31, 2010, around 36 Rapa Nui clans have reportedly taken steps to reclaim their ancestral territory on Chile's Easter Island, which they did by occupying the land that they regard as their ancestral territory. As the UN Special Rapporteur on the Rights of Indigenous Peoples wrote, on December 29, 2010 about 70 Rapa Nui people peacefully occupied Riro Kainga Square in the center of Hanga Roa, as an act of protest to claim their ancestral territorial rights. They were evicted by a hundred heavily armed police, who beat some twenty people, including women and children. This occurred when the Government and Rapa Nui Parliament failed to reach an agreement to bring the occupation of Riro Kainga square to a peaceful end.⁶⁴³ Inasmuch as the lives and personal integrity of the Rapa Nui people are in peril because of the alleged acts of violence and intimidation by the police during demonstrations and eviction processes, on February 7, 2011, the Commission granted precautionary measures for the Rapa Nui people and requested, inter alia, that the Chilean State immediately cease and desist from any and all armed violence in taking State administrative or judicial measures against members of the Rapa Nui people, including evictions from public areas or State- or privately-owned property; that it guarantee that the conduct of State agents in the protests and evictions will not jeopardize the lives and personal integrity of the members of the Rapa Nui people.

302. During the follow-up period, the Commission learned of indigenous and Afro-descendant communities being forcibly displaced by the threats and attacks against their leaders. The Inter-American Court has held that Article 22(1) of the Convention protects the right not to be forcibly displaced.⁶⁴⁴ It has also written that freedom of movement and residence is a condition *sine qua non* for a person's free development.⁶⁴⁵ According to the information available, in many places where there is forced displacement, being an indigenous or Afro-descendant leader is a risky matter that puts one in harm's way since the communities tend to be surrounded by danger,⁶⁴⁶ because their territories have strategic value to the guerrilla movement, former paramilitaries and other armed groups.⁶⁴⁷

⁶⁴³ OHCHR, *Easter Island*. Statement of UN Special Rapporteur on the Rights of Indigenous Peoples before the Eviction of Indigenous Rapanui. January 12, 2011. Unofficial translation available at: http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&catid=53:south-america-indigenous-peoples&id=8409:rapanui-statement-of-un-special-rapporteur-on-the-rights-of-indigenous-peoples-james-anaya-before-the-eviction-of-indigenous-rapanui

⁶⁴⁴ I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 207; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 188.

⁶⁴⁵ I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 168. Cf. *Case of the Moiwana Community*, June 15, 2005. Series C No. 124, para. 110, and *Case of Ricardo Canese*, Judgment of August 31, 2004. Series C No. 111, para. 115.

⁶⁴⁶ Independent expert on minority issues. Preliminary Conclusions on the mission to Colombia, 12 February 2010. A/HRC/13/23/Add.3, para. 12.

⁶⁴⁷ *Ibid.*, para. 13.

303. The IACHR has observed that forced displacement in Colombia has had a profound effect on Afro-descendant leaders. According to the 2005 census figures, the Afro-Colombian population was the second largest racial group in the country (accounting for 10.62% of the country's population). In Latin America as a whole, Colombia is second only to Brazil in terms of the size of its Afro-descendant population. According to the Consultancy for Human Rights and Displacement (CODHES 2008), Afro-Colombians represent almost one fourth of the displaced population in Colombia (22.5%) and 12.3% of all Afro-Colombians are displaced persons.⁶⁴⁸ The Commission has received information concerning Afro-descendant leaders who have been demanding title to lands, effective respect for these communities' collective ownership of the land, and opposition to armed groups. These causes have made them the targets of selective assassinations, acts of violence and harassment.⁶⁴⁹ In Chapter IV of its annual reports, the IACHR has made reference to the precarious situation of Afro-descendants in Colombia, especially the threats to their leaders' rights to life and personal integrity.⁶⁵⁰

*Ana Fabricia Córdoba, Afro-descendant community leader who worked with displaced persons seeking the restitution of lands in the Urabá region, member of the organization Ruta Pacífica de las Mujeres (Women's Peaceful Path) and a founder of the Asociación Líderes Hacia delante por un Tejido Humano de Paz (Association of Leaders Moving Forward for a Human Fabric of Peace, LATEPAZ), whose mission is to support victims of forced displacement, died as a result of a gunshot on June 7, 2011. Ana Fabricia Córdoba Cabrera had reported a number of cases in which rights of displaced persons had been violated by paramilitaries in the Medellín neighborhoods of La Cruz and La Honda. The IACHR expressed its deep concern in a press release on June 20, 2011, because Colombian government authorities admitted publicly that the murder of Ana Fabricia Córdoba could have been averted, since the Ministry of the Interior's Protection Program had reportedly known about threats against the community leader since May 9 but had failed to implement protection measures in a timely manner.*⁶⁵¹

304. Furthermore, there is still a very pronounced pattern in the region of instituting baseless criminal cases in which the full weight of the law and the maximum criminal charges are brought against indigenous and Afro-descendant leaders who press their cases to prevent the displacement of their communities or to reclaim their territory which, although often taken over by business interests, they nonetheless still regard as their ancestral territory. The IACHR has observed that multiple criminal complaints are

⁶⁴⁸ UNHCR, *Colombia: ACNUR celebra el año internacional de los afrodescendientes*, May 13, 2011. Available [in Spanish] at: <http://www.acnur.org/t3/noticias/noticia/colombia-acnur-celebra-el-ano-internacional-de-los-afrodescendientes/>

⁶⁴⁹ IACHR. Preliminary Observations of the Inter-American Commission on Human Rights after the visit to Colombia made by the Rapporteur on the Rights of Afro-descendants and against Racial Discrimination. March 27, 2009, para. 59.

⁶⁵⁰ See, *inter alia*, IACHR. Annual Report 2010, Chapter IV, para. 173-194; Annual Report 2009, Chapter IV, paras. 111 and 117; Annual Report 2008, Chapter IV, paras. 104-106; Annual Report 2007, Chapter IV, para. 67, and Annual Report 2006, Chapter IV, para. 42.

⁶⁵¹ IACHR, Press Release 59/11, IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia, Washington, D.C., June 20, 2011.

brought by the affected businesses and their workers or by the authorities; many of the crimes with which the indigenous leaders are charged are written in very vague and broad language, and are, therefore, contrary to the principle of legality.

The Commission has learned of various criminal cases being instituted against leaders and members of the Mapuche people in Chile who participated in public protests to reclaim territories that they regard as their ancestral lands. As the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, James Anaya, wrote in his follow-up to the recommendations made by the previous Special Rapporteur on the situation of indigenous peoples in Chile, there were reportedly procedural irregularities and discrimination against Mapuche individuals, mainly in the fact that Anti-Terrorist Law 18314 was applied to prosecute and convict Mapuche individuals for crimes allegedly committed in disputes to reclaim ancestral territories and natural resources. As the Rapporteur wrote, traditional leaders, other authorities and members of the Mapuche community have been convicted and continue to be tried under various criminal regimes for acts that are basically the Mapuches' struggle for their land claims.⁶⁵² The former Special Rapporteur, Rodolfo Stavenhagen, had observed this situation as far back as his 2003 mission to Chile and recommended that "[c]harges for offences in other contexts ("terrorist threat", "criminal association") should not be applied to acts related to the social struggle for land and legitimate indigenous complaints."⁶⁵³ As Rapporteur James Anaya observed, Juan Carlos Huenulao Lielmil, José Benicio Huenchunao Marín, Patricia Troncoso Robles, Juan Ciriaco Millacheo Lican, Juan Carlos Marileo Saravia and Florencia Jaime Marileo Saravia were all convicted under the Anti-Terrorist Act or the crime of terrorist arson, and sentenced to 10 years and one day; Victor Ancalaf Llaupe was sentenced to five years and one day for the crime of hurling an incendiary device; and Aniceto Norín and Pascual Pichún were convicted and sentenced to five years and one day for the crime of threatening terrorist arson. The UN Special Rapporteur also compiled information in 2009 concerning 15 Mapuches or Mapuche sympathizers who were tried for offenses criminalized in the Anti-Terrorist Act.⁶⁵⁴ The dilemma of the Mapuche people has also been addressed by the Committee for the Elimination of Racial Discrimination, which has recommended that the Government of Chile review the Anti-terrorist Act and make certain that it is not enforced against members of the Mapuche community for acts of social protest.⁶⁵⁵ In its "Examination of

⁶⁵² UN, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum. The situation of indigenous peoples in Chile: follow-up to the recommendations made by the previous Special Rapporteur, A/HRC/12/34/Add.6, October 5, 2009.

⁶⁵³ UN, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum. The situation of indigenous peoples in Chile: follow-up to the recommendations made by the previous Special Rapporteur, A/HRC/12/34/Add.6, October 5, 2009, paragraph 46.

⁶⁵⁴ *Idem*.

⁶⁵⁵ UN, *International Convention on the Elimination of All Forms of Racial Discrimination, Reports Submitted by States Parties in Accordance with Article 9 of the Convention, Final Observations of the Committee for the Elimination of Racial Discrimination, Chile*. Document CERD/C/CHL/CO/15-18, August 13, 2009.

the Fifth Periodic Report from Chile” of April 2007, the UN Human Rights Committee expressed its concern “about the definition of terrorism contained in the Counter Terrorism Act No. 18,314, which may be excessively broad.”⁶⁵⁶

305. The forms of discrimination practiced against those in the Americas who work to promote and defend their ancestral territories and natural resources are carried on in the practices of some national judicial authorities. For the judicial authorities in some countries, the mere fact that one belongs to or is in a leadership position in his or her community is sufficient to implicate him or her in the actions committed by a fringe segment of that community and charge him or her with a criminal offense. Indeed, in some States, if the court authorities determine that an accused indigenous leader is innocent, then a new case will be instituted against the officer of the court who had the case dismissed or against the attorney who represented the accused.

306. According to the information received from civil society organizations, in some countries the aggression, assaults and harassment against indigenous or Afro-descendant leaders can even be traced back to members of the same community, hired by the authorities or criminal groups to minimize his or her people’s claims on their rights. Some of the threats occasionally come from former members of the Army who live in the communities that are home to the indigenous and Afro-descendant leaders. In some countries of the region, the discrimination and social exclusion of indigenous and Afro-descendant peoples is very pronounced, and manifests itself in a variety of ways, one being the impotence of the judicial institutions that should be hearing the causes that the community leaders are spearheading in defense of the rights of the members of their communities.

307. Here, the Commission has observed a number of structural problems in the hemisphere that make it difficult for indigenous and Afro-descendant leaders to get their causes into the justice system. The Commission has learned that the State institutions charged with enforcing the law do not have sufficient technical and economic support, which makes the institutions weak and their staff disinclined to perform their functions with the necessary due diligence and impartiality, particularly in those areas where local and regional power groups are able to exert serious influence. In its report titled *Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*, the IACHR enumerated some of the factors that make captive Guaraní communities’ access to justice difficult. They are related to the consequences of the fragile State institutions,⁶⁵⁷ such as their lack of technical and economic support and of the human resources needed to conduct the investigations, and the lack of interpreters of indigenous languages within the court system.⁶⁵⁸

⁶⁵⁶ UN, *International Covenant on Civil and Political Rights, Human Rights Committee. Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*. Concluding observations of the Human Rights Committee, Chile, doc. CCPR/C/Chl/Co/5- April 17, 2007.

⁶⁵⁷ IACHR, *Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*, December 24, 2009, paragraphs 140 and 141.

⁶⁵⁸ International Labour Organisation, *A Global Alliance against Forced Labour*. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, Continued...

Concerning the structural problems that indigenous leaders face in getting their causes into the courts, in Guerrero, Mexico, an important percentage of the population belongs to indigenous communities, who conserve their traditions and cultural identity and reside in municipalities where marginalization and poverty are widespread. In general, the indigenous population is in a situation of extreme vulnerability, which manifests itself in different areas, such as in the administration of justice and health care services. In many cases, the members of this population are defenseless because they do not speak Spanish and do not have interpreters, owing to the lack of financial resources to hire a lawyer, to travel to health care centers or to the courts, and also because they are often victims of abusive practices or practices that violate due process. Owing to this situation, members of the indigenous communities do not use the organs of justice or the public agencies engaged in the protection of human rights, either because they distrust them or because they fear reprisals.⁶⁵⁹

E. Defenders of the right to a healthy environment

308. The relationship between protection of the environment and the enjoyment of human rights has been the subject of numerous declarations by specialized international conferences,⁶⁶⁰ and resolutions adopted by the General Assembly of the United Nations⁶⁶¹ and of the OAS.⁶⁶² In the inter-American sphere, Article 11 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, “*Protocol of San Salvador*”, expressly recognizes every person’s right “to live in a healthy environment and to have access to basic public services.”

309. Although the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights make no express reference to protection of the

...continuation

93rd meeting, 2005, para. 181; IACHR, *Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*, December 24, 2009, para. 139.

⁶⁵⁹ I/A Court H.R., *Case of Fernández Ortega v. Mexico*. Judgment of August 30, 2010. Series C No. 215, para. 78.

⁶⁶⁰ For example, Principle 1 of the Declaration from the United Nations Conference on the Human Environment, held in Stockholm, Sweden, June 5 to 10, 1972, reads as follows: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.” Available at:

<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>. For its part, Article 16 of the Universal Declaration of the Rights of Peoples, Algiers, July 4, 1976, provides that “[e]very people has the right to the conservation, protection and improvement of its environment.” Principle 1 of the Rio Declaration on Environment and Development provides that “[h]uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” Available at: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

⁶⁶¹ As established in UN General Assembly resolution 3281(XXIX), Charter of Economic Rights and Duties of States, of December 12, 1974, “The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States.”

⁶⁶² OAS General Assembly, resolution AG/RES. 1819 (XXXI-O/01), *Human Rights and the Environment*.

environment, the IACHR has written that a healthy environment is a necessary precondition for exercise of a number of fundamental rights, which are profoundly affected by the degradation of natural resources. The Commission's interpretation is that both the Declaration and the American Convention reflect a priority concern with the preservation of individual health and welfare, legal interests which are protected by the interrelation between the rights to life, security of person, physical, psychological and moral integrity, and health, and thereby refer to the right to a healthy environment.⁶⁶³

310. The right of defenders to participate in activities to protect and promote a healthy environment was recognized by the United Nations General Assembly back in 1982, in its *World Charter of Nature*, which provides that all persons "shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation."⁶⁶⁴ Agenda 21, the United Nations Programme of Action from the Rio Conference on Environment and Development, recognized the importance of cooperation between organizations and the States to preserve the environment and achieve development.⁶⁶⁵

311. The Commission has examined a number of issues related to the link between the environment, defenders and human rights;⁶⁶⁶ it has also decided a number of petitions⁶⁶⁷ and requests seeking precautionary measures⁶⁶⁸ that are for the protection of defenders who strive for a healthy environment. The Commission observes that defenders play an essential role in ensuring the balance between environmental protection and the

⁶⁶³ IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System*, December 30, 2009, paras. 190 and 191.

⁶⁶⁴ UN General Assembly, Resolution 37/7, *World Charter of Nature*, October 28, 1982, Principle 23. Available at: <http://www.un.org/documents/ga/res/37/a37r007.htm>

⁶⁶⁵ "Countries, in cooperation, where appropriate, with national, regional or international organizations, should ensure that essential human resources exist, or be developed, to undertake the integration of environment and development at various stages of the decision-making and implementation process." Earth Summit, United Nations Programme of Action from Rio, Agenda 21, approved in Rio de Janeiro, June 3 to 14, 1992, para. 8.10, available at: http://www.un.org/esa/dsd/agenda21/res_agenda21_08.shtml

⁶⁶⁶ Cf. IACHR, Report No. 69/04 (Admissibility), Petition 504/03, Community of San Mateo Huanchor and its members, Peru, October 15, 2004; Report No. 76/09 (Admissibility), Petition 1473-06, Community of La Oroya, Peru, August 5, 2009.

⁶⁶⁷ IACHR, Report No. 11/04 (Admissibility), Petition 735/01, Teodoro García Cabrera and Rodolfo Montiel Flores, Mexico, February 27, 2004; Application of the Inter-American Commission on Human Rights, Teodoro Cabrera and Rodolfo Montiel Flores v. Mexico, June 24, 2009; Report 67/05 (Admissibility), Petition 61/03 Blanca Jeanette Kawas, Honduras, October 13, 2005; Application of the Inter-American Commission on Human Rights, Blanca Jeanette Kawas Fernandez v. Honduras, February 4, 2008; Report No. 63/04 (admissibility), Petition 60/2003, Carlos Antonio Luna, Honduras, October 13, 2004; Report No. 58/06 (admissibility), Petition 1083/05, Erwin Haroldo Ochoa López and Julio Armando Vásquez Ramírez, Guatemala, July 20, 2006; Report No. 80/07 (Merits), Case 11.658, Martín Pelicó Coxic, Guatemala. See also *Report on the situation of human rights defenders in the Americas*, para. 220.

⁶⁶⁸ For example, PM 240/09 – Mauricio Meza, Colombia; PM 239/09 – Héctor Antonio García Berríos *et al.*, El Salvador; PM 196/09 – Amplification of Precautionary Measures, Honduras- Andrés Tamayo.

development of the countries of the region.⁶⁶⁹ They are also vital to guaranteeing that every individual's right to life and right to personal integrity are protected from exposure to contaminating agents that, emanating from a variety of sources, can affect the quality of the air, water, soil and subsoil, and can be inimical to the enjoyment of human rights. The Inter-American Court has held that "[t]he recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work."⁶⁷⁰

312. In its 2006 report, the IACHR wrote that the struggle for the right to a healthy environment has led thousands of human rights defenders to organize to struggle for the effective observance of their rights and many leaders have been targeted by threats and attacks because of their work to protect economic and social rights.⁶⁷¹ During the follow-up period, the IACHR has observed that the attacks, aggression and harassment targeted at defenders of the environment have become more pronounced in some States of the hemisphere,⁶⁷² mainly where there are serious tensions between the sectors that support certain industrial activities, like the extractive industries, which have enormous economic interests at stake, and those sectors that resist the implementation of projects in order to avoid the forced relocation of the communities that will be inevitable if the projects are established or to prevent the harmful effects of the contamination that the industries will produce in the waters, air, soil and subsoil.

313. According to the reports the Commission has received, many of the projects developed by the extractive industries are the result of free-trade agreements and commitments made to increase foreign investment in some States. Most of these projects are run by foreign businesses; the States that are hosts to the projects often do not properly monitor their activities and environmental effects.⁶⁷³ The Commission observed

⁶⁶⁹ Principle 3 of the Rio Declaration on Environment and Development reads as follows: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."

⁶⁷⁰ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Judgment of April 3, 2009. Series C No 196, para. 148.

⁶⁷¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, Chapter IV "Groups of Especially Exposed Defenders," para. 215.

⁶⁷² In this connection, the United Nations Special Rapporteur on the Situation of Human Rights Defenders has observed that: "Private corporations have allegedly been impeding the activities of defenders working, inter alia, [...] the exploitation of natural resources [...]. The Special Rapporteur has received information about instances in which security guards employed by oil and mining companies have allegedly threatened to kill, harassed and attacked human rights defenders protesting against the perceived negative impact of the companies' activities on the enjoyment of human rights by local communities." United Nations General Assembly, A/65/223, Report of the Special Rapporteur on the Situation of Human Rights Defenders, August 4, 2010, paragraphs 9 and 10. Available at: <http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>

⁶⁷³ IACHR, Hearing, *on the Situation of Environmental Defenders in Mesoamerica*, 140th session, October 25, 2010.

that a number of countries in the region where violations are committed do not have adequate legislation to ensure effective enjoyment of the human rights that the extractive industries can affect. Where such laws either do not exist or are weak, there are no regulations governing the requirements regarding prior consultation with, and the informed consent of the indigenous communities living on the sites where the industries will build the projects.⁶⁷⁴

314. The IACHR would again make the point that as part of their general obligation to adopt measures to protect the human rights of all persons, States have a duty to enforce the national and international environmental protection standards that they have enacted or accepted. This obligation is particularly relevant in the case of non-State actors whose conduct is harmful to natural resources and whose non-compliance can engage the State's international responsibility.⁶⁷⁵

315. To protect the environment, in practice States have resorted to a variety of internal means, including the establishment of quality, production or emissions standards; licensing or regulation of dangerous activities; the provision of economic incentives or disincentives; penalties for particularly harmful activities through criminal law; or the creation of private liability regimes to discourage and compensate for environmental damage.⁶⁷⁶ As the IACHR has previously observed, whatever internal course of action is selected, effective enforcement of the environmental protection measures in relation to private parties, particularly extractive companies and industries, is essential to avoid the State's international responsibility for violating the human rights of the communities affected by activities detrimental to the environment.⁶⁷⁷

316. The attacks, aggression and harassment targeted at environmental defenders expose the problem of the State's non-compliance with its obligations where environmental protection is concerned. In many cases, a State fails to comply with its own laws, which pits the industries against the communities neighboring the projects. The Commission has received information concerning a number of ways in which the work of environmental defenders is obstructed in the case of projects run by the extractive

⁶⁷⁴ IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System*.

⁶⁷⁵ IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System*, para. 203.

⁶⁷⁶ See in this regard, SHELTON, Dinah, *Environmental Rights and Brazil's Obligation in the Inter-American Human Rights System*, The George Washington International Law Review, Volume 40 No.3, 2008-2009, p. 736; IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System*, para. 191. Available at: <http://cidh.org/countryrep/Indigenous-Lands09/TOC.htm>

⁶⁷⁷ IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System*, para. 203.

industries in places like Brazil⁶⁷⁸, El Salvador⁶⁷⁹, Guatemala⁶⁸⁰, Honduras⁶⁸¹, Mexico⁶⁸², Ecuador⁶⁸³, Panama⁶⁸⁴ and Peru⁶⁸⁵.

317. According to the information the Commission has received, the murders and other violations that environmental defenders have suffered are region-wide in the case of the extractive industry, which is not just the mining industry as it includes other areas such as logging. The Commission has received information indicating that in Brazil, at

⁶⁷⁸ Amnesty International's Statement on the murders of campesinos in Pará, June 2, 2011. Available [in Portuguese] at: http://www.cptpe.org.br/index.php?option=com_content&view=article&id=2881:declaracao-da-anistia-internacional-sobre-os-assassinatos-de-camponeses-no-para&catid=2:noticia&Itemid=29

⁶⁷⁹ Amnesty International. *Salvadoran environmental activists killed and radio station staff threatened*, January 5, 2010. Available at: <http://www.amnesty.org/en/news-and-updates/salvadoran-environmental-activists-killed-radio-station-staff-threatened-20100105>; WOLA, Washington Office on Latin America, *Alarming Series of Violent Acts in Cabañas, El Salvador*, February 8, 2011. Available at: http://www.wola.org/publications/alarming_series_of_violent_acts_in_cabanass_el_salvador

⁶⁸⁰ Cf. UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, A/HRC/16/20/Add.1, January 26, 2011, para. 43. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.20.Add.1.pdf>; Amnesty International, *Persecution and resistance. The experience of Human Rights Defenders in Guatemala and Honduras*, August 2007. Available at: <http://www.amnesty.org/es/library/asset/AMR02/001/2007/es/d8c31be5-d381-11dd-a329-2f46302a8cc6/amr020012007en.pdf>; CIEL, *Environmental Defenders in Danger: The Situation in Mexico and Central America in the Context of Industrial Mining*. Report prepared by the Center for International Environmental Law (CIEL) for the thematic hearing of the Inter-American Commission on Human Rights on the *Situation of Environmentalists in Mesoamerica*, 140th session, October 25, 2010. Available at: http://www.ciel.org/Publications/IACHR_Oct10.pdf

⁶⁸¹ Amnesty International, *Honduras: Human Rights Defenders at Risk: Environmental Activists Killed in Olancho Department*, February 29, 2007. Available at: <http://www.amnesty.org/en/library/asset/AMR37/001/2007/en/2fb9f11d-d3b1-11dd-a329-2f46302a8cc6/amr370012007en.pdf>; CIEL, *Environmental Defenders in Danger: The Situation in Mexico and Central America in the Context of Industrial Mining*. Report prepared by the Center for International Environmental Law (CIEL) for the thematic hearing of the Inter-American Commission on Human Rights on the *Situation of Environmentalists in Mesoamerica*, 140th session, October 25, 2010. Available at: http://www.ciel.org/Publications/IACHR_Oct10.pdf

⁶⁸² OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2010, paragraphs. 60-64; CIEL, *Environmental Defenders in Danger: The Situation in Mexico and Central America in the Context of Industrial Mining*. Report prepared by the Center for International Environmental Law (CIEL) for the thematic hearing of the Inter-American Commission on Human Rights on the *Situation of Environmentalists in Mesoamerica*, 140th session, October 25, 2010. Available at: http://www.ciel.org/Publications/IACHR_Oct10.pdf

⁶⁸³ FIDH- CEDHU, *Intervención Minera a gran Escala en Ecuador y vulneración de derechos humanos, Caso Corriente Resources*, December 2010. Available [in Spanish] at: <http://www.fidh.org/IMG/pdf/Resumen-Ejecutivo-Intervencion-Minera.pdf>

⁶⁸⁴ IACHR, *Hearing on the Situation of Environmentalists in Mesoamerica*, 140th session, October 25, 2010. See also Environmental Advocacy Center, *Harnessing the power of Law*, 2011. <http://www.ciampanama.org/>

⁶⁸⁵ Confederación Nacional de Comunidades del Perú Afectadas por la Minería, *La Resistencia de las comunidades de Ayavaca*, Lima 2010. Available [in Spanish] at: <http://www.scribd.com/doc/49862817/LA-RESISTENCIA-DE-LAS-COMUNIDADES-DE-AYAVACA-POR-EL-TERRITORIO-LA-VIDA-EL-AGUA-Y-LA-AUTONOMIA>.

least 125 activists and campesino leaders have received death threats; in the space of just five days (May 24 to 28, 2011) four persons were killed for their activities in defense of the environment.⁶⁸⁶ In El Salvador, in the short six-month period from June to December 2009, three environmental defenders opposed to the mining industries were murdered;⁶⁸⁷ another was killed in 2011.⁶⁸⁸ In Guatemala, 4 defenders working for a healthy environment died in just one month (January to February 2010).⁶⁸⁹ In Mexico, at least 12 persons were killed in the period from 2006 to 2012, among them public officials and civilian defenders of the right to a healthy environment.⁶⁹⁰

⁶⁸⁶ Comissão Pastoral da Terra (CPT), *CPT acaba de enviar à ministra Maria do Rosário novas ameaças contra defensores dos direitos humanos*, June 7, 2011. Available [in Portuguese] at: http://www.cptnacional.org.br/index.php?option=com_content&view=article&id=664:cpt-acaba-de-enviar-a-ministra-maria-do-rosario-novas-ameacas-contradefensores-dos-direitos-humanos&catid=12:conflitos&Itemid=54; Amnesty International, *Las autoridades deben actuar para detener muertes en el Amazonas*, June 2, 2006. Available [in Spanish] at: <http://www.amnistia.org.pe/2011/06/02/las-autoridades-deben-actuar-para-detener-las-muertes-en-el-amazonas/>

⁶⁸⁷ Marcelo Rivera Moreno, age 37, a member of the Friends of San Isidro Cabañas Association (ASIC) and an activist against the El Dorado mine operations; Ramiro Rivera Gómez, age 53, a member of the Cabañas Environmental Committee (CAC); Dora Alicia Sorto, age 32 and also a member of the CAC. *Agencia Prensa Rural, El Salvador: Activistas antiminería y defensores del medio ambiente asesinados*, February 5, 2010. Available [in Spanish] at: <http://www.prensarural.org/spip/spip.php?breve2122>

⁶⁸⁸ IACHR, *Press Release 62/11. IACHR condemns murder of human rights defender in El Salvador*, Washington, D.C., June 24, 2011. IACHR hearing on the *Risk for environmental defenders in Mesoamerica*, 140th session, October 25, 2010.

⁶⁸⁹ The body of German Antonio Curup, member of the movement opposing the establishment of a cement plant in San Juan Sacatepéquez, was found on February 14, 2010 in the Bárcenas jurisdiction; he had been decapitated and his body showed signs of torture; Octavio Roblero, a leader of the Resistance for the Protection of Natural Resources and the Rights of Peoples [Frente de Resistencia en Defensa de los Recursos Naturales y Derechos de los Pueblos] (FRENA) was killed on February 17, 2010, as he was closing up his business in front of the Malacatlán San Marcos bus terminal; Juan Antonio Chen, a Mayan attorney, a member of the Departmental Citizens' Group and a collaborator of the Human Rights Office of the Archdiocese of Guatemala (ODHAG), was killed on February 17, 2010; Evelinda Ramírez Reyes, Chair of the Retalhuleu FRENA Committee, was murdered on January 13, 2010, as she was returning home after several meetings with government officials in Guatemala City on January 11, 12 and 13. Cf. FIDH, *Ola de Asesinatos de defensores de derechos humanos en Guatemala*, February 22, 2010. Available [in Spanish] at: <http://www.fidh.org/Ola-de-asesinatos-de-defensores-de-derechos>

⁶⁹⁰ According to the information received by the IACHR, the following environmental defenders were killed in Mexico during the follow-up period: Mariano Abarca Roblero, a member of the Chicomuselo Civic Front, which is part of the Mexican Network of Those Affected by the Mining Industry [Red Mexicana de Afectados por la Minería] (REMA); he had allegedly been opposed to mining in his community and was reportedly murdered outside his home in Chicomuselo on November 27, 2009; Armando Villarreal Martha, a leader of the National Agro-dynamic Organization [Organización Agrodinámica Nacional] (OAN) had allegedly taken part in the nationwide movement of farmers and campesinos who were asking the current government to review the North American Free Trade Agreement (NAFTA); on March 14, 2008, as he and his son were driving through Nuevo Casas Grandes, they were killed by bullets fired from a passing vehicle; Ernesto Rábago Martínez; a member of the Bowerasa organization (Haciendo Camino) was reported working for the indigenous communities of the Sierra Tarahumara when, on March 2, 2010, he was allegedly killed in his office in the city of Chihuahua; Aldo Zamora, tlahuica campesino, was reportedly killed on May 17, 2006, in Santa Lucía Ocuilan, presumably by a group of illegal loggers; the victim had reportedly participated in a campaign to put a stop to clandestine logging in the forest of San Juan Atzingo in the Launas de Zempoala National Park; Fernando Mayen, an attorney and member of the community of San Luis Ayucan, Municipality of Jilotzingo, state of Mexico (Technical Council of Citizens of Jilotzingo), was shot three times in the head; his body was discovered in his car on March 12, 2008, along the highway between Mexico City and Toluca; Juan Gavia Xingú and Bernardo Sánchez Venegas, inspectors of the

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The IACHR has received information concerning the situation of defenders who oppose the illegal logging of the jungles of Amazonas, in Brazil. The Commission learned of the murder of José Claudio Ribeiro da Silva and his wife, Maria do Espírito Santo da Silva, who were leaders of the Projeto de Assentamento Agroextrativista Praia Alta Piranha, where they worked fighting the illegal felling of trees in a nature reserve located in Nova Ipuxina, in the state of Pará. According to the information the Commission received, the activist couple were shot to death on May 24, 2011, near their home inside the nature reserve where they had lived for more than 20 years. They made a living through the sustainable production of nuts. The two activists had been the targets of threats for several years, because of their complaints about loggers interested in exploiting the nature reserve for the illegal felling of trees of high commercial value for the production of coal for the steel industry. The IACHR received information to the effect that in November 2010, at an international forum in Manaus, José Claudio Rivero da Silva had publicly announced that he was in fear for his life.⁶⁹¹

Within days of the activists' death, the Commission received news of the murder of Adelino Ramos, an activist in the Movimento Camponês Corumbiara, who had allegedly been threatened for having complained about the illegal felling of trees in the states of Acre, Amazonas and Rondônia. According to the information available, Adelino Ramos was selling vegetables at an encampment when a passing motorcyclist shot him.

The day after the death of Adelino Ramos, Erenilton Pereira, a farmer living seven kilometers from the town of Nova Ipuxina, in Pará, which is where José Claudio Ribeiro da Silva and his wife Maria do Espírito Santo da Silva were living, was also killed. He had reportedly witnessed the activist couple's killers leaving the crime scene. He himself had gone to buy fish on the banks of Lake Tucuruí when a man he was talking to shot him to death.⁶⁹²

318. The IACHR has received information from a number of States where businesses have hired security units to harass, abuse and attack persons who head activities, projects or movements to protect a healthy environment in areas where the businesses' industrial projects are being run. The targets are mainly those defenders whose work, the businesses believe, could put a stop to the economic activities of those

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Federal Office for the Protection of the Environment, Valentín Reyes García, Representative of the National Commission for Protected Natural Areas, killed in central Mexico; the four were in the community of Albarrán, Temascaltepec, investigating the environmental effects of the "La Guitarra" mine; Leonel Castro Santana and his nephew Ezequiel Castro Pérez, members of the Campesino Environmental Organization of the Sierra de Petatlán and Coyuca de Catalán, in Ajuchiotán del Progreso, Guerrero, were reportedly murdered on June 26, 2009, as reprisals for their activities; Francisco Quiñones, an opponent of the mining activities in Peña Colorada in the state of Jalisco, was reportedly murdered on March 11, 2006; Miguel Ángel Pérez, from Tepoztlán and a member of the Morelos Peoples Council, was working to protect water and land and was killed on October 31, 2009.

⁶⁹¹ BBC World, Brazil: *A Dark Day for Brazil's Amazon Jungle*, May 25, 2011. Available [in English] at: <http://ipsnews.net/news.asp?idnews=55788>

⁶⁹² Amnesty International's statement on the murders of campesinos in Pará, June 2, 2011. Available [in Portuguese] at: http://www.cptpe.org.br/index.php?option=com_content&view=article&id=2881:declaracao-da-anistia-internacional-sobre-os-assassinatos-de-camponeses-no-para&catid=2:noticia&Itemid=29

involved in the projects. The Commission must once again underscore the point that the acts of third parties can compromise a State's international responsibility.

On April 23, 2007, the Commission granted precautionary measures in favor of priest Marco Arana and attorney Mirtha Vásquez and other members of the organization "Group of Integral Education for Sustainable Development" (GRUFIDES: Grupo de Formación Integral para el Desarrollo Sostenible), an institution devoted to defense of the environment, training, and legal assistance for peasant communities around the city of Cajamarca. The information available indicates that the beneficiaries have been subjected to intimidation and threats by individuals who support mining in the region, and that some persons were assassinated in confrontations between the sectors that support mining and those who protest mining activities. The Commission asked the Peruvian State to adopt the measures necessary to guarantee the life and personal integrity of the beneficiaries, verify the effective implementation of the measures of protection by the competent authorities, provide perimeter surveillance for the headquarters of the NGO GRUFIDES, provide police accompaniment to the GRUFIDES personnel who must travel to the peasant communities, and report on the actions taken to investigate judicially the facts that gave rise to the precautionary measures. The Commission continues to monitor the beneficiaries' situation.

319. During the follow-up period, the Commission received reports of disappearances and abductions of persons defending a healthy environment, who had opposed the mega-projects run by foreign companies in some States. Attacks of this kind are the most serious obstacles to the work of promoting and protecting human rights⁶⁹³ and cause irreparable harm to the immediate victim, instill fear in those involved in causes of this type, thereby directly minimizing the opportunities to engage in activities in defense of human rights.⁶⁹⁴ In addition to the disappearances and abductions, the Commission has been informed of a number of murders of environmental defenders. According to the information available, many of the murders were said to have been committed after the murdered environmental defender engaged in some activity to promote environmental protection.

Gustavo Marcelo Rivera Moreno, promoter of culture and opposition leader of the implementation of a mining project in the Department of Cabañas in El Salvador disappeared on June 18, 2009.⁶⁹⁵ After several searches, his colleagues found his body in a well 30 meters deep and it presented signs of torture. As was informed to the commission in its 140 Session, the authorities rejected the hypothesis that the homicide was linked to the activities of protection of the environment undertaken by Mr. Rivera and attributed

⁶⁹³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 158.

⁶⁹⁴ Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 43; I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 153; I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2006. Series C No. 121, para. 78.

⁶⁹⁵ Human Rights Watch, *El Salvador: investigate killing of Community leader*, August 8, 2009. Available at: <http://www.hrw.org/news/2009/08/07/el-salvador-investigate-killing-community-leader>

the crime to personal motives. Although the perpetrators were convicted for the crime in September 2010, no investigations were conducted with regards to the masterminds of the murder and the case was closed. Further, in July 2009, three journalists of Radio Victoria, a community radio, received death threats after denouncing Mr. Rivera's disappearance⁶⁹⁶.

The murder of Gustavo Marcelo Rivera Moreno is one of four that have been informed to the IACHR in the last two years, committed against human rights defenders that have opposed the mining activities in Cabañas, El Salvador. In this regard, the IACHR Has also been informed of the murder of Juan Francisco Duran Ayala, leader of the Cabañas Environmental Committee for the Defense of Water and Natural Resources (CAC for its acronym in Spanish), whose body was found on June 4, 2011 with two gunshot wounds to the head; Ramiro Rivera Gómez, a CAC member, was murdered on December 20, 2009, when he was traveling in a pickup truck on a rural road in the canton of Trinidad; and Dora Alicia Sorto, also a CAC member, was killed with a firearm on December 26, 2009.⁶⁹⁷

320. During the follow-up to the 2006 report, the Commission has observed a number of death threats made against environmental defenders who take a stand against projects run by the extractive industries. The States are obligated to take reasonable measures to prevent the threats, assaults and harassment of human rights defenders; conduct serious investigations of the facts brought to their attention; and, where appropriate, punish those responsible and adequately redress the victim.⁶⁹⁸

The Commission has monitored the situation of human rights defenders in Olancho, Honduras. Back on December 22, 2006, the IACHR granted precautionary measures for Father Andrés Tamayo, and Messrs. Elvin Noe Lanza, Santos Efraín Paguada, Víctor Manuel Ochoa, René Wilfredo Gradiz, Macario Zelaya and Pedro Amado Acosta, members of the Olancho Environmentalist Movement [Movimiento ambientalista de Olancho] (MAO) who were receiving the typical kinds of threats made against environmental defenders in that part of Honduras. On June 9, 2006, the IACHR requested information from the State concerning the situation of these persons in order to determine whether precautionary measures were needed. While in its replies of June 16, August 3 and October 12, 2006, the State alluded to certain protective measures offered to Father Tamayo. It provided no information about any protection arranged for the other members of the MAO. On December 20, 2006, Mr. Heraldo Zúñiga was murdered; he was one of those for whom precautionary measures had been ordered. Also killed was his companion

⁶⁹⁶ IACHR hearing on the *Risk for environmental defenders in Mesoamerica*, 140th session, October 25, 2010; Mining Watch Canada, Urgent Action: Threats and Violence Against Community Leaders in Cabañas, El Salvador, 21 August 2009, <http://www.miningwatch.ca/en/urgent-action-threats-and-violence-against-community-leaders-caba-el-salvador>; Human Right Watch, *El Salvador: Investigate Killings of Community Leader*, August 8, 2009. Available at: <http://www.hrw.org/en/news/2009/08/07/el-salvador-investigate-killing-community-leader>

⁶⁹⁷ IACHR, Press release 62/11, *IACHR condemns murder of a human rights defender in El Salvador*, Washington D.C., June 24, 2011; IACHR hearing on the *Risk for environmental defenders in Mesoamerica*, 140th session, October 25, 2010.

⁶⁹⁸ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174, paragraph 166.

Roger Murillo. In view of the background information on the matter, the Commission asked the Government of Honduras to take the necessary steps to guarantee the life and personal integrity of the beneficiaries and to report the measures taken to conduct a judicial investigation of the events that necessitated the adoption of precautionary measures. The IACHR continues to monitor the beneficiaries' situation.

321. A number of environmental defenders have been the targets of statements made in the media and by public officials, describing them as “enemies of development,” “holding the people back” or “eco-terrorists.”⁶⁹⁹ Statements of this kind discredit the work performed by the defenders and create a climate hostile to the defense of rights. The Commission must emphasize yet again that statements made by representatives of the State against a backdrop of political violence, acute polarization or heightened social conflict, send the message that acts of violence intended to silence environmental defenders enjoy the acquiescence of the government, especially when those statements are made by the highest authorities of the State.⁷⁰⁰

According to the information the Commission has received, during the oil-workers stoppage in the Amazonian province of Orellana, Dayuma parish, the President of Ecuador, Rafael Correa, delivered a speech on December 4, 2007, in which he made statements such as “ecologists are extortionists”, “the communities are not protesting; these protests come from a group of terrorists”; “romantic environmentalists and infantile ecologists are the ones working to de-stabilize the government.”⁷⁰¹

322. The Commission has also received reports on the government’s excessive use of force to suppress protests in which environmental defenders are participating. There are indications that many of these events have been infiltrated by persons sent by the industries whose interests are antithetical to the causes that the protests are being held to advance; these people are there to instigate acts of violence so that the police will move in and break up the demonstrations.

At its 140th session, the Commission was informed of events that transpired in Panama on May 26, 2009, in an encampment that the Committee in Favor of Shutting Down the Petaquilla Mine and the National Coordinator for the Defense of Lands and Waters [Coordinadora Nacional para la Defensa de Tierras y Aguas] (CONADETIAGUAS) had set up near the community of Coclesito, to cut off a mining company’s access in Panama.

⁶⁹⁹ Cf. IACHR, Hearing on the *Risk for environmental defenders in Mesoamerica*, 140th session, October 25, 2010; Equipo Jurídico INREDH, *Nuevo Escenario para la criminalización a los defensores*, Frente Ecuatoriano de Derechos Humanos. Available [in Spanish] at: http://fedhu.org/index.php?option=com_content&task=view&id=84&Itemid=2

⁷⁰⁰ Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 209.

⁷⁰¹ INREDH, *Encuentro Latinoamericano Defensores-as de la naturaleza frente a la criminalización de la protesta*, Quito, Thursday, July 2, 2009. Available [in Spanish] at: http://www.inredh.org/index.php?option=com_content&view=article&id=258%3Amemoria&Itemid=144; REDAMAZON, *Ecuadorian President says “ecologists are terrorists,”* December 5, 2007. Available at: <http://redamazon.wordpress.com/2007/12/05/ecuadorian-president-call-ecologists-terrorists>

According to the information the Commission has received, on May 26, 2009 the Penonomé police had allegedly entered the encampments with anti-riot units at around 9:00 a.m., without making any attempt to enter into a dialogue with the demonstrators who had been encamped there for 16 days. The police threw tear gas at the demonstrators and allegedly arrested 19 campesinos, who were beaten and then jailed in Coclesito. According to the information available, while the police operation was in progress, helicopters from the mining companies were flying overhead.⁷⁰²

323. In some States of the region, human rights defenders working to preserve and protect the environment encounter legal obstacles when attempting to take their causes to court; it has also been reported that some States do not have laws to provide adequate and effective judicial remedies for complaints related to environmental harm, much less to obtain full reparations.⁷⁰³ According to the information the Commission has received in the public consultation, some of these problems are as follows: a) the large sums that the judges require be posted as bond for an injunction to secure a temporary shutdown of the works or the operation of the industries whose contaminants may be affecting people's lives or health; b) the fact that the communities may not have active legal standing to file collective suits to protect the right to a healthy environment; and c) a requirement that the remedies shall only be allowed to move forward if the extractive businesses are being charged with something they did, not something they did not do; in other words the failure to take the necessary measures to prevent environmental degradation shall not be sufficient cause of action.

324. The Commission was also troubled by the significant increase in the abuse of criminal law by businesses that have extractive projects in the region; the attorneys representing these businesses bring suits charging human rights defenders and community leaders who resist the industries' projects with crimes like "sabotage", "terrorism", "insurrection", "unlawful association", "instigation to commit crime" and others. The IACHR finds that the broad and generic language in which these criminal offenses are described is exploited by those seeking to thwart opposition to the activities of the extractive businesses and the mega-projects, sometimes with the connivance of public officials, to stretch the definition of those criminal offenses to include the public protests and demonstrations that environmental defenders lead.

F. Human rights defenders of lesbian, gay, trans, bisexual and intersex persons

325. The leaders of organizations that promote and defend the rights of lesbian, gay, trans, bisexual and intersex persons (LGTBI) play a fundamental role in the region, both in

⁷⁰² Cf. IACHR, Hearing *Risk for environmental defenders in Mesoamerica*, 140th session, October 25, 2010; Observatorio de Conflictos Mineros de América Latina, *La verdad de la represión a las comunidades*, June 7, 2009.

⁷⁰³ United Nations Environment Programme, Regional Office for Latin America and the Caribbean, *Access to Environmental Justice in Latin America*, available [in Spanish] at: http://www.pnuma.org/deramb/documentos/Acceso_Justicia_Ambiental_Raul_Branes.pdf

terms of public oversight to ensure compliance with the States' obligations vis-à-vis the rights to privacy, equality and non-discrimination, and in general, in the process of putting together a global agenda of human rights that includes respect for that guarantee of the rights of lesbian, gay, trans, bisexual and intersex persons.

326. Under the United Nations *Declaration on Defenders*, every person has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms and “to develop and discuss new human rights ideas and principles and to advocate their acceptance.”⁷⁰⁴ Inasmuch as the principle of equality and the right to a private life have to be protected and developed, the activities undertaken to defend and promote the free exercise of a sexual orientation and gender identity⁷⁰⁵ are inherent in the mission of defending and promoting human rights.

327. The IACHR must again make the point that sexual orientation is a fundamental component of every individual's private life and that every individual has the right to a private life free from arbitrary and abusive interference by government.⁷⁰⁶ The principle of equality and non-discrimination gives every person the right to demand that the State respect and ensure the free and full exercise of his or her rights, without any form of discrimination;⁷⁰⁷ any difference in treatment based on a person's sexual orientation is suspect⁷⁰⁸ in the sense that the presumption shall always be that any such difference in treatment is incompatible with the principle of equality⁷⁰⁹ and non-discrimination.⁷¹⁰

⁷⁰⁴ Art. 7 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.53.144.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.53.144.en)

⁷⁰⁵ The OAS General Assembly has addressed the protection that States must afford “for human rights defenders who work on the issue of [...] human rights violations committed against individuals because of their sexual orientation and gender identity.” OAS General Assembly, Human Rights, Sexual Orientation and Gender Identity, AG/RES. 2504 (XXXIX-0/09), approved at the fourth plenary session held on June 4, 2009.

⁷⁰⁶ IACHR, *Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters*, Case 12,502 v. Chile, September 17, 2010, para. 111; see also IACHR, Report 71/99, Case 11.656, Marta Lucía Álvarez Giraldo, Colombia, May 4, 1999.

⁷⁰⁷ IACHR, Application to the Inter-American Court of cases 12.576, 12.611 y 12.612, *Aniceto Norín Catriman, Juan Patricio Marileo Saravia, Víctor Ancalaf Llaupe et al. v. Chile*, para. 156. See also, I/A Court H.R., *Legal Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A. No. 18, para. 83.

⁷⁰⁸ IACHR, *Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters*, Case 12,502 v. Chile, September 17, 2010, para. 95.

⁷⁰⁹ The Court has considered that “The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights that are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.” I/A Court H.R., *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 44, para. 55.

⁷¹⁰ Consistent with the UN Human Rights Committee and the Inter-American Court, the Commission has defined discrimination as “any distinction, exclusion, restriction or preference which is based on any ground
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Therefore, any difference in treatment in the enjoyment of the fundamental rights and freedoms will mean that the corresponding State is obliged to prove that it passes the strict scrutiny test, i.e., the test of whether it is both objective and reasonable, which also means whether it serves some legitimate purpose, and is suitable in the sense of a logical means-to-end relationship between the goal sought and the distinction made, and whether it is necessary and proportional.⁷¹¹

328. In its 2006 report, the IACHR underscored the fact that many beneficiaries of precautionary measures were persons dedicated to protecting “the rights of homosexuals, lesbians, and transgenders” and that they, too, were victims of threats and occasional aggression, precisely because of their work.⁷¹² During the follow-up period, the IACHR has observed with concern an increase in the number of acts of aggression, harassment, threats and smear campaigns waged by State and non-State actors alike against persons who defend the rights of LGBTI persons. Other systems for the protection of human rights share the same concern.⁷¹³

329. At the inter-American level, during the follow-up period since the 2006 report, the OAS General Assembly has approved four resolutions: 2435 (XXXVIII-0/08),⁷¹⁴

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such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” United Nations, Human Rights Committee, General Comment 18, Non-Discrimination, 10/11/89, CCPR/C/37, paragraph 7; IACHR, *Application filed with the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters, Case 12.502 v. Chile*, September 17, 2010, para. 76; I/A Court H.R., *Judicial Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 92.

⁷¹¹ IACHR, *Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters, Case 12.502 v. Chile*, September 17, 2010, paras. 85-86, 95.

⁷¹² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 252.

⁷¹³ At the global level, the United Nations Special Rapporteur on the Situation of Human Rights Defenders has expressed profound concern “about the continuing denigration campaigns and the violent threats against defenders of lesbian, gay, bisexual and transgender rights.” United Nations General Assembly, Report of Mrs. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders,” A/HRC/13/22, 13th session, December 30, 2009, paragraph 49. Available at: <http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.13.22.pdf>; at the regional level, within the European system, the European Parliament adopted a resolution back in 1994 on Equal rights for Gays and Lesbians in the EC, where it called upon States to partner with national organizations to take measures and initiate campaigns against the increasing acts of violence perpetrated against homosexuals and to ensure that homosexual women’s and men’s organizations are able to apply for funding and be judged according to the same criteria as any other type of organization. See European Parliament, Resolution on Equal Rights for Gays and Lesbians in the European Community, Resolution A3-0028/94, June 3, 2008, general considerations 9-11

⁷¹⁴ OAS General Assembly, Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2435 (XXXVIII-0/08), approved at the fourth plenary session, held June 3, 2008.

2504 (XXXIX-0/09),⁷¹⁵ 2600 (XL-O/10),⁷¹⁶ and 2635 (XLI-0/11),⁷¹⁷ all titled “Human Rights, Sexual Orientation and Gender Identity.” The General Assembly urged the member states “to ensure adequate protection for human rights defenders who work on the issue of acts of violence, discrimination, and human rights violations committed against individuals on the basis of their sexual orientation and gender identity.”⁷¹⁸

330. The IACHR has received a large amount of information concerning the problems and obstacles to the activities of those who promote and defend the rights of LGBTI persons. These include murder, threats, criminalization of their activities, the failure to take a different approach to the investigation of violations committed against them, and discourse calculated to discredit the defenders of the rights of LGBTI persons.

331. In the case of the murders committed, serious problems arise when it comes to the victim’s identification and the investigators’ grasp of the magnitude of the events, mainly because many attacks on LGBTI leaders take place within a generalized context of violence against persons who practice a sexual orientation or gender identity that is different from the one perceived as socially acceptable. This makes it difficult to ascertain whether a murder of a leading figure in the LGBTI community was committed because of his or her work defending the rights of LGBTI persons, or because the victim was himself or herself an LGBTI person. The failure on the part of the authorities to conduct an exhaustive analysis of every possible theory of the crime and thus establish whether the motive for the crime was the victim’s promotion and defense of human rights, and the absence of special records from the perspective of the LGBTI communities are serious problems; the murder of one of their leaders has the same chilling effect on defenders of LGBTI rights as it has on other human rights defenders, instilling in them a fear of the work of defending and promoting their rights, which only serves to perpetuate the violations committed against them.

332. Among the defenders of LGBTI rights who lost their lives during the follow-up period, the IACHR received information from Brazil concerning the murder of Gabriel Henrique Furquim, a member of the Dignity Group for the defense of homosexuals’ rights and of the Brazilian Association of Gays, Lesbians, Bisexuals and Trans Persons, on June 21, 2009,⁷¹⁹ and the murder of Iranilson Nunes Da Silva, a member of the Revida organization murdered in Jacareí on November 23, 2010.⁷²⁰ In the case of Colombia, the IACHR received

⁷¹⁵ OAS General Assembly, Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2504 (XXXIX-0/09), approved at the fourth plenary session, held June 4, 2009.

⁷¹⁶ OAS General Assembly, Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2600 (XL-0/10), approved at the fourth plenary session, held June 8, 2010.

⁷¹⁷ OAS, General Assembly, Human Rights, Sexual Orientation, and Gender Identity, AG/RES. 2635 (XLI-0/11), approved at the fourth plenary session on June 7, 2011.

⁷¹⁸ *Idem*.

⁷¹⁹ Grupo Gay Da Bahia, *Militante de grupo gay é assassinado em Curitiba*, Redação Bem Paraná, June 22, 2009. Available [in Portuguese] at: http://www.ggb.org.br/gabriel_henrique_parana_Adeus_amigo.html

⁷²⁰ Infoglobo Extra, *Jacareí: homem morto com 12 tiros recebia ameaça*, 25 de novembro de 2010. Available [in Portuguese] at: <http://extra.globo.com/noticias/brasil/jacarei-homem-morto-com-12-tiros-recebia->

information concerning the February 16, 2008 murder of Fredys Pineda, in the city of Apartadó;⁷²¹ the October 25, 2009 murder of Wanda Fox (Walter Cuarán), a member of the Zona Trans Project of the PROCREAR, in Bogotá;⁷²² the March 6, 2009 murder of Álvaro Rivera Linares in Cali;⁷²³ and the March 17, 2011 murder of John Edison Ramírez Salazar, a member of the Fundación Desarrollo y Paz.⁷²⁴ Information was received from Honduras concerning the 2009 murder of Neraldys Perdomo and Imperia Gamaniel Parson, from the organization Colectivo Unidad Color Rosa, and Walter Trochez.⁷²⁵ In the case of Mexico, information was received concerning the May 4, 2011 murder of Quetzalcóatl Leija Herrera, president of the Council for Studies and Projects in Comprehensive Human Development.⁷²⁶ According to information released by the Sexual Diversity Forum of the National Institute against Discrimination, Xenophobia and Racism (INADI), in 2010 alone, 50 LGBTI activists were reportedly killed in Latin America.⁷²⁷

333. The IACHR has observed that when a human rights defender brings a case in court, especially one related to attacks or murders of LGBTI persons, the threats against the defender intensify. The danger is even greater when an LGBTI defender participating in a criminal case or an LGBTI witness to a crime travels by night or in isolated areas, and no State security measures have been taken to protect him or her; the perpetrators of the crimes may even be the police themselves. During the coup d'état in Honduras, the IACHR granted a number of precautionary measures to protect LGBTI leaders participating in criminal proceedings and who had been the targets of threats and harassment that, absent any protection from the State, put them in extreme peril and exposed their rights to irreparable harm.

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[ameaca-21670.html](#); Acapa, *Homossexual morre com 12 tiros em Jacarei; polícia suspeita de homofobia*, November 25, 2010. Available [in Portuguese] at: <http://acapa.virgula.uol.com.br/politica/homossexual-morre-com-12-tiros-em-jacarei-policia-suspeita-de-homofobia/2/32/12204>

⁷²¹ *Semana*, *Un muerto sí importa, Réquiem por un amigo asesinado: Reflexiones en torno al asesinato de Fredys Pineda*, February 21, 2008. Available [in Spanish] at: http://www.semana.com/wf_InfoBlog.aspx?IdBlg=29&IdEnt=1249

⁷²² Colombia Diversa, *Todos los Deberes, pocos los derechos. Situación de derechos humanos de lesbianas, gays, bisexuales, transgeneristas en Colombia*, Bogotá, 2011, p. 32

⁷²³ Press Release 11/09, IACHR condemns murder of human rights defender in Colombia, Washington, D.C., March 12, 2009.

⁷²⁴ FIDH, *Asesinato del Sr. John Edison Ramírez Salazar, defensor de derechos humanos de la comunidad LGBTI*, Washington D.C., January 20, 2011. Available [in Spanish] at: <http://www.fidh.org/Asesinato-del-Sr-John-Edison>

⁷²⁵ IACHR, Press Release 4/11, *IACHR deeply concerned about members of the transgender community in Honduras*, Washington, D.C., January 20, 2011.

⁷²⁶ IACHR, Press Release 42/11, *IACHR condemns murder of LGBTI rights activist in Mexico*, Washington, D.C., May 10, 2011.

⁷²⁷ Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo, Available [in Spanish] at: <http://inadi.gob.ar/>; *Numeralia, La homofobia en LA en Números*, available [in Spanish] at: <http://ombudsgay.org/index.php/2011/05/27/la-homofobia-en-la-en-numeros/>

The IACHR granted several precautionary measures persons after the coup d'état in Honduras in 2009 to protect LGTBI that had been participating in the advancement of criminal processes. Among them, on January 29, 2010, it granted precautionary measures in favor of Indyra Mendoza Aguilar (Director of the organization Catrachas), Nohelia Flores Alvarez, Fátima Maritza Ulloa Becerra, and Ana Lourdes Ordoñez. According to available information, on December 17, 2008, in Tegucigalpa, Nohelia Flores Álvarez was forced to enter into the car of a member of the Preventive Police, who gun in hand demanded her sexual services. It is reported that Nohelia refused and the police official threatened to kill her. The following day, the police officer, accompanied by other two officials, returned in a pick-up truck looking for Nohelia and the three of them stabbed her 17 times in the throat, back, stomach and arms; she passed out and they abandoned her in some bushes. At the hospital, Indyra Mendoza took pictures to serve as evidence in a criminal process and accompanied Nohelia to denounce the facts, which are being investigated by Fatima Maritza Ulloa Becerra and Ana Lourdes Ordoñez, agents of the National Direction of Criminal Investigation in Tegucigalpa. In the request for precautionary measures it is alleged that the four beneficiaries are being threatened and harassed as a result of their participation in the criminal process.

334. The Commission was disturbed to find that one of the most serious problems in the region when defending the rights of LGTBI persons is that in some countries of the hemisphere, any sexual orientation other than heterosexual continues to be criminalized as offenses labeled “sodomy” (or “buggery”), “gross indecency”, “unnatural crimes” and so on. While during the follow-up period the Commission was pleased to learn that some countries like Nicaragua had decriminalized homosexuality,⁷²⁸ it nonetheless observes that in many Caribbean countries crimes of this kind are still on the books, with the result that the right of association for purposes of promoting and defending the rights of LGTBI persons are prohibited, the argument being that their organizations and activities are “illegal.” There are laws criminalizing behavior based on non-heterosexual orientation in Antigua⁷²⁹ and Barbuda⁷²⁹; the Bahamas⁷³⁰; Barbados⁷³¹; Belize⁷³²; Dominica⁷³³; Grenada⁷³⁴; Guyana⁷³⁵;

⁷²⁸ In 2008, Nicaragua amended its previous Criminal Code, Article 204 of which classified “sodomy” as a criminal offense. Cf. *El Nuevo Diario, Entra en vigor nuevo Código de Nicaragua*, July 9, 2008. Available [in Spanish] at: <http://www.elnuevodiario.com.ni/nacionales/20940>

⁷²⁹ Defining the crime of “buggery”. Cf. Sexual Offences Act, 1995, Sec. 12.

⁷³⁰ Defining “unnatural crimes”. Sexual Offences & Domestic Violence Act, 1991, Ch. 99, Sec. 16

⁷³¹ Defining “buggery” as a criminal offense. Cf. Sexual Offences Act, 2002, Ch. 154, Sec. 9

⁷³² Defining “unnatural crime”. Criminal Code, 2000, Ch. 101, Sec. 53.

⁷³³ Criminalizing “gross indecency” and “buggery”. See, respectively, Sexual Offences Act, 1998, Sec. 14, and Sexual Offences Act, 1998, Sec. 16.

⁷³⁴ Criminalizing “unnatural crime”. Criminal Code, 1958, Sec. 435

⁷³⁵ Classifies “gross indecency” and “unnatural offence” as crimes. Cf. Criminal Law (Offences) Act, 1893, Ch. 8.01, Sec. 352; Criminal Law (Offences) Act, 1893, Ch. 8.01, Sec. 353.

Jamaica⁷³⁶; St. Kitts and Nevis⁷³⁷; Saint Lucia⁷³⁸; Saint Vincent and the Grenadines,⁷³⁹ and Trinidad and Tobago.⁷⁴⁰

The IACHR has received information from Jamaica indicating that under its Offences against the Person Act, “buggery” is still a crime punishable by imprisonment.⁷⁴¹ In Jamaica, being an LGBTI person is a criminal offense; but Jamaican law also prohibits the establishment of human rights organizations whose purpose is to defend the rights of LGBTI persons, on the grounds that such an organization is “unlawful”. This exposes defenders of the rights of LGBTI persons to the danger of being killed, beaten and threatened, and the police feel free to ignore complaints filed concerning this type of violence.⁷⁴² In its preliminary observations on the in loco visit it made to Jamaica in December 2008,⁷⁴³ the Commission vigorously condemned the high level of homophobia within Jamaican society, which has materialized in the form of the violent deaths of persons perceived as being gay, lesbian, trans or bisexual, and slashings, group assaults, arbitrary detentions and police harassment of LGBTI persons. The Commission has also received information concerning statements made by public officials to the effect that the rights of LGBTI persons cannot and must not be defended. It learned of statements made by MP Ernest Smith, a member of the Jamaican Parliament, who claimed that

⁷³⁶ Criminalizing “unnatural offences”; “outrages on decency” and “buggery.” Cf. Offences Against the Person Act, 1864, Sec. 76; Offences Against the Person Act, 1864, Sec. 77; Offences Against the Person Act, 1864, Sec. 79.

⁷³⁷ Classifying “buggery” as a criminal offence. Cf. Offences Against the Person Act, 1990, Ch. 56, Sec. 56.

⁷³⁸ Classifying “serious indecency” and “buggery” as criminal offences. Cf. Offences Against the Person Act, 1990, Ch. 56, Sec. 56.

⁷³⁹ Classifying “buggery” and “gross indecency” as criminal offences. Cf. Criminal Code, 1990, Sec. 146 y 148.

⁷⁴⁰ Classifying “buggery” and “serious indecency” as criminal offences. Cf. Sexual Offences Act, 1986, Ch. 11:28, Sec. 13 y 16.

⁷⁴¹ Arts. 76 and 77 of the Offences against the Person Act. Available at: <http://www.moj.gov.jm/laws/statutes/Offences%20Against%20the%20Person%20Act.pdf>; see also: [TIME: The Most Homophobic Place on Earth?](#) By Tim Padgett. Wednesday, 12 April 2006.

⁷⁴² During its visit, the IACHR received reports on four murders committed under circumstances that would suggest homophobia. The four murders were committed within an 18-month period. One was the result of a firebomb attack on the home of someone perceived as being homosexual. The IACHR also received information about a man thought to be a homosexual who was hacked to death with a machete. Cf. IACHR, Press Release No. 59/08 “IACHR issues preliminary observations on visit to Jamaica”, Kingston, Jamaica, December 5, 2008. Available at: <http://www.cidh.oas.org/Comunicados/English/2008/59.08eng.htm>. The Commission was also informed of the murder of Lenford “Steve” Harvey, who headed the Support for Life AIDS group, an organization that provides assistance to members of the LGBT community in Jamaica. According to the information available, three men had reportedly burst into Harvey’s home on November 30, 2005, confronting him and his two flat mates. The armed men demanded money. One of the gunmen reportedly yelled “We hear that you are gay” to the trio. The two flat mates denied this, but Harvey apparently stayed silent. The flat mates were bound and gagged. Harvey was forced at gunpoint to get into a car and was abducted by his assailants. Two hours later he was found shot to death.

⁷⁴³ IACHR, Press Release No. 59/08, *IACHR issues preliminary observations on visit to Jamaica*, Kingston, Jamaica, December 5, 2008.

"homosexual activities seem to have overtaken this country." He also said that he was "concerned that homosexuals in Jamaica have become so brazen, they've formed themselves into organisations." On February 16, 2009, MP Smith had asked that the activities of the organization called the Jamaica Forum for Lesbians, All-Sexuals and Gays (JFLAG) be shut down, claiming that "They should be outlawed! How can you legitimise an organisation that is formed for the purpose of committing criminal offences?"⁷⁴⁴

335. Apart from the murders and threats that defenders of LGBTI persons suffer, a recurring problem in the region is that the work done by advocates of LGBTI rights is not recognized as being legitimate. The IACHR has received information concerning opposition groups or church groups that are constantly waging campaigns to discredit organizations that defend the rights of LGBTI persons, which heightens the atmosphere of hostility toward and condemnation of their activities. It has serious repercussions for their ability to meet and organize themselves to defend and promote their rights, and to participate in making public policy and obtain funding for their activities.

The IACHR received information to the effect that authorities denied members of the LGBT community the right to congregate in public spaces, specifically Duarte Park, a traditional LGBT gathering place in Santo Domingo's Colonial Zone. On April 6, a newspaper ran several articles citing concerns by Catholic Cardinal Nicolas de Jesus Lopez Rodriguez regarding the "vulgarity" carried out by couples of the same sex late at night. Additionally, some members of the local neighborhood association complained of sexual exhibitionism by gays, lesbians, and heterosexuals alike and charged that the LGBT community in particular was not respectful of morality and tradition. The Cardinal's concerns led the National Police to increase the number of police patrolling the area. The inability to freely associate and gather in Duarte Park became a point of contention between government authorities and members of the LGBT community, who claimed that they are the victims of police harassment whenever they gather in public places.⁷⁴⁵

336. Given the picture described above, in order to facilitate the work of LGBTI leaders, the States must implement strategies aimed at getting law enforcement, the officers of the court and society in general to accept and protect lesbian, gay, trans, bisexual and intersex persons.

⁷⁴⁴ Human Right Watch, *Letter to Prime Minister Golding*, February 19, 2009. Available at: <http://www.hrw.org/en/news/2009/02/19/letter-prime-minister-golding>

⁷⁴⁵ Embassy of the United States in the Dominican Republic, 2010 Dominican Republic Human Rights Report, available at: <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154503.htm>

The Commission was informed of the February 24, 2010 Directive 006⁷⁴⁶ which permanently replaced the April 2009 Provisional Directive issued by the National Police of Colombia. This directive sets out a number of criteria to encourage members of the police to respect and protect the LGBTI community. According to the information received by the Commission, under these directives a number of meetings have been held in different cities across the country,⁷⁴⁷ at some of these meetings, agreements were reached to create, inter alia, work programs to encourage respect for and acceptance of the human rights of the LGBT population; instructions for police conduct vis-à-vis the LGBT population; active, ongoing training of members of the police force in every division, regarding the rights and measures for understanding sexual diversity and gender identities.⁷⁴⁸ While the Commission applauds these directives, which may well represent progress in the protection and recognition of the rights of LGBTI persons and of the defenders of the rights of these communities, the Commission has received information indicating that these directives are not being followed in practice.⁷⁴⁹

337. Another frequent obstacle to proper investigation, prosecution and punishment of those responsible for crimes committed against LGBTI persons –an obstacle found across the region- is that most crimes committed against LGBTI persons are classified as crimes of passion; the lines of investigation pursued are not tailored to determining whether the crime was in fact a crime of passion or a crime committed because of the victim’s sexual orientation or preference. The Commission recognizes that some States in the region have made an effort to create special units to investigate and analyze crimes committed by and against members of the LGBTI community.

⁷⁴⁶ Ministry of National Defense, National Police, *Permanent Administrative Directive No. 006. Guarantees and observance of the rights of the LGBT community*, February 24, 2006.

⁷⁴⁷ Colombia Diversa, *Human Rights Situation of the LGBT Population. Shadow Report submitted to the United Nations Human Rights Committee*, May 2010, p. 10.

⁷⁴⁸ Commitments made by the Cartagena Metropolitan Police Force to the LGBTI community, Available [in Spanish] at: <http://www.caribeafirmativo.com/wp-content/uploads/2010/07/COMPROMISO-POLICIAL.doc>

⁷⁴⁹ On September 9, 2009, Nathalia Diaz Restrepo, a member of the organization Santamaria Fundacion, was subjected to police abuse in Cali. According to her complaint, when Nathalia was walking around Las Veraneras neighborhood at night, in the company of Lulu Muñoz, she was approached by police officers identified by the number 241009, who requested to search them. Given the fact that both women were trans, they demanded to be searched by a woman police officer. But the policemen refused and arrested both women for refusal to be searched. While the arrest was proceeding, Nathalia invoked Directive 058 of the National Police, to which one of the officers replied, “We are not respecting that fake treaty.” According to the complaint, the detention was not only unjustified but it also did not follow the legal procedures required, such as due registration and allowing those arrested to make a phone call. Nathalia and Lulu also stated that they were verbally attacked by the policemen. Colombia Diversa, *Human Rights Situation of the LGBT Population. Shadow Report submitted to the United Nations Human Rights Committee*, May 2010, p. 10.

The IACHR was informed that a special unit was created in Mexico's Federal District to serve the LGBTI community. The special unit is attached to the Office of the CUH-5 Territorial Coordinator, which is under the Office of the Special Investigating Prosecutor in Cuauhtémoc. The head of the unit is a transgender attorney, responsible for that section of the Public Prosecutor's Office.⁷⁵⁰ Under the November 23, 2010 agreement to establish the special unit, the latter will have jurisdiction over: a) the crime of discrimination committed on the basis of a person's sexual orientation or preference; b) various crimes whose commission is the result of homophobia or that were presumably committed because of gender identity or expression; c) preliminary inquiries instituted into other crimes where the plaintiffs, complainants, victims, aggrieved parties or likely suspects are persons with an LGBTTI (lesbian, gay, bisexual, transsexual, transgender, transvestite or intersex) sexual orientation or preference by gender identity or expression.⁷⁵¹ The Commission observes that the unit can be effective in supporting respect for the work of the defenders of LGBTI persons, provided its functions are known to the general public and its activities are implemented effectively. The Commission will follow the activities of this special unit and hopes that units like it will be established in other parts of the country where crimes against members of these communities have been committed.⁷⁵²

G. Defenders of migrant workers and their families

338. The Commission has decided to include defenders of migrant workers and their families in this chapter because of the disturbing situation facing those who work to defend and assist migrant workers of various nationalities in transit through Mexico on their way to the United States, given the current context of militarization and organized crime in some areas of the country.

339. In its *Report on Immigration in the United States: Detention and Due Process*, the Commission addressed the international human rights standards applicable to migrants.⁷⁵³ The Inter-American Court, for its part, has addressed the matter in its *Advisory*

⁷⁵⁰ El Universal, *Una lucha a favor de los suyos*, February, 22 2011. Available [in Spanish] at: <http://www.eluniversal.com.mx/ciudad/105289.html>

⁷⁵¹ AGREEMENT A/023/2010 FROM THE ATTORNEY GENERAL OF THE FEDERAL DISTRICT, CREATING THE SPECIAL UNIT TO SERVE THE LGBTTI COMMUNITY, published in the Official Gazette of the Federal District, November 30, 2010. Available [in Spanish] at: <http://cgservicios.df.gob.mx/prontuario/vigente/r379601.doc>

⁷⁵² On May 10, 2011, the Inter-American Commission on Human Rights (IACHR) condemned the murder in Mexico of Quetzalcóatl Leija Herrera, who was president of the Center for Studies and Projects for Integral Human Development (CEPRODEHI) and worked to defend and promote the rights of lesbian, gay, bisexual, trans, and intersex persons (LGBTI) in the city of Chilpancingo, Guerrero. According to the information the IACHR received, Quetzalcóatl Leija had participated in promoting the "Law of Societies of Coexistence" before the Legislature of the Local Congress; advocated for the "Bill to Prevent and Eliminate Discrimination in Guerrero"; reported to the authorities 16 cases allegedly involving homophobia-related crimes; and organized six gay-pride marches in the state of Guerrero, among other activities to defend the rights of LGBTI persons. Cf. *IACHR Condemns Murder of LGBTI activist in Mexico*, Washington, D.C., May 10, 2011.

⁷⁵³ IACHR, *Report on immigration in the United States: Detention and Due Process*, December 30, 2010. Available at: <http://IACHR.org/countryrep/USImmigration.esp/Indice.htm>

*Opinion on the Juridical Condition and Rights of the Undocumented Migrants.*⁷⁵⁴ The International Convention on the Protection of the Rights of All Migrant Workers and Their Families⁷⁵⁵ sets forth a number of rights that also appear in the American Convention on Human Rights, but drafted to specifically apply to the protection of migrants.⁷⁵⁶ As the Court has held, States are required to recognize the basic human rights of all persons within their territory, irrespective of their legal status and in accordance with the principles of equality before the law and non-discrimination.⁷⁵⁷ Likewise, while the States can establish systems to control the entry and departure of undocumented migrants to and from their territory, such systems must also be applied in strict observance of the guarantees of due process and respect for human dignity.⁷⁵⁸

340. Because of its geopolitical proximity to the United States, Mexico is a country of origin, transit, destination and return for migrants. According to the Office of the Deputy Secretary for Population, Migration and Religious Matters, which is part of the Secretariat of the Interior, every year approximately 150 thousand undocumented migrants enter Mexico; the majority are from Central America.⁷⁵⁹ While in Mexico, migrants find it difficult to exercise their rights when dealing with the immigration controls and control points set up by the State, which may result in violations of due process and the right to personal liberty; however, given the current circumstances in Mexico as a result of organized crime and the militarization of certain areas, migrants are frequently exposed to a wide variety of violations of their rights, ranging from threats to abductions and even murder.⁷⁶⁰

⁷⁵⁴ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraph 118.

⁷⁵⁵ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted by the United Nations General Assembly in resolution 45/158 of December 18, 1990. Available at: <http://www2.ohchr.org/english/law/cmw.htm>

⁷⁵⁶ The United Nations Convention underscores the right to life (Art. 9); the right not to be subjected to torture or cruel, inhuman and degrading treatment or punishment (Article 10); the right not to be subjected to slavery or bondage or to perform forced or compulsory labor (Art. 11), etc.

⁷⁵⁷ I/A Court H.R., *Judicial Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraph 118.

⁷⁵⁸ I/A Court H.R., *Judicial Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraph 119.

⁷⁵⁹ CNDH, *Informe Especial sobre Secuestro de Migrantes en México*, February 22, 2011, p. 5. Available [in Spanish] at: <http://www.cndh.org.mx/InfEspecialSecuestroMigrantes7.pdf>

⁷⁶⁰ IACHR, Annex to Press Release 82/11. Preliminary observations of the Rapporteurship on the Rights of Migrant Workers of the IACHR to Mexico, August 2, 2011. See also, *UN Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico*, March 31, 2011. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10907&LangID=E>

The situation of migrants is serious when one considers that according to what the National Human Rights Commission (CNDH) has reported, in the period from September 2008 to February 2009, it learned of 198 cases of abductions in Mexico in which 9,758 migrants were deprived of their freedom. It was also documented that 55% of the victims were abducted in the southern portion of the country; 11.8% were abducted in northern Mexico, and 1.2% in central Mexico. The geographic region where the remaining 32% were abducted could not be determined. In early 2010, the CNDH conducted a survey based on the information in its regional offices. The survey found that in the month of August 2009 alone, a total of 1,211 migrants were victims of abduction.⁷⁶¹

341. Those dedicated to defending the rights of migrant workers are addressing issues related to due process and personal liberty in cases involving detentions and deportations of migrants who are undocumented in Mexico; but they are also involved in documentations activities, filing complaints and monitoring human rights violations committed against migrants. Many people assist those who seek the protection of shelters in various parts of the country. The situation of defenders of migrant workers is an issue of concern to the entire region, as they are engaged in the business of protecting persons who are from other countries in the hemisphere, such as El Salvador, Guatemala, Honduras, Nicaragua, Panama and others.⁷⁶² The Commission observes that the new Immigration Law in Mexico, published on May 25, 2011, contains a definition of a human rights defender.⁷⁶³

342. The IACHR has received information about the situation of those who defend the rights of migrants. That information reveals some of the obstacles that a defender of the rights of migrants might encounter: abduction, unlawful detentions; criminalization of his or her activities; searches of his or her organization; stigmatization as a defender of criminals, and obstacles in getting a hearing for complaints of violations of migrants' rights.

343. On the issue of abductions and subsequent murders, news was received to the effect that on April 2, 2009, four armed subjects detained Raúl Ángel Mandujano Gutiérrez, Director of Migrant Services of the Chiapas State Secretariat for Southern Border Development, whose was said to be involved in the work of a number of organizations that defend the rights of migrants.⁷⁶⁴ He had just been in a meeting with a committee of diplomats

⁷⁶¹ CNDH, *Informe Especial sobre Secuestro de Migrantes en México*, February 22, 2011, p. 12. Available [in Spanish] at: <http://www.cndh.org.mx/InfEspecialSecuestroMigrantes7.pdf>

⁷⁶² According to the information available, after being in operation for one year, one of the shelters for migrants –San Juan Diego– had served more than 17 thousand migrants from El Salvador, Guatemala, Honduras, Nicaragua, Panama, and elsewhere. Cf. El Universal, *Realizan operativo en casa del migrante en Tuxtla*, July 2, 2010. Available [in Spanish] at: <http://www.eluniversal.com.mx/notas/692415.html>

⁷⁶³ Article 3 of the Immigration Law, published in the Federation's Official Gazette of May 25, 2011, defines a human rights defender as "any person or organization in civil society who, either individually or collectively, promotes and advocates for the protection or observance of human rights, fundamental freedoms and individual guarantees, at either the national or international level." Available [in Spanish] at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf> [translation ours].

⁷⁶⁴ OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and* Continued...

from the United Nations, the International Organization for Migration and the Government of El Salvador. According to the information the Commission has obtained, the body of Ángel Mandujano was reportedly found some months later, in the Mazatlán area. He appeared to have been beaten and tortured.⁷⁶⁵

According to the organizations' reports, on 22 March, Ignacio Muñiz Zamora, a legal adviser to migrants at the Beato Juan Bautista Scalabrini Migrants Rights Centre (Centro de Derechos Humanos Beato Juan Bautista Scalabrini), in Nuevo Laredo, Tamaulipas state, was approached by two unidentified armed men. The two men tried to force Ignacio Muñiz Zamora into their vehicle. During the struggle one of the men threatened him saying "you shouldn't mess with us, stop what you are doing" ("no debes de meterte con nosotros y deja de hacer lo que estas haciendo"). The men then pointed a gun at Ignacio Muñiz Zamora, stole two laptop computers and a radio that he was carrying with him and drove off. This is not the first time that Ignacio Muñiz has been threatened.⁷⁶⁶ The IACHR also received information on the threat that a migrant reported to Guadalupe Calzada, Director of the "San Juan Diego" Shelter in Lechería, state of Mexico, on January 30, 2011. According to the migrant's account, a stranger had warned him that there were plans to burn down the shelter and kill the Guatemalans and the shelter director. According to the information available, that threat might have come from criminal groups active in the area and who believe that the shelter poses a threat to their criminal activities.⁷⁶⁷

344. According to the information received, persons who document violations of migrants' rights have been unlawfully detained. The IACHR received information concerning the detention of Irineo Mujica Arzate, who had appeared at and taken photographs of an operation conducted by the National Immigration Institute and the Oaxaca State Secretariat of the Navy in Las Palmas, Nitelpec, on March 31, 2008. According to the information available, Irineo Mujica was held in custody for five hours; her belongings were taken away, which contained evidence of the brutality committed against migrants traveling on a train, and the testimony and photographic evidence of the alleged rape of two Central American migrant women.⁷⁶⁸

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the risk. Report on the Situation of Human Rights Defenders in Mexico, 2010, Annex 1 paragraph 4. Available [in Spanish] at: <http://www.hchr.org.mx/files/doctos/Libros/informepdf.pdf>.

⁷⁶⁵ Mileno, *Encuentran cuerpo de ex director de oficina de migrantes en Chiapas*, September 1, 2009. Available [in Spanish] at: <http://www.milenio.com/cdb/doc/noticias2011/0040b737a39dc5ab49b345a8c1b0f15d>

⁷⁶⁶ Amnesty International, *Mexican Migrants Rights Defenders Attacked*, March 31, 2011. Available at: <http://www.amnesty.org/en/library/asset/AMR41/016/2011/en/1cfae9d9-091a-46b0-8043-be6ca9c538ea/amr410162011en.html>

⁷⁶⁷ Amnesty International, *Mexico: fears for staff and migrants at shelter*, February 1, 2011. Available at: <http://www.amnesty.org/en/library/asset/AMR41/003/2011/en/9df6b9de-dbfd-478d-a867-14b951656ffb/amr410032011en.html>

⁷⁶⁸ OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2010, Annex 1 paragraph 48. Available [in Spanish] at: <http://www.hchr.org.mx/files/doctos/Libros/informepdf.pdf>.

345. As for the unfounded criminal cases brought against persons who aid migrants, the IACHR received information indicating that either criminal groups or the authorities frequently harass those who assist migrants by threatening to report them for the crime of trafficking in persons.

The IACHR was informed that Concepción Moreno Arteaga was detained on March 9, 2005, in the community of El Ahorcado, Municipality of Pedro Escobedo in Querétaro, for the crime of trafficking in persons. Concepción Moreno was providing assistance and food to migrants in transit when five members of the Federal Investigation Agency (AFI) reportedly stepped out of a car and, after beating the migrants in her home, had forced her to get into the vehicle. Concepción Moreno was reportedly sentenced to six years in prison for violations of the General Population Law, based on a preliminary inquiry that connected her to alleged traffickers of undocumented migrants from the municipality of El Marqués. According to the information available, she was brought face to face with the alleged pollero with whom she was alleged to be associated, who said that he did not know her and that there was a mix-up.⁷⁶⁹ After spending two and a half years in prison, Concepción Moreno was released on August 31, 2007, when she proved her innocence on appeal.⁷⁷⁰

346. Another obstacle that defenders of the rights of migrants encounter is social stigmatization by those who view them as aiding and abetting criminals. According to the information received, in some areas of the country, both the media and the general public blame defenders for sheltering migrants who are undocumented in the country and for the crimes that foreign migrants commit, and claim that they are harboring criminals.

347. Some shelters that provide assistance to migrants have been raided by alleged members of the police. The IACHR learned of a raid on the Tultitlán Migrant Shelter in the state of Mexico, which provided assistance to more than 23,000 migrants, most from Central America.⁷⁷¹ According to the information available, individuals wearing hoods and with the insignia of the Office of the Attorney General, had allegedly raided the shelter without a court order and using force. They reportedly attempted to take away some 20 undocumented Central American migrants, whom they loaded onto their trucks. The Lechería area residents joined together to demand that the undocumented migrants be released. They also demanded identification from the supposed police, whereupon the latter released the

⁷⁶⁹ La Jornada, *Lleva dos años presa una mujer acusada de pollera por dar de comer a migrantes*, March 9, 2007. Available [in Spanish] at: <http://www.jornada.unam.mx/2007/03/09/index.php?section=estados&article=032n1est>

⁷⁷⁰ OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los Defensores de Derechos Humanos en México, [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2010, paragraph 53. Available [in Spanish] at: <http://www.hchr.org.mx/files/doctos/Libros/informepdf.pdf>.

⁷⁷¹ Prensa Libre, *Casa del Migrante ha recibido 23 mil centroamericanos en dos años*, January 20, 2011. Available [in Spanish] at: http://www.prensalibre.com/internacionales/Casa-Migrante-recibido-centroamericanos-Mexico_0_412158935.html; La Prensa.hn, *Migrante en México sueña con volver a Honduras*, June 13, 2011. Available [in Spanish] at: <http://www.laprensa.hn/Migrantes/Ediciones/2011/01/20/Noticias/Migrante-en-Mexico-suenan-con-volver-a-Honduras>

undocumented migrants and withdrew.⁷⁷² The IACHR also learned that the computer of Father Pedro Pantoja, director of the Belén Migrant Shelter, was stolen on December 7, 2010. It contained testimony from migrants who had been victims of abduction.⁷⁷³

348. The Inter-American Commission has granted precautionary measures on a number of occasions to protect the defenders of migrants who are in grave danger and whose rights may be irreparably violated.

On April 23, 2010, the IACHR granted precautionary measures for José Alejandro Solalinde Guerra, David Álvarez Vargas, Areli Palomo Contreras, Mario Calderón López, and Norma Araceli Doblado Abrego, who work or can be found at the Hermanos en el Camino Migrant Shelter in Ixtepec, in the state of Oaxaca, Mexico. In the request for precautionary measures and in information provided during a working meeting held on March 20, 2010, during the Commission's 138th period of sessions, it is alleged that the beneficiaries had been subject to acts of intimidation and that in February 2010, Father Solalinde Guerra was detained and held at gunpoint by the Federal Police when he went to the Office of the Public Prosecutor of Oaxaca state in the context of investigations underway for the alleged murder of three migrants. The petitioners indicate that the protection measures implemented by the authorities turned out to be ineffective, and they inform the Commission that the acts of harassment continue.

On April 23, 2010, the IACHR granted precautionary measures for Father Pedro Pantoja Arreola and his team of collaborators at the Belén Migrant Shelter in Saltillo, in the state of Coahuila, Mexico. In the request for precautionary measures and in information provided during a working meeting held on March 20, 2010, during the Commission's 138th period of sessions, it is alleged that the beneficiaries had been subject to acts of intimidation and harassment, an unsuccessful break-in attempt at the shelter's facilities, and surveillance by individuals in vehicles who take photographs of those who enter and leave the shelter. The Inter-American Commission asked that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of Father Pedro Pantoja Arreola and his team of collaborators at the Belén Migrant Shelter in Saltillo, in the state of Coahuila, Mexico. The IACHR also asked that the planning and implementation of the protection measures be done in agreement with the beneficiaries and their representatives, and that the Commission be informed about the measures adopted to remove the risk factors for the beneficiaries.

⁷⁷²El Universal, *Realizan operativo en casa de migrante de Tultitlán*, July 2, 2010. Available [in Spanish] at: <http://www.eluniversal.com.mx/notas/692415.html>; El Universal, *Estado de México, Acosan a migrantes en albergue de Tultitlán*, July 3, 2010. Available [in Spanish] at: <http://www.eluniversaledomex.mx/otros/nota4628.html>

⁷⁷³Excelsior, *Peligran albergues por ayudar a indocumentados*, December 24, 2010, Available [in Spanish] at: http://www.excelsior.com.mx/index.php?m=nota&id_nota=698959; MILENIO, *Casa del Migrante sigue sufriendo agresiones*, June 13, 2011. Available [in Spanish] at: http://www.milenio.com/cdb/doc/noticias2011/75b72844da8089d57a31be8af1c3be01?quicktabs_1=1

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

IV. THE INDEPENDENCE AND IMPARTIALITY OF JUSTICE OPERATORS

A. The role of justice operators in the access to justice of the victims of human rights violations

349. The role of judicial authorities – judges, prosecutors, solicitors, public defenders, and agents of the administration of justice – is essential in ensuring that the victims of human rights violations have access to justice, since the proper performance of jurisdictional functions guarantees that court proceedings, from start to finish, are consistent with international standards of human rights.⁷⁷⁴ Each judicial authority, depending on his or her role in a proceeding, helps to ensure that every complaint regarding a violation of human rights can follow its proper course through the jurisdictional mechanisms created by the State, and that it is possible to punish those responsible for human rights violations,⁷⁷⁵ compensate the victims and, through a serious, impartial, and effective investigation, inform society regarding the truth about the reported events.⁷⁷⁶

350. Judicial authorities are the guarantors of due process and all actions they take in the context of their respective powers and that are intended to protect the guarantees that must govern the litigation of cases relating to human rights violations are part of the work of promoting and defending the right of access to justice,⁷⁷⁷ which is not

⁷⁷⁴ In its 2006 report, the Commission acknowledged the “valuable work of those individuals and authorities whose functions include protecting, enforcing, promoting, or defending human rights [...]. Judges, prosecutors, public defenders, and police commissars, as agents of the administration of justice, play a fundamental role as a liaison between the state and the general population. Moreover, they are the ones who carry out the investigation, prosecution, and punishment of perpetrators of human rights violations.” IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 223.

⁷⁷⁵ The Commission has reiterated that the most effective way to protect human rights defenders in the hemisphere is to effectively investigate acts of violence against them and to punish those responsible. *Cfr. Ibid.*, para. 202.

⁷⁷⁶ *Cf. I/A Court H.R., Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C, No. 168, para. 101.

⁷⁷⁷ “Access to justice” means both *de jure* and *de facto* access to judicial venues and remedies for protection against acts that violate human rights according to international standards. This must be viewed from a dual perspective including both the physical ability to file court actions and the real prospects of obtaining a prompt response consistent with the applicable legislation. Access to justice is not limited to the formal existence of judicial remedies but means also that these remedies must be suitable for investigating, punishing, and providing

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exhausted when a case reaches the court but extends throughout the entire proceeding and endures until the decision is implemented.⁷⁷⁸

351. A situation in which an individual's attempts to gain access to the courts are de jure or de facto systematically frustrated⁷⁷⁹ or in which one of the parties is not guaranteed equal procedural resources,⁷⁸⁰ would affect the State's fulfillment of its obligations regarding the rights to judicial protection and due process,⁷⁸¹ which, as components of the right to access to justice, help to eliminate impunity in cases related to human rights violations.

352. Even though judges and other judicial authorities, in the performance of their natural functions, must ensure a trial governed by the guarantees of due process, the pressures that judges often face and sometimes the very design of the legal framework governing their functions contaminates the workings of the court with problems associated with corruption⁷⁸² and a lack of impartiality and independence. Nonetheless, some of the region's judges and magistrates as well as public defenders, prosecutors, and solicitors make special efforts to ensure that the procedural guarantees of due process prevail in the cases they handle, even when they find themselves subject to various types of pressures. The Commission has noted that the efforts made by judicial authorities who are committed to ensuring respect for and to protecting human rights and democratic principles have a multiplier effect on others involved in the administration of justice and on society in general. However, those efforts often make them particularly subject to risk.

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compensation for the violations reported. IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, paras. 5 and 55.

⁷⁷⁸ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/8/4, 13 May 2008, para. 58.

⁷⁷⁹ Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 9.

⁷⁸⁰ Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 13.

⁷⁸¹ Article XVIII of the American Declaration and Articles 8 and 25 of the American Convention establish that all persons have the right to access judicial remedies and to be heard, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, when they believe that their rights have been violated.

⁷⁸² The United Nations Special Rapporteur on the Impartiality of Judges and Magistrates, Gabriela Knaul, has indicated that "[...] judicial corruption is a factor contributing to impunity. [...] Corruption in one part of the judicial system may undermine the efforts made throughout the system to combat impunity; thus, it must be addressed comprehensively." "To combat judicial corruption, it will be necessary to take measures such as disclosing the personal assets of judicial authorities and others performing important roles in the criminal justice system; establishing control mechanisms at the institutional level to guarantee the transparency of activities; establishing internal supervisory bodies and confidential mechanisms for formulating complaints; and periodically and systematically publishing activities reports. In addition, efforts must be made to increase the salaries, judges, and judicial employees to reduce the chances of corruption". UN General Assembly, *Provisional Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul*, A/65/274, 10 August 2010, paras. 44, 45.

353. The Commission considers it particularly important that States protect judicial authorities from attacks or acts of intimidation against them or their families, as well as other types of actions that directly or indirectly undermine their independence and impartiality, which in the context of their professional conduct ensure due protection for the human rights of victims whose cases they handle and the effectiveness of the rule of law in a democratic society. The Commission agrees with the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Mrs. Margaret Sekaggya, that when these actors in the judicial process “make a special effort to ensure access to fair and impartial justice, and thereby to guarantee the related human rights of victims, they can be said to be acting as human rights defenders.”⁷⁸³

354. In its 2006 report, the IACHR recommended that the States strengthen their mechanisms for the administration of justice and guarantee their independence, a necessary condition for performing their function of investigating, prosecuting, and punishing those who carry out attacks on human rights.⁷⁸⁴ In view of the serious situation faced by many of the region’s judicial authorities, particularly judges,⁷⁸⁵ in this section the Commission has decided to analyze the guarantees that must accompany the conduct of judicial activity in accordance with the standards of international human rights law and to point out some of the principal problems impeding this work in some countries in the region.

B. Independence and Impartiality of justice operators

355. The IACHR has indicated that independence and impartiality are underlying assumptions for compliance with the rules of due process.⁷⁸⁶ For its part, the UN Office of the Rapporteur on the Independence of Judges and Magistrates has indicated that the absence of these guarantees has a negative impact on the exercise of the right to access justice, besides generating mistrust and even fear, which deters people from

⁷⁸³ Fact Sheet No. 29 of the Special Rapporteur on the Question of UN Defenders, *Human Rights Defenders: Protecting the Right to Defend Human Rights*, page. 9.

⁷⁸⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 22.

⁷⁸⁵ This concern has been shared by the UN Special Rapporteur on the Situation of Human Rights Defenders, who has pointed out that those who contribute to assuring often have a particular role to play and may come under considerable pressure to make decisions that are favorable to the State or other powerful interests such as the leaders of criminal organizations. Fact Sheet No. 29 of the Special Rapporteur on the Question of UN Defenders, *Human rights Defenders: Protecting the Right to Defend Rights*, page 9. <http://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>.

⁷⁸⁶ IACHR. *Report on the Human Rights Situation in Venezuela. 2003*, para. 155. Citing principles 10 and 13 of that international instrument. For its part, the Inter-American Court has stated that the judge in charge of hearing a case must be competent, in addition to being independent and impartial. I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Judgment of November 23, 2009 Series C, No. 209, para. 273; similarly *Cf. Case of Ivcher Bronstein. Merits, Reparations, and Costs*. Judgment of February 6, 2001. Series C No. 74, para. 112; and *Case of 19 Tradesmen v. Colombia*. Merits, Reparations, and Costs. Judgment of July 5, 2004. Series C No. 109, para. 167.

seeking justice.⁷⁸⁷ The Commission notes that independence and impartiality constitute guarantees that must be granted to the parties involved in court proceedings. At the same time, however, they constitute essential guarantees that allow judicial authorities to freely carry out their role of protecting the right of access to justice. From this latter perspective, in this report the Commission wishes to address the guarantees of judicial independence and impartiality. It should be noted that according to the jurisprudence maintained by the Court, the guarantees of due process are applicable to any State organ that carries out functions of a materially jurisdictional nature.⁷⁸⁸

1. Independence

356. The independence of judges is one of the principal objectives of the separation of powers⁷⁸⁹ and applies both individually with respect to the judge as an official as well as institutionally (the judicial branch as a branch of government).⁷⁹⁰ The Inter-American Court, following the direction of the European Court⁷⁹¹ and the United Nations Basic Principles on the Independence of the Judiciary (hereinafter Basic Principles)⁷⁹² has indicated that States, as part of due process guarantees, are required to ensure the independence of judges and magistrates who carry out materially jurisdictional functions⁷⁹³ so as to instill legitimacy and sufficient confidence not only for the parties in the case but for the citizens in a democratic society.⁷⁹⁴

⁷⁸⁷ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/8/4, 13 May 2008, para. 34.

⁷⁸⁸ I/A Court H.R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 71

⁷⁸⁹ I/A Court H.R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 73, and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 55. See also IACHR, *Democracy and Human Rights in Venezuela*, November 30, 2009, para. 184.

⁷⁹⁰ Cf. IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 83.

⁷⁹¹ Cf. ECHR. *Case of Campbell and Fell v. the United Kingdom*. Judgment of 28 June 1984. A no. 80, para. 78; ECHR. *Case of Langborger v. Sweden*. Judgment of 22 January 1989. Series A No. 155, para. 32.

⁷⁹² UN Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985.

⁷⁹³ Cf. I.A. Court HR., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 71

⁷⁹⁴ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 67.

357. By virtue of the guarantee of independence, from the institutional perspective, judges who are part of the State's jurisdictional function must perform their functions without being subject to undue interference from the executive and legislative branches, the parties in the proceeding, social agents, and others organs connected to the administration of justice.⁷⁹⁵ According to the Bangalore Principles of Judicial Conduct, independence is a prerequisite of the principle of legality and a fundamental guarantee of the existence of a fair trial.⁷⁹⁶

358. Given how important an independent judiciary is to the separation of powers and the right of access to justice, it must be enshrined in the State's highest-level legal instruments, which means that it must be guaranteed by the country's Constitution or legislation, so that all governmental and other institutions respect and abide by it.⁷⁹⁷ In countries without a written constitution, the independence of the judiciary must be considered a fundamental principle of law.⁷⁹⁸ With respect to the institutional autonomy of public prosecutor's and public defender's offices, as pointed out by the UN Rapporteur on the Independence of Judges and Lawyers, "the prosecution's lack of autonomy of the executive branch, [...] can erode the credibility of authority responsible for investigating crimes objectively"⁷⁹⁹ and "in order to uphold the principle of equality of arms, offices of the public defender should be made independent of the executive branch."⁸⁰⁰ The Commission urges the States to guarantee the institutional independence of the entities participating in the administration of justice – the judicial branch, prosecutor's offices, and public defender's offices – vis-à-vis the State's executive branch.

359. In addition to the legal recognition of the guarantee of independence recognized in the principle of the separation of powers, States are required to guarantee *de iure* and *de facto* that judicial authorities carry out their functions independently, as reflected in the guarantee of independence in its individual dimension. Particularly with respect to judges and magistrates, the Court has noted that some ways to guarantee

⁷⁹⁵ Cf. IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 83.

⁷⁹⁶ Bangalore Principles of Judicial Conduct, approved by the United Nations Economic and Social Council in Resolution E/CN.4/2003/65/Anexo, November 2002 and adopted on January 10, 2003. Value 1. Available at: http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

⁷⁹⁷ Principle 1 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Available at: <http://www2.ohchr.org/english/law/injudiciary.htm>.

⁷⁹⁸ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, para. 21.

⁷⁹⁹ UN General Assembly, *Report of the Rapporteur on the Independence of Judges and Lawyers*, A/HRC/17/30/Add.3, 18 April 2011, para. 16.

⁸⁰⁰ UN General Assembly, *Report of the Rapporteur on the Independence of Judges and Lawyers*, A/HRC/17/30/Add.3, 18 April 2011, para. 73.

independence are: a) the establishment of an appropriate process for their appointment and removal;⁸⁰¹ b) inability to be removed during the terms of their appointment;⁸⁰² and c) a guarantee against external pressures.⁸⁰³ The commission will explain below each of these guarantees considered necessary to enable judges to carry out their functions independently.

a. Selection and term of appointment

360. Even though States may create various procedures for appointing judges,⁸⁰⁴ not just any procedure can satisfy the conditions required by the American Convention for implementing a truly independent regime.⁸⁰⁵ Only an appointment process that is transparent, based on objective criteria, and that guarantees the equality of candidates, is a fundamental guarantee of judicial independence.⁸⁰⁶

361. The IACHR has indicated that an appropriate method for appointing judges and prosecutors is through public competition to ensure that they are not appointed or removed on a discretionary basis⁸⁰⁷ and judicial careers are open to all accredited individuals who are interested.⁸⁰⁸ Appointment procedures may not involve preferences or unreasonable advantages and all citizens who meet the requirements may compete under equal conditions, even those holding positions on a provisional basis, who may not be treated with preferences, advantages, or disadvantages based on that condition.⁸⁰⁹

362. Those participating in the selection process for a judicial position must not be subject to discrimination of any kind.⁸¹⁰ Equal opportunity in an appointment

⁸⁰¹ I/A Court H.R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, paras. 73-75.

⁸⁰² I/A Court H.R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; *Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 138.

⁸⁰³ I/A Court H.R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75.

⁸⁰⁴ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 74.

⁸⁰⁵ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 74.

⁸⁰⁶ IACHR, *Democracy and Human Rights in Venezuela*, para. 187.

⁸⁰⁷ IACHR, *2009 Annual Report*. Chapter IV - Venezuela, para. 479.

⁸⁰⁸ IACHR, *Democracy and Human Rights in Venezuela*, para. 217.

⁸⁰⁹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 73.

⁸¹⁰ Cf. Principle 10 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and

procedure is guaranteed through open competition, wherein open and equal opportunity is provided by indicating publicly, clearly, and transparently the requirements for carrying out the position and no restrictions are permitted that would impede or present difficulties for someone who is not part of the administration or some agency, meaning that an individual who has not been in service can attain the position based on merit.⁸¹¹ Equal opportunity in terms of access or tenure in the position guarantees freedom from any interference or political pressure.⁸¹²

363. Regarding the items that should be rated during the applicant selection process, the Court has indicated that there should be objective selection mechanisms that take into account the singular and specific nature of the duties to be performed, so that candidates are selected solely on the basis of personal merit and professional qualification.⁸¹³ With respect to personal merit, those who will carry out jurisdictional functions must be persons of integrity, suited to the position, and have the appropriate legal training or qualifications.⁸¹⁴ In addition, the professional skill of candidates for entering judicial careers and for each appointment must be evaluated on the basis of objective criteria.⁸¹⁵

364. Regarding the term of the appointment, it must be of sufficient duration to afford the judicial authority the stability needed to perform his judicial tasks independently⁸¹⁶ without fear of being subject to confirmation later.⁸¹⁷ The IACHR

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40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>. It should be noted that according to this principle, the requirement those seeking judicial appointments be nationals of the respective countries is not considered discriminatory.

⁸¹¹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 73.

⁸¹² I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*. Judgment of July 1, 2011. Series C No. 227, para. 135.

⁸¹³ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 72.

⁸¹⁴ Cf. Principle 10 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>. It should be noted that according to this principle, the requirement those seeking judicial appointments be nationals of the respective countries is not considered discriminatory.

⁸¹⁵ Article 9 of the *Universal Charter of the Judge* unanimously approved at the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999. Available at: http://www.iaj-uim.org/old/ENG/frameset_ENG.html

⁸¹⁶ The Special Rapporteur on the Independence of Judge and Lawyers has indicated that judicial appointments with short terms of office weaken “the judiciary, affect their independence and their professional development.” United Nations General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, para. 49.

⁸¹⁷ On this point, the Special Rapporteur on the Independence of Judges and Lawyers has indicated his concern that the requirement that an appointment be confirmed after a probationary period may run counter to

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reiterates that provisional appointments must be the exception and not the rule, since provisional appointments that continue over extended periods of time or the situation in which most judges are provisional create significant obstacles to independence.⁸¹⁸

365. Judges who are appointed on a provisional basis should not be extended indefinitely and their appointment must be subject to a condition subsequent, such as a pre-determined deadline or the holding and completion of a public competition and appointment of a permanent replacement for provisional judges.⁸¹⁹ The IACHR has noted that short-term appointments or appointments subject to confirmation represent a serious threat to the independence of judges because they are not given the security they need to carry out their positions.⁸²⁰

b. Irremovability

366. Judges must have “reinforced guarantees” due to the independence required for the judicial branch.⁸²¹ This right to tenure in their positions entails a reinforced assurance of job security through guaranteed tenure,⁸²² an essential prerequisite for judicial independence.⁸²³ According to the Court, a guarantee of tenure consists of the following guarantees: a) continuance in the position; b) an adequate promotions process; and c) no unjustified dismissals or free removal.⁸²⁴ If the State fails to fulfill any of these

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the principle of the independence of judges. He has also indicated that the provisional nature of the appointment of some judges subject to fixed terms with the possibility of reselection or reappointment affects their independence and professional development. United Nations General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, paras. 56 and 57.

⁸¹⁸ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*. Judgment of July 1, 2011. Series C No. 227; para. 107.

⁸¹⁹ I/A Court H.R., *Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, para. 43.

⁸²⁰ See Supreme Court of Norway, *Case of Jens Viktor Plabte v. the State*, December 1997, No.82 B/1997 No.108/1957, cited by the UN Economic and Social Council in *Civil and Political Rights, Including the Question of the Independence of the Judiciary, the Administration of Justice, and Impunity. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy*, E/CN.4/1999/60, 13 January 1999, para. 50.

⁸²¹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Judgment of June 30, 2009. Series C No. 197, para.67.

⁸²² IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, 29 November 2006, para. 85.

⁸²³ IACHR, *Democracy and Human Rights in Venezuela*, para. 229.

⁸²⁴ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para.79.

guarantees, this affects guaranteed tenure and the State thus fails to guarantee judicial independence.⁸²⁵

367. Regarding continuance in the position, regardless of whether the appointment was permanent or provisional, in the performance of a judicial functions, it is essential that continuance in the position be guaranteed through irremovability during the entire term of the appointment,⁸²⁶ In the context of provisional judges, this guarantee is reflected in the requirement that they enjoy all the benefits of permanent appointment until the condition subsequent that puts a legal end to their term occurs.⁸²⁷ Provisional appointment must not be equal to free removal.⁸²⁸

368. The guarantee of permanence protects judges so that their removal occurs only as a result of serious misconduct, while other sanctions may be considered in response to other events such as negligence or incompetence.⁸²⁹ In this sense, judges may only be suspended or removed from their positions due to incapacity or disqualifying conduct.⁸³⁰ In the absence of any of these conditions, the judge must remain in his position for the term established in his appointment.

369. With respect to the promotions system, as established in the Basic Principles, the procedure for promotion must be based on objective factors, particularly in terms of professional capability, integrity, and experience.⁸³¹ The UN Special Rapporteur on Independence has expressed the view that final resolutions regarding promotions, should

⁸²⁵ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Judgment of June 30, 2009. Series C No. 197, para.79.

⁸²⁶ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, para. 57.

⁸²⁷ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*. Judgment of July 1, 2011. Series C No. 227, para. 105; *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 116.

⁸²⁸ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*, Judgment of July 1, 2011. Series C No. 227; para. 117.

⁸²⁹ Cf. IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 87.

⁸³⁰ Principle 18 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/injudiciary.htm>

⁸³¹ Principle 13 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/injudiciary.htm>

be adopted by an independent body responsible for selecting judges, the majority of whose members are judges.⁸³²

370. With respect to the guarantee against unjustified dismissal or free removal, the UN report on judicial independence states that the “dismissal of judges by the executive, e.g., before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.”⁸³³ The free removal of judges foments an objective doubt in the observer regarding the effective possibility they may have to decide controversies without fear of reprisals.⁸³⁴

371. In sanction proceedings for conduct on the part of a judge, it is essential to make a distinction between control over judges within the ordinary criminal jurisdiction and within the disciplinary jurisdiction, since while the former is limited to determining responsibility for unlawful conduct attributable to a judge or magistrate, the subject of disciplinary control is the judge’s conduct and performance in his capacity as a public official.

372. In concrete terms, with respect to disciplinary control to which judges are subject when they fail to efficiently and adequately fulfill their jurisdictional duties, one of the requirements to be met for imposing a disciplinary sanction is that the sanctioned conduct be defined previously and in detail in the law and that the seriousness of the violation and the type of disciplinary measure to be imposed in the respective case be specified. In any case, the sanction must be in proportion to the seriousness of the infraction committed by the judge.⁸³⁵ On this aspect, the Basic Principles establish that “all disciplinary, suspension, or removal proceedings shall be determined in accordance with established standards of judicial conduct.”⁸³⁶

373. In order to impose a disciplinary measure, the decision-making proceeding must satisfy due process guarantees. In this respect, the authority responsible

⁸³² UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, para. 71.

⁸³³ UN, Human Rights Committee, General Comment No. 32, *Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 20. I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Judgment of June 30, 2009. Series C No. 197, para.77.

⁸³⁴ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para.78.

⁸³⁵ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, paras. 57 and 58.

⁸³⁶ Principle 19 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>

for imposing the measure must conduct itself impartially and allow the exercise of the right of defense.⁸³⁷ Although States have discretionary powers to reorganize their institutions and potentially to remove personnel based on the needs of the public service and the administration of public interests in a democratic society, these powers cannot be exercised without full respect for the guarantees of due process and judicial protection, since doing so could make those affected subject to arbitrary action.⁸³⁸

374. The Commission has noted with favor the codes of judicial ethics adopted in some States in the region and has underscored the importance of not including broad or vague content that allows sanctioned conduct to be subject to discretionary interpretation by disciplinary bodies.⁸³⁹ The IACHR has viewed as a positive development related legislation established by the States that incorporates in the disciplinary system the principles of legality, oral proceedings, publicity, equality, impartiality, adversarial proceedings, procedural economy, effectiveness, promptness, proportionality, adaptation, concentration, immediacy, suitability, excellence, and integrity in addition to applying the same regime to all judges regardless of their permanent, temporary, interim, or provisional status.⁸⁴⁰

375. The UN Special Rapporteurship on the Independence of Judges and Lawyers has expressed its concern regarding the important and even decisive role that legislative or executive branches play in imposing disciplinary measures on judges in some States.⁸⁴¹ In this respect, in order to remedy problems of this type, the IACHR, like the UN Human Rights Committee, considers it advisable for States to establish an independent body whose functions include appointing, promoting, and imposing disciplinary measures on judges at all levels, in addition to examining whether their compensation is commensurate with their responsibilities and functions.⁸⁴²

376. One of the objectives of irremovability is to allow the court to operate with the freedom necessary to rule strictly on the basis of law. In order for this guarantee to be possible, judges must have (i) the ability to interpret and apply legal sources and (ii)

⁸³⁷ I/A Court H.R., *Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 74.

⁸³⁸ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Judgment of November 24, 2006. Series C No. 158, para.110.

⁸³⁹ Published in Official Gazette 39.326 of August 6, 2009.

⁸⁴⁰ IACHR, *Democracy and Human Rights in Venezuela*, para. 243.

⁸⁴¹ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, 24 March 2009, para. 61.

⁸⁴² Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*, CCPR/CO/84/TKJ, 18 June 2005, para. 17.

the ability to freely assess the facts and the evidence.⁸⁴³ As a result of this, the grounds for disciplinary investigations and sanctions imposed on a judge should never be the legal judgment developed in a decision.⁸⁴⁴ In this regard, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that “judicial officers [...] shall not be removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body.”⁸⁴⁵

377. It is important to point out that some States have remedies such as appeal, cassation, review, certiorari, or the like, that are intended to correct lower court decisions when a judge has been imprecise or made an error in applying the law. Nonetheless, the purpose of disciplinary oversight is to evaluate the conduct, suitability, and performance of a judge as a public official. Thus, the Inter-American Court has stated that even when a review body issues a declaration of inexcusable judicial error, when the judge who committed that error is submitted to a disciplinary proceeding and when there are autonomous grounds for determining the existence of a disciplinary error, the proceeding must in any case analyze how serious the conduct is and whether the penalty is proportionate.⁸⁴⁶

378. On the other hand, if the conduct attributable to the judge falls within scope of a criminal offense, disciplinary oversight would not be the appropriate venue for ruling on possible unlawful conduct, which should instead be a matter for the ordinary criminal jurisdiction. In such cases, as the Special Rapporteur on the Independence of Judges and Lawyers has indicated, the guarantee of irremovability may be limited so as to allow the judicial apparatus to rule on the commission of a crime or to put an end to the impunity fostered by judges belonging to authoritarian regimes and to prevent the repetition of serious human rights violations.⁸⁴⁷

379. In cases where the commission of a crime is alleged, the guarantee of the irremovability of judges must not compromise the action of justice. For this reason, States must have adequate and effective procedures to provide conditions ensuring that the

⁸⁴³ IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 89.

⁸⁴⁴ IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 89.

⁸⁴⁵ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the Report of activities of the African Commission in the 2nd summit and Meeting of Heads of State of the African Union in Maputo, July 4-12, 2003, Principle A.4, n(2).

⁸⁴⁶ I/A Court H.R., *Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, para. 86.

⁸⁴⁷ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, 24 March 2009, para. 64.

commission of criminal actions does not affect the independence of judges and magistrates nor obstruct the work of administering justice. The UN Special Rapporteur has stated that proceedings for suspending the immunity of those serving in the judicial system must be regulated by law in great detail and the objective should be to reinforce judicial independence.⁸⁴⁸ The decision as to the admissibility of criminal action should not depend on the discretion of a division of the executive branch, which could expose judges to political pressures and jeopardize their independence.⁸⁴⁹

380. The decisions adopted both in disciplinary proceedings and when suspending or separating a judge from this position must be subject to independent review.⁸⁵⁰ In both disciplinary proceedings and criminal proceedings leading to the removal of a judge, States must provide a suitable and effective remedy allowing the judge to obtain reinstatement when his responsibility has not been proven or when his removal has been arbitrary. The guarantee of irremovability must operate so as to allow the reinstatement of a judge who was arbitrarily deprived of his position, since otherwise States could remove judges and intervene in this way in the judicial branch without any great cost or control, which could create fear among other judges who see their colleagues removed and not reinstated even when the removal was arbitrary.⁸⁵¹

381. The Commission believes that an additional factor serving to guarantee the irremovability of judges and magistrates and the independence of bodies charged with the administration of justice is sufficient resources to perform the functions entrusted to them and providing certainty regarding job security for the term of their appointment. In this respect, the Basic Principles state that “it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.”⁸⁵² A reduction in the budget for the courts can impede the administration of justice and, as a

⁸⁴⁸ *Ibid.*, para. 67

⁸⁴⁹ *Idem.*

⁸⁵⁰ Principle 20 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>. The Human Rights Committee maintained that the removal of judges before the term of their appointment expires without giving them any concrete reason and without providing any effective judicial protection for challenging their removal is incompatible with judicial independence. UN Human Rights Committee. General Comment, No. 32, Article 14: *Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 20. The Commission has also indicated that the absence of an effective judicial remedy against alleged acts violating the right to tenure as a judge constituted a violation of Article 25 of the American Convention, IACHR, Report No. 30/97, *Case 10.087, Merits, Gustavo Carranza*, Argentina, September 30, 1997, para. 72.

⁸⁵¹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 81

⁸⁵² Principle 7 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm> <http://www2.ohchr.org/spanish/law/judicatura.htm>

result, produce unwarranted delays in the appointment of permanent judges and increase the number of provisional judges. With respect to provisional judges, the Court has indicated that if such judges do not have the security of continuing in their positions for a specific period of time, they will be vulnerable to pressures from different sectors, primarily those who have the power to decide on removals or promotions in the judicial branch.⁸⁵³

382. The judicial branch should participate effectively in budget preparation⁸⁵⁴ and the management of funds should be entrusted directly to the judicial branch or a responsible independent body within the judiciary.⁸⁵⁵ The Commission agrees with the UN Rapporteurship that States must be sure to keep low salaries and payment delays from being a factor contributing to the corruption of judicial systems.⁸⁵⁶

c. Guarantee against external pressures

383. Guaranteeing judges against external pressures means that they are able to rule on the matters they hear on the basis of the facts and in accordance with the law, without any restriction and without being subject to influences, inducements, pressures, threats, or improper interferences, be they direct or indirect, from whatever sector, or for whatever reason.⁸⁵⁷ According to the Basic Principles, the judiciary shall have exclusive authority to decide whether a matter that has been submitted to it falls within its competence as defined by law, without undue or unjustified interferences in the judicial process.⁸⁵⁸

384. The UN Human Rights Committee has expressed the need to protect judges against conflicts of interest and intimidation.⁸⁵⁹ The UN Special Rapporteur on Independence has stated that it is the responsibility of the State to protect judicial bodies

⁸⁵³ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 80.

⁸⁵⁴ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, 24 March 2009, para. 39.

⁸⁵⁵ *Ibid.*, para. 43.

⁸⁵⁶ *Ibid.*, para. 75.

⁸⁵⁷ Principle 2 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>

⁸⁵⁸ Principles 3 of 4 of the Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>

⁸⁵⁹ Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 19.

from attacks, acts of intimidation, threats, reprisals, and revenge, encompassing the underlying causes of attacks, threats, and acts of intimidation, identifying those who perpetuate such threats, properly investigating all reports and complaints, and ensuring a rendering of accounts once reports have been proven. Measures must also be adopted to protect employees of the criminal justice system and their families, particularly in highly sensitive cases such as those involving terrorism, drug trafficking, and organized crime.⁸⁶⁰

385. The Commission believes that if States fail to guarantee the security of their judges and magistrates against all types of external pressures, including reprisals directly targeting judges and their families as well as those designed to affect their stability and professional future, the exercise of judicial functions may be gravely affected, impeding judicial protection for the victims of human rights violations and frustrating the free development of the judicial function and the guidelines governing due process of law.

2. Impartiality

386. According to the UN Human Rights Committee, the impartiality of a judicial body means that its members have no direct interest, adopted position, or preference for one of the parties and are not involved in the dispute.⁸⁶¹ In this regard, the Inter-American Court has stated that the judge must approach the facts in the case subjectively free of any prejudice and with objective guarantees sufficient to dispel any doubts that the parties or the community might harbor regarding a lack of impartiality.⁸⁶² Impartiality refers not only to the result of the final decision itself but also encompasses the actions of the judge throughout the entire process in which the decision is reached.⁸⁶³

387. The guarantee of impartiality has two aspects.⁸⁶⁴ On one hand, judges and magistrates must not be influenced by personal biases or prejudices nor should they have preconceived ideas regarding the matter submitted for their review, nor should they act in a manner that improperly promotes the interests of one of the parties to the

⁸⁶⁰United Nations General Assembly, *Provisional Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Gabriela Knaul, A/65/274, 10 August 2010, para. 46.

⁸⁶¹I/A Court H.R., *Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 146.

⁸⁶²I/A Court H.R., *Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, para. 56.

⁸⁶³Bangalore Principles of Judicial Conduct, approved by the United Nations Economic and Social Council in Resolution E/CN.4/2003/65/Annex, November 2002 and adopted on January 10, 2003. Available at: http://www.unodc.org/pdf/corruption/bangalore_e.pdf:

⁸⁶⁴Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 21.

detriment of the other party.⁸⁶⁵ Secondly, as part of the guarantee of impartiality, judges and magistrates must appear impartial in the judgment of a reasonable observer.⁸⁶⁶

388. The European Court has specified that when evaluating, in a specific case, any sort of doubt regarding the impartiality of the judge, the accuser's viewpoint should be taken into consideration even though it is not decisive and must be objectively evaluated.⁸⁶⁷ Partiality or the misuse of power on the part of judges must be consistently proven, particularly when they act within the competence assigned to them by law, so that there is concrete and direct proof with which to establish whether formally valid procedures were not used as legitimate resources of the administration of justice but rather as mechanisms to achieve unstated purposes that were not evident at first sight.⁸⁶⁸ An important aspect of the impartiality of a trial is that it is conducted expeditiously,⁸⁶⁹ since delays in civil proceedings that cannot be justified on the basis of the complexity of the case or the conduct of the parties are not compatible with the principle of an impartial approach.⁸⁷⁰ For its part, the IACHR has indicated that the lack of impartiality would be evidenced by the possible misuse of power and action based on prejudices.⁸⁷¹ The accusation of the misuse of power or partial action must be based on objective factors that

⁸⁶⁵ Communication No. 387/1989, *Karttunen v. Finland*, para. 7.2; Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 21.

⁸⁶⁶ According to the Bangalore Principles of Judicial Conduct, approved by the United Nations Economic and Social Council in Resolution E/CN.4/2003/65/Annex, November 2002 and adopted on January 10, 2003. Available at: http://www.unodc.org/pdf/corruption/bangalore_e.pdf: A judge shall disqualify himself or herself from participating in any proceeding in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include but are not limited to instances where: "the judge has actual bias or prejudice concerning a party or has personal knowledge of disputed evidentiary facts concerning the proceedings; the judge has previously service as a lawyer or was a material witness in the matter in controversy; the judge or a member of the judge's family has an economic interest in the outcome of the matter in controversy. Provided that disqualification of a judge shall not be required in no other tribunal can be constituted to deal with the base or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice." From this perspective, Article 5 of the Universal Charter of the Judge establishes the duty of the judge to be and appear impartial in exercising judicial activity [see Universal Charter of the Judge unanimously approved at the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

⁸⁶⁷ ECHR, *Padovani v. Italy*. Judgment of February 26, 1993. Series A, No. 257-B, para. 27.

⁸⁶⁸ IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 124.

⁸⁶⁹ Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 27. Available at: <http://www1.umn.edu/humanrts/gencomm/hrcom32.html>

⁸⁷⁰ Human Rights Committee, *General Comment No. 32 Article 14. Right to Equality before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32, August 23, 2007, para. 27. Available at: <http://www1.umn.edu/humanrts/gencomm/hrcom32.html>

⁸⁷¹ IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 124.

are duly proven to demonstrate misuse in the intentions of the person who carries out the action subject to scrutiny.⁸⁷²

C. The freedom of association of justice operators

389. Human rights defenders' freedom of association constitutes an essential tool for fully and comprehensively carrying out the work of defending and promoting human rights and achieving a greater impact in their respective tasks.⁸⁷³ Judges must enjoy the right to form associations of judges or other organizations designed to represent their interests, promote their professional training, and defend judicial independence, as well as to join those associations.⁸⁷⁴ The exercise of the right of association by judicial authorities can strengthen the independence of the judiciary and may also lead to improved training during the course of a judicial career.⁸⁷⁵ The UN Rapporteur on Judicial Independence has stated that "continuing training is a right of the judge and an obligation of the judiciary."⁸⁷⁶ The IACHR feels that States must fulfill their duties to respect and guarantee the freedom of association of judicial authorities in accordance with the recognized standards of freedom of association but must also guarantee conditions affording judges access to continuing training.

D. Obstacles faced by justice operators in the region

390. The IACHR has monitored the situation in the region with respect to judges, public defenders, prosecutors, and solicitors and has identified a series of obstacles that include both institutional deficiencies in terms of ensuring the independence of the judicial branch and attacks, assaults, and harassment in reprisal for actions taken by judicial authorities.

391. With respect to institutional deficiencies in ensuring the judicial function, the Commission has noted that the fragility of the judicial branch in some States is manifest both in executive branch interferences in the judicial branch as well as the indefinite provisional status of numerous judges and the legal possibility that their appointment will be subject to later confirmation or reelection to the position.

⁸⁷² IACHR, Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela, Case 12.489, November 29, 2006, para. 125.

⁸⁷³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 69.

⁸⁷⁴ Principle 9 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>
<http://www2.ohchr.org/spanish/law/judicatura.htm>

⁸⁷⁵ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/8/4, 13 May 2008, para. 82.

⁸⁷⁶ *Idem*.

392. In this regard, during the follow-up period the IACHR has received reports of clear interferences by executive branch officials in the judicial branch through control of the administration of justice. These interferences, in addition to being a significant affront to the principle of the separation of powers which is intrinsic to democratic systems, also has a negative impact on access to justice by victims whose cases are tried by judges who are subject to discretionary removal or dismissal.

The Commission received information regarding the situation of the judicial branch in Ecuador during its 143rd period of sessions.⁸⁷⁷ In this regard, the IACHR acknowledged statements made by the President of Ecuador, Rafael Correa, who stated that the President of the Republic is not only the head of the Executive Branch, he is head of the entire Ecuadorian State, and the Ecuadorian State is the Executive Branch, the Legislative Branch, the Judicial Branch, the Electoral Branch, the Transparency and Social Control Branch, the Superintendencies, the Prosecutor's Office, the Office of the Comptroller – All this is the Ecuadorian State.” In addition, the Commission was informed regarding Decree 872 of September 5, 2011 whereby the Executive Branch decreed what is called the “State of Exception in the Judicial Branch,” which is reflected in the “national mobilization of all judicial personnel in particular” for “sixty days from the signing of the decree.”⁸⁷⁸ According to information received by the IACHR, after being in effect for slightly more than one month, the decree has led to the removal of 162 judges and employees by the Transitional Justice Council, which is responsible for the administration of the judicial branch and made up of one delegate appointed by the President, another appointed by the National Assembly, and another by the Transparency Function.

393. As an additional factor in the instability faced by judges in some countries in the region, the Commission has noted in some States the high percentages of judges and prosecutors with provisional status who have been appointed on an indefinite basis, or for short periods that upon conclusion are extended for an indefinite period. The IACHR has noted that under this system it is possible for various judges to hear the same case in a single venue and also for judges to be removed from hearing a case when they have they have specific legal viewpoints that are perceptibly different from the policies promoted by the executive branch.

The Commission has expressed its concern regarding the information received from Venezuela, indicating that during 2008 and 2009 judges continued to be appointed without a public competition by a judicial commission made up of the presidents or vice presidents of each chamber of the Supreme Court. The IACHR was informed that in 2008 this commission appointed 920 temporary judges, 350 interim judges, 172 provisional judges, and 9 judges in other categories, for a total of 1,451 non-tenured judges appointed without a public competition. In addition, according to the information the

⁸⁷⁷ IACHR, *Hearing on the Situation of the Right to Freedom of Expression in Ecuador*, 143rd session, October 25, 2011.

⁸⁷⁸ Decree 872 of September 5, 2011.

IACHR received, between January and September 2009 a total of 359 judges were appointed without a public competition, including 136 temporary judges, 138 interim judges, 59 provisional judges, 2 tenured judges, and 24 judges in other categories.⁸⁷⁹ During the period from January to October 2010, the Commission continued receiving information on the stability of the so-called temporary and provisional judges, as well as the appointment of non-tenured judges by the Judicial Commission of the Supreme Court of Justice (245), including 66 provisional judges (27%), 70 temporary judges (29%), 103 interim judges (42%) and 6 judges belonging to other categories (3%).⁸⁸⁰ All these judges were appointed without a public competition, which is required under Article 255 of the Constitution of the Bolivarian Republic of Venezuela,⁸⁸¹ and can be freely appointed and removed.⁸⁸² The Commission has recommended that the State of Venezuela adopt urgent measures to ensure the independence of the judicial branch, strengthening the procedures for appointing and removing judges and prosecutors, affirming their stability in the position, and eliminating the provisional status situation in which the large majority of judges and prosecutors find themselves.⁸⁸³

394. In addition, the IACHR has noted as a factor contributing to the fragile independence of judges and magistrates the legal possibility of being subject to later confirmation in order to remain in the position or be reelected. The former Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, indicated that this practice “affects the independence and professional development of judges and magistrates and is contrary to international standards in this area.”⁸⁸⁴

In Guatemala, both Article 208 of the Constitution and the Law on the Judicial Career (Article 3) establish that judges and magistrates carry out their functions for a period of five years, upon conclusion of which they may be reappointed and reelected. In his 2009 mission to Guatemala, the former Special Rapporteur on the Independence of Judges and

⁸⁷⁹ IACHR, *Democracy and Human Rights in Venezuela*, paras. 208-210. Information provided to the IACHR by the petitioners. *Hearing on Democratic Institutions, Parapolice Groups and Jails in Venezuela*. 137th Regular Period of Sessions, November 2, 2009.

⁸⁸⁰ IACHR, *Annual Report*, Chapter IV- Venezuela, March 7, 2011, para. 621. Information received during the *hearing on Democratic Institutions and Human Rights Defenders in Venezuela*, 140th regular session, October 29, 2010.

⁸⁸¹ Article 255 of the Bolivarian Constitution of Venezuela: “Appointment to a judicial position and the promotion of judges shall be carried out by means of public competitions to ensure the capability and excellence of the participants, with selection by the juries of the judicial circuits, in such manner and on such terms as may be established by law. The appointment and swearing in of judges shall be the responsibility of the Supreme Tribunal of Justice. Citizen participation in the process of selecting and designating judges shall be guaranteed by law. Judges shall be removed or suspended from office only through the procedures expressly provided for by law.”

⁸⁸² IACHR, *Democracy and Human Rights in Venezuela*, 30 December 2009, paras. 208-210. Information provided to the IACHR by the petitioners. *Hearing on Democratic Institutions, Parapolice Groups and Jails in Venezuela*. 137th Regular Session, November 2, 2009.

⁸⁸³ IACHR, *2011 Annual Report*. Chapter IV- Venezuela, March 7, 2011, Recommendation 3.

⁸⁸⁴ UN General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, Addendum. Mission to Guatemala, A/HRC/11/41/Add.3*, October 1, 2009, para. 57.

*Lawyers, Leandro Despouy, recommended legislative reform to put an end to provisional appointment, for example by providing for automatic renewal of the judge's term at the end of five years, unless there is a serious offense duly established by a disciplinary process that adheres to the guarantees of a fair trial.*⁸⁸⁵

395. Furthermore, with respect to personal reprisals against defenders in the region, based on the information received, the IACHR notes that a situation of personal and professional insecurity persists in some States with respect to defenders, as evidenced by the large number of attempts on their lives and personal safety, as well as unjustified transfers from professional positions or locations when their work has a perceptible effect on the government in office, or the activities of organized crime groups or other levels of power that, in some extreme cases, actually go so far as to collude with judicial authorities in their own institutions.

396. The IACHR has noted with concern that during the follow-up period various judicial authorities were murdered and that many of these murders were preceded by threats and perpetrated by assassins. The information received indicates that many of these murders have not been properly investigated nor have the perpetrators and masterminds been punished.

397. The figures received by the IACHR cause concern in some States. In this regard, in Colombia during the period from 1989 to 2011, 284 murders have been perpetrated against judicial authorities, eight of them during the period from January 2010 to March 2011.⁸⁸⁶ According to the figures reported by the Judiciary, five judges have been murdered in the last four years.⁸⁸⁷ As pointed out by Gabriela Knaul, UN Special Rapporteur on Independence, "the worst thing is that most of these crimes are not adequately investigated much less criminally punished, thus helping to maintain the climate of impunity."⁸⁸⁸ With respect to Guatemala, according to the information submitted by Leandro Despouy, former UN Special Rapporteur on Independence, seven judicial

⁸⁸⁵ UN General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, Addendum. Mission to Guatemala, A/HRC/11/41/Add.3*, October 1, 2009, para. 110.

⁸⁸⁶ Solidarity with Colombian Judges Fund (*Fondo de Solidaridad con los Jueces Colombianos - FASOL*), Victim database. *Violations from 1989 to 2011*, updated as of March 22, 2011. Available at: <http://www.corpofasol.org/estadisticas.html>

⁸⁸⁷ *Diario El País, En medio de una manifestación sepultan a una jueza asesinada en Arauca*, March 24, 2011. Available at: <http://www.elpais.com.co/elpais/judicial/hoy-cumpliran-exequias-jueza-asesinada-en-saravena-5>; Colombian Commission of Jurists, *Asesinato de jueza que investigaba crimen de niños sacude Colombia*, March 23, 2011, Available at: http://www.coljuristas.org/prensa/2011/afp_23-03-2011_01.html; *El Tiempo, Jueces han recibido 750 amenazas en cuatro años*, March 23, 2011. Available at: http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-9055660.html

⁸⁸⁸ UN General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, A/HRC/14/26/Add.2*, April 15, 2010, para. 53.

authorities were murdered during 2009.⁸⁸⁹ In addition, according to the information available, at least three judges were murdered between 2009 and February 2011⁸⁹⁰ and at least one prosecutor was murdered in 2011.⁸⁹¹ In Honduras the IACHR received information on the murder of a judge in 2010⁸⁹² and a prosecutor in 2011.⁸⁹³ In addition, the IACHR was informed of the murder of two judges in Peru in 2006,⁸⁹⁴ a provincial prosecutor in 2007⁸⁹⁵ and another prosecutor in 2010.⁸⁹⁶ With respect to Venezuela, the IACHR received information on the murder of a judge in 2007,⁸⁹⁷ a prosecutor in 2008,⁸⁹⁸ and another judge in 2009.⁸⁹⁹

The IACHR received information regarding the murder of two prosecutors in Central America during a single week in May 2011. Thus, in Guatemala, the corpse of Assistant Prosecutor Allan Stowlinsky Vidaurre was found dismembered in upper Verapaz in northern Guatemala on May 24, 2011. According to the information available, the prosecutor participated in several searches in an effort to capture the leader of a criminal

⁸⁸⁹ UN General Assembly, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy*, A/HRC/11/41/Add.3, October 1, 2009, para. 78.

⁸⁹⁰ Prensa Libre, *Jueces temen atentados tras asesinatos en Petén*, February 16, 2011. Available at: http://www.prensalibre.com/noticias/Jueces-temen-atentados-asesinato-Peten_0_428357185.html

⁸⁹¹ La Tribuna, *ONU denuncia la muerte de fiscales en Guatemala y Honduras*, May 31, 2011. Available at: <http://www.latribuna.hn/2011/05/31/onu-denuncia-la-muerte-de-fiscales-en-guatemala-y-honduras/>

⁸⁹² El Heraldo, *Sicarios acribillan a una jueza en la capital hondureña*, March 4, 2010. Available at: <http://www.elheraldo.hn/Sucesos/Ediciones/2010/03/04/Noticias/Sicarios-acribillan-a-una-jueza-en-la-capital-hondurena>

⁸⁹³ La Tribuna, *ONU denuncia la muerte de fiscales en Guatemala y Honduras*, May 31, 2011. Available at: <http://www.latribuna.hn/2011/05/31/onu-denuncia-la-muerte-de-fiscales-en-guatemala-y-honduras/>

⁸⁹⁴ La República, *Sicarios asesinan a magistrado en Chimbote*, December 13, 2006. Available at: <http://www.larepublica.pe/archive/all/larepublica/20061213/pasadas/15/59508>; El Siglo de Torreón, *Asesinan a juez en Lima*, July 20, 2006. Available at: <http://www.elsiglodetorreon.com.mx/noticia/226133.asesinan-a-juez-en-lima.html>

⁸⁹⁵ La República, *Siete ataques armados contra fiscales y jueces en últimos tres años y medio*, February 7, 2009. Available at: http://www.larepublica.pe/pagina_impreso.php?pub=larepublica&anho=2009&mes=02&dia=07&pid=1&sec=15&pag=5

⁸⁹⁶ El Comercio, *En la puerta de la Fiscalía: asesinaron de tres balazos en el pecho a fiscal en Huancavelica*, August 11, 2010. Available at: <http://elcomercio.pe/peru/621874/noticia-huancavelica-asesinaron-fiscal-puerta-fiscalia>

⁸⁹⁷ Diario La Voz, *Mataron a Juez en su camioneta*, October 13, 2007. Available at: <http://www.diariolavoz.net/seccion.asp?pid=18&sid=431¬id=239545>

⁸⁹⁸ COFAVIC, *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego*, March 2009, p. 40. Available at: [http://cofavic.org/images/Informe%20defensores%20COFAVIC\(2\).pdf](http://cofavic.org/images/Informe%20defensores%20COFAVIC(2).pdf)

⁸⁹⁹ El UNIVERSAL, *Investigan si crimen de juez en El Cafetal fue un sicariato*, October 3, 2009. Available at: http://www.eluniversal.com/2009/10/03/sucgc_art_investigacion-si-crimen_1598005.shtml

group associated with the massacre of 27 Guatemalan peasants on May 15, 2011. Stowlinsky was abducted on his way to pick up his son at a sports center in Cobán and his lifeless body was discovered the next day.⁹⁰⁰ The IACHR also learned of the murder of Raúl Enrique Reyes Carbajal, Coordinator of the Office of the Prosecutor in Puerto Cortes, Honduras, who just days before assuming this position served as organized crime prosecutor in San Pedro Sula. According to the information available, the prosecutor died on May 27, 2011 after being shot while being transported in his vehicle from Puerto Cortés to San Pedro Sula.⁹⁰¹ The UN Office for Human Rights expressed serious concern regarding the murder of the two prosecutors, stating that “they seem to be evidence of a new trend among organized crime groups of attacking these officials in order to create greater insecurity and violence in both countries.”⁹⁰²

398. During the follow-up period there have also been continued death threats against judicial authorities to induce them to favor one of the parties in a proceeding or to cease investigating some crime. The information available to the IACHR indicates that in Colombia there have been reports of 750 cases of threats against judicial authorities in the last four years.⁹⁰³ In Guatemala, at least 20 judicial authorities have been threatened since 2009⁹⁰⁴ and in Honduras 22 judges have been threatened up to March 2010.⁹⁰⁵ The IACHR has noted in particular that judicial authorities have been subject to various pressures that grow worse in the days preceding a judicial decision. Although some judicial authorities have asked their States for protection during those critical periods after receiving threats, in some cases they have not been provided with adequate and effective protection plans that would ensure their ability to act without external pressures when issuing their decisions. In addition, in many cases, these threats are not properly investigated and those who make them are not punished.

⁹⁰⁰ Noticias de Guatemala, *Descuartizan a Fiscal que participó en arresto del presunto Zeta “comandante de la bruja”*, May 24, 2011. Available at: <http://noticias.com.gt/nacionales/20110524-descuartizan-a-fiscal-que-participo-en-arresto-del-presunto-zeta-comandante-la-bruja.html>. See also UDEFEGUA, *Ante un cruel asesinato de un buen agente fiscal*, May 27, 2011. Available at: <http://www.protectionline.org/Allan-Stowlinsky-Vidaurre-agente.html>

⁹⁰¹ La Prensa.hn, *Asesinan a coordinador de fiscales en Puerto Cortés*, May 28, 2011. Available at: <http://www.laprensa.hn/content/view/full/500604>;

⁹⁰² United Nations News Centre, *UN Voices Concern at Targeting of Prosecutors and Rights Defenders in Central America*, 31 May 2011. Available at: <http://www.un.org/apps/news/story.asp?NewsID=38546&Cr=rights+defenders&Cr1=&Kw1=Central+America&Kw2=&Kw3=> or in Spanish at <http://www.un.org/spanish/News/fullstorynews.asp?newsID=21052&criteria1=ddhh&criteria2=drogas#>

⁹⁰³ Diario El País, *En medio de una manifestación sepultan a una jueza asesinada en Arauca*, March 24, 2011. Available at: <http://www.elpais.com.co/elpais/judicial/hoy-cumpliran-exequias-jueza-asesinada-en-saravena-5>; Colombian Commission of Jurists, *Asesinato de jueza que investigaba crimen de niños sacude Colombia*, March 23, 2011, Available at: http://www.coljuristas.org/prensa/2011/afp_23-03-2011_01.html; El Tiempo, *Jueces han recibido 750 amenazas en cuatro años*, March 23, 2011. Available at: http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-9055660.html

⁹⁰⁴ Prensa Libre, *Jueces temen atentados tras asesinatos en Petén*, February 16, 2011. Available at: http://www.prensalibre.com/noticias/Jueces-temen-atentados-asesinato-Peten_0_428357185.html

⁹⁰⁵ El Heraldo, *Amenazan a muerte a 22 jueces de Honduras*, March 5, 2010. Available at: <http://www.elheraldo.hn/layout/set/print/Sucesos/Ediciones/2010/03/05/Noticias/Amenazas-a-muerte-contra-22-jueces-de-Honduras>

In Colombia, Judge María Stella Jara Gutiérrez was appointed in February 2008 to hear criminal charges against retired military officer Luis Alfonso Plazas Vega for the alleged death and disappearance of several people in the siege of the Palace of Justice in Bogota, Colombia in November 1985. According to the information available to the IACHR, Judge Jara Gutiérrez received threats from alleged illegal armed groups, which intensified in the months running up to June 9, 2010, when the decision was handed down in the case, and the day after when President Álvaro Uribe criticized the ruling in the media.⁹⁰⁶ The IACHR was informed that from the moment she was assigned to the proceeding, the judge asked the Superior Council of the Judiciary to provide increased security, but did not receive a positive response. The threats received by the judge include an invitation to her funeral and a letter expressing “condolences for your prompt disappearance along with your entire family.”⁹⁰⁷ In response to a situation of risk to the judge’s rights, on June 2, 2010, a few days before she was to issue a decision in the case, the IACHR granted precautionary measures in favor of María Stella Jara Gutiérrez and her son. The Inter-American Commission asked the State of Colombia to adopt the measures necessary to guarantee the life and personal safety of María Stella Jara Gutiérrez and her son; to consult with the beneficiary and her representatives on the measures to be adopted; and to report on the actions taken to investigate the events that led to the adoption of precautionary measures. According to the information received by the IACHR when processing the precautionary measures, Judge Jara left Colombia in June 2010 in search of better security conditions.⁹⁰⁸ The IACHR noted that in December 2010 Judge Jara returned to Colombia along with her son.

399. Several judicial authorities in the region have been removed from office after adopting decisions contrary to the interest of some groups in power. In many cases, publicly available information points to clear political interference in the decision to remove them. Arbitrary removals of judicial authorities and reprisals against them send a strong signal to society and to other judicial authorities that the judicial branch is not free to adopt decisions,⁹⁰⁹ since in some cases after being removed from their positions they have been prosecuted or even subjected to situations that insult their dignity.

⁹⁰⁶ El Espectador, *María Jara, desde el exilio, habla de amenazas en su contra*, November 22, 2010. Available at: <http://www.elespectador.com/impreso/judicial/articuloimpreso-236252-maria-jara-el-exilio-habla-de-amenazas-su-contra>

⁹⁰⁷ Radio Caracol, *Cronología de las presiones y amenazas contra la juez María Stella Jara*, September 4, 2009. Available at: <http://www.caracol.com.co/nota.aspx?id=873407>

⁹⁰⁸ El Espectador, *Es doloroso que una juez que ha resuelto un caso deba abandonar el país*, June 22, 2010. Available at: <http://www.elespectador.com/noticias/judicial/articulo-209855-doloroso-una-juez-ha-resuelto-un-caso-deba-abandonar-el-pais?page=4>

⁹⁰⁹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, de 2009, Chapter III, para. 301.

In Venezuela, on December 10, 2009, the 31st Control Judge of the Metropolitan Area, María Lourdes Afiuni Mora, replaced Elegio Cedeño's detention with a less severe judgment in liberty,⁹¹⁰ since he had already been deprived of freedom for longer than the maximum preventive detention period allowed under the Organic Code of Criminal Procedure, which establishes a maximum period of two years.⁹¹¹ The judge based her decision on the opinion issued by the Working Group on Arbitrary Detention of the Human Rights Council on September 1, 2009. Minutes after she issued her decision, judge Afiuni was arrested by agents of the Public Security Police attached to the Office for Intelligence and Prevention Services (DISIP, currently SEBIN) at the headquarters of the court, along with marshals Rafael Rondón and Carlos Lotuffo.⁹¹² The next day, President of the Republic Hugo Chávez called judge Afiuni an "outlaw" on national radio and television, called for harsh treatment against her and publicly asked that she be sentenced to 30 years in prison.⁹¹³ Judge Afiuni was prosecuted for the alleged commission of the crimes of personal corruption, abuse of authority, abetting escape, and conspiracy to commit a crime⁹¹⁴ and assigned to a "maximum security" cell on January 6, 2010, where she remained for thirteen months. In that cell she had no "access to prison authorities" or any ability to interact with guards or the rest of the inmate population. She was refused access to a cell meeting minimum safety and hygiene standards, was denied food and medicine for two days, was not provided basic foods for her nutrition, and had no access to the sun when removed from her cell to walk at night.⁹¹⁵ In March 2010, judge Afiuni found two lumps near her breast and was denied access to a physician she trusted. The Commission asked the Inter-American Court to grant provisional measures in favor of Judge Afiuni,

⁹¹⁰ In accordance with Opinion No. 20/2010 of September 3, 2010 from the Working Group on Arbitrary Detention of the United Nations Human Rights Council, Judge Afiuni Mora ordered the conditional release of Mr. Cedeño, fully exercising her judicial powers, providing a less severe precautionary measures, which included prohibiting Mr. Cedeño from leaving the country; retaining his passport, and requiring that he appear before the court every fifteen days.

⁹¹¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, de 2009, Chapter III, para. 297.

⁹¹² *Ibid.* See also Working Group of Arbitrary Detention of the United Nations Human Rights Council, Opinion No. 20/2010 (Bolivarian Republic of Venezuela) adopted on September 3, 2010 with respect to the case of detention in Venezuela of Judge María Lourdes Afiuni Mora, para.7.

⁹¹³ President Hugo Chávez stated on national channel: "I call for toughness against this judge. I even told the President of the Supreme Court of Justice, Luisia Estela Morales, and I tell the National Assembly: a law must be passed because a judge who frees a bandit is much worse than the bandit himself. It is infinitely more serious than an assassination; therefore, we must apply the maximum penalty against this judge and against others who do this. I call for thirty years in prison in the name of the dignity of the country." On December 11, 2009, the day after her arrest, Judge Afiuni was advised of the arrest warrant, which mentioned the commission of irregularities that allowed Mr. Cedeño's release. Working Group on Arbitrary Detention of the United Nations Human Rights Council, Opinion No. 20/2010 (Bolivarian Republic of Venezuela) adopted on September 3, 2010 with respect to the case of the detention in Venezuela of Judge María Lourdes Afiuni Mora, para.9.

⁹¹⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, de 2009, Chapter III, para. 299.

⁹¹⁵ IACHR, *2010 Annual Report*, Chapter IV- Venezuela, March 7, 2011, para. 643.

which were granted through resolution of the President of the Court on December 10, 2010.⁹¹⁶ The IACHR was informed that on January 26, 2010 charges were drawn up against judge Afiuni in the context of the criminal proceeding.⁹¹⁷ According to information known to the public, on February 2, 2011 the court in charge of the proceeding against judge Afiuni agreed to change the place of detention for health reasons after a surgical operation and she was moved to house arrest under the condition that she appear every eight days at the arraignment office and with an express prohibition on making statements in the national and international media.⁹¹⁸ Finally, the IACHR learned that the hearing scheduled for June 2011 had been deferred until July.⁹¹⁹ The IACHR continues to monitor Judge Afiuni's situations.

400. The IACHR has also noted interference by some authorities in the private lives of judicial authorities with the use of illegal tapping of their telephone communications, sometimes in a serious context of threats and attacks in retaliation for some judicial decisions affecting the interests of certain groups.

After the issuance of a transcendent opinion from the Criminal Cassation Chamber of the Supreme Court of Justice of Colombia on July 11, 2007, determining that those who had been linked to paramilitary or self-defense groups, regardless of their level of participation in the organization could not be the beneficiaries of amnesty or pardon and could be extradited and as a general rule could not enter civil service,⁹²⁰ some of the deputy justices were targeted by death threats and harassment⁹²¹ such as tapping by the Administrative Security Department (DAS) of some 1,900 telephone calls of Deputy Justice Iván Velasquez, as well as interception of the conversations of then President of the Supreme Court of Justice, Francisco Ricaurte, Justices Sigifredo Espinoza, Jaime Arrubla, María del Rosario González, and César Julio Valencia Copete.⁹²²

⁹¹⁶ I/A Court H.R., *Matter of María Lourdes Afiuni with regard to Venezuela*. Resolution of the President of the Inter-American Court of December 10, 2010.

⁹¹⁷ IACHR, *2010 Annual Report*, Chapter IV- Venezuela, March 7, 2011, para. 648.

⁹¹⁸ El Nacional, *Acuerdan arresto domiciliario para Afiuni*, February 2, 2011. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/182054/Naci%C3%B3n/Acuerdan-arresto-domiciliario-para-Afiuni; El Universal, *Tribunal acordó arresto domiciliario para jueza Afiuni*, February 2, 2011. Available at: http://www.eluniversal.com/2011/02/02/pol_ava_tribunal-acordo--arr_02A5098811.shtml

⁹¹⁹ El Universal, *Difieren juicio contra Afiuni para el 6 de julio*, June 15, 2011. Available at: <http://www.eluniversal.com/2011/06/15/difieren-juicio-contrafiuni-para-el-6-de-julio.shtml>

⁹²⁰ Supreme Court of Justice of Colombia, Criminal Chamber, Judgment of July 11, 2007, Reporting Magistrate Yesid Ramírez Bastidas and Julio Enrique Socha Salamanca.

⁹²¹ According to the information received, both Deputy Justices in charge of the investigation into the so-called *parapolítica* scandal, Iván Velásquez y María del Rosario González, have been the target of death threats and harassment. The Commission asked the State for information regarding the security situation of both magistrates and issued precautionary measures in their favor, in order to strengthen the transparency and relevance of their respective protection plans. IACHR, *2008 Annual Report of the IACHR*. Chapter IV – Colombia, February 25, 2009, para. 137.

⁹²² IACHR, *2009 Annual Report of the IACHR*, Chapter IV- Colombia, December 30, 2009, para. 194.

The series of threats and harassment against the justices reached another critical point in March 2010 when the IACHR received information that the Office of the Attorney General had discovered a plan to attack the justices of the Supreme Court of Justice. As indicated by the IACHR in its 2010 annual report, the State informed the Commission that it had assigned police professionals to the protection plans for the justices, including logistical measures such as armored vehicles, motorbikes, communications, and after the information regarding an alleged criminal plan to attack the justices published in the media, it ordered the reinforcement of the protection plans for the justices.⁹²³ The IACHR has continued to receive information on threats and harassment against Justices Iván Velásquez, María del Rosario González, and César Julio Valencia Copete, in the context of the precautionary measure granted by the Commission to protect their life and safety. The IACHR again expresses its concern because, although the intelligence activities to which the justices were subject have been made public, no information has been received regarding the actions undertaken to review and purge the intelligence files and thus ensure the beneficiaries' security conditions.⁹²⁴

401. Some judges in the region have been removed by disciplinary bodies after a higher court ordered the reversal of a lower court's decision. In some cases, the removal is carried out through administrative procedures lacking the proper guarantees intrinsic to due process. This lack of respect for judicial decisions violates the guarantee of independence of judges and erodes the system for the administration of justice. The IACHR reiterates that a legal assessment should only be disputed through challenge mechanisms provided by the States and the mere reversal of a decision by a higher court should not lead to removal of the judge who issued the ruling being challenged.⁹²⁵

According to information received by the IACHR, Miguel Antonio Arias was the First Judge for Criminal Matters of Azuay, Ecuador when in a criminal trial for drug possession he ordered release and issued an order of irrevocable dismissal in favor of the accused. Following this decision, the prosecutor in Azuay appealed the decision to the Second Criminal Chamber of the Superior Court of Justice of Cuenca, which overturned the lower court decision. According to the information available, following this new decision, the District Delegation of the National Council of the Judiciary, in a resolution dated June 10, 2006, initiated an administrative inquiry that ended with the removal of Judge Arias,

⁹²³ IACHR, *2010 Annual Report*, Chapter IV- Colombia, March 7, 2011, para. 222. Note DDH/OEA No. 0738 of the Ministry of Foreign Relations of the Republic of Colombia, dated April 5, 2010. In its observations, the State advised that Decree 1740 of 2010 establishes a Protection Program for which the National Police is responsible and thus provides protection to the justices of the Constitutional Court, Supreme Court of Justice, Council of State, and the Superior Council of the Judiciary and, based on risk, offers protection to the judges of the Republic and national level public officials and former officials. Colombia's observations regarding the Draft Report of the Inter-American Commission on Human Rights on the country for 2010, February 25, 2011, p. 45.

⁹²⁴ *Ibid.*, 225.

⁹²⁵ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the report on the activities of the Second Summit and Meeting of Heads of State of the African Union held in Maputo of July 4-12, 2003, Principle A, number 4, item n (2).

without any proceeding being opened that would allow him to defend himself regarding the commission of some crime or offense.⁹²⁶ The Association of Judges for Justice expressed its concern because the removal was solely in response to the fact that a judicial decision issued by the judge had been overturned.⁹²⁷ Miguel Antonio Arias filed an action seeking constitutional protection to nullify the resolution that ordered his removal strictly on the basis of legal judgments expressed in his decision. District Court No. 3 for Fiscal and Tax Matters of Cuenca threw out the appeal for protection. Nonetheless, the Third Chamber of the extinct Constitutional Court (Case No. 0969-2006-RA), in a ruling dated November 19, 2007, ultimately nullified the resolution that removed the Criminal Judge of Azuay from his position and proceeded to reinstate him.⁹²⁸

402. Of particular concern to the Commission was the information received regarding acts of harassment against judges who were identified as opposing the coup d'état in Honduras. In its Preliminary Observations on its Visit to Honduras from May 15 to May 18, 2010, the IACHR stated that it had learned of several judges who were dismissed from their positions by the Supreme Court of Justice and stated that it was "unacceptable that individuals charged with administering justice, who opposed the break with the democratic, constitutional order, are being charged and dismissed because of their defense of democracy."⁹²⁹

On July 6, 2010 the IACHR received a complaint against the State of Honduras for the alleged illegal, arbitrary, and politically motivated dismissal of the Judge Tirza del Carmen Flores, Justice of the Court of Appeals of San Pedro Sula; Guillermo López Lone, Judge of the Trial Court of San Pedro Sula; Ramón Enrique Barrios, Judge of the Trial Court of San Pedro Sula, and Luis Alonso Chévez de la Rocha, First Instance Judge against Domestic Violence, all of whom are members of the Association of Judges for Democracy who had participated in activities in opposition to the coup d'état.

According to the information the IACHR received during its visit to Honduras regarding the dismissals of these judges, Justice Tirza Flores Lanza, and Judge Guillermo López Lone, an ex officio investigation was initiated regarding them on July 1, 2009 because on June 30,

⁹²⁶ Association of Judges for Democracy, *Apoyo Internacional a Miguel Antonio Arias*, July 13, 2006. Available at: <http://www.juecesdemocracia.es/pdf/ApoyoSecrJpDJuezEcuatoriano.PDF>; El Mercurio Cuenca-Ecuador, *Hemeroteca Virtual. Jueza demanda restitución al cargo*, December 3, 2007. Available at: <http://www.elmercurio.com.ec/hemeroteca-virtual?noticia=81191>

⁹²⁷ Association of Judges for Democracy, *Apoyo Internacional a Miguel Antonio Arias*, July 13, 2006. Available at: <http://www.juecesdemocracia.es/pdf/ApoyoSecrJpDJuezEcuatoriano.PDF>;

⁹²⁸ Constitutional Court for the Period of Transition, *Judgment No. 002-09-SIS-CC, Case No. 0006-09-IS*, July 7, 2009. See the section presenting the factual and legal background. Available at: http://www.derechoecuador.com/index2.php?option=com_content&task=emailform&id=5093&itemid=54#SENTENCIANo000209SISCC

⁹²⁹ IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010*, para. 82.

2009 they filed an appeal for constitutional protection in favor of then President of Honduras, José Manuel Zelaya Rosales.⁹³⁰ With regard to Justice Flores Lanza, the Personnel Office for the Judiciary found her administratively responsible “1.- for having been absent from her office at the court on June 30, 2009, when she was at the capital of the Republic engaging in activities not intrinsic to the duties of her position, without having sought the respective permission. 2.- participating in activities incompatible with the performance of her position, by taking action in the nullification proceeding submitted in file no. N° SCO-896-2009, (action seeking constitutional protection) dated August 12, 2009. 3) indicating the offices of the Court of Appeals of San Pedro Sula as the location for receiving notice in proceedings that have nothing to do with her exclusive role of impartially providing and administering justice. 4.- participating in activities that based on her status as a justice are not permitted to her, by appearing before the Attorney General of the Republic and filing a complaint against officials of the State for the alleged commission of crimes and issuing comments regarding judicial actions taken by other judicial bodies and the Supreme Court of Justice itself.” With respect to judge Guillermo López Lone, President of the Association of Judges for Democracy, he was found responsible for “failure to perform the duties of his position by committing actions against the dignity of the Administration of Justice by actively participating in the demonstration that occurred on July 5, 2009, in the area surrounding the International Airport of Toncontín [...] Regarding Judge Luis Alonso Chévez de la Rocha, he was found responsible for “having been detained by the National Police on August 12, 2009, because he was present in actions altering the public order, because he tried to cause various judicial employees to rebel against the established government and because he stated “he was ashamed to belong to the Judicial Branch.” Committing actions against dignity in administration.” Finally, Judge Ramón Enrique Barrios was investigated “because he expressed in a lecture that was published in the newspaper “El Tiempo” on August 28, 2009 as an opinion piece titled “It was not a constitutional succession” in which he identifies himself as a Trial Judge and criticizes the actions of the Supreme Court of Justice in the proceeding against Mr. Jose Manuel Zelaya Rosales, indicating as well the procedure that in his judgment should have been followed [...]”⁹³¹ The Inter-American Commission declared the petition admissible on March 31, 2011 in its 141st session.⁹³²

V. THE PROTECTION OF HUMAN RIGHTS DEFENDERS

403. In this chapter the Commission will identify the international mechanisms in place to protect human rights defenders, and describe the specific mechanisms available within the inter-American system. The IACHR will also address the States’ duty to protect human rights defenders under the inter-American human rights standards and the Commission’s own 2006 recommendations and, lastly, the domestic specialized protection systems that some States in the region have adopted.

⁹³⁰ *Ibid.*, para. 79.

⁹³¹ *Ibid.*, paras. 79 and 80.

⁹³² IACHR, Report No. 70/11. Petition 975-10. Adán Guillermo López Lone *et al.* (Honduras), March 31, 2011.

A. Specialized international mechanisms for the protection of human rights defenders

404. Both the United Nations systems and the regional systems for the protection of human rights have approved a number of resolutions specifically on the topic of human rights defenders. Those resolutions have put into place special mechanisms of protection. At the global level, and at the request of the UN Commission on Human Rights,⁹³³ the UN Secretary-General named a special representative on the situation of human rights defenders. In March 2008, through resolution 7/8 of the Human Rights Council, the office of the representative became the Special Rapporteurship on the Situation of Human Rights Defenders.⁹³⁴

405. In 2004, the Council of the European Union issued the European Union Guidelines on Human Rights Defenders.⁹³⁵ In 2008, the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities⁹³⁶ was adopted, which called on the Council of Europe bodies and institutions to pay particular attention to issues concerning human rights defenders and specifically asked the Commissioner for Human Rights to take a number of measures to protect human rights defenders.⁹³⁷ For its part, in 2007 the Organization for Security and Co-operation in Europe (OSCE) created a Focal Point for Human Rights Defenders and National Human Rights Institutions as part of its Office for Democratic Institutions and Human Rights (ODIHR).⁹³⁸

⁹³³ Commission on Human Rights, Resolution 2000/61, April 26, 2000. Available at: <http://olddoc.ishr.ch/hrdo/documents/resolutions/CHR2000-61.pdf>

⁹³⁴ UN Human Rights Council, resolution 7/8, March 27, 2008, available at: http://www2.ohchr.org/english/issues/defenders/docs/resolution7_8.doc

⁹³⁵ The guidelines were revised in 2006 and 2008, Cf. Council of the European Union - *Ensuring protection – European Union Guidelines on Human Rights Defenders*, Brussels, June 10, 2009. Available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/16332-re02.en08.pdf>

⁹³⁶ Committee of Ministers of the Council of Europe, *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, February 6, 2008, available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1245887&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75>.

⁹³⁷ These measures include the following: meeting with human rights defenders and other relevant sources, including ombudspersons and national human rights institutions during his country visits; conveying to the authorities the concerns regarding the problems that human rights defenders face in their work, especially in serious situations where there is a need for urgent action; and working in close cooperation with the United Nations organizations and institutions, and regional systems for the protection of human rights. Cf. Committee of Ministers of the Council of Europe, *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, February 6, 2008, available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1245887&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75>

⁹³⁸ Office for Democratic Institutions and Human Rights, *Human Rights Defenders in the OSCE region: Challenges and good practices*, April 2007- April 2008, p. 4. Available at: <http://www.osce.org/odihhr/35652>. The work of the focal point is divided into four main tasks: monitoring the situation of human rights defenders; Continued...

406. For its part, in 1999 the African Union adopted the *Grand Bay (Mauritius) Declaration* in which it noted the UN Declaration on Human Rights Defenders and acknowledged that the development and energization of civil society should be seen as building blocs in the process of creating an environment conducive to human rights in Africa.⁹³⁹ In May 2003, the First African Union Ministerial Conference on Human Rights adopted the *Kigali Declaration*, which emphasizes the important role that civil society organizations (CSOs) in general and human rights defenders in particular play in the promotion and protection of human rights in Africa, and calls upon the African states and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development.⁹⁴⁰ In 2004, and in consideration of these declarations, the African Commission on Human and Peoples' Rights adopted a resolution on the Protection of Human Rights Defenders in Africa, in which it created a Special Rapporteur on Human Rights Defenders.⁹⁴¹

407. In the Americas the regional instruments for the protection of human rights have undergone significant development. The Inter-American Democratic Charter has underscored how important permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order is to the development of representative democracy.⁹⁴² Every year since 1999, the OAS General Assembly has adopted a resolution titled *Human Rights Defenders: Support for Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in*

...continuation

identifying issues of concern; promoting the interests of human rights defenders; and strengthening co-operation with national human rights institutions (NHRIs)

⁹³⁹ *Grand Bay Declaration and Plan of Action*, adopted at the OAU Ministerial Conference on Human Rights, held on April 12 through 16, 1999, in Grand Bay, Mauritius. Available at: http://www.achpr.org/english/declarations/declaration_grand_bay_en.html

⁹⁴⁰ *Kigali Declaration*, adopted by the First African Union Ministerial Conference on Human Rights on May 8, 2003, in Kigali, Rwanda, art. 28. Available at: http://www.achpr.org/english/declarations/declaration_kigali_en.html

⁹⁴¹ African Commission on Human and Peoples' Rights. Resolution on the Appointment of a Special Rapporteur on Human Rights Defenders in Africa, adopted at the Commission's 35th regular session, held May 21 to June 4, 2004, in Banjul, Africa. Available at: http://www.achpr.org/english/_info/hrd_res_appoin_3.html. The Rapporteur's mandate is a) to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa; b) to submit reports at every Ordinary Session of the African Commission; c) to cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders; d) to develop and recommend effective strategies to better protect human rights defenders and e) to follow up on his/her recommendations; to raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa. In furtherance of his or her mandate, the Special Rapporteur sends urgent communications to the various States related to violations or threats to the rights of human rights defenders; prepares reports on the situation of human rights defenders in Africa; visits the countries and issues press releases on the subject.

⁹⁴² Article 2 of the Inter-American Democratic Charter.

the Americas,⁹⁴³ which supports the work that human rights defenders perform and urges the States of the region to provide the guarantees and facilities necessary so that they are able to freely engage in their work. In Resolution AG/RES. 1618 of 2001, the Assembly asked the IACHR “to consider preparing a comprehensive study in this area which, *inter alia*, describes their work, for study by the pertinent political authorities.”⁹⁴⁴

408. One initiative of the IACHR’s Executive Secretariat to more closely track the situation of human rights defenders in the region, in furtherance of the resolutions of the OAS General Assembly, was to create, in 2001, an IACHR Unit on Human Rights Defenders. At the 141st session of the Inter-American Commission, the full membership decided to create the Rapporteurship on Human Rights Defenders.⁹⁴⁵

B. Mechanisms of protection of human rights defenders within the Inter-American Commission on Human Rights

409. The following are among the means the IACHR uses to protect human rights defenders: i) requests to the States seeking information; 2) press releases; 3) public hearings; 4) preparation of reports on the situation of defenders; 5) thematic reports, and 6) adoption of precautionary measures and requests for provisional measures from the Inter-American Court.

1. Requests to the States seeking information (Article 41 of the Convention and Article 18 of the IACHR’s Statute).

410. Article 41 of the Convention and Article 18 of the Commission’s Statutes provide that the Commission’s main function is to promote respect for and defense of human rights and that it has the authority to ask the governments of the States of this hemisphere to provide reports on the measures taken in the area of human rights.⁹⁴⁶

⁹⁴³ AG/RES. 2579 (XL-O/10); AG/RES. 2517 (XXXIX-O/09); G/RES. 2412 (XXXVIII-O/08); AG/RES. 2280 (XXXVII-O/07); AG/RES. 2177 (XXXVI-O/06); AG/RES. 2067 (XXXV-O/05); AG/RES. 2036 (XXXIV-O/04); AG/RES. 1920 (XXXIII-O/03); AG/RES. 1842 (XXXII-O/02); AG/RES. 1818 (XXXI-O/01); AG/RES. 1711 (XXX-O/00); AG/RES. 1671 (XXIX-O/99).

⁹⁴⁴ OAS General Assembly, *resolution AG/RES.1818 (XXXI-O/01)*, June 5, 2001.

⁹⁴⁵ Since its creation, the following have been the Rapporteurship’s functions: a) receive and examine the communications, complaints, urgent actions and press releases that human rights organizations send to the Executive Secretariat; b) advise the Commission on individual petitions and requests for precautionary measures for human rights defenders; c) follow up on the public hearings held on this topic; and d) prepare reports on the situation of human rights defenders in the countries of the region.

⁹⁴⁶ Issuance of Article 41 letters is a way to monitor the commitments undertaken by the States at the hearings the Commission holds during its sessions on the subject of protecting human rights defenders. The IACHR believes it is essential to identify the positive steps forward that the States in the region take with respect to the initiatives proposed within the inter-American human rights system. Thus, on April 25, 2011, the Inter-American Commission requested information from the State of Mexico concerning the progress made in the creation of national mechanisms for the protection of human rights defenders, following up on the hearing held on the subject during the Commission’s 140th session, where the State expressed its willingness to enter into an open dialogue with civil society organizations to facilitate their work and implement measures of protection. Mexico presented its response on May 9, 2011.

Based on these provisions, the IACHR asks the States to present information on the human rights issues about which it is interested or concerned, including the measures the States have taken to address them. The requests for information give the State an opportunity to identify issues that could compromise its international responsibility; they also give the IACHR the opportunity to learn what the State's position is and the measures it has taken, thus enabling an objective evaluation of the State's compliance with its international obligations. The Commission receives periodic information from human rights defenders that may warrant its attention through this mechanism.⁹⁴⁷

2. Press Releases

411. Through its press releases, the IACHR endeavors to expose situations where human rights are in grave peril or have been violated and require the States' immediate attention. During the follow-up period, the IACHR has issued at least 37 press releases⁹⁴⁸ related to human rights defenders, in which it has condemned attacks against them or expressed its concern over the abusive use of police and military in protest demonstrations; over the intelligence activities waged against them; the aggression and harassment of defenders who are beneficiaries of precautionary measures, and the enactment of laws that could make it a criminal offense for such organizations to accept any international cooperation.

3. Thematic hearings

412. Under Article 62 of the Commission's Rules of Procedure, it can hold hearings to receive general or particular information related to human rights in one or more member State of the OAS. The hearings have revealed to the Commission and to all the countries of the region the specific obstacles that defenders encounter in one specific country or across the region. During the follow-up period, the IACHR has held a total of 50 hearings on the specific theme of human rights defenders. Those hearings have increased in number with the passage of time, to the point that 24% of all the hearings the

⁹⁴⁷ In the period since the *Report on the Situation of Human Rights Defenders in the Americas*, the IACHR has requested information from the States on numerous occasions. Among the subjects about which information has been requested are the following: a) the initiation of criminal cases against civil society organizations for receiving international or foreign funding to conduct their activities; b) the factors compromising the Independence and impartiality of the justice operators, and the personal or professional reprisals taken against them; c) the institution of criminal cases against defenders to thwart and criminalize the work of defending and promoting human rights; e) when, by reason of the work they do to investigate serious human rights violations, human rights defenders become the targets of reprisals that threaten their lives and personal integrity; f) cases in which high-ranking public officials have made public statements to discredit human rights defenders, and g) the undue restrictions on the right of assembly and freedom of expression in the legitimate practice of protest demonstrations, by abusing the use of force.

⁹⁴⁸ The press releases that the IACHR has issued since the 2006 report that concerned human rights defenders, can be viewed at the following web address: http://www.oas.org/en/iachr/defenders/press_releases/default.asp

Commission has held on this theme in the last five years were in the Commission's 141st session.⁹⁴⁹

413. The IACHR is appalled by the situations described by the human rights defenders who have attended the hearings, who have been the targets of smear campaigns in their own countries, occasionally by government authorities. Article 63 of the Commission's Rules of Procedure provides that the States "shall grant the necessary guarantees to all persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission" and that States "may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission."⁹⁵⁰

4. Reports on the situation of human rights defenders under the petition and case system

414. Pursuant to Article 41(f) of the American Convention and Article 20 of its Statute, the IACHR processes individual petitions from the time the petition is received until the merits report on a case is approved, and makes recommendations to the States for purposes of making reparations to the victims of human rights violations. In the case of States that are party to the American Convention and have accepted the contentious jurisdiction of the Inter-American Court, the Commission may, after evaluating a State's compliance with its recommendations, decide to either publish the case or take it to the Inter-American Court.

415. The facts with which the Inter-American Court has to work in a case submitted to its jurisdiction are those set out in the Commission's merits report. Thus, the way in which the Commission lays out the facts to the Court is fundamental to the development of the inter-American system's case law and to obtaining justice for victims of human rights violations. The Court's decision on a case involving a human rights defender serves a protective function that extends far beyond the immediate case; it helps protect all human rights defenders who find themselves in a predicament similar or related to the case being decided.⁹⁵¹ The Commission has filed a total of nine cases with the Court that involve human rights defenders. This has enabled further development of inter-American

⁹⁴⁹ The hearings that the Commission has held in the 2006/2011 period on the subject of human rights defenders can be viewed at: <http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=30>

⁹⁵⁰ When the Commission learns of actions intended to discredit or make accusations against human rights defenders for having reported violations of human rights during hearings, it has requested from the States all the information they have on the matter, and particularly the measures taken to ensure that the human rights defender does not suffer any reprisals for having testified before the Commission.

⁹⁵¹ I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*, Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Rosendo Cantú et al. v. Mexico*, Judgment of August 31, 2010. Series C No. 216, para. 219.

case law on the subject of protecting those dedicated to the defense and promotion of human rights.⁹⁵²

5. Thematic reports

416. Through public hearings, working meetings, press releases, urgent alerts from civil society and other means, the Commission receives periodic information from human rights defenders. The information received may be sufficient to warrant the Commission's preparation of thematic reports. The standards developed by the Unit for Human Rights Defenders, and the recommendations made in the Report on the Situation of Human Rights Defenders in the Americas (2006) have had a far-reaching impact on civil society, the States of this hemisphere and the inter-American system itself. The purpose of this report is to follow up on the recommendations made in the 2006 report and to update the information on the obstacles that human rights defenders in the hemisphere currently encounter. In addition to its thematic reports on human rights defenders, the IACHR also includes in its annual reports a study on the situation of human rights defenders in those countries to which Chapter IV refers each year.

6. Precautionary measures

417. For three decades now, precautionary measures have served to protect thousands of persons at risk in the OAS member States.⁹⁵³ The authority of the IACHR to request the adoption of urgent actions or request precautionary measures is a mechanism that has been used for decades by international tribunals and bodies. In the particular context of the region, it has operated as an effective instrument for the protection and prevention of irreparable harm to persons or groups of persons that face situations of serious and imminent risk. In this way, the Commission has been complying with its mandate to "be to promote the observance and protection of human rights" in the terms set forth in Article 106 of the OAS Charter, and to assist the States with their compliance with their unavoidable duty of protection – which is their obligation at any instance.⁹⁵⁴

⁹⁵² The cases recently submitted by the Commission to the Court are Case 12.605, Joe Luis Castillo *et al.* v. Venezuela, February 22, 2011 and Case 12.661, Jose Luis Uzcategui v. Venezuela, October 22, 2010. The cases that have a decision of the Court are: I/A Court H.R., Teodoro Cabrera García and Rodolfo Montiel Flores, Case 12.449 v. the United Mexican States, June 24, 2009; Blanca Jeannete Kawas Fernández, Case 12.507 v. the Republic of Honduras, February 4, 2008; Arley José Escher *et al.*, Case 12.353 v. the Federative Republic of Brazil, December 20, 2007; Jesús María Valle Jaramillo, Case 12.415 v the Republic of Colombia, February 13, 2007; Saúl Isaac Cantoral Huamaní and Consuelo Trinidad García Santa Cruz, Case 10.435 v. Republic of Peru, February 21, 2006; Gilson Nogueira de Carvalho, Case 12.058 v. Federative Republic of Brazil, January 13, 2005; Pedro Huilca Tecse, Case 11.768 v. Republic of Peru, March 12, 2004.

⁹⁵³ Press Release 84/09, *IACHR publishes its new Rules of Procedure*. Washington, December 10, 2009.

⁹⁵⁴ The Commission has stated that the mechanism of precautionary measures applies to all OAS member states and is not limited to the States parties to the Convention. It has considered that "OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate". See IACHR, Report No. 52/01, Case 12.243, Merits, Juan Raul Garza (United States), April 4, 2001, para. 117.

418. The mechanism of precautionary measures is regulated in Article 25 of the Commission's Rules of Procedure, whose most recent amendment entered into force on December 31, 2009 to reflect the existent practice in the processing of precautionary measures, such as the elements that the IACHR takes into account when analyzing the requests, their granting, maintenance and lifting.⁹⁵⁵

419. The Commission may request the adoption of precautionary measures to prevent irreparable harm to persons in serious and urgent cases. Like the provisional measures granted by the Inter-American Court, precautionary measures have a "precautionary" function, in terms of preserving a legal situation *vis-à-vis* the exercise of jurisdiction by the Commission, and "protective" in the sense of preserving the exercise of the human rights enshrined in the provisions of the inter-American system, thereby preventing irreparable harm to persons.⁹⁵⁶

420. Anyone may file a request seeking precautionary measures and need not be a national of the State from which the measures are being sought. If the IACHR has knowledge of facts that, in its judgment, warrant precautionary measures, it may, on its own initiative, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons. The requests seeking precautionary measures can be filed separately or as part of an individual petition, either in writing or by electronic means; it can even be filed during the Commission's visits to member States.

421. In the case of human rights defenders, the measures can be requested in order to protect an individual human rights defender or group of identifiable defenders, for example persons who are members of the same organization. The Court has consistently held that measures of protection can be granted to a group of persons not previously identified by name, but who are identifiable and who are in grave peril because they belong to a particular group or community.⁹⁵⁷

a. Requirements for granting precautionary measures in favor of human rights defenders

422. When examining a request seeking precautionary measures, the Commission looks for three factors: i) the gravity; ii) the "urgency", and iii) whether the measure is intended to "prevent irreparable harm to persons." Even though the facts which motivated a request for protective measures do not have to be fully proven, a minimum degree of detail and information is necessary to assess *prima facie* a situation of

⁹⁵⁵ Press Release 84/09. *IACHR publishes its new Rules of Procedure*. Washington, December 10, 2009.

⁹⁵⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 233.

⁹⁵⁷ I/A Court H.R., *Matter of the Centro Penitenciario de Aragua "Cárcel de Tocarón" regarding Venezuela*. Order of November 1, 2010 [in Spanish only], *Consideranda* 14.

gravity and urgency.⁹⁵⁸ Precautionary measures can be granted irrespective of whether an individual petition has been filed.⁹⁵⁹

423. Firstly, the Commission would like to highlight that the analysis of a precautionary measure request is made with due consideration of the particularities of each specific situation. The analysis cannot be subject to strict or generalized criteria, instead, it has to attend to the nature of the risk and of the damage that is to be prevented. Notwithstanding, below the IACHR will point out certain elements that it has taken into account when analyzing the requests of precautionary measures for human rights defenders. These elements do not constitute necessary requirements for granting the measures nor have an exhaustive character.

424. As for the “gravity” requirement, before making a decision on a situation brought to its attention involving a human rights defender, in practice the IACHR has assessed a number of contextual circumstances such as a) the nature of the threats received (spoken, written, symbolic, etc.); b) a history of acts of aggression against persons in similar situations; c) any direct acts of aggression committed against the potential beneficiary; d) an increase in the threats indicative of a need for preventive action, and e) factors such as apology of and incitement to violence against a person or group of persons. Likewise, it has considered as has the Court, that it is necessary that contextual elements “constitute a threat, either directly or indirectly, to life and personal integrity” in order to rise to the level of gravity required.⁹⁶⁰

425. As for the “urgent” nature of the situation for which measures are sought, the risk or threat involved must be imminent, which means that the remediation response must be immediate; hence, when examining this aspect, one has to consider the timing and duration of the precautionary or protective intervention requested.⁹⁶¹ To assess this aspect, the Commission has considered elements such as: a) the existence of cyclical

⁹⁵⁸ I/A Court H.R., *Matter of Children and Adolescents Deprived of Liberty in the “Complejo Do Tatuapé” of Febem. Provisional Measures and Request for Extension of Provisional Measures regarding the Federative Republic of Brazil*. Order of July 4, 2006. *Consideranda* 23.

⁹⁵⁹ The Inter-American Court considered necessary to explain that given the protective nature of provisional measures, the Court may, in exceptional circumstances, order such measures even when there is no contentious case before the inter-American system, if the situations may, *prima facie*, result in a serious and urgent violation of human rights. In such cases, the Court has written, an assessment must be made of the problem brought to the Court’s attention, the effectiveness of the State measures to deal with the situation as described, and how exposed the persons requesting the measures would be if the measures were not adopted. I/A Court H.R., *Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center regarding Venezuela. Request for Provisional Measures*. Order of February 8, 2008, *Consideranda* 9. *Matter of the Centro Penitenciario de Aragua “Cárcel de Tocarón” regarding Venezuela*. Order of November 1, 2010 [in Spanish only], *Consideranda* 7; *Matter of María Lourdes Afiuni regarding Venezuela, Provisional Measures*. Order of December 10, 2010, *Consideranda* 7.

⁹⁶⁰ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela. Precautionary Measures*. Order of July 9, 2009, *Consideranda* 35.

⁹⁶¹ I/A Court H.R., *Matter of Four Ngöbe Indigenous Communities and Their Members regarding Panama. Provisional Measures*. Order of May 28, 2010, *Consideranda* 9.

threats and assaults, which strongly suggests the need to take immediate action; b) the continuing nature of the threats and how close one follows upon the other; among others.

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

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

428. On the matter of irreparable harm, the events that warrant the request must suggest that there is a reasonable probability that the harm will materialize; the request must not rely on legal rights or interests that can be remedied.⁹⁶²

429. It is important to highlight that previous denunciation of the risk to the authorities is not an additional requirement for granting a precautionary measure, but as it is established in Article 25.4 of the Rules, it is an element that the Commission will take into account when analyzing the request. In this regard, when it has been denounced at a domestic level, the IACHR can evaluate the effectiveness or ineffectiveness of the State's response. Likewise, when the person who requests the measure has not denounced to the domestic authorities the situation of risk, it is important for the Commission to know the reasons why the person abstained from doing so.

430. Before arriving at a final decision as to whether to grant or reject the request seeking precautionary measures, the IACHR may request additional information from the person applying for precautionary measures or from the State concerned, or from both. The IACHR can request such information whenever the information supplied to it is not sufficient for it to arrive at a final determination. Much of what the Commission does is follow up requests for information from the State and from the petitioners. When information is requested from the petitioner or potential beneficiary of the measures and said petitioner does not comply with the Commission's request, the IACHR may, under its

⁹⁶² I/A Court H.R., *Matter of Monagas Judicial Confinement Center ("La Pica") regarding Venezuela; Matter of Yare I and Yare II Capital Region Penitentiary Center regarding Venezuela; Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) regarding Venezuela; and Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center regarding Venezuela*, Provisional Measures, Order of February 8, 2008, *Consideranda* 3.

Rules of Procedure, regard this failure to comply as a ground for the Commission to withdraw a request that the State adopt precautionary measures.

431. Based on the assessment of the facts reported in the original request and, if necessary in the response to the Commission's request for information from the State or the petitioners, the IACHR decides whether or not the measure should be granted. If the measure is not granted, this does not prevent the petitioner from filing a new request for protection if he or she believes that there are grounds to grant the request or if new circumstances develop.

b. Granting of precautionary measures and follow-up while they are in force

432. If the request filed with the IACHR meets the requirements of i) "gravity"; 2) "urgency", and 3) is intended to "prevent irreparable harm to persons," then the IACHR will grant the request. Accordingly, the Commission will ask the State concerned to immediately take the measures necessary to guarantee the life and physical integrity of the beneficiaries and to arrange the measures of protection with those beneficiaries and their representatives. When the beneficiary is a human rights defender, the Commission has also asked the State to adopt the necessary measures to ensure that the beneficiary is able to safely carry on with his or her activities in the promotion and defense of human rights.⁹⁶³

433. Furthermore, if its requests that precautionary measures be taken the Commission may, if the particular circumstances so warrant, ask that the threats, acts of harassment or attacks of which the beneficiary has been the victim be investigated by the justice system. While the Court has written that the effectiveness of the investigations and proceedings into the facts that prompted the measures of protection go to the merits of a contentious case,⁹⁶⁴ it has also accepted that in some cases it can be shown that the failure to investigate or an ineffective investigation can be a contributing factor to the situation of extreme gravity and urgency, in which case an investigation would be needed to prevent irreparable harm to the specific beneficiary.⁹⁶⁵ The IACHR has written that an investigation aimed at clarifying and eliminating the causes for which precautionary measures have been

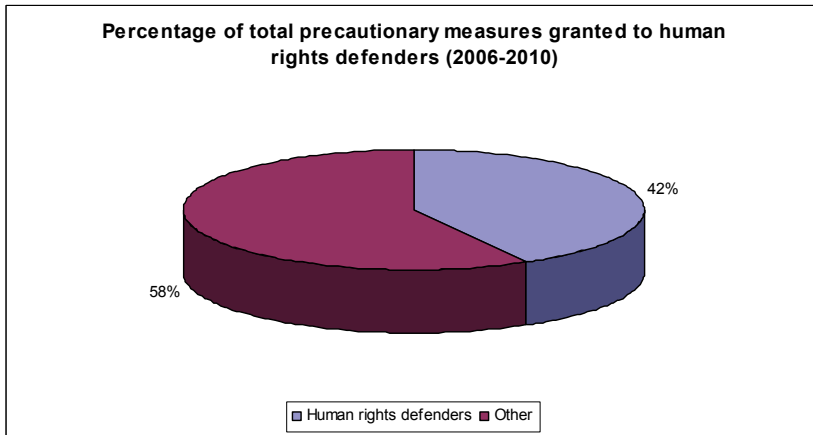
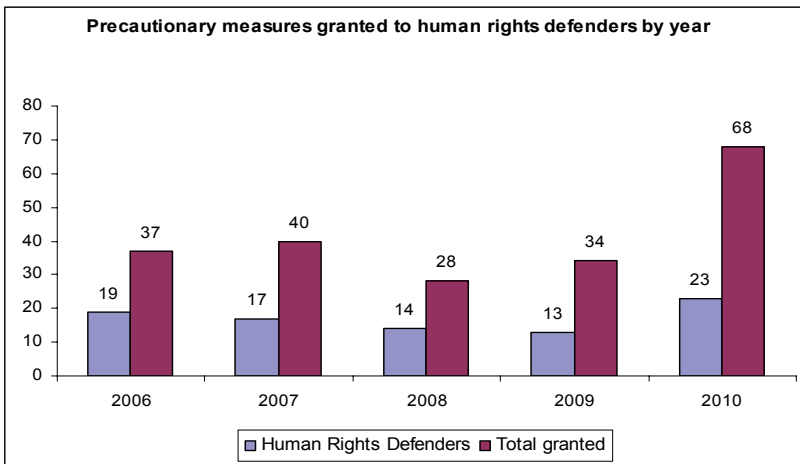
⁹⁶³ Thus, for example, in PM 143/11, the IACHR granted precautionary measures for Leo Valladares Lanza and Daysi Pineda Madrid in Honduras, who had been followed and harassed by unknown individuals, following comments Valladares Lanza made on a television program in February 2011. The Commission asked the State of Honduras to take the necessary measures to guarantee the life and physical integrity of Leo Valladares Lanza and Daysi Pineda Madrid; and to ensure that Leo Valladares Lanza would be able to continue his work of promoting and defending human rights under safe conditions. See, precautionary measures granted in 2011. Available at: <http://www.cidh.oas.org/medidas/2011.eng.htm>

⁹⁶⁴ *Matter of Leonel Rivero et al. regarding Mexico*. Provisional measures. Order of November 25, 2008, *Consideranda 18*; *Matter of Pilar Noriega et al. regarding Mexico*. Provisional Measures. Order of February 6, 2008, *Consideranda 14*.

⁹⁶⁵ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional measures. Order of July 9, 2009. *Consideranda 17*.

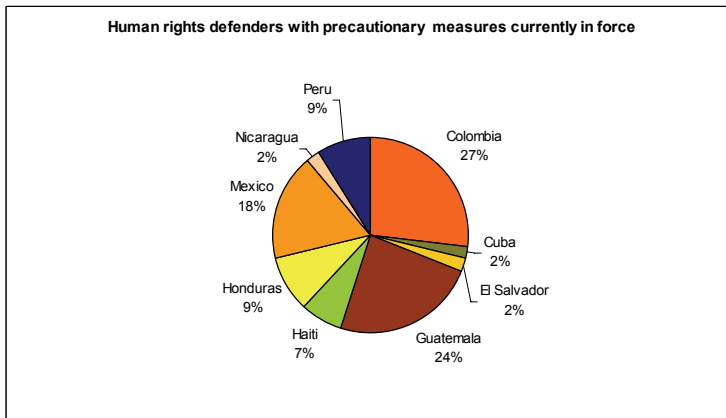
granted is among the measures that the State should adopt for carrying out its obligation to protect and so remove the risk factors that beset the beneficiary.⁹⁶⁶

434. Human rights defenders account for over one third of the beneficiaries for whom precautionary measures are currently in force in this hemisphere. Of the 207 measures granted in the 2006-2010 period, 86 were for persons engaged in the defense and promotion of human rights, which is 42% of the beneficiaries of precautionary measures. The IACHR is deeply concerned over the high number of human rights defenders who have felt compelled to seek precautionary measures.



⁹⁶⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 246.

435. Once precautionary measures are granted, the States must “ensure that security measures are effectively put into practice when demanded by conditions of risk.”⁹⁶⁷ Of the total number of precautionary measures in effect from 2006 to the present, almost one third (32%) are for human rights defenders, which indicates that the degree of imminent risk to their rights persists. Of the precautionary measures granted, the State that has been most frequently called to provide protective measures for human rights defenders at risk is Colombia (27%), followed by Guatemala (24%) and Mexico (18%).⁹⁶⁸



436. So long as precautionary measures are in effect, the IACHR asks the State and the beneficiaries’ representatives to periodically report on the measures’ implementation.⁹⁶⁹ The information supplied by both parties is to be substantive enough to enable the IACHR to assess whether the measures should remain in effect and ascertain the beneficiaries’ current situation. The Commission is troubled by the fact that on occasion, the reporting requirements are not satisfied by either the States or the beneficiaries’ representatives within the established timeframe, which makes it difficult for the IACHR to keep track of the situation and, in particular, to assess how effective and relevant the precautionary measures are.

437. Given the exceptional nature of precautionary measures and the strict rules for granting them, for the IACHR it is essential that the beneficiaries’ situation be monitored and a determination made as to whether the gravity and urgency that warranted the respective measure still obtain. And so, the Commission is urging the States

⁹⁶⁷ IACHR, *Justice and social inclusion: the challenges of democracy in Guatemala*, OEA/Ser.L/VIII.118, Doc. 5 rev.2, December 29, 2003, para. 208.

⁹⁶⁸ With regards to Honduras, the precautionary measure PM-196/09 is included. This measure covers more than a hundred beneficiaries of precautionary measures, which include human rights defenders.

⁹⁶⁹ According to Article 25(8) of the Rules of Procedure, “the Commission may request relevant information from the interested parties on any matter related to the granting, observance, and maintenance of precautionary measures”.

to comply with their requirements within the stipulated time period. In this regard, the Commission requests the parties to comply with the requirements made to them within the deadlines.⁹⁷⁰ is reminded that compliance with the precautionary measures is mandatory inasmuch as their purpose is to prevent irreparable harm to persons and thereby enable the States to comply with the international obligations they undertook upon adoption of the American Declaration and ratification of the American Convention on Human Rights.

c. Implementation in the States of the protection measures ordered by the organs of the inter-American system

438. The precautionary measures issued by the IACHR are binding upon the States because of the general obligation incumbent upon them to respect and guarantee human rights, to adopt the legislative or other measures necessary for ensuring effective observance of human rights, and to carry out in good faith the obligations contracted under the American Convention and the Charter of the OAS. They are also binding upon the States because Articles 33 and 41 of the American Convention give the IACHR the competence to monitor to ensure that the States parties are complying with their commitments.⁹⁷¹ The Inter-American Court has written that “the ultimate aim of the American Convention is the effective protection of human rights, and, pursuant to the obligations contracted under it, the States should ensure the effectiveness of their mechanisms (endow them with *effet utile*), which implies implementing and carrying out the resolutions issued by its supervisory organs, whether the Commission or the Court.”⁹⁷²

439. Accordingly, States must create systems for diligent and effective implementation of the protective measures that the organs of the inter-American system order. To that end, one of the principles that must be followed when implementing such measures is that they be planned and applied with the participation of the beneficiaries and their respective representatives.⁹⁷³ The Commission is urging the States to ensure this right to the beneficiaries of protective measures; it also calls upon the beneficiaries and their representatives to provide whatever cooperation is needed for the protective measures to be effective.⁹⁷⁴ The States have to guarantee this rights of the beneficiaries of

⁹⁷⁰ According to Article 25(8) of the Rules of Procedure, the Commission may withdraw a request that the State adopt precautionary measures due to the substantive inactivity of the beneficiaries or their representatives to respond to the requirements of the IACHR regarding the granting, observance and maintenance of precautionary measures.

⁹⁷¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 241.

⁹⁷² I/A Court H.R., *Case of Penitentiaries in Mendoza*, Order of November 22, 2004, operative para. 16.

⁹⁷³ I/A Court H.R., *Matter of Alvarado Reyes et al. regarding Mexico*. Provisional Measures. Order of April 1, 2010, *Consideranda* 14.

⁹⁷⁴ I/A Court H.R., *Matter of Alvarado Reyes et al. regarding Mexico*. Provisional Measures. Order of April 1, 2010, *Consideranda* 14; *Case of the Mapiripán Massacre*. Provisional Measures. Order of September 2, 2010, *Consideranda* 20.

precautionary measures and its representatives have to cooperate in order to facilitate the effective implementation of the measures.⁹⁷⁵

440. In general terms, the States within the region have adapted their internal structure to comply with the protection requests from the Inter-American Commission and the Inter-American Court, although the lack of effective and diligent implementation by the States remains a critical concern.⁹⁷⁶ Drawing upon its own experience and the public consultations conducted in preparation for this report, the IACHR has identified several types of systems of implementation.⁹⁷⁷

441. In keeping with the mandate of promoting human rights, conferred upon it by the States of the region, the Commission will now examine some of the main obstacles that the above-described systems have posed for practical implementation of precautionary and provisional measures. These observations are based on the findings of the consultations conducted in preparation for this report and are in furtherance of the recommendation that the Commission made in its 2006 report where it asked the States to adopt adequate measures to put into practice the protection measures requested by the IACHR and the Court.⁹⁷⁸

i. Systems of implementation through interinstitutional meetings

442. Some states in the region hold intergovernmental meetings to make decisions on how best to implement protective measures requested by the organs of the inter-American system. The IACHR has received information indicating that meetings are held in countries like Bolivia and Mexico. According to the information available, the inter-institutional committees are established on an ad hoc basis, convened by the authority that is processing the request for protective measures. The committee is composed of the

⁹⁷⁵ I/A Court H.R., Matter of Alvarado Reyes *et al.* Provisional measures regarding Mexico. Order of the President of the Inter-American Court of Human Rights of April 1, 2010. Consideranda 14; I/A Court H.R., Case of the Mapiripán Massacre. Provisional measures regarding Colombia. Order of the Inter-American Court of Human Rights of September 2, 2010, consideranda 20. .

⁹⁷⁶ The OHCHR has identified the following as problems mentioned by the defenders in connection with implementation of the measures: the authorities' delayed response; the refusal to acknowledge the seriousness of the situation; the fact that in most cases, the measures are nothing more than providing telephones and other means of communication or assigning bodyguards, whose job is to "look out for the defenders" [...] when in fact the institutions charged with protecting the human rights defenders are the very ones the defenders fear. OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2010, paragraph 108. Available [in Spanish] at: <http://www.hchr.org.mx/files/doctos/Libros/informepdf.pdf>.

⁹⁷⁷ The Commission would like to thank the States that in the frame of the public consultation, provided information on its systems of implementation of precautionary and provisional measures for this section of the report. Even though great challenges persist, the IACHR values the efforts of the States of Bolivia, Canada, Colombia, Ecuador, El Salvador, Honduras, Mexico and Peru, aimed at adequating their internal structure to comply with the international obligations assumed in the frame of the American Declaration and Convention.

⁹⁷⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 8.

beneficiaries and the representatives of the authorities that are legally empowered to implement the actions taken to comply with the measures requested.

443. The State of Bolivia reported that Supreme Decree No. 29196 of July 18, 2007, created the National Council for International Legal Defense and Representation of the Bolivian State. Its members are the Ministry of the Office of the Presidency, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Economy and Public Finance, and the Ministry of Legal Defense of the State.⁹⁷⁹ One of its functions is to take cognizance of all proceedings related to precautionary and provisional measures. The State of Mexico, for its part, observed that the Secretariat of the Interior has used inter-institutional working groups to enable the authorities involved to cooperate and coordinate with one another. In the case of a request from the inter-American system, once its admissibility is decided, measures are ordered to guarantee the personal integrity and/or life of the beneficiaries of the precautionary measures granted by the Commission or provisional measures ordered by the Court. Accordingly, the Office of the Attorney General of the Republic, through its Office of the General Director of International Cooperation, is a member of the inter-institutional working group established by the Secretariat of Foreign Affairs and by the Secretariat of Public Security. Other members of the working group include municipal, state and federal authorities; the group is coordinated by the Secretariat of the Interior.

444. According to the information the Commission has available, although an authority is in charge of coordination with the other government institutions participating in the inter-institutional meetings,⁹⁸⁰ under this model there is as a rule under no precise legal framework spelling out the procedures and scope of the powers invested in the authorities charged with implementing and coordinating the measures; nor is there any legal framework regarding the protective measures or systems that could be used to safeguard the beneficiaries.

445. In the case of Bolivia, under the terms of Supreme Decree No. 29196, the purpose of the National Council for International Legal Defense and Representation of the Bolivian State is to represent Bolivia "in international litigation and complaints". It is "charged with mapping out policies, guidelines and directives."⁹⁸¹ The Commission observes that while the Decree institutes coordination of the activities involved in the defense and legal representation of the Bolivian State in international forums, it does not contain any provisions prescribing the procedure to be followed to implement and follow up on precautionary and provisional measures ordered by the inter-American system. Such measures ought not to be construed as part of a contentious process in which the State is

⁹⁷⁹ Supreme Decree No. 29894 of February 7, 2009

⁹⁸⁰ For example, in the specific case of Mexico, according to subparagraph VIII of Article 21 of the Rules governing the Secretariat for Government, one of its functions is to "coordinate the response to requests for precautionary measures or provisional measures to prevent human rights violations, and to implement those measures provided they are not within the jurisdiction of some other office of the Federal Government."

⁹⁸¹ Supreme Decree No. 29196 of July 18, 2007.

defending itself; instead they should be viewed as measures taken to protect persons in situations of gravity and urgency, thereby enabling the State to perform its obligations under international law.

446. In the case of Mexico, the OACNUDH has observed that the Interior Secretariat's Unit for the Promotion and Protection of Human Rights does not have a mechanism by which to evaluate risk, or a protocol prescribing the procedure to be followed and setting out clear criteria to determine whether the measures should be left in place or lifted. Nor does it have clear rules governing coordination between federal and local institutions. The OACNUDH has also observed that there is no specific line item in the budget to cover the costs of these measures.⁹⁸² According to civil society organizations in Mexico, those who attend the meetings of the intergovernmental working groups are frequently low-level officials without any authority to take decisions binding upon the agencies they represent; instead, they are at the meetings to justify what their institutions did for the beneficiaries before the organs of the inter-American system requested protective measures. Again, there are no budgetary or logistical resources especially earmarked for implementation of the protective measures; hence, the authorities who attend these meetings can hardly promise to spend money out of their own budgets to enforce the measures. The result is a slow implementation process that wears down the beneficiary. Then, too, when a measure of protection is to be implemented, there are no provisions clearly spelling out what each authority's responsibilities are. The intergovernmental working group's meetings are a function of the urgency of the situation at hand; it may also meet at the instigation of the beneficiary or at the Commission's request.

447. Those States that use intergovernmental meetings to implement the measures ordered by the organs of the inter-American system must operate with the necessary transparency and establish rules to govern the procedures by which the precautionary and provisional measures will be implemented and monitored. These States must have laws prescribing which authorities are responsible for the measures' implementation, what kind of authority they have to coordinate with the authorities in other areas and levels of government, the internal procedures for implementation, the criteria used to determine the protective measures that will be provided to the human rights defender at risk, and how the implementation of the measures will be monitored, all the time ensuring that they are effective and are arranged with the beneficiaries, which will also necessitate logistical and budgetary resources.

⁹⁸² OHCHR, *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la Situación de las y los Defensores de Derechos Humanos en México [Defending human rights: between the commitment and the risk. Report on the Situation of Human Rights Defenders in Mexico]*, 2010, paragraph 109. Available [in Spanish] at: <http://www.hchr.org.mx/files/doctos/Libros/informepdf.pdf>.

ii. Systems of implementation of protective measures with prior judicial clearance

448. According to the information obtained during the consultations conducted for preparation of this report, in some States prior judicial clearance is required before the measures requested by the Commission or the Court can be implemented, in order to determine whether they can move forward. This prior judicial oversight is contrary to the very nature and purpose of the protective measures, which require urgent attention in order to prevent irreparable harm to persons in situations of gravity and urgency; it also constitutes a duplication of proceedings.

449. Specifically, Venezuelan civil society reported that the provisional measures ordered by the Inter-American Court would undergo a preliminary review by the domestic authorities in the criminal courts of first instance; in those reviews, the beneficiaries would bear the burden of demonstrating the gravity of the threats or complaints upon which their request was based. According to civil society organizations, criminal court judges examine the facts and the appropriateness of the measures ordered by the organs of the inter-American system; the police will not take those measures until the criminal court so orders. The beneficiaries' opinion is not considered when determining what measures should be taken.

450. The Commission has expressed concern because, as a rule, the Venezuelan State's position has been to reject the recommendations made by international human rights organizations, on the grounds that such recommendations violate national sovereignty. In the particular case of precautionary measures granted by the IACHR, the Venezuelan State has asserted that in its view, such measures are not binding up it.⁹⁸³ On this point, the IACHR must again point out that, based on the principle of good faith recognized in Article 31(1) of the Vienna Convention, if a State signs and ratifies an international treaty, especially a human rights treaty like the American Convention, it has an obligation to make its efforts to apply the recommendations and decisions of the organs of protection prescribed in that treaty, such as the Inter-American Commission and the Inter-American Court of Human Rights in this case. It must also adopt all measures necessary to ensure its internal legal system effectively complies with the provisions of the Convention, as stipulated in Article 2 thereof.⁹⁸⁴ The IACHR would remind the Venezuelan State that it has a duty to comply with the international human rights obligations it freely undertook in the American Convention and other applicable legal instruments;⁹⁸⁵ given those obligations, the IACHR is urging the Venezuelan State to effectively comply with the provisional and precautionary protective measures, without requiring that they be cleared by the domestic courts before being implemented.

⁹⁸³ IACHR, *Democracy and Human Rights in Venezuela*, para. 1160.

⁹⁸⁴ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 87; *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 171; and *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 79.

⁹⁸⁵ Cf. IACHR, *Democracy and Human Rights in Venezuela*, para. 1160.

iii. Systems of implementation by incorporating the measures into national protection programs for human rights defenders

451. The Commission has observed that some States like Guatemala, Colombia and El Salvador roll requests for provisional or precautionary measures for human rights defenders into the protection programs that exist within the State structure. If measures of protection ordered by the organs of the inter-American system are properly incorporated into the domestic protection mechanisms that the States have established, this can facilitate effective and diligent implementation of those measures. Nevertheless, States that use this system still encounter challenges, both in terms of the effectiveness of their domestic programs and the process of assimilating the protection requests.

452. The Guatemalan State told the IACHR that the Coordinator of Executive Human Rights Policy (COPREDEH) is the authority in charge of coordinating “activities with the various offices in the executive branch and organs of the justice system to ensure effective implementation of protection measures for human rights defenders: precautionary measures requested by the Commission and provisional measures ordered by the Court.”⁹⁸⁶ According to the information supplied by the State, the precautionary measures requested by the Commission and provisional measures ordered by the Court are implemented by way of a request from COPREDEH to the Ministry of the Interior, under the Program for Implementation of Security Measures. To determine what type of protection mechanism will be used, COPREDEH calls a meeting where it serves as mediator between the beneficiary of the measures, the Ministry of the Interior and the National Civil Police. Once a decision has been made about what protection system will be put into place, the Office of the Director General of the National Civil Police, acting on an order from the Ministry of the Interior, sends instructions to the Legal Services Office to have the order sent to the Office of the Deputy Director General of Operations and Public Security. That office, in turn, sends an order to the Protection and Security Division (DIPROSE) if the system of protection agreed upon is to guard the perimeter or establish a fixed control point; on the other hand, if personalized measures are involved, the order is sent to the Individual Protection Division of the National Civil Police, which then appoints the security detail that the beneficiary of the provisional or precautionary measures will require.⁹⁸⁷

453. For their part, Guatemalan civil society organizations reported that the State does not have sufficient trained personnel to provide an adequate protection system and that the protection systems available are very limited. They also report that the units that provide protection do not coordinate with each other, due in large part to the fact that there is reportedly no specific person in charge of monitoring the implementation of the measures. Civil society went on to report that on occasion, the security forces are withdrawn without giving advance warning to the human rights defender being protected.

⁹⁸⁶ See [in Spanish] <http://copredek.gob.gt/media/File/Mision,vision,POA.pdf>

⁹⁸⁷ Response from the State of Guatemala to the questionnaire for the follow-up report on the situation of human rights defenders in the Americas, January 2009.

One particularly troubling aspect for the organizations is that the beneficiary of the protective measures is required to cover some of the costs of his/her protection, such as meals for the persons assigned to protect him/her or re-accommodating space in his/her office or home to house the security personnel.

454. The Commission has closely followed the policies on implementation of protection measures for human rights defenders in Guatemala. During the hearing held on March 29, 2011 at the Commission's 141st session, it became apparent that the current mechanism of protection is limited in some respects; the Commission therefore called upon the Guatemalan State to confront the problems still present in the design of the mechanism used to implement precautionary and provisional measures. The Guatemalan State indicated that it was in the process of reconfiguring public policy on protection of human rights defenders and requested the IACHR's support in this process.⁹⁸⁸

455. With regard to Colombia, the Commission has in previous reports recognized that Colombia's "Protection Program for Human Rights Defenders, Trade Unionists, Journalists and Social Leaders"⁹⁸⁹ continues to be carried out and covers some 10,421 persons.⁹⁹⁰ This program is operated under Decree 1740, of May 19, 2010. According to the information provided by the State in the consultations conducted for preparation of this report, the protective measures provided to beneficiaries of precautionary and provisional measures are implemented under that program of protection for those classified as being under extraordinary or extreme danger.

456. A number of civil society organizations have observed that the beneficiaries of the precautionary measures granted by the Commission or provisional measures ordered by the Court must undergo a repeat process of "proof of risk" in order to obtain the protection required of the Colombian State even though the respective international bodies have already established that the risk exists. In its February 25, 2011 reply to the questionnaire sent by the IACHR for preparation of this report, the State asserted that the risk studies are not intended to dispute the existence of danger, but rather to establish the degree of danger and track how it is affected by the implementation of protective measures.⁹⁹¹

457. When the Commission asks a State party to implement a precautionary measure or when the Court orders a provisional measure, they do so after conducting an evaluation under international law, in which they have determined that the three requisite

⁹⁸⁸ IACHR, *Hearing on the Situation of Human Rights Defenders in Guatemala*, 141st session, March 29, 2011.

⁹⁸⁹ IACHR, *Annual Report 2010*, Chapter IV - Colombia, March 7, 2011, para. 205; *Annual Report 2009*, Chapter IV - Colombia, December 30, 2009, para. 151.

⁹⁹⁰ IACHR, *hearing on the situation of human rights defenders in Colombia and implementation of precautionary measures*, held October 28, 2010, during the Commission's 140th session.

⁹⁹¹ Colombia's observations to the 2010 Draft Report of the Inter-American Commission on Human Rights on Colombia, February 25, 2011, p. 42.

conditions are present: i) “gravity”; ii) “urgency”, and iii) an intent “to prevent irreparable harm to persons”. These are the grounds upon which these measures are granted. Accordingly, in keeping with the international commitments, the function of the States is to comply in good faith with the requests made by the organs of the inter-American system.⁹⁹² The Constitutional Court of Colombia has upheld the binding nature of precautionary measures where it wrote the following:

[...] precautionary measures decreed by the IACHR are binding at the domestic level, inasmuch as the IACHR is an organ of the Organization of American States –OAS- of which Colombia is a member, just as it is a State party to the American Convention on Human Rights, which was approved by Law 16 of 1972 and which Colombia ratified on July 31, 1973. It is also bound because the Statute of the IACHR was adopted by the OAS General Assembly, in which Colombia participates, and because under Article 93, paragraph one of our Constitution, the Convention has become part of our domestic legal system and thereby ranks as constitutional law.⁹⁹³

458. As for the legal effects of the precautionary measures, the Constitutional Court of Colombia has written that because precautionary measures granted by the IACHR are binding upon the domestic legal system, they create a corollary duty on the part of the authorities of the State to ensure that they are observed and that fundamental rights are thus protected.⁹⁹⁴ As the Constitutional Court of Colombia wrote, “if the State failed to comply with precautionary measures decreed by the IACHR, it would be disregarding its international obligations under articles 1 and 2 of the American Convention on Human Rights.”⁹⁹⁵

459. Just as the highest court in Colombia has recognized the binding nature of precautionary measures and the principle of good faith that governs international law, the States’ role in the process associated with a protective measure ordered by the inter-American system is to implement the measure and monitor it. However, it is not the States’ function to assess the factors that prompted the request for protective measures, to ascertain whether they rise to what the States deem to be the necessary degree of risk or danger. This was the finding of Colombia’s Constitutional Court, where it wrote that:

⁹⁹² “[...] the ultimate aim of the American Convention is the effective protection of human rights, and, pursuant to the obligations contracted under it, the States should ensure the effectiveness of their mechanisms (endow them with *effet utile*), which implies implementing and carrying out the resolutions issued by its supervisory organs, whether the Commission or the Court.” I/A Court H.R., *Case of the Prisons in Mendoza*, Order of November 22, 2004, operative para. 16.

⁹⁹³ Constitutional Court of Colombia, Decision T-524/05, May 20, 2005, reason 6. Available [in Spanish] at: http://www.corteconstitucional.gov.co/relatoria/2005/T-524-05.htm#_ftn5

⁹⁹⁴ Constitutional Court of Colombia, Decision T-524/05, May 20, 2005, reason 7. Available [in Spanish] at: http://www.corteconstitucional.gov.co/relatoria/2005/T-524-05.htm#_ftn5

⁹⁹⁵ Constitutional Court of Colombia, Decision T-524/05, May 20, 2005, reason 7. Available [in Spanish] at: http://www.corteconstitucional.gov.co/relatoria/2005/T-524-05.htm#_ftn5

If the actor is the beneficiary of precautionary measures ordered by an international body, irrespective of any other consideration, the State authorities must take steps to provide adequate and effective protection in order to guarantee the right to personal security, the right to life and the right to personal integrity, since the risk that the beneficiary is facing is not subject to question.⁹⁹⁶

460. The IACHR recognizes that States must examine the situation and, in consultation with the beneficiaries, determine what protective measures will be adopted to protect his/her rights. It is this analysis that will enable the State to effectively and diligently comply with requests for protective measures. Nevertheless, the Commission is concerned to find that some States might attempt to obstruct the protection by requiring a re-evaluation of the risk of danger, even though the IACHR has already determined that the risk or danger is present. This not only constitutes a failure to comply with the request from the organs of the inter-American system, but also places an added burden on the beneficiary before he/ she can qualify for the State's Protection Program. In practice, this conduct is simply a delaying tactic, a way to avoid having to offer the protective measures.

461. Finally, El Salvador reported that the Victim and Witness Protection Program is in charge of putting into practice the precautionary and provisional measures issued by the Commission and the Court, respectively. The State observed that implementation of the precautionary measures involves coordination with the National Civil Police's Victim and Witness Protection Program, to arrange with the beneficiaries and their representatives the measures that will be implemented. The Commission observes that according to what the State reported, that program provides protection to victims of crimes, witnesses and any other person at risk as a consequence of his/her involvement in the investigation of a crime or a court case. Human rights defenders who are beneficiaries of precautionary measures are not necessarily in danger or at risk because of their involvement in criminal cases; therefore, the Commission is left to wonder whether the measures that the inter-American system orders are being properly implemented under this program.

iv. Systems in which a State-designated authority is in charge of implementing the measures

462. According to the information the Commission has received, some States in the region have specific officials charged with implementing the protective measures domestically. The IACHR has observed this model in Canada, Ecuador, Honduras and Peru.

463. The State of Canada reported that the precautionary measures ordered by the IACHR and those from the United Nations are sent directly to the Human Rights

⁹⁹⁶Constitutional Court of Colombia, Decision T-524/05, May 20, 2005, reason 28. Available [in Spanish] at: http://www.corteconstitucional.gov.co/relatoria/2005/T-524-05.htm#_ftn5

Section of the Department of Justice, which is charged with taking swift action to marshal the government agencies necessary to implement the protective measures. Ecuador, for its part, reported that the Office of the Under Secretary for Human Rights and Worship, which is part of the Ministry of Justice, Human Rights and Worship, is the authority charged with performing Ecuador's international obligations under the United Nations system and the inter-American system. The Commission observes that while these States have designated the authority charged with implementation, they did not furnish any information about the procedures followed within the State to implement and follow up on the measures of protection ordered by the inter-American system.

464. The State of Honduras reported that the Security Secretariat's Human Rights Unit is the authority charged with carrying out protective measures ordered by the inter-American system, to which end it decides what actions will be taken to implement the precautionary measures, puts those actions into practice and monitors them.⁹⁹⁷ According to the information supplied by the Honduran State, before deciding what actions will be taken, the responsible authority meets with the beneficiaries and draws up an agreement spelling out the commitments that the authorities are making to protect the beneficiary's rights. As for requests to investigate the facts that triggered the measure, the State reported that these meetings are attended by officials from the National Bureau of Criminal Investigation, who pledge to make the investigations a priority once the beneficiaries file a formal complaint.

465. The IACHR has monitored the progress that the Honduran State has made in creating and strengthening a mechanism through which to implement precautionary measures, especially since the 2009 coup d'état.⁹⁹⁸ The IACHR has been informed of a number of problems that the beneficiaries of the protective measures ordered by the inter-American system are reportedly still wrestling with. According to the information received, the Human Rights Unit in charge of implementing and following the protection measures is severely understaffed.⁹⁹⁹ Furthermore, the organizations that appeared at the hearing the Commission held during its 141st session said that officials were particularly interested in getting the beneficiaries to sign the "acts of commitment" for the sake of completing a formality and to be able to show the documents to international bodies, when in fact the measures agreed upon in the documents are not actually being implemented and therefore cannot be effective in protecting the beneficiaries. According to the civil society organizations, in some cases the bodyguards provided for protection had charged the

⁹⁹⁷ IACHR, Hearing on the mechanism for the implementation of precautionary measures in Honduras, 140th session, October 25, 2010.

⁹⁹⁸ IACHR, *Honduras: Human Rights and the Coup d'état*, para. 21; IACHR, hearing *Situation of Human Rights Defenders in Honduras*, 141st session, March 25, 2011, Hearing on the mechanism for implementing precautionary measures in Honduras, 140th session, October 25, 2010.

⁹⁹⁹ According to the State, there are reportedly only four persons assigned to oversee the implementation of precautionary measures, responsible for compiling information needed to monitor the precautionary measures and the related investigations. IACHR, hearing *Situation of Human Rights Defenders in Honduras*, 141st session, March 25, 2011, available [in Spanish] at: <http://www.IACHR.org/audiencias/141/8.mp3>;

beneficiary for meals and transportation.¹⁰⁰⁰ On the whole, the civil society organizations reported that there are no clearly-defined procedures for the various protective measures available or for the monitoring and risk-assessment systems.

466. The State of Peru told the IACHR that in accordance with Supreme Decree No. 017-2008-JUS, *Regulation of the Legislative Decree on the System for Legal Defense of the State*, it is the Office of the Specialized Supranational Public Prosecutor that is in charge of exercising the State's legal defense in supranational forums established under international treaties to which Peru is party. Article 28 of that Decree states that this office shall be in charge of the "urgent special procedures (precautionary measures, provisional measures, urgent appeals and others)." The State reported that the office in question processes orders for protective measures issued by the organs of the inter-American system and to that end holds a number of meetings with the agencies involved and conducts the necessary follow-up.

467. The Commission applauds the Peruvian State for having a provision in a law in which the State formally designates the national authority charged with prosecuting the measures of protection ordered by the inter-American system. However, the Commission notes that while Supreme Decree No. 017-2008-JUS names the Office of the Specialized Supranational Public Prosecutor as the authority charged with processing requests for protection measures, the IACHR did not receive any information about the procedures that the office follows, what authority it has to negotiate protection systems with other authorities, or what budgetary and logistical resources the Office has to perform these functions.

468. It is a welcome development that States are now beginning to give specific offices or officials the authority to follow through with implementation of the measures of protection. However, the Commission believes that the designation of a competent authority is just the first step in devising a more holistic system for effective implementation of precautionary measures. States must develop the procedures to be followed to improve the measures and must assign the necessary logistical and budgetary resources.¹⁰⁰¹

¹⁰⁰⁰ IACHR, *Hearing on the mechanism for the implementation of precautionary measures in Honduras*, 140th session, October 25, 2010.

¹⁰⁰¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 8.

C. National mechanisms for the protection of human rights defenders

1. The States' duty to protect human rights defenders

469. The States' obligation to protect human rights defenders when they are in danger by virtue of their activities, has been acknowledged at the global level in the *United Nations Declaration on Defenders*,¹⁰⁰² and, within the inter-American system, by both the IACHR¹⁰⁰³ and the Inter-American Court through its case law.¹⁰⁰⁴

470. Time and time again the Commission has underscored how important it is that human rights defenders be able to perform their work without fear of reprisals or undue pressure. The IACHR has emphasized that the defense of human rights can be exercised freely only when the persons engaged in it are not victims of threats or of any type of physical, psychological, or moral aggression or other forms of harassment.¹⁰⁰⁵

471. Human rights defenders in some States of the hemisphere engage in their activities in a climate of hostility where the lingering obstacles they frequently encounter obstruct their activities; for them, the important human rights issues may take second place, as they have to concern themselves with their own safety.¹⁰⁰⁶ Given this very serious

¹⁰⁰² Article 12 of the Declaration on Defenders provides that: "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration." *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, approved by the UN General Assembly in resolution A/RES/53/144 of March 8, 1999. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

¹⁰⁰³ In its 2006 Report, the IACHR recommended that the States of the hemisphere "Implement, as a priority matter, a global policy of protection for human rights defenders. Adopt an effective and exhaustive strategy of prevention in order to prevent attacks against human rights defenders." Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 5.

¹⁰⁰⁴ The Court has established that "States have the particular obligation to protect those persons who work in non-governmental organizations, to provide effective and adequate guarantees to human rights defenders so that they may freely carry out their activities, and to avoid actions that limit or impede such work. Human rights advocacy constitutes a positive and complementary contribution to the State's own efforts as guarantor of the rights of all persons under its jurisdiction." *Matter of the Colombian Commission of Jurists regarding Colombia*. Provisional Measures. Order of November 25, 2010. *Consideranda* 24. With regard to the obligations that States have *vis-à-vis* human rights defenders, it has also expressed that "States have the duty to [...] protect them when they are subject to threats in order to ward off any attempt on their life or safety." Cf. *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145.

¹⁰⁰⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 46.

¹⁰⁰⁶ OACNUDH, *Defender los derechos humanos: entre el compromiso y el riesgo, Informe sobre la Situación de las y los defensores de derechos humanos en México*, para. 43. Available [in Spanish] at: <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>

situation, in its 2006 report the IACHR recommended that the States “[i]mplement, as a priority matter, a global policy of protection for human rights defenders.”¹⁰⁰⁷

2. A global policy of protection for human rights defenders

472. A number of the measures the States have taken to protect human rights defenders in no way constitute the global policies of protection that the Commission recommended in its 2006 report;¹⁰⁰⁸ some States simply provide security to defenders who are in danger, but do nothing to investigate the source of the threats made against them. In other cases, the authorities take the view that the institution of an investigation into the threats is sufficient to protect the affected defender. However, they fail to provide any security while the investigation is underway; or the supposed protective measures may be provided in an atmosphere that discredits and smears human rights defenders, an atmosphere that the authorities themselves have created. These examples reveal a failure to design a global policy of protection, thereby creating a situation of defenselessness that is detrimental to the work done by human rights defenders. The IACHR will now set out what the parameters of the global policy of protection that it recommended in its 2006 report should be.

473. The member States’ implementation of a global policy of protection for human rights defenders is a function of their obligation to ensure the exercise and enjoyment of human rights, an obligation undertaken in articles 1 and 2 of the American Convention. States are to allow human rights defenders to perform their work without fear of reprisals. As for the obligations to respect and ensure, undertaken in Article 1 of the American Convention, the Court has written that it is not sufficient that States merely refrain from violating rights [obligation to respect]; instead, they must also take positive measures dictated by the subject’s particular protection needs, either because of his personal circumstance or the specific situation in which he finds himself [obligation to ensure observance of rights].¹⁰⁰⁹ As for the obligation to adopt measures, contained in Article 2 of the Convention, the Inter-American Court has written that “each State Party has an obligation to adjust its domestic law to the provisions thereof to guarantee the rights enshrined” in the Convention.”¹⁰¹⁰

474. The IACHR must again underscore the point it made in its 2006 report, which is that one of the essentials in a global program of protection for human rights defenders is fostering a culture of human rights in which the fundamental role played by

¹⁰⁰⁷ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 5.

¹⁰⁰⁸ *Ibid.*, recommendation 5.

¹⁰⁰⁹ I/A Court H.R., *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 81; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, para. 154.

¹⁰¹⁰ I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 87; *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 171.

human rights defenders in guaranteeing democracy and the rule of law is recognized publicly and unequivocally and that the States publicly acknowledge that engaging in the protection and promotion of human rights is a worthy mission.¹⁰¹¹ The IACHR has recommended to the States that they undertake educational and promotional activities for all State agents, society as a whole and the press, to raise awareness about the importance and validity of the work that human rights defenders and their organizations undertake.¹⁰¹²

475. In the questionnaire sent to compile information for this report, a good percentage of the States that replied talked about policies to protect human rights in general, but not human rights defenders specifically. The Commission is grateful for the information that some States provided regarding the measures taken to create a culture in which the work of human rights defenders is appreciated, as such practices are indicative of the progress made on the Commission's 2006 recommendations.

476. The following are some of the activities that the States reported and that are specifically intended to cultivate a policy that fosters an appreciation of the work of human rights defenders:

a. The Bolivian State reported that a) the National Program of Action in Human Rights specifically takes into account human rights defenders as one of the at-risk groups and therefore deserving of special attention, both on the part of the State and society as a whole, and b) it has recognized the UN Declaration on Human Rights Defenders as part of its domestic legal system.

b. The Chilean State reported that its National Human Rights Institute prepared an informative brochure on human rights defenders, their role and their rights. The brochure is for the general public. It also said that it was in the process of research and publication online, to publicize the work done by human rights defenders throughout Chilean history.

c. The Colombian State reported on the following: a) presidential directives¹⁰¹³; directives from the Ministry of National Defense¹⁰¹⁴, the Ministry of the

¹⁰¹¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendations 1 and 2.

¹⁰¹² *Ibid.*, recommendation 3.

¹⁰¹³ The State mentioned the following directives: a) 1999 directive 007, which condemns threats, attacks and attempts against human rights defenders and orders all public servants to refrain from questioning the legitimacy of human rights organizations and their members; b) 2001 Directive 07, in which all national and territorial agencies are urged to recognize and support, to the extent that they are able, all nongovernmental organizations engaged in humanitarian activities in Colombia.

¹⁰¹⁴ The State reported on the following directives: 2003 Directive 009 to strengthen the policy of promoting and protecting the human rights of workers, union members and human rights defenders, and b) 2003 Directive 800, which seeks to protect the work of organized labor leaders and human rights defenders

Interior and Justice¹⁰¹⁵, the Office of the Attorney General of the Nation¹⁰¹⁶ and the Administrative Security Department.¹⁰¹⁷ The purpose of these directives is to commend and protect the work of human rights defenders; b) the policy of “defusing the rhetoric”, which has opened the door to enable the government to operate in a climate of tolerance, to find those areas of agreement with civil society, to work together on the agreements and respect differences; c) continuation of the “committees to protect the rights of human rights defenders” as a forum created to enable dialogue about human rights defenders¹⁰¹⁸; d) statements made by the President¹⁰¹⁹ and Vice President of the Republic¹⁰²⁰ in which they publicly recognize the work done by human rights defenders; e) four workshops held

¹⁰¹⁵ The State reported on the following directives: a) the National Government’s Joint Declaration for the protection of trade unionists, whose purpose is to condemn the attacks against trade unionists; b) External circular CIR09-259-DMI-0100, which recognizes the legitimacy and importance of the lawful and constitutional work that organizations of human rights defenders, social and community leaders do, and urges the governors and municipal and district mayors to take the necessary measures to guarantee, respect and enforce observance of the work that human rights defenders and social and community leaders do.

¹⁰¹⁶ The State reported on directive 012 of July 15, 2010, in which guidelines are issued for guaranteeing observance of the right of human rights defenders to engage in their work. That directive is addressed to the police, delegate attorneys, regional prosecutors, provincial prosecutors, ombudspersons and national, departmental and municipal authorities.

¹⁰¹⁷ The State reported on the following: a) 2007 Circular 007 on the protection of human rights defenders which, within the DAS, underscores the importance of defending and protecting human rights defenders by fostering a culture that respects, protects and guarantees the fundamental rights and freedoms of members of governmental and nongovernmental human rights organizations; b) 2008 Directive 016, which is reiterated in Circular 018 of October 2010, in which orders are given for “Enforcement of Constitutional Order: ban on engaging in intelligence work in the protection services,” which reiterates that intelligence gathering does not constitute a protective measure and is prohibited.

¹⁰¹⁸ The State reported that the Ministry of the Interior and Justice established the National Committee to Protect the Rights of Human Rights Defenders, Social and Community Leaders on April 30, 2009, the date on which the preliminary strategy discussion—that had started in November 2008—was concluded. The following are the only territorial protection committees established: Norte de Santander, Cauca, Santander, Nariño and, provisionally, Barrancabermeja. The national process to protect the work of human rights defenders and community and social leaders has thus far reportedly held a total of 100 meetings and gatherings. The State reported that according to the Schedule for the first four months of 2011, 6 thematic meetings were to be held between February and April 2011; the territorial timetable has not yet been established.

¹⁰¹⁹ The following were among the acts of acknowledgement reported by the State: a) on August 7, 2010, President Juan Manuel Santos had reportedly asserted that his Government pledged an unwavering commitment to the protection of human rights; b) on August 27, 2010, he established a bargaining table whose purpose is to ensure respect for the human rights of trade unionists and business activity in general; c) on October 22, 2010, the President made the following statement: “Having learned of the complaints of threats made against members of human rights organizations, WOLA and other organizations dedicated to this noble cause, the Government of Colombia must give voice to its profound concern over these disturbing developments and reaffirm its intention to strengthen the policy for protection of human rights defenders.”

¹⁰²⁰ The State reported, *inter alia*, the following acts of acknowledgement: a) on August 27, 2010, Vice President Angelino Garzón announced that in September 2010, a new negotiating group would be formed to look for ways to ensure observance of trade unionists’ rights and entrepreneurial activity in general; b) on March 30, 2011, Vice President Garzón announced that the protection of human rights defenders would be bolstered, and condemned the threats made against Comuna Seis’ Human Rights and Co-existence Group in Medellín. The Vice President sent a letter to that effect to the head of the Police, General Óscar Naranjo, to the Attorney General, Viviane Morales, and others, to bring the matter to their attention and request protective measures for those under threat.

to raise awareness among and instruct journalists about the work done by human rights defenders; f) three radio programs produced by the Ministry of the Interior and Justice, broadcast between June and July 2010, to encourage support, recognition and protection of human rights defenders within society;¹⁰²¹ g) 8 online weekly newsletters with news and information promoting the work of human rights defenders, sent out in June and July 2010;¹⁰²² h) informative workshops for civil servants in the departments participating in the national process to Protect Human Rights Defenders and Social and Community Leaders.¹⁰²³

d. The State of El Salvador reported that: a) the Office of the Prosecutor for the Defense of Human Rights has encouraged respect for the work done by human rights defenders by providing training to civil servants; b) within the Police Force, the Human Rights Unit of the Office of the Inspector General of the National Civil Police and the Judicial Training School of the Council of the Judiciary have conducted workshops targeting personnel in police stations, and c) it also reported on statements made during the follow-up period that were intended to enhance appreciation for the work of human rights defenders.¹⁰²⁴

e. The Guatemalan State reported that: a) as part of the events held to commemorate the Day to Recognize the Dignity of the Victims, it paid tribute to human rights defenders¹⁰²⁵ and nominated human rights defenders to be awarded with the “Day

¹⁰²¹ The radio programs were broadcast by RCN and Caracol Social within the national territory, and over stations with large listening audiences in the regions of Antioquia, Arauca, Atlántico, Sucre, Nariño, Cauca, Risaralda, Putumayo, Valle, Norte de Santander, Santander and Magdalena Medio.

¹⁰²² According to the State, these bulletins were sent to over 1200 public servants nationwide.

¹⁰²³ According to the State, these workshops were conducted in Santander, Cauca, Atlántico, Nariño, Valle del Cauca, Antioquia, Risaralda, Arauca and the municipality of Barrancabermeja and had reportedly been attended by 163 public servants.

¹⁰²⁴ The State reported on the following pronouncements: a) on November 6, 2009, during a hearing held at the IACHR, the State recognized the work of human rights defender Father Jon Cortina, founder of the Asociación Pro Búsqueda de Niños y Niñas Desparecidos en El Salvador [Association Advocating the Search for Children Victims of Forced Disappearance in El Salvador]; b) posthumous recognition of Monsignor Arturo Rivera y Damas and Dr. Julia Hernández at a hearing before the IACHR, for having pressed the case of Monsignor Romero with international bodies, and for the contributions they made as major defenders of justice and truth and as artisans for peace; c) on November 16, 2006, the State reported that the “Order of Merit of José Matias Delgado, in the Degree of *Gran Cruz Placa de Oro*” had been awarded to six Jesuit priests murdered in 1989, for their “tireless search for justice for the poor, truth and peace (...)”; d) on January 16, 2010, President Mauricio Funes apologized to all victims of human rights violations committed during the armed conflict, and asked pardon of human rights activists; e) on March 24, 2010, the President recognized the legacy of peace left by Monsignor Romero and unveiled a mural at the country’s international airport, among other measures taken to somehow make amends for the killing of this towering figure; f) in January 2010, on the occasion of the presentation of El Salvador’s Report to the United Nations Committee on the Rights of the Child, the Salvadoran Delegation recognized the important role that human rights defenders play.

¹⁰²⁵ The State reported that the following were some of the human rights defenders recognized: Mrs. Aura Elena Farfán, a defender of the right to life and the dignity of victims; Emeterio Toj Medrano, a witness to human rights violations during the internal armed conflict; Jesús Tecú Osorio, a survivor of the Río Negro massacre and now an activist for justice and protection of life.

of the Women of the Americas” commemorative medal; b) it released a Public Statement by the Government of Guatemala in support of Human Rights Defenders, July 2005; c) it conducted a number of radio and television campaigns in 2009 and 2010 to applaud the work of human rights defenders;¹⁰²⁶ d) it continued the Forum for Analysis of Attacks on Human Rights Defenders; and e) the work of the Presidential Committee to Steer the Executive Branch’s Policy on Human Rights (COPREDEH) continued, and involved activities to educate public servants about the work of human rights defenders.

f. The State of Mexico reported that: a) under its National Human Rights Program (2008-2012) it applauded the work of human rights defenders and gave assurances that they would be participating in the crafting of public policy; b) the Governmental Policy Commission on Human Rights is serving as an opportunity for civil society and government to engage in dialogue;¹⁰²⁷ c) the State National Commission on Human Rights has a program on violations of the rights of journalists and civilian human rights defenders, which reportedly addresses and examines requests from human rights defenders whose rights have been violated or who are at risk, and that, in a variety of forums, brings home the message of the important role that human rights defenders play in building democracy; d) in 2010 the Secretariat of the Interior applauded the work done by those who defend the rights of migrant workers;¹⁰²⁸ e) forums and meetings were held to design a mechanism for the protection of human rights defenders; f) the Interior Secretariat’s Unit to Promote the Defense of Human Rights has been designated to serve as liaison between the Interior Secretariat and civil society organizations and, where appropriate, to forward those organizations’ petitions to the appropriate authorities under the applicable law.

g. The Peruvian State reported that the National Human Rights Council [Consejo Nacional de Derechos Humanos] (CNDH) is a multisector agency of the Executive Branch charged with promoting, coordinating, publicizing and advising on the protection and monitoring of human rights. It also serves as a forum for dialogue with human rights defenders on the subject of public policy and the problems affecting them, which in itself constitutes an acknowledgement of their work.

477. In addition to this public recognition of the work of human rights defenders, a global policy of protection must be directed at eliminating the risk that affects the person and guarantee the continuity of his or her work. In this regard, the

¹⁰²⁶ The State reported that in 2009, a campaign was waged called “vos no lo sabes pero sos un defensor@ de derechos humanos” [“you don’t know it but you’re a human rights defender”]; in 2010, another campaign was waged, this one called “yo defiendo los derechos humanos, porque exijo mis derechos” [“I defend human rights because I demand my rights”].

¹⁰²⁷ Official Gazette of the Federal Government, Agreement establishing with a permanent character the Committee on Government Human Rights Policy,” March 11, 2003.

¹⁰²⁸ The State reported that on July 21, 2010, the Secretariat of the Interior issued a press release at its website concerning the precautionary measures that the IACHR had ordered for José Alejandro Solalinde, David Alvarez Vargas, Areli Doblado Abrego, members of the “Hermanos en el Camino” Shelter, and recognized the work that the beneficiaries were doing in defending the rights of migrant workers.

Court's jurisprudence has identified a number of obligations incumbent upon the States and has stated that "the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity."¹⁰²⁹

478. In the Commission's view, a global policy that is respectful of and guarantees the defenders' right to protect human rights should be added to the list of duties articulated by the Court. Those duties come under the general heading of the obligation of ensuring the observance of human rights, set forth in Article 1 of the Convention. This obligation, coupled with the States' obligation to adopt all measures necessary to give effect to human rights (Article 2),¹⁰³⁰ are essential preconditions if one is to be able to freely and effectively engage in activities to promote and defend human rights.

479. Therefore, a global policy of protection will require States to: a) adopt public policies, laws or any other measures to ensure that defenders are able to freely engage in their activities; b) refrain from imposing administrative, legislative or any other type of obstacle that would make their work more difficult; c) protect human rights defenders when threats are made to their lives and personal safety; and d) vigorously investigate violations committed against human rights defenders and thereby combat impunity.

480. The IACHR will now examine the obligation incumbent upon States to protect human rights defenders when they are threatened, so as to prevent assaults on their lives and personal safety. This preventive effort is a critical part of the global policy of protection that the IACHR recommended in its 2006 report.

3. Special protection of human rights defenders to prevent attacks on their lives and personal integrity

481. The measures that States must adopt to protect the lives and safety of human rights defenders when they become targets of reprisals for the work they perform is just one part of the obligations incumbent upon a State in a genuinely comprehensive policy of protection. The protection to which the IACHR is now alluding is the prevention that States must assure to human rights defenders by virtue of the States' obligation to guarantee observance of human rights.

¹⁰²⁹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145.

¹⁰³⁰ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 87; *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 171; and *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 79.

482. The obligation to prevent is one of means or conduct, and the fact that a right has been violated does not by itself constitute proof of a failure to comply with that obligation.¹⁰³¹ To prove noncompliance, it must be shown that the authorities knew –or should have known– of the existence of a real and immediate risk.¹⁰³² As the Court has written, States should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response...¹⁰³³

483. During the follow-up period, the Commission has been gratified to see mechanisms developing in some States for the purpose of protecting human rights defenders whose lives and personal safety are at risk because of the work they perform. The United Nations Special Rapporteur on the Situation of Human Rights Defenders has written that while many good practices have to be commended, there is still room for improvement.¹⁰³⁴

The Commission is aware of the existence of the Protection Program for Human Rights Defenders, Trade Unionists, Journalists and Social Leaders, run by the Ministry of the Interior and Justice and set in motion in December 1997.¹⁰³⁵ It is also aware that on October 26, 2004, Brazil officially launched the National Program to Protect Human Rights Defenders, which was developed by the Office of the National Special Secretary for Human Rights; according to the information available, Brazil's federative units would answer to a National Executive Committee to implement measures to protect human rights defenders. In the case of Guatemala, the State reports that a mechanism is in place, headed by the Presidential Human Rights Policy Steering Committee, which can ask other authorities to take measures to protect human rights defenders at risk. The Honduran State reported on the adoption of a Protocol for the Protection of Human Rights Defenders, issued by the Special Prosecutor for Human Rights. In the consultations conducted in preparation for this report, Argentina, Ecuador and Venezuela indicated that while they do not have mechanisms specifically to protect human rights defenders, the latter would qualify for protection under the programs to protect victims and witnesses in criminal cases. Finally,

¹⁰³¹ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252.

¹⁰³² ECHR, *Kiliç v. Turkey*, Judgment of March 28, 2000, Application No. 22492/93, paras. 62 - 63; *Osman v. the United Kingdom*, Judgment of October 28, 1998, *Reports of Judgments and Decisions 1998-VIII*, paras. 115 - 116; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 124.

¹⁰³³ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 252.

¹⁰³⁴ UN General Assembly, *Report of the United Nations Special Rapporteur on the situation of human rights defenders*, A/HRC/13/22, December 30, 2009, para. 76. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22.pdf>

¹⁰³⁵ See Decree 1740 of 2010. Available [in Spanish] at: <http://www.dmsjuridica.com/CODIGOS/LEGISLACION/decretos/2010/1740.htm>

Mexico reported that in July 2011 the government had published an agreement establishing the bases for a mechanism to protect at-risk, threatened or vulnerable human rights defenders, which it described as the initial step towards establishing a special mechanism for protection of human rights defenders in Mexico.

484. Although the specialized protection programs are not the only option for providing protection to human rights defenders, if properly implemented they can enable a State to comply with its obligation of protection while bringing it into closer proximity to the human rights defender at risk, thereby enabling it to know precisely what his or her situation is and to intervene in a timely manner, using a specialized approach that is proportional to the risk that the human rights defender may be experiencing. Programs of this kind are especially necessary in those States where the work of promoting and defending human rights has become a risky activity because of the multiple attacks, acts of aggression and harassment committed against human rights defenders. The IACHR commends those States that have put into practice specialized mechanisms of protection for at-risk human rights defenders and believes that mechanisms of this sort exemplify the progress made on its 2006 recommendations.

485. At the same time, it has to be said that during the follow up period, many States in the region did not adopt special measures to protect human rights defenders. The acts of violence and other attacks perpetrated against human rights defenders not only affect the guarantees of every human being, but can undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless. The IACHR would remind these States that under the case law of the Inter-American Court, the standards that the Commission has singled out, and Article 12 of the UN Declaration on Human Rights Defenders, the States have undertaken an international obligation to protect human rights defenders.

486. While the special protection programs within the region are a significant step towards compliance with the IACHR's 2006 recommendations, these programs tend to have efficacy and design problems, which can mean that they do not yet meet the standards set by the Commission in its report and therefore have significant challenges to overcome. In furtherance of its mandate of promoting human rights, the IACHR will now set out some of the criteria that programs to protect human rights defenders must meet in order to provide adequate protection consistent with the guidelines established by the inter-American human rights system.

a. The political commitment of the State to the national protection program

487. In its 2006 report the Commission wrote that in order for a protection program to be effective, it must be backed up by a strong political commitment on the part of the State.¹⁰³⁶ That commitment is mirrored in the manner and extent to which the

¹⁰³⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 133.

functioning of the program is guaranteed by law, the effectiveness of the authorities in charge, and the resources and staff assigned to it.¹⁰³⁷

488. As for the legal status of the protection program, the latter should be part of a national human rights plan adopted as priority policy by all institutional decision-making entities at the central and local levels.¹⁰³⁸ The Commission particularly admires protection programs that the States have established by law, which ensures that its procedures are secure and transparent.

489. As for the authority in charge of the protection program, no program to protect human rights defenders should rely upon the good faith of any single authority; instead, it should be mandated by law or inter-institutional partnership agreements. The States must adopt rules clearly spelling out the authorities and responsibilities of the officials who will play a role in either implementing or monitoring the protection measures. Likewise, law must prescribe the powers that the officials have for those purposes.

490. In States under a federal system, the necessary measures must be taken to ensure that the protection program operates effectively and efficiently. It must be made clear whether the implementation and monitoring of protection measures will be done directly by the central government or through partnerships with local authorities. States must adopt the necessary laws to enable the central and local authorities to be clear about what their functions are where the protection of human rights defenders is concerned, so that the transfers of authority and revenue sharing from the national to local levels are not muddled.

491. Article 28 of the Convention, the “federal clause”, provides that where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, Article 28 provides that the national government shall immediately take suitable measures, in accordance with its constitution and its laws, so that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of the Convention.”

492. Under this article, the central government is required to take the necessary measures to enable the competent authorities of the federal units to achieve compliance with the Convention within the framework of the federal system.¹⁰³⁹ As the Inter-American Court has written, a State cannot plead its federal structure to avoid complying with an international obligation.¹⁰⁴⁰ Inasmuch as the protection of human rights

¹⁰³⁷ *Ibid.*, para. 133.

¹⁰³⁸ *Ibid.*, para. 133.

¹⁰³⁹ IACHR, *Report 8/91, Case 10.180, Mexico*, February 22, 1991, para. 41.

¹⁰⁴⁰ I/A Court H.R., *Case of Garrido and Baigorria v. Argentina. Reparations*. Judgment of August 27, 1998. Series C No.39, para. 46.

defenders is an international obligation, a national government must adopt the necessary measures within the State to enable effective implementation of a program to protect human rights defenders, where the fact that a State is organized as a federal system does not prevent it from ensuring effective protection of human rights defenders.

493. An integral part of a State's political commitment to its program to protect human rights defenders is that the program is sufficiently staffed with personnel trained in receiving requests for protection, evaluating the risk, adopting the measures of protection, putting them into practice and then monitoring them to make certain they are still being enforced.

494. In its 2006 report, the IACHR observed that risk analysis and implementation of measures should be assigned to personnel who are members of a state law enforcement agency, but who are not in the intelligence or counterintelligence division of that agency. That personnel should include instructors, supervisors, and security experts who work full-time for the protection program and have their own facilities.¹⁰⁴¹ States must staff the protection programs with personnel who are capable of establishing trust with the persons who seek protection, and who have the knowledge needed to assess risk, implement the protection measures and monitor them.

495. States must provide the budgetary and logistical resources needed to ensure that the program is effective.¹⁰⁴² Accordingly, States are well advised to assign the corresponding resources in their budgetary line items, with a view to covering the costs of the personnel who work in the program and the specific expenses related to the protective measures provided to the persons at risk, so that such protection does not become a financial burden on the defender being protected. Maintenance of the equipment of the State's security units should not impose a financial burden on those benefiting from the State's protection, as this is the exclusive responsibility of the State.¹⁰⁴³

b. Protected subjects

496. The criteria for determining who shall be regarded as a human rights defender appear in the *UN Declaration on Human Rights Defenders*. Under Article 12(2) of the Declaration, "[t]he State shall take all necessary measures to ensure the protection [...] of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

¹⁰⁴¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 136.

¹⁰⁴² *Ibid.*, para. 134.

¹⁰⁴³ Arguments of the Inter-American Commission in I/A Court H.R., *Matter of Liliana Ortega et al regarding Venezuela*. Provisional Measures. Order of July 9, 2009, *Consideranda* 7.

497. Anyone who engages in activities to promote and defend human rights has the right to be protected. The Commission would emphasize that, as can be inferred from the Declaration, human rights defenders are identified by what they do, and not by any other criteria, such as whether or not they are paid for what they do, or whether they defend a certain type of right as opposed to another.¹⁰⁴⁴ Furthermore, the State's obligation of protection is in relation to persons either "individually" or "in association with others." Thus, the State must protect both the members of civil society organizations and those who work on their causes as individuals. One need not prove membership in any human rights organization.

c. Grounds for requesting special protection

498. Article 12(2) of the UN Declaration on Human Rights Defenders suggests a number of grounds under which a human rights defender may seek protection from the competent State authorities, which are "violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the [...] Declaration."¹⁰⁴⁵ The Commission believes that the problems identified in chapter II of this report, fit into the grounds for requesting protection when they affect the defender's life and personal safety.

499. Before turning its attention to risk assessment, the Commission notes that it has received information concerning certain States –among them Argentina, Ecuador, El Salvador and Venezuela- which reportedly have mechanisms in place for the protection of human right defenders; those mechanisms are linked to the programs to protect victims, witnesses and other subjects participating in criminal cases. The United Nations Special Rapporteur on the Situation of Human Rights Defenders has already addressed this practice and observed that witness protection programmes "should not be used as substitutes for defender protection programmes" and such programmes "are not sufficient to provide for the safety of defenders, since in most cases they have not been designed for that purpose."¹⁰⁴⁶

500. The information the IACHR has received suggests that, in general, implementation of a protection measure under witness and victim protection programs begins with a presumed threat to the life or personal safety of a person as the result of his

¹⁰⁴⁴ United Nations Office of the High Commissioner for Human Rights, Protecting the Right to Defend Human Rights and Fundamental Freedoms, Fact Sheet No. 29, UN publications, Geneva, 2004.

¹⁰⁴⁵ Article 12 of the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms." Approved by the UN General Assembly in resolution A/RES/53/144 of March 8, 1999. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En)

¹⁰⁴⁶ UN General Assembly, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya* A/HRC/13/22, December 30, 2009, paragraph 73. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22.pdf>

or her participation in a criminal case.¹⁰⁴⁷ The Commission is troubled by the fact that given their nature, protection under these programs presupposes that the danger one faces is because of one's participation in a criminal case, whereas in the case of human rights defenders the threat may be the result of any number of factors, such as his or her work of promoting rights in certain communities or his or her participation in administrative contentious proceedings where considerable financial interests are at stake.

501. In order to get the State's protection under these programs, a human rights defender who is not party to a criminal case must file a complaint about the threats or attacks he or she is experiencing by virtue of his or her work; this threat or attack would become the basis of a criminal case that would allow the human rights defender to get protection under the program.

502. The rule requiring a human rights defender to file a complaint in order to get into a protection program can slow the process precisely when swift measures of protection are needed. The case law of the Inter-American Court has been emphatic in asserting that a lack of an adequate response in the adoption of protection measures poses a danger in itself.¹⁰⁴⁸ The Commission observes that the prior complaint requirement and the formalities that the institution of a criminal case involves, can delay the urgent protection immediately required in a situation of danger. When, as a result of a request seeking protection the State learns of a crime that it can prosecute at its own initiative, committed against a human rights defender, it has an obligation to institute a criminal case.¹⁰⁴⁹ Even if the crimes committed are of other types, it is important that the authorities who participate in the protection program have channels of communication open with the competent authorities so as to urge the human rights defender to denounce the criminal behavior to the competent authorities so that the crimes can be prosecuted.

¹⁰⁴⁷ This is the sense, for example, of Venezuela's *Law on Protection of Victims, Witnesses and Other Subjects at Trial*, which provides that one of the essential preconditions for requesting protection measures is "a well-founded presumption of a certain danger to a person's safety as a consequence of his or her collaboration or relevant testimony in a criminal trial." (Official Gazette of the Bolivarian Republic of Venezuela, *Law on Protection of Victims, Witnesses and Other Subjects at Trial*, Article 17, October 4, 2006. For its part, Ecuador's Victim and Witness Protection Program states that "the Protection and Assistance Program shall be for victims, witnesses and other participants in the criminal proceeding and their next of kin [...]" (Victim and Witness Protection Program, Executive Decree 3112, Official Record 671 of September 26, 2002. Article 1. In the case of Argentina, according to the information available, in order to qualify for the National Witness and Defendant Protection Program, which operates under the authority of the Secretariat of Justice, the individual must have made a significant contribution to a judicial investigation in the federal jurisdiction, which has put that individual in danger. (National Witness and Defendant Protection Program, available [in Spanish] at: <http://www.ius.gov.ar/la-justicia-argentina/proteccion-de-testigos.aspx>) It was also reported that according to El Salvador's Special Law on Victim and Witness Protection, the purpose of the program is to provide protection to victims and witnesses because of their involvement in criminal investigations or criminal proceedings.

¹⁰⁴⁸ I/A Court H.R., *Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center regarding Venezuela*. Provisional Measures. Order of February 8, 2008, *Consideranda* 18; *Matter of Alvarado Reyes et al. regarding Mexico*. Provisional Measures. Order of May 26, 2010, *consideranda* 9, and *Matter of Alvarado Reyes et al. regarding Mexico*. Provisional Measures. Order of November 26, 2010, *Consideranda* 43.

¹⁰⁴⁹ IACHR. Report No. 52/97, *Arges Sequeira Mangas*, February 18, 1998, paras. 96 and 97; Report No. 55/97, *Juan Carlos Abella*, November 18, 1997, para. 392, and Report No. 62/00, *Hernando Osorio Correa*, October 3, 2003, para. 24.

503. Finally, the IACHR observes that programs to protect victims and witnesses in criminal cases often do not feature the kind of flexibility needed to protect human rights defenders. On occasion, protection is required for a given group of persons, such as members of the same organization. Witness and victim protection programs, on the other hand, require that the protected persons be participants in criminal cases, who are in such programs precisely because of the danger that their participation poses to them. Therefore, when the protection requested is for groups, the witness and victim programs would have serious difficulties providing diligent and effective protection.

504. The IACHR is recommending to the States that use the model that employs witness and victim protection programs as a vehicle to implement protective measures for human rights defenders, that they make certain that the introduction of a human rights defender into a witness and victim protection program is not problematic for the immediate protection of the defender who is not in peril because of his/her participation in criminal cases. It therefore urges those States not to require the institution of a criminal case as a precondition that human rights defenders must satisfy in order to receive protection. It also urges them not to make protection conditional upon any other requirement that would delay the adoption of measures.

d. Risk assessment

505. The risk assessment will indicate to the State the extent to which the applicant human rights defender's activities could put his or her life or personal safety at risk, and also disrupt his or her ability to continue to engage in the work of defending and promoting human rights. A proper risk assessment should enable the State to propose the right security measures to safeguard the human rights defenders' rights and thereby enable him or her to continue his or her work. The risk assessment should be regarded as the means by which the State will study the best way to fulfill its obligation of protection; accordingly, the State must ensure that during the risk evaluation, the lines of communication with the applicant human rights defender are adequate and that he or she takes active part in the risk assessment.

506. The Commission has been informed that some States reportedly provide protection measures while the risk assessment is in progress. The State of Colombia has reported that the fact that a technical risk assessment is underway does not mean that preventive protective measures are not being provided, as these afford the beneficiaries with protection while the assessment is underway (Article 12 of 2010 Decree 1740). Similarly, the Honduran State indicated that it has adopted a protection protocol, which would be triggered "by an allegation on the part of the human rights defender that his or her life or safety is in jeopardy"; "by agreement with the victim, the most appropriate measures of protection to ensure the beneficiary's personal integrity and safety [would be adopted] and an investigation into the source or provenance of the alleged threats conducted." The IACHR commends such practices if they are conducted swiftly and if suitable and effective preventive measures are taken to protect human rights defenders.

507. When assessing the situation of risk of a human rights defender, one of the first hypotheses that must be considered is the possible connection with the activities of the human rights defender who is requesting protection. In this regard, the Inter-American Court has pointed out that “the analysis of the potential violation of [the human rights defender’s] right of freedom of association [...] must be made in the context of the link between the exercise of said right and the promotion and defense of human rights.”¹⁰⁵⁰

508. Likewise, when assessing risk, a distinction must be made between a security incident and a reprisal resulting from the exercise of the rights contained in the UN Declaration on Human Rights Defenders.¹⁰⁵¹ If the assessment establishes that the episode that posed the risk happened as a consequence of the human rights defender’s activities of promoting and defending human rights, the risk should be taken as a given; however, the degree of risk and its potential effect on the life and personal safety of the human rights defender will depend on other factors, which the State must also examine. The Court has held that the State’s duty to prevent and the adoption of measures to protect life and personal safety that results from that duty are conditional upon the existence of a real and imminent danger that the State can prevent or avoid.¹⁰⁵²

509. The Court has introduced a number of standards that States can use to determine how a risk can affect a person’s life and personal integrity. It has written that there must be: 1) an assessment of the problem presented, ii) an assessment of the effectiveness of the actions taken by the State to address the situation described, and iii) an analysis of the degree of vulnerability that the persons for whom the measures are requested would find themselves were the measures not adopted.¹⁰⁵³

510. When assessing the problem posed, States must examine a number of objective factors to determine the degree of risk to the applicant human rights defender’s rights. The Court has held that there may be a nexus of factors or circumstances revealing aggression against a particular group of persons, and that expose those persons to a situation of extreme gravity and urgency, in which they are at risk of suffering irreparable harm.¹⁰⁵⁴ The Commission considers that the various events narrated by the persons

¹⁰⁵⁰ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145.

¹⁰⁵¹ Here, for example, a distinction has to be made between the robbery of an organization in which the only objects taken are those that have an economic value, and a robbery in which the stolen goods are documents or information that are vital to enabling the human rights defenders to prosecute their causes, or confidential documents about individuals. The first kind of robbery is not necessarily a reprisal for the activities of promoting and defending human rights; the second kind of robbery is more likely an intentional reprisal for the organization’s activities.

¹⁰⁵² I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 280.

¹⁰⁵³ I/A Court H.R., *Matter of Alvarado Reyes et al. regarding the United Mexican States*. Provisional Measures. Order of December 26, 2010, *consideranda* 32.

¹⁰⁵⁴ I/A Court H.R., *Matter of Alvarado Reyes et al. regarding the United Mexican States*. Provisional Measures. Order of December 26, 2010, *consideranda* 61.

seeking protective measures must be considered as a whole and examined in relation to the facts that precipitated the request.

i. Context-based assessment

511. For states to assess a risk based on context, they need to identify and evaluate certain circumstances that could affect the degree of risk that the defenders face; for example, whether their work could directly affect the interests of some party in the region; whether they are in possession of information that could be compromising for some agent of the State or criminal group; whether their work is conducted in combat zones or in places where there have been previous attacks on human rights defenders; whether the local authorities have responded to their complaints; if a defender is a key witness who might bring charges of human rights violations; whether the human rights defender is engaging in his or her activities at a critical moment for his or her cause; or whether he or she is a member of some organization or group of defenders that has been attacked, threatened or harassed in the past.

512. During the risk assessment, the gender perspective has to be considered in the case of women seeking protection. States must evaluate the particular context in which a woman human rights defender is operating, to determine whether it is one in which the risk to her would be greater because of her sex. In some States, the risk for some women defenders of the rights of displaced women is extreme; because of their activities, some have become victims of sexual violence, physical aggression, threats and harassment.¹⁰⁵⁵ Similarly, attacks have been perpetrated on the lives and personal safety of women who have participated in movements to demand respect for the rights of other women who have been victims of gender violence.¹⁰⁵⁶ In contexts like these, it is vital that the State assess the risk from a gender perspective; if any context could pose a more serious risk to a human rights defender's rights because of her gender, then the assessment should reflect the heightened risk.

ii. Assessing the risk in the specific case

513. Context-related factors¹⁰⁵⁷ are not the only ones to consider when assessing risk. States must also look at the other particulars of the case, such as a) the type of attacks committed; b) whether these attacks are repeat occurrences; c) whether the severity of the attacks has increased over time; and d) whether any agent of the State has participated in the acts of aggression.¹⁰⁵⁸

¹⁰⁵⁵ See PM 1-10 - 14 Women in a Situation of Displacement, Colombia. Available at: <http://www.cidh.oas.org/medidas/2010.eng.htm>

¹⁰⁵⁶ See PM 147/08 Luz Estela Castro Rodríguez *et al.*, Mexico. Available at: <http://www.cidh.oas.org/medidas/2008.eng.htm>

¹⁰⁵⁷ I/A Court H.R., *Matter of Alvarado Reyes et al. the United Mexican States*. Provisional Measures. Order of December 26, 2010, *Consideranda* 61.

¹⁰⁵⁸ See arguments of the IACHR in I/A Court H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of March 4, 2011, "Visto" 6 [Only in Spanish].

514. As to the type of aggression, a State must examine what type of problem the human rights defender seeking protection has experienced. Each type of problem should be examined separately, weighing it for the degree of the potential effect it could have on the human rights defender's life and personal safety. For example, the risk posed by surveillance of an organization's facilities might be different from the risk posed when a human rights defender is followed home; or e-mail threats made to all the organizations in the region may not carry the same weight as verbal threats made against a specific organization or individual human rights defender.

515. Where repeated incidents of aggression are involved, the sequence of events over time has to be examined, taking into account all the acts of intimidation, threats, physical assaults and verbal attacks that the individual human rights defender concerned and the group to which he or she belongs may have experienced. The State should also determine whether the human rights defender's nuclear has been the target of attacks. A determination should also be made as to whether the latest attacks occurred around the time that the State's protection was requested.

516. It is also important to ascertain whether agents of the State were involved in the attacks committed against human rights defender or whether the attacks were perpetrated with the consent or connivance of those agents. The involvement of State agents in the harassment of and attacks against human rights defenders not only creates international liability for the State¹⁰⁵⁹ but is also a serious obstacle to human rights defenders' ability to get justice for the attacks perpetrated against them or to feel protected by the protective measures available, when the authorities implicated in the threat or attack are the very persons who provide that protection.

517. To determine the effectiveness of the measures taken by the State to assess risk, it must be ascertained whether subsequent to the adoption of protective measures, the corresponding authorities conducted a serious investigation and prosecuted those responsible for the attacks and harassment committed against a human rights defender. Prosecution would help mitigate the risk to human rights defenders. Where risk is involved the duty to investigate is more rigorous, and demands "prompt and immediate action by the police, prosecutorial and judicial authorities ordering the opportune and necessary measures to determine the authors of the threats made and the crimes committed in this context."¹⁰⁶⁰ If the authorities are aware of the attacks, but the attacks continue because no progress is made in the investigation and apprehension of the responsible parties, the human rights defender is at even greater peril.

¹⁰⁵⁹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 127.

¹⁰⁶⁰ I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 101. Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 126.

518. However, if the State takes the initiative of providing protection measures under its human rights defender protection program and the attacks or aggression against the protected human rights defender persist, then the State will have to assess whether the measures adopted are effective; in other words, whether they have succeeded in putting a stop to the dangers posed to the person being protected or whether additional measures must be introduced or the protection plan amended.¹⁰⁶¹

519. When examining how vulnerable the applicant defender would be if the measures were not adopted, the State must use the considerations mentioned above to examine how the State's participation through special protective measures may be a suitable and timely means of protecting the human rights defender's life and personal safety and enabling him or her to continue to perform his or her functions. This step in the risk assessment means ascertaining whether the risk to which the human rights defender would be exposed could be corrected through the use of special measures of protection.

520. The Commission believes that States should include the above considerations when examining the risk to human rights defenders who request protection.

e. Suitability and effectiveness of the protection measures

521. In its 2006 report, the IACHR observed that the protection measures for human rights defenders at risk must be adequate and effective.¹⁰⁶² For protective measures to be adequate they must be an appropriate means of protecting the person at risk; to be effective, they must produce the expected results¹⁰⁶³ so that the risk to the person being protected ceases.¹⁰⁶⁴ The Court has written that these measures of protection are essentially provisional and temporary in nature.¹⁰⁶⁵

522. In order for a measure to satisfy the suitability requirement, it must be able to deal with the degree of risk that the defender is experiencing, such that it not only protects the defender's life and personal integrity but also ensures that he or she is able to continue to engage in the defense and promotion of human rights. Accordingly, the State and the beneficiaries must jointly design the type of protection measures to be provided.¹⁰⁶⁶

¹⁰⁶¹ I/A Court H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of November 25, 2010. Operative para. 27.

¹⁰⁶² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 129.

¹⁰⁶³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 133.

¹⁰⁶⁴ I/A Court H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of November 23, 2010, Operative para. 27.

¹⁰⁶⁵ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda* 40.

¹⁰⁶⁶ I/A Court H.R., *Matter of the "Globovisión" Television Station regarding Venezuela*. Provisional Measures. Order of November 21, 2007, *Consideranda* 11.

523. As to the process of negotiating the measures to be provided, the State must ensure that the beneficiary human rights defender plays an active role in selecting the appropriate protection measures. The Court has written that when protection measures are to be ordered, the beneficiaries of these measures are to be given an active role in their planning and implementation; in general, they are to be kept informed on the progress made in the execution of these measures.¹⁰⁶⁷ The Court reasons that this will help ensure that the measures are executed diligently and effectively.¹⁰⁶⁸ Only through stable, respectful and constructive dialogue with the beneficiaries will the protection measures selected be adequate to the degree of danger that the defender is experiencing and his or her specific work-related needs.

524. It is vital that the protection measures implemented enable the human rights defender to carry on with his or her work. In the case of journalism, for example, the Court has written that “[t]he means and coverage of this protection must respond to the requirements of the circumstances, and be adapted, insofar as possible, to the need to protect the life, personal integrity, and freedom of expression of the beneficiaries and to the specific situations that occur.”¹⁰⁶⁹ In a case involving women community leaders and human rights defenders, the Court has ordered the State to provide the beneficiaries with protection during their travels and movements within and outside the area where they reside.¹⁰⁷⁰ In order for the measures to be suitable, they must be tailored to the work needs of the subject being protected and should be able to be modified as the danger that the activities of defending and promoting human rights poses at different times varies in intensity; special care should be taken to reinforce those measures when a human rights defender is at a critical stage in defending his or her cause.

525. To ensure the suitability and effectiveness of the measures, the persons who will be involved in the human rights defender’s protection (such as personal bodyguards, patrols or security personnel posted at the headquarters of the organizations) must have the training and instruction necessary to perform their functions. The personnel involved in the security arrangements must instill a sense of confidence and trust in the beneficiaries of the protection. The Court has emphasized that “the measures of protection [...] [must] not [be] provided by the security officials who, according to the beneficiaries, were involved in the reported facts” so that the personnel appointments must be done with the beneficiaries participating.”¹⁰⁷¹

¹⁰⁶⁷ I/A Court H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of March 4, 2011, Operative para. 4.

¹⁰⁶⁸ I/A Court H.R., *Matter of Luis Uzcátegui regarding Venezuela*, Provisional measures. Order of the Court of January 27, 2009. *Consideranda* 13.

¹⁰⁶⁹ I/A Court H.R., *Matter of the “Globovisión” Television Station regarding Venezuela*. Provisional Measures. Order of November 21, 2007, *Consideranda* 19.

¹⁰⁷⁰ I/A Court H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of November 25, 2010, Operative para. 57.

¹⁰⁷¹ *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures. Order of March 4, 2011, Operative para. 3.

526. As the Commission has previously observed in connection with the protection arrangements, “[t]he privatization of the functions involved in citizen security is a departure from the concept of human rights, where the State is responsible for guaranteeing that citizen security is defended, protected and ensured.”¹⁰⁷² The best course of action is for the States to have a State security force exclusively for the protection program, separate from those elements in the police that engage in intelligence and counterintelligence work. The members of this special security force for protection of human rights defenders should be selected, recruited, and trained with complete transparency and with the participation of representatives of the programs’ target population, so as to create confidence and trust between the persons being protected and those who are protecting them.¹⁰⁷³

527. States must also cultivate policies that enable them to monitor the effectiveness of the measures selected to protect at-risk human rights defenders and that allow the defenders to cope with the obstacles to their work, especially at those times when the risk level could increase. If the measures of protection are ineffective, they will have to be adjusted to comport with the situation that the human rights defender is experiencing. The Court has observed that in some cases the protective measures planned and implemented by the State for the beneficiaries have been neither effective nor sufficient to remedy the particular situation the defender is experiencing¹⁰⁷⁴ and the beneficiary’s family members have been either threatened or murdered while the measures are still in effect. The Court has commented that these developments are very serious and reveal the inefficacy of the means adopted to eradicate the sources of the risk and properly protect the beneficiaries.¹⁰⁷⁵

528. One way in which the measures can be effective, is if State authorities [...] “establish clear and direct means of communication with the beneficiaries in order to establish the necessary trust for their adequate protection.”¹⁰⁷⁶ While the State must establish these channels of communication, the beneficiaries, too, must do everything possible to cooperate in any way necessary to ensure effective implementation of the measures.¹⁰⁷⁷

¹⁰⁷² IACHR, *Report on Citizen Security and Human Rights*, para. 72.

¹⁰⁷³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 136.

¹⁰⁷⁴ I/A Court H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of November 25, 2010, *Consideranda* 71.

¹⁰⁷⁵ I/A Court H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of November 25, 2010, *Consideranda* 53.

¹⁰⁷⁶ I/A Court H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of November 25, 2010, *Consideranda* 28.

¹⁰⁷⁷ I/A Court H.R., *Matter of Mery Naranjo et al.* regarding Colombia. Provisional Measures. Order of November 25, 2010, *Consideranda* 27.

f. When the risk ceases

529. States must take care to ensure that security measures are effectively put into practice when the risk so requires¹⁰⁷⁸ and must periodically monitor the danger to the protected defender and keep the protective measure in effect so long as the risk to the life and personal safety of the defender so dictates. Nevertheless, States must not lose sight of the fact that protection measures are essentially provisional and temporary in nature;¹⁰⁷⁹ hence, when the risk to the life and personal integrity ceases, so too would the grounds for continuing to enforce the protection measures.

530. The fact that no threats have been made over a period of time does not necessarily mean that the risk to the person has ceased.¹⁰⁸⁰ However, if a certain period of time passes without further threats occurring, the reasons why those threats have stopped need to be examined to determine whether the protection measures should be kept in place.¹⁰⁸¹ In one case in which the protection measures had been in place for over six years, the Court wrote that “only certain types of contexts related to a pattern of extreme situations can justify maintaining”¹⁰⁸² the protective measures. The Court reasoned that the fight against the alleged context of harassment of human rights defenders is a matter for the contentious jurisdiction, and not special measures of protection.¹⁰⁸³ In this case, the Court decided to lift the protection measures as there was insufficient information regarding a risk to the beneficiaries that would suggest a threat of irreparable harm.¹⁰⁸⁴

531. States must assess the risk in order to decide whether the measures of protection should be lifted. The beneficiaries’ participation is essential here, in order to get their view on the question of whether the measures should be lifted. Irrespective of whether the special measures of protection are lifted, Article 1(1) of the Convention establishes the States’ general obligation to respect the rights and freedoms established in the Convention and to ensure their free and full exercise to all persons subject to their jurisdiction.¹⁰⁸⁵

¹⁰⁷⁸ IACHR, Justice and social inclusion: the challenges of democracy in Guatemala, para. 208.

¹⁰⁷⁹ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 40*.

¹⁰⁸⁰ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 40*.

¹⁰⁸¹ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 40*.

¹⁰⁸² I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 41*.

¹⁰⁸³ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 41*.

¹⁰⁸⁴ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 42*.

¹⁰⁸⁵ I/A Court H.R., *Matter of Liliana Ortega et al. regarding Venezuela*. Provisional Measures. Order of July 9, 2009. *Consideranda 44*. *Matter of Velásquez Rodríguez regarding Honduras*. Provisional Measures. Order

4. The national institutions for the promotion and defense of human rights (Ombudsman)

532. The national institutions to protect and defend human rights, which in many countries is the office of the ombudsperson or defenders of the people, play an important role in the observance and enforcement of human rights. The establishment of such institutions in the member States represents a step forward in the consolidation of the institutions of democratic government.¹⁰⁸⁶ The *Vienna Declaration and Programme of Action of the United Nations* has highlighted the role of *ombudspersons* in advising the authorities on the subject of reparations for victims of human rights violations, and in disseminating information and helping to educate the public on this subject.¹⁰⁸⁷ For its part, the United Nations General Assembly has underscored the role that ombudspersons can play at the national level where the promotion and protection of human rights and fundamental freedoms are concerned and in creating a public awareness of these rights and freedoms.¹⁰⁸⁸

533. Under the *Principles relating to the Status of National Institutions* (the Paris Principles),¹⁰⁸⁹ the independence and pluralism of the ombudsmen must be guaranteed.¹⁰⁹⁰ The principles state that the “composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all the necessary guarantees to ensure the pluralistic representation of the social forces (of civilian society) involved in the protection and promotion of human rights.”

534. With specific reference to the guarantees of independence, the IACHR saw significant progress in the fact that the States ensure that the system for appointing

...continuation

of January 15, 1988, *consideranda* 3; *Matter of the Urso Branco Prison regarding Brazil*. Provisional Measures. Order of May 2, 2008, *consideranda* 19.

¹⁰⁸⁶ IACHR, Press Release No. 26/01, *IACHR Concludes 113th Session*, October 18, 2001. IACHR, Recommendation of the Inter-American Commission on Human Rights for the promotion and protection of the rights of the mentally ill, approved at the 111th session of the IACHR, April 4, 2001, recommendation 5. IACHR, *Annual Report of the Inter-American Commission on Human Rights 1990-1991. Situation of Human Rights in Some States, Chapter IV. Guatemala, February 22, 1991*. IACHR, *The Mexican Constitutional System and Human Rights* para.122.

¹⁰⁸⁷ United Nations General Assembly, *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights on June 25, 1993, A/CONF.157/23, July 12, 1993. Available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)

¹⁰⁸⁸ Resolutions 41/129 of 4 December 1986 and 46/124 of 17 December 1991 and Commission on Human Rights resolutions 1987/40 of 10 March 1987, 1988/72 of 10 March 1988, 1989/52 of 7 March 1989, 1990/73 of 7 March 1990, 1991/27 of 5 March 1991 and 1992/54 of 3 March 1992.

¹⁰⁸⁹ Principles relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly in resolution 48/134 of December 20, 2003. Available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>

¹⁰⁹⁰ Article 3(d) of the Paris Principles.

the ombudsperson is not left entirely to the discretion of the Executive Branch.¹⁰⁹¹ The Commission is urging the States to ensure that the national institutions for the defense and promotion of human rights enjoy the utmost independence and that their pluralism is guaranteed through proper representation of the social forces, which includes trade unions and nongovernmental organizations active in the area of human rights.¹⁰⁹²

535. While the Commission has pointed out that a complaint filed with the ombudsman's office does not constitute an effective judicial remedy under the terms of the American Convention,¹⁰⁹³ the ombudsman's advisory role, the assistance he or she provides to victims and the recommendations he or she issues play a critical role in urging the State's compliance with its obligations under international human rights instruments. Under the Paris Principles, one of the functions of national institutions is to contribute to the State's compliance with its international treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.¹⁰⁹⁴

536. The IACHR is gratified to observe that in exercise of that function, some national institutions have played active roles as driving forces behind decisions taken by the inter-American system, and have even intervened as petitioners in filing requests seeking precautionary measures, individual complaints, and as participants in the public hearings held by the Inter-American Commission. The IACHR would encourage ombudspersons in the region to play a more active role in overseeing the international commitments undertaken by their respective States, in accordance with the Paris Principles. It also urges them to increase their participation in and coordination with the inter-American system for the protection of human rights.

537. To promote the involvement of human rights defenders in the domestic affairs of the State, the Edinburgh Declaration adopted in 2010 reaffirmed the importance of effective national institutions for the promotion and defense of human rights, vested with competence to promote and protect human rights and enjoying as broad a mandate as possible.¹⁰⁹⁵ The IACHR applauds the commitment that the ombudspersons have undertaken in this declaration to support victims of abusive business practices, facilitate access to justice, and to renew their efforts to collaborate with civil society organizations in this regard.

¹⁰⁹¹ IACHR, Annual Report 1999, Chapter V, Follow-Up on IACHR Recommendations of the "Report on the Situation of Human Rights in Mexico", April 13, 2000, para. 22.

¹⁰⁹² Principles relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly in resolution 48/134 of December 20, 2003. Available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>

¹⁰⁹³ IACHR, Report No. 73/99 "Ojo de Agua" Cooperative (Mexico), May 4, 1999, para. 16.

¹⁰⁹⁴ Article 3(d) of the Paris Principles.

¹⁰⁹⁵ Art. 10 of the Edinburgh Declaration, adopted by the 10th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, October 10, 2010. Available at: http://www.ohchr.org/Documents/AboutUs/NHRI/Edinburgh_Declaration_en.pdf

538. The role that national institutions can play is essential for compliance with the recommendation made by the Commission to foster a culture of human rights in which the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law is recognized publicly and unequivocally.¹⁰⁹⁶

539. As for the activities to protect human rights defenders, the Commission has been informed that some ombudspersons have been instrumental in implementing mechanisms to protect the lives and personal integrity of human rights defenders in peril. In Mexico, mechanisms are in place for the adoption of special protective measures; these mechanisms were developed by the National Human Rights Commission (CNDH) and by the Federal District Human Rights Commission (CDHDF). The legal basis for these mechanisms can be found in Article 40 of the Law of the CNDH¹⁰⁹⁷ and Article 39 of the Law of the CDHDF.¹⁰⁹⁸ When a situation of gravity and danger exists where there is a risk of irreparable harm, these ombudspersons are authorized to take special protective measures, while making recommendations to the authorities in the ombudsman's sphere of competence on how best to protect the defender in danger. The Commission observes that the CNDH's recommendations have to go to the federal authorities, whereas the CDHDF's recommendations would go to the state authorities. The efficacy of the requests from the CNDH and CDHDF would depend upon whether the receiving authorities agree to carry them out.

¹⁰⁹⁶ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 1.

¹⁰⁹⁷ Under the CNDH law, the chief investigator [*Visitador General*] has the authority to ask at any time the competent authorities to take all measures necessary to prevent the irreparable consummation of the human rights violations being reported or claimed, or the materialization of harm to the affected persons that would be difficult to remedy; he or she may also request that the measures be modified in the event of a change in the circumstances that warranted them originally. Art. 40 of the Law of the National Human Rights Commission published in the Federation's Official Gazette of June 29, 1992. Available [in Spanish] at: <http://www.cndh.org.mx/node/26>. Under the Rules of Procedure of the CNDH, once notice of the violation being claimed is received, the chief investigator shall have sufficient cause to ask the competent authorities to take the necessary protection measures if the facts, if true, would result in harm that would be difficult if not impossible to remedy or that would make it impossible to restore the victim's rights. Article 117 of the Rules of Procedure of the National Human Rights Commission, September 29, 2003. Available [in Spanish] at: <http://www.cndh.org.mx/node/26>. According to the *Guía para implementar medidas cautelares en beneficio de defensores de los derechos humanos en México* [Handbook for implementing precautionary measures for human rights defenders in Mexico], the proposal setting out the precautionary measures would be prepared on a case-by-case basis in coordination with the human rights defenders or their representatives; a 30-day deadline would be given, which could be extended for whatever time necessary provided the reasons for the extension are explained. According to civil society organizations in Mexico, the precautionary measures issued by the CNDH do not tend to be effective in practice, since on occasion the authorities receiving the proposal reportedly do not comply with them. CNDH, *Guía para implementar medidas cautelares en beneficio de los defensores de los derechos humanos en México*, October 2010. Available [in Spanish] at: http://www.cndh.org.mx/sites/all/fuentes/documentos/index/20110329_2.pdf.

¹⁰⁹⁸ Either the President of the Federal District Human Rights Commission or the investigators [*visitadores*] may at any time ask the competent authorities to take all measures necessary to prevent the irreparable consummation of the human rights violations being reported or claimed, or the materialization of harm to the affected persons that would be difficult to remedy; they may also request that the measures be modified in the event of a change in the circumstances that warranted them originally.

540. The IACHR would remind the authorities who receive the protection recommendations from the CNDH and the CDHDF that, under Article 1 of the Convention, States must prevent violations of human rights when they know of the existence of a real and imminent threat.¹⁰⁹⁹ When the competent authorities learn of a threat to a defender through the CNDH's or CDHDF's request for precautionary measures, they are to act on these requests in good faith, since irrespective of any liabilities that may arise under the domestic legal system should a threat to human rights defender materialize, the State's international responsibility could be compromised for nonobservance of the duty to prevent.

VI. RECOMMENDATIONS

541. Based on the information compiled and the Commission's analysis in this report of the recommendations made in the 2006 report, and to better protect human rights defenders and ensure that they are able to conduct their work,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATES OF THE AMERICAS:

1. Adopt the appropriate measures to recognize by law the right to defend human rights and to disseminate their content within government, educational and social circles. The Commission calls upon the States to widely publicize and promote the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Commission also urges the States to put together a program of specific measures intended to put the Declaration into practice.
2. Implement, as a priority matter, a global policy of protection for human rights defenders. To achieve this objective, the IACHR urges the States to comply with the following specific recommendations:
 - A. **Promoting the work of human rights defenders and acknowledging their role in democratic societies**
3. Foster a culture of human rights in which the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law is recognized publicly and unequivocally. The commitment to this policy should be reflected at every level of the State – local, state or provincial,

¹⁰⁹⁹ ECHR, *Kiliç v. Turkey*, Judgment of March 28, 2000, Aplicación No. 22492/93, paragraphs 62 - 63; *Osman v. the United Kingdom*, Judgment of October 28, 1998, *Reports of Judgments and Decisions 1998-VIII*, paragraphs 115 - 116; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, paragraph 124.

and national – and in every branch of government – executive, legislative, and judicial.

4. Publicly recognize that the exercise of the protection and promotion of human rights is a legitimate action and that, on exercising these actions, human rights defenders are not working against State institutions, but rather, to the contrary, are helping to strengthen the rule of law and to expand the rights and guarantees of all persons. All State authorities and officials at the local level should be aware of the principles regarding the activities of human rights defenders and their protection, as well as the guidelines applicable to the observance of those principles.
 5. The States must not tolerate any attempt on the part of State authorities to call into question the legitimacy of the work of human rights defenders and their organizations. Public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because they engage in their work of promoting and protecting human rights. Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.
 6. Undertake education and dissemination activities targeting all State agents, the general public and the press, to raise awareness about the importance and validity of the work of human rights defenders and their organizations.
 7. Instruct their authorities to ensure that, from the highest levels, forums are created for open dialogue with human rights organizations, to learn their views on public policies and the problems that beset them.
- B. Protecting human rights defenders to prevent any attack upon their lives and personal integrity.**
8. Protect human rights defenders when their lives and personal integrity are in jeopardy, by adopting an effective and exhaustive strategy of prevention in order to ward off attacks against human rights defenders. To do this, appropriate funds will have to be made available as will political support for the institutions and programs.
 9. In those countries where attacks on human rights defenders are more systematic and numerous, the States should make available all resources necessary and sufficient to prevent harm to their lives and physical safety. The IACHR considers that the special protection programs can enable these States to comply with their obligation to protect by allowing greater proximity and more firsthand knowledge of the particular situation of the defender in jeopardy and thereby be able to provide a

prompt and specialized response proportional to the danger that the human rights defender is facing. States must ensure that the specialized programs have the backing of a strong political commitment on the part of the State, reflected in the manner in which the program's operation is ensured by law, the effectiveness within the ranks of the officials in charge of the program, and sufficient and suitable resources and staff assigned to it; the IACHR is also urging the States to take into account the standards set out in this report when conducting risk assessment studies.

10. Ensure that the personnel who are involved in the security arrangements are designated in conjunction with the beneficiaries and with their agreement, so as to build trust. The protection measures ought not to be provided by security personnel who, according to the beneficiaries, were reportedly involved in the facts denounced. The Commission is recommending that the States have a State security force separate from the security personnel involved in intelligence and counterintelligence work; the personnel in this special force would be selected, recruited, and trained with complete transparency and with the participation of representatives of the programs' target population.
11. Guarantee the security of human rights defenders who are especially vulnerable by adopting specific measures of protection based on their activities and the risks they routinely encounter. The States should also undertake measures to secure recognition of the important role that these defenders play in the movement to protect and defend human rights.
12. Allocate human, budgetary, and logistical resources to adapt domestic laws so as to be able to implement appropriate protective measures requested by the Inter-American Commission or the Inter-American Court to protect the life and physical integrity of human rights defenders. Such measures should be in force for the time requested by the Commission or the Court, and they should be decided in consultation with the defenders to ensure they are relevant and that they allow them to continue carrying out their activities.

C. Clearing away obstacles and adopting measures to ensure the free and full practice of defending and promoting human rights

13. Ensure that the authorities or third parties do not use the punitive power of the State and its organs of justice to harass those like human rights defenders who are engaged in legitimate and lawful activities.¹¹⁰⁰ States must take all measures necessary to prevent State investigations from

¹¹⁰⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 11.

being used to unjustly persecute persons who are legitimately demanding observance and protection of their human rights. The following are among the measures that States should consider: conduct a review to ensure that the crimes commonly invoked to arrest human rights defenders are formulated in accordance with the principle of legality; ensure that the authorities presiding over the cases issue their decisions within a reasonable period of time; ensure that the authorities and third parties do not violate the principle of presumption of innocence by making statements that stigmatize as criminals human rights defenders who are being criminally prosecuted.

14. Adopt mechanisms to prevent excessive use of force during public demonstrations, through planning, prevention, and investigation measures that follow, *inter alia*, the guidelines set forth in this report.
15. Refrain from any type of arbitrary or abusive meddling in the home of human rights defenders or offices of human rights organizations, or in their correspondence and telephone and electronic communications. Instruct the authorities attached to state security agencies to respect these rights, and impose disciplinary and criminal sanctions on those who engage in such practices.
16. Revise the premises and procedures governing intelligence-gathering activities targeting human rights defenders and their organizations to ensure due protection of their rights. To this end, the implementation of a mechanism for periodic, independent review of those records is recommended.
17. Allow and enable human rights defenders and the general public to have access to public information held by the State, as well as private information about them. The State should establish an expedited, independent, and effective mechanism for this purpose, which includes a review by civilian authorities of the security forces' decisions to deny access to information.
18. Ensure that the procedure for registering human rights organizations does not become an impediment to their work and that registration is for declarative purposes but not to authorize or legalize their existence. The States must ensure that the registration of organizations is a rapid process, requiring only the documents necessary to obtain the information necessary for registration purposes. National laws should prescribe the maximum time periods for the State authorities to act on registration applications.
19. Refrain from promoting laws and policies on registration of human rights organizations that use vague, imprecise, and broad definitions of the legitimate grounds for restricting their establishment and operation. The

States must also make certain that the registration officials do not have discretionary authority to refuse to register the organizations; registration officials are not to use bureaucratic controls to require organizations to keep their registrations active by submitting documents that exceed the boundaries of confidentiality that such organizations must have in order to operate with independence.

20. Ensure that organizations of human rights defenders whose registrations are denied have available to them a remedy to challenge that decision before an independent court. The States should also ensure an impartial remedy for situations in which organizations' registration is suspended or the organization dissolved.
21. Refrain from restricting the means of financing of human rights organizations. The States should allow and enable human rights organizations' access to foreign funding, provided as international cooperation, under the conditions of transparency mentioned in this report.
22. As a matter of public policy, undertake the battle against impunity for violations of the rights of human rights defenders by conducting exhaustive and independent investigations into the attacks suffered by defenders and punish the material and intellectual authors of those attacks. The IACHR is urging the States to set up specialized units within the police force and the public prosecutor's office, armed with the necessary resources and training and protocols needed to enable them to act in coordination and with due diligence when investigating attacks on human rights defenders, while establishing theories about the crimes and guidelines to steer the investigation, taking into account the interests that may have been harmed in retaliation for the activities conducted by the aggrieved human rights defender.
23. Illegal armed groups are among the main perpetrators of violence against human rights defenders. States must implement a serious policy to investigate, prosecute, and punish all of the actors involved, not just their armed members, but also those who promote, direct, support, or finance such groups or participate in them.
24. Strengthen the mechanisms for the administration of justice and guarantee the independence and impartiality of the officers of the court, which are conditions *sine qua non* for performance of their functions of investigating, prosecuting, and punishing those who violate human rights. To strengthen those mechanisms, the States must guarantee that they will have the budget and human resources necessary for an effective administration of justice.

25. Ensure that provisional appointments of judges do not last indefinitely; instead, they should be subject to conditions, such as completion of a pre-determined time period, a competition and background check; the result should be a permanent appointment, either of the provisional judge or the person who is competitively selected to replace the provisional judge on a permanent basis.
26. Ensure that the military courts do not have jurisdiction to investigate and prosecute members of the military who commit crimes against human rights and fundamental freedoms.
27. Encourage the ombudspersons within the region to play a more active role in checking for compliance with the international commitments undertaken by their respective States, in keeping with the Paris Principles, and redouble their participation in and coordination with the inter-American system for the protection of human rights.
28. Give whatever orders are necessary to promptly and effectively comply with the recommendations of the Inter-American Commission and the judgments of the Inter-American Court of Human Rights.