

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

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

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

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

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

4. In compliance with its powers under the Convention and the Statute and with the above-cited resolutions, and pursuant to Article 48 of the Rules of Procedure, the IACHR requested information from the States on compliance with the recommendations made in the reports published on individual cases included in its annual reports from 2000 through 2014. For the preparation of this report, the IACHR took into consideration the information received until November 17, 2015, which is consider the closing date of this report.

5. Pursuant to Article 17.2 of the Regulations of the Commission, Commissioner Rose-Marie Belle Antoine, a national of Trinidad and Tobago did not participate in the debate or discussion or conclusions of the Commission on the follow up of report on cases referred to that country; nor did the Commissioners James L. Cavallaro, regarding the matters of the United States; José de Jesús Orozco Henríquez, Mexico's affairs; Felipe Gonzalez, Chile's affairs; Rosa Maria Ortiz, of the affairs of Paraguay; Tracy Robinson on the Jamaica's affairs; and Vannuchi Paulo, Brazil's affairs; to be nationals of those countries.

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

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

CASE	ART.49 (FS) ART. 51 (FR) <sup>1</sup>	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.307, Report No. 103/01, María Merciadri de Morini (Argentina) <sup>2</sup>	49	X		
Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina)	49		X	
Case 12.080, Report No. 102/05, Sergio Schiavini and María Teresa Schnack (Argentina)	49		X	
Case 12.298, Report No. 81/08 Fernando Giovanelli (Argentina)	49		X	
Case 12.159, Report No. 79/09, Gabriel Egisto Santillán Reigas (Argentina)	49		X	
Case 11.732, Report No. 83/09, Horacio Aníbal Schillizzi (Argentina)	51		X	
Case 11.758, Report No. 15/10, Rodolfo Correa Belisle (Argentina)	49	X		
Case 11.796, Report No. 16/10, Mario Humberto Gomez Yardez (Argentina) <sup>3</sup>	49	X		
Case 12.536, Report No. 17/10, Raquel Natalia Lagunas and Sergio Antonio Sorbellini (Argentina)	49		X	
Petition 242-03, Report No. 160/10, Inocencia Luca Pogoraro (Argentina)	49		X	
Petition 4554-02, Report No. 161/10, Valerio Castillo Báez (Argentina) <sup>4</sup>	49	X		
Petition 2829-02, Report No. 19/11, Inocencio Rodríguez (Argentina)	49		X	

<sup>1</sup> To the effects of this Chapter FSS refers to the cases under Follow up of Friendly Settlements or Reports issued under Article 49 of the ACHR and FR refferes to the Follow up of Recommndations or Reports issued under Article 51 of the ACHR.

<sup>2</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 38-40.

<sup>3</sup> See IACHR, *Annual Report 2011*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 159-164.

<sup>4</sup> See IACHR, *Annual Report 2013*, Chapter II, Section D: Status of compliance with the recommendations of the IACHR, paras. 165 - 175.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 11.708, Report No. 20/11, Aníbal Acosta and L. Hirsch (Argentina) <sup>5</sup>	49	X		
Petition 11.833, Report No. 21/11, Ricardo Monterisi (Argentina) <sup>6</sup>	49	X		
Petition 12.532, Report No. 84/11, Penitencieras de Mendoza (Argentina)	49		X	
Petition 12.306, Report No. 85/11, Juan Carlos de la Torre (Argentina)	49		X	
Petition 11.670, Report No. 168/11, Menéndez and Caride (Argentina) <sup>7</sup>	49	X		
Case 12.324, Report No. 66/12, Rubén Luis Godoy (Argentina)	51		X	
Case 12.182, Report No. 109/13, Florentino Rojas (Argentina)	49		X	
Petition 21-05, Report No. 101/14, Ignacio Cardozo and otros (Argentina)	49			X
Case 12.710, Report No. 102/14, Marcos Gilberto Chaves and Sandra Beatríz Chaves (Argentina)	49		X	
Cases 12.067, 12.068 and 12.086, Report No. 48/01, Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg (Bahamas)	51		X	
Case 12.265, Report 78/07 Chad Roger Goodman (Bahamas)	51		X	
Case 12.513, Report 79/07 Prince Pinder (Bahamas)	51			X
Case 12.231, Report No. 12/14, Peter Cash (Bahamas)	51			X
Case 12.053, Report No. 40/04, May Indigenous Community of the Toledo District (Belize)	51			X
Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)	49		X	
Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia) <sup>8</sup>	49	X		
Petition No. 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia) <sup>9</sup>	49	X		

<sup>5</sup> See IACHR, *Annual Report 2014*, Chapter II, Section D: Status of compliance with the recommendations of the IACHR, paras. 173-181.

<sup>6</sup> See IACHR, *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 180-183.

<sup>7</sup> See IACHR, *Annual Report 2013*, Chapter II, Section Status of compliance with the recommendations of the IACHR, paras. 225-252.

<sup>8</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 109-114.

<sup>9</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 115-19.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition No. 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia) <sup>10</sup>	49	X		
Case 12.350, Report No. 103/14, M.Z. (Bolivia) <sup>11</sup>	49	X		
Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil)	51		X	
Cases 11.286, 11.406, 11.407, 11.412, 11.413, 11.415, 11.416 and 11.417, Report No. 55/01, Aluísio Cavalcante <i>et al.</i> (Brazil)	51		X	
Case 11.517, Report No. 23/02, Diniz Bento da Silva (Brazil)	51		X	
Case 10.301, Report No. 40/03, Parque São Lucas (Brazil)	51		X	
Case 11.289, Report No. 95/03, José Pereira (Brazil)	49		X	
Case 11.556, Report No. 32/04, Corumbiara (Brazil)	51		X	
Case 11.634, Report No. 33/04, Jailton Neri da Fonseca (Brazil)	51		X	
Cases 12.426 and 12.427, Report No. 43/06, Raniê Silva Cruz, Eduardo Rocha da Silva and Raimundo Nonato Conceição Filho (Brazil) <sup>12</sup>	49	X		
Case 12.001, Report No. 66/06, Simone André Diniz (Brazil)	51		X	
Case 12.019, Report No. 35/08 Antonio Ferreira Braga (Brazil)	51			X
Case 12.310, Report No. 25/09 Segastião Camargo Filho (Brazil)	51		X	
Case 12.440, Report No. 26/09 Wallace de Almeida (Brazil)	51		X	
Case 12.308, Report No. 37/10, Manoel Leal de Oliveira (Brazil)	51		X	
Case 12.586, Report No. 78/11, John Doe (Canada)	51		X	
Case 11.771, Report No. 61/01, Samuel Alfonso Catalán Lincoleo (Chile)	51		X	
Case 11.715, Report No. 32/02, Juan Manuel Contreras San Martín <i>et al.</i> (Chile) <sup>13</sup>	49	X		
Case 12.046, Report No. 33/02, Mónica Carabantes Galleguillos (Chile) <sup>14</sup>	49	X		
Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile)	51		X	

<sup>10</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 120-124.

<sup>11</sup> See IACHR, Report on Friendly Settlement No. 103-14, *Case 12.350, (M.Z. vs. Bolivia)*, dated November 7, 2014.

<sup>12</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 162-175.

<sup>13</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 187-190.

<sup>14</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 191-194.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 4617/02, Report No. 30/04, Mercedes Julia Huenteao Beroiza <i>et al.</i> (Chile)	49		X	
Case 12.142, Report No. 90/05, Alejandra Marcela Matus Acuña <i>et al.</i> (Chile) <sup>15</sup>	51	X		
Case 12.337, Report No. 80/09, Marcela Andra Valdés Díaz (Chile) <sup>16</sup>	49	X		
Petition 490-03, Report No. 81/09 "X"(Chile) <sup>17</sup>	49	X		
Case 12.469, Report No. 56/10, Margarita Barberia Miranda (Chile)	51		X	
Case 12.281, Report No. 162/10, Gilda Rosario Pizarro <i>et al.</i> (Chile) <sup>18</sup>	49	X		
Case 12.195, Report No. 163/10, Mario Alberto Jara Oñate (Chile) <sup>19</sup>	49	X		
Case 12.232, Report No. 86/11, María Soledad Cisternas (Chile) <sup>20</sup>	49	X		
Case 11.654, Report No. 62/01, Ríofrío Massacre (Colombia)	51		X	
Case 11.710, Report No. 63/01, Carlos Manuel Prada González and Evelio Antonio Bolaño Castro (Colombia)	51		X	
Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia)	51		X	
Case 11.141, Report No. 105/05, Villatina Massacre (Colombia)	49		X	
Case 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia) <sup>21</sup>	49	X		
Case 12.009, Report No. 43/08, Leydi Dayan Sanchez (Colombia)	51		X	
Case 12.448, Report No. 44/08, Sergio Emilio Cadena Antolinez (Colombia) <sup>22</sup>	51	X		

<sup>15</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 216-224.

<sup>16</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 298-302.

<sup>17</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 303-306.

<sup>18</sup> See IACHR, *Annual Report 2011*, Chapter III, Section Status of compliance with the recommendations of the IACHR, paras. 337-345.

<sup>19</sup> See IACHR, *Annual Report 2011*, Chapter III, Section Status of compliance with the recommendations of the IACHR, paras. 346-354.

<sup>20</sup> See IACHR, *Annual Report 2012*, Chapter III, Section Status of compliance with the recommendations of the IACHR, paras. 408-412.

<sup>21</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 329-333.

<sup>22</sup> See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 274-280.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 477-05, Report No. 82/08 X and family (Colombia) <sup>23</sup>	49	X		
Petition 401-05, Report No. 83/08 Jorge Antonio Barbosa Tarazona <i>et al.</i> (Colombia)	49		X	
Case 10.916, Report No. 79/11, James Zapata Valencia y José Heriberto Ramírez (Colombia)	51		X	
Case 12.376, Report No. 59/14, Alba Lucía Rodríguez (Colombia)	49		X	
Case 12.476, Report No. 67/06, Oscar Elias Biscet <i>et al.</i> (Cuba)	51		X	
Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo <i>et al.</i> (Cuba)	51			X
Case 12.174, Report No. 31/12, Israel Geraldo Paredes Acosta (Dominican Republic) <sup>24</sup>	49	X		
Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)	49		X	
Case 11.439, Report No. 94/00, Byron Roberto Cañaveral (Ecuador)	49		X	
Case 11.445, Report No. 95/00, Ángelo Javier Ruales Paredes (Ecuador) <sup>25</sup>	49	X		
Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)	49		X	
Case 11.584, Report No. 97/00, Carlos Juela Molina (Ecuador)	49		X	
Case 11.783, Report No. 98/00 Marcia Irene Clavijo Tapia, (Ecuador)	49		X	
Case 11.868, Report No. 99/00, Carlos Santiago and Pedro Andrés Restrepo Arismendy (Ecuador)	49		X	
Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador)	49		X	
Case 11.478, Report No. 19/01, Juan Clímaco Cuellar <i>et al.</i> (Ecuador)	49		X	
Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador)	49		X	
Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador)	49		X	
Case 11.779, Report No. 22/01 José Patricio Reascos (Ecuador)	49		X	

<sup>23</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 339-444.

<sup>24</sup> Ver IACHR, Friendly Settlement Report No. 31/12, Case 12.174, Israel Gerardo Paredes Acosta. (Dominican Republic), March 20, 2012.

<sup>25</sup> See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 283-286.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador)	51		X	
Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos <i>et al.</i> (Ecuador)	49		X	
Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador)	49		X	
Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador)	49		X	
Case 11.542, Report No. 107/01, Angel Reiniero Vega Jiménez (Ecuador)	49		X	
Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador)	49		X	
Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador)	49		X	
Case 12.007, Report No. 110/01 Pompeyo Carlos Andrade Benítez (Ecuador)	49		X	
Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)	49		X	
Case 12.188, Report No. 64/03, Joffre José Valencia Mero, Priscila Fierro, Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador)	49		X	
Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos (Ecuador)	49		X	
Case 12.205, Report No. 44/06, José René Castro Galarza (Ecuador)	49		X	
Case 12.207, Report No. 45/06, Lizandro Ramiro Montero Masache (Ecuador)	49		X	
Case 12.238, Report No. 46/06 Myriam Larrea Pintado (Ecuador)	49		X	
Petition 533-01, Report No. 47/06 Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)	49		X	
Case 12.487, Report No. 17/08, Rafael Ignacio Cuesta Caputi (Ecuador)	51		X	
Case 12.525, Report No. 84/09, Nelson Iván Serano Sáñez (Ecuador)	51		X	
Petition 533-05, Report No. 122/12, Julio Rubén Robles Eras (Ecuador)	49		X	
Case 12.631, Report No. 61/13, Karina Montenegro <i>et al.</i> (Ecuador)	49		X	
Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez <i>et al.</i> (El Salvador)	51		X	
Case 12.028, Report No. 47/01, Donnason Knights (Grenada)	51		X	
Case 11.765, Report No. 55/02, Paul Lallion (Grenada)	51		X	
Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)	51		X	

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala)	51		X	
Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)	51		X	
Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay <i>et al.</i> ; Case 10.799 Catalino Chochoy <i>et al.</i> ; Case 10.751 Juan Galicia Hernández <i>et al.</i> and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales <i>et al.</i> (Guatemala)	51		X	
Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo <i>et al.</i> (Guatemala)	51		X	
Case 11.382, Report No. 57/02, Finca “La Exacta” (Guatemala)	51		X	
Case 11.312, Report No. 66/03, Emilio Tec Pop (Guatemala)	49		X	
Case 11.766, Report No. 67/03, Irma Flaquer (Guatemala)	49		X	
Case 11.197, Report No. 68/03, Community of San Vicente de los Cimientos (Guatemala)	49		X	
Petition 9168, Report No. 29/04, Jorge Alberto Rosal Paz (Guatemala)	49		X	
Petition 133-04, Report No. 99/05, José Miguel Mérida Escobar (Guatemala)	49		X	
Case 10.855, Report No. 100/05, Pedro García Chuc (Guatemala)	49		X	
Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala)	51		X	
Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)	51		X	
Case 11.422, Report No. 1/12, Mario Alioto López Sánchez (Guatemala)	49		X	
Case 12.546, Report No. 30/12, Juan Jacobo Arbenz Guzmán (Guatemala)	49		X	
Petition 714-06, Report No. 123/12, Angelica Jerónimo Juárez (Guatemala) <sup>26</sup>	49	X		
Case 12.264, Report No. 1/06, Franz Britton (Guyana)	51			X
Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)	51		X	
Case 11.335, Report No. 78/02, Guy Malary (Haiti)	51			X
Petition 11.805, Report No. 124/12, Carlos Enrique Jaco (Honduras) <sup>27</sup>	49	X		
Case 12.547, Report No. 62/13, Rigoberto Cacho Reyes (Honduras)	49	X		

<sup>26</sup> See IACHR, Friendly Settlement Report No. 123/12, Petition 714-06 (Angelica Jerónimo Juárez), November 12, 2012.

<sup>27</sup> See IACHR, Friendly Settlement Report No. 124/12, Case 11.805 (Carlos Enrique Jaco), November 12, 2012.



CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique y Dalton Daley (Jamaica)	51		X	
Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)	51		X	
Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)	51		X	
Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)	51		X	
Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)	51		X	
Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)	51			X
Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)	51		X	
Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)	51		X	
Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)	51			X
Case 11.807, Report 69/03, José Guadarrama (Mexico) <sup>28</sup>	49	X		
Petition 388-01, Report 101/05 Alejandro Ortiz Ramírez (Mexico) <sup>29</sup>	49	X		
Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico)	51			X
Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico) <sup>30</sup>	49	X		
Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez <i>et al.</i> (Mexico)	49		X	
Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (Mexico)	51		X	
Case 12.642, Report No. 90/10, Jose Ivan Correa Arevalo (Mexico)	49		X	
Case 12.660, Report No. 91/10, Ricardo Ucan Seca (Mexico) <sup>31</sup>	49	X		
Case 12.623, Report No. 164/10, Luis Rey Garcia (Mexico) <sup>32</sup>	49	X		
Petition 318-05, Report No. 68/12, Gerónimo Gómez López (Mexico) <sup>33</sup>	49	X		

<sup>28</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 552-560.

<sup>29</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 562-562.

<sup>30</sup> See IACHR, *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 833-844

<sup>31</sup> See IACHR *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 876-881.

<sup>32</sup> See IACHR *Annual Report 2011*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 982-987.

<sup>33</sup> Ver IACHR, Friendly Settlement Report No. 68/12, Petition 318-05, (Gerónimo Gómez López), Mexico. July 17, 2012.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 12.551, Report No. 51/13, Paloma Angélica Escobar Ledezma et al. (Mexico)	51		X	
Case 12.769, Report No. 65/14, Irineo Martínez Torres and Calendario (Mexico)			X	
Case 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua)	51		X	
Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)	51			X
Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)	51		X	
Case 12.431, Report No. 121/10, Carlos Alberto Mojoli (Paraguay) <sup>34</sup>	51	X		
Case 12.358, Report No. 24/13, Octavio Rubén González Acosta (Paraguay)	49		X	
Petición 1097-06, Report No. 25/13, Miriam Beatriz Riquelme Ramírez (Paraguay) <sup>35</sup>	49	X		
Case 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru) <sup>36</sup>	51	X		
Case 11.031, Report No. 111/00, Pedro Pablo López González <i>et al.</i> (Peru)	51		X	
Cases 10.247 and others, Report No. 101/01, Luis Miguel Pasache Vidal <i>et al.</i> (Peru)	51		X	
Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru)	51		X	
Case 12.035; Report No. 75/02, Pablo Ignacio Livia Robles (Peru) <sup>37</sup>	49	X		
Case 11.149, Report No. 70/03 Augusto Alejandro Zúñiga Paz (Peru) <sup>38</sup>	49	X		
Case 12.191, Report No. 71/03, María Mamerita Mestanza (Peru)	49		X	
Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru)	49		X	

<sup>34</sup> See IACHR *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 904-908.

<sup>35</sup> See IACHR, *Annual Report 2014*, Chapter II, Section D: Status of compliance with the recommendations of the IACHR, paras. 1101-1105.

<sup>36</sup> See IACHR *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 928-935.

<sup>37</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 332-335.

<sup>38</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 336 and 337.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 185-02, Report No. 107-05, Roger Herminio Salas Gamboa (Peru) <sup>39</sup>	49	X		
Case 12.033, Report No. 49/06, Rómulo Torres Ventocilla (Peru) <sup>40</sup>	49	X		
Petition 711-01 <i>et al.</i> , Report No. 50/06, Miguel Grimaldo Castañeda Sánchez <i>et al.</i> (Peru); Petition 33-03 <i>et al.</i> , Report No. 109/06, Héctor Núñez Julia <i>et al.</i> (Peru); Petition 732-01 <i>et al.</i> , Report 20/07 Eulogio Miguel Melgarejo <i>et al.</i> ; Petition 758-01 and others, Report No. 71/07 Hernán Atilio Aguirre Moreno <i>et al.</i> (Peru)	49		X	
Petition 494-04, Report No. 20/08 Romeo Edgardo Vargas Romero (Peru)	49		X	
Petitions 71-06 <i>et al.</i> , Report No. 22/11, Gloria José Yaquetto Paredes <i>et al.</i> (Peru)	49		X	
Case 12.041, Report No. 69/14, M.M. (Peru) <sup>41</sup>	49	X		
Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)	51			X
Case 9.903, Report No. 51/01, Rafael Ferrer Mazorra <i>et al.</i> (United States)	51			X
Case 12.243, Report No. 52/01, Juan Raul Garza (United States)	51			X
Case 11.753, Report No. 52/02, Ramón Martínez Villarreal (United States)	51		X	
Case 12.285, Report No. 62/02, Michael Domingues (United States) <sup>42</sup>	51	X		
Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)	51			X
Case 11.193, Report No. 97/03, Shaka Sankofa (United States)	51		X	
Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)	51			X
Case 11.331, Report No. 99/03, Cesar Fierro (United States)	51		X	
Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)	51		X	
Case 12.412, Report No. 101/03, Napoleon Beazley (United States)	51		X	

<sup>39</sup> See IACHR, *Annual Report 2013*, Chapter II, Section D: Status of compliance with the recommendations of the IACHR, paras. 1094 and 1107.

<sup>40</sup> See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 613-616.

<sup>41</sup> See IACHR, Report on Friendly Settlement No. 69/14, Case 12.041 (M.M. v Peru), dated July 25, 2014

<sup>42</sup> See IACHR *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 185-186.

CASE	ART.49 (FS) ART. 51 (FR)	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)	51		X	
Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)	51		X	
Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)	51		X	
Case 12.534, Report No. 63/08 Andrea Mortlock (United States)	51		X	
Case 12.644, Report No. 90/09 Medellín, Ramírez Cárdenas and Leal García (United States)	51			X
Case 12.562, Report No. 81/10, Wayne Smith, Hugo Armedariz et al. (United States)	51			X
Case 12.626, Report No. 80/11, Jessica Lenahan (Gonzales) (United States)	51		X	
Case. 12.776, Report No. 81/11, Jeffrey Timothy Landrigan (United States)	51			X
Case 11.575, 12.333 y 12.341, Report No. 52/13, Clarence Allen Jackey et al.; Miguel Ángel Flores, James Wilson Chambers (United States)	51			X
Case 12.864, Report No. 53/13, Iván Teleguz (United States)	51			X
Case 12.422, Report No. 13/14, Abu-Ali Abdur' Rahman (United States)	51			X
Case 12.873, Report No. 44/14, Edgar Tamayo Arias (United States)	51			X
Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay) <sup>43</sup>	51	X		
Petition 228-07, Report No. 18/10, Carlos Dogliana (Uruguay) <sup>44</sup>	49	X		
Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)	51		X	
Petition 12.555, Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)	49			X
Case 11.706, Report No. 32/12, Yanomami indigenous people of Xaximu (Venezuela)	49		X	
Case 12.473, Report No. 63/13, Jesús Manuel Cárdenas et al. (Venezuela)	49		X	
<b>Total of cases under Follow Up</b>	197	45	127	25
	Art. 49 = 104 Art. 51 = 93	Art. 49 = 39 Art. 51 = 6	Art. 49 = 63 Art. 51 = 64	Art. 49 = 2 Art. 51 = 23

<sup>43</sup> See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 1109-1116.

<sup>44</sup> See IACHR *Annual Report 2012*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 1033-1039.

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

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

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

1. Provide economic reparation to the family members of Juan Ángel Greco in the sum of three hundred thousand pesos (\$300,000) that shall be paid to Mrs. Zulma Basitanini de Greco in the amount of thirty thousand (\$30,000) per month in the time period specified in point 3 of the present item, that amount comprising material damages, moral damages, lost wages, costs, fees and any other classification that would arise from the responsibility assumed by the Province of Chaco.
2. Provide the petitioners and the Inter-American Commission on Human Rights, through the Office for Human Rights of the Foreign Ministry, a legalized and certified copy of two cases for which the Province of Chaco has requested reexamination.
3. Within the framework of its competences, encourage the reopening of the criminal case and the corresponding investigations.
4. Direct the reopening of the administrative case Nº 130/91-250690-1401 once the criminal case has been reopened.
5. Commit itself, in the framework of its competences, to ensuring that the victim's family members have access to the judicial and administrative investigations."
6. Publish the agreement in the principle written press sources of the nation and the Province of Chaco."
7. Continue pursuing legislative and administrative measures for the improved protection of Human Rights. Specifically, it was placed on record that a draft law creating a Criminal Prosecutor's Office for Human Rights has been developed and transmitted to the Provincial Chamber of Deputies for its study and approval.
8. Strengthen the work of the Permanent Commission for Control of Detention Centers, created by Resolution No. 119 of the Ministry of Government, Justice and Labor of the Province of Chaco, on February 24, 2003.
9. Further emphasize the work of the Organ of Institutional Control (O.C.I) created by Article 35 of the Organic Police Law of the Province of Chaco Nº 4.987, directing it toward the more effective protection of human rights on the part of the Provincial Police. At the initiative of the Executive, the Provincial Counsel for Education and

Promotion of Human Rights created by Law N° 4.912 was constituted in the sphere of the Chamber of Deputies. The representatives of the distinct intervening organs and powers have already been designated and convoked.

10. In its 2009 Annual Report,<sup>45</sup> the IACHR considered that the items related to monetary compensation and publication of the agreement had been fulfilled.

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

12. As for the judicial inquiries, the State reiterated that the criminal proceeding and the administrative inquiry conducted by the Chief of Police, Juan Carlos Escobar, and the Deputy Chief of Police, Adolfo Eduardo Valdez and First Sargent Julio Ramón Obregón, had been reopened, to determine the corresponding responsibility. It further reported that these proceedings were fully under way.

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

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

15. Finally, as for the legislative reforms, the petitioners applauded the passage and enactment of 2010 Provincial Law No. 6483, which creates the Provincial Mechanism for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The petitioners observed that this basic step must materialize in the form of specific measures taken to put the law into practice. On this same point, the petitioners insisted on the serious deficiencies in the powers and authorities that Law No. 5.702 invests in the Special Criminal Prosecutor's Office for Human Rights. They add that the office does not have functional autonomy. As for compliance with this point in the Agreement, the petitioners contend that legislative reform is needed to modify the nature and functions of the Special Criminal Prosecutor's Office for Human Rights.

16. On March 26, 2011 the Commission met during its 141st regular session with representatives of the province of Chaco, in which the representatives informed the Commission of the ministerial order to expand its administrative investigation on all police forces that were involved in the facts of the case and monitor the investigation's activities. Moreover, the representatives agreed to express the importance of the prompt implementation of an oral trial to the First Criminal Chamber of the First Circuit of the Province of Chaco.

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

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<sup>45</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with IACHR Recommendations, paras. 43-68. Available at: <http://www.oas.org/es/cidh/docs/anual/2013/docs-es/InformeAnual-Cap2-D.pdf>

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

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

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

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

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

23. By communication of December 19, 2013, the petitioners reported that while after the signing of the friendly settlement, the Provincial Justice began the trial of those responsible for the death of Mr. Greco, this would have been made on the basis of evidence produced by the poor research which have hindered the process and the determination of the responsibility of the police officers involved in the events. Through this communication the petitioners demanding the State elucidate the events leading to the death of Juan Ángel Greco and punish responsible of it, and to determine the reasons that originally the poor investigation was conducted and determine the responsibility of the officials who carried forward.

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

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

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

27. On December 4, 2014, the IACHR requested information on the status of compliance with the agreement. On December 23, 2014, the petitioners responded that, as far as the criminal investigation was concerned, it had not clarified the circumstances of the death of the victim, and thus it did not allow for adequate punishment of the perpetrators. They added that the official reopening of the investigations was not accompanied by any concrete action related to a serious and effective investigation, and that neither were the mistakes of the original criminal investigation corrected. They further stated that the initial investigation led to lower and appeals court judgments that were not consistent with the standards of due process and judicial protection; hence a pattern of impunity would be perpetrated.

28. As regards legislative and institutional reforms, the petitioners stressed their concern over the fact that the Provincial Committee for Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment has been receiving less than 30 percent of the budget that was initially assigned for it. In the view of the petitioners, this poses a major obstacle to the operations of this Committee.

29. As for the Special Human Rights Prosecution Office, the petitioners again expressed their concern over the small number of cases that this Office had prosecuted. However, it mentioned that as of 2015, an Assistant Human Rights Prosecution Service would begin work, and that it would be operating throughout the province, an initiative they welcomed.

30. Finally, the petitioners requested the IACHR to continue to monitor closely the items of the agreement pending compliance. On February 20, 2015, the State, for its part, requested an extension for presenting additional information.

31. On August 24, 2015, the State sent the Commission a report prepared by the authorities of the Province of Chaco, in which the Ministry of Government, Justice, Security and Labor forwarded a copy of the notes in which it requested information from the following bodies: Secretariat of Public Security, Office of the Provincial Prosecutor General, Special Human Rights Prosecutor, Special Deputy Criminal Human Rights Prosecutor, Chair of the General Legislative and Justice Committee of the Chamber of Deputies, Ministry of Finance and Public Credit, and the Committee against Torture and Cruel Treatment. Regarding the points of the friendly settlement agreement that remained pending the State referred in its report to points (1) Criminal and administrative investigation of the death of Juan Ángel Greco, and (2)(ii) Office of the Special Human Rights Prosecutor. As for the first point, the report presented by the Special Criminal Human Rights Prosecutor of the Provincial Ministry of Justice confirms that on April 14, 2014, a statement was taken of a witness who the night prior to the events had been with Juan Angel Greco; on May 19, 2015, an official letter was ordered to be sent to the El Chaco Police Department Headquarters requesting information about five officials from that Department, specifically, their status, where they are on duty at the moment, and their home addresses; that on May 28, 2015, an official letter was ordered to be sent to the Logistics Office of the El Chaco Police Department inquiring about municipal changes that had been implemented in the Police Detachment of the *Barrio 500* Housing Complex of Barranqueras; and that on June 10, 2015 a hearing was ordered to take defendants' statements from the five individuals about whom information had been requested from the El Chaco Police Department Headquarters.

32. With regard to the second point, the State indicated that pursuant to Resolution Nos. 50/13 and 15/14 of the Office of the Deputy Prosecutor General of the Province of El Chaco, the Special Criminal Human Rights Prosecutor was urged to provide for the relevant procedural measures to determine the etiology of J.A. Greco's detention; to take and exhaust steps to go forward with the cases under his jurisdiction and those related thereto. Furthermore, pursuant to Decision No. 35/14, the Office of the Deputy Prosecutor General urged this same office to: a) redouble efforts to complete the preliminary criminal investigation of



the cases before that legal agency; b) expedite the processing of the cases in which there are persons deprived of liberty, in keeping with jurisprudential and supranational criteria on reasonable timeframes for completing a preliminary inquiry; and, c) prevent in the future situations like those in the instant case in which there could be functional responsibilities for a delay in processing the cases of persons deprived of liberty. Additionally, the State highlights Decision No. 8/2015 from the Prosecutor General of the Superior Court of Justice ordering the Special Deputy Human Rights Prosecutor to intervene as soon as she takes office in all cases under her jurisdiction, and in case of vacancy, absence, or impediment, she shall be replaced by the Investigative Prosecutor for the Second Judicial District who is on duty. This same Resolution urges the Investigative Prosecutors for Districts II, III, IV, V, and VI to collaborate with the Special Deputy Criminal Prosecutor. Finally, it mentions Resolution No. 91/2015 in which the Prosecutor General of the Superior Court of Justice requests that the Special Criminal Human Rights Prosecutor enforce the internal resolutions mentioned above.

33. On September 15, 2015, the Commission requested updated information on compliance with the friendly settlement agreement. On October 15, the State requested an extension to fulfill this request for information. As of this report's completion, neither party had furnished additional information.

34. With regard to progress in implementing the friendly settlement agreement, the Commission had already noted that the State had complied with the commitment to appoint members of the Principal Committee for Prevention of Torture and other Cruel, Inhuman, and/or Degrading Treatment, and with its commitment to promote legislative and administrative measures to improve the protection of human rights. At the same time, the Commission observed that, insofar as legislative and administrative measures are concerned, some remained pending, such as the bill to create a "provincial system for protection of human rights in police and prison operations," as well as measures to ensure that the entities already created are functioning effectively, and that their operations are facilitated by the appropriate budget disbursements.

35. As regards the information furnished by the State, the Commission notes that some progress has been made in the criminal investigation of Juan Angel Greco's death, and urges the State to submit updated information on the said case, particularly about the results of the hearing to take defendants' statements ordered by the Special Criminal Human Rights Prosecutor. Additionally, the Commission took note of the information presented by the State on the guidelines issued by the Prosecutor General of the Province of El Chaco to the Office of the Special Criminal Human Rights Prosecutor to redouble its efforts to expedite the cases under its jurisdiction, ensure respect for the right to a fair trial of individuals prosecuted by that Office, especially those deprived of liberty, and improve the Office of the Prosecutor's administration of justice. At the same time, the Commission observes that the State failed to present information on the measures adopted to strengthen the human and material capacity of the Office of the Special Criminal Human Rights Prosecutor so that Office may diligently perform its duties and do so in a reasonable timeframe. As for furthering legislative and administrative measures, no information was received about the bill to create a "provincial system for protection of human rights in police and prison operations."

36. Based on the foregoing, the IACHR concludes that the friendly settlement agreement has been partially honored and urges the State to provide information about the points mentioned above. Consequently, the Commission will continue to monitor the pending items.

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

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

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

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

1. The parties agree to set up an “ad-hoc” Arbitration Tribunal to determine the amount of economic reparation due Sergio Andrés Schiavini’s heirs, in keeping with the rights acknowledged to have been violated and the applicable international standards. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber. The petitioners will designate one expert, the national State shall propose a second, and the third shall be proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following the approval of this agreement by Decree of the Executive Branch of the Nation.
2. The procedure to be followed shall be determined by common agreement among the parties, and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to participate in the discussions of the procedure. In representation of the national State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.
3. The parties agree to form a technical working group, in which the Government of the Province of Buenos Aires shall be invited to participate, to carry out the studies and take such other steps as may be necessary to submit for the consideration of the Legislature and, where appropriate, the competent federal authorities, the following initiatives, aimed at implementing the necessary measures to bring existing law into harmony with international standards, in accordance with point 2 of the Act dated November 11, 2004:
  - a) Draft legislative reform bill making it mandatory, with no exceptions, to perform an autopsy in all cases of violent or criminally suspicious deaths. It will also prohibit members of the security forces from being involved in this process with respect to facts in which they have participated;
  - b) Draft reform of the Criminal Procedures Code of the Nation granting a victim’s relatives the right to choose to designate their own expert before the autopsy is performed;
  - c) Analysis of the legislation in force on the procedures followed by the forensic medical office to evaluate possible modifications that could contribute to ensuring transparency and effectiveness in its performance;
  - d) Draft reform of the Criminal Procedures Code of the Nation to incorporate the violation of human rights as grounds for review;
  - e) Draft reform of the Criminal Procedures Code of the Nation incorporating the violation of human rights as grounds for the immediate suspension or interruption of the statute of limitations;

- f) Evaluation of domestic law concerning hostage-taking and the use of force to bring it into harmony with international standards in accordance with principle No. 3 of UN Resolution 1989/65;
  - g) Proposal that, in the event that the appeal for review in the Schiavini case filed by the Provincial Office of the General Prosecutor before Chamber 111 of the Criminal Court of Cassation of Buenos Aires Province is unsuccessful, a “Truth Commission” is established at the federal level to help effectively safeguard that right;
  - h) Development of draft reforms setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights, that include the establishment of a specific entity with jurisdiction in the decision-making process—including the institution of “friendly settlement”—and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights.
4. The Government of the Argentine Republic pledges to facilitate the activities of the working group and make available the technical support and facilities it requires in order to perform its task. It also pledges to periodically inform the Inter-American Commission on Human Rights regarding the outcomes of the task entrusted to the technical group and invites the Commission to participate actively in evaluating the draft reforms, as well as the follow-up and evolution of these initiatives.
  5. The Government of the Argentine Republic pledges to publish this agreement in the Official Gazette of the Argentine Republic, in the newspapers “La Unión” of Lomas de Zamora, “Clarín”, “La Nación,” and “Página/12”, once it has been approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.

40. In its 2009 Annual Report,<sup>46</sup> the IACHR concluded that the State was in compliance with the part of the agreement related to pecuniary reparations.

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

42. By a communication dated January 13, 2011, the State submitted information concerning the measures taken to comply with the terms of the above friendly settlement agreement. As for the non-pecuniary damages, the State reported the following progress: first, it reported that the Truth Commission had been formed, composed of Dr. Dr. Martín Esteban Scotto, named by the petitioner party, Dr. Carlos Alberto Beraldi, nominated by the Federal Government, and Dr. Héctor Granillo Fernández, appointed by the Ministry of Justice of the Province of Buenos Aires. It further indicated that to enable that Commission to begin its work, the provincial government was asked to supply a copy of the three court cases and one administrative case, which the State had listed in its presentation. It also reported on the working meeting held on September 1, 2010, where the experts serving on the Commission agreed to work together to prepare the Commission’s draft Rules of Procedure.

43. Second, regarding the agreed upon legal reforms, the State reported that the respective drafts are under evaluation in the appropriate sections of government. As for the reforms intended to set forth the procedures for processing and responding to petitions with international agencies that promote and

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<sup>46</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, para. 73. Available at: <http://www.oas.org/es/cidh/docs/anual/2013/docs-es/InformeAnual-Cap2-D.pdf>

protect human rights, the State reported that a working meeting was convened and held during the Commission's 140<sup>th</sup> session; participating were Commissioner Luz Patricia Mejía, representatives of CELS and CEJIL, and officials of the Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights and of the Foreign Ministry. That meeting discussed the progress made on preparation of the joint draft resolution, and the possibility of working out a draft law of a higher order, in keeping with the agreement reached in the present follow-up.

44. On October 25, 2011, the Commission again requested updated information from the parties regarding the state of compliance with the friendly settlement agreement. Regarding the legislative reforms, the State updated information on three issues: the execution of autopsies, remedies and citizen security. In regards to point 3.a) of the agreement, it indicates that it is obligatory to conduct autopsies for all cases involving suspicious and violent death, as set forth " *in the Criminal Procedure Code of the Province of Buenos Aires (Código Procesal Penal de la Provincia de Buenos Aires, CPPBA) and the National Procedure Code (Código de Procedimientos de la Nación, CPPN) provide the required obligation to execute autopsies in such cases*". Likewise, the State of Argentina stated that such codes also provide room for objection based on the same grounds applicable to judges, which could be used in considering it necessary to question the appointment of an expert because of his or her alleged partiality. Regarding point 3.b) of the agreement, it emphasized that in accordance with the existing legislation, family members could participate and control the production of evidence based on the procedural concept of the individual victim, which allows the family to propose the participation of an expert. Finally, concerning point 3.c) of the agreement on the rules that regulate the activities of the forensic medical team, the State stressed that the Supreme Court of Argentina (Corte Suprema de Justicia Nacional) adopted measures in accordance to Agreements 16/08, 47/09 and 22/10. (...). In this framework, by fulfillment of Agreement 47/09, the State issued general rules of procedure that control the general aspects of the activities related to the Medical Staff.

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

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

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

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

49. As for evaluation of domestic legislation on hostage taking and the use of force, in order to bring these laws into line with international standards under Principle No. 3 of UN Resolution 1989/65, the

petitioners noted that said item has not been put on the working agenda of the meetings being held with the Secretariat for Human Rights and the Special Representative for Human Rights in the International Sphere (REDHU) of the Ministry of Foreign Relations, International Commerce and Worship.

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

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

52. In a communication dated October 9, 2013, the Commission requested the parties to provide up-to-date information on the status of the recommendations whose implementation was still pending. The petitioners responded in a communication dated October 30, 2013, in which they said that, as yet, there had been no response from the State with respect to the legislative reforms included in the friendly settlement agreement. As for the remaining items, they repeated the information cited earlier. Thus, the petitioners reiterated their concern regarding the delays preventing the Truth Commission from working at its full capacity, in their opinion a *sine qua non* aspect as far as compliance with the friendly settlement agreement was concerned. The petitioners also mentioned that the State had failed to meet its commitment to facilitate the activities of the working group, provide it technical support, and grant it permission to use the facilities that it needed to carry out its work, as well as failing to provide information on the results achieved by the technical group. The State has not offered any response to the above information.

53. On June 4, 2014, the petitioner presented a communication in which it emphasized that despite the fact that 9 years have passed since the signature of the agreement with the State, there is a partial and reiterated non-compliance from part of the National Government.

54. On December 4, 2014, the IACHR again requested updated information on the status of compliance. To date no information has been received from either party.

55. In communications from December 29, 2014, April 21, 2015, and July 2, 2015, the State requested extensions from the IACHR to submit information on compliance.

56. On August 27, 2015, a meeting between the parties, facilitated by the IACHR, took place in Buenos Aires. The aim of the meeting was to further compliance on the pending points that remain under the friendly settlement agreement. At the meeting, the petitioners stated that 13 years after the agreement had been signed the only point with which the State had fully complied was the financial compensation; however, for the victim’s mother the measure of vital importance was the Truth Commission and a lot of time had been wasted in installing the Commission and making it operational. The petitioners explained that the latest challenge that had arisen was referred to the Truth Commission’s Rules of Procedure, which were pending approval due to the State’s questioning of the terms used in the language of Article 17, [which] contains an indemnity clause. This clause provides that the National State undertakes the obligation to hold the members of the Truth Commission harmless from any kind of claim against them as a result of the performance of their

duties. During the meeting the petitioners also provided a written report on the status of compliance with the friendly settlement agreement; copy of Note SDH No. 657/15 of July 20, 2015 addressed to the Ministry of Foreign Relations, by means of which the Secretariat for Human Rights of the Ministry of Justice substantiates the inadmissibility of an indemnity clause for members of the Truth Commission; copy of the petitioners' communication to the Ministry of Foreign Relations, dated May 30, 2014, in which they lists all the legislative initiatives submitted by that party so that the State could comply with the different points of the agreement regarding legislative reform, as well as the difficulties that had arisen for the Truth Commission's functioning; and copy of the note dated June 5, 2013, signed by the members of the Truth Commission, in which they submitted their Rules of Procedure to the Ministry of Foreign Relations for approval by the National State, as required in the friendly settlement agreement.

57. The State, for its part, confirmed in the meeting the existence of a challenge to establish the Commission of Truth that was referred to one of the articles of its Rules of Procedure with regards to the indemnity for its members for the performance of their duties; and explained that in accordance to the Argentine legal system, the only instrument that could ensure that kind of indemnity would be a law. As a result of the meeting, the parties pledged to hold a meeting on the rules of procedure in order to explore other alternatives.

58. By means of a communication from September 2, 2015, the State submitted a copy of Note SDH No. 580/15, dated June 16, 2015, from the Ministry of Justice, addressed to the Ministry of Foreign Relations regarding compliance with IACHR Report No. 102/05, specifically, on the issue of reforming the country's Code of Criminal Procedure in order to further bring legislation into line with international human rights standards as part of the commitment undertaken pursuant to point 3 of the friendly settlement agreement, without specifying in which way exactly. On that same occasion, the State announced the meeting of the parties had been scheduled for September 18, 2015.

59. On September 15, 2015, the Commission requested updated information on the compliance of the friendly settlement agreement. The Commission takes note of the information furnished by both parties, particularly that which regards the Truth Commission's functioning and the legislative changes needed to conform to international human right standards. Insofar as the former is concerned, the Commission understands the concerns the petitioner has expressed about the time invested to get the Truth Commission up and running. Indeed, the Commission was created in September 2010 thanks to the efforts of both parties, but, as the IACHR notes, it has been unable to conduct its business for different reasons. According to the information provided by the parties, the IACHR observes that the members of the Truth Commission sent the National State its draft rules of procedure for approval in June 2013 and the State held that it could not accept the indemnity clause contained in Article 17 thereof. Given that at the meeting held between the parties in August 2015 they confirmed their interest in the Truth Commission's functioning, clarifying the rationale behind the inclusion of this clause in the rules of procedure, and expressing their willingness to explore alternative options, the ACHR awaits the outcome of the meeting scheduled for September 18, 2015, as well as all the efforts aimed at overcoming this challenge.

60. With respect to the commitments included in point 3 of the friendly settlement agreement, given that in keeping with information provided by the State, the approval of the new Argentine Code of Criminal Procedure occurred after the Ministry of Justice's progress report on legislative adjustments, the IACHR urges the State to submit updated information on the scope of the criminal procedure reform based on the commitments undertaken. Updating this report would enable the Commission to evaluate compliance with point 3(a), (b), (d), and (e) of the agreement.

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

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

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

63. By means of a friendly settlement agreement signed on August 23, 2007, the government of the Argentine Republic expressed its willingness to assume objective international responsibility as a state party to the Convention and asked the Commission to accept its acknowledgment of the alleged violations as set out in the petition.

64. Under that agreement, the State agreed to:

**b. Economic reparation**

1. The parties agree to set up an ad-hoc Arbitration Tribunal to determine the amount of economic reparation due to the petitioners, in keeping with the rights acknowledged to have been violated and the applicable international standards.
2. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber. The petitioners will designate one expert; the National State shall propose a second; and the third shall be proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following the approval of this agreement by Decree of the Executive Branch of the Nation.
3. The procedure to be followed shall be determined by common agreement among the parties, and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to participate in the discussions of the procedure. In representation of the National State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.
4. The arbitration tribunal's award shall be final and not subject to appeal. It shall contain the amount and type of monetary reparation agreed upon, the beneficiaries thereof, and a calculation of any applicable costs and fees incurred in the international proceeding and by the arbitration entity. These shall be submitted to the Inter-American Commission on Human Rights for evaluation in the framework of the process to follow up on compliance with the agreement, in order to verify whether the latter is consistent with the applicable international parameters. The

payments set forth in the award shall be immune from seizure and shall not be subject to currently applicable taxes, contributions, or fees, or any that may be imposed in the future.

5. The petitioners relinquish, definitively and irrevocably, the ability to initiate any other claim of a monetary nature against the National State associated with the instant case. In addition, they cede and transfer to the National State all litigation rights they may have in the framework of the suit brought against the government of the Province of Buenos Aires and undertake to sign the respective instrument before a national Notary Public within ten working days following the effective delivery of the payment resulting from the arbitration award.
6. Without prejudice to the foregoing transfer in its favor, the National State declares that it reserves the right to recover the amounts actually paid out to the petitioners as determined by the Arbitration Tribunal from the Government of the Province of Buenos Aires by subtracting those amounts from the totals that might correspond to that province under the federal sharing law (*ley de coparticipación*), and/or any other lawful means.

**c. Measures of non-monetary reparation**

1. The Government of the Argentine Republic pledges to publish this agreement by means of a notice, whose text shall be agreed in advance with the victim's next of kin, in the Official Gazette of the Argentine Republic and in a nationally distributed newspaper, once it has been approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.
2. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to report on the status of the following cases being heard by courts in the provincial jurisdictional until their final conclusion:
  - a) Case 1-2378, titled "N.N. re. Homicide – victim: Giovanelli, Fernando Horacio," proceeding before the Third Transitory Criminal Court of First Instance in Quilmes Judicial District, Province of Buenos Aires.
  - b) Case 3001-1785/00, titled "Supreme Court of Justice – General Secretariat re. Irregular situation observed in the processing of case 1-2378 before the Third Transitory Criminal Court in Quilmes," proceeding before the Supreme Court of Justice of the Province of Buenos Aires – Judicial Oversight and Inspection Office.
3. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to evaluate the possibility of including the Giovanelli case in the current study programs at police training academies, as a measure to ensure non-repetition of practices that violate human rights.
4. The Government of the Argentine Republic commits to developing a law setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights, that includes the establishment of a specific entity with jurisdiction in the decision-making process – including the institution of "friendly settlement" – and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights, in accordance with the provisions of Article 28 (federal clause) of the American Convention on Human



Rights, in connection with Articles 1.1 (general obligation to observe and ensure rights) and 2 (duty to adopt domestic legal provisions) of said international instrument.

65. According to documents received by the IACHR, on April 8, 2010, the Court of Arbitration for Assessment of Pecuniary Reparation in the Case of Giovanelli vs. Argentina issued its arbitral award establishing reparations in favor of the victims, plus an amount to cover costs and expenses. At the request of the parties, said award was evaluated by the IACHR, which concluded that it was consistent with applicable international standards.<sup>47</sup>

66. On November 22, 2010, October 26, 2011, and December 3, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the friendly settlement agreement. The petitioner provided updated information indicating that, regarding the non-pecuniary reparation measures set forth therein, publication of the Friendly Settlement Agreement in the Official Gazette of the Argentine Republic, or in a daily newspaper of nationwide circulation, has still not taken place.

67. Moreover, the petitioner stated that the two cases cited in the Friendly Settlement Agreement (items 2.a and 2.b) had been closed, despite the fact that neither one had been definitively resolved.

68. She also claims that the State has not honored its commitment to examine the possibility of incorporating the "Giovanelli" case into the current curricula at the police training institutes as a measure of non-repetition of human rights violating practices. She further contends that no steps have been taken by the authorities to draw up draft rules establishing a procedure to process and investigate petitions brought before the Commission and the Inter-American Court of Human Rights, as provided in the final item of the non-pecuniary reparation measures included in the Agreement.

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

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

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

72. On December 10, the State informed that Case No. 1-2378 entitled " N.N, homicide -victim: Giovanelli, Fernando Horacio" [N.N s/ homicidio - victima: Giovanelli, Fernando Horacio] had been reopened.

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<sup>47</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with IACHR Recommendations, para. 91. Available at: <http://www.oas.org/es/cidh/docs/annual/2013/docs-es/InformeAnnual-Cap2-D.pdf>

It also said that in keeping with the information provided by the Director of Educational Research and Planning, the police training study program specifically focuses on topics concerning institutional violence, the rights of detainees, different legal forms of deprivation of liberty; torture, prohibition of torture, cruel, inhuman, and degrading treatment; the use of force and firearms, and ethical principles governing police conduct in which the aim is to make the student aware of the importance of abiding by the law in carrying out police duties, instilling awareness of the ethical standards that govern the profession, the importance of respect for human rights, and interpretation of national and international policing standards in force.

73. On December 4, 2014, the IACHR again requested updated information on the status of compliance. On December 30, 2014, the State requested an extension to submit the information requested.

74. On September 15, 2015, the Commission again requested updated information from the parties on the status of compliance with the friendly settlement agreement. As of the date this report was finalized, no information had been received from either party.

75. Consequently, the Commission concludes that the friendly settlement agreement is partially complied with. Accordingly, the Commission will continue to monitor the pending items.

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

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

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

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

##### **a. Pecuniary damages**

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

Province of Buenos Aires the amounts actually paid out to the petitioners, as determined by the Arbitration Tribunal [...]

**b. Non-pecuniary damages**

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

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

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

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

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

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

79. In a note dated May 11, 2011, the State forwarded to the Commission the arbitration award establishing damages and issued on May 6, 2011 by the Tribunal for Fixing Pecuniary Damages in the Case of Santillán v. Argentina, made up of the arbitrators Fabián Omar Salvioli, Chairman, Oscar Schiappa-Pietra and Ricardo Monterisi<sup>48</sup>.

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

81. In a note dated January 2, 2013, the petitioners reported that, with regard to the non-pecuniary reparation measures set forth therein, publication of the Friendly Settlement Agreement in the

<sup>48</sup> See 2013 Annual Report of the IACHR, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, para. 111. Available at: <http://www.oas.org/es/cidh/docs/annual/2013/docs-es/InformeAnual-Cap2-D.pdf>

Official Gazette of the Argentine Republic, or in a daily newspaper of nationwide circulation had not taken place yet.

82. Moreover, with regard to the two cases cited in the Friendly Settlement Agreement (items 2.a and 2.b), the petitioners reported that they had been closed, despite the fact that there was no final decision in either case. They further stated that notwithstanding the foregoing, the mother of the victim requested judicial authorization to exhume the body and have it cremated and for the appropriate measures to be taken so that the Forensic Anthropology Team preserves DNA evidence for a possible comparison, should the remains of his father Omar Santillán, who disappeared during the military dictatorship period in Argentina, come to light at some point in time.

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

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

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

86. In its communication dated March 6, 2014, the petitioner reported that, with regard to the non-pecuniary reparation established in the agreement, to date the agreement had not been published in either the Official Gazette of the Argentine Republic or a nationally distributed newspaper. As for the court case for the murder of Gabriel Egisto Santillán, the petitioner confirmed that it was closed. Nonetheless, in early 2012, the mother of the victim requested judicial authorization to exhume the body of her son and have it cremated; at the same time she took steps to ensure that the Argentine Forensic Anthropology Team would preserve the DNA genetic material of the minor, with a view to matching it with the possible appearance of the remains of his father, who was forcibly disappeared during the last military dictatorship in 1977. Petitioner further reported that the cases before the Supreme Court of Justice of Buenos Aires Province had also been closed. In addition, she indicated that the State had not made efforts to foster academic activities related to coordination between the federal and provincial governments to ensure compliance with internationally assumed obligations. Finally, with regard to pecuniary reparation, petitioner indicated that the amount of reparation owed to the family had not been paid.

87. On May 8, 2014, a working meeting was held between the parties, in which the petitioners reiterated the afore-mentioned information, and the State reported that the decree for disbursement of the payment was pending the signature of the President of the Nation. As a follow up to said meeting, the IACHR requested updated information from the parties on July 10, 2014. Subsequently, in a communication dated July 23, 2014, the State forwarded a copy of Decree 1007 dated June 23, 2014, issued by the National Executive Authority, providing for cash payment of the award granted by the ad hoc tribunal for determination of pecuniary reparation.

88. On December 4, 2014, the IACHR again requested updated information on the status of compliance. On December 29, 2014, the State requested an extension to present the information.

89. On September 15, 2015, the Commission again requested updated information from the parties regarding compliance with the friendly settlement agreement. On October 15, 2015, the State requested an extension to present the information.

90. By means of a communication dated November 3, 2015, the State forwarded Note No. 958/2015 from the National Human Rights Secretariat with which it presented proof of payments for compensation and reimbursement of costs and fees ordered by the Executive, paid by the Direction of Obligations in Charge of the Treasury, of the National Ministry of Economy, to the victim's mother and representatives, respectively. As regards to the petitioners' request for the cremation of Mrs. Mirta Liliana Reigas son's remains, that she filed before the Supervisory Court [*Juzgado de Garantía*] No. 3 of the Judicial Department of Morón, it was reported that there are no legal obstacles on the part of the Court to do so.

91. The Commission highlights the information submitted by the State and values the effort made to pay the compensation and legal costs set by the Ad-hoc Tribunal. In this regard, the Commission takes note of the proof of payment that was forwarded by the State and deems that the measures for pecuniary reparations included in point III(a) of the friendly settlement agreement have been fulfilled.

92. As for the non-pecuniary reparations, the Commission observes that it has not received information on the publication of the Agreement in the Official Gazette of the Argentine Republic [*Boletín Oficial de la República Argentina*] or in a press release in national newspaper; nor has the Commission received information on the commitment to sponsor an academic event on the problem of coordination between the Federal State and the Provincial States regarding compliance with international obligations, in light of Article 28 of the American Convention. In the same sense, it observes that the State did not submit information on Case No. 23.148/91 and 3001-465/06 filed under "Executive Branch of the Province of Buenos Aires-Subsecretary of Justice submits cause 12.159- Santillan, Gabriel Egisto".

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

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

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

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

1. To publicly acknowledge international responsibility for the human rights violations determined by the Commission in this report. In particular, to conduct a public ceremony, with the participation of senior Government authorities and Mr. Horacio Aníbal Schillizzi Moreno, to acknowledge the State's international responsibility for the events in the instant case.

2. To adopt -as a measure to prevent repetition- the necessary actions to guarantee that in the future, the disciplinary measures are imposed, following due process.

96. In its 2013 Annual Report,<sup>49</sup> the IACHR found that the State had complied with the second recommendation, noting that the Argentine judicial authorities had adopted the necessary regulatory provisions, as indicated in Supreme Court decision No. 26/08, so that disciplinary measures would be imposed in accordance with the right to a fair trial and the right to judicial protection enshrined in Articles 8 and 25 of the American Convention.

97. That report also indicated that the petitioners had lost contact with Mr. Schilizzi since the last meeting they had with him in 2006, information that was reiterated on December 31, 2012.

98. On October 26, 2011, December 3, 2012, and October 11, 2013, the IACHR requested the parties to submit information regarding compliance with the first recommendation, but it has not received a specific response from either party.

99. On December 4, 2014, the IACHR again requested updated information on the status of compliance. On December 23, 2014, the petitioning party responded that it was withdrawing from the case, since it had not, to date, managed to resume contact with Mr. Schilizzi. The State did not present any information.

100. On September 15, 2015, the Commission again requested updated information from the parties regarding compliance with the friendly settlement agreement. The State, through a communication dated September 25, 2015, requested that the proceedings be archived. The State bases its request on the fact that the second recommendation aimed at ensuring that the disciplinary penalties be enforced through proceedings conducted with due process of law, was already deemed to have been fulfilled by the IACHR; and that the first recommendation for a public act of acknowledgement with the participation of Mr. Schilizzi Moreno is impossible to fulfill, inasmuch as the petitioners have repeatedly stated that they lost contact with him in 2006. The State also explained that since Mr. Schilizzi Moreno's own representatives could not locate him and that the Human Rights Secretariat requested the petitioners to present an alternative proposal in order to comply with the pending recommendation, but have not received a response from their part. Finally, the State indicated that on December 23, 2014, the petitioners withdrew from the case because it was impossible to resume contact with Mr. Schilizzi.

101. On November 3, 2015, the Executive Director of the Center for Legal and Social Studies, reiterated [what was stated in] the note submitted on December 23, 2014, which explained its withdrawal from the case, for the reasons expressed therein.

102. With regard to the implementation of the Act of recognition of responsibility, the Commission takes note of the impossibility of compliance expressed by both parties, by absence of the beneficiary. In this regard, the Commission considers, in light of the jurisprudence of the Inter-American system of human rights on the issue of monitoring and compliance of States with measures of reparations, in cases in which there has been no contact with the beneficiary person, it is the duty of the State to create at least the possibility so that the person concerned can access this measure<sup>50</sup>. In this regard, the Commission urges the State to supply information about efforts to locate Mr. Horacio Aníbal Schilizzi Moreno, among which could be considered the publication of an edict, citation, or other instrument of the same nature in the Argentine legislation.

103. Pursuant to the foregoing, the Commission concludes that the State has partially comply with the recommendations formulatd in Report o. 83/09. Consequently, the Commission will continue to follow up on the peding issue.

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<sup>49</sup> See 2013 Annual Report of the IACHR, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, paras. 119-128. Available at: <http://www.oas.org/es/cidh/docs/anal/2013/docs-es/InformeAnual-Cap2-D.pdf>

<sup>50</sup> See Inter-American Court HR, Case Gomes Lund and Others (Guerrilla do Araguaia) Vs. Brazil, Judgement of November 24 of 2010. Preliminary Exceptions, Merits, Reparations and Costs.

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

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

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

#### **1. Recognition of international responsibility**

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

#### **2. Non-monetary reparation measures**

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

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

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

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

In the working meeting held during the IACHR's 124<sup>th</sup> regular period of sessions, the government delegation reported on the state of the efforts being carried out by the Argentine State with regard to the legislative reform involving the military justice system. In that regard, it reported on the Ministry of Defense's issuance of Resolution No. 154/06, which formed a working group made up of experts of the Secretariat for Human Rights and the Secretariat for Criminal Policy and Prison Affairs of the Ministry of Justice and Human Rights of the Nation, various representatives of civil society organizations, the University of Buenos Aires, and members of the Armed Forces, whose work has produced agreements on

the transformation of the military disciplinary system, a comprehensive review of military legislation, and the consideration of questions pertaining to the regulation of activities in the framework of peace operations and situations of war, having set a time frame of 180 days for finishing its activities. The aforementioned working group completed, before the established deadline, the preparation of a draft reform of the System of Administration of Military Justice, which was formally presented to the Minister of Defense on July 19, 2006.

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

**c) Publication of the friendly settlement agreement**

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

106. In the IACHR's 2013 Annual Report,<sup>51</sup> the Commission considered that the State had complied with all of the provisions of the agreement, except for publication of the friendly settlement agreement.

107. In a communication dated December 31, 2012, the petitioners reported that, based on an inquiry conducted by them, they learned that on January 28, 2012, the State had published the content as they were requested to do in the daily newspaper *La Nación*. Likewise, they indicated that they were interested in learning whether the State is indicating that it will publish it in other widely circulated news media for the same purpose. They note that should compliance with that remaining item be confirmed, the friendly settlement agreement could be considered fully complied with and the case could be closed.

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

109. On December 4, 2014, the IACHR requested information on full compliance with the last item of the agreement pertaining to publication of the agreement in various publications, so that it could consider that the friendly settlement agreement had been fully honored. In a communication dated February 11, 2015, the State reiterated the information provided by the Ministry of Defense in 2013, in which it reported publication of the agreement in the Argentine Army news bulletins and announced that on December 23, 2011, the extract for publication in the newspapers "Clarín," "La Nación," "Río Negro," and "La Mañana del Sur" had been forwarded to the Communications Secretariat. On this point, the Commission notes that the communication submitted by the State does not mention the actual publication of that extract in the newspapers cited.

<sup>51</sup>See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, paras. 131-137. Available at: <http://www.oas.org/es/cidh/docs/anual/2013/docs-es/InformeAnual-Cap2-D.pdf>



110. On February 11, 2015, the State sent a communication in which it referred specifically to point (c) of the friendly settlement agreement regarding the agreement's publication. In its note, the State informed the Commission that the agreement had been published in November 2010 in both the magazine "*Soldados*" and the newspaper "*Tiempo Militar*." Subsequently, the friendly settlement agreement was published in the Public Army Newsletter No. 4869 of February 14, 2011, and in Confidential Army Newsletter No. 5516 of May 24, 2011 under the title, "Institutional Apology." The State sent a copy of the above-mentioned publications. Insofar as its publication [in media] outside of the purview of the Ministry of Defense is concerned, the State reiterated that on December 23, 2011, the extract to be published in the written media was submitted to the Secretariat for Public Communication.

111. On July 3, 2015, the State submitted information on the publication of the agreement carried out on January 28, 2012 in the newspapers "*Clarín*," "*Río Negro*," and "*La Mañana Neuquen*," and sent proof of publication from the respective newspapers.

112. On September 15, 2015, the Commission again requested updated information from the parties on compliance with the friendly settlement agreement. On October 15, the State requested an extension to submit the said information. On November 13, 2015, the State sent the reports from the media outlets in which Case No. 11.178- Rodolfo Correa Belisle was published.

113. The Commission notes that the State indeed sent copies of the media publications under the purview of the Ministry of Defense, as well as from the newspapers "*Clarín*," "*Río Negro*," and "*La Mañana Neuquen*," in which information about the friendly settlement agreement appeared in an inset. The Commission further notes that the State furnished the paid receipts for publication from these newspapers as proof that it had kept its commitment.

114. Given the foregoing, the commission expresses its appreciation for the efforts undertaken by the State to comply with the only pending point that remained—the publication of the friendly settlement agreement. The Commission concludes that this point has been fully honored and thus declares that its supervision of the agreement has terminated.

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

115. In Report No.17/10 dated March 16, 2010, the Commission approved the friendly settlement agreement signed by the parties in Case 12.536 referred to Raquel Natalia Lagunas and Sergio Antonio Sorbellini, who were 17 and 19 years old respectively, who were last seen alive on March 12, 1989 when they left to the filed to hunt rabbits. In summary, the petitioners maintained that as of the discovery of their children's corpses, police activity was deployed in order to cover up the incident and do away with or distort the evidence. The petitioners referred to a series of procedural irregularities as a result of which two persons were convicted, who later benefited from a declaration of nullity of the case against them due to procedural defects. They indicated that in the instant case, the Legislature had created a Special Commission to investigate the chain of cover-ups, as they were considered grave acts of public interest. They asserted that through the actions of that Commission, the bodies were exhumed, and it was verified that the judicially declared autopsies had never been performed, and that the police records and expert testimony were false.

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

**III. Measures to be adopted**

**A. Measures of non-pecuniary reparation**

1. The Government of the Province of Río Negro undertakes, fully respecting the separation of powers, to make its best efforts to continue the investigations of the case to the final consequences. With that purpose, and as certified in the act of November 8, 2007, the Government of the Province of Río Negro and the petitioners agree to constitute a

Commission for Follow-up (Comisión de Seguimiento) for the purposes of monitoring progress in the judicial case in order to prepare an assessment of the case to evaluate the steps to be taken, to which the federal government will be invited to participate. The parties shall agree upon the composition of that commission.

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

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

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

#### **B. Measures of pecuniary reparation**

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

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

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

#### **II. Conclusions**

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

submitted to the Inter-American Commission on Human Rights for the purposes set forth in Article 49 of the American Convention on Human Rights. In that sense, it is noted for the record that it must first be forwarded to the Argentine Foreign Ministry; this agreement shall be approved in keeping with the corresponding legal provisions by the Province of Río Negro.

118. In its 2013 annual report,<sup>52</sup> the IACHR considered that the commitment regarding pecuniary reparation had been honored.

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

120. In a communication of September 27, 2012, the petitioners reported that the State had not taken any steps to comply with the remaining items other than pecuniary reparation. They also noted that not even a single meeting had taken place since November 2007, for the purpose of establishing the “Commission to Follow Up on the Double Crime of Río Colorado,” and that only the mayor of the city and municipal employees had attended the dedication ceremony of the victims’ memorial square.

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

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

123. It can be gathered from the information that the non-pecuniary reparation measures consented to by the parties in the friendly settlement agreement have still not been complied with. So far, the IACHR has not received any information on the results attained by the “Commission to Follow Up on the Double Crime of Río Colorado,” or on the results of the competitive selection process for the position of the Decentralized Prosecuting Attorney of the City of Río Colorado.

124. On December 4, 2014, the IACHR requested information on the status of compliance with the agreement. To date, neither of the parties has presented additional information.

125. On September 15, 2015, the Commission again requested updated information from the parties regarding compliance with the friendly settlement agreement. On October 15, the State requested an extension to present the requested information. As of the date this report was finalized, no information had been received from the either party.

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<sup>52</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, paras. 141-150. Available at: <http://www.oas.org/es/cidh/docs/annual/2013/docs-es/InformeAnual-Cap2-D.pdf>

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

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

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

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

**1. Recognition of facts. Adoption of measures**

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

**2. Non-monetary reparation measures.**

**2.1. On the right to identity**

- a. The National Executive Branch of the Argentine Republic agrees to send the Honorable Congress of the Nation a bill on establishing a procedure for obtaining DNA samples that protects the rights of those involved and effectively investigates and adjudicates the abduction of children during the military dictatorship.
- b. The National Executive Branch of the Argentine Republic agrees to send to the Honorable Congress of the Nation a bill to amend the legislation governing the operation of the National Genetic Data Bank in order to adapt it to scientific advances in this area.

**2.2. On the right of access to justice**

- a. The National Executive Branch of the Argentine Republic agrees to send to the Honorable Congress of the Nation a bill to more effectively guarantee the judicial participation of victims –understanding as such persons allegedly kidnapped and their legitimate family members – and intermediate associations set up to defend their rights in proceedings investigating the kidnapping of children.
- b. The National Executive Branch of the Argentine Republic agrees to adopt, within a reasonable period of time, the measures necessary to optimize and expand on the

implementation of Resolution No. 1229/09 of the Ministry of Justice, Security, and Human Rights.

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

### **2.3. On the training of judicial actors**

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

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

### **2.4. Regarding the task force**

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

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

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

### **2.5. On publicity**

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

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

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

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

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

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

134. In a communication of January 30, 2013, the State reported, with regard to item 2.2 of the friendly settlement agreement, that the Attorney General of the Nation ordered, under Decision PGN No 435112 of October 23, 2012, the creation of the “Specialized Unit for cases of appropriation of children during the period of State terrorism.” It notes that the unit operates under the Prosecutorial Coordination and Follow-up Unit for Human Rights Violations committed during the period of State terrorism and its chief coordinators are attorneys Martin Mikilson and Pablo Parenti, who are empowered to intercede as assistant and ad hoc prosecutor, respectively, in the different proceedings before the courts and at every level, from the trial through all appeal and review levels.

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

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

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

138. On December 4, 2014, the IACHR requested information on the status of compliance with the agreement. In a communication dated January 27, 2015, the State presented additional information. On item 2.3.b regarding training of judicial agents, it indicated that it had pursued such training through different programs and specific mechanisms for intervention, with a view to ensuring appropriate handling of victims of crimes against humanity, and specifically victims of substituted identity, and that it had promoted investigations into these violations. It added that the Dr. Fernando Ulloa Center for Assistance to Victims of Human Rights Violations, established by the Human Rights Secretariat of the Ministry of Justice and Human Rights, had prepared a “protocol for intervention in the handling of victims - witnesses in judicial

proceedings,” directed to judges, officials, and operators who participate in judicial proceedings involving witnesses and victims of State terrorism, as a guide designed to prevent revictimizing of victims who testify.

139. In addition, the State reported that the specialized unit for cases of children abducted during the period of State terrorism had organized many meetings with prosecutors and working teams of some of the courts that have processed a large number of such cases, such as the courts in the federal capital, La Plata, San Isidro, San Martín, Lomas de Zamora, and Rosario. It further reported that it had also conducted discussion and training sessions, and that it has designed a course on “Investigation of Crimes of Abduction of Children during State Terrorism,” for judicial officials and judges, that, once it is approved, will be offered in 2015.

140. On September 15, 2015, the Commission again requested updated information from the parties regarding compliance with the friendly settlement agreement. On October 15, the State requested an extension to submit the information requested.

141. On November 5, 2015, the State submitted information on point 2(3)(b) regarding the training for judicial officials. For purposes of complying with this point, the State referred to the second management report of the Specialized Unit for Cases of Child Abduction during the Period of State Terrorism created pursuant to Resolution PGN No. 435/12. The report highlights among the activities conducted during the year multiple meetings with prosecutors and working groups of some jurisdictions in which a large number of cases are being processed, such as, the Federal Capital, La Plata, San Isidro, San Martín, Lomas de Zamora, and Rosario; this, in addition to training and discussion workshops. Furthermore, the State reported that pursuant to Resolution PGN No. 245/15, the Prosecutor General of the Nation approved a course designed by the above-mentioned Specialized Unit. This training course for judicial officers and judges was taught beginning in March 2015 and aims to provide tools for an effective investigation of the crime of child abduction during the period of State terrorism, as well as for obtaining biological samples for DNA analysis that can establish the identity of the victims of this crime.

142. The State also announced that in November the Specialized Unit will give a class on Criminal Investigation in Cases Involving Crimes against Humanity, as part of the training in criminal investigation within the framework of the new Code of Criminal Procedure of the Nation (CPPN), organized by the Office of the Prosecutor General of the Nation. Finally, the State reported that the said Unit is developing a guide for DNA hearings, in keeping with the terms of Article 218 bis of the CPPN. The purpose of this guide is to have both the Public Ministry as well as the Judicial Branch exchange experiences and develop joint parameters to ensure that these hearings are conducted with special consideration for the victims, adopting appropriate measures for the victim’s safety, physical and psychological well-being, and privacy. The report recalled the importance of having the State take responsibility for gathering evidence and for the punitive consequences stemming therefrom, which frees the victim from such a burden.

143. The Commission values the significant progress the Argentine State has made in complying with the friendly settlement agreement. At the same time, it awaits the information regarding the results of the training for judicial officers on appropriate treatment of victims and the adoption of the guide for DNA hearings in keeping with the terms of Article 218 bis of the CPPN.

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

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

145. In Report No.19/11, dated March 23, 2011, the Commission approved the friendly settlement agreement signed by the parties on August 16, 2007, in petition No. 2829-02, Inocencio Rodríguez. In summary, the petitioner indicates that during the last military dictatorship in Argentina, Mr. Inocencio Rodríguez had been deprived of his liberty for more than four years in a prison controlled by the military; that he was systematically tortured at the hands of agents of the State and unacceptable conditions of

deprivation of liberty. The petitioner added that once the rule of law had been reestablished, several reparations laws were enacted, including Law No. 24.043 and No. 24.906, under which Mr. Rodríguez sued for reparations in 1996. That same year, the Ministry of the Interior granted reparations for the period of 14 days from the time of the alleged victim's arrest until he was turned over to the custody of the federal court, but refused to concede reparations for the remainder of Mr. Rodríguez' incarceration, on grounds that a civilian court had convicted him in regular legal proceedings. The petitioner contends that the Argentine justice system would have therefore considered Mr. Rodríguez an ordinary prisoner and not a political victim of the *de facto* authoritarian regime. The petitioner argued that denying reparations to Mr. Rodríguez would be tantamount to discrimination and deprived him of a right to which he is entitled under the law. The petitioner argued that the court actions filed were ineffective and that the authorities acted arbitrarily. The petitioner contended that the alleged victim suffered violations of the rights protected by Articles 8, 21, 24, and 25 of the Convention, in conjunction with the obligation of respecting those rights set out in Article 1.1 thereof.

146. On August 16, 2007, the petitioners and the representatives of the Government of the Argentine Republic signed an agreement, in which the following commitments are established:

1. The parties hereby agree that Mr. Inocencio Rodríguez should be granted monetary reparations in accordance with the scheme envisaged in Law No. 24.043, for the whole of the period during which he was detained and not compensated within the framework of file MI No. 345.041/92. The administrative procedure is initiated by filing a complaint with the Secretariat of Human Rights of the Ministry of Justice and Human Rights of the Nation, pursuant to the provisions of said law regarding competence in such matters.
2. The State also undertakes to prepare, through its Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation, a draft amendment to Law No. 24.043 in order to include, under conditions deemed appropriate, cases in which a person is deprived of his freedom in accordance with the provisions of Law No. 20.840 as compensable grounds under its regulatory framework. The State also undertakes to make every effort to remit it to the Argentine Congress as soon as possible.
3. The petitioners definitively and irrevocably renounce their right to file any other claim of any kind against the national State, in connection with this case.

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

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

149. In a communication dated October 9, 2013, the Commission asked the parties to provide up-to-date information on the status of the recommendations pending implementation. As of the writing of the 2013 Annual Report, the parties had not provided the information requested.

150. Subsequently, in a communication dated January 31, 2014, the State reiterated the information provided earlier; with regard to the monetary reparations stipulated in Law 20840, it indicated



that the relevant administrative case file was under review, with a view to complying with the commitment made by the Argentine State.

151. On December 4, 2014, the IACHR requested information on the status of compliance with the agreement. On December 29, 2014, the State requested an extension to submit the information requested.

152. In a communication dated May 28, 2015, the State reported that the payment 14.096 (operation No. 555.301) was made by crediting Seventh Series Consolidation Bonds to an account at the *Caja de Valores S.A.*, through Note No. 85/14, in an account to the order of the First Instance Court No. 3 of Santa Rosa, La Pampa, in the case “Rodríguez Inocencio, Intestate Succession.” The State attached the details of the payment. Based on the foregoing, the State requested that the friendly settlement agreement approved pursuant to Report No. 19/11 be deemed to have been fully honored.

153. On July 31, 2015, the Commission transmitted to the petitioners the report submitted by the State for its observations. Subsequently, on September 15, 2015, the Commission once again requested updated information from the parties regarding compliance with the friendly settlement agreement. As of this report’s completion, the petitioners had not submitted their observations to the State’s report nor had they responded to the IACHR’s request for additional information

154. Based on the information furnished by the State, the Commission notes that indeed the Ministry of the Economy and Public Finance paid the benefit recognized under Law No. 24.043 to Mr. Inocencio Rodríguez. In accordance with the copy of the payment details provided by the State, on September 22, 2011, the sum owed in the case “Rodríguez Inocencio, Intestate Succession” was paid. Therefore, the Commission considers that the first point of the friendly settlement agreement has been fulfilled.

155. Given the foregoing, the Commission highlights the information furnished by the State and values the efforts undertaken to honor the agreement and declares it partially complied. Consequently, the Commission urges the petitioners to provide information on the compliance with the friendly settlement agreement and will continue to follow it up.

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

156. In Report No. 84/11, dated July 21, 2011, the Commission approved the friendly settlement agreement signed by the parties on October 12, 2007, in case No. 12.532, Inmates of the Penitentiary of Mendoza. On May 29, 2003, the Commission received a petition lodged by 200 inmates of Cell Block 8 of the Penitentiary of Mendoza alleging responsibility of the Republic of Argentina for violation of the right of the inmates to their physical integrity, health and life. In summary, the petitioners claimed that approximately 2,400 of them were allegedly being housed in a prison with a maximum capacity of 600 inmates, where 4 to 5 inmates were living in a single 3 by 2 square-meter cell. They also alleged that they lack toilets, showers, enough food and adequate medical care. They reported that, many times, confinement time in such conditions is as long as twenty hours per day, with only a total of four non-continuous hours permitted outside of the cell. They claimed that inmates must relieve themselves into a nylon bag without any privacy inside of their cell in front of the rest of their cellmates. They further alleged that they lack water to bathe with and must resort to using a hose for washing and that many of them suffer scabies and other diseases as a result of unsanitary conditions. As a result of the overcrowding, the petitioners denounced a series of deaths of inmates and other incidents in which an indefinite number of inmates were injured; however, the authorities have not cleared up any of the circumstances in which this events happened. Moreover, the petitioners alleged that the inmates did not have access to medical treatment, nor to any kind of work or activity aimed to their rehabilitation; additionally they cannot attend to school or the religious services; and, there is no separation between convicted prisoners and prisoners on remand.

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

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

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

"1. The parties agree to create an "ad-hoc" Arbitration Tribunal, in order for it to determine the amount of pecuniary reparation owed to the victims involved in the case, in accordance with the rights for which a violation has been recognized in section 1 of this agreement, in keeping with any international standards that may be applicable.

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

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

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

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

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

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

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

a) Introduce a bill before the Legislature of the Province of Mendoza to create a local prevention agency within the framework of the Optional Protocol of the Convention against Torture and other Cruel Inhumane and Degrading Treatment or Punishment, and take the necessary steps to achieve the approval thereof. Said agency shall meet the standards of independence and autonomy prescribed in said Protocol, and should eventually be adapted in a timely fashion to meet the established criteria, when the corresponding national

mechanism is approved. A period of 90 days from the date of the signing of this document has been set for this purpose;

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

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

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

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

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

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

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

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

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

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

b) In light of the conditions of detention of the inmates at the penitentiaries of Mendoza, request administrative and judicial authorities to review the disciplinary files or reports of the Criminological Technical Agency and the Correctional Council, which affect implementation of the benefits set forth in the Rules on the Progressive Application of

Punishments. Additionally, the operation of the Criminological Technical Agency and the Correctional Council should be scrutinized in order to optimize their performance;

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

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

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

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

**D. Ratification and dissemination:**

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

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

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

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

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

159. In communications dated October 9, 2013 and December 4, 2014, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested. On December 29, 2014 and April 21, 2015, the State requested extensions to submit the information requested by the IACHR.

160. On September 15, 2015, the Commission again requested updated information from the parties regarding compliance with the friendly settlement agreement. On October 2, 2015, the State forwarded to the IACHR a compliance report prepared by the Subsecretariat for Justice of the Ministry of

Labor, Justice and Government of the Province of Mendoza, which indicates that the Mendoza Bureau of Prisons currently has 4,028 prisoners of which 679 are federal prisoners.

161. With the specific information furnished by the State, the status of compliance with each one of the clauses of the agreement has been updated below.

**Measures of Pecuniary Reparation:**

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

162. As indicated in Report No. 84/11, the friendly settlement agreement was approved by means of Decree No. 2740, in which State responsibility was recognized and the Law ratifying the agreement was approved on September 16, 2008 and published on October 17, 2008. In keeping with the aforementioned agreement, the Ad-Hoc Tribunal was created on December 15, 2008. Said Tribunal issued its arbitral award judgment on November 29, 2010. The Tribunal examined the 6 deaths (numbered 1 to 6 in the agreement), which took place at the prison of Lavalle as a result of the fire occurring on May 1, 2004, and set a total amount of \$601,000 USD. It additionally set the amount of \$1,413,000 USD to be paid by the State in the 10 cases of persons (7 to 18 in the agreement) who died at the penitentiary located in Boulogne Sur Mer. In the 8 cases of persons who sustained injuries at the different centers, it set an amount of \$202,000 USD. As costs and fees, it ordered the payment of \$100,000 USD, and \$18,000 in remuneration to the arbitrators.

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

**Measures of Non Pecuniary Reparation**

**Normative Measures:**

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

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

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

165. In relation with the defense of persons deprived of liberty, [according to] the 2015 report from the State, the Provincial Commission for the Prevention of Torture is under the charge of the Ombudsman for the Persons Deprived of Liberty. This agency is an independent, external oversight body that has its own legal personality, is functionally and financially autonomous, and has a budget earmark of \$2,500,000.

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

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

the Optional Protocol. In its 2015 report, the State indicated that to date it has not been possible to go forward with the reform.

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

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

168. In its 2015 report, the State indicated that the office of the defender for the Boulogne Sur Mer prison has jurisdiction to defend convicts in Compound I Boulogne Sur Mer, Compound II San Felipe, Unit III "Women's Prison", Unit IV, "Gustavo André" Farm Prison; this office of the defender has a sister defender office headquartered at Compound III "Almafuerde" in order to provide services to those deprived of liberty at that center.

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

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

#### **Other Measures of Satisfaction:**

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

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

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

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

172. In its report of 2015, the State indicated that it currently encourages, at all times, an open investigation of all acts of violence occurred within its penitentiary facilities; and that under an internal protocol, this is communicated to the competent prosecutor unit, the execution judge in charge of the inmate involved, the Director-General of the Penitentiary Service and to the Safety Inspection Services. As for the violent acts referred in the friendly settlement agreement, the State offers information about the authority in

charge of the investigation of 9 issues, from which the State emphasizes that there are no charges against prison staff and only in one of the cases, the name of one of the inmates is associated as accused of homicide.

### **Plan of Action and Budget**

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

173. In its 2015 report, the State indicated that it is developing a plan of action and active policies in the short, medium and long term with the intention that Mendoza Penitentiary Service fulfils its objectives, aimed to: reduce prison overcrowding; equating rights; and to achieve the reintegration of those deprived of liberty. As short-term policies the State highlighted the implementation of a system for monitoring, supervision, and electronic tracking of inmates with house arrest and/or temporary leaves. As medium-term policy, the State pointed out that two major projects that are being implemented will help to expand the accommodation capacity of the province. Finally, as a long-term policy, the provincial government presented a draft of a detention facility financing law by private sector. The State clarified that the privatization of the prison service is not intended, but an alternative provided in the Act of concession of works and public services.

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

174. Regarding the measures taken with respect to young adults deprived of their liberty, in its 2015 report, the State reported that the prison complex II "San Felipe" has destined module four, Sector A and B, module seven Sector A and B and module 8 sector A and B, to the accommodation of young and adult inmates, with a current population of 267 young adult inmates. Also, by virtue of the Resolution No. 756 of June 7<sup>th</sup> 2013, the General Director of Penitentiary Services of Mendoza created the Criminal Unit of Young Adults dependent of the prison complex II San Felipe and on the unit staff working with young adult inmates. Also, the State presented detailed information on the creation of the program "Juntos Podemos", consisting on promoting interdisciplinary work spaces in which, not only the inmate participates, but also the families and the treatment and safety personnel.

175. With respect to the measures carried out in order to gain access to education, recreation, cultural activities, sports, psychological assistance and reintegration activities, the State presented a detailed report of each of the areas involved in the interdisciplinary treatment team. As the most important achievement in 2014, it highlighted the distribution of hours of lectures in a classroom as a semi - formal school for isolated inmates; and as an indicator of the actions aimed to promote social reintegration, the State noted that a total of 3.711 persons deprived of freedom were enrolled in some level of formal education; 121 students attended 11 bachelor degrees; and 1,887 inmates were occupationally trained in the Training Centres for Work at all Penal Institutions.

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

176. As indicated in Report No. 84/11, according to the information provided by the State in early 2008, the Technical Criminological Agency changed the evaluation criteria, which resulted in a considerable

increase in positive assessments and, consequently, greater access by inmates to the benefits set forth in Law 24.660 (on the execution of sentences depriving persons of liberty).

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

177. With regard to measures taken with regard to improving the health service in its 2015 report, the State informed that the Province of Mendoza established as an action for prison policy, to strengthen the health system, for which interagency agreements were made with the Ministry of Health in context of confinement, which recounted in detail.

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

178. With regard to measures aimed at ensuring access to the workplace, in its 2015 report, the State reported that prison labor policies at the prison complexes are aimed at occupational therapy, on which the State indicated it has a practical sense to the extent that it has helped to change habits such as, getting up early, training in various trade and jobs and keeping inmates busy. The State indicated that the work activities are performed in their own workshops and through privately managed activities. It also recounted the agreements signed to place the products of the inmates in their own workshops. Finally, the State noted that there are approximately 468 inmates who are in production, in their own workshops or in private companies; and that they collect the remuneration, as referred to in the national enforcement of sentences law, through two funds, one available and another that becomes available at the time the inmate is released.

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

179. With regard to access to the courts for the execution of penalties, in its report of 2015, the State reported that there are two courts which have permanent judges, about which the State explained each one's jurisdiction, as well as of the Federal Court or of the oral courts; the latter in charge of the affairs of persons deprived of their liberty for federal crimes. Furthermore the State indicated that the requirements to access the records are specified by the basic legislation and the Criminal Procedure Code.

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

180. In Report No. 84/11, the Commission took note of the adoption of Organic Law No. 7.976 on the Provincial Penitentiary Service, which requires professionalization of senior penitentiary officials.

181. In its report of 2015, the State reported that in 2013 the Institute for Penitentiary Instruction (INFOPE) was created under the premise that the prison staff is the fundamental tool of the system; furthermore it stated that a technical degree concerning prison security was recently included, which is currently being attended by the senior staff. The State related in its report a series of measures taken to improve the working conditions and training of prison staff.

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

182. The Commission has not received information regarding the establishment of a Monitoring Commission.



183. The Commission values the information presented by the State, as well as the advancements reported in compliance with the friendly settlement agreement. It is apparent from the information available to the Commission that a substantial number of the commitments undertaken by the State in the friendly settlement agreement have been implemented. In this connection, it bears mentioning that, in Report No. 84/11, the IACHR was very appreciative of the efforts made by the parties to reach the agreement and implement it.

184. At the same time, the Commission observes the State announced it had requested information to the pertinent offices regarding the other items, but has yet to receive any information; therefore the State indicated that, after receiving this information, it will be presented immediately.

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

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

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

187. On November 4, 2009, the petitioners and representatives of the Government of the Argentine Republic signed an agreement in which the following commitments were made:

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

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

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

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

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

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

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

192. With a view to accelerating compliance with the items pending in the Friendly Settlement Agreement concluded under the auspices of the IACHR, the parties held a working meeting on April 26, 2014. In addition, in a communication dated April 28, 2014, the petitioners requested authorization of a channel for discussion or an inter-institutional “forum” [*mesa*] on amending the laws related to social pensions, such as Decree 432 of 1997 and 582 of 2003, and revising the requirement of years of residence for access to these rights, in accordance with the mandates assumed by the State under the duly established agreement.” They further stressed the need to get an urgent process under way for immediate amendment of Decree 432 of 1997, because it also requires proof of 20 years’ residence for access to disability pensions, a requirement that eliminates the possibility for any children and adolescents with disabilities to have access to the pension defined in that decree.

193. On December 4, 2014, the IACHR requested information on compliance with the agreement. On January 2, 2015, the petitioners, after reiterating their recognition of the enormous importance of the case and the friendly settlement agreement, as well as the advances made in legislation, expressed their concern over the statements of certain high government officials and over the adoption of new legislation which, in their opinion, constitutes a setback to immigration law. In the first place, the petitioners referred to various statements by officials to the media in which they associated immigrants with criminal activities.

194. In the second place, with regard to regulations that would reduce the current levels of protection for immigrants, the petitioners indicated that on December 4, 2014, the National Code of Criminal Procedure (CPPN) was approved, which, in conjunction with the measure suspending evidentiary proceedings, includes a specific modality for foreigners in its Article 35, which was openly opposed by the petitioners, together with 52 other civil society organizations. In their opinion, the modality established in that provision would be applied to cases in which the immigrant faces the dilemma of being subject to a criminal proceeding, being convicted, serving the sentence, and being subsequently expelled from the country pursuant to immigration law, or of accepting a suspension of the evidentiary proceeding and expulsion for up to 15 years. In addition, the petitioners pointed out that Article 35 of the CPPN includes a troubling distinction between the cases of persons with regular and irregular immigration status, even though the

immigration law eliminated the negative consequences of irregular immigration status affecting the rights of immigrants. They consider that with these measures, the burden of proof is reversed, and it is up to foreigners to prove that their status is regular. As another legal provision which, in their view, runs counter to the admission of foreigners into Argentina, they cite Regulation 4362/2014, which establishes a procedure for settlement of cases in the tourist subcategory based on the well-founded suspicion. They report that the determination of “false tourist,” which, according to this regulation, is meant to be based on identifiable objective evidence, could be substantiated merely by unfounded suspicions or discriminatory notions. Moreover, they point out that Article 5 of that regulation authorizes immigration agents to reject the entry of foreigners who in the past would have been in an irregular immigration status in Argentina, thereby creating a new sanction not contemplated in the immigration law.

195. Finally, the petitioners indicated that in 2014, there were no meetings between the parties to discuss the legislation examined in item 2.b of the agreement or any other legislation related to immigration.

196. In a communication dated February 5, 2014, the State reiterated that it was substantially in compliance with the friendly settlement agreement, and that it was continuing to examine legislation on the subject. In this regard, it reported on the ANSES commitment regarding examination of the petitioners’ proposal related to the requirements for processing social pensions in the case of immigrants, to which it was awaiting a response.

197. On March 21, 2015, during the 154 Period of Sessions, the Commission convened a working meeting for both parties, which agreed upon a working methodology to accelerate compliance with the item on the friendly settlement regarding the evaluation of existing legislation, in order for it to meet international standards and to establish a working instrument to follow up on the implementation of the agreement.

198. On April 7, 2015, as a follow up to that meeting, petitioners sent a communication to the Secretariat for Human Rights of the Ministry of Justice and the Directorate of International Contentions of the Ministry of Foreign Affairs, and copied the Commission, with a proposed agenda and a list of the authorities to be convened to the meeting to be decided on at that time. Likewise, they singled out four subjects on which the monitoring of the friendly settlement agreement should focus. Those subjects are as follows: i) granting disability annuity (Law no. 18.910 and its Regulatory Decree), old age pensions (Law no. 13.478 and its Regulatory Decree no. 582/03), and pensions for mothers of seven or more children (Law no. 23.746 and its Regulatory Decree no. 2360/90); ii) article 35 of the new Criminal Procedural Code of the Nation; iii) determining the procedure implemented to resolve cases of substantiated suspicion in the tourist subcategory (Provision 4362/2014); and iv) access to the universal assignation per child (Decree 1602/09).

199. In a communication dated September 15, 2015, the Commission asked the parties to provide up-to-date information on the status compliance with the friendly settlement.

200. In a communications dated October 15, 2015, the State forwarded the minutes from working meetings that took place between the parties on May 15, June 17, and August 12, 2015, which evidence the progress made in the framework of compliance with the friendly settlement. In accordance to the information consigned in the said minutes, during those meetings the parties were able to discuss the subjects set forth by the petitioners, who called attention to certain situations of special concern and put forward concrete proposals to revise highlighted regulations. In the last meeting it was agreed that the various proposals for regulation revision would be reviewed by several agencies in order to receive their comments and input.

201. The Commission once again appreciates the efforts made by the parties, that resulted in derogation of the immigration law known as the “Videla law,” and its replacement by Law 25871 approved on January 20, 2004, and in the Regulations of the Immigration Law approved on May 3, 2010 by the President of the Argentine Republic, through Decree No. 616. At the same time, the Commission recognizes that as a result of the working meetings held by the parties in 2015 there have been important improvements in the compliance of items 2.b and 2.c of the friendly settlement agreement, regarding the evaluation of existing legislation, in order for it to meet international standards and to establish a working instrument to follow up on the implementation of the agreement. Notably, significant steps have been taken as far as identifying the

subjects on which the evaluation of legislation, which may be subject to revision, will focus on, as well as the reform proposals presented by the petitioners and the State's willingness to have them evaluated by various agencies. In that regard, the Commission appreciated the information presented by the parties and urges them to continue working jointly to monitor the implementation of the agreement, and to update the Commission accordingly.

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

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

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

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

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

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

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

207. On December 4, 2014, the IACHR requested information on the status of compliance with the agreement. On December 29, 2014, the State requested an extension to present the information requested. To date, neither of the parties has presented additional information.

208. On August 27, 2015, the parties attended a working meeting convened by the Commission in Buenos Aires to encourage compliance with the recommendations made in Report No. 66/12. At the said meeting the parties listed the recommendations that have already been implemented, and then focused on

the recommendation that had yet to be complied with, which is the one regarding the criminal investigation aimed at resolving the report of torture. The State claimed that given how much time had passed, it had become difficult to solve the case. On the other hand, the petitioners pointed out that the Public Defender's office established itself as a plaintiff in the case regarding torture, cruel or inhumane treatment, and that it has requested various provisional measures, which have suffered delays.

209. On September 15, 2015, the Commission asked the parties to provide up-to-date information on the status compliance with the recommendations.

210. In a communication dated November 3, 2015, the State presented a report about case 343/92 (NNs/ torture, cruel or inhumane treatment – victim: Ruben Luis Godoy), prepared by the Ministry of Justice of the Santa Fe province, in which the investigation would have new momentum as a result of the compromises taken on by the State in the Commission's case 12.324. As a follow up to the working meeting that took place on August 27, 2015, the State reiterated the impossibility that, in the framework of the investigation, they will be able to locate a key witness, who is of Uruguayan nationality and has been proven to have been detained with Mr. Godoy, and to have seen Mr. Godoy following the alleged torture, cruel or inhumane treatment. In this regard, the State recounts the State Prosecutor's Office's efforts to locate the Uruguayan witness. Likewise, the State reiterates that it has been difficult to find some of the evidence given the amount of time which has passed since the alleged acts would have taken place, and that the investigation has been pursued insofar as it has been possible to do so. Notwithstanding, the State informs that the Public Prosecutor's Office has given instructions to continue maintain the measures deployed, regardless of the probability of succeeding, until there is a new path for the investigation to follow.

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

#### **Case 12.182, Report No. 109/13 Florentino Rojas (Argentina)**

212. On November 5, 2013, the IACHR issued Report No. 109/13, pursuant to which it approved the friendly settlement agreement reached by the parties on November 23, 2009. The case refers to the violation of the rights to equal protection of the law and the right to judicial protection, established in articles 24 and 25 of the American Convention on Human Rights respectively, against Florentino Rojas, who suffered an accident while he came back to his home after finishing his shift in the mandatory military service, and that caused him a permanent physical disability of 85%. In this sense, Florentino Rojas requested a military pension that was denied, On November 23, 2009, the parties subscribed a friendly settlement agreement in which the following was established:

1. The parties agree to establish an Arbitration Tribunal "ad-hoc", in order that it may determine the amount of humanitarian assistance to be granted to the petitioner, as established in section III of this document, and in accordance with international standards that are applicable.
2. The Tribunal will be composed of three independent experts of recognized competence in the field of human rights and moral quality, one will be designated by the petitioner, the second will be proposed by the national State and the third will be proposed by the two experts appointed by the parties. The Tribunal shall be formed no later than within 30 days of the approval of this agreement by a National Executive Decree.
3. The procedure to be followed shall be determined by agreement between the parties, the content of which shall be recorded in minutes and a copy submitted to the Interamerican Commission on Human Rights. To this end, the parties shall appoint a representative to participate in the discussions on the procedure. The national State delegate

to the Ministry of Foreign Affairs, International Trade and Worship, and Ministry of Justice and Human Rights, the appointment of an official in the area with responsibility for human rights in both Ministries.

4. The arbitral award shall be final and unappealable. It shall contain the amount and type of monetary assistance granted, the beneficiaries thereof, and the determination of costs and fees incurred in both the procedure carried out at the international level and in the arbitration, must be subjected to the evaluation of the Human Rights Commission in the framework of the monitoring of compliance with the agreement, in order to verify that it conforms to the applicable international standards. The amounts recognized in the award shall not be seized and they will be exempt from payment of any tax or other existing or future rate.

213. On December 4, 2014, the IACHR requested updated information to the parties on the compliance with the agreement. The State provided the information requested on December 11, 2014, indicating that the Ad Hoc Tribunal was established according to the terms agreed above. The State provided a minute signed by the petitioner accepting without any objection the integration of the said Tribunal. The petitioners sent a communication on February 5, 2015 confirming the creation of the Tribunal, but indicating that the decision had not been issued yet, and the monetary reparation had not been paid either, reasons why they request that the Commission continues following up the situation of the case until the procedure is finalized.

214. On March 16, 2015, the State reported on the appointment of the chairman of the Ad Hoc Tribunal. On July 20, 2015, the petitioner indicated that the agreement had yet to be complied with.

215. On July 15, 2015, the State expressed its deep concern for the content of the claims made by the petitioner to the Ad-Hoc Tribunal, inasmuch as it considers that the petitioner seeks to reintroduce matters linked to an alleged international responsibility of the State in the case, which were not subject to the process of dialogue nor the friendly settlement agreement approved by the Commission. According to the State, the petitioner had indicated to said Tribunal that the expression "humanitarian reasons" was unilaterally imposed by the Argentine State, and what the petitioner was actually requesting from the Ad-Hoc Tribunal was reparation for a systematic violation of their rights, reaffirming in several sections of the brief that violations of Articles 8 and 25 of the American Convention are the cause of the source of reparations that the Tribunal must impose on the Argentine State for being internationally responsible for said violations. In this regard, the petitioner had submitted a plea that the amount the Tribunal establishes should be for reparation of human rights violations by the State that it considers proven in the Article 49 report. The petitioner requested US\$480,000 in material damages, US\$424,000 in moral damages, as well as legal costs of US\$18,000 USD, for a total of US\$842,000 and fees of between 15% and 20% of the arbitral award.

216. In the same communication, the State refuted the petitioner's arguments to the Ad-Hoc Tribunal on May 28, 2015, requesting that the petitioners brief be rejected and their claims and pleas be reformulated; and provided copy of a communication written by the petitioner to the Ad Hoc Tribunal, maintaining its position and indicating its unwillingness to change its pleas, highlighting that the Tribunal's objective is to establish the payment amount. Furthermore, the petitioner opposed the environmental studied requested by the State to determine Mr. Florentino Rojas' living conditions, stating that the grounds for the reparation are the violation of Articles 8 and 25 of the American Convention on Human Rights. The State expressly requested a declaration from the Commission inasmuch it considers that the petitioner has violated the terms of the agreement by raising points that are not subject to arbitration, such as the establishment of aspects unrelated to the correspondent humanitarian assistance.

217. The IACHR takes note of the allegations submitted to the Ad Hoc Tribunal, which was established jointly by the parties and awaits information on the decision that it adopts.

218. The IACHR requested updated information from the parties on September 25 2015. As of the date this report was prepared, neither of the parties had submitted the requested information.

219. The IACHR notes that the agreement has been partially complied. The IACHR values the efforts of the parties to comply with the agreement and urges the State to make progress swiftly in order to fully honor the commitments undertaken.

**Petition 21-05, Report No. 101/14, Ignacio Cardozo et al. (Argentina)**

220. On November 7, 2014, the IACHR issued Friendly Settlement Report No. 101/14, by means of which it approved the agreement signed by and between the parties on October 1, 2012. The case has to do with events that occurred on December 17, 1999, on the interprovincial bridge that unites the cities of Corrientes and Resistencia, [where] during an operation, the Argentine armed forces used disproportionate force against workers who were peacefully protesting the non-payment of their wages. As a result, two individuals died and many others were injured. Based on the foregoing, the petitioners held that the State was responsible for violations of the rights to life, humane treatment, movement, a fair trial, freedom of expression, right of assembly, freedom of association, rights of the child, and judicial protection, in relation to its obligation to respect and ensure [such rights] enshrined in Articles 4, 5, 7, 8.1, 13, 15, 16, 19, and 25, respectively of the American Convention on Human Rights. In keeping with the stipulations of the agreement reached by the parties in this case, the State has accepted its objective responsibility in the international sphere in its capacity as a State party to the Convention and in keeping with constitutional law, and requested that the IACHR deem the violations alleged in the terms alleged in the petition.

221. The State committed to complying with the following:

**III. Measures to be adopted**

a. Pecuniary measures of reparation

1. The parties agree to set up an *ad hoc* Arbitral Tribunal to determine the amount of pecuniary reparations due to the petitioners, in conformity with the rights whose violation has been recognized, and in accordance to the applicable international standards.

2. The Tribunal will consist of three independent experts (*sic*), recognized to be well-versed in human rights law and of upstanding moral character, one designated at the proposal of the petitioners, the second at the proposal of the State, and the third at the proposal of the two experts designated by the parties. The Tribunal should be constituted no later than 30 days after the adoption of the report provided for in Article 49 of the American Convention on Human Rights.

3. The procedure to be applied will be defined by mutual agreement between the parties; a record of the contents of said agreement will be set forth in a document, a copy of which shall be forwarded to the Inter-American Commission on Human Rights. To that end, the parties shall designate a representative to participate in the deliberations on the procedure. For the purposes of representing the State, the designation of one official from the human rights area of the Ministry of Foreign Affairs (*sic*) and from the human rights area of the Ministry of Justice and Human Rights shall be delegated to those Ministries.

4. The award of the arbitral tribunal shall be final and not subject to appeal. It shall contain the amount and the modality of the pecuniary reparations agreed upon, the beneficiaries thereof, the determination of the costs and fees that may be in order, both in the procedure carried out internationally and in the arbitral procedure, which shall be submitted for evaluation to the Inter-American Commission on Human Rights in the context of the process of monitoring compliance with the agreement, with the purpose of verifying that it is adjusted to the applicable international standards. The amounts recognized in the award shall be non-attachable and shall be exempt from the payment of any tax, contribution, or fee, already existing or to be established.

5. The petitioners waive, on a final and irrevocable basis, bringing any other pecuniary claim against the Argentine State in relation to the instant case.

b. Non-pecuniary measures of reparation

1. The Government of the Argentine Republic undertakes to publicize this agreement once it has been approved by the Inter-American Commission on Human Rights as provided for by Article 49 of the American Convention on Human Rights, in the "Boletín Oficial de la República Argentina" (Official Gazette of the Argentine Republic) and in a national-circulation daily newspaper by means of an insert. The text will be agreed upon with the petitioners.

2. The Government of the Argentine Republic undertakes to coordinate with the corresponding areas for the purposes of giving impetus to the criminal investigation, allocating the means within its reach to prevent the passage of more time, identifying and punishing the direct perpetrators and masterminds of the deaths and injuries.

3. Without prejudice to the criminal proceeding, the Government of the Argentine Republic undertakes to give impetus to the summary administrative investigations with respect to all those who participated in the operation (*sic*), including those who have already retired.

4. The Government of the Argentine Republic undertakes to coordinate with the competent areas for the purposes of forming a technical working group to the effect of continuing to carry out the studies and steps necessary for evaluating the socio-environmental and health situation of the victims and their immediate families, which, independent of and prior to the pecuniary reparations, should provide concrete solutions to their basic material needs and ensure the victims access to adequate control and attention to their physical and mental health.

222. On November 3, 2015, the IACHR requested updated information from the parties on compliance with the agreement. The petitioners did not submit the information requested.

223. For its part, the State submitted information on November 13, 2015, indicating that it was currently awaiting the designation of the chairman of the Ad-Hoc Arbitration Tribunal that shall determine the pecuniary reparations due to the petitioners.

224. Pursuant to the foregoing, the Commission concludes that the friendly settlement is pending for compliance. The Commission shall thus continue to follow up on the points pending compliance.

**Case 12.710, Report No. 102/14, Marcos Gilberto Chaves and Sandra Beatríz Chaves (Argentina)**

225. On November 7, 2014, the IACHR issued Friendly Settlement Report No. 102/14, pursuant to which it approved the agreement signed by and between the parties on August 5, 2014. The case refers to the alleged violation of the rights to a fair trial, privacy, equal protection, and judicial protection, in relation to the general obligation to respect and ensure [such rights], enshrined in Articles 8, 11, 24, and 25, respectively, of the American Convention on Human Rights, to the detriment of Mr. Marcos Gilberto Chaves and his daughter, Mrs. Sandra Beatriz Chaves, who were sentenced to life imprisonment for the alleged homicide of Mrs. Chaves' husband.



226. In accordance with the instruments signed by and between the parties, the State committed to:

### **Friendly Settlement Agreement**

[...]

#### **a. Humanitarian assistance measures**

1. The Government of Salta Province, through Decrees No. 2.281 and 2.283, dated August 4, 2014, called for the commutation of the sentences for life in prison for Sandra Beatriz Chaves and Marcos Gilberto Chaves, for the prison terms effectively served by both at the time the commutation is granted. These decrees call for the immediate release of the petitioners, with no restrictions of any kind. A certified copy of said decree is attached as Annex II.

#### **b. Non-pecuniary reparation measures**

1. The Government of Salta Province committed to providing, pursuant to current statutes and subject to the prior request and agreement of the beneficiaries, immediate psychological and medical care, as necessary, to treat Marcos Gilberto Chaves, Sandra Beatriz Chaves, and her children Luz María and Marcos Nicolás González Chaves, in keeping with Point III.B of the Letter of Commitment to a Friendly Settlement, included as Annex I.

2. The Government of Salta Province committed to providing the means for Sandra Beatriz Chaves and her children, Luz María and Marcos Nicolás González Chaves, to receive education through completion of higher education, be it technical or university studies, according to the terms agreed in Point III.C.1 of the Letter of Commitment to a Friendly Settlement, included as Annex I.

3. The Government of Salta Province committed to adopting effective reintegration measures, especially in the work arena, for Sandra Beatriz Chaves, according to Point III.C.2 of the Letter of Commitment to a Friendly Settlement, included as Annex I.

4. The Government of Salta Province committed further implementing ongoing programs and training courses on gender perspective in the administration of justice and prohibition of discrimination, according to the terms of Point III.D of the Letter of Commitment to a Friendly Settlement, included as Annex I.

### **ANNEX I**

#### **Friendly Settlement Commitment Agreement**

#### **III. Humanitarian Assistance Measures**

##### **A. Commutation of Sandra Beatriz Chaves and Marcos Gilberto Chaves' sentences<sup>53</sup>**

1. The Government of Salta Province undertakes to move forward with measures to grant the commutation of the life in prison sentences handed down to Sandra Beatriz Chaves and Marcos Gilberto Chaves on June 8, 2001 by the Third Criminal Chamber of the Salta Province, for the prison term effectively served by Mr. and Ms. Chaves at the time the commutation is granted.

2. Said measure shall be adopted in no more than fifteen (15) working days, counted from the signing of the Friendly Settlement Agreement on July 24, 2014, which shall allow

<sup>53</sup> Text of Annex II, which amends the Friendly Settlement Commitment Agreement.

Sandra Beatriz Chaves and Marcos Gilberto Chaves to regain their personal freedom, with no restrictions of any kind.

**A. Commutation of the sentences against Sandra Beatriz Chaves and Marcos Gilberto Chaves**

1. The Government of Salta Province undertakes to move forward with measures to grant the commutation of the life in prison sentences handed down to Sandra Beatriz Chaves and Marcos Gilberto Chaves on June 8, 2001 by the Third Criminal Chamber of the Salta Province, for the fourteen (14) years they spent in prison.

2. Said measure shall be adopted in no more than fifteen (15) working days, counted from the signing of this agreement, which shall allow Sandra Beatriz Chaves and Marcos Gilberto Chaves to regain their personal freedom, with no restrictions of any kind.

**B. Medical and psychological treatment**

1. In order to facilitate the social reintegration of both persons, and based on evidence of their vulnerable situation and that of their close family group, the Government of Salta Province undertakes the commitment to immediately provide, in keeping with current law and subject to prior request and agreement of the beneficiaries, the medical and psychological assistance that may be necessary for Ms. Sandra Beatriz Chaves and Mr. Marcos Gilberto Chaves and her children, Luz María and Marcos Nicolás González Chaves. The State shall, therefore, provide free and immediate medical and psychological treatment that may medically be necessary. The treatments shall be provided for as long as they are needed and shall include medication and, where applicable, other resources that are directly related and strictly necessary.

2. Psychological or psychiatric treatment shall be provided by specialized state personnel and institutions. Should the Government of Salta Province lack these services, it shall resort to specialized private or civil society institutions. The provision of said treatment shall take into consideration the specific circumstances and needs of each beneficiary, so as to provide them with family and individualized treatments, as agreed with each of them following an individual evaluation. Finally, the treatment shall be provided, where possible, in the facilities closest to their place of residence.

**C. Training and work reintegration measures**

1. The Government of Salta Province and the representative for the alleged victims agree that the Provincial State shall provide the means for Ms. Sandra Beatriz Chaves and her children, Luz María and Marcos Nicolás González Chaves, to receive education through the completion of higher education, be it technical or university studies. The beneficiaries or their legal representatives shall notify the State, within six months, counted from the date of signing of this agreement, of their requests for training or, where appropriate, scholarships to study, depending on the educational opportunities in the Province.

2. In the specific case of Sandra Beatriz Chaves, given that Marcos Gilberto Chaves is currently retired, the Government of Salta Province is committed to quickly adopting effective reintegration measures, particularly in the work arena, according to her needs. To this end, the Government of Salta Province undertakes to provide counseling and professional mentoring to Sandra Beatriz Chaves in order to allow her to obtain a small business loan from the Ministry of Environment and Sustainable Protection to finance a project she will define, corresponding to the Productive Development Line – Micro-businesses of the Provincial Investment Fund, pursuant to the current laws and up to a maximum of fifty-thousand pesos (\$ 50,000).

**D. Training justice operators and security forces**

1. The Government of Salta Province undertakes to continue implementing ongoing training programs and courses on the gender perspective in the administration of justice and prohibition of discrimination. These courses will be designed for public servants and employees of Salta Province, in particular, members of the Judiciary, Public Prosecutor's Office, Public Defender's Office, and security forces.

227. On September 15, 2015, the IACHR requested updated information from the parties on compliance with the agreement. The petitioners submitted the information requested on October 14, 2015. The State, for its part, presented information on October 29, 2015.

228. The petitioners indicated that in relation to Point A regarding the commutation of prison sentences, the Government of the Province of Salta, pursuant to Decrees No. 2.281 y 2.283, had indeed ordered the commutation of Sandra Beatriz Chaves', and her father, Marcos Gilberto Chaves', life sentences, definitively regaining their liberty after 14 years of incarceration, with which the obligation contained therein had been fully honored. The foregoing corresponds with what the State affirmed in its report. Based thereon, the IACHR declares that clauses (a)(1) of the Friendly Settlement Agreement, and II(A)(1) and (2) of the Friendly Settlement Commitment Agreement, amended by Annex II of the former, have been fully complied with.

229. In relation to point (b)(1) regarding psychological and medical treatment, the petitioners indicated that Mrs. Chaves had ties to a public health center in the area where the family resides and had been interviewed by a psychologist. They informed her, however, that they were unable to provide family therapy or psychological assistance to her children. Thus, conversations were held with the National State and it was agreed that, through the Program for the Implementation of Human Rights Instruments, psychological assistance would provisionally be provided through another medical center. Therefore, since October 2014, Mrs. Chaves is satisfactorily receiving psychological treatment provided at the Center. For personal reasons, the beneficiary decided to suspend the assistance, which will resume shortly. This corresponds with information furnished by the State about compliance with this point. The IACHR applauds the State for exploring other temporary alternatives to provide psychological treatment to the beneficiary. In this sense, the IACHR considers that the State has taken the necessary steps to partially comply with this measure and awaits additional information on the center or program that will definitively provide psychological and medical care to Sandra Chaves and the other members of her family who are covered under the Agreement.

230. With regard to point (b)(2), the measure to provide Sandra Chaves and her children education, the petitioners indicated that in August 2015, the Government of Salta offered training options however the measure has yet to be implemented. Insofar as Mrs. Chaves' son is concerned, they were waiting for the documents showing how many years of secondary education he had satisfactorily completed in order to verify what would be the next course the State should cover. As for her daughter, she decided that at this time her priority is to find a job, and will therefore not avail herself of the measure. Mrs. Chaves decided that she wanted to register for a computer course, however due to scheduling problems the request had still not been implemented. This corresponds to information furnished by the State on compliance with this measure.

231. In relation to clause (b)(3) regarding reintegration and employment, the petitioners indicated that Sandra Chaves' children are registered at the job placement office, but no opportunities had arisen as of yet. Mrs. Chaves, for her part, was hired by a state agency, but the petitioners highlight that the measure is still being complied with by the State. Furthermore, Mrs. Chaves is applying for a loan to develop an individual business project. Additionally, an assistance subsidy is being processed; the subsidy has been delayed by successive changes in the Office of the Chief of Staff of the Nation, but should be granted shortly. Mrs. Chaves also indicated that she is doing the paperwork to individually register with the Provincial Housing Institute to apply for a loan that would enable her to have decent housing. Finally, in relation to the training clause (b)(4), the petitioners stated that they still have no information from the State on compliance with said measure.

232. With regard to clause (b)(4) that provides for “continuing to implement ongoing training programs and courses on gender perspective in the administration of justice and on the prohibition to discriminate,” the State affirmed that through the Governor of the Province of Salta’s Decree for Necessity and Urgency No. 2.654/14, which became Provincial Law No. 7.857, a public emergency in social matters was declared due to gender violence. This declaration was accompanied by the creation of five specific courts for family and gender-based violence. Furthermore, the competitive selection process and designation of intra-family and gender violence judges was finalized and they have been performing their duties since August 31, 2015. Along these same lines, there was the creation of 1 post for a criminal prosecutor; 5 posts for advocates [against] intra-family and gender-based violence; and the Risk Assessment Unit for Gender-Based Violence was created in the Public Ministry. The State indicated in its report that a temporary protection shelter for women victims of violence and their minor children was inaugurated, the delivery of panic buttons was implemented, and a provincial plan for the prevention, treatment, and eradication of gender-based violence was developed, among other measures. The State highlighted the establishment of the Observatory on Violence against Women, pursuant to Law No. 7.863 on the design and implementation of public policies to prevent and eradicate violence against women.

233. Concretely with regard to trainings, the State indicated that the Ministry of Justice has imparted course and workshops on a gender perspective and intra-family and gender-based violence aimed at provincial security forces, health professionals, teachers, and the public in general. These activities have taken place in Salta and adjoining areas, and in different municipalities. Workshops have been organized in collaboration with institutions involved in the topic. Among such efforts, the State has underscored the Cooperation, Technical Assistance, and Complementation Agreement signed with the National Human Rights Observatory on April 27, 2015. As part of this Agreement the Workshop on Gender Perspective and Trafficking in Persons for Purposes of Sexual Exploitation was held with the participation of state agents and civil society. Furthermore, a conference was held at the National Senate to take stock of “The Six Years Since the Approval of Law No. No. 26.845 for the Comprehensive Protection of Women,” and another workshop on Violence during Courtship has been scheduled to take place. The State also listed other workshops that they will organize with the Office on Women of the National Court of Justice and with the Foundation *Género y Conciencia*, among other initiatives to take place in the near future.

234. The State provided information according to which the database of the Human Rights Promotion and Training Directorate of the Human Rights Secretariat has a record of, since the date this friendly settlement agreement was signed—i.e. from August 5, 2014 to May 22, 2015—, 18 trainings, of which 14 had a gender component. The total number of trainings with a gender component included 1,400 participants from different state agencies, such as the municipal police, municipal health center professionals, provincial police, federal police, national gendarmerie, airport officials, officials from the Office for the Rescue and Support of Victims of Trafficking in Persons, journalists, students in communications, bureau of prisons personnel, family court personnel, among others. The State furnished press articles about some of the activities. The IACHR greatly values the State’s effort to further compliance with these measures and shall apprise the petitioners of the same.

235. Pursuant to the foregoing, the Commission concludes that the friendly settlement agreement has been partially honored. Consequently, the Commission shall continue to oversee the points that remain pending, namely, (b)(1), (2), (3), and (4).

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

236. In Report No. 48/01 of April 4, 2001, the Commission concluded that the State was responsible for: a) violating Articles I, XVIII, XXV and XXVI of the American Declaration by sentencing Messrs. Edwards, Hall, Schroeter and Bowleg to a mandatory death penalty; b) violating Messrs. Edwards’, Hall’s, Schroeter’s and Bowleg’s rights under Article XXIV, of the American Declaration, by failing to provide the condemned men with an effective right to petition for amnesty, pardon or commutation of sentence; c) violating Messrs. Hall’s, Schroeter’s and Bowleg’s rights under Articles XI, XXV, and XXVI of the American Declaration, because of the inhumane conditions of detention to which the

condemned men were subjected; d) violating Messrs. Edwards', Hall's, Schroeter and Bowleg's rights under Articles XVIII, and XXVI of the American Declaration, by failing to make legal aid available to the condemned men to pursue Constitutional Motions; and e) violating Messrs. Schroeter's and Bowleg's rights to be tried without undue delay under Article XXV of the Declaration.

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

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

238. On April 10, 2012, the State informed that Messrs. Schroeter, Bowleg and Hall were released from Her Majesty's prison on December 5, 2007, March 13, 2009, and September 15, 2009, respectively. With regard to Mr. Edwards, Bahamas informed that on June 11, 2010, he was re-sentenced to life imprisonment, thus his date of release is unknown.

239. On October 7, 2013, December 4, 2014 and on September 2, 2015 the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not present additional information on the compliance with the recommendations.

240. The IACHR takes note of the requests for extensions made by the State on February 24, 2015, and again on May 8, 2015. However, as of the date of this report, the parties have not submitted any information regarding compliance with the aforementioned recommendations.

241. The IACHR invites the parties to provide additional information regarding the compliance of the State with the remaining recommendations. Following the aforementioned, the Commission reiterates that there has been partial compliance with the recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

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

243. On April 10, 2012, the State informed that on October 23, 2008, Mr. Goodman was re-sentenced to fifty years of imprisonment, and that his scheduled date of release is November 24, 2009.

244. On October 7, 2013, December 4, 2014 and on September 2, 2015 the IACHR requested from both parties information related to compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure

245. The IACHR takes note of the requests for extensions made by the State on February 24, 2015, and again on May 8, 2015. However, as of the date of this report, the parties have not submitted any information regarding compliance with the aforementioned recommendations.

246. The IACHR invites the parties to provide additional information regarding the compliance of the State with the remaining recommendations. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

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

248. On April 10, 2012, the State informed that Mr. Pinder's scheduled date of release is July 28, 2017. However, the State did not present any information regarding the recommendations of the IACHR, which are related to the sentence of judicial corporal punishment imposed on Mr. Pinder and the legal framework authorizing such form of punishment.

249. On October 7, 2013, December 4, 2014 and on September 2, 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not present additional information on the compliance with the recommendations.

250. The IACHR takes note of the requests for extensions made by the State on February 24, 2015, and again on May 8, 2015. However, as of the date of this report, the parties have not submitted any information regarding compliance with the aforementioned recommendations.

251. The IACHR invites the parties to provide additional information regarding the compliance of the State with the remaining recommendations. Based on these considerations, the Commission reiterates that compliance with the aforementioned recommendations remains pending. Accordingly, the Commission will continue to monitor compliance with its recommendations.

#### **Case 12.231, Report No. 12/14 Peter Cash (Bahamas)**

252. In Report No. 12/14 of April 2, 2014, the Commission concluded that the State of the Bahamas was responsible for: a) the violation of Articles II, XVIII, and XXVI by failing to provide Mr. Cash with an effective right to petition for amnesty, pardon, or commutation of sentence; b) the violation of Articles XVIII and XXVI by failing to exclude or remedy the use of coerced confessions in the criminal proceedings against him; c) the violation of Articles I, XXV, and XXVI by subjecting him or permitting him to be subjected to torture; d) the violation of Articles XVIII and XXVI by failing to make legal aid available to him to pursue a Constitutional Motion; and e) the violation of Article XXV by violating Mr. Cash's right to be tried without undue delay. Based on these conclusions, the IACHR recommended that the State:

1. Grant an effective remedy, which includes a re-trial of Mr. Cash in accordance with the fair trial protections under the American Declaration, or failing that, an appropriate remission or commutation of sentence;
2. Undertake an investigation to identify the police officers involved in assaulting Mr. Cash to extract confessions and apply the proper punishment under law;
3. Adopt measures to compensate Mr. Cash for the suffering occasioned by the violation of Mr. Cash's rights, particularly his right to personal security, his right to humane treatment while in custody and his right to be protected from cruel, infamous or unusual punishment;
4. Adopt such legislative or other measures as may be necessary to ensure that the rights under Articles I, XXV and XXVI of the American Declaration to personal security, to humane treatment and the right not to receive cruel, infamous, or unusual punishment in custodial detention are given effect in The Bahamas;
5. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Declaration including, and in particular, Articles I, XXV, and XXVI;
6. Adopt such legislative or other measures as may be necessary to ensure that the right under Article XXIV of the American Declaration to petition for amnesty, pardon or commutation of sentence is given effect in The Bahamas;

7. Adopt such legislative or other measures as may be necessary to ensure that the right to an impartial hearing under Article XXVI of the American Declaration and the right to judicial protection under Article XVIII of American Convention are given effect in The Bahamas in relation to recourse to Constitutional Motions;

8. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair and impartial hearing under Articles XVIII and XXVI of the American Declaration is given effect in The Bahamas;

9. Adopt such legislative or other measures as may be necessary to ensure that the right under Article XXV of the American Declaration to be tried without undue delay is given effect in The Bahamas.

253. On September 2, 2015, the IACHR requested information from both parties regarding compliance with the aforementioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not submitted any information regarding compliance with these recommendations.

254. Based on these considerations, the Commission finds that the aforementioned recommendations are pending compliance. Consequently, the Commission will continue to monitor the pending items.

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

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

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

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

2. Carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its



tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people.

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

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

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

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

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

261. Based on these considerations, the petitioners request from the Inter-American Commission a continuous dialogue with Maya leaders and their representatives as essential in assisting the government to

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

262. On December 4, 2014, the Commission requested updated information from both parties concerning compliance with the Commission's Recommendations in Report No. 40/04. The petitioners sent a communication on January 5, 2015 indicating that the Government of Belize remains out of compliance with the recommendations. They reiterated that the same issues presented to the Commission are now before the Caribbean Court of Justice on appeal from the Belize Court of Appeal decision of July 2013, and that a hearing is scheduled in Trinidad y Tobago for March 2015.

263. On July 9, 2015, the petitioners reported that the Caribbean Court of Justice, the highest court for Belize, had handed down a judgment on April 22, 2015, ordering the country to refrain from interfering with Maya lands while they are being registered and demarcated. The petitioners indicated that the Caribbean Court of Justice's decision—which recognized the community's ancestral rights over the lands they have traditionally occupied and used—mirrors that of the Inter-American Commission on Human Rights, and they asked the Commission for support in the implementation of the IACHR report. To this end, they requested that the Commission conduct an on-site visit.

264. On September 15, 2015, the IACHR asked the parties for updated information. The petitioners reported on October 28, 2015, that the State has not yet complied with the Commission's recommendations and that it has not created mechanisms to demarcate and formally title the Maya territory. The petitioners expressed concern regarding public statements made by the Prime Minister indicating that the decision by the Caribbean Court of Justice was vague or unsettled and that it did not recognize the Maya people's communal ownership rights over their ancestral territory. According to the petitioners, these statements were accompanied by the arrest of a number of members of the community. The petitioners specified that on June 24, 2015, police officers arbitrarily arrested a number of Maya leaders who live in the Community of Santa Cruz, in an operation carried out at 3:30 a.m., and that the police had then taken 13 individuals to a detention center dressed only in their underwear, or half-dressed, and barefoot. The petitioners reiterated their request that the Commission visit the country to follow up on the current situation and facilitate a dialogue between the parties concerning compliance with the recommendations established in Report No. 40/04.

265. The State, for its part, did not respond to the request for updated information.

266. Based on information provided by the petitioners, the Inter-American Commission observes that compliance with the aforementioned recommendations is still pending and urges the State to take the necessary measures to comply with the recommendations in Merits Report No. 40/04. The Commission will continue to monitor compliance with its recommendations.

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

267. On October 27, 2005, by Report No. 97/05, the Commission approved a friendly settlement agreement in the case of Alfredo Díaz Bustos. In summary, the petitioner alleged that Mr. Alfredo Díaz Bustos was a Jehovah's Witness in respect of whom the State violated the right to conscientious objection when he was called to serve the military on February 29, 2000, directly affecting the right to freedom of conscience and religion. In addition, the petition indicated that Mr. Díaz Bustos suffered discrimination based on his status as a Jehovah's Witness given that the very Law on National Defense Service of Bolivia established inequality between Catholics and those who follow other religions, such that exemption from military service was possible for Catholics, but not for others. The petitioner also alleged that the Bolivian State had violated the right to judicial protection of the alleged victim since, by final judgment of the Constitutional Court, it was

established that the matters concerning the right to conscientious objection to compulsory military service cannot be submitted to any judicial organ.

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

269. After studying the information in the record, the Commission had concluded in its annual reports for 2006 and 2007 that items a), b), and c) of the agreement were being carried out, but not items d) and e).

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

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

272. On February 2, 2011, the applicant asserted that on February 7, 2009, a new Constitution was enacted in Bolivia, but did not incorporate the conscientious objection. He alleged that this right is not protected by any statute and neither under the law of Compulsory Military Service, which was drafted by the Ministry of Defense and is currently pending of approval in the Congress. The applicant affirmed that although Law No. 3845 of May 2, 2008 ratified the Iberia-American Convention on the Rights of Youth, it contains a reservation to Article 12 of the aforesaid Convention, which protects the conscientious objection. The applicant maintained that this reservation reveals the non-compliance with the friendly settlement agreement by the Bolivian State.

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

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

275. In a communication received on December 31, 2012, the State reported that in 2011 and 2012, the Plurinational Legislative Assembly had received the draft Law on Compulsory Military Service for police and military candidates and the draft Law on Compulsory Military Services, respectively, so that the conscientious objection continued to be the subject of much in-depth analysis. It pointed out that one proposal in the draft Law on Compulsory Military Service is to include alternative military service for conscientious objectors. The State indicated that, although Article 249 of the Political Constitution of the State establishes that "all Bolivian men are forced to perform military service," implementation of that Constitution provision takes several forms, some of which exclude military training and the use of arms. Accordingly, the State pointed out that through Bolivia's Civil Aviation Law (Law 2902 of 2004) and Ministerial Resolution No. 1152 of August 25, 2000, provision is being made to award a military service certificate free of charge to young volunteers in the Bolivian Air Force's search and rescue squads who meet the requirements and perform that service once a week for two years. In short, the State pointed out that in practice there is an alternative to compulsory military service.

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

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

278. The IACHR requested the parties to provide up-to-date information on the fulfillment of the commitments undertaken in the friendly settlement agreement on December 4, 2014. The State replied on January 13, 2015, reiterating that the Political Constitution of the Plurinational State was enacted on February 7, 2009, but that a new compulsory military service law was not approved in that context, neither was the right to conscientious objection recognized. The State indicated that "positivization" of the right to conscientious objection was impossible. The State reiterated the contents of its earlier briefs, noting that the purpose of the SAR alternative service was search, assistance, and air rescue, as well as roadside- and natural disaster assistance, and not warfare. The petition, meanwhile, had not replied to the request for information as of the date this report was closed.

279. On September 2, 2015, the IACHR requested updated information from the parties regarding compliance with the commitments made by the Bolivian State. In this regard, the State submitted information via a communication received on October 15, 2015, in which it insists that the right to objection of conscience to military service has been included in the preliminary draft of the amended regulations for military law, not only for the possible enactment of laws to that effect, but also for incorporation into the new constitutional text. With regard to compliance with commitment e), the State reiterated the information regarding the existence of Ministerial Resolution No. 1152, dated August 25, 2000, by which the armed forces issued regulations regarding the awarding of military service certificates to young volunteers in the Bolivian Air Force's search and rescue squads, along with information regarding the enactment of Law No. 1902, the Civil Aviation Law, dated October 29, 2004, by which the SAR group was instituted. The State mentions that through Resolution No. 0620, published on June 2, 2014, the armed forces maintain as a military document the certificate of completed obligatory military service (*Libreta Militar*) for citizens over 23 years of age who have well-founded reasons for objecting to performing compulsory military service.

280. To date, the petitioner has not submitted any information regarding the status of compliance with the pending items of the agreement.

281. The Commission takes note of the information provided and appreciates the State's efforts to comply with its pending commitments from the friendly settlement agreement. However, the Commission is concerned to observe the reservation to paragraphs 1 and 2 of the Ibero-American Convention on Rights of Youth<sup>54</sup> made by the State upon its signature, which was included in Law No. 3845 of May 2008, as these paragraphs refer to the right to conscientious objection to obligatory military service and to the State's duty to promote legislative measures to guarantee the exercise of this right.

282. With regard to commitment d), based on the information submitted by the parties, the IACHR observes that the State has incorporated the right to objection of conscience into the preliminary draft of the amended regulations for military law, even though these bills were not approved by the National Congress after the relevant legislative debates. In this regard, the IACHR declares that the State has complied with the commitment established in subparagraph d) of the friendly settlement agreement.

283. With regard to commitment e), while the Commission views as positive the issuance of regulations and the institutionalization of the Bolivian Air Force's search and rescue squads, through Ministerial Resolution No. 1152 of August 25, 2000, and Civil Aviation Law No. 2902, as an alternative to obtain the certificate of military service, it must note that both instruments were published prior to the signing of the friendly settlement agreement by the parties. Likewise, it is not evident from the information presented to the IACHR that the Vice Ministry of Justice has carried out actions to encourage Congress to approve military legislation that incorporates the right to conscientious objection with respect to military service. In this regard, the IACHR urges the State to provide information concerning the participation of the

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<sup>54</sup> Article 12. Right to conscientious objection.

1. Youth have the right to make conscientious objection towards obligatory military service.

2. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service.

Vice Ministry of Justice in efforts to include the matter of conscientious objection in the legislative debate in Congress, so that the Commission can evaluate compliance with the only item pending from the friendly settlement agreement.

284. Based on the foregoing, the Commission concludes that the friendly settlement agreement has been partially fulfilled. Consequently, the Commission will continue to monitor item e) of the agreement.

#### **Case 12.350, Report No. 103/14, MZ (Bolivia)**

285. On November 7, 2014, through Report No. 103/14, the Commission approved a friendly settlement agreement in the case of MZ. The petitioners indicated that on October 2, 1994, MZ, who was 30 years old, was the victim of rape in her home, in the city of Cochabamba, by her landlady's son, an incident which apparently was reported to the Judicial Technical Police. The petitioners alleged that in the context of the investigation and judicial process, the State of Bolivia failed to recognize the right to an impartial tribunal in determining the rights of MZ and the right to obtain a well-founded decision, based on the evidence in the case, in response to the parties' allegations. They further asserted that the remedies filed within the domestic jurisdiction proved to be ineffective in protecting MZ from the violations to which she had been subject and that the State had also failed to recognize her rights to a life free of violence; to physical, psychological, and moral integrity; and to protection of honor and dignity.

286. On March 11, 2008, the parties agreed to a friendly settlement of the case. In the friendly settlement agreement, the State recognized its international responsibility with regard to the case, adding that "the referenced case illustrates the situation faced by many women victims of sexual violence who have been discriminated against by the justice system in violation of the rights protected by the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women—the 'Convention of Belém do Pará'—and the American Convention on Human Rights, the 'Pact of San José, Costa Rica.'" The commitments undertaken by the parties under the friendly settlement agreement include the following:

1. The State agrees to implement within a period of one year through the Judiciary Institute of Bolivia a positive action to ensure that at least 15% of the total amount of time in its educational programs is dedicated to activities focusing on the promotion and protection of human rights with a gender approach, for which purpose it must ensure the participation of personnel who specialize in this subject.
2. Explicitly include within a period of six months in the regulations governing the procedures for evaluating sitting judges the variable "degree of knowledge of human rights, particularly issues associated with gender discrimination."
3. Within no more than two years, through an administrative act, implement dissemination on the official website of the Judiciary and the Office of the Attorney General the resumes of candidates selected to occupy vacancies, in order to ensure maximum publicity. That publication must remain for a reasonable amount of time so as to allow individuals, professional colleagues, and associations involved in sectors linked to the work of the judiciary, human rights, and other similar organizations to submit in writing and on a well-founded and documented basis to the authorized administrative authorities of the Judiciary and the Office of the Attorney General, any observations, objections, views and other circumstances they deem relevant with respect to the candidates selected.
4. The Ministry of Foreign Relations will organize a conference during 2008 on the rights of women and the Convention of Belém Do Para for judicial officials of the Supreme Court and District Superior Courts, the General Prosecutor's Office, District Prosecutors' Offices, the National Police, as well as lawyers in private practice and public defenders, ensuring the participation of the organizations acting as petitioners in the case and the Ministry of Justice and the Vice Ministry on Gender.

5. The State, through the Ministry of Foreign Relations, and the Ministry of Justice – Vice Ministry on Gender and Generational Affairs, agrees to make financial provision for editing manuals and other publications on the treatment of the victims of sexual violence, which will be given to the Judicial Branch, the General Prosecutor’s Office, the National Police, and other institutions, as a campaign to raise awareness regarding the rights of women and the effect of international treaties.

6. The State, through the Office of the Attorney General, in accordance with Art. 26 of Law 2033 on protecting victims of crimes against sexual freedom, will create within a period of two years a Specialized Unit to support the victims of sexual violence as well as to conduct investigations and take public criminal action with respect to these crimes.

7. The State, through the Office of the Attorney General – Forensic Investigations Institute – will create within a period of two years a Special Unit to develop the scientific-technical studies needed for the investigation of crimes against sexual freedom.

8. The State, through the Office of the Attorney General – Forensic Investigations Institute – agrees to make the necessary adjustments within no more than two years to ensure that the physical locations where victims of sexual violence submit their statements provide the necessary infrastructure conditions to guarantee their privacy.

287. In compliance with the friendly settlement agreement, the state adopted a series of measures focused on public policy, human rights and gender training courses for judicial officers, amending the Rules of the Judicial Service, issuing laws and creation of specialized units endowed with adequate care spaces for the development of their activities. Under this, the parties considered it had substantially met the friendly settlement agreement, except with regard to the commitments on the appointment, promotion and training of members of the judiciary of judges and prosecutors; and the creation of a specialized unit.

288. On March 26, 2014, in the context of the 150<sup>th</sup> regular session, the parties signed a memorandum of understanding in order to make total compliance with the friendly settlement agreement contingent on the following two commitments:

1. With regard to the package of commitments related to the appointment, promotion, and training of judges and prosecutors who are members of the judiciary, the parties agreed they would consider it to have been satisfied upon approval of the draft regulations for the judicial career, regarding which the petitioners made observations during the meeting held by the parties on February 20, 2014, in the city of La Paz. The State will inform the petitioners regarding the results of its efforts to incorporate those observations.

2. With regard to the commitment on the creation of a Specialized Unit, the parties agreed that it would be considered satisfied upon the State’s delivery to the petitioners of the list of personnel in the Victims Support Unit of Cochabamba, indicating the functions they perform. For their part, the petitioners offered to conduct training on gender issues for said personnel.

289. The Commission observed and valued the measures adopted by the State to comply with the two items aforementioned. Through its Friendly Settlement Report No. 103/14, the Commission approved the terms of the agreement and recognized the State of Bolivia’s total compliance with the commitments it had made, pursuant to the request made by the petitioner as per the fifth clause in that agreement.

290. The Commission reiterates its profound appreciation for the efforts made by the parties and its satisfaction at the total compliance with the friendly settlement agreement in this case.

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

291. In Report No. 54/01 of April 16, 2001, the Commission concluded that (a) the Federative Republic of Brazil was responsible for violating the rights to judicial guarantees and judicial protection, guaranteed by Articles 8 and 25 of the American Convention, in keeping with the general obligation to respect and ensure the rights provided for in Article 1(1) of that instrument, due to the unwarranted delay and negligent processing of this case of domestic violence in Brazil; (b) the State had taken some measures aimed at reducing the scope of domestic violence and state tolerance of it, although those measures have not succeeded in significantly reducing the pattern of state tolerance, in particular in the wake of the ineffectiveness of police and judicial action in Brazil, with respect to violence against women; and (c) the State had violated the rights and failed to carry out its duties as per Article 7 of the Convention of Belém do Pará to the detriment of Ms. Fernandes; and in connection with Articles 8 and 25 of the American Convention and in relation to its Article 1(1) for its own omissions and tolerance for the violence inflicted.

292. The IACHR made the following recommendations to the Brazilian State:<sup>55</sup>

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

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<sup>55</sup> The IACHR notes that it had previously considered recommendations Nos. 1 and 3 to have been fully discharged, in its Annual Report of 2008 (IACHR. *Annual Report 2008*. Chapter III.D, paras. 101 and 103).



- f. The provision of information to the Inter-American Commission on Human Rights within sixty days of transmission of this report to the State, and of a report on steps taken to implement these recommendations, for the purposes set forth in Article 51(1) of the American Convention.

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

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

295. The State also informs that upon the launching of the *Pacto Nacional de Enfrentamento à Violência contra a Mulher*, in August of 2007, the attention of women in situations of violence was selected as a one of the two axis of attention of the State of Brazil. Within this axis, there has been the creation of a network to improve the quality of attention offered to women victims of violence. The SPM is currently employing a number of efforts to monitor the workings of the network. The State also mentions significant efforts to strengthen the *delegacias especializadas no atendimento á mulher* and to implement a national database of statistics related to domestic and family violence, among other measures. The State finally reiterates that the *Lei Maria da Penha* constitutes the north of the actions implemented to address violence against women within the III National Plan of Policies towards Women (2013-2015). For these reasons, the State considers it has implemented all of the recommendations issued by the Commission.

296. The petitioners presented information on November 25, 2013, and previously submitted relevant information this year on February 6, 2013. In regards to recommendation 2, the petitioners indicate that the judicial process undertaken under the framework of the *Conselho Nacional de Justiça* (CNJ) concerning this case, did not pronounce on responsibilities related to irregularities and delays in the course of the criminal process against the aggressor of Maria da Penha Maia Fernandes. At the request of the victim, a new process was undertaken in the context of the CNJ in September of 2009, in order for the irregularities to be effectively investigated. In its last communication, the State of Brazil informed that an additional process was opened under the CNJ to determine responsibilities for the irregularities and delays in the criminal process, which the petitioners claim was archived on June 11, 2013, according to information

available electronically. The petitioners indicate that access to the files concerning this last process requires that Ms. Penha travels to Brasilia personally, which is challenging for her due to the results of the domestic violence she suffered. Therefore, they request that the Commission asks the State of Brazil to forward the decision undertaken in the realm of said process. In summary, they consider that recommendation 2 is still pending compliance after 12 years of the approval of the merits report from the Commission.

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

298. On December 9, 2014 and on September 2, 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. As of the time of this report, no updated information has been received from the State or from the petitioners. In this regard, the Commission invites the parties to submit additional information on the State's compliance with the remaining recommendations.

299. Therefore, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

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

1. That it carry out a serious, impartial, and effective investigation into the facts and circumstances of the deaths of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, and of the assaults on and attempted homicides of Cláudio Aparecido de Moraes, Celso Bonfim de Lima, Marcos Almeida Ferreira, and Carlos Eduardo Gomes Ribeiro, and that it duly prosecute and punish the persons responsible.

2. That such investigation include the possible omissions, negligence, and obstructions of justice that may have resulted from the failure to convict the persons responsible in a final

judgment, including the possible negligence and mistakes of the Public Prosecutor's Office and of the members of the judiciary who may have decided to waive or reduce the corresponding sentences.

3. That the necessary measures are taken to conclude, as soon as possible and in the most absolute legality, the judicial and administrative proceedings regarding the persons involved in the above-noted violations.

4. That the Brazilian State makes reparation for the consequences of the violations of the rights of the victims and their families or those who hold the right for the harm suffered, described in this report.

5. That the necessary measures be taken to abolish the jurisdiction of the military justice system over criminal offenses committed by police against civilians, as proposed by the original bill, introduced in due course, to repeal Article 9(f) of the Military Criminal Code, and to approve, to take its place, the single paragraph proposed in that bill 27.

6. That the Brazilian State takes measures to establish a system of external and internal supervision of the military police of São Paulo that is independent, impartial, and effective.

302. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners presented their response to the request for information of the IACHR on December 4, 2013. In regards to recommendation 1, the petitioners indicated that as to the criminal process related to Aluísio Cavalcanti, after seven extensions, a sentencing hearing of Robson Bianchi and Luiz Fernando Goncalves, was held on April 25, 2012, before the IV Judicial Tribunal of Sao Paulo. They were absolved in said instance, and an appeal was presented, which is currently pending a resolution.

303. On December 9, 2014 and on September 2, 2015, the IACHR requested updated information from both parties on the fulfillment of the aforementioned recommendations, in keeping with Article 48(1) of its Rules of Procedure. As of the time of this report, no information has been received from the State or from the petitioners. In this regard, the Commission invites the parties to submit additional information on the State's compliance with the remaining recommendations.

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

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

305. In Report No. 23/02 of February 28, 2002, the Commission concluded that the Federative State of Brazil was responsible for violating the right to life (Article 4) of Mr. Diniz Bento da Silva, which occurred in the state of Paraná on March 8, 1993, and for violating the right to judicial guarantees (Article 8), the right to judicial protection (Article 25), and the right to obtain guarantees and respect for the rights spelled out in the Convention (Article 1.1).

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

1. Conduct a serious, effective, and impartial investigation through the ordinary justice system to determine and punish those responsible for the death of Diniz Bento da Silva, punish those responsible for the irregularities in the investigation by the military police, as well as those responsible for the unjustifiable delay in conducting the civil investigation, in accordance with Brazilian law.

2. Take the necessary steps to ensure that the victim's family receives adequate compensation for the violations established herein.

3. Take steps to prevent a repetition of such events and, in particular, to prevent confrontations with rural workers over land disputes, and to negotiate the peaceful settlement of these disputes.

307. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On June 12, 2014, the petitioners submitted their reply. With respect to recommendation 1, they indicated that the State has not yet complied because the Court of Justice of the State of Paraná has decided to shelve the case on the grounds that the military justice system has already determined the innocence of the accused. They reported that the Office of the State's Public Prosecutor will appeal the Court's decision before the Supreme Court of Justice, considering the irregularities in the investigation conducted by the military justice system. Furthermore, the petitioners said that the State has not complied with the other two recommendations. They reiterated, therefore, that the State continues to ignore violence against defenders of the rights of persons involved in the land dispute.

308. On December 5, 2014 and on September 2, 2015, the IACHR requested updated information from both parties, but, as of the time of this report, no information has been received from the State or from the petitioners. In this regard, the Commission invites the parties to submit additional information on the State's compliance with the remaining recommendations.

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

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

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

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

1. That it adopts the legislative measures needed to transfer to the regular criminal courts the trial of common crimes committed by military police officers in the performance of their public order functions.

2. That use of the cells designed for solitary confinement (*celdas fortes*) be discontinued.

3. That it punish, in keeping with the gravity of the crimes committed, the civilian and military police officers involved in the facts that gave rise to the instant case.

4. In those cases in which it has not done so, that it pay fair and adequate compensation to the victims' next-of-kin for the harm caused as a result of the breaches of the above-mentioned provisions.

312. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On December 17, 2013, the petitioners submitted their reply. With respect to recommendation 1, they noted that federal law

9.299/96 transferred to the ordinary criminal justice system the prosecution of intentional homicide committed by military police in the exercise of their public functions. However, they criticized the fact that common crimes remain under the jurisdiction of the military justice system and that the military police, rather than civilian police, have competence to investigate common offenses and homicides.

313. The petitioners stated that they had not received information on the deactivation of isolation cells. As for the obligation to make reparations, they reported that some relatives of the victims had not yet been identified or located and therefore have not received compensation for the damages caused. In connection with recommendation 3, they pointed out that either all the defendants had been absolved or the investigations had been closed.

314. On December 5, 2014 and on September 2, 2015, the IACHR requested updated information from both parties, but, as of the time of this report, neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. In this regard, the Commission invites the parties to submit additional information about the State's compliance with the remaining recommendations.

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

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

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

317. Pursuant to that agreement, the State undertook to:<sup>56</sup>

1. Publicly recognize its responsibility by the solemn act of creating the National Commission for the Eradication of Slave Labor – CONATRAE (created by Presidential Decree of July 31, 2003), which will take place on September 18, 2003.
2. Keep under reserve the identity of the victim at the moment of the solemn act recognizing State responsibility and in public declarations about the case.
3. Continue with the efforts to carry out the judicial arrest warrants against the persons accused of the crimes committed against José Pereira. To this end, the friendly settlement agreement will be forwarded to the Director-General of the Department of the Federal Police.
4. Compensate José Pereira for material and moral damages suffered.
5. Implement the actions and proposals for legislative changes contained in the National Plan for the Eradication of Slave Labor, drawn up by the Special Commission of the Council for the Defense of Human Rights, and initiated by the Government of Brazil on March 11, 2003, in order to improve the National Legislation aimed at prohibiting the practice of slave labor in Brazil.

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<sup>56</sup> Regarding points 1, 2, and 4 of the referenced friendly settlement agreement, the Commission already considered those obligations to have been fully discharged (IACHR. *Annual Report 2008*. Chapter III.D, para. 137).

6. Make every effort to secure the legislative approval (i) of Proposed Law No. 2130-A, of 1996, which includes among the violations of the economic order the use of “unlawful means of reducing production costs such as the non-payment of labor and social taxes, exploitation of child, slave, or semi-slave labor”; and (ii) the version presented by the Deputy Zulaiê Cobra to take the place of the proposed law No. 5,693 of Deputy Nelson Pellegrino, which amends Article 149 of the Brazilian Criminal Code.
  7. Defend the establishment of federal jurisdiction over the crime of reduction to conditions analogous to slavery, for the purpose of preventing impunity.
  8. Strengthen the Public Ministry of Labor; ensure immediate compliance with the existing legislation, by collecting administrative and judicial fines, investigating and pressing charges against the perpetrators of the practice of slave labor; strengthen the Mobile Group of the MTE; take steps along with the Judiciary and its representative entities to guarantee that the perpetrators of the crimes of slave labor are punished.
  9. Revoke, by the end of the year, by means of the appropriate administrative acts, the Cooperation Agreement signed between the owners of estates and authorities of the Ministry of Labor and Public Ministry of Labor, signed in February 2001, and which was denounced in this proceeding on February 28, 2001.
  10. Strengthen gradually the Division of Repression of Slave Labor and Security of Dignitaries (STESD), established under the Department of the Federal Police by means of Administrative ruling (*Portaria*)-MJ No. 1,016, of September 4, 2002, so as to give the Division adequate funds and human resources for the proper performance of the functions of the Federal Police in the actions to investigate reports of slave labor.
  11. Take initiatives *vis-à-vis* the Federal Public Ministry to highlight the importance of Federal Prosecutors according priority to participating in and accompanying the actions to perform inspections for slave labor.
  12. Undertake in October 2003 a national campaign to raise awareness of and oppose slave labor with a particular focus on the state of Pará. On this occasion, through the presence of the petitioners, publicity will be given to the terms of this Friendly Settlement Agreement. The campaign will be based on a communication plan that will include the preparation of informational materials geared to workers, inserting the issue in the media through the written press, and through radio and TV spots. In addition, various authorities are to make visits to the targeted areas.
  13. Evaluate the possibility of holding seminars on the eradication of slave labor in the state of Pará no later than the first half of 2004, with the presence of the Federal Public Ministry, ensuring that the petitioners are invited to participate.
318. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned agreement, pursuant to Article 48.1 of its Rules of Procedure. Information has been received from both parties this year relevant to compliance with the friendly settlement agreement in the aforementioned case.
319. The Commission first notes information presented by the State relevant to compliance with the above-referenced agreement and the dispositions contained therein on January 2, 2013. In the mentioned documentation, the State described the measures it has adopted aimed at strengthening the legal framework to combat slave labor, including the Constitutional Amendment proposal (PEC) 458/2001, which is still waiting for a vote by the Chamber of Deputies; the decision to establish a Parliamentary Inquiry Commission (CPI) to investigate the situation of slave labor in Brazil, on February 3, 2012; as well as several bills related to slave labor currently under consideration by the Federal Legislature (PL 5016/2005, which aims at

reforming the Penal Code regarding the punishment for slave labor; PL 169/2009, which aims at prohibiting Brazilian enterprises from signing contracts with companies that exploit degrading labor abroad; PL 603/2011, which relates to labor conditions in coal mines; and PL 1515/2011, which aims at impeding that public spaces of any nature be named after people notoriously involved in the exploitation of slave labor).

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

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

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

323. In response to the request for information, dated October 9, 2013, sent by the IACHR to both parties, the petitioners submitted their reply on December 18, 2013. They reiterated that they still have no information on the fulfillment of recommendations 3, 8, 9, 10, 11, 12, and 13 by the State. They also reaffirmed the information and concerns presented the year before regarding legislative reform. And they expressed concern regarding draft law 3842/2012, which would define slave labor in terms that are incompatible with ILO standards and human rights standards in general.

324. On December 5, 2014 and on September 2, 2015, the IACHR requested updated information from both parties, but, as of the time of this report, no information has been received. In this regard, the Commission invites the parties to submit additional information on the State's compliance with the remaining recommendations.

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

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

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

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

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

328. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On December 9, 2014 and on September 2, 2015, the request for information was resent. However, as of the time of this report, no information has been received from the State or from the petitioners. In this regard, the IACHR notes that the last information submitted by the State was on February 9, 2012, and therefore urges the parties to submit information about the points pending compliance.

329. Based on these considerations, the Commission reiterates that the aforementioned recommendations remain pending, reason why it is concluded that the compliance with the recommendations is partial. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

330. In Report No. 33/04 of March 11, 2004, the Commission concluded that: (a) the State of Brazil was responsible for the violation of the rights to personal liberty, humane treatment, life, special measures of protection for children, judicial protection, and judicial guarantees, enshrined, respectively, in Articles 7, 5, 4, and 19, to the detriment of Jailton Neri da Fonseca, and in Articles 25 and 8 of the American Convention in conjunction with Article 1(1) to the detriment of his next-of-kin; and that (b) the State violated its duty to adopt provisions of domestic law, in the terms of Article 2 of the American Convention, and also violated the obligation imposed on him by Article 1(1) to respect and ensure the human rights enshrined in the Convention.



331. The Commission made the following recommendations to the State:<sup>57</sup>

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

332. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On February 7, 2014, the petitioners submitted their reply. With respect to recommendation 2, they indicated that the State has not reported on the investigation of the facts and that the police officers involved in the crime are still working under their regular status.

333. Concerning recommendation 4, they noted that federal law 9.299/96 transferred to the ordinary criminal justice system the prosecution of intentional homicide committed by military police in the exercise of their public functions. However, they criticized the fact that common crimes remain under the jurisdiction of the military justice system and that the military police, rather than civilian police, have competence to investigate common offenses and homicides.

334. In addition, the petitioners reported that they have not received information on the fulfillment of recommendations 5 and 6 by the State. They also expressed concern over the high levels of abuse by police and of institutionalized racism. They reported that, in Brazil, persons of African descent are murdered 150% as often as persons not of African descent.

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<sup>57</sup> Regarding recommendations Nos. 1 and 3, as indicated in the 2009 Annual Report of the IACHR, both parties agreed that there had been compliance (IACHR. *Annual Report 2009*. Chapter III.D, para. 181).

335. On November 24, 2014 and September 2, 2015, the IACHR requested information from the parties regarding compliance with the above-mentioned recommendations, in keeping with Article 48(1) of its Rules of Procedure. Nevertheless, as of when this report was finalized no information has been received either from the State or the petitioners. Thus, the Commission invites the parties to submit additional information on the State's compliance with the remaining recommendations.

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

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

337. In Report No. 66/06 of October 21, 2006, the IACHR concluded that the State of Brazil was responsible for violating the human rights to equality before the law, judicial protection, and judicial guarantees, enshrined, respectively, in Articles 24, 25, and 8 of the American Convention, to the detriment of Simone André Diniz, a victim of racial discrimination. In addition, the Commission determined that the State had violated the duty to adopt provisions of domestic law, in the terms of Article 2 of the Convention, and also in violation of the obligation imposed by Article 1(1) to respect and ensure the rights enshrined in that instrument.

338. The Commission made the following recommendations to the State of Brazil:<sup>58</sup>

1. Fully compensate the victim, Simone André Diniz, in both moral and material terms for human rights violations as determined in the report on the merits, and in particular,
2. Publicly acknowledge international responsibility for violating the human rights of Simone André Diniz;
3. Grant financial assistance to the victim so that she can begin or complete higher education;
4. Establish a monetary value to be paid to the victim as compensation for moral damages;
5. Make the legislative and administrative changes needed so that the anti-racism law is effective, in order to remedy the limitations indicated in paragraphs 78 and 94 of this report;
6. Conduct a complete, impartial and effective investigation of the facts, in order to establish and sanction responsibility with respect to the events associated with the racial discrimination experienced by Simone André Diniz;
7. Adopt and implement measures to educate court and police officials to avoid actions that involve discrimination in investigations, proceedings or in civil or criminal conviction for complaints of racial discrimination and racism;
8. Support a meeting with organizations representing the Brazilian press, with the participation of the petitioners, in order to draw up an agreement on avoiding the publicizing of complaints of racism, all in accordance with the Declaration of Principles on Freedom of Expression;

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<sup>58</sup> With regards to recommendations 1, 2 and 4, as indicated in the IACHR annual report of 2009, both parties coincided that they had been complied with (IACHR, Annual Report 2009, Chapter III.D, para. 187). In 2011, the petitioners specified that they consider recommendation 12 fully complied with.

9. Organize government seminars with representatives of the judicial branch, the Public Ministry and local Public Safety Secretariats in order to strengthen protection against racial discrimination or racism;
10. Ask state governments to create offices specializing in the investigation of crimes of racism and racial discrimination;
11. Ask Public Ministries at the state level to create Public Prosecutor's Offices at the state level specializing in combating racism and racial discrimination;
12. Promote awareness campaigns against racial discrimination and racism.

339. On December 20, 2013, the petitioners submitted their reply to the request for information sent by the IACHR on October 7, 2013. The petitioners indicated that the situation of Simone André Diniz had not changed and that the State had not complied with the recommendations. They say, furthermore, that the State's failure to fulfill recommendation 3 hindered the victim's access to education. They note as a weakness of Brazilian criminal law the fact that it permits race-based offenses to be characterized as "racial insults." They also reported that the criminal investigation into the case had been shelved.

340. On December 9, 2014, the IACHR requested updated information from both parties on the fulfillment of the aforementioned recommendations. On December 17, 2014, the State presented its reply. On recommendation 3, it submitted a certificate testifying to a full scholarship for the victim to study at Guarulhos University ("*Ofício da Reitoria* nº 15/2014") as stipulated. With respect to recommendation 5, it pointed to the adoption of the Racial Equality Statute ("*Estatuto da Igualdade Racial*", Act 12.288/2010) and of Act 14.187 of the State of São Paulo against racial discrimination. The IACHR notes the progress made in terms of government policies, awareness campaigns, and assistance programs at the federal and state levels, but urges the State to report on how that progress has affected the effective application of the antiracism law. In this regard the IACHR 2014 Annual Report took note of the progress made in public policies, awareness campaigns, and federal and state assistance programs, while urging the State to report on the concrete impact of such progress on the effective enforcement of the anti-racism law. Furthermore, the Commission reiterated its concern for the failure to conduct a thorough, impartial, and effective investigation of the facts.

341. The IACHR reiterates that for the preparation of the 2009 Annual Report, both parties reported that with respect to recommendations Nos. 1, 2, and 4, the victim received R\$36,000 (thirty-six thousand *reais*) in compensation on March 18, 2008 for moral and material damages; and that the Governor of São Paulo publically acknowledged in a ceremony held on December 19, 2007 responsibility for violation of the victim's human rights. Furthermore, the State had indicated in 2009, that it had fully complied with Recommendation No. 12 with the campaign "Racism: if you don't report it, who will?," launched by the Government of São Paulo May 13, 2009, in addition to three national awareness campaigns sponsored by the Federal Government in 2008. At the same time, the IACHR notes that the petitioners reiterated in a communication received on December 23, 2013, that most of the recommendation had yet to be fully complied with, excepting Recommendations 1, 2, 4, and 12. The IACHR therefore declares that Recommendations 1, 2, 4, and 12 have been fully complied with.

342. On November 24, 2014, the IACHR requested information from both parties regarding compliance with the above-mentioned recommendations, in keeping with Article 48(1) of its Rules of Procedure. The petitioners did not furnish the information requested.

343. For its part, the State submitted its response on December 17, 2014. In relation to recommendation No. 3, the Brazilian Government highlighted that, through the Note from the Dean Nº 15/2014, dated September 17, 2014, the Dean of the University of Guarulhos, Luciane Lucio Pereira, reported that at the behest of the Government of Brazil, a scholarship was given to Mrs. Simone André Diniz for the Nutrition Course chosen by the victim, after her approval in the selection process. For this reason, the

Government reiterated its request that the petitioner directly inform the victim about the educational options at said institution, or that her contact information be provided to the State for purposes of notifying her.

344. As regards Recommendation No. 5, the State reiterated the information about approval of the Racial Equality Act (Law 12.288 of July 20, 2010) and Law No 14 187 2010 of the State of Sao Paulo, highlighting that the creation of the Office of the President's Secretariat for Policies to Promote Racial Equality in 2003 represented a great step forward for adopting measures to turn the tide on inequality, such as the quotas in education and public service, the implementation of the Comprehensive Health Program for the Black Population, the plan for young people *Plano Juventude Viva*, among others. It is worthwhile underscoring that the Racial Equality Act envisages the implementation of affirmative action programs in diverse public and private sectors. This Act provides for the creation of the National System to Promote Racial Equality, whose aim is to decentralize racial equality policies. In order to reduce violence against black youth, the Federal Government implemented in September 2012 the *Plano Juventude Viva*, which consists of preventive measures to reduce vulnerability of these youth. As for the topic of domestic work, Constitutional Amendment No. 66 was approved, which ensures 17 new rights for domestic workers, broadening guarantees in a sector of the economy that is mostly made up of women of African descent.

345. Regarding recommendation No. 6, the State reinstated the informed in reports previously presented before the IACHR, indicating that under the procedural legislation of the State, the investigation may only be reopened if the authorities have knowledge of new facts or evidence; the State added that the issue was submitted to the Fifth Prosecution Office, that revised the information and established that the investigation had to be archived again, due to the lack of new evidence. In that sense, the State reiterated that it has promoted the measures and norms acceptable, legally and constitutionally, and that it would be impossible to re open an investigation under the current legal conditions.

346. With regard to Recommendations Nos. 7 y 9, the State reaffirms what it stated in its 2009 and 2010 reports on the training that is being undertaken as part of the *Plano Juventude Viva*, already mentioned above.

347. As for Recommendation No. 8, the State affirms that compliance therewith is directly related to the response to Recommendation No. 12 on publication initiatives and awareness campaigns aimed at protection and promotion, adding that is open to dialogue with the petitioners to create new strategies and other initiatives they believe are necessary.

348. In relation to Recommendations Nos. 10 and 11, the Brazilian State reiterated the information regarding the collaboration between the Attorney General and the Ombudsman of Sao Paulo to establish a cooperation system in cases where human rights violations are reported. Although there is no specific prosecutor for cases of racism, the Brazilian State highlights the excellent work that has been done in the fight against all forms of discrimination against people of African descent.

349. On September 2, 2015, the IACHR requested updated information from both parties. As of the date this report was prepared, this information had not been received.

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

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

351. In Report No. 35/08 of July 18, 2008, the IACHR concluded that the Brazilian State had violated Mr. Antônio Ferreira Braga's rights to personal integrity, to personal liberty, to due process and to judicial protection, which are recognized in articles 5, 7, 8(1) and 25 of the American Convention, pursuant to the general obligations set forth under Article 1(1) of said Convention, and had failed to comply with its obligation to prevent and punish all acts of torture committed within its jurisdiction, as set forth in Articles 1, 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture.

352. The Commission made the following recommendations to the Brazilian State:

1. That it adopt the necessary measures to give legal effect to the obligation to effectively investigate and punish those who unlawfully detained and tortured Antonio Ferreira Braga; in this regard, the State must ensure due criminal process so as to prevent the statute of limitations from being invoked as grounds for annulling criminal punishment for crimes such as torture, and from any unjustified procedural delays in this regard.
2. That it open an investigation to determine the civil and administrative responsibility for the unreasonable delay in the criminal proceeding regarding the torture inflicted on Antonio Ferreira Braga, especially among those judicial authorities who had knowledge of the file, in order to appropriately punish those who are found to be responsible, with a view to determining whether said judicial authorities acted with negligence.
3. That it make appropriate reparations to Antonio Ferreira Braga for the above-cited violations of his human rights, including the payment of reparations.
4. That it provide training to Civil Police officers to provide them with basic knowledge regarding the fundamental rights enshrined in the American Convention, particularly with respect to proper treatment.

353. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On February 3, 2014, the petitioners submitted their reply. Concerning recommendation 1, they reported that they have not received information on measures to effectively investigate and punish the persons responsible for illegally detaining and torturing the victim. They also reported that the statute of limitations continues to be cited as grounds for the expiration of criminal liability for crimes such as torture.

354. They state that they have not received information on the fulfillment of recommendations 2 and 3. With respect to recommendation 4, they noted the adoption of act 12847/2013, which established the National System to Prevent and Combat Torture, but said they have no knowledge of any civilian police training.

355. On December 5, 2014 and on September 2, 2015, the IACHR requested updated information from both parties, but, as of the time of this report, no information has been received. In this regard, the Commission invites the parties to present additional information on the State's compliance with the remaining recommendations.

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

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

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

358. Based on the analysis and conclusions of Report 25/09, the Inter-American Commission recommended to the Brazilian State that it:

1. Conduct a complete, impartial, and effective investigation of the incident, with a view to identifying and punishing the material and intellectual perpetrators of Sebastião Camargo Filho's murder.
2. Make full amends to the next-of-kin of Sebastião Camargo Filho, including both moral and material damages, for the human rights violations identified in this report.
3. Adopt, on a priority basis, a global policy for eradicating rural violence, including preventive measures and measures to protect communities at risk, and stronger measures to protect leaders of movements working for the equitable distribution of rural land.
4. Adopt effective measures to dismantle illegal armed groups involved in conflicts related to land distribution.
5. Adopt a public policy to tackle the impunity surrounding violations of the human rights of individuals involved in agrarian conflicts and seeking the equitable distribution of land.

359. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State submitted information on December 27, 2013. It said the investigation is being conducted in a complete, impartial, and effective manner. It reported that the defendants were tried, with public participation in the form of juries, and that their decisions were respected. It also explained that reparations had not yet been made, but a working group was to handle the matter.

360. The IACHR takes note of the public campaigns, the programs at the federal and national levels, and the police reform designed to protect human rights defenders in the context of rural land distribution and to promote their rights.

361. However, the information submitted by the petitioners in 2013, 2014, and 2015 contrasts with what was presented by the State. They alleged that the investigation was flawed in various ways, such as the lack of charges against dozens of persons allegedly involved in committing the crime. Regarding the State's liability for reparations, on one hand they confirmed the good will of the State and reported that they had already agreed on the figure proposed by the working group. On the other hand, they reported that payment had not yet been made and there were problems with the way in which the payment was going to be made and the right to legal fees. Furthermore, they reiterated that there had been no positive changes in the situation of human rights defenders involved in land disputes.

362. On September 18, 2015, the IACHR requested updated information from both parties. As of the date this report was prepared, no information had been received from either party.

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

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

364. In Report No. 26/09 of March 20, 2009, the IACHR concluded that the Brazilian State is responsible for the death of Wallace de Almeida, a poor young man of African descent who resided in a marginal area who was wounded by police agents and then bled to death without having been assisted by those agents; that racial and social considerations came into play in this case; that the investigation into the

case was very poor; that it did not meet the requirements of due diligence, to the point that even on the date of the report, it continued at a standstill and unfinished, it not being possible to file charges against anyone responsible for committing the crimes.

365. As of result of those facts, the Inter-American Commission found violations of the rights to life, humane treatment, judicial guarantees, equality, and judicial protection, enshrined respectively at Articles 4, 5, 8, 24, and 25 of the American Convention. State responsibility for violations of Articles 4, 5, and 24 of the American Convention has been to the detriment of Wallace de Almeida, whereas in relation to the violations of Articles 8 and 25, in conjunction with Article 1(1) of the American Convention, the violations run to the detriment of his next-of-kin. The Inter-American Commission also determines that there were violations of the obligations imposed by the American Convention at its Article 1(1) to respect and ensure the rights enshrined therein; at Article 2, which establishes the duty to adopt provisions of domestic law for the purpose of upholding the rights contained in the American Convention; and at Article 28, regarding the obligation of both the federal State and the state of Rio de Janeiro to implement the provisions of the American Convention.

366. Based on its analysis and the conclusions of the instant report, the Inter-American Commission on Human Rights made the following recommendations to the Brazilian State:

1. That a thorough, impartial and effective investigation of the facts, be conducted by independent judicial bodies of the civilian/military police, in order to establish and punish those responsible for the acts involved in the murder of Wallace de Almeida, and the impediments that kept both an effective investigation and prosecution from taking place.
2. Fully compensate the relatives of Wallace de Almeida both morally and materially for the human rights violations established in this report, and in particular,
3. Adopt and implement the measures needed for effective implementation of the provision in Article 10 of the Brazilian Code of Criminal Procedure,
4. Adopt and implement measures to educate court and police officials to avoid actions involving racial discrimination in police operations, in investigations, in proceedings and in criminal convictions.

367. On October 7, 2013, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners presented their response to the request for information of the IACHR on December 6, 2013. The petitioners indicate that the context of police violence and summary executions has not changed in Rio de Janeiro since the murder of Wallace de Almeida in 1998. They indicate that statistics show that there are still 2.4 deaths per day at the hands of the security forces in Brazil. Police violence and the use of lethal force as a systematic violation of human rights is common, and evidences the preservation of the security system used in the 1990's. For example, the project launched on 2008 to create *Unidades de Policia Pacificadora* (UPP) across the national territory, has also been the subject of many human rights violations claims, including the description of acts of torture, execution, and forced disappearances, in areas where the UPP's operate.

368. Regarding compliance aspects with the Commission recommendations, the petitioners underscore that the State of Brazil just offered some reparations to the family of Wallace de Almeida, in the form of indemnization. The State also organized on June 25, 2009, a ceremony where the Governor of the State of Rio de Janeiro announced the payment of indemnization to the family members of Wallace Almeida and offered a formal apology. However, the petitioners consider that these measures do not constitute sufficient reparations, since the family members could not speak in the formal ceremony and the payment of indemnization is not enough to consider this aspect of the recommendations completely complied with. They also underscore that after 15 years of the murder of Wallace de Almeida, the military police officers who perpetrated these acts have not been judicially sanctioned and they still serve in the police forces. They remark irregularities and delays in the investigations of these types of executions, including that of Wallace

de Almeida, and the fact that most of them remain in impunity. They also underscore a pronouncement from the United Nations Committee on the Elimination of Racial Discrimination describing the influence of racial discrimination in the criminal law system in Brazil, and how the creation and existence of the *Secretaria Especial de Políticas de Promoção Racial* is not sufficient to resolve the problem of racism in the country. Therefore, they consider that the State of Brazil has not duly complied with the recommendations in Report No. 26/09.

369. On December 9, 2014, the IACHR requested updated information from both parties on the fulfillment of the aforementioned recommendations. On January 12, 2015, the petitioners submitted their reply, in which they reiterated that the State only offered reparations to the family of the victim and was still not fulfilling the recommendations of this Commission. Specifically regarding recommendations 1 and 3, the petitioners indicated that there were several deficiencies in the investigations that did not meet the human rights international standards, such as: a) the fact that the reconstruction of the crime happened only eight years after the facts; b) a denounce for murder against a police officer was made only after 12 years of the facts; and c) the delays in the scheduling of the Court which was re scheduled three times. The petitioners point out that the absence of justice and the fact that the police officers allegedly involved in the facts of the case are still part of the police constitute a serious problem that allows impunity. According to the petitioners, the impunity of the police officers has been seen as part of the dominant cultural in Brazil. They alleged that the alleged head of the group that executed Wallace, was promoted in 2009, hence now he is a Major within the police. According to the petitioners, currently, this police officer is part of the Elite Squad of the Military Police, and he is responsible for operations within the community, which led to summary executions and brutality. Regarding the recommendation on training of State agents, the petitioners claim that racism still constitutes the main reason for the violation of human rights by the court and police officials against African descents. The petitioners consider that it is fundamental that the government continues to create and implement public policies to address the issue of racial discrimination.

370. On September 18, 2015, the IACHR requested updated information from both parties. At the time this report was prepared, no information had been received from either party.

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

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

372. In Report No. 37/10 of March 17, 2010, the IACHR concluded that the Brazilian State was responsible for violating, to the detriment of Mr. Manoel Leal de Oliveira and his family members, the rights to life, freedom of thought and expression, due process, and judicial protection, as established in Articles 4, 13, 8 and 25, respectively, of the American Convention, all in connection with the obligation imposed by Article 1.1 of the same instrument.

373. The Inter-American Commission made the following recommendations to the Brazilian State:<sup>59</sup>

1. Recognize its international responsibility for the violations of human rights established in this report by the Inter-American Commission;
2. Conduct a thorough, impartial, and effective investigation into the events, so as to identify and punish all of the material and intellectual authors of the murder of Manoel Leal de Oliveira;

<sup>59</sup> With regards to recommendations 1 and 4 as indicated in the IACHR annual report of 2012, the petitioners specified that they consider these recommendations fully complied with (IACHR, Annual Report 2012, Chapter III.D, para. 328).



3. Conduct a thorough, impartial, and effective investigation into the irregularities that occurred throughout the police investigation of the homicide of Manoel Leal de Oliveira, including actions to impede the identification of its material and intellectual authors;
4. Make reparations to the family of Manoel Leal de Oliveira for the damages suffered. Such reparation should be calculated in keeping with international parameters, and must be in an amount sufficient to compensate the material and moral damages suffered by the victim's family members;
5. Adopt, on a priority basis, a global policy of protecting the work of journalists and centralize, as a matter of public policy, efforts to combat impunity for the murders, attacks, and threats perpetrated against journalists, through exhaustive and independent investigations of such occurrences and the punishment of their material and intellectual authors.

374. On October 7, 2013, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners presented their response to the request for information of the IACHR on November 1, 2013. They consider that the State of Brazil has yet to comply with the recommendation to reopen the case related to the murder of Manoel Leal de Oliveira and to identify and sanction its intellectual authors. They also informed that in October 18, 2012, the *Conselho de Defesa dos Direitos da Pessoa Humana* adopted resolution number 7, in which it created a working group related to human rights and communication professionals in Brazil, with the goal of analyzing the current context related to this issue and to propose actions to prevent violence against these professionals. By means of resolution number 6, adopted by the *Secretaria de Direitos Humanos da Presidência da República*, it recommended the special protection of journalists and communication professionals while covering protests and included directives related to the use of less lethal weapons by public security forces. The *Secretaria* also organized a colloquium at the *Pontifícia Universidade Católica de Rio de Janeiro* (PUC-RJ), to discuss the security of communication professionals and the importance of eradicating impunity when they suffer violence.

375. On December 9, 2014, the IACHR requested updated information from both parties on the fulfillment of the aforementioned recommendations. On January 21, 2015, the petitioners submitted their reply, in which they reiterated that the State still has not complied with the recommendation to reopen the case on the victim's murder and to identify and punish those who planned and executed the crime. No information has been received by the State.

376. On September 3, 2015, the IACHR again requested updated information on compliance. To date, none of the parties have responded to that request. The IACHR notes that the State has not furnished any information at all since 2010, and thus invites the State to submit additional information on compliance with the remaining recommendations.

377. Bearing in mind the foregoing, the IACHR recalls as it likewise did in its 2012 Annual Report that it valued the information provided by the petitioners on December 18, 2012, which acknowledged compliance with Recommendations Nos. 1 and 4, due to the fact that on September 21, 2009, the State had acknowledged its international responsibility for the violations of rights set out in this report; and on April 7, 2010, the State made a payment of R\$100,000 (a hundred thousand reais) in damages to the victim's family.

378. For the reasons above mentioned, the IACHR considers that the State has complied with recommendations No. 1 and 4. Consequently, the IACHR concludes that the level of compliance with the recommendations of the report is partial, and will continue to follow up on the pending clauses No. 2, 3 and 5.

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

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

1. Adopt measures to identify the John Does and verify their situation and status, in order to process any outstanding claim for asylum they may wish to present;
2. Make full reparation to the John Does for the established violations, including, but not confined to material damages;
3. Adopt the necessary legislative or administrative changes to ensure that refugee claimants are afforded due process in presenting their asylum claims. If the direct back policy is continued, this would require gaining the necessary assurances from the third State's immigration officials that directed back individuals will be able to return to Canada for their scheduled refugee eligibility interviews. In the alternative, the State would need to conduct individualized assessments based on the third State's immigration law to determine whether directed back individuals would have access to seek asylum in that State and not face automatic legal bars. In those cases where there is a bar from seeking asylum, those individuals may not be directed back. Finally, any "direct back" policy shall include an individualized determination of whether there is risk of subsequent *refoulement* for any refugee claimant directed back to the third State; and
4. Adopt the necessary legislative or other measures to ensure refugee claimants have access to adequate and effective domestic remedies to challenge direct-backs before they occur.

380. On December 20, 2012, the State reported with regard to recommendations No. 1 and 2 *supra*, that it was impossible to identify John Does 1 and 2 because they have always been, and still remain, anonymous. The State mentioned, that neither the petitioners nor the Commission have provided any additional information that may assist the State to identify John Does 1 and 2. As regards John Doe 3, Canada observed that it still is not certain who he is. With respect to recommendation No. 3 *supra*, Canada explained that it had already satisfied it, since the policy of using direct backs was revised, and direct backs are now permitted only in very limited circumstances. Since said revision, the State claimed that no one arriving in Canada seeking asylum had been or would be directed back to the United States to await an interview in Canada unless the United States gave assurances that the directed back individuals would be allowed to return to Canada for their appointments. Lastly, regarding recommendation No. 4 *supra*, the State reiterated that its existing remedies are adequate and effective, thus no other measures were required to implement this recommendation.

381. On April 19, 2013, the petitioners stated that subsequent to the information submitted in its communications of September 29, 2010; May 9, 2011; and December 20, 2012, the State had not provided any new information.

382. On October 7, 2013, December 5, 2014 and on September 2, 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented any new information concerning compliance with the recommendations set forth above in the last three years.

383. The Commission reminds the State of Canada that it is its duty to adopt all measures to locate the John Does and invites the State to provide all the information regarding the actions undertaken to identify them and locate them. Base of the above mentioned, the Commission considers that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

384. In Report No. 61/01 of April 16, 2001, the Commission concluded that the Chilean State had violated, with respect to Samuel Alfonso Catalán Lincoleo, the rights to personal liberty, life, and personal security, enshrined at Article I of the American Declaration and Articles 4, 5, and 7 of the American Convention. In addition, the IACHR concluded that the Chilean State violated, to the detriment of Mr. Catalán Lincoleo's next-of-kin, the rights enshrined in Articles 8 and 25 of the American Convention, in keeping with Articles 1(1) and 2 of that instrument. In addition, the IACHR reiterated that Decree-Law No. 2,191, on self-amnesty, issued in 1978 by the past military regime of Chile, is incompatible with Articles 1, 2, 8, and 25 of the American Convention. All the foregoing was in connection with the forced disappearance of Samuel Alfonso Catalán Lincoleo, 29 years of age, who was an agricultural technical expert with ties to the Communist Party when he was detained on August 27, 1974, in his domicile in the city of Lautaro, Chile, by members of the Carabineros, soldiers, and civilians. The family members turned to the Chilean courts in 1979 with a complaint stating the facts, but the matter was archived in October 1981 by application of Decree-Law 2,191 of 1978, which ordered amnesty for the violations committed since the September 1973 coup in Chile. In 1992 an effort was made to bring a new judicial action, which culminated in November 1995 with the dismissal with prejudice by application of the self-amnesty decree-law cited above. Finally, the Supreme Court of Justice of Chile decided on a motion for cassation on the merits of the case with its ruling of January 16, 1997, which found that the legal action had prescribed.

385. The IACHR made the following recommendations to the Chilean State:

1. Establish the parties responsible for the murder of Samuel Alfonso Catalán Lincoleo through due judicial process, so that the guilty parties may be effectively punished.
2. Adapt its domestic legislation to the American Convention, for which purpose it must declare Decree-Law No. 2191 of 1978 null and void.
3. Adopt the necessary measures to ensure that the victim's next-of-kin receive adequate, timely reparations, including full satisfaction for the violations of the human rights established herein, as well as payment of fair compensation for material and nonmaterial damages caused, including pain and suffering.

386. In its 2010 Annual Report, the IACHR indicated that it considered that recommendation 3 in Report No. 61/01 had been fulfilled.<sup>60</sup>

387. By means of a note dated March 13, 2009, the Chilean State presented the following information: Regarding the first recommendation, it reported that on January 29, 2001, a complaint was filed with the Santiago Court of Appeal against Mr. Augusto Pinochet Ugarte and others for the crimes of qualified abduction, illicit association, and illegal burials of persons, including that of Samuel Catalán Lincoleo, whose proceedings were registered as No. 2182-98. On August 25, 2003, the proceedings were totally and definitively dismissed, on the grounds that the 4th Military Court of Valdivia had already established *res judicata* in connection with those same incidents. On August 31, 2005, the Ninth Chamber of the Santiago Court of Appeal, in resolving the jurisdictional consultation placed before it, upheld the definitive dismissal of the proceedings.

388. In a note dated December 30, 2010, the State observed that the Special Visiting Judge from the Temuco Appeals Court had presided over case No. 113,958 (Catalán Lincoleo), which is in the preliminary inquiry phase; no one is currently standing trial or has been convicted. The State reported that, investigative measures still need to be carried out. The State observed that in this proceeding, the Law No. 19.123

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<sup>60</sup> See IACHR, 2010 Annual Report, Chapter III, Section D: Status of Compliance with IACHR Recommendations, para 270. Available at: <http://www.cidh.oas.org/annualrep/2008sp/cap3.D.4sp.htm>

Continuation Program of the Ministry of the Interior is a coadjutor party. In subsequent communications dated January 17, 2012, January 10, 2013, and January 9, 2014, the State reiterated the aforesaid information, and indicated that the case was still in the preliminary phase, as there were pending proceedings to be completed, and the alleged perpetrators of the crimes in question had not been charged. On this point, the IACHR invites the State to include its next report specific information on the progress made with the proceedings pending in this investigation.

389. Regarding the second recommendation, related to amending its domestic law, the State reported that a congressional motion for the interpretation of Article 93 of the Criminal Code had been presented, in order to ensure compliance with the judgment of the Inter-American Court of Human Rights in the case of *Almonacid Arellano v. Chile*. That judgment by the Inter-American Court ordered the Chilean State to amend its laws so that the decree in question would not pose an obstacle for investigating and punishing those responsible for the human rights violations committed during the 1973 to 1978 period. As of the date of its communication, the State reported, the legislative bill seeking to exclude crimes against humanity and war crimes covered by international instruments ratified by Chile from statutory limitations was at its first reading in the Senate and was on the docket for examination by the Constitution, Legislation, and Justice Committee.

390. In its communication of December 30, 2010, the State reiterated this information and reported that the bill was currently in the Senate for the second reading required under the Constitution. It had been sent to the Senate on May 6, 2009. The State indicated that another bill had reportedly been introduced to establish a new mechanism of review for cases involving human rights violations. That bill was currently in its first reading. The Commission notes that the State did not report any progress made in conjunction with this recommendation in its reports of January 17, 2012 and January 9, 2014. Although earlier it had provided details on the content of the two bills in Congress, it has merely reiterated that they are still in the same situation as they were in 2010.

391. In view of the foregoing, the IACHR again observes with concern that its recommendation to the effect that the identity of the parties responsible for the murder of Samuel Alfonso Catalán Lincoleo be established has not been heeded, and that despite the amount of time that has passed, case No. 113.958 is still in the preliminary inquiry phase, and no one has thus far been brought to trial. Lastly, the Commission reiterates that despite the efforts made to adapt Chile's laws to conform to the American Convention, which is an international obligation incumbent upon the State but 171 thus far unfulfilled, in 2011 and 2012 no progress was made on the constitutional procedures required for passage of the bills that the Executive Branch introduced in 2009. Since all branches of the Chilean government have to be involved in the process of adapting domestic laws to conform to the American Convention, the legislative branch is urged to comply with the Commission's recommendations and to provide specific information on the procedures pending in Case No. 113,958 and the actions that have been taken to move this investigation forward.

392. On December 1, 2014 and on September 15, 2015, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

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

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

394. In Report No. 139/99 of November 19, 1999, the IAHCR concluded that the State violated the rights to personal liberty and humane treatment, and the right to life, of Carmelo Soria, enshrined in Article I of the American Declaration of the Rights and Duties of Man. The Commission also found that the dismissal with prejudice of the criminal charges that had been brought for the detention and disappearance of Carmelo Soria Espinoza negatively affects the right to justice of the petitioners, and as a result, the Chilean State has violated its international obligations enshrined at Articles 8 and 25, 1(1) and 2 of the American Convention;

that Decree-Law 2,191 of 1978, the self-amnesty law, is incompatible with the American Convention, which was ratified by Chile on August 21, 1990; that the judgment of the Supreme Court of Chile that finds said Decree-Law 2,191 constitutional of binding application, when the American Convention had already come into force for Chile, violates Articles 1(1) and 2 of said Convention; that the Chilean State has not carried out Article 2 of the American Convention, for it has not brought its legislation into line with the provisions of the Convention; that it has ceased to be in compliance with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons for having adopted Decree-Law 2,191 and because its administration of justice organs have not punished the perpetrators of the crimes committed against Carmelo Soria. Mr. Carmelo Soria Espinoza, 54 years of age, and a dual Spanish and Chilean national, worked as the chief of the editorial and publications section at the Latin American Demography Center (CELADE) in Chile, an entity of the Economic Commission for Latin America and the Caribbean (ECLAC), which is part of the United Nations, accordingly Mr. Soria was an international civil servant.

395. On November 19, 1999, the Inter-American Commission made the following recommendations to the Chilean State:

1. To establish the responsibility of the persons identified as guilty of the murder of Carmelo Soria Espinoza by due process of law, in order for the parties responsible to be effectively punished and for the family of the victim to be effectively ensured the right to justice, enshrined in Articles 8 and 25 of the American Convention.
2. To comply with the provisions of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, in order for human rights violations, committed against international officials entitled to international protection, such as the execution of Mr. Carmelo Soria Espinoza in his capacity as an officer of ECLAC, to be appropriately investigated and effectively punish those responsible. Should the Chilean State consider itself unable to fulfill its obligation to punish those responsible, it must, consequently, accept the authorization of universal jurisdiction for such purposes.
3. To adapt its domestic legislation to reflect the provisions contained in the American Convention on Human Rights in such a way that Decree Law No. 2.191 enacted in 1978 be repealed, in order that human rights violations committed by the de facto military government against Carmelo Soria Espinoza may be investigated and punished.
4. To adopt the necessary measures for the victim's family members to receive adequate and timely compensation that includes full reparation for the human rights violations established herein, as well as payment of fair compensation for physical and non physical damages, including moral damages.

396. On March 6, 2003, the IACHR published Report No. 19/03, which contains the agreement on implementation the parties reached with respect to Case 11.725.

397. In the terms of the agreement on implementation, the State committed to:

- a) Issue a public declaration recognizing the responsibility of the State, through the action of its agents, for the death of Mr. Carmelo Soria Espinoza.
- b) Erect a monument of remembrance to Mr. Carmelo Soria Espinoza in a location designated by his family in Santiago.
- c) Pay a single lump sum of one million five hundred thousand United States dollars as compensation to the family of Mr. Carmelo Soria Espinoza.

d) Declare that Mr. Carmelo Soria Espinoza had the status of an international official of the United Nations, assigned to the Economic Commission for Latin America, ECLAC, as a senior staff member, and that he therefore had the status of a senior international staff official.

e) Present before the Courts of Justice of Chile an application to reopen criminal proceedings that were initiated to prosecute those who killed Mr. Carmelo Soria Espinoza.

398. For their part, the petitioners agreed to:

a) Terminate the action before the Inter-American Commission on Human Rights and expressly declare that all the recommendations contained in the Commission's report 133/99 have been complied with.

b) Desist from the suit for extra-contractual liability of the State, in the case "*Soria con Fisco*" now before the Fourth Civil Court of Santiago under case N<sup>o</sup> C-2219-2000, declaring that it agrees to terminate judicial proceedings initiated and that the reparations agreed before the Inter-American Commission on Human Rights are all that will be demanded of the State and that, consequently, the family will not pursue further judicial action for State liability, whether in connection with action of its agents or for physical or non physical damages, including moral damages. An authenticated copy of the judicial decision approving the withdrawal of action must be presented before the Commission by the petitioner, for purposes of demonstrating compliance with this agreement.

399. Based on the information that the parties provided, the Commission concluded that all the commitments undertaken by the parties in Report No. 19/03 had been duly carried out<sup>61</sup>. In its 2008 Annual Report, the Commission expressed its appreciation for the efforts made by the Chilean State to comply with those commitments. At the same time, the Commission also concluded that the State had partially complied with the Commission's recommendations in Report No. 139/99, as recommendations 1, 2, and 3 of that report were still pending compliance.

400. By a communication received on June 8, 2010, the petitioners reported that on March 5, 2010, the petitioners and representatives of the Chilean Government's Human Rights Program had, in separate submissions, both asked the Supreme Court to reopen the case into the murder of Mr. Carmelo Soria. On March 29, 2010, the Special Justice of the Supreme Court, don Héctor Carreño Seaman, did not agree to the request. They added that on April 1, 2010, the Government's Human Rights Program and the petitioners both appealed that decision. On April 28, 2010, the Second Chamber of the Supreme Court confirmed the ruling. The Court therefore held that the investigation had been completed. The petitioners regretted that the Supreme Court had refused to reopen the case record, which in practice meant that the perpetrators of the murder of Carmelo Soria Espinoza never faced punishment, i.e., they enjoy complete and absolute impunity.

401. In a communication dated December 30, 2010, The State reaffirmed the information on the proceedings and current status of the case prosecuted into the murder of Carmelo Soria. As to Case No. 7981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State indicated that it had been underway since September 7, 2009, with seven defendants.

402. Concerning the second recommendation in Report No. 139/99, the State asserted that it was gathering sufficient information to enable it to fully comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. As for the third recommendation, the State observed that various alternatives had reportedly been examined, the most viable being the enactment of a law interpreting Article 93 of the Penal Code. An effort was made to reconcile non-application of the Amnesty

<sup>61</sup> See IACHR, 2008 Annual Report, Chapter III, Section D: Status of Compliance with IACHR Recommendations, paras. 189-190.

Law (DL 2191) with the institution of *res judicata* and the principle of *ne bis in idem*. As a result two bills were reportedly introduced: a) an interpretative law that brings Chilean criminal law in line with international human rights treaties, a bill that is currently in its second reading in the Senate; b) a modification that establishes a new review mechanism for cases of human rights violations, a bill that is currently in its first reading.

403. In a note dated January 18, 2012, the State reported regarding the first recommendation, on the establishment of criminal responsibility for the murder of Carmelo Soria, that in view of the refusal of the Supreme Court of Justice to reopen the preliminary inquiry, the Ministry of the Interior's Human Rights Program was taking all available legal measures to implement the Commission's recommendation, but the State did not indicate which measures. Regarding Case No. 7981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State said that it was about to be informed of the final ruling.

404. Concerning the second recommendation, the State reiterated that it was gathering information to enable it to comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. Likewise, it reiterated the information regarding the third recommendation, on the bill interpreting Article 93 of the Penal Code, which was still under consideration in Congress.

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

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

407. On January 9, 2014, the State reported that although Supreme Court Case No. 1-93 for prosecution of aggravated homicide to the detriment of the victim was initially closed, it was reopened at the initiative of the examining judge, and that the proceeding was in the preliminary investigative stage, with various investigative processes under way, but that "no further details on the case had been obtained." With regard to Case No. 7981, the State reiterated what it had stated in its earlier reports, and indicated that it was still awaiting the appeal judgment, since the Appellate Court ordered verification of new ongoing proceedings.

408. In that same communication, the State reported that no further progress had been made on the bill regarding interpretation of Article 93 of the Penal Code, which is still in the Senate, where it has remained since May 6, 2009. It further reported that neither had any headway been made with regard to the new channel for review in the case of human rights violations.

409. On December 4, 2014, the IACHR requested that the parties provide updated information on the status of compliance with the recommendations contained in Report No. 139/99.

410. On December 11, 2014, the petitioner reported on Case No. 1-93, indicating that the proceedings ordered when the preliminary inquiry was reopened were still in progress, and that on July 25, 2014 a Spanish extradition request involving several of the persons tried on the basis of the principle of territoriality had been denied (Case 624-2013). Moreover, in conjunction with Case No. 7981, petitioner

indicated that the decision of the Santiago Court of Appeals (Case No. 1233-2012) was still pending. The State, for its part, did not provide any updated information.

411. On September 15, 2015, the IACHR requested the parties to provide it with updated information on implementation of the recommendations. As at the date of this report neither of parties had furnished the information requested.

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

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

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

414. On March 11, 2004, by Report No. 30/04, the Commission approved a friendly settlement agreement in the petition of Mercedes Julia Huenteao Beroiza *et al.* In summary, the petitioners, who are members of the Mapuche Pehuenche people, from the sector known as Alto del Bío Bío, Region VIII in Chile, had made arguments regarding the State's responsibility for the development of the Ralco Hydroelectric Project, carried out by the Empresa Nacional de Electricidad S.A. (ENDESA), in the areas in which they lived.

415. According to that agreement, the State committed to the following:

1. Measures to improve the legal institutions protecting the rights of indigenous peoples and their communities, including: a) constitutional recognition for the indigenous peoples in Chile; b) ratification of ILO Convention No. 169 by Chile;
2. Measures designed to strengthen the territorial and cultural identity of the Mapuche Pehuenche people, as well as mechanisms for participation in their own development, including: a) creation of a municipality in the Upper Bío Bío sector; b) agreement on mechanisms to solve the land problems that affect the indigenous communities in the Upper Bío Bío sector; c) strengthen indigenous participation in the Upper Bío Bío Indigenous Development Area (ADI); and d) agreement on mechanisms designed to ensure the participation of indigenous communities in the management of the Ralco Forest Reserve.
3. Measures to foster development and environmental conservation in the Upper Bío Bío sector, including: a) agreement on mechanisms to ensure that indigenous communities are informed, heard, and taken into consideration in follow-up and monitoring of the environmental obligations of the Ralco Hydroelectric Project; b) strengthen economic development in the Upper Bío Bío sector, in particular in its indigenous communities, through mechanisms that are acceptable to the petitioners; c) agree on mechanisms to facilitate and improve tourism development of the reservoirs in the Upper Bío Bío for the benefit of the indigenous communities; and d) agree on binding mechanisms for all state organs to prevent the construction of future megaprojects, in particular hydroelectric projects, on indigenous lands in the Upper Bío Bío.
4. Agree, as soon as possible, on urgent measures with respect to the lawsuits against indigenous leaders who have been prosecuted for acts connected with the construction of the Ralco Plant.
5. Measures to satisfy the private demands of the Mapuche Pehuenche families concerned.



416. In its 2008 Annual Report,<sup>62</sup> the IACHR considered that the State was in compliance with items 1(b) and 2(a) and (d). Moreover, as regards item 4 on measures pertaining to legal action against indigenous leaders, on January 5, 2011, the State reported that it had honored this commitment with the release of the affected victim. In the petitioners' communication dated January 4, 2013, they acknowledged that this item had been honored; hence it is considered as fulfilled.

417. With regard to the commitment in 1(a) on constitutional recognition of the indigenous peoples in Chile, the State reported on January 5, 2011, and December 21, 2011, that the reform was under consideration in the Constitution, Legislation, and Regulation Committee of the Senate. It added that the Chilean Government maintained its commitment to push for a constitutional amendment in the National Congress and, to that end, on March 8, 2011, it announced that the "Consultation on Indigenous Institutions" would be held in seven stages, on three thematic areas: (1) definition of the procedure for consultation and participation, including participation regulations of the Environmental Impact Assessment System (EIAS); (ii) the draft constitutional amendment recognizing the indigenous peoples; and (iii) the establishment of an Agency for Indigenous Development and a Council of Indigenous Peoples. Likewise, it reported that between March and August 2011 the first two stages, i.e., dissemination and information, had been successfully carried out. The State pointed out that the second stage took the form of 124 workshops at the national level, in which a total of 5,582 indigenous leaders participated. According to information provided by the State, the consultation process concluded between September and November 2011 and an ad hoc committee was set up to propose a mechanism and roadmap for the first thematic area. Said committee's preliminary conclusions were submitted to CONADI on November 23, 2011.

418. The State added that the elections for the Indigenous Members of the CONADI Council were held on January 15, 2012; the elected members took office on May 9, 2012, and immediately began working with the CONADI Council's Consultation Commission to move forward with the discussions "on the rules that would govern the Indigenous Consultation required under ILO Convention No. 169." The State reported that as a result, on August 8, 2012, the Minister of Social Development visited the ILO office where he officially delivered to the indigenous peoples and various organizations the proposed "New Regulations Governing Indigenous Consultation" so that the indigenous peoples of Chile might study and discuss them independently and then enter into a dialogue with the Government to agree upon the final version of those regulations. The State reported that the various organizations of Indigenous Peoples began discussing the new Proposed Regulations to Govern Indigenous Consultations on August 8, 2012, in meetings that they themselves convened, with support and funding from the Government. The State also observed that more than 74 informative workshops and meetings were held between August and November 2012, and that Indigenous Peoples from across the country had met in a Grand National Encounter of Indigenous Peoples, held in Santiago, Chile, November 30, 2011, with over 250 representatives of the indigenous peoples in attendance.

419. On January 16, 2014, the State reported that in 2013, it had established a "Consensus Forum" ["Mesa de Consenso"] among indigenous representatives who had prepared counterproposals or expressed an interest in participating in the process. This process, in which the United Nations High Commission for Human Rights and the National Institute of Human Rights participated, took place in nine sessions, where the proposals received were reviewed and a final policy framework was structured. Subsequently, on November 22, 2013, the President of the Republic approved Supreme Decree No. 66 regulating the process of consultation with indigenous peoples; it was then submitted to the Office of the Comptroller-General of the Republic [*Contraloría General de la República*] for review and approval.

420. Concerning commitment 2(b), the State reported in 2001 that lands had been bought for almost all the Pehuenche communities that belonged to the *Commune* of the Upper Bío Bío and that in the three-year period from 2008 through 2010, an area of 180 hectares was purchased for the Butaleibun indigenous community and an area of 353.7 hectares was purchased for the Newen Mapu community of Malla

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<sup>62</sup> See IACHR, 2008 Annual Report, Chapter III, Section D: Status of Compliance with IACHR Recommendations, paras. 209 and 213. Available at: <http://www.cidh.oas.org/annualrep/2008sp/cap3.D.4sp.htm>

Malla. It added that henceforth, every land-grant will be coupled with an agreement to provide productive support and technical assistance. In its note of January 2012, it said that in 2011 CONADI had invited tenders for a preinvestment study on land acquisition in the Cajón de Queuco sector of the Upper Bío Bío region.

421. The State informed afterwards regarding this point, that it had bought the territory of Trapa, with an extension of 8.000 hectares for the communities of Pewenche de Butalelbún y Kiñe Leche Coyan, that are located in Cajón del Queuco, Alto Bío Bío; and indicated that the said purchase represented an investment of \$1.556.772.000 Chilean pesos. In the same sense, in communication dated January 16, 2014, the State informed that CONADI adjudicated a subsidy for 33 families in the Alto Bío Bío for a total amount of \$660.0000.0000 Chilean pesos.

422. As for commitment 2(c), the State indicated that in June 2009 the technical board for monitoring public investment in the Area of Indigenous Development of the Upper Bío Bío was launched, and in a note dated January 12, 2012, the State referred to the consultation process under way on indigenous institutions and to the activities carried out by CONADI to ensure participation by the sector's families in said consultation. On December 26, 2013, the petitioners reported that the board for the Indigenous Development Area had not been established; thus they considered that the State had not complied with this commitment.

423. The State reported on January 16, 2014 that it had reactivated the activities of the Alto Bío Bío Indigenous Development Area in four meetings with the participation of regional and national authorities on May 22, June 11, July 8, and October 4, 2013. It further reported that efforts were being pursued to legally establish the board of the entity together with the municipality.

424. In connection with commitment 3(a) of the Friendly Settlement Agreement, the State indicated that necessary measures had been taken to transmit the audit results to the municipalities of Santa Bárbara and Upper Bío Bío, among others, for public consultation and that the audit results had been published on the CONAMA web page, but that no comments whatsoever had been received from said municipalities. Moreover, it said that the Office of the Executive Director of CONAMA and the public utilities had followed up on and monitored the project, as established in the environmental qualification resolution. With regard to the impacts of the Ralco dam in the Upper Bío Bío sector, the State reported that it would conduct an independent audit three years after the hydroelectric plant had started to operate, in order to propose necessary measures to correct any possible unforeseen effects, in particular on tourism development along the banks of the reservoir. In that regard, in its note of January 2012, the State reports that the "Independent Environmental Audit Report for the Ralco Hydroelectric Plant Project" for the second half of 2011 has been sent by the Environmental Assessment Service to the Edensa Chile firm, which presented its observations on December 14, 2011.

425. The State reported on January 16, 2014 that the final audit report was sent to the municipality of Alto Bío Bío in document No. 120278 of February 2, 2012. It further reported that the Environmental Assessment Service had held two meetings convened by the Unit for Coordination of Indigenous Affairs under the Ministry of Social Development, in which representatives of the affected families were advised of the status of compliance with measures in response to the flooding of Panteón Quepuca - site 53, as established in CONAMA regulatory decision No. 133-06. In addition, the State indicated that those reports were sent to CONADI's National Board for its consideration and opinion. Finally, on this point, the State reported that on March 5, 2013, at the request of the communities affected by the flooding of the Quepuca Ralco Cemetery, the UCAI-MDS met with the representatives of the affected communities to work on a petition for reparations.

426. As for commitment 3(b), the State reported that CONADI prepared the "Productive Development Plan for relocated families on the *El Porvenir* estate, Quilaco, province of Bío Bío"; working in conjunction with the relocated families and the National Agricultural Development Institute (INDAP), it is preparing a work plan for the communities in the Upper Bío Bío sector. According to information provided by the State, two meetings were held with the petitioners in 2011 to review the commitments in the Friendly Settlement Agreement: one in the city of Los Angeles on May 10 and the other in Santiago on May 15. Likewise, in letter No. 477, dated September 9, 2011, the National Director of CONADI informed the

petitioners of the decision of the Ministry of Planning to make CONADI responsible for implementing and following up on the commitments under the Friendly Settlement Agreement.

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

428. The State indicated in its communication of January 16, 2014 that on October 17, 2013, the invitation to bid, Basic Study BIP Code 3012590, "Assessment of the Territorial Development Framework Plan, Indigenous Subterritories" was published. This assessment will make it possible in future to determine the portfolio of projects to benefit Bío Bío commune. The State reported that in 2013, the Indigenous Territorial Development Program invested a total of \$347 million in the area, which was earmarked primarily for structuring the landholdings, acquisition of farm machinery, and introduction of modern irrigation methods and veterinarian services; technical advisory services were also provided to small indigenous producers in the commune.

429. As for commitment 3(c), the State reported that tourism projects on the banks of Lake Ralco had been funded. Works had been promoted and financed to strengthen the ability to service the tourism trade with a particular interest in the Southern Andes. The State reported that an independent audit of the Ralco Hydroelectric Plant had been conducted in 2011 and that, on October 6, its results had been transmitted for analysis to CONADI and the Indigenous Affairs Coordination Unit of the General Secretariat of the Presidency. On January 15, 2014, the State reported that the 2013 program on "Competitive Public Bidding for Implementing Tourism Initiatives" supported three projects to make use of the Alto Bío Bío reservoirs for tourism, to the benefit of the indigenous communities.

430. As concerns commitment 3(d), the State indicated that that was covered by national legislation; consequently implementation of that commitment must fall within the bounds established by the provisions in force. In its communication in January 2014, the State reiterated that it considers that it has complied with this item.

431. Nevertheless, the petitioners sent a communication on December 15, 2008, in which they indicated that the State has failed to carry out commitment 3(d) of the friendly settlement agreement, on having accepted to undertake an environmental impact study of a hydroelectric megaproject in Mapuche Pehuenche territory known as the Angostura Project. According to the petitioners, this project would affect indigenous lands of the Alto Bío Bío in which there are at least four sacred sites for the Mapuche Pehuenche and on which some Mapuche Pehuenche families currently live. The petitioners indicated that the National Corporation of Indigenous Development (CONADI: Corporación Nacional de Desarrollo Indígena), an agency of the State entrusted with ensuring the protection of indigenous lands, issued a report on July 31, 2008 (Official Note 578) in which it confirms the importance of the sector for the heritage of the Mapuche Pehuenche communities. The petitioners indicated, based on what was stated above, that the State breached its commitment to adopt land-use management measures so that the indigenous lands in the Upper Bío Bío may be "characterized as an area for protection of resources of natural or cultural heritage value, and, accordingly, that they be declared as zones not fit for building or with building restrictions." In addition, the petitioners emphasized in their latest communication on December 26, 2013 that the terms of this item have not been met, since the State approved a megaproject for a hydroelectric plant in the Alto Bío Bío sector, known as the Angostura Power Plant.

432. As for commitment 5, concerning measures to meet the specific demands of the affected Mapuche Pehuenche families, the State reported that in late 2006 each individual had received parcels of land, drawn by lot. Each person received land in the zone intended for residential, agricultural, tourism development, or forest management use; it clarified that three parcels still had to be distributed, because of demarcation problems. It reported that the charitable pensions had been paid out and that scholarships had been awarded in June 2009. The State updated the previous information, indicating that in February 2011 title had been given free and clear to three beneficiaries for the pending real estate of lot A of the Porvenir Estate. Likewise, it reported on the execution of a project to upgrade access roads to the Porvenir Estate properties.

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

434. In their communication of December 26, 2013, the petitioners underlined that this item of the commitment remains unfulfilled, since although the land was handed over, there are still serious water problems in both the Santa Inés and La Suerte sectors, to the point that Mrs. Mercedes Huentao has not been able to use the land, and that this situation persists despite many reports from government officials. They also referred to the lack of access to La Suerte sector, where there is not an adequate road for vehicles to enter. According to the petitioners, neither has the State delivered the houses, and that 18 beneficiaries were informed that they had to use the government's regular subsidy system, which was not part of the terms initially discussed by the parties. The petitioners further indicated that they were required to show a social welfare card, that would identify the degree of vulnerability of the applicants, which they consider, as yet another requirement being imposed that was not part of the original agreement. As for pensions, the petitioners reported that Mr. Fermin Beroiza had stopped receiving his ENDESA pension in March 2012. Finally, on the subject of production assistance, the petitioners stated in that communication that although the State had guaranteed that 1,500 production units would be available, the amount supplied was inadequate, and they requested direct delivery of the resources.

435. The State indicated in its January 2014 report that a Cooperation Agreement was signed between the National Corporation and Regional Indigenous Development of the Bío Bío and the Ministry's Regional Secretariat for implementation of the Porvenir Estate Replanting Project supported by Resolution No. 1505 of November 6, 2013. According to the State, under this project 24 plots of land in parcel B will be replanted, given the Porvenir Estate subdivision of Quilaco commune. According to the State, in December 2013 on-site activities to establish the boundaries were carried out.

436. In their latest communication dated December 26, 2013, the petitioners stated that in general, they considered that the State had not honored the commitments set forth in items 1(a), 2(b) and (c), all of 3, and 5 of the agreement.

437. On December 2, 2014 and on September 15, 2015, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending. The parties did not furnish the information requested.

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

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

439. In Report No. 56/10 of 18 March 2010, the Commission found that the State of Chile is liable for violation of Margarita Barbería Miranda's right to equal protection, as set forth in Article 24 of the American Convention, by applying to her case a discriminatory provision that prohibited her from practicing as a lawyer in Chile solely because she was a foreigner. Because of this situation, the IACHR found that the State also violated its general obligations to respect and guarantee all human rights of the victim, without any discrimination whatsoever, as set forth in Article 1(1) of the American Convention, further violating its duty to adopt domestic legal provisions that would align its law with its international commitments in this matter, as enshrined in Article 2 of the Convention.

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

1. That measures be taken to amend the Chilean law that precludes individuals from the practice of law solely on the grounds that they are aliens, and in particular the norms contained in the Organic Code of Tribunals of Chile.
2. That Margarita Barbería Miranda be permitted to take the oath of attorney and practice law in Chile.
3. That Margarita Barbería Miranda be adequately compensated for the violations established in the present report.

441. In Report No. 56/10, the Commission gave a very positive assessment to actions taken by the State of Chile related to compliance with the first and second recommendations, to wit, passing Law 20,211 that modified Article 526 of the Organic Code of the Courts; and swearing in Margarita Barbería Miranda as an attorney on 16 May 2008, before the Supreme Court of Chile; hence these two recommendations are considered as fulfilled, leaving only the full reparations to the victim pending.

442. On 29 November 2010 the IACHR sent a communication requesting information of the parties on the status of compliance with the second recommendation, which had to do with reparations for the violations established in the Commission's report. In a communication dated 29 December 2010, the State reported that at the end of 2008 it held a meeting with Ms. Margarita Barbería and suggested the possibility that she press for satisfaction of her financial claims by pursuing recognized domestic procedures under Chilean law. The State also indicated that the petitioner rejected this proposal, reiterating her expectation that she be compensated for material and moral injury suffered as a result of the legal prohibition that had hindered her from being sworn in as an attorney. Additionally, the State of Chile stated that Ms. Barbería had not introduced adequate evidence of the injury to sustain the following requests: university scholarships for each of her three children; a full scholarship for graduate studies at the doctoral, master's or professional degree level in a law-related subject of interest to the petitioner; a furnished office; an automobile; and a lump-sum payment of US\$ 90,000.00.

443. In a note date 16 November 2011 the petitioner reported to the IACHR that the State of Chile had not provided adequate compensation for the violations she had suffered. For its part, on 21 December 2011, the State of Chile sent a communication in which it reiterated in the same terms the information it had provided in its note submitted on 29 November 2010.

444. By a communication received on January 15, 2013, the petitioner claimed that in 2012 she had no contact with representatives of the Chilean State in connection with fulfillment of the Commission's recommendation. For its part, on January 4, 2013, the State sent a communication repeating what it had previously reported, specifically that while it had suggested to the petitioner that she press for satisfaction of her financial claims by pursuing recognized domestic procedures under Chilean law, Mrs. Barbería had not opted to pursue that course of action.

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

446. In a communication dated January 9, 2014, the State indicated that in similar cases in which the IACHR has issued a report on the merits, the State Defense Council has offered an alternative, whereby the petitioner would file a *juicio de hacienda* [a suit to which the fiscal authority is a party] to pursue the State's responsibility for the acts investigated by the Commission, which the State Defense Council could resolve, if the quorum required by the law is achieved. The State cited a precedent in which the petitioner had succeeded in obtaining reparations. The State indicated that it was waiting for the petitioner to initiate this mechanism or to restate its reparation claims. This information was forwarded to the petitioner on April 21, 2014, but no information on her decision has been received to date.

447. In a communication dated December 4, 2014, the Commission asked the parties to provide up-to-date information on the status of the recommendations whose implementation was pending.

448. On January 18, 2015, the petitioner reported that there had been no changes in the Chilean State's intention to comply with the recommendation. Petitioner further noted that in the past three years, the State had not made any attempts to seek a convergence of views or shown any intention of reaching an agreement.

449. On September 15, 2015, the IACHR requested the parties to provide it with updated information on implementation of the recommendations. As at the date of this report neither of parties had furnished the information requested.

450. The Commission takes note of the obstacles for the compliance with the recommendation related to adequate reparations to Margarita Barbería Miranda, and urges the parties to work together to comply with this clause. The Commission therefore concludes that the Chilean State has partially complied with the aforementioned recommendations. Consequently, it will continue to monitor the recommendation not yet honored.

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

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

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

1. Conduct an impartial and effective investigation in ordinary jurisdiction with a view to prosecuting and punishing those materially and intellectually responsible.
2. Take steps to ensure that the families of the victims are duly compensated.
3. Take steps to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention, as well as adopting the measures necessary to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission in investigating and prosecuting similar cases through the ordinary criminal justice system.

453. On November 26, 2014 and September 3, 2015, the IACHR requested both parties for information on implementation of the recommendations. As yet, the petitioners have not provided any information. The IACHR received responses from the State on April 10 and November 16, 2015.

454. According to information supplied by the State in previous years, with respect to the first recommendation the IACHR notes that the State has reiterated in several notes sent between 2007 and 2015 that the Criminal Cassation Division of the Supreme Court of Justice issued a judgment on March 6, 2003, vacating all of the decisions adopted by the military criminal tribunals and ordered the proceedings to be referred to the private courts. Accordingly, in a ruling dated September 2, 2005, the criminal investigation was reassigned to the Office of the 48th Specialized Prosecutor of the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation, where it remains at the inquiry stage. It also reiterated that since October 1998, the decision to acquit the members of the military forces in the disciplinary proceeding brought against them was upheld and that some of their harsher sentences were made more lenient (dismissal became reprimand and suspension of duties became acquittal).

455. In its communications submitted on April 10 and November 16, 2015, the State repeated the information mentioned in previous years concerning the criminal and disciplinary proceedings. In particular, it reiterated that in 2013 investigative procedures were carried out "as a means formally to link a number of individuals who, based on the evidence gathered thus far, may have had an involvement in the events that the case concerns"; it also indicated that as of October 2015 there had been no additional proceedings further to the ones previously reported.

456. In relation to the second recommendation, in the communications presented on April 10 and November 16, 2015, the State again mentioned that in the context of a contentious administrative proceeding under the mechanism contained in Law 288/96, 10 suits for direct compensation had been filed against the Nation with the Valle del Cauca Administrative Tribunal. In that connection, it reiterated that on November 26, 2003, the same tribunal held a conciliation hearing with relatives of the victims. As a result of that hearing, all of the proceedings involving all the plaintiffs and the Nation were declared closed, and the proceeding to determine the administrative responsibility of Brigadier General Rafael Hernández López and others for the events that had occurred continued. In addition, the State noted that resolution No. 819 of April 13, 2004, finalized the conciliation agreement and the agreed sum proceeded to be paid to the relatives of all the victims.

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

Report 62/01 has been fully complied with. As regards the third recommendation, the State of Colombia provided additional information by means of a communication submitted to the IACHR on April 7, 2014. In that communication the State submitted information regarding the measures adopted domestically to prevent homicides of protected persons, among which they highlighted the advancements in intelligence procedures, operations, and logistics, with the establishment of an Operational Manual to be used by the Army, the Navy, and the Air Force; as well as the issuance of Law 1621 of April 17, 2013, whose purpose is to strengthen the legal framework of the agencies that carry out intelligence activities and it establishes limits and mechanisms for oversight and supervision for those activities, which must be in “strict compliance with the Constitution, the law, international humanitarian law, and international human rights law.”

458. In the said communications, the State reiterated a list of the different courses, workshops, and diploma programs previously mentioned, that have been designed and given with the aim of expanding and reinforcing the legal and operational knowledge of the armed forces, within which specific issues are highlighted such as sexual violence, human rights, international humanitarian law, operations law, medical mission, training instructors, and the use of force to maintain order. The progress mentioned by the State included the creation in 2004 of the position of Operational Legal Advisor within the Air Force, which was cemented by Permanent Directive No. 208; the design of the career plan for lawyers by the armed forces; the regulatory progress made based on Directives nos. 208 and 40 of 2009, and No. 20 of 2011; adjustment of the contents and processes for imparting and assimilating knowledge at each level of responsibility in the command structure; creation of the Army School of Human rights and International Humanitarian Law as a useful and specialized mechanism for providing education and training in those subjects in the armed forces and National Police; extracurricular training workshops for incorporating human rights (HR) and international humanitarian law (IHR) organized by military units; creation of Special Operational Groups for Criminal Investigations to support the fight against crime; the design of procedures for activating and implementing the Immediate Inspection Commission (CII) under the Office of the Procurator General of the General Command; and the review of the rules of engagement as part of the updating of the Operational Law Handbook.

459. It also reported that several strategies were set in motion. They included the position of Operational Legal Advisers as a strategy within the Comprehensive Human Rights and IHR Policy; Delegated Inspectors whose principal function is to ensure observance of HR and IHR standards; the Complaints Reporting System for alleged HR and IHR violations by military personnel. As regards the instruction review, the State added that a Strategic Plan for the Education System (PESE for the Spanish) was devised, through which the activities planned for implementing the system were being carried out. Furthermore, based on a review of the PESE conducted in 2010, which revealed a need to strengthen mainstreaming of IHR and the law of armed conflict (LOAC) in the armed forces education system, activities were planned as far ahead as 2019, including training for educators, instructors, and replicators. Other aspects included, a consolidated teacher-training model (MUP) in effect since 2003; a regional scenario training group (GEPER) in effect since 2009; the "Joint, Coordinated, Combined and By-Branch Lessons Learned System" for the state security forces in effect since 2010, the aim of which is to share methodology for implementing practical exercises in the observance of IHR, with an emphasis on standards applicable to non international armed conflict; the implementation of short-term training workshops through short-term, supplementary, extracurricular training activities under the MUP at all command levels; the adoption of a judicial police liaison system for whenever certain outcomes arise in the course of military operations, in order to advance judicial proceedings at the scene of events; and, lastly, the establishment and implementation of an Immediate Inspection Commission, whose purpose is to present an opinion on the possible occurrence of alleged violations of human rights and international humanitarian law attributed to members of the armed forces.

460. The Colombian State also made a referred to the range of measures adopted at the domestic level to prevent killings of protected persons.

461. Based on the foregoing, the IACHR notes and values highly the efforts of the State to comply in full with the first recommendation and, at the same time, urges the State to continue to take effective steps to investigate and prosecute the events. On another point, the Commission notes that the text of Ministry of Defense Resolution No. 819, which the IACHR received on March 3, 2005, indicates that entity's recognition of



the conciliation agreement reached before the Administrative Tribunal and confirms the order to pay the amounts agreed upon as compensation for the material and emotional injuries suffered by the relatives of the victims as a result of the events that occurred in the Municipality of Riófrío on October 5, 1993. The IACHR also notes that the petitioners have not submitted comments on the recommendations' implementation since February 13, 2008. In consideration of the foregoing, the IACHR concludes that the State has complied with the second recommendation.

462. With respect to the third recommendation, the IACHR takes note of the measures established and implemented by the State in the years since the adoption of Report No. 62/01. In that connection, it values the efforts of the State to adopt measures to prevent any future occurrence of similar events in keeping with its duty to ensure the basic rights recognized in the American Convention, particularly through HR and IHL education and instruction in the armed forces. Nonetheless, there is nothing in the detailed information provided by the State to suggest any possible measures "to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission on Human Rights in investigating and prosecuting similar cases through the ordinary criminal justice system." Accordingly, the IACHR invites the State to provide it with detailed and specific information in that regard, so that it may determine if said measure has been implemented.

463. In light of the foregoing, the Commission concludes that the State has complied with the second recommendation, and the level of compliance with the recommendations is therefore partial. Consequently, the Commission will continue to monitor the items that remain pending, especially in relation to the first recommendation of the report.

**Case 11.710, Report No. 63/01, Carlos Manuel Prada González, and Evelio Antonio Bolaño Castro (Colombia)**

464. In Report No. 63/01 of April 6, 2001, the Commission established that the State was responsible for violating the American Convention at Articles 4, to the detriment of Evelio Antonio Bolaño Castro; 4 and 5, to the detriment of Carlos Manuel Prada González; and 8(1), 25, and 1(1) to the detriment of both victims and their families. This was as the result of the extrajudicial execution, at the hands of state agents, of Carlos Manuel Prada González and Evelio Antonio Bolaño Castro, and the failure to judicially clarify the incident.

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

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

466. The IACHR has been monitoring the State compliance of the recommendations it issued and on November 26, 2012 it requested information from both parties. On October 2, 2013, the IACHR requested updated information from both parties on compliance with the pending items. The State's response to this request was received that November. The petitioners did not respond to the request for information.

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

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

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

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

471. With regard to recommendation No. 3, the petitioners had previously described the amendment to the Political Constitution approved by the Congress of the Republic under Legislative Act 02 of 2012, pertaining to military jurisdiction of criminal justice, as a serious aspect linked to compliance viewing it as substantially expanding the scope of competence of the military justice system to hear cases of violations of international humanitarian law, as well as of human rights violations such as those committed in the instant case. [Footnote: Note of secretariat: as of the date of the approval of the instant Annual Report, and based on information of public knowledge, under the decision of the Constitutional Court, Legislative Act 02 of 2012 had been declared unconstitutional. See: Press release No. 41 of the Constitutional Court. October 25, 2013. Available at: <http://www.corteconstitucional.gov.co/>

472. On December 1, 2014, the IACHR once again requested information on implementation of the recommendation from both parties. On February 4, 2015, the State reiterated the information that it had already presented in connection with the criminal proceeding and advised that since July 22, 2014, the case had been before the Supreme Court of Justice, which was hearing an Extraordinary Appeal for Cassation lodged by the attorney of the accused against the judgment of the Superior Court of Antioquia. The State also repeated the contents of notes sent between 2008 and 2013 concerning disciplinary proceedings. In that regard, it said that in keeping with a disciplinary ruling issued by the Office of the Delegated Inspector for the Armed Forces (*Procuraduría Delegada para las Fuerzas Militares*) in 1994, it had decided to discharge with prejudice various military personnel and to enter the punishment on the records of the retired officials. As to

the second recommendation, the State reiterated that it had complied with said recommendation on October 27, 2009, when the Minister of Defense ordered the payment of the amount awarded in moral damages to the next-of-kin of the victims in the judgment handed down by the Third Section of the Council of State on March 26, 2009.

473. With regard to the third recommendation, the State again mentioned the permanent inclusion through the Ministry of National Defense of human rights and international humanitarian law (IHL) policies targeting all members of the public security forces, including measures to strengthen human rights and IHL awareness among specialized personnel in the armed forces and police; provide human rights and IHL training to members of the public security forces; institute seminars and diploma courses on the subject; to publish primers and other printed matter on IHR and other aspects relating to human rights; issue training guidelines for military units on human rights and IHR; and implement operational best practices.

474. On September 3, 2015, the IACHR requested updated information from both parties on implementation of the recommendations. On November 16, 2015, the State reiterated the information it submitted in February of that year regarding implementation of the three recommendations.

475. As yet, no response has been forthcoming from the petitioners.

476. Based on the foregoing, the IACHR notes and values the efforts of the State to comply with the first recommendation and, at the same time, urges the State to continue to take effective steps to investigate and prosecute the events. In addition, the Commission sees that both parties acknowledge the payment by the Ministry of Defense of the amounts awarded to the next-of-kin of Carlos Manuel Prada and Evelio Bolaños by the Council of State in the judgment of March 26, 2009. However, the IACHR notes that on March 21, 2013, the petitioners said that that judgment contributed to the reparation of the next-of-kin but that it "should be accompanied by other reparation measures that honor the memory of the victims, protect their families ..." In that regard, the IACHR observes that there is nothing in any subsequent communications from the State to indicate the state's position in relation to the petitioners' observation. In that connection, the Commission does not have sufficient information to determine if adequate and timely reparation has been made.

477. As to the third recommendation, the IACHR takes note of the steps devised and implemented by the State and values its efforts adopt measures to prevent any future occurrence of similar events in keeping with its duty to ensure the basic rights recognized in the American Convention, particularly through HR and IHL education and instruction in the armed forces. Nonetheless, there is nothing in the information provided by the State to suggest any possible measures "to fully apply the case law developed by the Colombian Constitutional Court and by this Commission with respect to the investigation and adjudication of similar cases in the ordinary penal justice system." Accordingly, the IACHR invites the State to provide it and the petitioners with detailed and specific information in that regard.

478. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia)**

479. In Report No. 64/01 of April 6, 2001, the Commission concluded that the State was responsible for violating the right to life of Leonel de Jesús Isaza Echeverry, enshrined in Article 4 of the American Convention; the right to human treatment of Ms. María Fredesvinda Echeverry, enshrined in Article 5 of the American Convention; the right to humane treatment and the breach of the obligation to adopt special measures of protection with regard to the child Lady Andrea Isaza Pinzón, established in Articles 5 and 19 of the American Convention; as well as the breach of the duty to afford effective judicial protection to the victims of this case, in keeping with Articles 8 and 25, in conjunction with Article 1(1) of the Convention. This case has to do with the responsibility of state agents for the death of Mr. Leonel de Jesús Isaza Echeverry, the harm to the personal integrity of Ms. María Fredesvinda Echeverry and the child Lady Andrea Isaza Pinzón, and the failure to clarify these events judicially.

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

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

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

482. As to recommendation No. 1, the State has reiterated the information on the decision handed down in November 2004 acquitting the defendants under the principle of *in dubio pro reo*. However, it added that a motion to review the ruling was filed with the Supreme Court of Justice in order to enforce proper due process procedures and ensure that a legally pre-established judge with jurisdiction to hear the matter presides (guarantee of natural judge).<sup>63</sup>

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

484. With respect to recommendation No. 3, the State reiterated the information submitted in 2010 and 2011 on making Human Rights (HR) and International Humanitarian Law (IHL) policies permanent, applying them to all members of the public security forces and developing the guiding principles of leadership, promotion and respect for HR and IHL; as well as prevention, deterrence, control, integration and recognition. It mentioned the Comprehensive HR and IHL Policy that was issued in January 2008, the HR and IHL School of the Military Forces being up and running as of 2009 and ongoing progress made by the Constitutional Court in setting legal precedents to define the limits of military criminal jurisdiction. In light of the foregoing, the State requested the IACHR to find full compliance with recommendation No. 3 of Report 64/01.

485. On October 2, 2013 and November 26, 2014, the IACHR asked both parties updated information on the points pending for compliance.

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<sup>63</sup> The State submitted the date of the filing of the motion for review and a copy in its communication of February 5, 2013; however, as of the date of approval of the instant Annual Report, the Commission has not received information from the parties on the processing of said action.

486. The petitioners responded on February 12 of 2015, indicating in relation to the investigation, that there have not been major advances since the working meeting of 2012. According to the petitioners, the Attorney General of the Nation had informed that on November 6, 2012, a revision action had been filed before the Supreme Court of Justice of Colombia against the decision that absolved all the agents involved in the Criminal Military Justice System. The petitioners indicated that on June 12, 2014, they filed a request of information before the Attorney General of the Nation, to obtain data on the said revision action. However, they had not received an answer from the Supreme Court of Justice or from the Attorney General of the Nation.

487. In relation to the recommendation number 3, the petitioners indicated that there are three legislative initiatives currently before the Colombian Congress, that are related to the accusatory system in the Criminal Military Justice System; investigation, sanction and judgment of the military forces according to the IHL; and the constitutional reform for the judgment of military forces for crimes committed in active duty and with the occasion of the service. According to the petitioners the objective of the said initiative is to broaden the scope of the Criminal Military Justice System to the judgment of human rights violations and other infractions to international humanitarian law. The petitioners considered that all of the above mentioned, represents a great risk for the advancements on standards in this subject that have been established by the IACHR in the different cases related with this issue and in the respective country reports, as well as the advancements of the Constitutional Court in its judgments on this thematic.

488. The IACHR received the response of the State on March 12, 2015. In that communication, with respect to the first recommendation, the State reiterated the information that it had provided on January 2 and February 5, 2013. Regarding the criminal proceeding, the State indicated that the processing of the motion to review filed by the Office of the Procurator General of the Nation (*Procuraduría General de la Nación*) against the acquittal issued by the Second Divisional Court attached to the Military Criminal Justice System and upheld at second instance by Superior Military Tribunal remained ongoing. Furthermore, with regard to the disciplinary proceeding, the State indicated that on April 14, 1998, the General Attorney of the Nation amended the punishment imposed by the Office of the Delegated Inspector to a lieutenant investigated in connection with the events that occurred in the context of this case from suspension without pay for 90 days to a severe reprimand. It added that the Office of the Procurator General of the Nation found that there was liability to disciplinary penalties but not to criminal ones inasmuch as it considered that the military criminal proceeding had been conducted lawfully and it concurred with the decision to acquit the military personnel under investigation of the criminal charges.

489. As regards the second recommendation, the State reiterated that the Ministry of Defense, by Resolution No. 2512 of June 27, 2007, had complied with the conciliation agreement approved by the Council of State on September 28, 2006, and that compensatory damages were paid to the next-of-kin of the three victims. As to the third recommendation, the State repeated the information presented in 2010, 2011, and 2013 regarding the permanent adoption by the Ministry of National Defense of policies on human rights and international humanitarian law targeting all members of the public security forces, as well as the development of guiding principles on leadership, promotion and respect for human rights and international humanitarian law, and on prevention, deterrence, control, and recognition; it also drew attention to the willingness of the military criminal tribunals to refer investigations concerning alleged violations of human rights and international humanitarian law by members of the armed forces to the regular courts, noting that between 2008 and 2010 744 cases had been voluntarily referred to the regular jurisdiction. Accordingly, it reiterated its request that this recommendation be declared fully implemented.

490. On September 3, 2015, the IACHR requested both parties for updated information on implementation of the items pending. The State replied on November 16, 2015, reiterating, in relation to the first recommendation, the information that it had furnished in March of that year, adding that the proceedings involving the motion for review had been moving forward. Likewise, with regard to the request made by the petitioners to the Office of the Procurator General for information on that review, the State indicated that "the information regarding the steps taken in the proceedings is available for consultation on the web site of the Judicial Branch of the Republic of Colombia, which is open to public access.

491. As for the second recommendation, the State again mentioned the compliance with the conciliation agreement approved by the Council of State on September 28, 2006, by the Ministry of Defense through Resolution No. 2512 of June 27, 2007, by which compensation was made to the next-of-kin of the three victims in this case. Regarding the third recommendation, it again reaffirmed the information presented in March 2015 and said that thanks to the willingness of the military criminal courts to send investigations concerning violations of human rights and international humanitarian law by members of the armed forces to the regular jurisdiction, between 2008 and January 27, 2015, a total of 1,298 investigations had been referred to the regular courts. At the same time, the State referred to information that it had furnished in a number of communications regarding the mechanism envisaged in Article 41 of the American Convention as well as to observations presented to the Commission in connection with Chapter IV of the country report published in 2015. Specifically, it said that although Legislative Act No. 1 of 2015 had been passed, it might still be reviewed by the Constitutional Court in response to the constitutionality suit, the examination of which was ongoing.

492. As yet, no response has been forthcoming from the petitioners.

493. Based on the foregoing, the IACHR urges the State to continue to take effective steps to investigate and prosecute the events and to punish those responsible. At the same time, the Commission notes that while the State has provided a copy of Ministry of Defense Resolution No. 2512 of June 27, 2007, which orders settlement of the relevant amounts, in their last communication, dated February 12, 2015, the petitioners said that they were not aware that the next-of-kin of the victims had actually received compensation. Therefore, the IACHR requests the State to present proof of payment of the sum of money to the next-of-kin and its full compliance with that recommendation.

494. As to the third recommendation, the IACHR finds that it does not have sufficient information to determine if it has been complied with in full.

495. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Therefore, the Commission shall continue to monitor pending items.

#### **Case 11.141, Report No. 105/05, Villatina Massacre (Colombia)**

496. On October 27, 2005, by Report No. 105/05<sup>64</sup>, the Commission approved and recognized the partial implementation of a friendly settlement agreement signed on July 29, 2002, in the case known as the "Villatina Massacre." In summary, the petition alleged the responsibility of state agents in the massacre of children Johana Mazo Ramírez, Johny Alexander Cardona Ramírez, Ricardo Alexander Hernández, Giovanni Alberto Vallejo Restrepo, Oscar Andrés Ortiz Toro, Ángel Alberto Barón Miranda, Marlon Alberto Álvarez, Nelson Dubán Flórez Villa, and the youth Mauricio Antonio Higueta Ramírez, perpetrated on November 15, 1992 in the Villatina neighborhood of the city of Medellín.

497. That friendly settlement agreement incorporates the terms of an agreement originally signed on May 27, 1998, in the course of an initial attempt to reach a friendly settlement in the matter. In the agreement, the State recognized its international responsibility for the violation of the American Convention, the right to justice and individual reparation for the victims' next-of-kin, as well as an element of social reparation with components related to health, education, and a productive project. In addition, it provides for erecting a monument in a park in the city of Medellín so as to recover the historical memory of the victims. The Commission observes that the operative part of the agreement reflects the recommendations of the Committee to Give Impetus to the Administration of Justice (Comité de Impulso para la Administración de Justicia) created in the context of the agreement originally signed on May 27, 1998.

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<sup>64</sup> Report No. 105/05, Case 11.141, Villatina Massacre, Colombia, October 27, 2005, available at <http://www.cidh.oas.org/annualrep/2005eng/Colombia11141.eng.htm>.

498. In Report No. 105/05, the Commission highlighted the implementation by the State of a large part of the commitments assumed in the agreement, specifically (i) the compensatory damages payments agreed upon by the parties in favor of the next-of-kin of the victims; (ii) as regards the healthcare-related reparation measures, in which the State undertook to implement a project aimed at improving basic healthcare for the inhabitants of Villatina and to put up a commemorative plaque at the health center, the IACHR verified that the health center was built in that neighborhood and is operational, and that plaques to the victims have been installed; (iii) as regards the collective reparation measures in the area of education by which the State committed to upgrade “San Francisco de Asís” primary school in order also to provide secondary education services, the IACHR found that the physical infrastructure has been satisfactorily refurbished and that the courses have gradually been opened; (iv) regarding the collective reparation measures concerning the implementation of a production project, the IACHR confirmed from a report jointly submitted by the parties on February 17, 2005, that the State satisfied the terms of compliance with its commitments as regards providing support for the production project, including the payment of damages for forcible unemployment; finally, in relation to the construction of an artistic work in order to honor the memory of the children and to restore the reputation of, and provide moral reparation to, the next-of-kin of the victims, the IACHR observed that on July 13, 2004, a ceremony was held to inaugurate a park in the Plaza del Periodista in the city of Medellín, which was attended by the mothers of the victims, the vice president of the Republic, the minister of defense, the vice minister of foreign affairs, the director of the National Police, officials from the Municipality of Medellín, Church leaders, the petitioners in case 11.141, and the IACHR, the last represented by Commissioner Susana Villarán and its Executive Secretary, Santiago Canton.

499. In the same sense, the IACHR urged the State to continue carrying out the rest of the commitments assumed, in particular the commitment to provide effective guarantees and judicial protection to the victims and their next-of-kin, as prescribed in Articles 8(1) and 25 of the American Convention, by continuing the investigation into the facts so as to allow for the identification, prosecution, and sanction of the persons responsible. The IACHR also indicated that it would continue to monitor the measure relating to dissemination of the contents of the friendly settlement agreement, by which, as agreed by the parties, the State must publish and distribute in coordination with the petitioners 500 copies of the agreement, including all the documents it comprises and its annexes.

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

501. On October 2, 2013, the IACHR requested information from both parties on compliance with the pending items. By communication of March 25, 2014, the Colombian State submitted that information. In respect of justice, the State noted that the facts continue to be under investigation in the Office of the Attorney General (Fiscalía General de la Nación) and that for the time being there are not enough elements to pursue an appeal (*la acción de revisión*), it will continue providing the IACHR further information on this point. As for the publication and dissemination of the Friendly Settlement Agreement, the State reported that on March 13, 2014, a meeting was held between the parties in the city of Medellín in order to work together to review the documents and prepare the content of the publication. The State reports that once it has the final version of the document, the appropriate steps will be taken to have it printed.

502. On November 25, 2014, the IACHR once again requested information on compliance with the recommendations. With respect to the commitment in relation to justice, on March 24, 2015, the State reiterated what it had established in its communication of March 2014 to the effect that the Office of the Attorney General was still investigating the events and that, in that regard, efforts had been made to uncover evidence by which to identify the individuals responsible for the events. However, it said that for the time being the evidence needed to seek a review was lacking. As for the commitment to publish and disseminate the friendly settlement agreement, the State advised that arrangements were being made with the Inter-Disciplinary Human Rights Group (GIDH), the results and activities of which the State would report to the Commission. In the same sense, the State added that the National Police had published Report No. 105/05 on

its web portal and that it had disseminated that report by directive No. 43 of May 6, 2014, and requested all district, station, substation, and CAI commanders to circulate that directive.

503. On September 3, 2015, the IACHR requested both parties for information on implementation of the items pending. As at the date of publication of this report, information had been forthcoming from neither.

504. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission shall continue to monitor pending items, especially those related to the possibility of filing an appeal and the publication of the agreement by mutual agreement of the parties.

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

505. On February 28, 2006, the Commission approved the Report No. 05/06 pursuant to Article 50 of the American Convention by which it concluded that the State was responsible for violating the rights to life, to a fair trial, rights of the child, and right to judicial protection, corresponding to Articles 4, 8, 19, and 25 of the American Convention in relation to its Article 1(1), to the detriment of the child Leydi Dayán Sánchez Tamayo, and that the State had violated the rights to judicial guarantees and judicial protection corresponding to Articles 8 and 25 of the American Convention in relation to Article 1(1) of that international instrument, to the detriment of the next-of-kin of Leydi Dayán Sánchez Tamayo. This case has to do with the responsibility of state agents in the death of the child Leydi Dayán Sánchez Tamayo, which occurred on March 21, 1998, in Ciudad Kennedy, Bogotá, and the failure to clarify the facts of the case judicially.

506. With the approval of the referenced report, the Commission established a series of deadlines for the State to carry out the recommendation made therein in relation to truth, justice, and reparation. After considering the information provided by both parties and the actions carried out by the State in furtherance of the recommendations on promoting an action for review before the regular courts, the ceremonies to recover the historical memory of Leydi Dayán Sánchez, the trainings for the National Police on the use of firearms in keeping with the principles of necessity, exceptionality, and proportionality; and the payment of compensation to the victim's next-of-kin, it decided to issue Report 43/08 pursuant to Article 51 of the American Convention, and to publish it.

507. In its Report, the Commission indicated that while the investigation that is currently under way before the regular courts had not yielded results, one should value the impetus given to the action for review, specifically, the decision of the Chamber of Criminal Cassation of the Supreme Court of Justice, which declared the grounds for review that set aside the judgments of acquittal handed down by the military criminal courts based on the conclusion adopted in the Article 50 report, and ordered that the case be removed to the Office of the Attorney General so that a new investigation could be initiated before the regular courts. Nonetheless, given that the information provided by the State did not indicate that the review process had produced any results in relation to implementation of the recommendation on administration of justice, on July 23, 2008, by Report No. 43/08, the IACHR made the following recommendation to the State:

1. Carry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo.

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

509. On December 3, 2013, the State submitted its response reporting that in October 2013, Criminal Case Backlog-Clearing Circuit Court No. 55 of Bogota issued a conviction and sentenced an individual to a jail term of 36 years and 6 months. Additionally, it highlighted that a serious and impartial investigation was conducted in the proceedings by the Office of the Attorney General of the Nation. The State also noted the



active participation of the representatives of the victim's family therein, as a civil party to the criminal proceedings and having the chance to voice their legal position in case.

510. On November 25, 2014, and September 3, 2015, the IACHR again requested information from the parties on implementation of the recommendations. The State presented its responses to the above requests on March 16 and November 16, 2015, respectively.

511. In those communications the State reiterated that after the criminal proceeding was reassigned on May 4, 2011, to the 55th Criminal Court of the Bogotá Decongestion Circuit, the said court handed down a conviction on October 2013, sentencing Juan Bernardo Tulcán Vallejo to 36 years and six months in prison. In that sense, the State indicated that the proceeding included a meaningful and impartial investigation by the Office of the Attorney General, which took into account the evidence contained in the record, Colombian criminal law, the arguments of the parties, and the recommendation of the Honorable Commission to advance it. In addition, the representatives of the victim's family participated actively in it by appearing as civil parties in the criminal suit, where they had multiple opportunities to make legal submissions in the case in terms of evidence, criminal classifications, and motions, among other legal matters.

512. Specifically with regard to the communication received on November 16, 2015, the State indicated that it had taken meaningful actions in the area of criminal law, thereby meeting the Commission's recommendation to carry out an impartial and effective investigation in the regular courts, where the man responsible for the death of the girl Leydi Dayán Sánchez Tamayo had been prosecuted and punished.

513. The IACHR takes note of the information supplied by the State and values highly its efforts to investigate, prosecute, and punish those responsible for the death of Leydi Dayán Sánchez Tamayo, in addition to the active participation of the representatives of the victim's next-of-kin in the criminal proceeding. In that respect, the Commission has learned that the conviction imposed on Juan Bernardo Tulcán Vallejo on October 29, 2012, by the 55th Criminal Court of the Bogotá Decongestion Circuit and upheld, with amendments, by the Criminal Division of the Superior Court of Bogotá in its judgment of August 20, 2013, is reportedly currently before the Criminal Division of the Supreme Court of Justice owing to a cassation petition filed by the convicted man's defense counsel. Accordingly, the IACHR will await information on the outcome of the cassation appeal and, therefore, abstains from finding that the recommendation has been met.

514. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendation. Therefore, the Commission will continue to monitor compliance.

#### **Petition 401-05, Report No. 83/08, Jorge Antonio Barbosa Tarazona (Colombia)**

515. On October 30, 2008, in its Report No. 83/08<sup>65</sup>, the Commission approved and recognized partial compliance of a friendly settlement agreement signed on September 22, 2006 regarding Petition 401-05 of Jorge Antonio Barbosa Tarazona. Briefly stated, the petition claimed that agents of the State were responsible for the disappearance of Jorge Antonio Barbosa Tarazona on October 13, 1992 in the Department of Magdalena, and that the judicial authorities were unjustifiably delayed in investigating, prosecuting, and punishing those allegedly responsible.

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<sup>65</sup> Report No. 83/08, Petition 421-05, Jorge Antonio Barbosa Tarazona, Colombia, October 30, 2008, available at <http://www.cidh.oas.org/annualrep/2008eng/Colombia401-05.eng.htm>

516. The aforementioned friendly settlement includes the terms of the agreement signed on September 22, 2006. In the text of the agreement, the parties agreed upon the following reparation measures:

**1. ON THE MATTER OF REPARATIONS:**

**Pecuniary Reparations:**

1.1.1 Once this friendly settlement agreement is approved by the Inter-American Commission on Human Rights, the State agrees to submit to the Council of State a conciliation proposal of up to one hundred percent (100%) of the sentence handed down by the Contentious Administrative Court of Santa Marta, for moral damages suffered by the relatives of Jorge Antonio Barbosa Tarazona; at the same time, the State will recognize the material damages caused by the death of Jorge Antonio Barbosa Tarazona based on the current legal minimum salary.

1.1.2 The State agrees to enforce Law 288 of 1996, for the purpose of providing reparation to the mother, wife and daughter for the following damages: non-material damages caused to Jorge Antonio Barbosa Tarazona, for the suffering endured from the time of his detention until the time he was legally declared dead in absentia and for any expenses incurred by the aforementioned relatives in the search for his remains as long as they provide records of the expenses.

**1.2 Non-pecuniary reparations or measures of satisfaction:**

1.2.1 At the time of the signing of the Friendly Settlement Agreement scheduled for September 22, 2006, in the city of Barranquilla, with the victim's family in attendance, the State, represented by officials of the Ministry of National Defense and of the Army, will apologize for the incidents that led to the death of Jorge Antonio Barbosa Tarazona; likewise, a plaque in memory of Jorge Antonio Barbosa Tarazona and a letter of sympathy signed by an official of the Ministry of National Defense will be presented to the family.

1.2.2 The State agrees to monitor the medical and psychological health of the mother, the wife and the daughter of Jorge Antonio Barbosa Tarazona, and will provide them whatever treatment is deemed necessary.

1.2.3 The State agrees to include this case in the education program of the Army under "lessons learned."

**2. ON MATTERS OF JUSTICE:**

Within the framework of responsibility for due diligence in carrying out investigations, the State will strengthen and advance efforts and special actions to identify the individuals responsible for the disappearance and later death of Jorge Antonio Barbosa Tarazona. At the same time, it will use all its technical and scientific tools and knowledge in the effort to locate the victim's remains. When the remains are found and identified, the State will turn them over to the family as soon as possible in order that he may be honored according to their beliefs.

**3. MONITORING COMPLIANCE WITH THE TERMS OF THIS AGREEMENT**

The parties agree to keep the Honorable Inter-American Commission on Human Rights informed on the progress made and the results achieved.

517. In Report No. 83/08, the Commission expressed appreciation for the steps taken by the State to fulfill the commitments adopted in the agreement as regards: (i) the pecuniary reparation measures through the cash payment of \$377,781,470.99 million Colombian pesos in compensation to the relatives of the victim, by means of Ministry of National Defense Resolution No. 0062 on January 9, 2007; (ii) the nonpecuniary reparation measures, by which, on September 22, 2006, the State, with high-ranking military commanders in attendance, held a ceremony in which the Vice Minister of Defense acknowledged, in the

name of the State of Colombia, responsibility for the disappearance of Jorge Antonio Barbosa Tarazona, apologized to his relatives, and presented them with a commemorative plaque and a letter; (iii) the examination of the state of health of the family members, given that the Ministry of Social Welfare began psychological assessments of the mother, wife, and daughter of Jorge Antonio Barbosa, and; (iv) the measure to restore the victim's reputation, inasmuch as it reported that the Office of Education and Doctrine of the National Army included the case of Jorge Antonio Barbosa Tarazona in the army's education program as part of the "Lessons Learned" methodology that was instituted throughout the institution, military colleges (Military Cadet School and the Army Subofficials Training School) and training schools. Finally, the IACHR concluded in its friendly settlement report that it would follow up on the measures pending compliance to do with clarification of the facts, recovery of the victim's remains, and to prosecution and punishment of those responsible

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

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

520. In response, on April 11, 2013, the petitioners contended: "they have the right as the victims to know what technical and scientific efforts have been made by the Colombian State in the search for the remains of the victims." Specifically, they claimed that the State must submit information regarding: i) "whether it is true that members of the military confessed that the body was left under N.N.[Unclaimed] status in the cemetery of Cienega - Magdalena;" ii) what investigations have been conducted and for how long by the authorities in charge for the purpose of locating the remains; and iii) "what are the reasons or circumstances for which it has been impossible to locate the remains, even though it is known that the remains are located at a particular cemetery." This information was forwarded to the State in an IACHR communication of April 30, 2013, requesting its response within a period of one month.

521. On October 8, 2013 and November 25, 2014 the IACHR requested information from both parties on compliance with the items pending. On March 16, 2015, the State said, in relation to the search for the remains of Mr. Jorge Antonio Barboza Tarazona, that the case was registered in the Single Virtual Identification Center (CUVI) and was filed at the National Unit of Prosecutors for Justice and Peace, to be included on the list of individuals pending identification among those who were found in the exhumations of that Unit. However, it added that it had been impossible to find the remains of the dead persons owing to the fact that the funeral company that buried them had undergone a change of management and files for the dates of the events had not been found.

522. With respect to the criminal proceeding, the State mentioned the main procedures in the case and presented a list of the steps taken by the Office of the Attorney General and the Judicial Police. Among those steps, the State reported on the convictions handed down on several accused individuals and said that they demonstrated its commitment to meet its obligation to advance "efforts and special actions leading to the identification of the individuals responsible for the disappearance and subsequent death of Jorge Antonio Barbosa Tarazona." Based on the foregoing, the State requested the IACHR to declare that it had complied in full with its obligations under the friendly settlement agreement.

523. On September 3, 2015, the IACHR requested both parties for information on implementation of the items pending. As yet, the petitioners have not provided any information. The State, for its part, presented its response on October 28, 2015.

524. In its communication, the State reiterated the information presented in March of that year concerning compliance with the commitments adopted and added in relation to the undertaking in matters pertaining to justice that according to information provided by the Office of the Attorney General at October 2015, there were no additional procedures to report; it clarified, however, that that did not mean that "the State is not making the necessary efforts to fulfill this obligation so as to identify the individuals responsible for the disappearance and subsequent death of Jorge Antonio Barbosa Tarazona."

525. The IACHR takes note of the invaluable information supplied by the State with regard to the steps taken to comply in full with the pecuniary and nonpecuniary reparation measures and also of its willingness to continue providing "all the care needed by Mrs. Yaneth Gómez Tarazona, Kelly Johana Barbosa Gómez, and María Emilce Tarazona de Barbosa." Accordingly, the Commission reiterates that it considers that the commitments adopted by the State with respect to pecuniary and nonpecuniary reparations were fully complied with. At the same time, the IACHR recognizes the progress made with a view to identifying the individuals responsible for the disappearance and subsequent death of Jorge Antonio Barbosa Tarazona as well as in the search for the victim's remains. Therefore, the IACHR invites the State to provide detailed and specific information on the results of the final judgments delivered against those convicted by the superior courts, and urges its to continue to take steps toward complete compliance with all the undertakings pending.

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

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

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

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

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

3. That it provide adequate reparations to the families of James Zapata Valencia and José Heriberto Ramírez Llanos, taking into account the child special condition of José Heriberto Ramírez at the time of the events.

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

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

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

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

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

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

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

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

537. On November 26, 2014, the IACHR asked both parties for information about compliance with the points pending.

538. The petitioners responded on February 12, 2015, indicating in relation to recommendation 1, that there have not been significant advancements in the criminal procedure, and that they had unsuccessfully waited for the performance of several activities of the investigation to be done by the State Attorney 11 of the Human Rights and Humanitarian Law Specialized Unit. In relation to recommendation 3, the petitioners indicated that they filed an enforcement action so that the Colombian State complied with the recommendations of the IACHR contained in the Report 79/11, and on February 26, 2014, the Administrative Tribunal of Cundinamarca issued a judgment declaring the non-compliance of the State, from parte of the Presidency of the Republic of Colombian, as well as from part of the Ministry of Foreign Relations. The petitioners informed that after this decision was issued, the Presidency and the Ministry of Foreign Relations filed an appeal due to the lack of legitimacy that was resolved by the Council of State on June 12, 2014, confirming the decision of first instance. The petitioners indicated after the decision of the Council of State, that a meeting was organized with State representatives to discuss the amount of the monetary reparation, however, despite having arrived to an agreement, the State has not disburse the payment yet.

539. On March 17, 2015, the State indicated in relation to the first recommendation that owing to the status of the investigation (preliminary stage) it was not possible to supply detailed information about the steps taken by the investigating agency, and it reiterated that work had been done to build up the hypotheses as regards to motives and the possible authors, with a view to elucidating the facts. As to the second recommendation, it established that the Ministry of National Defense, in conjunction with the president of the Republic and high-ranking military commanders, had implemented prevention measures and investigated cases of homicides allegedly committed by agents of the State. It added that mechanisms had been created to ensure transparency and cooperation with judicial and disciplinary authorities in their investigations, and that some measures had been adopted, from the adoption of policies to strengthening, on the basis of the latter, the operational doctrine of the public security forces and the education system. It added that the Ministry of National Defense had implemented a comprehensive policy on human rights and international humanitarian law in response to the need to ensure that human rights and international humanitarian law were fully integrated as part of instruction on tactics and the operational approach.

540. In relation to the third recommendation, the State explained that there continues to be some progress, with the appropriate administrative and legal procedures, in order to provide adequate reparation to the relatives of the victims and, in that regard, it had requested the Administrative Tribunal of Cundinamarca to hold a conciliation hearing as envisaged in Law 288, to which the Colombian Jurists Commission had been invited as representatives of the victims' families. That hearing was held on November 14, 2014, and a conciliation agreement was reached regarding the financial sums to be paid in compensation to the next-of-kin of both victims, as was an admission of material and moral injuries. The State explained that, at the present the Administrative Tribunal of Cundinamarca is reviewing that agreement in order to ensure its lawfulness, and that once the Tribunal gives its approval, payment would be executed.

541. The petitioners submitted additional information on July 22 and August 4, 2015. In those communications, the petitioners said that there had been no significant progress in the criminal proceeding and that they had waited in vain for a number of investigative measures to be carried out by the Office of the 17th Prosecutor of the Specialized HR and IHL Unit. They expressed their concern that the recommendation on compensation had not been complied with in full and indicated that on February 6, 2015, the Administrative Tribunal of Cundinamarca had invalidated the conciliation agreement with the argument that the amount allotted to compensation for “violation of constitutional or treaty-based rights” was injurious to

"the public purse and the interests of the State" and that, in its opinion, financial reparation was not appropriate in that regard since a series of other measures could be adopted where satisfaction was concerned. Finally, the petitioners highlighted their concern at the current circumstances of Blanca Oliva Llanos and Mariscela Valencia de Zapata, both of whom are senior citizens and in poor health. They said that there was a serious risk that Report No. 79/11 could be irrelevant where providing reparation for the violation of the rights of the next-of-kin of José Heriberto Ramírez Llanos Ramírez and James Zapata Valencia was concerned.

542. On September 3, 2015, the IACHR requested both parties for information on implementation of the items pending. As yet, the petitioners have not provided any additional information.

543. The parties held a working meeting on October 21, 2015, under the auspices of the IACHR at its 156th session. At that meeting, the parties discussed the challenges that had arisen with respect to finalizing payment of the compensation and agreed that the petitioners should prepare a new draft conciliation agreement that took into account the considerations of the judge of the tribunal that invalidated the previous proposal.

544. The State presented its response to the request of the IACHR on October 28, 2015. With regard to the first recommendation, the State reiterated that the proceeding remained at the same stage and that, despite the complexities of the investigation, steps and procedures had been undertaken with a view to determining the motives and identifying the authors of the crime. It also added that the Office of the Attorney General had given instructions that the proceeding be digitized in order to facilitate consultation and had designated an analyst from the Human Rights Group of the Technical Investigations Corps (CTI). In relation to the second recommendation, the State mentioned, as it has in previous notes, the efforts made with prevention measures and investigation of homicides allegedly committed by agents of the state, as well as implementation of transparency and cooperation mechanisms to enable the judicial and disciplinary authorities that are investigating those incidents to work more efficiently and effectively. Furthermore, in July 2015, the Office of the Attorney General through the Directorate of National Prosecution Units Specializing Human Rights and IHL advanced the investigation and prosecution of 2,653 proceedings, the majority of which concern events that occurred in previous years.

545. Finally, as regards the third recommendation, the State reiterated the information that it provided at the working meeting of October 21, 2015, in the sense that, faced with the tribunal's ruling of February 6, 2015, invalidating the conciliation agreement reached by the parties, the victims filed an action for relief against that decision, naming the Office of the President of the Republic and the Ministry of Foreign Affairs as parties in the suit. In that regard, the State advised that the Office of the President of the Republic supported the action for relief presented, while, for its part, the Ministry of Foreign Affairs had been unflinching in its collaboration with a view to meeting the commitment to provide reparation to the victims in the case under Law 288 to 1996. The State informed the IACHR that the action is currently being heard by the Council of the State and that, as of the date of this report, based on consultations made with that tribunal, a draft ruling has been prepared. The State underscored that under the principle of division of powers, the executive branch is bound to abide by the decisions of the judiciary, which is not to say that actions or appeals may not be brought against those decisions.

546. The Commission highlights the efforts made jointly by the parties to provide adequate reparation to the next-of-kin of James Zapata and José Heriberto Ramírez and to comply with the third recommendation. The IACHR awaits information on the results of the motion pending before the Council of State or of the alternatives explored at the working meeting held on October 21, 2015.

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

**Petition 653-00, Report No. 59/14, Alba Lucía Rodríguez Cardona (Colombia)**

548. On July 24, 2013, the Commission adopted Report No. 59/17 in which it approved a friendly settlement agreement in the case concerning Alba Lucía Rodríguez. In brief, the petitioners claimed that the Colombian State bore international responsibility for violation of rights recognized in articles 5, 8, 11, 24 and 25 of the American Convention on Human Rights and 7 of the Convention of Belem do Para to the detriment of Alba Lucía Rodríguez Cardona, who was subjected to a judicial proceeding that discriminated against her on the basis of her gender and social background.

549. On March 28, 2011, during the 143rd regular session of the Commission, the parties signed a “Friendly Settlement Agreement” by which the State agreed to implement reparation measures in favor of Alba Lucía Rodríguez for the injuries caused to her.

550. The agreement signed by the parties established the following measures:

1. The State agrees to expressly acknowledge its responsibility, in consultation with the victim and with her consent;

2. The State agrees to compensate the victim for the pecuniary and non-pecuniary damages arising from the violations of the American Convention on Human Rights in this case. To this end, the State and the victims’ representatives respectfully request that the Honorable Inter-American Commission on Human Rights set the amount of such compensation. In the event that an out-of-court settlement is reached or a judgment is handed down by a domestic court, the amounts paid to the victim pursuant to those legal proceedings shall be deducted from the compensation set by the Honorable Commission. In the event that the amounts awarded at the domestic level exceed the sum established by the Honorable Commission, the State shall pay the excess domestic amount.

3. As part of the State’s agreement to take adequate comprehensive measures of reparation for the violations of the American Convention on Human Rights in this case, the State shall undertake to design and implement national training courses at schools for judicial and administrative public servants, as well as for medical, psychological, and psychiatric personnel, on gender perspective and the scope of professional privilege. The training courses must place special emphasis on topics such as: (i) gender and human rights; (ii) gender perspective for due diligence in conducting preliminary investigations and judicial proceedings related to discrimination, violence, and homicides perpetrated against women on the basis of gender, and (iii) overcoming stereotypes on the social role of women. Those programs should mention international human rights instruments, specifically those relating to gender-based violence, bearing in mind that certain standards and practices in the domestic law have discriminatory effects on the daily lives of women. In addition, the State agrees to request information from the National Ministry of Education on the processes and guidelines that have been advanced and that will be advanced in order to implement Article 11 of Law 1257 of 2008.

4. The State agrees to provide medical, psychological, and sexual and reproductive healthcare to Ms. Alba Lucía Rodríguez and her partner, for purposes of evaluating the harm or trauma caused by the events in this case. If the diagnosis of the specialist so determines, the psychological services shall extend to her relatives as they provide support to Alba Lucía in her rehabilitation process. Along these same lines, the State agrees to cover her travel expenses. A comprehensive health rehabilitation and recovery program shall be designed to include free, comprehensive medical services for Alba Lucía and her partner, for the period of time considered appropriate according to the diagnosis of the respective medical and psychological professionals.



5. In the event that Alba Lucia Rodríguez decides to pursue her education, the State agrees to assist her in accessing her preferred course of study through the Department of Education of Medellín and/or the Office of the Governor of Antioquia. Her admission and continuation in the educational program shall be subject to the requirements established by the chosen educational institution. The offer of education includes starting basic secondary or high school, or technical, technological, and/or arts and vocational skills training. The education offered may be based in the city of Medellín or in any other municipality. In any case, the conditions stipulated in this paragraph shall be subject to variations according to the demonstrated needs of the individual.

6. In the event that Alba Lucía decides to pursue employment, the State shall support her through appropriate employment training based in the city of Medellín or in any other municipality in the Department of Antioquia, providing goods or merchandise one time only, or in any other way that contributes effectively to Alba Lucía's ability to rebuild her life plan.

7. Given that the health services as well as the education and employment training services are not available and therefore cannot be implemented in the town in which Alba Lucía currently resides, the State shall assist Alba Lucía and her partner in moving to, establishing themselves, and remaining in the city of Medellín or another municipality in the Department of Antioquia, through the provision of a support allowance. This allowance shall be disbursed on a quarterly basis for the duration of the educational or employment training program chosen by Alba Lucia, in accordance with paragraph 5 of this agreement.

551. Based on what was decided by the Commission at its 148th regular session in July 2013 and in view of the mutual agreement of the parties, the Commission, as an exceptional measure, set in its Report No. 59/14 the amount of compensation for the moral and material injuries caused by the violations of the American Convention on Human Rights in this case. In that connection, the Commission set, based on equity, the sum of US\$ 60,000 in non-pecuniary damages; the sum of US\$ 10,740 for Alba Lucia Rodríguez's lost earnings for the 6 years that she was deprived of her liberty (1996-2002); the amount of US\$ 5,557 in consequential damages; and the amount of US\$ 2,136 for the costs and expenses of the Colombian Network of Women for Sexual and Reproductive Rights of Medellín and US\$ 10,000 for the costs and expenses of the attorney Castilla.

552. In that report, the IACHR also found that the state had complied fully with the commitment that it had adopted in clause 1 and decided to continue to monitor the commitments in respect of which compliance on the part of the Colombian state remained pending.

553. On September 3, 2015, the IACHR requested both parties for information on implementation of the items pending. As yet, the petitioners have not provided any information.

554. On November 16, 2015, the State presented updated information on its implementation of the friendly settlement agreement. With respect to the commitment set out in the first clause, it reiterated that in view of the ceremony of express acknowledgment of responsibility held on November 15, 2012, in the Plaza Central in the municipality of Abejorral (Antioquia) presided over by the then-Minister of Justice and Law of the Republic of Colombia, Dr. Ruth Stella Correa Palacio, it considered that that part of the agreement had been met in full by the State.

555. As to the undertaking given in the second clause, it indicated that on December 10, 2014, the Council of State had issued a judgment in proceeding 05001-23-31-000-2004-04210-01, in which it declared that the Nation – Office of the Attorney General of the Nation and Superior Council of the Judicature – bore joint and several financial responsibility for the injuries caused as a consequence of the unjust deprivation of liberty that Alba Lucía Rodríguez Cardona suffered. Accordingly, it ordered those bodies to provide compensation to the victim and her relatives, in keeping with the Report No. 59/14 and the parameters laid down therein, for pecuniary and non pecuniary injuries and infringement of her constitutional rights, to wit, the honor and reputation of the victim and her spiritual and emotional integrity as a woman.

556. The State reported that steps had been initiated with a view to making the joint financial payments in accordance with the guidelines established by the Council of State, to which end the representatives of Alba Lucía Rodríguez Cardona were requested to provide the necessary documents in keeping with the requirements and provisions contained in decrees 768 of 1993 and 818 and 1328 of 1994, in addition to a copy of the deed or judicial order of adjudication of heirship to the inheritors of Mrs. Etelvina Cardona Rodríguez, the mother of Alba Lucía Rodríguez Cardona and beneficiary of the decision of the Council of State, bearing in mind the former's death. In that regard, it added that it had not been possible to schedule payment because neither the representative nor the beneficiaries had submitted the necessary documents.

557. With respect to the commitments contained in clause 3, the State reiterated that it had launched the National Training Plan to Ensure Access to Justice for Women Victims of Violence, targeting judicial officials, with an emphasis on the application of Law 1257 of 2008. It said that in 2014 the Office of the Senior Presidential Advisor for Equity for Women set in motion actions and strategies to strengthen institutional capacities to prevent, provide assistance, and punish all forms of violence against women, especially in key sectors such as justice, security, and health, that the workshops and training days had had a positive effect on officials and representatives in different sectors in terms of increasing their awareness and knowledge of women's human rights, and that there was a greater institutional understanding and awareness of national and international standards on the human rights of women.

558. Furthermore, the State provided detailed information on the various measures and strategies implemented by the Ministry of Health and Social Protection that targeted officials and civil society in the areas of sexual and reproductive health from a gender equity, maternal health, and public health perspective. It explained how different training processes and forums were held, technical documents were prepared, and technical assistance days, training workshops, and follow-up and evaluation of health service models were organized.

559. The IACHR values highly the efforts of the State to make good on its commitments under the friendly settlement agreement. In particular, it notes the judgment of the Council of State of December 10, 2014, which ruled that the State was financially responsible, based on a series of considerations regarding the responsibility of states under the inter-American human rights system; reparations under said system and how they are complemented by compensation in the contentious administrative jurisdiction at the domestic level; and international *res judicata*. In the latter part, the Council took note of the friendly settlement agreement signed by the parties before the IACHR, the State's recognition of the unjust deprivation of liberty to which the victim was subjected and its commitment to provide compensatory damages and adopt a series of restorative justice measures, and the decision of the IACHR by which it set, in equity, the damages amount. At the same time, the IACHR urges the petitioners to provide the necessary documentation to enable the State to continue to advance with its implementation of said agreement.

560. In relation to the third clause, the Commission finds, based on the information provided by the State, insufficient elements to enable a comprehensive assessment of compliance with the State's commitments with respect to the design and implementation of national training courses on the scope of professional privilege, overcoming stereotypes on the social role of women, and processes and guidelines advanced to implement Article 11 of Law 1257 of 2008.

561. Accordingly, the IACHR will await updated information on compliance with those commitments in clause 3 as well as the other undertakings.

562. In light of the above, the IACHR concludes that the State has partially implemented the recommendations contained in Report No. 59/14.

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

563. In Report No. 67/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for violations of Articles I (right to life, liberty, personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to preservation of health and well-being), XVIII (right to justice), XX, (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration, to the detriment of Messrs. Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efrén Fernández, Juan Adolfo Fernández Saínez, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Rafael Millet Leyva, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta, and Orlando Zapata Tamayo.

564. The international responsibility of the Cuban State derived from the events of March 2003, when there were massive detentions of human rights activists and independent journalists based on the argument that they had engaged in subversive, counterrevolutionary activities against the State and that they had disseminated illicit propaganda and information. Subsequently, all of them were tried in very summary proceedings, in which their rights to defense were violated, and they were convicted and subjected to prison terms ranging from six months to 28 years.

565. The Commission made the following recommendations to the Cuban State:

1. Order the immediate and unconditional release of the victims in this case, while overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.
2. Adopt the measures necessary to adapt its laws, procedures and practices to international human rights laws. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.
3. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.

4. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights.

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

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

568. On October 4, 2013, December 8, 2014 and September 25, 2015, the Commission requested up-to-date information from the parties on the status of compliance with the recommendations that were put forth in the instant case. None of the parties submitted that information.

569. The Commission reiterates its appreciation to the State for releasing all of the victims of Case 12.476. Nonetheless, as it did not have up-to-date information on compliance with the other recommendations, the IACHR concludes that the State has partially complied with them. Accordingly, the Commission will continue supervising the points still pending.

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

570. In Report No. 68/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for: (1) violations of Articles XVIII and XXVI of the American Declaration to the detriment of Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac; (2) violations of Article I of the American Declaration to the detriment of Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac. The responsibility of the Cuban State derives from submitting the victims to very summary trials that did not guarantee respect for the procedural guarantees of a fair trial, and the subsequent execution of the victims on April 11, 2003, pursuant to a judgment handed down in a procedure that did not have the proper guarantees of protection.

571. The Commission made the following recommendations to the Cuban State:

1. Adopt the measures necessary in order to adapt its laws, proceedings, and practices in line with international human rights law, especially those that relate to situations described in the present report. In particular, the Commission recommends the Cuban State reform its Constitution to ensure the independence of its judiciary.
2. Make reparations to the families of the victims for the material and psychological damages they have suffered by virtue of the violations of the American Declaration established here.
3. Adopt all measures necessary to ensure that similar events may not occur again, in accordance with the duty of the State to protect and guarantee human rights.

572. On October 4, 2013, December 8, 2014 and September 25, 2015, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case. The IACHR notes that on October 16, 2013 and December 19, 2014 the petitioners reported that there was no evidence that the Cuban State had carried out the recommendations of the IACHR and asked the Commission to continue monitoring the case until the State fully carries out the recommendations.

573. To date, the parties have not submitted any information regarding compliance with the aforementioned recommendations.

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

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

575. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The incident that led to the agreement was the death of Edison Patricio Quishpe at a police station on September 7, 1992, after he had been arrested and subjected to torture and other forms of inhuman, cruel, and degrading treatment.

576. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 93/00<sup>66</sup>, in which it acknowledged that the State had complied with the payment of compensation in the amount of US\$30,000, and decided to continue to monitor and supervise the clauses pending for compliance. In the same report, the IACHR urged the State to take the necessary measures to comply with the commitments related to justice and to the payment of interest in arrears. Compliance remains pending with regard to two clauses:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings against and shall seek the punishment of those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

[...]

#### VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

[...] In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

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

578. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the

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<sup>66</sup> Report No. 93/00, Case 11.421, Edison Patricio Quishpe Alcívar, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.421.htm>

Prosecutor General, which had verbally reported that it had conducted “investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” In the same communication, the State recognized that in terms of the compensatory damages established in the friendly settlement agreement, payment of the amount of interest in arrears remained pending.

579. On November 25, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated, as they had stated in their previous communication regarding the impunity of the facts. The State, for its part, did not respond to the request for information made by the IACHR.

580. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter “verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

581. The petitioning party did not provide any additional information on compliance.

582. The IACHR observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no progress in complying with the commitment related to the investigation of the events and that it has merely reiterated word for word the same information it provided before, without indicating that there has been any specific judicial activity designed to identify, prosecute, and punish those responsible for the death of Edison Patricio Quishpe. Nor has the IACHR received information regarding payment of interest. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.439, Report No. 94/00, Byron Roberto Cañaverl (Ecuador)**

583. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Mr. Byron Roberto Cañaverl on May 26, 1993, at the hands of state agents who subjected him to torture and other forms of cruel and inhumane treatment.

584. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 94/00<sup>67</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$7,000, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to take the measures needed to carry out the pending commitment to bring civil, criminal, and administrative proceedings against those persons who, in the performance of state functions, participated in the alleged violations, and to pay interest for the delinquency in payment of the compensation. In that sense, the following clauses are still pending for compliance:

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<sup>67</sup> Report No. 94/00, Case 11.439, Byron Roberto Cañaverl, Ecuador, October 5, 2000, available at: <http://cidh.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.439.htm>

## V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

[...]

## VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

[...] In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

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

586. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." In the same communication, the State recognized that in terms of the compensatory damages established in the friendly settlement agreement, payment of the amount of interest in arrears remained pending.

587. On November 26, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the IACHR's request for information.

588. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

589. The petitioning party did not provide any additional information on compliance.

590. The IACHR observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no progress in complying with the commitment related to the investigation of the events and that it has merely reiterated word for word the same information it provided before, without indicating that there has been any specific judicial activity designed to identify, prosecute, and punish those responsible for the arrest and torture of Byron Roberto Cañaverl. Nor has the IACHR received information regarding payment of interest. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)**

591. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with a series of arrests of Mr. Manuel Inocencio Lalvay Guamán that took place between 1993 and 1994 at the hands of state agents, who subjected him to torture and other forms of cruel and inhumane treatment.

592. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 96/00<sup>68</sup>, in which it acknowledged that the State had complied with the payment of compensation in the amount of US\$25,000, and decided to continue to monitor and supervise the clause pending for compliance. In the said report, the IACHR urged the State to take the measures needed for carrying out the commitment still pending with respect to bringing to trial the persons considered responsible for the facts alleged. In that sense, the following clause is still pending for compliance:

#### **V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

593. On October 4, 2013, the IACHR requested information on compliance with the items pending. On November 21, 2013, the petitioners reiterated that in 1999 the Police Court ruled that the criminal action was barred by statute of limitations, and that the State had not taken any action to set aside that decision, which, according to the petitioners, is a violation of the right in question, since the police judges acted without jurisdiction to adjudicate human rights violations. The State, for its part, recognized in subsequent communications that on April 28, 1999, the Second Judge of the First District handed down an order barring the criminal action, which was affirmed by the District Police Court on June 23, 1999, and that those accused remained in active service as of 2014.

594. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted

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<sup>68</sup> Report No. 96/00, Case 11.466, Manuel Inocencio Lalvay Guzmán, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.466.htm>



by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted “investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.”

595. On November 26, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners indicated that the State had still not taken any steps to set aside the decision of the Police Courts that ruled that the action was barred by statute of limitations, and they informed that the State had failed to take any actions to sanction the police judges who assumed the authority to hear and decide criminal matters involving human rights violations, for which reason those acts remain unpunished. The State did not reply to the request for information.

596. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter “verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

597. The petitioning party did not provide any additional information on compliance.

598. The IACHR observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no progress in complying with the commitment related to the investigation of the events. To the contrary, it barred by statute of limitations the criminal action against those responsible for the torture of Manuel Inocencio Lavay Guamán. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.584, Report No. 97/00, Carlos Juela Molina (Ecuador)**

599. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of the minor Carlos Juela Molina on December 21, 1989, by an agent of the State who subjected him to torture and other forms of cruel and inhumane treatment. The investigation of the police officer involved in the incident was taken up by the police criminal justice system, which sent the proceedings to the archive.

600. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 97/00<sup>69</sup>, in which it acknowledged that the State had complied with the payment of compensation in the amount of US\$15,000,

<sup>69</sup> Report No. 97/00, Case 11.584, Carlos Juela Molina, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.584.htm>.

and decided to continue to monitor and supervise the clause pending for compliance. In the said report, the IACHR urged the State to urge the State to take the measures needed to comply with the pending commitments to punish the persons responsible for the violation alleged. In that sense, the following clause is still pending for compliance:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State; and therefore, it will not proceed against the persons who have been object of final judgment by the national courts, in relation to the alleged violations.

601. On October 4, 2013, the IACHR requested information from both parties about compliance with the pending items. On November 19, 2013, the petitioners reported that the State had not brought any legal action for the investigation, prosecution, and punishment of the police judges who had assumed jurisdiction to which they were not entitled to investigate human rights violations, and under which they shelved the case in 1995 upon finding that it was barred by statute of limitations.

602. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners again indicated that the State had not brought any action against those police judges, and added that the State had also failed to take any actions to punish those directly responsible for the violations committed against the victim. The State did not reply to any of the IACHR's requests for information.

603. On September 25, 2015, the IACHR requested updated information from the parties concerning compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

604. The petitioning party did not provide any additional information on compliance.

605. The observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the torture of Carlos Juela Molina. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

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

606. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Marcia Irene Clavijo

Tapia, carried out without an arrest warrant on May 17, 1993. The victim was subjected to torture and other forms of cruel and inhumane treatment at the time of her arrest, kept in preventive custody for four years, and then the charges against her were dismissed.

607. On October 5, 2000<sup>70</sup>, the IACHR adopted Friendly Settlement Report No. 98/00, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$63,000, and decided to continue to monitor and supervise the clause pending for compliance. In the said report, the IACHR urged the State to take the measures necessary to carry out the commitments pending with respect to bringing to trial and punishing the persons responsible for the violations alleged, and to paying interest for the delinquency in payment of the compensation. In that sense, the following clauses are still pending for compliance:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

[...]

#### VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

[...] In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

608. On October 4, 2013 and on November 26, 2014, the IACHR asked both parties for information on compliance with pending items. Neither of the parties submitted any information.

609. On September 25, 2015, the IACHR requested updated information from the parties concerning compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

610. The petitioning party did not provide any additional information on compliance.

611. The IACHR observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the torture of Marcia Irene Clavijo Tapia. Nor has the IACHR received information regarding payment of interest. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

<sup>70</sup> Report No. 98/00, Case 11.783, Marcia Irene Clavijo Tapia, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.783.htm>

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

612. On May 14, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged that “the domestic judicial proceeding was characterized by unjustified delays, excessive technicalities, inefficiency, and denial of justice. The Ecuadorian State could not demonstrate that it was not its official agents who illegally and arbitrarily detained brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, to the point of torturing them and taking their lives, nor could it refute that those actions were at odds with the Constitution, with our country’s legal framework, and with respect to the international conventions that guarantee human rights.” The State also agreed to pay compensatory damages, to conduct a search for the bodies, and to prosecute the guilty. The case deals with the detention and subsequent disappearance of the brothers Carlos Santiago and Pedro Andrés Restrepo on January 8, 1988, at the hands of officers of the National Police.

613. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 99/00<sup>71</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$2,000,000, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to take the measures needed to comply with the commitments still pending to carry out the total, definitive, and complete search for the bodies of the two brothers, and the criminal trial of the persons considered to have participated in the torture, disappearance, and death of the Restrepo Arismendy brothers, as well as in covering up those acts. In that sense, the following clauses are still pending for compliance:

**SIXTH – NEW SEARCH FOR THE RESTREPO BROTHERS**

[...] The Ecuadorian State, represented by the Attorney General, undertakes to carry out a complete, total, and definitive search, in Yambo Lake, for the bodies of the Restrepo brothers, which, it is considered, may have been cast into it in 1998 or subsequent years, and to recover them if located. To this end, the Ministry of National Defense shall make available a team of scuba divers from the Ecuadorian Navy to the Office of the Attorney General; they will be joined by a team or teams of specialized private organizations, whose assistance will be sought by the Office of the Attorney General or that are provided on a volunteer basis by Ecuadorian or international human rights organizations. The Ministry of Government, for its part, will provide the full collaboration needed to secure this objective.

**NINTH – PUNISHMENT OF PERSONS NOT PLACED ON TRIAL**

The Ecuadorian State, through the Office of the Attorney General, pledges to encourage the State Attorney General and the competent judicial organs, to bring criminal charges against those persons who, in the performance of their police functions, are considered to have participated in the death of brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy. The Office of the Attorney General undertakes to encourage the public or private organs with competence to contribute legally supported information that makes it possible to bring those persons to trial. If it takes place, this trial shall be carried out subject to the constitutional and statutory order of the Ecuadorian State, and, consequently, shall not proceed against those persons who have been subject to a final judgment by the Supreme Court of Justice of Ecuador, or in the event that the offenses attributable to them have been legally prescribed.

614. On March 15, 2013, the State submitted information on progress in the steps taken for compliance. In this regard, it reported on the creation of the Operational Team, which goes by the name of “POR LA VERDAD Y JUSTICIA” [“For Truth and Justice”], within the Ministry of the Interior, in order to facilitate the search and discovery of victims’ remains. It further reported that the Ministry of the Interior

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<sup>71</sup> Report No. 99/00, Case 11.868, Carlos Santiago and Pedro Restrepo Arismendy, Ecuador, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.868.htm>

had launched a “far-ranging communications campaign” to secure information on the whereabouts of the victims’ remains. The State also noted that the Argentine Forensic Anthropology Team has assisted in the process of investigation. Additionally, it reported that “since the time the Operational Team began to perform its duties, the Restrepo family has participated in the investigation,” mainly through attendance at periodic meetings to be briefed on progress and to listen to their [the family’s] requests.

615. With regard to the criminal investigation, the State reported that the matter is under the responsibility of a prosecuting attorney of the Truth and Human Rights Commission of the Office of the Attorney General of the State and that the process is in the preliminary stage. In this regard, the State noted that “there is total secrecy with regard to the investigation being conducted by the prosecuting attorney,” and that it would report at the proper time when the case moves to the next stage of the investigation. This information was forwarded to the petitioners for their comments, and as of the date of approval of the instant Annual Report, the petitioners have not submitted their reply.

616. On October 4, 2013 and on November 26, 2014, the IACHR requested information from both parties on compliance with the items still pending, but no replies have been received.

617. On September 25, 2015, the IACHR requested updated information from the parties concerning compliance. On October 23, 2015, the State reiterated that the matter is still under the responsibility of a prosecuting attorney of the Office of the Attorney General’s Truth and Human Rights Commission and that the process continues in the preliminary inquiry stage. The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

618. The petitioning party did not provide any additional information on compliance.

619. The IACHR observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the disappearance and torture of Carlos Santiago and Pedro Restrepo Arismendy. Nor has the State made progress in carrying out the total, definitive, and complete search for the minors’ bodies. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador)**

620. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Kelvin Vicente Torres Cueva, detained without an arrest warrant on June 22, 1992. The victim was subjected to torture and other forms of cruel and inhumane treatment, kept incommunicado for 33 days, and held in preventive custody for more than six years, after which he was released.

621. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 100/00<sup>72</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$50,000,

<sup>72</sup> Report No. 100/00, Case 11.991, Kelvin Vicente Torres Cueva, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.991.htm>

and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to make the decisions needed to carry out the pending commitments to bring to trial the persons considered responsible for the facts alleged, and to pay interest for the delinquency in payment of the compensation. In that sense, the following clauses are still pending for compliance:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

[...]

#### VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

[...] In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

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

623. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." In the same communication, the State recognized that in terms of the compensatory damages established in the friendly settlement agreement, payment of the amount of interest in arrears remained pending.

624. On November 26, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners again indicated that the State had not taken any action against the perpetrators of the acts, or any actions to overturn the aforementioned judgment. The State, for its part, did not reply to the request for information.

625. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of

statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

626. The petitioning party did not provide any additional information on compliance.

627. The IACHR observes with concern that although it has been 15 years since the friendly settlement report was approved, the State has shown no progress in complying with the commitment related to the investigation of the events and that it has merely reiterated word for word the same information it provided before, without indicating any specific judicial activity designed to identify, prosecute, and punish those responsible for the torture of Kelvin Vicente Torres Cueva. Nor has the IACHR received information regarding payment of interest. Based on the foregoing, concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.478, Report No. 19/01, Juan Clímaco Cuéllar *et al.* (Ecuador)**

628. On June 25, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals the arrests of Froilán Cuéllar, José Otilio Chicangana, Juan Clímaco Cuéllar, Henry Machoa, Alejandro Aguinda, Demetrio Pianda, Leonel Aguinda, Carlos Enrique Cuéllar, Carmen Bolaños, Josué Bastidas, and Harold Paz, which were carried out without arrest warrants between December 18 and 21, 1993, by hooded members of the Army. The victims were kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment; they were then held in preventive custody for between one and four years, after which they were released.

629. On February 20, 2001 the IACHR adopted Friendly Settlement Report No. 19/01<sup>73</sup> in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$100,000 to each of the victims, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged. In this regard, the following is still pending compliance:

#### **SEVENTH - PUNISHMENT**

The Ecuadorian State, through the Office of the Attorney General, pledges to encourage the State Attorney General and the competent judicial organs, to bring criminal charges against those persons who are considered to have participated in the facts alleged, and to encourage the public or private organs with competence to contribute legally supported information that makes it possible to bring those persons to trial.

This trial shall be carried out subject to the constitutional and statutory order of the Ecuadorian State, and in the event that the offenses attributable to them have not legally prescribed.

<sup>73</sup> Report No. 19/01, Case 11.478, Juan Clímaco Cuéllar *et al.*, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.478.htm>

630. On October 07, 2013 and December 1, 2014, the IACHR asked both parties to report on compliance with the items still pending. Neither the State nor the petitioners responded to the request for information.

631. On September 25, 2015, the IACHR requested updated information from the parties concerning compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

632. The petitioning party did not provide any additional information on compliance.

633. The IACHR observes that the State has shown no concrete progress in complying with the commitment to identify, prosecute, and punish those responsible for the detention and torture of the victims in this case. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor the items pending.

#### **Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador)**

634. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals the duration of the preventive custody in which Lida Ángela Riera Rodríguez was held in her trial for abetting the crime of embezzlement. The victim was detained on January 7, 1992, on June 26, 1995, she was convicted to a two-year prison term as an accessory after the fact, when she had already been in custody for three years and six months.

635. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 20/01<sup>74</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to adopt the necessary measures to conclude implementation of the commitment regarding the trial of persons implicated in the facts alleged. In this regard, the following is still pending compliance:

#### **V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings against and shall seek the punishment of those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

<sup>74</sup> Report No. 20/01, Case 11.512, Lida Ángela Riera Rodríguez, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.512.htm>



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

637. In a communication dated May 27, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." In the same communication, the State recognized that in terms of the compensatory damages established in the friendly settlement agreement, payment of the amount of interest in arrears remained pending.

638. On November 25, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

639. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

640. The petitioning party did not provide any additional information on compliance.

641. The IACHR observes that the State has shown no concrete progress in complying with the aforementioned commitment to identify, prosecute, and punish those responsible for the arbitrary detention of the victim in this case. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador)**

642. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This was in connection with the death of René Gonzalo Cruz Pazmiño, which took place on June 20, 1987, at the hands of a member of the Army.

643. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 21/01<sup>75</sup>, in which it acknowledged that the State had complied with the payment of compensation damages in the amount of US\$30,000 to the victim, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to adopt the necessary measures to conclude implementation of the commitment to prosecute the persons implicated in the facts alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings against and shall seek the punishment of those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

644. On October 4, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that on November 19, 2013, the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case would have reached the Statute of Limitations, because 10 years had passed, as established in the Criminal Code, counted from the date of the fact or the beginning of the trial, which bars prosecution when no court judgment has been issued during that time in cases where the offense is punishable by a term of imprisonment, such as the offense of murder.

645. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." In the same communication, the State recognized that in terms of the compensatory damages established in the friendly settlement agreement, payment of the amount of interest in arrears remained pending.

646. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

647. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No.

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<sup>75</sup> Report No. 21/01, Case 11.605, René Gonzalo Cruz Pazmiño, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.605.htm>

MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

648. The petitioning party did not provide any additional information on compliance.

649. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the death of René Gonzalo Cruz Pazmiño. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.779, Report No. 22/01, José Patricio Reascos (Ecuador)**

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

651. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 22/01<sup>76</sup>, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### **V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings against and shall seek the punishment of those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

652. On October 8, 2013, the IACHR requested information from both parties regarding the state of compliance with pending items. The petitioners responded on November 21, 2013, by saying that the State had not initiated any judicial or administrative proceeding towards the investigation and punishment of those responsible for the alleged facts and that the delay had led the matter to lapse within the domestic jurisdiction.

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<sup>76</sup> Report No. 22/01, Case 11.779, José Patricio Reascos, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.779.htm>

653. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

654. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

655. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

656. The petitioning party did not provide any additional information on compliance.

657. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against José Patricio Reascos. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador)**

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

659. The Commission issued the following recommendations to the State:

1. Proceed to grant full reparations, which involves granting adequate compensation to Mrs. Dayra Maria Levoyer Jimenez;
2. Order an investigation to determine responsibility for the violations detected by the Commission and eventually to punish the individuals responsible;

3. Take such steps as are necessary to reform *habeas corpus* legislation as indicated in the present report, as well as to enact such reforms with immediate effect.

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

661. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

662. On November 26, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners again indicated that the State had taken no actions against the perpetrators of the acts, or steps to provide reparation to the victim. They further added that the victim's property remained confiscated and in the possession of the State. The State did not reply to the request for information.

663. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

664. The petitioning party did not provide any additional information on compliance.

665. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against Dayra María Levoyer Jiménez. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

**Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos *et al.* (Ecuador)**

666. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for

violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with arrest of the Colombian citizens Rodrigo Elicio Muñoz Arcos, Luis Artemio Muñoz Arcos, José Morales Rivera, and Segundo Morales Bolaños, who were detained without an arrest warrant on August 26, 1993, by officers of the National Police. The victims were kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment.

667. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 104/01<sup>77</sup>, in which it acknowledged that the State had complied with paying each victim the amount of US\$10,000 as indemnification, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State that it must comply fully with the friendly settlement agreement by instituting judicial proceedings against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

668. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on November 19, 2013, by reiterating that the State had not complied with the element requiring the commencement of a judicial or administrative proceeding to investigate, identify, and punish the police officers responsible for the facts alleged before the Commission.

669. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

670. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners repeated what they had stated in their previous communication. The State did not reply to the request for information.

671. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The

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<sup>77</sup> Report No. 104/01, Case 11.441, Rodrigo Elicio Muñoz Arcos *et al.*, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11441.htm>

State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

672. The petitioning party did not provide any additional information on compliance.

673. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against the victims in this case. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador)**

674. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Washington Ayora Rodríguez, detained without an arrest warrant on February 14, 1994. The victim was kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment, after which he was released on the grounds that there was no motive for his arrest.

675. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 105/01<sup>78</sup>, certifying that the victim had been paid compensatory damages in the amount of US\$30,000, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to fully implement the friendly settlement by beginning judicial proceedings against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### **V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

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

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<sup>78</sup> Report No. 105/01, Case 11.443, Washington Ayora Rodríguez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11443.htm>

677. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

678. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners repeated what they had stated in their previous communication. The State did not reply to the request for information.

679. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

680. The petitioning party did not provide any additional information on compliance.

681. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the torture of Washington Ayora Rodríguez. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador)**

682. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the death of Marco Vinicio Almeida Calispa, which occurred on February 2, 1988, while he was in the custody of police officers, and with the failure of the courts to clear up the incident.

683. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 106/01<sup>79</sup>, certifying that the amount of US\$30,000 had been paid as compensatory damages to the victim's next-of-kin and decided to continue to monitor and supervise the clause pending for compliance. In the said report, the IACHR urged the State to fully implement the friendly settlement agreement, bringing judicial proceedings

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<sup>79</sup> Report No. 106/01, Case 11.450, Marco Vinicio Almeida Calispa, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11450.htm>



against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

684. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on November 19, 2013 that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, given the length of time that has elapsed to date, legal action is reportedly barred by the 10-year statute of limitations provided in the Criminal Code.

685. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

686. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication and added that the State had also failed to take any actions to sanction the police judges who had assumed jurisdiction, to which they were not entitled, to hear and decide matters involving human rights violations. The State did not reply to the request for information.

687. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

688. The petitioning party did not provide any additional information on compliance.

689. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the death of Marco Vinicio Almeida Calispa. The IACHR believes that the State has provided limited and repetitive information

regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

### **Case 11.542, Report No. 107/01, Ángel Reiniero Vega Jiménez (Ecuador)**

690. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the arrest of Ángel Reiniero Vega Jiménez, violently detained in his home by state agents without an arrest warrant on May 5, 1994. After being subjected to torture and other forms of cruel and inhumane treatment, the victim died in a hospital. The charges against the officers involved were dismissed by the police criminal justice system.

691. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01<sup>80</sup>, certifying that the amount of US\$30,000 had been paid as indemnification to the victim's next-of-kin, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State that to fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### **V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

692. On October 4, 2013 the IACHR asked both parties to report on compliance with the items still pending. On November 19 that year, the petitioners reiterated that the police judges, who did not have jurisdiction over the acts in question because they were human rights violations, dismissed the charges against the perpetrators and shelved the case. At that time, the petitioners added that the State had not taken any action to set aside that decision on the grounds that it was issued by police judges who lacked subject matter jurisdiction, nor had it brought any action to punish those judges or the perpetrators of the acts at issue in this case.

693. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

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<sup>80</sup> Report No. 107/01, Case 11.542, Ángel Reiniero Vega Jiménez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11542.htm>

694. On November 26, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication, and added that the acts remained unpunished. The State did not reply to the request for information.

695. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter “verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

696. The petitioning party did not provide any additional information on compliance.

697. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for violating the human rights of Ángel Reiniero Vega Jiménez. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador)**

698. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the death of Wilberto Samuel Manzano as a result of the actions of state agents on May 11, 1991. The victim was wounded with a firearm and then illegally detained by police officers in civil clothing, following which he died in a hospital. The charges against the officers involved were dismissed by the police criminal justice system.

699. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01<sup>81</sup>, certifying that the amount of US\$30,000 had been paid as compensatory damages to the victim’s next-of-kin, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State that to fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### **V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

<sup>81</sup> Report No. 108/01, Case 11.574, Wilberto Samuel Manzano, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11574.htm>

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

700. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. On November 19 that year, the petitioners reiterated that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, given the length of time that has elapsed to date, legal action is reportedly barred by the 10-year statute of limitations provided in the Criminal Code.

701. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to any of the IACHR's requests for information.

702. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

703. The petitioning party did not provide any additional information on compliance.

704. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the death of Wilberto Samuel Manzano. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador)**

705. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the arrest of Vidal Segura Hurtado, detained without an arrest warrant by officers of the National Police in civilian clothing on April 8, 1993. The victim was subjected to torture and other forms of cruel and inhumane treatment; he was then executed and his body was found on May 8, 1993, on the beltway surrounding the city of Guayaquil.

706. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 109/01<sup>82</sup>, in which it acknowledged that the State had complied with the payment of compensatory damages in the amount of US\$30,000 to the victim's next-of-kin, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

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<sup>82</sup> Report No. 109/01, Case 11.632, Vidal Segura Hurtado, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11632.htm>

## V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

707. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on November 19, 2013, that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, given the length of time that has elapsed to date, legal action is reportedly barred by the 10-year statute of limitations provided in the Criminal Code.

708. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State agreed to forward that information in writing; however, this Commission has not received it to date.

709. On November 26, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

710. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

711. The petitioning party did not provide any additional information on compliance.

712. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the torture and death of Vidal Segura Hurtado. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

**Case 12.007, Report No. 110/01, Pompeyo Carlos Andrade Benítez (Ecuador)**

713. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Pompeyo Carlos Andrade Benítez, detained without an arrest warrant on September 18, 1996. After he had been held for ten months, the preventive custody order was canceled and a dismissal order was issued; however, the victim remained in detention.

714. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 110/01<sup>83</sup>, in which it acknowledged that the State had complied with paying the victim the amount of US\$20,000 as compensatory damages, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged. In this regard, compliance remains pending with respect to one clause, which states as follows:

**V. PUNISHMENT OF THE PERSONS RESPONSIBLE**

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

715. On October 8, 2013 and on November 26, 2014, the IACHR requested both parties to report on the state of compliance with pending items. Neither of the parties submitted the information requested.

716. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

717. The petitioning party did not provide any additional information on compliance.

718. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against Pompeyo Carlos Andrade Benítez. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

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<sup>83</sup> Report No. 110/01, Case 12.007, Pompeyo Carlos Andrade Benítez, October 11, 2001, available at <http://www.cidh.oas.org/annualrep/2001eng/Ecuador12007.htm>

**Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)**

719. On July 17, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the duration of the preventive custody in which Bolívar Franco Camacho Arboleda was held during his trial for illegal possession of cocaine. The victim was placed in detention on October 7, 1989. On January 24, 1995, he was acquitted and, in February 1995, he was released, after he had been imprisoned for more than five years (63 months).

720. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 63/03<sup>84</sup>, in which it acknowledged that the State had complied with paying the victim the amount of US\$30,000 as compensatory damages, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged to comply fully with the friendly settlement agreement by initiating judicial proceedings against the persons involved in the alleged violations. In this regard, compliance remains pending with respect to one clause, which states as follows:

**V. PUNISHMENT OF THOSE RESPONSIBLE**

The Ecuadorian State undertakes, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties, are presumed to have participated in the alleged violation.

The Office of the Attorney General undertakes to encourage the Public Prosecutor, the competent judicial organs, and public or private agencies to provide legal evidence to determine the responsibility of those persons. If appropriate, prosecution will be pursued in accordance with the constitutional and legal framework of the Ecuadorian State.

721. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reiterated on November 21, 2013, that the State had not instituted any judicial or administrative proceeding to investigate, identify and punish the police, judges and prosecutors responsible for the facts alleged to the Commission.

722. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State agreed to forward that information in writing; however, this Commission has not received it to date.

723. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. They further stated that, given the length of time that had elapsed since the time of the events, the statute of limitations provided under the domestic law had expired. The State did not reply to the request for information.

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<sup>84</sup> Report No. 63/03, Case 11.515, Bolívar Franco Camacho Arboleda, October 10, 2003, available at: <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.11515.htm>

724. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter “verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

725. The petitioning party did not provide any additional information on compliance.

726. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against Bolívar Franco Camacho Arboleda. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

**Case 12.188, Report No. 64/03, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador)**

727. On November 12, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, and Rocío Valencia Sánchez, detained without an arrest warrant by police officers on March 19, 1993. On March 28, 1993, the victims were placed in preventive custody as part of their prosecution for the crimes of drug trafficking and asset laundering. The victims were kept in preventive custody for more than five years, following which they were acquitted.

728. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 64/03<sup>85</sup>, in which it acknowledged that the State had complied with paying each victim the amount of US\$25,000 as indemnification, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged the State to comply fully with the Friendly Settlement Agreement by initiating judicial proceedings against the persons involved in the alleged violations. In this regard, compliance remains pending with respect to one clause, which states as follows:

V. PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State undertakes, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties or the exercise of public power, are presumed to have participated in the reported violations.

<sup>85</sup> Report No. 64/03, Case 12.188, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez, October 10, 2003, available at <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12188.htm>



The office of the Attorney General undertakes to encourage the Public Prosecutor of the State, the competent judicial organs, and the competent public or private agencies to provide legal evidence to determine the responsibility of those persons. If appropriate, prosecution will be pursued in accordance with the constitutional and legal framework of the Ecuadorian State.

729. On October 8, 2013, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on November 19, 2013, that the State had not yet initiated any civil, criminal or administrative actions to punish the police officers, judges, and prosecutors responsible for the facts alleged.

730. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to any of the IACHR's requests for information.

731. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

732. The petitioning party did not provide any additional information on compliance.

733. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against the victims in this case. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

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

734. On November 26 and December 16, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the firearm attack on the vehicle carrying Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos on May 22, 1999, perpetrated by officers of the National Police. Following the attack the victims were taken into custody, without arrest warrants, and subjected to torture and other forms of cruel and inhumane treatment; they were later released, on the grounds that the attack and arrest were the result of a “police error.”

735. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 65/03<sup>86</sup>, in which it acknowledged that the State had complied with paying compensation in the amounts of US\$100,000 to Mr. Hernández, US\$300,000 to Mr. Loor, and US\$50,000 to Mr. Lara, and decided to continue to monitor and supervise the clauses pending for compliance. In the said report, the IACHR urged to comply fully with the

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<sup>86</sup> Report No. 65/03, Case 12.394, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos, October 10, 2003, available at: <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12394.htm>

friendly settlement agreements by initiating judicial proceedings against the persons involved in the alleged violations. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### V. PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State undertakes, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties or the exercise of public power, are presumed to have participated in the reported violations.

The office of the Attorney General undertakes to encourage the Public Prosecutor of the State, the competent judicial organs, and the competent public or private agencies to provide legal evidence to determine the responsibility of those persons. If appropriate, prosecution will be pursued in accordance with the constitutional and legal framework of the Ecuadorian State.

736. On October 8, 2013 and December 1, 2014, the IACHR asked both parties to report on compliance with the items still pending, but received no response.

737. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

738. The petitioning party did not provide any additional information on compliance.

739. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against the victims in this case. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

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

740. On October 10, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, and the duty of adopting domestic legal provisions, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

741. This case deals with the duration of the preventive custody in which José René Castro Galarza was held during his prosecution for drug trafficking, acting as a front, and illegal enrichment. The victim was detained, without an arrest warrant, on June 26, 1992. He was then kept incommunicado for 34 days. On November 22, 1996, the illegal enrichment charges against the victim were dismissed; on March 23, 1998, the fronting charges were dismissed; and he was sentenced to an eight-year prison term for drug trafficking, which was reduced to six years on September 15, 1997. The victim was kept in prison even though he had been in custody for six years, and he was released on June 16, 1998.

742. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 44/06<sup>87</sup>, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$80,000; and it decided to continue to monitor and supervise the clause pending compliance. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### FIFTH: PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State

The Office of the Attorney General shall deliver to the State Attorney General all necessary documents to open investigations to punish those responsible for the aforesaid violations. By the same token, it shall encourage the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of such persons. If admissible, the prosecution will be subject to the Constitution and laws of the Ecuadorian State.

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

744. In this regard, the petitioners claimed that the precautionary measure prohibiting transfer of the victims property was issued in 1992, and that 20 years had elapsed without the victim being able to use and enjoy his property, which would be a serious breach of the friendly settlement agreement and a violation of his right to property stemming from arbitrary acts of State agents. Consequently, the IACHR was requested to urge the State to cease the violations against the victim and proceed to lift the aforementioned precautionary measures.

745. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

746. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No.

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<sup>87</sup> Report No. 44/06, Case 12.205, José René Castro Galarza, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12205eng.htm>

MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

747. The petitioning party did not provide any additional information on compliance.

748. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against the victim in this case. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Petition 12.207, Report No. 45/06, Lizandro Ramiro Montero Masache (Ecuador)**

749. On September 20, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Lizandro Ramiro Montero Masache, detained without an arrest warrant on June 19, 1992. The victim was held in preventive custody for more than five years, following which the charges were dismissed.

750. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 45/06<sup>88</sup>, in which it acknowledged that the State had complied with the payment of compensation to the victim in the amount of US\$60,000; in addition, it said would continue to follow up on and monitor the clause pending for compliance. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### **V: PUNISHMENT OF THOSE RESPONSIBLE**

The Ecuadorian State will undertake, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties or by taking advantage of their position, are presumed to have participated in the alleged violation.

The Office of the Attorney General will make available to the Public Prosecutor all documentation needed to initiate investigations that could lead to the punishment of the parties responsible for the violations in question. Likewise, it will encourage the competent judicial organs and other public or private entities to provide any legal evidence that may contribute to establishing responsibility for the violations. Any prosecution that may ensue will be carried out in accordance with the constitutional and legal framework of Ecuador.

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

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<sup>88</sup> Report No. 45/06, Case 12.207, Lizandro Ramiro Montero Masache, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12207eng.htm>

752. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to any of the requests for information.

753. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

754. The petitioning party did not provide any additional information on compliance.

755. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the detention and torture of the victim in this case. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

#### **Case 12.238, Report No. 46/06, Myriam Larrea Pintado (Ecuador)**

756. Following the adoption of Admissibility Report No. 8/05, the parties reached a friendly settlement agreement on February 23, 2005. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages, to remove her name from the public criminal records, to publish its acknowledgment of responsibility, and to prosecute the guilty. The case deals with the duration of the preventive custody in which Myriam Larrea Pintado was held during her prosecution for an alleged fraudulent transfer of property. The victim was imprisoned from November 11, 1992, to May 6, 1994, and was acquitted on October 31, 1994.

757. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 46/06<sup>89</sup>, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$275,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation. In this regard, compliance remains pending with respect to one clause, which states as follows:

#### **V. PUNISHMENT OF THOSE RESPONSIBLE**

The Ecuadorian State will initiate the actions necessary for the institution of both civil and criminal proceedings against, and the administrative sanctions of, those persons who, in carrying out state duties, or using their public authority are assumed to have participated in the alleged violation.

The Office of the Attorney General of the State will turn over all the necessary documentation to the Office of the Public Prosecutor in order to commence the investigations for the punishment of those found responsible for said violation. Likewise, it will request both the competent organs of the Judiciary and public or private organizations

<sup>89</sup> Report No. 46/06, Case 12.238, Myriam Larrea Pintado, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12238eng.htm>

to provide legally grounded information that will lead towards the establishment of said persons' responsibility, should it arise. Should these trials be warranted, they shall be carried out in observance of the constitutional and legal order of the Ecuadorian State.

## VI. OTHER REPARATIONS

The Ecuadorian State undertakes the commitment to erase from the Registry of Criminal Records, and from any other type of public or reserved registry, the name of Myrian [sic] Genoveva Larrea Pintado.

In addition, the Ecuadorian State undertakes the commitment to publish the text of clause III of this Friendly Settlement Agreement in the daily newspaper of the widest circulation. In this publication Ms. Myrian [sic] Genoveva Larrea Pintado's gratitude towards doctors Germánico Maya and Alejandro Ponce Villacís, attorneys and counsellors of Ms. Myrian [sic] Genoveva Larrea Pintado.

In addition, the Ecuadorian State undertakes the commitment, through the Office of the Attorney General of the State, to fashion a plaque with the name of Myrian [sic] Genoveva Larrea Pintado, which will record the responsibility of the Ecuadorian State, in accordance with number III of this agreement. The plaque shall be unveiled in an auditorium or another similar room of the Superintendencia de Bancos [Office of Banking Supervision].

758. The parties did not submit any information for four years. On October 26, 2011, the petitioner indicated that the State had complied only with the payment of financial compensation. On February 8, 2013, the petitioners reiterated that the State had failed to initiate any judicial action to investigate, prosecute, and punish those responsible for the violations committed against the victim, and they indicated that there had been compliance only with the item involving financial compensation.

759. On October 8, 2013 and December 1, 2014, the IACHR asked both parties to report on the status of compliance with the items still pending and received no response from either one.

760. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

761. The petitioning party did not provide any additional information on compliance.

762. The IACHR observes that the State has still not complied with the reparation measures related to erasing the criminal record, publishing a text in a daily newspaper with wide circulation, and creating a plaque, as well as instituting actions to investigate, prosecute, and punish those responsible for the violations committed against the victim in this case. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

**Case 12.558, Petition 533-01, Report No. 47/06, Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)**

763. On September 20, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to life, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

764. This case deals with the arrest of Fausto Mendoza Giler and Diógenes Mendoza Bravo on March 19, 2000, by members of the Special Operations Group (GOE) of the police. The victims were beaten, following which Fausto Fabricio Mendoza died. Diógenes Mendoza Bravo lodged a private suit against the police officers involved in the arrest and, on July 20, 2000, a generalized trial commencement deed was adopted in which none of those officers was named.

765. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 47/06<sup>90</sup>, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$300,000; and indicated that it would continue to monitor and supervise the commitment pending compliance, which states as follows:

**V: PUNISHMENT OF THOSE RESPONSIBLE**

The Ecuadorian State will undertake, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties or by taking advantage of their position, are presumed to have participated in the alleged violation.

The Office of the Attorney General will make available to the Public Prosecutor all documentation needed to initiate investigations that could lead to the punishment of the parties responsible for the violations in question. Likewise, it will encourage the competent judicial organs and other public or private entities to provide any legal evidence that may contribute to establishing responsibility for the violations. Any prosecution that may ensue will be carried out in accordance with the constitutional and legal framework of Ecuador.

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

767. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded to the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, who would have verbally reported that it had conducted "investigative activities such as on-site inspections and the collection of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State agreed to forward that information in writing; however, this Commission has not received it to date.

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<sup>90</sup> Report No. 47/06, Petition 533-01, Fausto Mendoza Giler *et al.*, March 15, 2006, available at <http://www.cidh.oas.org/annualrep/2006eng/Ecuador533.01eng.htm>

768. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

769. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter “verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution’s investigation.” The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with “pertinent information” that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

770. The petitioning party did not provide any additional information on compliance.

771. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against the victim in this case. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Therefore, the Commission will continue to monitor pending items.

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

772. In Report No. 17/08<sup>91</sup> of March 14, 2008, the Commission concluded that the Ecuadorian State had incurred international responsibility for violation of Rafael Ignacio Cuesta Caputi’s rights to a fair trial, to judicial protection and to freedom of expression, set forth in articles 8(1), 25 and 13 of the American Convention, in conjunction with its general obligation under Article 1(1) to respect and ensure the Convention-protected rights. The present case concerns the Ecuadorian State’s responsibility for failure to properly investigate the facts surrounding the explosion of a bomb that Mr. Cuesta Caputi was holding in the course of practicing his profession of journalism.

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

1. Publicly acknowledge international responsibility for the human rights violations established by the IACHR in the present report.
2. Carry out a complete, impartial, and effective investigation into the attack on Rafael Ignacio Cuesta Caputi.
3. Grant adequate reparation to Mr. Rafael Ignacio Cuesta Caputi for the violations of his right to judicial guarantees, to judicial protection, to personal integrity, and to freedom of thought and expression.

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

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<sup>91</sup> Report No. 17/08, Case 12.497, Rafael Ignacio Cuesta Caputi, March 14, 2008, available at: <http://www.cidh.oas.org/annualrep/2008eng/Ecuador12487eng.htm>



775. On October 25, that year, the petitioner reiterated that “there has been no change” in compliance with the recommendations “and the situation has remained the same since late 2010.” In this regard, he noted there was only partial compliance with the recommendations pertaining to publishing a public apology and dedicating a commemorative plaque. As for reparation, he claimed that there has been no effort made by the State to comply with this recommendation. In a subsequent communication dated January 20, 2014, the petitioner informed the IACHR that there was still a disagreement regarding the amount of compensation, and that the amount would have to be reevaluated and examined in order to determine a value that was fair and consistent with the principles governing this matter with respect to pecuniary and non-pecuniary damages.

776. On December 1, 2014, the IACHR once again requested information from both parties regarding compliance. The petitioner responded on January 26, 2015, that there have been no advancements since 2010. The State did not reply to the request for information.

777. On September 25, 2015, the IACHR asked the parties for updated information regarding compliance. As of the date of this report, neither of the parties has submitted any updated information regarding compliance.

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

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

779. In Report No. 84/09<sup>92</sup> of August 6, 2009, the Commission concluded that the State was responsible for violation of the rights to humane treatment, personal liberty, to a fair trial, nationality, freedom of movement and residence, and judicial protection, recognized in articles 5, 7, 8, 20, 22 and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, by virtue of the unlawful detention of Nelson Iván Serrano Sáenz, a citizen with dual Ecuadorian and United States citizenship, and his immediate deportation to the United States to face trial for the murder of four people in the state of Florida, where he was subsequently convicted and sentenced to die.

780. The IACHR made the following recommendations to the Ecuadorian State:

1. Continue granting legal assistance to Nelson Iván Serrano Sáenz according to international law.
2. Modify domestic legislation to ensure simple and effective recourse to courts pursuant to Article 25 of the American Convention for anyone subject to deportation proceedings.
3. Provide adequate reparations for the violations of Nelson Iván Serrano Sáenz’s rights established in this report.

781. On October 4, 2013 y on November 25, 2014, the IACHR requested both parties to report on compliance with the items still pending and received no response from either one.

782. On February 4, 2015, the State reported on the technical legal assistance provided to Mr. Nelson Serrano Sáenz through the hiring of an attorney from a firm located in the state of Florida, for (US)

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<sup>92</sup> Report No. 84/09, Case 12.535, Nelson Iván Serrano Sáenz, August 6, 2009, available at: <http://www.cidh.oas.org/annualrep/2009eng/Ecuador12525eng.htm>

\$258,000; she assisted him during the appeal of the death sentence he had received. In 2011, this firm filed a writ of certiorari, which was denied by the Florida Supreme Court on December 5, 2011.

783. In addition, on July 28, 2012, another attorney was hired for a fee of \$844,155.85 to file a motion under Rule 3.851 of the Florida Rules of Criminal Procedure. This action reportedly challenged the effectiveness of the lawyers who represented Mr. Serrano in the trial court. A firm of private investigators was also hired to gather additional evidence, as well as a company to organize the 90,000 pages of documents in the case.

784. On March 24, 2014, these attorneys held a teleconference with seven individuals, including one of the victim's relatives, for the purpose of identifying potential witnesses and other possible evidence. An evidentiary hearing was held May 12-20, 2014, and on September 2, 2014, Mr. Serrano's attorneys presented closing arguments on the ineffectiveness of the representation of the defense counsel assigned by the state of Florida.

785. In addition, under Rule 3.853 of the Florida Rules of Criminal Procedure, Mr. Serrano's counsel filed a motion for DNA testing to be performed on certain items collected from the crime scene. On March 14, 2014, the Florida Supreme Court ordered that new DNA testing be done using the latest technology available. The testing was performed by a professional who is an expert in this field. The State did not indicate what the impact of that test may have been.

786. The State also provided information concerning some diplomatic efforts made on behalf of Mr. Serrano. Along these lines, on September 23, 2014, the Ecuadorian Consul in Miami visited Mr. Serrano in the Florida State Prison to verify his current health status. Shortly after that, on September 24, a meeting was held with Judge Thomas Winokur of the First District Court of Appeal to explain how urgent it is for Mr. Serrano to receive the medical treatment he needs for diabetes, as he has lost sight in his right eye, his teeth have fallen out, and he is losing his hearing. This request was formalized through Official Document MJDHC-SDHC-2014-0178-0, dated October 24, 2014.

787. With regard to recommendation No. 2, the State reported that work on the Organic Law on Human Mobility is being carried out by the National Assembly's Commission on Citizen Participation and Social Control, in coordination with the Ministry of Foreign Affairs and Human Mobility and other public institutions. A number of working meetings and workshops have also reportedly been held in this context, with the participation of civil society. The Workshop on Building the Organic Law on Human Mobility was held on November 23, 2013, and the Meeting on Return and Refuge in the Context of Human Mobility was organized June 12-13, 2014.

788. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. The State reported on October 30, 2015, that the Supreme Court of Florida had denied the motion brought under Rule 3.851, and that the attorneys who were hired had filed a notice of appeal. Based on that, it can be deduced that the grounds for this appeal will be forthcoming.

789. The petitioning party did not provide any updated information on compliance.

790. The Commission takes note of the steps taken by the Ecuadorian State to comply with the recommendations laid out in Report No. 84/09 and appreciates the State's efforts to provide the victim with legal representation, which is part of comprehensive reparation. In addition, the Commission takes note of the draft legislation to establish a legal framework on the issue of human mobility, and it urges the State to provide more detailed information concerning progress on this matter.

791. Based on the above, the Commission concludes that there has been partial compliance with the recommendations made in Report No. 84/09. Therefore, the Commission will continue to monitor compliance with the recommendations.

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

792. On October 10, 2006, through the good offices of the Commission, the parties reached a friendly settlement agreement. The Ecuadorean State recognized its responsibility for violations of the right to life, humane treatment, a fair trial and judicial protection and its obligation to respect and ensure human rights under the American Convention on Human Rights. Additionally, the State pledged to pay compensation and to both civilly and criminally prosecute the individuals who were implicated in the act violating the Convention.

793. The case involves the death of the young man Julio Rubén Robles Eras, a 22-year-old Sub-lieutenant in the Army, who died on the night of August 22, 2001, under circumstances that have not been clarified, allegedly during an “initiation” for sub-lieutenants who had recently joined the battalion. Two judicial proceedings were initiated as a result of these events, one in military court, under the First Criminal Judge of the Third Military Zone, and the other being prosecuted in civilian court by the Macará District Attorney and the Seventh Criminal Court Judge of Loja. This led to a conflict of jurisdiction, which the Court of Military Justice settled in a decision that determined that the case belonged in the military courts. The case brought in the civilian court was joined with the case being heard in the military justice system.

794. On November 13, 2012, the IACHR approved Friendly Settlement Report No. 122/12<sup>93</sup> finding that the State had made good on the payment of US\$300,000.00 as financial compensation, and had made some progress in complying with the non-pecuniary measures of reparation, including the prohibition of “initiation” practices within the institution of the armed forces as well as the Office of the Attorney General’s compliance in ensuring that the principle of a unitary system of justice is enforced. In the same report, the IACHR decided to continue to monitor the commitments that remained unfulfilled. Compliance is reportedly pending with respect to the following clause:

**VII. THE RIGHT TO THE TRUTH OF THE VICTIM’S FAMILY MEMBERS AND THE RIGHT OF RECOURSE AGAINST THE RESPONSIBLE PARTIES**

The Ecuadorian state shall do everything within its power to ensure that the persons who participated in the act that violated the victim’s human rights and that engaged the state’s international responsibility, shall face civil and criminal liability.

The state reserves exercise of the right of recourse against the former officers that the military courts convicted of violating Mr. Robles Eras’ right to life. It shall exercise this right in accordance with Article 22 of the Constitution.

The Office of the Attorney General of the State shall present all the necessary documents to enable the Public Prosecutor’s Office and the Judicial Investigation Service to investigate the violations of Mr. Robles Eras’ right to personal integrity. Once the circumstances of Sub-Lieutenant Robles Eras’ death are known, i.e., once the culpable parties’ degree of blame has been established and they are sentenced accordingly, the final judgment shall be sufficient for the state to reclaim damages from the convicted former officers.

795. On October 4, 2013, the IACHR requested both parties to report on compliance with the items still pending. On November 20, 2013, the petitioners reported that the State made good on paying the amount of compensation provided for in the agreement entered into and had undertaken the creation of an adjudicatory unit that ordered police and military courts to become part of the Regular Civilian Judiciary System. The petitioners also indicated that they did not know whether the State had initiated civil and criminal proceedings to properly determine the circumstances of the victim’s death and the degree of responsibility of those involved.

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<sup>93</sup> Report No. 122/12, Petition 533-05, Julio Rubén Robles Eras, November 13, 2012, available at: <http://www.oas.org/es/cidh/decisiones/amistosas.asp>

796. In a communication dated May 27, 2014, received in this Secretariat on July 3, 2014, the National Director of Human Rights of the Attorney General's Office forwarded the IACHR a report drafted by the Ecuadorian Ministry of Justice, Human Rights, and Cults on the situation of some cases that are in compliance with the friendly settlement process or the recommendations contained in a report on the merits. With respect to this specific case, the State underscored its compliance with the financial reparation, as well as with the commitment of the Attorney General's Office to ensure the application of the principle of jurisdictional uniformity, in order for the military and police courts to be incorporated into the judiciary. It also mentioned the elimination of the practice of hazing within the armed forces.

797. In that communication, the State specified that the Office of the Director of the Truth and Human Rights Commission had sent official letters to the Office of the Public Prosecutor in order for it to conduct the pertinent investigations. In addition, the State indicated that a meeting had been held with the Office of the Prosecutor General, which In addition, the State had verbally reported that it had conducted "investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation."

798. On November 25, 2014, the IACHR once again requested information from both parties regarding compliance. In a communication dated December 17, 2014, the petitioners reiterated what they had stated in their previous communication. The State did not reply to the request for information.

799. On September 25, 2015, the IACHR requested updated information from the parties regarding compliance. On October 23, 2015, the State indicated that in a meeting between the Ministry of Justice, Human Rights, and Cults and the Office of the Public Prosecutor, on a date it did not specify, the latter "verbally reported that it had conducted investigative activities such as on-site inspections and the taking of statements, for purposes of gathering evidence prior to the initiation of the Prosecution's investigation." The State indicated, with regard to this and other matters, that through official communications—No. MJDHC-SDHC-DDH-2015-0017-O, of February 10, 2015; No. MJDHC-SDHC-2015-0094-O, of April 29, 2015; and No. MJDHC-SDHC-2015-0253-O, of October 16, 2015—it had requested information from the Office of the Public Prosecutor regarding 26 cases involving friendly settlements in the follow-up stage, without yet having received any response with "pertinent information" that could be provided to the Commission. According to what the State reported, the Office for Human Rights in the Ministry of Justice, Human Rights, and Cults is in the process of systematizing, consolidating, and updating the information requested.

800. The petitioning party did not provide any additional information on compliance.

801. The IACHR observes that the State has shown no concrete progress in complying with the commitment related to identifying, prosecuting, and punishing those responsible for the human rights violations committed against the victim in this case. The IACHR believes that the State has provided limited and repetitive information regarding the current status of the investigation, without pointing to actions being taken to achieve a result. Based on the foregoing, the Commission concludes that compliance with the friendly settlement agreement is partial. Accordingly, the Commission will continue to monitor the pending items.

#### **Case 12.631, Report No. 61/13, Karina Montenegro et al. (Ecuador)**

802. On December 18, 2008, a friendly settlement agreement was signed between the Ecuadorian State and Tania Shasira Cerón Paredes, Karina Montenegro, Leonor Briones, Martha Cecilia Cadena, and Nancy Quiroga. In the agreement, the Ecuadorian State acknowledged its international responsibility for the violation of the rights to humane treatment, personal freedom, and judicial protection, the rights of the child, and the obligation to respect and guarantee the human rights enshrined in the American Convention on Human Rights. Additionally, the State agreed to pay compensation, and to civilly and criminally prosecute the individuals who took part in the violation.

803. The case concerns the unlawful detention of these 5 women. On the date of their detention, 4 of them were pregnant, and Mrs. Martha Cecilia Cadena was 68 years of age; under Ecuadorian law, pregnant

women and persons over the age of 65 cannot be deprived of their liberty, and such persons are subject to house arrest rather than pretrial detention. The petition also contains allegations regarding the conditions in which these women were forced to spend their pregnancies and give birth, as well as the prison conditions in which they still live with their minor children.

804. On July 16, 2013, the Commission adopted Report No. 61/13, thereby approving the friendly settlement agreement between the parties. The report concluded that the State had complied partially with the following clauses, which continue to be monitored by the IACHR:

1. Pecuniary reparation measures
2. Immediate medical attention for Martha Cadena and her transfer to a prison house or correctional prison
3. Measures of non-repetition:
  - a) Training for public servants from the National Police, the Office of the Public Prosecutor, the Bureau of Prisons, the Constitutional Court, the Habeas Corpus Unit of the Mayor's Office, the Judiciary, and other appropriate legal practitioners
  - b) Provision of personnel and resources for compliance with the guarantee of house arrest
  - c) Creation of a prison house or correctional prison
  - d) Provision of materials to existing childcare facilities at detention centers and the creation of childcare facilities at existing centers
  - e) Creation of a special medical attention program for pregnant women, their children, and elderly persons
4. The Office of the Attorney General and the Office of the Deputy Secretary of Human Rights of the Ministry of Justice will file complaints with Police Headquarters, the National Council of the Judiciary, and the Office of the Prosecutor General, seeking the imposition of sanctions against those responsible for failing to carry out the house arrest, for which the respective proceedings shall be initiated to investigate the police, judicial, and other personnel who have failed to comply with or failed to execute the court orders mandating house arrest.
5. The Office of the Attorney General will institute administrative and civil proceedings to exercise the State's right of recourse against the public servants who compromised the State's international responsibility in this case.

805. On March 26, 2014, the petitioners submitted new information regarding compliance. They asserted therein that the financial reparation measures had been met in their entirety, and therefore the IACHR deems that part of the agreement satisfied.

806. With respect to the other clauses, in spite of the fact that the petitioners acknowledged progress on some of them—such as the provision of materials to existing childcare facilities—they insist that the State has not complied with them in their entirety and that the IACHR should continue to monitor compliance.

807. In a communication dated May 12, 2014, received in this Secretariat on July 3, 2014, the State sent information regarding compliance. The State submitted a list of human rights and gender training sessions held on different occasions between 2012 and 2014, in particular for medical and penitentiary staff. The State also presented information about ongoing education programs on human rights and gender, specifically sexual and domestic violence, at the prosecutors' school. The State further indicated that the Council of the Judiciary has held educational and training sessions for judiciary employees. Finally, it reported on training sessions on gender issues that have been provided to police personnel through the Ongoing Comprehensive Training Program (PCIC). This information was forwarded to the petitioners on July 15, 2014,

so they could submit their observations. Since the petitioners did not submit observations or express dissatisfaction with regard to this item, the Commission considers that with the 33 training activities described in detail in its report, the State has complied with item 3) of the friendly settlement agreement.

808. With regard to clause 3(b) concerning the provision of personnel and resources for compliance with the guarantee of house arrest, the State reported that on January 28, 2014, the National Assembly ratified the text of Articles 537 and 624 of the Comprehensive Organic Criminal Code, which provide for the substitution of pretrial detention with house arrest with the use of an electronic monitoring device. The State provided information about the legal and regulatory basis for using such a device; however, it did not include information about implementation of the rules, in other words, how the device is obtained and distributed, the number of individuals using it, and specifically the number of pregnant women who are being monitored under house arrest instead of in a prison facility as a result of having access to this device.

809. With regard to clause 3(c) concerning the creation of a prison house or correctional prison, the State informed the Commission about the New Prison Management Model, which aims to create new regional centers for social rehabilitation under a self-management model. By way of example, it points to the Guayas Center for Social Rehabilitation, which opened in August 2013 and has positioned itself as a pilot plan for this new management model. The State indicated that in November 2013, 4,300 individuals were transferred to the Guayas Center for Social Rehabilitation, and that by March 2014 the State planned to inaugurate the Sierra Centro Norte and Sierra Centro Sur Centers for Social Rehabilitation. The Commission is still awaiting information concerning these new facilities so that it can evaluate compliance with this clause.

810. With regard to clause 3(d) concerning the provision of materials to existing childcare facilities at the country's detention centers and the creation of childcare facilities at existing centers, the State reported that there are two childcare facilities in operation at the Women's Centers for Social Rehabilitation in Quito and Guayaquil, which it said are the correctional facilities with the highest numbers of pregnant women. The State gave general information related to the administration and operation of these facilities; however, it did not include the information related to the provision of materials, which is the subject of the agreement. Thus, the IACHR cannot at this time evaluate compliance with this commitment.

811. Finally, with regard to clause 3(e) concerning the creation of a special medical care program for pregnant women, their children, and elderly persons, the State reported that since May 2013 a joint project—*Proyecto Lazos de Amor Naciendo en Libertad* (Bonds of Love: Born in Liberty)—has been carried out between the Metropolitan Council for the Comprehensive Protection of Children and Adolescents, Coordinating Region 9, and the Ministry of Economic and Social Inclusion. This program aims to strengthen the mother-child bond by accompanying mothers throughout the pregnancy, delivery, and postpartum stages and encouraging the practice of breastfeeding. The State provided some details about specific aspects of the program. The State further indicated that women's correctional facilities are providing health services with the necessary care for pregnant women, including monthly check-ups between the first and seventh months of pregnancy and bimonthly check-ups during the last two months. Gynecology services are also available every two weeks; however, there is a general practitioner on staff who is available when needed. In addition, folic acid is administered from the first month of pregnancy, and other vitamins and minerals are provided beginning in the second month and throughout the pregnancy, in line with the Public Health Ministry's protocols. The State provided information regarding the ultrasound and Doppler equipment available at the Quito facility. Finally, the State provided information regarding Chapter III of the New Prison Management Model, which establishes the parameters for physical space, medical care, nutrition, and participation in activities for pregnant women, the elderly, and persons with disabilities, as well as the training for personnel who work in the social rehabilitation facilities. On July 15, 2014, this information was forwarded to the petitioners for their observations. As the petitioners did not submit observations or express dissatisfaction with respect to this item, the Commission finds that with the information provided regarding prenatal care in social rehabilitation facilities, the State has complied with point 3(e) of the friendly settlement agreement and declares this item to have been completed in its entirety.

812. On December 1, 2014, the IACHR asked for updated information regarding compliance. Neither of the parties submitted information on compliance.

813. On September 25, 2015, the IACHR asked the parties for updated information regarding compliance. On October 23, 2015, the State repeated information it had provided in May 2014 concerning the operation of the childcare facilities, the electronic monitoring devices, and the opening and operation of the Guayas Social Rehabilitation Center.

814. The petitioning party did not provide any additional information on compliance.

815. Based on the foregoing considerations, the IACHR declares that points 3(a) and 3(e) of the friendly settlement agreement—concerning the training of personnel and the creation of a program to provide medical care for pregnant women—have been fulfilled. The IACHR finds that compliance with the friendly settlement agreement is partial, and therefore it will continue to monitor pending items.

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

816. In its Merits Report No. 42/02 (Article 51), dated October 12, 2004, the IACHR declared that the Salvadoran State was responsible for: i) violation of Article 25 of the American Convention on Human Rights, to the detriment of Jorge Odir Miranda Cortez and 26 other persons identified in the processing of the petition, by virtue of the fact that a petition they attempted to file seeking amparo relief was not the simple and effective remedy required under the international human rights obligations undertaken by the Salvadoran State; ii) violation of Article 2 of the Convention, by virtue of the fact that amparo proceedings in El Salvador's Law of Constitutional Procedures did not meet the requirements set forth in Article 25 of the American Convention, as it was not the simple and prompt recourse required under Article 25 of the Convention and the fact that the existence of that domestic law constituted a failure to comply with the duty to bring domestic legislation in line with the American Convention; iii) violation of Article 1.1 of the American Convention for having failed in its obligation to respect and guarantee the right to judicial protection of Jorge Odir Miranda Cortez and the 26 persons included in this case; and iv) violation of Article 24 of the Convention, to the detriment of Mr. Jorge Odir Miranda Cortez. The Commission did not find a violation of Article 26 of the Convention and determined that it lacked evidence to assign responsibility to the State based on Articles 4 and 5 of the Convention.

817. In that sense, the IACHR reiterated to the Salvadorian State, the recommendations issued in Report No. 47/03 of October 8, 2003:

- a) Implement legislative measures to amend the provisions governing amparo, in order to make it the simple, prompt and effective remedy required under the American Convention, and
- b) Make adequate reparations to Jorge Odir Miranda Cortez and the other 26 victims mentioned in the record of Case 12.249 –or their beneficiaries, as appropriate- for the human rights violations herein established.

818. On November 30, 2007, in the city of San Salvador, the State, represented by Mr. Eduardo Calix López, Vice Minister of External Relations, and Mr. Jorge Odir Miranda Cortez, in representation of the Asociación Atlacatl "Vivo Positivo" and the other victims in this case, signed an Agreement on Compliance with Recommendations, in which they established the following points:

1. The parties to this agreement confirm their desire to terminate the proceedings before the Inter-American Commission on Human Rights, in recognition of the progress made by the Salvadoran State in the prevention and treatment of HIV/AIDS. Nevertheless, and despite repeated calls that the Asociación Atlacatl "Vivo Positivo" has made through the media and by telephone to the petitioners concerned by the present case, for the purpose of including them in decisions relating to the dialogue that has been maintained between Mr. Jorge Odir Miranda Cortez and officials of the Salvadoran State, it has been impossible to make contact with most of those persons, and this has been reported to the Inter-American

Commission on Human Rights. Included as an integral part of this notarized deed are certified copies of announcements that were published in the newspaper La Prensa Gráfica on September 22 and 23, 2006. Because it has been impossible to contact most of the persons concerned by the proceedings before the Inter-American Commission on Human Rights, the persons present here have reached agreements of general benefit that will also be brought to the attention of the Inter-American Commission on Human Rights.

2. The State of El Salvador, through the Vice Minister of External Relations, will deliver a lump-sum payment, within 15 working days after the date of this notarized deed, in the amount of two thousand United States dollars, in compensation to 23 persons who are parties to the proceedings before the Inter-American Commission on Human Rights, for a total of forty six thousand United States dollars, as a charge to the General Budget of the State, within the envelope of the Ministry of External Relations, which funds will be consigned in bank accounts opened by the Ministry of External Relations in the name of each of the beneficiaries, for a period of two years. If at the end of that time the beneficiaries of the accounts, or their next of kin pursuant to applicable legislation, have not claimed the funds, those reparations shall be awarded to the National Commission against AIDS, so that, together with the Asociación Atlacatl “Vivo Positivo”, they may be used in activities for the prevention of HIV, and to help reduce stigmatization and discrimination. The parties hereby also confirm that Mr. Jorge Odir Miranda Cortez together with three persons who are parties to the proceedings before the Inter-American Commission on Human Rights have decided to renounce their claim to compensation referred to above, and they will report this to the Inter-American Commission. The amount of fifty five thousand United States dollars will also be delivered to the Asociación Atlacatl “Vivo Positivo”, as a one-time reimbursement of outlays made with respect to this case, within 15 days after the date of this notarized deed.

3. Consistent with the extensive jurisprudence of the Inter-American Court of Human Rights, the payment that the State of El Salvador makes to the persons mentioned in this notarized deed is not subject to any taxes currently existing or that may be decreed in the future.

4. The parties also declare that these agreements constitute a demonstration of solidarity and of recognition by the Salvadoran State of reparations for damages caused.

5. As a consequence of the cited agreements, Mr. Jorge Odir Miranda Cortez, in his capacity as indicated above, declares that the damages that the situation may have caused are hereby satisfied, and he declares that, in that same capacity, he releases the Salvadoran State from any present or future claim or liability that may flow from the proceedings in question.

6. Additionally, the State of El Salvador, in faithful compliance with its duty to adapt the provisions of domestic law to the Inter-American Convention on Human Rights, undertakes to take the steps necessary for prompt adoption of the new Law of Constitutional Procedures.

7. As well, the parties agree to hold a public ceremony of recognition and solidarity about the events of this case, which will be attended by officials of the State institutions involved in the case, as well as by entities devoted to the prevention and comprehensive treatment of HIV/AIDS, as well as the communications media, as parties to the promotion of human rights and as witness to the commitment to continue measures of prevention and of care for persons living with HIV/AIDS.

8. The parties also agree to build a commemorative park dedicated to persons who have died as a result of AIDS during this process, to be located at kilometer 10 of the Highway from San Salvador to Comalapa,



9. Both the public ceremony and the inauguration of the commemorative park will be held jointly on December 1 of this year;

10. Finally, the State of El Salvador and Mr. Jorge Odir Miranda Cortez, in the capacity in which he appears, with a view to helping consolidate a climate of social reconciliation in the country and to publicize the issue of respect for human rights, specifically in relation to HIV/AIDS, have reached agreement on additional reparations, as detailed below:

Within the framework of friendly dialogue, the parties consider:

- A. The establishment of training programs for public officials with respect to non-discrimination against persons with HIV/AIDS, and the parties hereby recognize the effective existence of programs of this kind provided by the Ministry of Public Health and Social Assistance;
- B. The monitoring of hospitals under State administration by recognized nongovernmental organizations working with persons living with HIV/AIDS, and the parties hereby note that NGOs such as the Asociación Atlacatl “Vivo Positivo” are already performing this type of monitoring;
- C. Training for medical personnel who provide care to persons with HIV/AIDS; the parties also declare that such training is already being provided by the Ministry of Public Health and Social Assistance; and
- D. Strengthening the Asociación Atlacatl “Vivo Positivo” as the institution devoted to working on human rights and HIV/AIDS, and the parties recognize that said institution is the recipient of grants from the Ministry of Public Health and Social Assistance, as are other NGOs working on the HIV/AIDS issue.

819. In its Merits Report No. 27/09 (Article 51 – Publication), of March 20, 2009, the IACHR decided to reiterate the recommendation No. 1 and concluded that the Salvadoran State had complied with the second recommendation made in Report No. 47/03, as well as the agreements made in the compliance agreement signed by the parties on November 30, 2007<sup>94</sup>.

820. Therefore, the IACHR is continuing to monitor only the first recommendation, having to do with the implementation of legislative measures to amend the provisions governing amparo, as the single item pending compliance by the State.

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

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

823. On October 30, 2013, the parties held a working meeting during the 149th Regular Period of Sessions of the IACHR in which they reiterated their positions.

824. On December 8, 2014, the IACHR again requested updated information regarding compliance with the pending item. On January 30, 2015, with regard to the first recommendation, the

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<sup>94</sup> See, IACHR Merits Report No. 27/09 of March 20th, 2009, par. 156 and 157.

petitioners reported that they continue to push for follow-up, as this has not been possible at the initiative of the authorities.

825. The petitioners stated that they have requested audiences with the Foreign Ministry, CONASIDA, and the Legislative Assembly's Committee on Legislation and Constitutional Affairs to discuss progress made by the latter on the amparo issue, as well as to call attention to the recommendations made by the IACHR, request the Draft Law under review by the aforementioned Committee on Legislation, and express interest in being involved in subsequent follow-up meetings. On that point, the petitioners add that while the President of the Committee on Legislation gave them a copy of the Draft Law under review, further action has not been possible due to the committee's stated reluctance to follow up on these agreements, on grounds that the signing of Friendly Settlement Agreements is binding on the State. Finally, the petitioners indicate that 12 years have gone by since the reform process began with the Supreme Court's presentation of the Draft Law of the Constitutional Procedure Law, with no significant results obtained thus far.

826. For its part, the State informed on February 26, 2015, that the Law of Constitutional Procedures has not yet been amended, adding that the Constitutional Chamber of the Supreme Court of Justice re formulated the impetus of the said proceeding and focused on some interlocutory actions as established by the Procedural Constitutional Law, which has made it possible for amparo proceedings to be handled in a shorter amount of time. The State also reported that on November 24, 2014, the Legislative Assembly of El Salvador signed an agreement with the Asociación Atlacatl in order to strengthen and formalize relations between both institutions and promote steps to improve the conditions of persons living with HIV through a legal framework that responds the country's circumstances.

827. On September 25, 2015, the IACHR again requested updated information on compliance. The State indicated on November 17, 2015, that there is currently a draft proposal to amend the Law of Constitutional Procedures, which is being studied by the Legislative Assembly, and that this will change the way constitutional procedures as a whole are handled, including amparo proceedings, in order to bring them in line with the standards established by the Convention. Moreover, the State indicated that the Constitutional Chamber of the Supreme Court, in view of the principles of concentration and speed, has opted to maintain its case law with regard to the concentration of procedures related to amparo proceedings; it has stated such in its rulings of April 24, 2013, in Amparo 310-20132; November 26, 2014, in Amparo 814-2014; and December 12, 2014, in Amparo 938-2014. In this regard, the State considers that even though there has not been a legislative reform of the amparo process, the highest constitutional court has made up for this shortcoming in the law through its case law, ensuring that amparo cases are handled expeditiously in terms of the fundamental rights at risk and the particular characteristics of each case, to ensure a prompt response by the constitutional authority.

828. The petitioning party did not submit the information requested.

829. The IACHR takes notes of the information provided by the State and considers that the aforementioned judicial criterion is a positive step forward. However, it reminds the State that the recommendation made by this Commission is intended to "implement legislative measures to amend the provisions," and in this sense the measures are not limited solely to the judicial application of the standard. The IACHR takes this opportunity to reiterate that this is the only recommendation pending for the State to achieve total compliance with the only case currently being monitored through the mechanism of the Annual Report to the General Assembly of the Organization of American States. Therefore, the IACHR invites the State to take every necessary step to ensure compliance with this recommendation and to provide information regarding the concrete measures it has carried out to promote the change in legislation.

830. Based on the above, the Commission concludes that the State has partially complied with the recommendations. Therefore, the Commission will continue to monitor the pending item.

**Case 12.028, Report No. 47/01, Donnason Knights (Grenada)**

831. In Report No. 47/01 dated April 4, 2001, the Commission concluded the State was responsible for: a) violating Mr. Knights' rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Knights to a mandatory death penalty; b) violating Mr. Knights' rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Knights' with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Knights' rights under Article 5(1) and 5(2) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of Mr. Knights' conditions of detention; and d) violating Mr. Knights' rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

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

1. Grant Mr. Knights an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) and Article 5(2) of the American Convention in respect of the victim's conditions of detention is given effect in Grenada.

833. On March 3, 2015, the petitioner informed the IACHR that in 2002, in judgments related to the cases *R v Hughes*, *R v Reyes*, and *Fox v The Queen*, the Judicial Committee of the Privy Council declared that the imposition of the death penalty in Eastern Caribbean countries was unconstitutional. In this regard, the petitioner reports that, as the State of Grenada had not reconsidered Mr. Knights' sentence as of 2008, a number of petitions had been lodged with the Judicial Committee on behalf of Mr. Knights and nine other prisoners; accordingly, the sentences were overturned and the cases were sent to the Supreme Court for new sentencing. As a result, Mr. Knights was sentenced to life in prison and, according to the petitioner, is currently being assisted in the appeals process.

834. The petitioner also indicates that as of now, Section 230 of the Criminal Code still contains the mandatory imposition of the death penalty in murder cases and states that, although the courts no longer apply the death penalty, the State has yet to take any legislative initiative to eliminate this provision. Likewise, the petitioner indicates that there has been no progress in terms of the recommendations regarding the other legislative measures the State ought to adopt, and clarifies that so far Mr. Donnason Knights has not been compensated for the violations he suffered.

835. On September 18, 2015, the Commission requested information regarding compliance with the recommendations. To date, neither of the parties has submitted information. The IACHR observes that the State has not presented information on compliance with the recommendations set forth above since 2009.

836. The Commission invites the parties to submit additional information regarding the State's compliance with the rest of the recommendations. Based on the foregoing, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 11.765, Report No. 55/02, Paul Lallion (Grenada)**

837. In Report No. 55/02 dated October 21, 2003, the IACHR concluded that the State of Grenada was responsible for: a) violating Mr. Lallion's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Lallion to a mandatory death penalty; b) violating Mr. Lallion's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Lallion with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Lallion's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Lallion's right to physical, mental, and moral integrity by confining him in inhumane conditions of detention; d) for violating Mr. Lallion's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to Mr. Lallion to pursue a Constitutional Motion; and e) violating Mr. Lallion's right to personal liberty as provided by Article 7(2), 7(4), and 7(5) of the Convention, in conjunction with Article 1(1) of the Convention by failing to protect his right to personal liberty, and to be brought promptly before a judicial officer.

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

1. Grant Mr. Lallion an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Lallion's conditions of detention is given effect in Grenada.
6. Adopt such legislative or other measures as may be necessary to ensure that the right to personal liberty under Article 7(2), Article 7(4), and 7(5) of the American Convention in respect of Mr. Lallion is given effect in Grenada.

839. On March 11, 2015, the petitioner informed the IACHR that in 2002, in judgments related to the cases *R v Hughes*, *R v Reyes*, and *Fox v The Queen*, the Judicial Committee of the Privy Council declared that the imposition of the death penalty in Eastern Caribbean countries was unconstitutional. In this regard, the petitioner reported that, as the State of Grenada had not reconsidered Mr. Lallion's sentence, a number of petitions had been lodged with the Judicial Committee on behalf of Mr. Lallion and nine other prisoners; accordingly, the sentences were overturned and the cases were sent to the Supreme Court for new

sentencing. As a result, Mr. Lallion was sentenced to 25 years in prison in December 2009. Given the time he had already served in prison and the reduction of his sentence by one third, as the petitioner establishes, Mr. Lallion was released. However, Mr. Lallion has not received compensation for the human rights violations he suffered. The petitioner also states that there has been no progress in terms of the recommendations regarding the other legislative measures the State ought to adopt.

840. On September 28, 2015, the Commission requested information from both parties regarding compliance with the recommendations. To date, neither of the parties has submitted information. The IACHR observes that the State has not presented information on compliance with the recommendations set forth above since 2009.

841. The Commission values the commutation of the punishment through which Mr. Lallion recovered his freedom. Additionally, invites the parties to submit additional information concerning the State's compliance with the rest of the recommendations. Based on the foregoing, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

### **Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)**

842. In Report No. 56/02 dated October 21, 2003, the Commission concluded that the State was responsible for: a) violating Mr. Jacob's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Jacob to a mandatory death penalty; b) violating Mr. Jacob's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Jacob with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Jacob's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Jacob's rights to physical, mental, and moral integrity by confining him in inhumane conditions of detention; and d) violating Mr. Jacob's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

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

1. Grant Mr. Jacob an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Jacob's conditions of detention is given effect in Grenada.

844. On March 4, 2015, the petitioner informed the IACHR that in 2002, in judgments related to the cases *R v Hughes*, *R v Reyes*, and *Fox v The Queen*, the Judicial Committee of the Privy Council declared that the imposition of the death penalty in Eastern Caribbean countries was unconstitutional. In this regard, the petitioner reported that, as the State of Grenada had not reconsidered Mr. Jacob's sentence as of 2008, a number of petitions had been lodged with the Judicial Committee on behalf of Mr. Jacob and nine other prisoners; accordingly, the sentences were overturned and the cases were sent to the Supreme Court for new sentencing. As a result, Mr. Jacob was sentenced to a number of years in prison. Given the time he had already served in prison and the reduction of his sentence by one third, as the petitioner establishes, Mr. Jacob was released. However, Mr. Jacob has not received compensation for the human rights violations he suffered. The petitioner also states that there has been no progress in terms of the recommendations regarding the other legislative measures the State ought to adopt.

845. On September 28, 2015, the Commission requested information from both parties regarding compliance with the recommendations. To date, neither of the parties has submitted information. The IACHR observes that the State has not presented information on compliance with the recommendations set forth above since 2009.

846. The Commission values the commutation of the punishment through which Mr. Jacob recovered his freedom. The Commission invites the parties to submit additional information concerning the State's compliance with the rest of the recommendations. Based on the foregoing, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

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

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

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

849. The Commission made the following recommendations to the Guatemalan State:

1. Adapt the pertinent provisions of the Civil Code to balance the legal recognition of the reciprocal duties of women and men in marriage and take the legislative and other measures necessary to amend Article 317 of the Civil Code so as to bring national law into conformity with the norms of the American Convention and give full effect to the rights and freedoms guaranteed to María Eugenia Morales de Sierra therein.

2. Redress and adequately compensate María Eugenia Morales de Sierra for the damages done by the violations established in this Report.

850. On March 3, 2006, the petitioners and the Guatemalan State signed an "Agreement for Specific Compliance with Recommendations" for the purpose of formalizing the obligations of the State. In

that agreement, María Eugenia Morales de Sierra expressly waived the economic reparation that the IACHR recommended be paid to her in her status as victim because “her struggle consists of uplifting the dignity of women.”

851. Likewise, the IACHR notes that the commitments made by the State and agreed upon between the parties include: 1) To take steps to advance the bill to amend Article 317, subparagraph 42, of Decree Law No. 106 (Civil Code); and 2) To redress and adequately compensate Maria Eugenia Morales de Sierra for the damages done by the violations established. By virtue of the commitment related to redress and compensation, the parties agreed that multiple measures would be carried out under the responsibility of the Presidential Coordinating Commission on Executive Human Rights Policy (COPREDEH); these are laid out as follows:

- A) Create a foundation to be called the Maria Eugenia Morales Aceña de Sierra Foundation for Dignity (FUNDADIG), and to this end the State will take the necessary steps and assume the costs of its incorporation, registration, and recognition of its existence as a legal entity as well as of its operating fund;*
- B) Undertake efforts and collaborate on research to identify still-existing laws or provisions that discriminate against women, for the purpose of planning steps forward;*
- C) Arrange for the necessary funding and resources for FUNDADIG to conduct three research projects on women in Guatemala, from the standpoint of (i.) the field of sociology, (ii.) the field of anthropology, and (iii.) the field of law;*
- D) Arrange for scholarships for the “Let’s Educate Girls” Program or other existing programs that give scholarships in public establishments;*
- E) Along with FUNDADIG, work with the appropriate institutions on necessary aspects to promote the rights of women;*
- F) Seek for the IACHR to present a report on violence against Guatemalan women during the period 2004-2005;*
- G) Try to raise funds from international and cooperation agencies during the period 2006-2007 for training and specialization on gender issues;*
- H) Undertake efforts with agencies of the executive branch to conduct a diagnostic study of the situation of violence against women;*
- I) Seek to get FUNDADIG to conduct a diagnostic study on the nutritional condition of women and girls in the central region of the Republic of Guatemala, with a view to finding a solution;*
- J) Conduct campaigns to raise awareness about the vulnerability of women in Guatemalan society;*
- K) Disseminate a national awareness campaign, specifically in the country’s Maya languages, on the reforms made to the Civil Code;*
- L) In coordination with FUNDADIG, work with the respective government ministries to have an academic paper published on the topic “Dignity of Women”;*
- M) Arrange for the organization of a national academic contest specifically for women;*
- N) Review educational materials in order to eliminate any hint of discrimination and sexism that may affect women’s dignity;*
- O) Arrange for research to be conducted into the possible link between sexual exploitation and adoptions of girls.*

852. According to information provided by the petitioners on May 20, 2009, and reiterated on November 16 of that same year, there has been total compliance with the measures established in clauses A and L. Consequently, the IACHR considers that clauses A and L of the compliance agreement have been fulfilled in their entirety.

853. In addition, the IACHR takes note again of the information provided by the parties in 2008, in which they reported that the State had created publicity banners and posters and had broadcast three radio spots. Consequently, the IACHR considers that the State has complied with item J. However, as the State has not provided information that would make it possible to assess the dissemination of a “national awareness

campaign, specifically in the country's Maya languages," the IACHR considers that the State ought to still carry out efforts to comply with item K.

854. With regard to paragraph M, the IACHR takes note again of the information provided in 2009, in which it was reported that the notice of the national academic competition specifically for women had been published on April 6, 2009, via Ministerial Agreement No. 240-2009 in the Official Gazette; a press conference was held on June 9, 2009, to publicize the contest; and publicity materials were distributed to the country's 334 municipalities and to universities. According to the information provided, the notice of competition was extended on November 10, 2009, at the petitioner's request, through Resolution No. 847-2009.

855. In 2010, the State reported that on November 22, 2010, a panel of judges issued a decision on the research paper that won the Academic Contest for Maya, Garifuna, Xinca, and Mestizo Women; this was forwarded to the petitioner so as to then move to the prize phase. On this point, the petitioner indicated in a communication dated June 9, 2010, that she did not agree with the way this commitment had been carried out, as it was done only in the Spanish language. On July 4, 2011, the petitioner added that she was not satisfied with the method for implementing the measure because she did not believe the competition was representative of indigenous women, as only two entries were received. The IACHR also observes that the notice of competition was repeated and extended at the petitioner's request. Moreover, the IACHR observed that the study *"El Derecho de las Mujeres a una Vida Digna: Discurso y realidad en Guatemala. Una Lectura crítica a la aplicación de la Ley de Dignificación y Promoción Integral de la Mujer"* ("Women's Right to a Life of Dignity: Discourse and Reality in Guatemala. A Critical Reading of the Enforcement of the Law on the Dignification and Promotion of Women"), authored by the Academic Group at the Center on Gender Studies, was recognized as the winner of the academic competition. The IACHR also verified that copies of the book are available in various universities and public libraries in the United States and Canada, and that public forums on the study have been held with the authors in Mexico and Guatemala. Consequently, the IACHR considers that there has been full compliance with paragraph M of the agreement.

856. On December 8, 2014, the IACHR once again requested information on compliance. On January 7, 2015, the petitioners claimed that the recommendations have still not been implemented; Article 317 of the Civil Code has still not been amended and adequate reparation has not been provided for the damages caused by the established violations. In this regard, the petitioners report that "all possible avenues of communication with the authorities of the Presidential Commission on Human Rights Policy (COPREDEH) have been shut off."

857. On January 8, 2015, the State responded that legislative measures have been taken to amend the said article. It further claimed that draft Law 3688, which had been introduced on October 2, 2007, before Congress, had not been approved and, therefore, on December 1, 2010, the Women's Committee of the Congress had introduced a new bill in order to amend the said article, which thus far had not been approved by the plenary.

858. With respect to the second recommendation, the State reiterated that the petitioner had waived financial compensation. Likewise, it made note that there are other items in the agreement on compliance with the recommendations—such as those established in clauses B, C, D, E, F, G, H, I, K, N, and O—which have not been fulfilled by the State due to the difficulty of coordinating actions with the petitioner, stating that this is why "it did not continue coordinating any actions with her."

859. On September 11, 2015, the IACHR requested information from the parties regarding compliance with the recommendations. On October 15, 2015, the petitioners reiterated, as they have done multiple times, that Article 317, subparagraph 42, of Decree Law No. 106 (Civil Code) has not been amended and that the State of Guatemala has not complied with the recommendations. The State, for its part, has not submitted any additional information.

860. The Commission appreciates the information provided by the parties and reiterates that the agreement has been partially fulfilled, with clauses A, L, J, and M completed. The IACHR also observes that the



clauses pending compliance are overly broad and general, and it therefore urges the parties to move past the current lack of communication to explore avenues for dialogue and alternative, flexible options that enable the content of these measures to be defined as concrete actions to be monitored by this Commission. The IACHR will continue to monitor the items pending compliance: B, C, D, E, F, G, H, I, K, N, and O.

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

861. In Report No. 58/01 of April 4, 2001, the IACHR concluded that the Guatemalan State had violated the rights of Mr. Oscar Manuel Gramajo López to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), and judicial protection (Articles 8 and 25), in conjunction with the obligation to ensure the rights protected in the Convention, established at its Article 1(1). According to the antecedents, on November 17, 1980, Oscar Manuel Gramajo López and three companions were detained by and subsequently disappeared by members of the National Police, who had the help of members of the Treasury Police and some members of the military. The detention took place in circumstances in which the victim and his friends were in the home of one of the latter, listening to the radio with the volume turned all the way up, having a few drinks, when a neighbor reported them to the police because of the noise they were making.

862. In Report No. 58/01 the Commission made the following recommendations to the Guatemalan State:

1. Conduct an impartial and effective investigation of the facts reported to determine the circumstances and fate of Mr. Oscar Manuel Gramajo López, which would establish the identity of those responsible for his disappearance and punish them in accordance with due process of law.
2. Adopt measures for full reparation of the violations determined, including: steps to locate the remains of Mr. Oscar Manuel Gramajo López; the necessary arrangements to accommodate the family's wishes in respect of his final resting place; and proper and timely reparations for the victim's family.

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

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

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

a) Concerning the search for the remains of Mr. Oscar Manuel Gramajo Lopez, it indicated that the Forensic Anthropology Foundation of Guatemala (FAFG) –an autonomous, technical-scientific non-governmental organization- interviewed and took DNA samples of the family members of Mr. Gramajo Lopez. A comparison of said samples, as well as samples secured from the bone remains recovered in the exhumations by the FAFG at different locations in Guatemala, had been run to check them against the genetic data in its database (BDD) and, thus far, Oscar Manuel Gramajo Lopez has not been successfully identified.

b) Regarding the necessary arrangements to accommodate the wishes of the family as to the final resting place of the remains of Mr. Oscar Manuel Gramajo, the State indicated that once his remains are located and identified, it will – with the approval of his family – coordinate efforts related to his final resting place.

c) With regard to the recommendation to award proper and timely reparations to the victim's family, it stated that on December 5, 2008, the National Reparations Program awarded economic reparation in the amount of twenty four thousand quetzals to Mrs. Edelia Lopez Escobar as a result of the forced disappearance of her son Oscar Manuel Gramajo, thus this commitment was carried out.

866. On December 5, the IACHR asked again for information on compliance. The State replied on January 5, 2015, by reiterating the information it had previously submitted.

867. On September 28, 2015, the Commission asked the parties for information. On October 21, 2015, the State submitted updated information on the status of compliance with the recommendations. With regard to the first recommendation, the State reported that on July 16, 2014, it had received the information it requested on January 31, 2013, from the AFIS Unit of the Crime Laboratory of the National Civilian Police concerning one of the possible eyewitnesses to the events; consequently, after a number of procedural steps, it was able to obtain witness testimony. The State also indicated the various steps that still need to be taken in connection with the investigation into the events that occurred, and reiterated that the Office of the Public Prosecutor was investigating this case.

868. With regard to the second recommendation, the State reported that the victim's relatives had provided DNA samples; thus it has been possible to carry out investigations to identify possible matches between the genetic profile of relatives of Oscar Manuel Gramajo López and the exhumations done by the Forensic Anthropology Foundation of Guatemala. However, as there have been no DNA matches that would make identification possible, the State indicates that it is continuing with the process to identify and locate the remains of Mr. Gramajo López.

869. To date, the Commission has received no information from the petitioners.

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

**Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay *et al.*; Case 10.799 Catalino Chochoy *et al.*; Case 10.751 Juan Galicia Hernández *et al.*; and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales *et al.* (Guatemala)**

871. In Report No. 59/01 of April 7, 2001, the IACHR concluded that the Guatemalan State was responsible for violating the following rights: (a) the right to life, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalán, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajquí Gimón, and Juan Tzunux Us, as established at Article 4 of the American Convention; (b) the right to personal liberty in the case of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqui Gimón, as established at Article 7 of the American Convention; (c) right to humane treatment, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqui Gimón, as established at Article 5 of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; in addition, in the case of the attempts to extrajudicially execute Messrs. Catalino Chochoy, José Corino, Abelino Baycaj, Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez, and Orlando Adeldo Galicia Gutiérrez, the Commission concluded that the Guatemalan State was responsible for violating the right to humane treatment, as established at Article 5 of the American Convention; (d) the rights of the child in the case of children Rafael Sánchez and Andrés Abelicio Galicia Gutiérrez, as established at Article 19 of the American Convention; (e) judicial guarantees and judicial protection, to the detriment of all the victims, both those extrajudicially executed and those who suffered attempted extrajudicial execution, as established at Articles 8 and 25 of the American Convention. (f) In addition, the IACHR considered the Guatemalan State responsible in all cases for having breached the obligation to respect and ensure the rights protected in the American Convention on Human Rights, as established at Article 1 thereof.

872. According to the background information, the IACHR determined that each of cases 10,626; 10,627; 11,198(A); 10,799; 10,751; and 10,901 referred to complaints in which it was indicated that the alleged material perpetrators of the various human rights violations were the Civil Self-Defense Patrols (PAC) or the Military Commissioners, and after considering the nature of the operations of the PAC and the Military Commissioners, the chronological framework of the various complaints, and the *modus operandi* used in each of the facts alleged, the Commission decided, in keeping with Article 40 of its Regulations in force at the time, to join the cases and refer to them in a single report.

873. In Report No. 59/01, the Commission made the following recommendations to the States:

1. That it conduct a thorough, impartial and effective investigation to determine the circumstances of the extrajudicial executions and attempted extrajudicial executions of each victim and the attendant violations, and punish those responsible.
2. That it takes the necessary measures so that the next-of-kin of the victims of the extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
3. That it takes the necessary measures so that the victims of the attempted extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
4. That it effectively prevents a resurgence and reorganization of the Self-defense Civil Patrols.
5. That in Guatemala the principles established in the United Nations "Declaration on the right and responsibility of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms" be promoted and that the necessary measures be taken to ensure that the right of those who work to secure respect for fundamental rights is respected and that their life and personal integrity are protected.

874. With regard to Case 10.626 (Remigio Domingo Morales and Rafael Sanchez) in Report 59/01, on April 24, 2006, the IACHR decided under Resolution 1/06 to correct the aforementioned Report, declaring that on June 28, 1990, Remigio Domingo Morales and Rafael Sanchez were detained by members of the Civil Self-Defense Patrols (PAC) and were taken on that same day to Huehuetenango Hospital to be treated for multiple blunt-force sharp instrument injuries that they presented; both of them were discharged from the hospital on July 3, 1990. The State of Guatemala and the petitioners were notified of the above-cited Resolution and it was subsequently published in Report N<sup>o</sup> 59/01.

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

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

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

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

879. On December 5, 2014 and on September 28, 2015, the IACHR requested updated information on compliance with recommendations.

880. On October 28, 2015, the State repeated the information it had submitted to the IACHR in 2013 with regard to Case 10.626 (Remigio Domingo Morales and Rafael Sánchez) in terms of the fourth and fifth recommendations. The State also reaffirmed that, according to the results from the investigations that were carried out, Mr. Domingo Morales and Rafael Sánchez, who at the time was a minor, were not victims of extrajudicial executions or attempted extrajudicial executions, and that therefore there would be no cause to grant compensation to their family members.

881. The IACHR takes note of the information provided by the State and in that regard reiterates what the Commission stated in Resolution 1/06, dated April 24, 2006—which rectified Report No. 59/01, published and approved on April 7, 2001—in terms of the material error made as regards the facts of Case 10.626, as well as the conclusions laid out. The Commission also observes that it does not have sufficient information from the State regarding compliance with the recommendations in relation to Cases 10.627; 11.198(A); 10.799; 10.751; and 10.901. In this regard, the Commission invites the State to provide this Commission and the petitioners with detailed information concerning compliance with these items.

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

**Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo, Ana María López Rodríguez<sup>95</sup> y Luz Leticia Hernández (Guatemala)**

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

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

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

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<sup>95</sup> The State reported in a note dated December 18, 2012 that the correct name of the victim is Ana Maria Lopez Rodriguez and not Maria Ana as it appeared in the IACHR Report.

final resting place of their remains, and adequate and timely compensation for the victims' relatives.

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

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

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

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

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

890. On December 5, 2014, the IACHR made another request for information on compliance with the recommendations. On January 9, 2014, the State reported the following to the IACHR on the component of adequate and timely reparation for family members of victims Rosario Solares Castillo and Ana María López Rodríguez, (showing the degree of compliance with the agreements entered into by the parties):

<b>Commitments stemming from the agreement on recommendation compliance as provided in Report No. 60/01</b>	<b>Family members of Ileana del Rosario Solares Castillo</b>	<b>Family members of Ana María López Rodríguez</b>
Recognition of international responsibility and apology	Implemented	Implemented
Unveiling of commemorative plaque in memory of the victim	Implemented	In the process of implementation
Payment of economic reparation	Implemented	Implemented
Seed capital for creating a foundation	Implemented	Implemented
Printing of CD with biography of the victim and case summary	Implemented	NA
Printing of education brochure	NA	In the process of implementation
Scholarships	NA	Implemented
<b>Commitments stemming from the agreement on recommendation compliance as provided in</b>	<b>Family members of Ileana del Rosario Solares Castillo</b>	<b>Family members of Ana María López Rodríguez</b>

<b>Report No. 60/01</b>		
Promoting approval of Law 3.590 (which creates the Commission for the Search of Disappeared Detainees)	In the process of implementation	In the process of implementation
Promote the prosecution and punishment of those responsible for the forced disappearances	In the process of implementation	In the process of implementation
Building a wall in the USAC plaza	In the process of implementation	NA

891. With regard to Luz Leticia Hernández, the State claims that the family members decided to not take part in the negotiation.

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

893. On January 5, 2015, a communication was received from the petitioners claiming that the situation of impunity has continued, inasmuch as there has still is an unwarranted delay in instituting trial proceedings against those responsible for the forced disappearance of Luz Leticia Hernández and Ana María López Rodríguez.

894. On September 11, 2015, the IACHR requested updated information from the parties regarding compliance with the recommendations. The petitioners did not submit any information. The State, for its part, on October 28 and November 5, 2015, reiterated the information submitted in its last communication and reported that, despite the steps taken to identify and punish those responsible, it has not managed to clarify the circumstances of this case.

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

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

896. In Report No. 57/02, of October 21, 2002, the IACHR concluded that the Guatemalan State had failed to carry out the obligations imposed on it by Article 1(1) of the Convention, and had violated, in conjunction with Article 1(1) of the Convention, the right to life, enshrined at Article 4 of the Convention, as regards Efraín Recinos Gómez, Basilio Guzmán Juárez, and Diego Orozco; the right to humane treatment, enshrined in Article 5 of the Convention, in relation to Diego Orozco, the whole group of workers/occupants and their families, who suffered the attack of August 24, 1994, and especially the 11 persons who suffered grievous injuries: Pedro Carreto Loayes, Efraín Guzmán Lucero, Ignacio Carreto Loayes, Daniel Pérez Guzmán, Marcelino López, José Juárez Quinil, Hugo René Jiménez López, Luciano Lorenzo Pérez, Felix Orozco Huinil, Pedro García Guzmán, and Genaro López Rodas; the right of freedom of association, enshrined in Article 16 of the Convention, in relation to the workers at the La Exacta farm who organized a labor organization to put forth their labor demands to the landowners and administrators of the La Exacta farm, and to the Guatemalan courts, and who they suffered reprisals for this reason; the right of the child to special protection stipulated in Article 19 of the Convention, as regards the minors who were present during the August 24, 1994 incursion; the right to due process and judicial protection, protected by Articles 8 and 25 of the Convention, in relation to the organized workers who sought access to judicial remedies in relation to their labor demands, and in relation to the victims of the events of August 24, 1994, and their family members who sought justice in relation to those events. In addition, it concluded that the Guatemalan State had violated Articles 1, 2, and 6 of the Convention on Torture in relation to the torture suffered by Diego Orozco.

897. The Commission made the following recommendations to the Guatemalan State:

1. That it begins a prompt, impartial and effective investigation of the events that took place on August 24, 1994 to be able to detail, in an official report, the circumstances of and responsibility for the use of excessive force on that date.

2. That it takes the necessary steps to subject the persons responsible for the acts of August 24, 1994 to the appropriate judicial proceedings, which should be based on a full and effective investigation of the case.
3. That it makes reparations for the consequences of the violations of the rights listed, including the payment of fair compensation to the victims or their families.
4. That it takes the necessary measures to ensure that violations of the type that took place in this case do not recur in future.

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

899. On December 12, 2014, the IACHR made another request for updated information on compliance. On January 9, 2015, the State reiterated the items of its prior communication of 2013 and explained that that the commitment in the instant case pertaining to the building of the monument to honor the memory of the victims and improve the school infrastructure of the communities, has not been implemented because the National Peace Fund, the entity in charge of compliance with said item, has been dissolved. Due to the foregoing reason, the State asserted that the duties of said Fund will be taken over by the Ministry of Social Development, and that this entity will undertake the fulfillment of the aforementioned commitments as soon as possible.

900. On September 28, 2015, the IACHR requested updated information from the parties regarding compliance with the recommendations. In that regard, the petitioners responded on October 21, 2015, reporting that in terms of the investigation, prosecution, and punishment of those responsible, it is still not known, due the lack of information provided by the State, whether the judge ordered the arrest or whether the suspects who have been identified, according to information provided by the State in prior years, have been apprehended.

901. In terms of the commitment to provide 96 housing units, the petitioners recognized the efforts made and the steps taken by COPREDEH, as these represent significant progress and results. However, they indicate that at this time, the first phase of construction has begun on 19 of the 52 housing units for which subsidies were approved by Housing Fund (FOPAVI) in 2013, and for these to be finished, FOPAVI must make a second disbursement of funds. Moreover, they add that as of now, 40 applications are pending approval by the FOPAVI Board of Directors, and 4 were not accepted by this entity, which held that new procedures were required. Thus, the construction of 44 housing units remains pending.

902. With regard to the commitments involving the construction of a monument in memory of the victims and the improvement of school infrastructure, the petitioners report that even though the Ministry of Social Development took on the responsibility of building the monument and the school infrastructure after the National Peace Fund was dissolved, this commitment remains unfulfilled, as COPREDEH has not taken the steps that are required. Finally, with regard to the commitment involving access to drinking water services, the petitioners indicate that the State has not provided information as to the steps taken even though it is now two and a half years past the date the Municipal Development Institute (INFOM) established for the project to begin.

903. On October 28, 2015, the State communicated with the IACHR concerning the status of compliance with the recommendations. It reports, in that regard, that the identity of several suspects has been established with certainty, such as Hary Omar Hernández Chan, Pedro Castro Acabal, Luis Fernando Tobar Mejía, Evitter Orellana Fajardo, and Armando Rodolfo Orellana Flores; thus, the Coatepeque District Attorney’s Office has requested information from various entities to determine the whereabouts or current addresses of these individuals. However, the State adds that it has not received a timely response, so the District Attorney’s Office will reiterate its requests. Likewise, the State reports that among the steps to be taken, the presiding judge will be asked to reissue the warrants to arrest the accused, who have now been

fully identified; warrants to raid, inspect, and search will be requested for the purpose of executing the arrest warrants; and the complete case file will be examined so that in due time the cases can be separated. This is because from the outset the investigation has raised issues of encroachment of rights, as the accused could include individuals who may have been eyewitnesses or grievously wounded victims of the violent acts carried out against the farm workers at the Hacienda San Juan. With regard to the commitment to build the housing units, the State stresses that FOPAVI made the first disbursement of funds for 30 percent of the amount of the project to build the first 52 homes, and construction began on May 6, 2015. With respect to the remaining 32 cases, it indicates that for budgetary reasons, the appropriate socioeconomic studies declaring the beneficiaries to be eligible were completed in February of this year, and COPREDEH is currently taking the steps that are required.

904. With regard to the other construction commitments, the State indicates that these are waiting to be taken up again, and that COPREDEH will hold a meeting with authorities from the Ministry of Social Development in order to coordinate steps to be taken in connection with these commitments. Likewise, in terms of the commitment regarding access to drinking water, the State notes that this project is scheduled to be carried out in the medium term by the INFOM Underground Water Office.

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

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

906. On October 10, 2003, by Report 66/03, the Commission approved a friendly settlement agreement in the case of Emilio Tec Pop. In summary, the petitioners had alleged that on January 31, 1994, Emilio Tec Pop, 16 years of age, was heading from the municipality of Estor, department of Izabal, to the departmental capital of Cobán, Alta Verapaz, and in the early morning hours was detained by unknown individuals. Thirty-two days later, on March 3, 1994, the authorities from the military garrison at Estor handed Emilio Tec Pop over to his family members. The petitioners in this case stated that he was detained against his will and physically and psychologically abused; the soldiers are alleged to have threatened to kill Emilio, they beat him and cut up his hands with a knife.

907. In the Friendly Settlement Agreement, the State undertook to 1) Recognize state responsibility; 2) Grant reparation and assistance to the victim consisting of payment of USD \$2,000.00 in compensation and provide seed capital for basic grains to Mr. Emilio Tec Pop in order to raise his standard of living and, 3) Investigate and punish those responsible for the incidents charged in the petition. According to the information provided by the parties, it is evident that the State has complied with the commitments related to recognition of international responsibility, reparation, and assistance, with only the justice clause still pending. Thus, only the following is pending compliance:

**V. INVESTIGATION AND PUNISHMENT OF THOSE RESPONSIBLE**

Subject to Guatemalan domestic law and in conformity with its international obligations, the State of Guatemala undertakes to investigate the facts and, based on the findings of the investigation, to institute civil, criminal and administrative proceedings against those persons who, in the performance of their official State duties or in exercise of public authority, are found responsible for the acts that have been acknowledged in this agreement, and/or, where the investigation fails to prove the involvement of officials or agents of the State in the violations, the State undertakes to determine the criminal and civil liability of the private individuals who participated in and committed the offences in question.

COPREDEH reserves the right to recover from the individuals or agents of the State found to be liable for the damage and injury caused to the petitioner the compensation it has paid.



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

909. With respect to the commitment to investigate and punish those responsible, the petitioners assert that the information provided by the State does not make it possible to establish whether concrete and significant progress has been made in the investigation, prosecution and punishment of those responsible for the human rights violations against Emilio Tec Pop. In response, the State claimed that it is continuing to follow up on the criminal investigations aimed at prosecuting those responsible for the arbitrary detention of Emilio Tec Pop.

910. On December 10, 2014, the IACHR requested updated information on compliance with the pending item of the agreement. On January 9, 2015, the State submitted information claiming that as of the present time it has been unsuccessful at identifying any of the those responsible for the crimes and that as soon as any progress is made in the investigation, it will be reported to the IACHR. Thus far, no information has been received from the petitioners.

911. On October 1, 2015, the IACHR requested updated information regarding compliance with the pending item from the agreement. On October 14, 2015, in response to that request, the petitioners stated that according to the reports submitted in recent years, the State has not provided information that would point to significant progress in the investigation into the events. They also indicate that the State “has not undertaken actions and steps to investigate, identify, and punish those responsible.”

912. For its part, on October 21, 2015, the State reported that it has not been possible to make progress in the criminal investigations and identify those responsible for the events in the instant case because the steps taken show that these incidents have not been reported to the Office of the Public Prosecutor or to any other judicial body with jurisdiction. Based on the foregoing, the State indicates that it considers it necessary for the victim to file the relevant complaint.

913. In this regard, the IACHR reminds the State that the inter-American system has consistently maintained in its case law that States have the obligation to carry out these types of investigations of their own accord. In this regard, the State may not argue that it is unaware of what took place, especially when it signed an agreement with the petitioning party which in the background section recounts that “early in the morning of January 31 of that year, as Emilio Tec Pop was travelling from the municipality of El Estor, in the department of Izabal to the departmental capital of Cobán, in Alta Verapaz, he was detained by unknown individuals and that 32 days later, on March 3, of the same year, the authorities of the military outpost of El Estor, a municipality in the department of Izabal, returned the minor, Emilio Tec Pop, to his family.” Moreover, in Section III of the agreement, the State acknowledged that its institutional responsibility arose from its failure to fulfill its obligations under Article 1.1 of the American Convention on Human Rights, to respect and guarantee the rights established in the American Convention, as well as its violation of Articles 5 (humane treatment) 7 (personal liberty), 8 (a fair trial), 19 (rights of the child), and 25 (judicial protection) of that Convention.<sup>96</sup>

914. Based on the foregoing, the IACHR calls on the Guatemalan State to take all necessary steps to conduct a criminal and disciplinary investigation of those individuals who committed the human rights violations against Emilio Tec Pop.

915. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue to monitor the pending item pertaining to investigation and punishment of those responsible.

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<sup>96</sup> See IACHR, Friendly Settlement Report No. 66/03, Case 11.312, Emilio Tec Pop, Guatemala, October 10, 2003.

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

916. On October 10, 2003, by report No. 67/03, the Commission approved a friendly settlement agreement in the case of Irma Flaquer. By way of background, on October 16, 1980, journalist Irma Flaquer Azurdia was kidnapped while driving in a vehicle accompanied by her son Fernando Valle Flaquer in Guatemala City. In the incident Fernando Valle Flaquer was injured; he subsequently died at the Hospital General San Juan de Dios. As of that same date, the whereabouts of Irma Flaquer have not been known. The petitioners also argue that during the investigation of the case by the Guatemalan authorities, it was noted that while the government of that period formally lamented Flaquer's presumed death, there were few official efforts to investigate the incident. In addition, the minimal efforts made in the official investigation were excused by an amnesty law that in 1985 granted a general pardon, diluting both the responsibility and the participation of some sector of the state apparatus.

917. On March 2, 2001, the parties agreed on a friendly settlement of the case. By means of the friendly settlement agreement, the State recognized its institutional responsibility for the facts of the case and recognized the need "to continue with and vigorously reinforce administrative and legal measures aimed at identifying those responsible, determining the whereabouts of the victim and applying the appropriate criminal and civil punishment." In addition, at the third item in that agreement, the State undertook to study the petitions put forth by the petitioners as reparations, which consisted of the following points:

- a. Establishment of a committee to expedite the judicial proceeding composed of two representatives each from COPREDEH and IPS;
- b. Establishment of a scholarship for the study of journalism;
- c. Erection of a monument to journalists who sacrifice their lives for the right to freedom of expression, symbolized in the person of Irma Marina Flaquer Azurdia;
- d. Designation of a wing of a public library as a repository for all material related to the works of the journalist in question;
- e. Naming of a public street after her;
- f. Establishment of a university chair in journalism history;
- g. Writing of letters to the relatives asking for forgiveness;
- h. Organization of a course for the training and social rehabilitation of inmates in the Women's Correctional Centre (COF);
- i. Compilation and publication of a book containing a selection of the best columns, writings and Articles of the disappeared journalist;
- j. Production of a documentary;
- k. Holding of a public ceremony to honor her memory.

918. In Report No. 67/03, the Commission indicated that it had been informed that the petitioners—the Inter-American Press Association (SIP)—were satisfied that the great majority of the points of the agreement had been implemented. Moreover, according to information provided by the parties during the follow-up to the report, it was established that the State had complied with its commitment to provide the victim's next-of-kin with a letter of apology, in a public ceremony held on January 15, 2009.

919. Additionally, compliance by the State was pending with regard to the following items: a) creating a journalism studies scholarship and b) creating a university chair or professorship on the history of journalism. Also, pending is the State's obligation to investigate the forced disappearance of Irma Flaquer Azurdia and the extrajudicial execution of Fernando Valle Flaquer.

920. On October 4, 2013, the IACHR requested up-to-date information from the parties on the status of compliance with the pending items of the agreement. The petitioners did not submit any information. The State only referred to the reparation consisting of the creation of a scholarship for studying journalism, and reported that it has not been possible to carry out this commitment since the procedures of the National Trust of Scholarships and State Credits (FINABECE) require that one indicate the type of scholarship and the conditions in which it will be delivered. In view of the foregoing, it indicated that it would be necessary to make the respective modification to the friendly settlement agreement between the parties.

921. On January 9, 2015, the State reported to the IACHR that the commitment to create a journalism studies scholarship was still pending. With regard to the university chair on the History of Journalism, the State reported that the University Of San Carlos Of Guatemala –USAC-, added to the journalism studies program the course “History of Journalism.” The IACHR expressed its appreciation in the 2014 Annual Report for the information provided by the State, and at this time takes the opportunity to assert that this point has been implemented in its entirety.

922. On October 5, 2015, the IACHR requested updated information on compliance with the points pending in the agreement. The petitioning party did not submit the information requested.

923. The petitioners indicated on November 2, 2015 that on October 29, 2015 a pone conference was held with the representatives of the Presidential Commission of Human Rights (COPREDEH) in which the parties talked about the creation of a scholarship on to study journalism and the establishment of a class on the same. Additionally, they indicated that they would be waiting for the results of the State regarding the consultation process among the representatives of COPREDEH with local entities of education and planification to start the compliance on the remaining issue.

924. On November 6, 2015, the State reported that in order to comply with the commitment to establish a scholarship, it had held a videoconference with the victim’s representatives, in which other alternatives were explored to meet this commitment. In addition, a meeting was held with the National Scholarship and Educational Loan Trust Fund of the Office of the President’s Secretariat of Planning and Programming to identify the requirements for the creation of the scholarship. The Commission applauds the steps taken by the parties to complete the items pending compliance and ensure total compliance with the agreement. The IACHR awaits the verification of the requirements and compliance with the measure.

925. With regard to the investigation, the State reiterated its willingness to continue taking the necessary steps to search for the truth. In this regard, the State reported that the Internal Armed Conflict Special Cases Unit of the Office of the Public Prosecutor’s Human Rights Section requested information from the historical archives of the National Police to strengthen its hypothesis of the case. The State reported that it has undertaken other inquiries and that according to the migration records of the General Office on Migration, there are no indications that the victim migrated, and according to the Administrator of National Cemeteries, there is no record of the victim’s remains having been buried in any cemetery within Guatemalan territory as of October 2015. The State indicated that it plans to carry out a firsthand inspection and survey of the scene of the crime, call in a witness to make a statement, research newspaper files on Irma Flaquer’s work, and get an expert opinion on the political context of the era.

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

**Case 11.197, Report on Friendly Settlement Agreement No. 68/03, Community of San Vicente de los Cimientos (Guatemala)**

927. On October 10, 2003, by Report No. 68/03, the Commission approved a friendly settlement report in the case of the “Community of San Vicente de los Cimientos.” In summary, on August 24, 1993, the Centro para la Acción Legal en Derechos Humanos (CALDH) and the Consejo de Comunidades Étnicas Runujel Junam (CERJ), in representation of 233 indigenous families, filed a complaint with the IACHR in which they alleged that during the armed conflict the sector called Los Cimientos, located in Chajul, department of Quiché, where 672 indigenous families lived who were the owners in the sector, was invaded in 1981 by the Guatemalan Army, which established a garrison in the area. After threats of bombardment of the community and the assassination of two community members, the community of Los Cimientos was forced to abandon its lands in February 1982, leaving behind harvests of corn, beans, and coffee, and animals. One month after they fled, some families returned to the place, and found their homes had been burned and their belongings stolen. Subsequently, the community of Los Cimientos was expelled once again in 1994. On June 25, 2001, the

community was violently evicted from their lands, of which they were the legal owners, by neighbors and other persons, apparently supported by the Government.

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

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

929. By a communication dated October 4, 2013, the Commission asked the parties to supply updated information on the status of compliance with those points of the agreement that were still pending in this case.

930. As regards to item 7 on the initiative for the creation of a promotion committee that will be responsible for monitoring progress with the legal proceedings initiated against the individuals involved in the events of June 25, 2001, perpetrated against the owners of the Los Cimientos and Xetzununchaj estates, the State said that the fact that no one has been convicted in this case does not mean that no initiative has been taken to make progress; indeed, it said that Mateo Hernández Sánchez was arrested and investigated (the only person who has been arrested in the case). For their part, the petitioners indicated that the State

continues to fail to follow through on its commitment to investigate, prosecute, and punish those responsible, for this case has been in total impunity for more than 12 years. In addition, they lamented that the only person prosecuted in this case was released due to an improper act by the Public Ministry in this case.

931. With regards to the cession of the current rights of ownership, holding, and inheritance to the Land Fund (item 3 of the agreement), the petitioners indicated that the information communicated by the State in 2013 is the same as that reported since 2010, thus they conclude that the State has not made progress in carrying out this commitment. They also said that they are waiting for COPREDEH to convene them to continue and conclude this process.

932. Regarding the granting of housing, as provided in the commitment “For the community’s location and resettlement, the Government of the Republic shall provide humanitarian assistance, minimum housing and basic services” (item 6 of the agreement), the petitioners reported that as of October 2013, of a total of 103 records of beneficiaries of housing, 65 socioeconomic studies had been approved, and that approval of the other 38 was pending. They also said that they are waiting for the Guatemalan Housing Fund (FOGUAVI) to declare and approve the 103 housing units.

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

934. On December 10, 2014, the IACHR requested updated information from the parties on compliance with the recommendations. In response, the State reported that item 4, regarding the transfer of 233 families to the farm known as Finca San Vicente Osuna and the annex thereto, Las Delicias, in the municipality of Siquinela, has been implemented by the State. The State also asserted that on December 29, 2014, FOPAVI (Housing Fund) issued a payment order, whereby two million two hundred and forty thousand quetzals were transferred as a subsidy to the entity that will execute construction of the first 64 houses for the beneficiaries. The State also reported that approval of the remaining 38 houses would be given at the Regular Meeting of the Board of Directors, which would be held in January 2015. With regard to item 7, the State submitted the same information as it had done on prior occasions.

935. On October 5, 2015, the IACHR requested updated information from the parties regarding the status of compliance with the two pending items of the agreement. On October 22, 2015, the petitioners provided information indicating that in terms of the commitment related to the investigation, prosecution, and punishment of those responsible, the State has not continued to investigate whether others may be responsible for the events of this case and has not submitted detailed, updated information on the current status of the criminal case and the legal situation of the other suspects. The petitioners reiterate that the only person who was prosecuted has remained free. As to the termination of property rights, they indicate that they do not have current information as the State has not held meetings or provided any information in that regard.

936. In terms of the provision of 103 housing units, the petitioners agree with what the State indicated in its January 9, 2015, report regarding the order of payment and transfer of funds by FOPAVI for the construction of 64 homes for beneficiaries. In this regard, they indicate that construction began in April 2015 on 23 of the 64 homes approved, and these were turned over to the beneficiaries in September 2015. Consequently, the construction of 41 of the approved homes remains pending, and 39 applications have yet to be approved, despite what the State indicated in its report of January 9, 2015. Finally, the petitioners stressed their concern regarding the Specific Agreement, as so far COPREDEH has not submitted a counterproposal with its final observations, even though it had committed to do so in May 2012.

937. For its part, the State submitted information on October 30, 2015. In its communication, the State—in keeping with what the petitioners stated—mentions the progress made in terms of the transfer of funds for the construction of the 64 housing units, as well as the conclusion of the first phase of the construction. The State also mentions that the funds needed before construction can begin on housing for the rest of the 39 beneficiaries will be approved at the Regular Meeting of the FOPAVI Board of Directors.

938. The IACHR appreciates the measures adopted by the State to comply with the agreement; however, it observes that more than 10 years have gone by and the measures are still in the process of being implemented. The IACHR therefore invites the State to move more nimbly and expeditiously toward full compliance with the commitments it has made.

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

**Petition 9.168, Report on Friendly Settlement No. 29/04, Jorge Alberto Rosal Paz (Guatemala)**

940. On March 11, 2004, by Report 29/04, the Commission approved a friendly settlement agreement in the petition of “Jorge Alberto Rosal Paz.” In this matter, on August 12, 1983, Mr. Jorge Alberto Rosal Paz was detained while driving between Teculután and Guatemala City; his whereabouts are unknown to this day. On August 18, 1983, the IACHR received a petition submitted by Ms. Blanca Vargas de Rosal, alleging that the Guatemalan State was responsible for the forced disappearance of her husband.

941. On January 9, 2004, the parties agreed on a friendly settlement in the case. In the agreement, the State recognized its institutional responsibility for breaching its obligation, under Article 1(1) of the American Convention on Human Rights, to respect and ensure the rights enshrined in the American Convention, in addition to Articles 4, 5, 7, 8, 11, 17, 19, and 25. In addition, it stated that the main basis for reaching a friendly settlement was the search for the truth and the administration of justice, restoring dignity to the victim, reparations resulting from the violation of the victim’s human rights, and strengthening the regional human rights system.

942. On February 15, 2006, Ms. Blanca Vargas de Rosal reported that the only commitment carried out by the State was economic reparation; the commitments regarding education, actions to restore the victim’s name, housing, investigation, and justice were still pending.

943. On October 4, 2013, the IACHR requested updated information from the parties as to the status of compliance with the pending items from the agreement. The State indicated, with regard to the scholarship for María Luisa Rosal Paz, that it had approved a budget for her to study for a master’s degree at McGill University in Canada, but that she had already obtained a master’s degree in Argentina with other funds. In terms of the scholarship for Jorge Alberto Rosal Vargas, on April 18, 2012, the beneficiary requested an additional extension for his scholarship for another year. However, in a hearing before the IACHR held on November 3, 2012, the State indicated that it cannot make another change to the commitment it made and that it will limit itself to complying with what was approved in the funding contract dated February 17, 2012. In terms of land for a family home, the State reiterated that it has proposed to give the petitioner the amount of money the property would cost, as determined by the appraisal made by the Cadastral Information Registry, a proposal the petitioner has rejected because she believes the money being offered is insufficient. Finally, in terms of the investigation process, the State indicated that the investigation into the case remains open.

944. The petitioners reported that María Luisa Rosal and Jorge Alberto Rosal have thus far received part of the scholarships. As for María Luisa, they noted that the awarding of the rest of the scholarship money for college studies is pending and asked that the possibility remain open of doing university studies at any university in any country<sup>97</sup>.

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<sup>97</sup> On December 2, 2011, the State reported that financing had been provided through FINABECE to María Luisa Rosal Vargas to allow her to take preparatory French classes before entering a master’s program at McGill University in Montreal, Canada. However, on October 26, 2011 the beneficiary reported that she was not accepted in the master’s program and asked that the scholarship be continued and the place of study be changed to National University of San Martín in Buenos Aires, Argentina. On this subject, the State indicated that it was impossible to transfer the funds because a new scholarship contract would have to be drawn up with FINABECE and that several meetings were being scheduled with the petitioners to resolve this situation.

945. With regard to the scholarship of Jorge Alberto Rosal, for which a non-reimbursable financing agreement of US\$ 48,382.70 was entered into,<sup>98</sup> payment of US\$5,327.05 is pending for the first years of the intermediate level and, that as a result of payment delay, he was unable to matriculate as a full time student, which set him back in his studies. They point out that he would require two more years of university studies in order to get his undergraduate degree and, two years for a master's degree.

946. Regarding family housing, the petitioners requested the State to conduct a new commercial appraisal so that the appraised value is consistent with the actual market value. They also noted that the investigation is still pending and that there are no concrete results that show implementation by the State in this regard.

947. On December 10, 2014, the IACHR made another request for up-to-date information on compliance with the recommendations. On January 9, 2015, the State submitted similar information to that mentioned above with regard to the scholarship for college studies granted to Maria Luisa Rosal Vargas and the investigations, which are still ongoing in the domestic level. With regard to Jorge Alberto Rosal Vargas, the State reported that in 2014, financing was requested and approved for the scholarship, as well as for room and board, at a University abroad.

948. On September 28, 2015, the Commission requested information from the parties. On October 21, 2015, the State reiterated the information it had submitted previously. In terms of the study scholarships, it indicated that it has not been able to communicate with the Rosal Vargas brothers. It also informed the Commission that Maria Luisa Rosal Vargas this year has not submitted any application to continue her studies that could be taken under consideration, and that currently the State is waiting for José Alberto Rosal Vargas to finish his studies at the university where he has been studying. With regard to the item agreed to in relation to the family home, the State insists on its communication submitted on December 14, 2012, it cannot offer an amount other than what came out of the appraisal performed on January 13, 2007.

949. The IACHR observes, with regard to the issue of the housing appraisal, that there is a discrepancy between the parties with regard to that measure of the agreement. However, it does not have enough information that would enable it to understand the extent of the obstacle to comply that this represents. In that regard, the IACHR is waiting for the parties to provide supplementary information so that it can evaluate the degree of compliance with this measure.

950. Meanwhile, the State indicated that it is still in the process of complying with the commitment to investigate the events and punish those responsible. In that regard, it laid out the various advancements it had made in terms of updating the personal information and location of each of the accused, as well as a list of the steps carried out to locate the victim's remains and find others who may be implicated in the events surrounding his disappearance. The IACHR appreciates this information and urges the State to continue to carry out the necessary steps to comply with this item.

951. As of the present date, the petitioners have not replied to the IACHR's request.

952. The IACHR appreciates the State's efforts to comply with this agreement and concludes that the friendly settlement agreement has been partially complied with. Accordingly it will continue to monitor for compliance with those points still pending.

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

953. On October 27, 2005, by Report No. 99/05, the Commission approved a friendly settlement agreement in the petition in the matter of "José Mérida Escobar." In summary, on February 19, 2004, the

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<sup>98</sup> In addition, in response to a request from the petitioners, the scholarship was expanded on July 18, 2011 to include a non-reimbursable item for food and housing for the period April to December 2011 in the amount of US\$857.50.

IACHR received a petition submitted by Amanda Gertrudis Escobar Ruiz, Fernando Nicolás Mérida Fernández, Amparo Antonieta Mérida Escobar, Rosmel Omar Mérida Escobar, Ever Obdulio Mérida Escobar, William Ramírez Fernández, Nadezhda Vásquez Cucho, and Helen Mack Chan alleging that the Guatemalan State was responsible for the extrajudicial execution of José Miguel Mérida Escobar on August 5, 1991. According to the petition, Mr. Mérida Escobar worked as Chief of the Homicide Section of the Department of Criminological Investigations of the National Police, and was in charge of the criminal investigation into the assassination of anthropologist Myrna Mack Chang. In the context of this criminal investigation, on September 29, 1990, he concluded that the main suspect in the assassination of Myrna Mack Chang was a member of the Security Department of the Presidential High Command of the Guatemalan Army. On August 5, 1991, Mr. Mérida Escobar was assassinated with gunshot wounds to the head, neck, left torso, and left arm; he died instantly.

954. On July 22, 2005, the parties agreed on a friendly settlement of the case. In the friendly settlement agreement, the State recognized its international responsibility for the violation of the rights enshrined in Articles 4, 5, 8, and 25 of the American Convention. Among the main commitments assumed in friendly settlement agreement No. 99/05 are:

- a) To take steps to ensure that the *Ministerio Público* conducts a serious and effective investigation.
- b) To make appropriate arrangements to establish a fellowship for police studies abroad.
- c) To look into the feasibility of drawing up a letter of recognition of the international responsibility of the State of Guatemala for the extrajudicial execution of José Miguel Mérida Escobar, which will be circulated to international organizations by way of the Official Gazette and the Internet.
- d) To take the relevant steps for the placement of a plaque in honor of police investigator José Miguel Mérida Escobar at the facilities of the Palace of the Civil National Police, in memory of José Miguel Mérida Escobar.
- e) To ensure that the appropriate authorities will take steps to determine the viability of changing the name of the Santa Luisa district in the Municipality of San José del Golfo, department of Guatemala, to the name of José Miguel Mérida Escobar.
- f) To take steps to ensure that the Executive Agency provides a life pension to the parents of José Miguel Mérida Escobar, Amanda Gertrudis Escobar Ruiz, and Fernando Nicolás Mérida Hernández, and a pension to his youngest son, Edilsar Omar Mérida Alvarado, until he completes his advanced technical studies.
- g) To take the relevant steps to ensure that the Ministry of Public Health provide for psychological treatment for Mrs. Rosa Amalia López, the widow of the victim, and for the youngest of his sons, Edilsar Omar Mérida Alvarado.
- h) The Government of the Republic pledges to take the relevant steps to ensure that the Ministry of Education arranges for a scholarship to be granted to the youngest son of the victim, Edilsar Omar Mérida Alvarado.

955. In its 2013 Annual Report,<sup>99</sup> The IACHR expressed its appreciation for the recognition of international responsibility by the State for violation of the rights enshrined under Articles 4, 5, 8 and 25 of the American Convention in the instant case. It also appreciated compliance with several of the commitments made by the State under the friendly settlement agreement it entered into with the petitioners. The IACHR noted that the commitments that are still pending are: investigating the facts of the case; establishing the rules of the 'Jose Miguel Merida Escobar' Scholarship and; circulation of the letter of recognition of international responsibility of the State to international agencies by way of Internet.

956. On December 10, 2014, the IACHR requested updated information on compliance. On January 9, 2015, the State replied, with regard to the fellowship for law enforcement studies, that the

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<sup>99</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with the IACHR's Recommendations, pars. 829-834. Available at: <http://www.oas.org/es/cidh/docs/annual/2013/docs-es/InformeAnnual-Cap2-D.pdf>



Secretariat of Planning and Programming of the Office of the President of the Republic (SEGEPLAN) suggested that the Friendly Settlement Agreement be expanded to define the details of the fellowship and, therefore, once the document is drafted, it would be forwarded to the IACHR. Additionally, the State reported that publication of the letter of recognition of its international responsibility to international agencies is still pending.

957. On January 16, 2015, the State submitted further information on the investigations, claiming that progress had been made by the Ministry of Public Prosecution and explaining that a date and time would be set for the oral trial proceedings against the defendants in the case to begin, which would be reported to the IACHR as soon as possible.

958. On October 5, 2015, the IACHR once again asked both parties for information concerning compliance with its recommendations. On November 6, 2015, the State submitted its response. In its communication, the State reiterated that the oral and public trial proceedings against the defendants have yet to begin. It added with regard to the commitment established in subparagraph a) that on June 16 of this year an arrest warrant was executed against one of the accused after it had been determined that he may have participated in the killing of Mr. Mérida Escobar. In that regard, the State indicated that this most recent defendant had been linked to the case for crimes against duty and humanity, and that an Intermediate Hearing was still pending, after which the State would request that his case be joined with that against the other defendants. In terms of the publication by international agencies of the letter acknowledging the State's international responsibility, the communication indicated that in October of this year the State asked the international news agency Agence France-Presse for its collaboration in distributing on its website the letter of apology and acknowledgment of international responsibility from the State to the victim's family members.

959. In that regard, the IACHR welcomes the State's initiative and would appreciate additional information concerning the link to the Internet site in which the information may have been published or otherwise a simple copy of the publication or of the correspondence with the news agency so that it can verify compliance with this item.

960. As of the date of this report, the petitioners have not submitted any information.

961. The IACHR takes note of the information provided by the State and greatly appreciates the efforts made to achieve total compliance with the pending commitments established in subparagraphs a) and c). Likewise, the IACHR invites the parties to provide information regarding the rules for the "Jose Miguel Merida Escobar" Scholarship.

962. Based on the foregoing, the IACHR concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

#### **Case 10.855, Report on Friendly Settlement Agreement No. 100/05, Pedro García Chuc (Guatemala)**

963. In Report No. 5/00 of February 24, 2000, the Commission concluded that the Guatemalan State was internationally responsible for the arbitrary execution of Mr. Pedro García Chuc and the violation of his rights to life, judicial protection, and judicial guarantees, among other rights enshrined in the American Convention. In this case, on March 5, 1991, at kilometer 135 of the route to the Western region, department of Sololá, several members of the state security forces captured Mr. García Chuc in the early morning hours. Two days later, the victim's corpse was located at the same place where he was captured, with several gunshot wounds. It is presumed that the extrajudicial execution was due to his work as president of the Cooperativa San Juan Argueta R.L., as well as his active participation in obtaining benefits for his community. The petition was presented by the victim's next-of-kin, and was one of a total of 46 petitions received by the Commission in 1990 and 1991 in which the State was allegedly responsible for the extrajudicial execution of a total of 71 men, women, and children, including Mr. García Chuc. After processing the cases before the IACHR, the

Commission decided, in keeping with Article 40 of its Regulations, to join those cases and resolve them together.

964. In that report, the IACHR recommended to the Guatemalan State that it:

1. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and related violations in the cases of the victims named in section VII, and to punish the persons responsible pursuant to Guatemalan law.
2. Adopt the measures necessary for the family members of the victims identified in paragraph 289 to receive adequate and timely reparation for the violations established herein.

965. On February 18, 2005, the State and the petitioners signed an "Agreement on Implementation of Recommendations. Case 10.855. Pedro José García Chuc," and on July 19, 2005, they signed an agreement on compensation. On October 27, 2005, the IACHR published Report No. 100/05, on the "Compliance Agreement" in this case. The commitments made by the State were as follows:

#### IV. COMPLIANCE WITH REPORT 39/00

##### A. Investigation, prosecution and punishment of the persons responsible

-The State undertakes to carry out a complete, impartial, and effective investigation to identify the persons who violated the human rights of the victim, including any members of judicial agencies who might have failed to meet their obligations, and to impose punishments, as appropriate, pursuant to our laws.

-In this framework, COPREDEH will encourage the Office of the Attorney General take the necessary measures to ensure a responsible investigation on the part of the State.

-The State undertakes to provide CALDH and the Commission with periodic reports on the aforementioned investigation process.

##### B. Reparations

###### 1. Financial compensation

a. The State recognizes that it has a duty to provide reparation and pay just compensation to the petitioners in accordance with the guidelines set forth in domestic and international law.

b. The State undertakes to reach an agreement with the petitioners on the amount and timing of payment of financial compensation before the end of first quarter 2005.

c. The Parties undertake to meet within a month after the signing of the instant agreement in Guatemala to discuss the issue of financial compensation and to set a timetable for compliance with paragraph (b) above.

###### 2. Public apology

a. The State undertakes to make public its recognition of its institutional responsibility for violation of the human rights of the victim and to make a public apology to his family in a declaration made either by the President of the Republic, or by the Vice President of the Republic or the Chair of COPREDEH, in a public ceremony to be held in Guatemala City (the "Public Ceremony").

b. The parties agree that the Public Ceremony shall be held within six months after the date of this agreement.

c. The parties undertake to reach an agreement on the place, date and time of the Public Ceremony within two months after the date of this agreement.

d. The State undertakes to publicize the Public Ceremony through the efforts of the COPREDEH Information and Press Department in the media.

### 3. Recovery of the victim's memory

In recognition of the diverse activities of Mr. García Chuc on behalf of his community, the State pledges to make and place a plaque in memory of the victim, the contents and site of which shall be determined with the beneficiaries.

[...]

## AGREEMENT ON FINANCIAL COMPENSATION CASE 10.855, PEDRO JOSÉ GARCÍA CHUC

[...]

### IV. TECHNICAL TRAINING FOR THE GARCÍA YAX AND GARCÍA CHUC FAMILIES

The State, through COPREDEH, undertakes to provide technical training to the beneficiaries on the creation and workings of an association for investment of the fund to be paid in financial compensation. That training shall be imparted at the time and place agreed with the petitioners and ideally shall center on the workings of micro enterprises and small businesses.

### V. INCORPORATION AND WORKINGS OF THE ASSOCIATION

The State, through COPREDEH, undertakes to grant the funds necessary to cover all professional fees incurred in the incorporation of the aforementioned association before a notary public and its entry in the Civil Register, as well as those of its legal representative.

The State, through COPREDEH, undertakes to take steps, preferably in the Department of Quetzaltenango, to locate and grant in usufruct a State-owned property for the functioning of the aforesaid association. However, should no State properties exist in said department, the same steps shall be taken to locate and grant a State-owned property in the Department of Sololá. Usufruct shall be granted for a period of twenty-five years, in accordance with the applicable laws.

966. In Report No. 100/05, the IACHR concluded that the State had complied with the public act of acknowledgement of responsibility and the placement of a plaque in memory of the victim. Both events took place on July 15, 2005. Moreover, in its 2007 Annual Report the IACHR declared partial compliance with the agreement, taking into consideration the petitioners' communication dated November 29, 2007, indicating that the State had made significant progress in implementing the commitments it had acquired. They noted that the only commitments still pending compliance were related to a) Providing a building in usufruct; b) Providing the García Yax and García Chic families with technical training; and c) Investigating, prosecuting, and punishing those guilty of Pedro José García Chuc's extrajudicial killing.

967. Regarding the pending clauses, the State reiterated that the greatest difficulty in complying with them is the absence of and lack of interest shown by the petitioners in attending the scheduled meetings and their failure to submit the documentation required to streamline the procedures and be able to honor the commitments. For example, the State explained that it has not been possible to amend the Corporate Charter of ASINDE (Indigenous Association for Entrepreneurial Development) for the process of appointment of a new representative, because the petitioner has not yet submitted the Charter for it to be appropriately

amended. As to the conveyance of a property to create the headquarters of the ASINDE, the State explained that the petitioners have not made any formal request as yet to the Municipal Council for the appropriate approval of conveyance of the property. It also asserted that the family members of Mr. Pedro García Chuc have stated their refusal to continue with the case in question.

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

969. On December 12, 2014, the IACHR requested updated information on compliance. On January 2015, the State claimed that the domestic investigation remains open. With regard to ASINDE, the State asserted that in addition to not being provided the Corporate Charter for the amendment thereof, as explained above, arrangements have not been made for it to be recorded with the Superintendent of Tax Administration (SAT), which has led to delinquent payment fees, which continue to accrue as they fail to be paid off. As for this item, the State reports that the petitioners have asked the State to cover the payment of the said fees in order to pay off the delinquent payment fees of the Association. In this regard the State explained that, while its commitment was to charter and finance ASINDE, the addition of these fees was a result of the petitioners' failure to meet the legal requirements and that this failure should not be attributed to the State.

970. With regard to the delivery of the property for the Association's operations, the State reiterated that the petitioners have still failed to comply with the request of the Ministry of Public Finances cited above.

971. As for technical training for the García Yax and García Chuc families, the State claimed that it forwarded the request to the Technical Institute for Training and Productivity (INTECAP) asking for support in providing free training for the Association staff, and that it agreed to provide the said training. Nonetheless, as reported by the State, the training could not be held, because both the legal representative and the other members of the Association and of the families were unable to take on the operation of the Association due to other professional or family responsibilities in different departments of the country. The State also claimed that the petitioners did not submit reports on economic resource management and activities undertaken in the Association and that they had reported that they cannot continue with it and that they would like to request that it be cancelled.

972. Lastly, the State asserted that it has summoned the petitioners to conduct follow-up on the commitments pending compliance and that it was not possible for them to attend.

973. On October 1, 2015, the Commission requested updated information concerning compliance with the friendly settlement agreement. On November 4, 2015, the State submitted information regarding the commitment related to the investigation, prosecution, and punishment of those responsible, indicating that the case is still under investigation and that it does not have the collaboration of the victim's family members. The State informs the Commission that no family member witnessed the crime and that the family has not wished to participate in the process by providing information that could help pinpoint those responsible.

974. In terms of the commitments related to ASINDE, the State indicates that the association has not functioned as expected given the petitioners' lack of activity, and that delinquent tax payments owed to the SAT remain pending and continue to accrue, as do the fees of the professionals hired. The State also stresses that the petitioners have expressed to COPREDEH on a number of occasions that they are not interested in continuing the process. The State also reported that COPREDEH has conducted visits and convened the petitioners to bring about compliance with the pending commitments; however, this has not been viable. Meanwhile, with regard to the commitment related to a building that ASINDE can use, the State indicated that the petitioners have not provided the information requested by the Ministry of Public Finances or that requested by the Municipal Council of Quetzaltenango in terms of the management of economic and

financial resources and information on association activities related to the aims and objectives for which it was created. In that regard, the IACHR does not have enough information concerning the efforts made and the obstacles that still must be overcome which would enable it to examine compliance with this item; thus, it will await more detailed information from the parties concerning the progress on this commitment.

975. Finally, in terms of technical training for the García Yax and García Chuc families, the State indicated that the beneficiaries do not meet the requirements requested by the Technical Institute for Training and Productivity (INTECAP) to be able to give them the relevant training, because they do not have at least 15 participants. On that point, the IACHR believes the State should explore other possibilities to provide technical training to the beneficiaries, inasmuch as the clause in the agreement did not establish a specific limitation as to the number of individuals who would take part in the training and the State could not require the victims and their family members to meet the minimum of 15 participants. The State should consult with the beneficiaries, and preferably draw up the minutes of that meeting, on other alternatives to comply with the agreed. On the other hand, if the beneficiaries decide they are no longer interested in getting the training, this decision should be recorded in writing so that the Commission can make an assessment as to compliance with the measure.

976. To date, the Commission has received no information from the petitioners.

977. The IACHR urges the petitioners to submit updated information, incorporating their observations with respect to the State's last communication, particularly concerning the issue of ASINDE's Corporate Charter and the change of its legal representative, and provide an unofficial copy of its application to the Municipal Council seeking approval for the conveyance of the property in usufruct for its operations.

978. Finally, the Commission observes that the State has made progress in the implementation of the commitments made in the compliance agreement. Specifically, the Commission considers that items B1, 2 (a, b, c, and d), and 3 of the compliance agreement have been fulfilled in their entirety. The IACHR considers that clauses IV and V of the compensation agreement are pending compliance. Finally, the IACHR appreciates the information submitted by the State and concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the pending items.

#### **Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala)**

979. In Report No. 69/06 of October 21, 2006, the IACHR concluded that the Guatemalan State was responsible for: (a) the violation of the human right to life in keeping with Article 4 of the American Convention, in relation to Article 1(1) of that instrument, due to the extrajudicial execution, by state agents, on April 3, 1993, of Tomas Lares Cipriano; (b) the violation of the human rights to humane treatment, judicial guarantees, and judicial protection, enshrined at Articles 5, 8, and 25 of the American Convention, in relation to Article 1(1) of that instrument, for the events that occurred April 3, 1993, and their consequences of impunity, to the detriment of Tomas Lares Cipriano and his next-of-kin; and (c) consequently, for the breach of the obligation to respect the human rights and guarantees, imposed by Article 1(1) of the American Convention. The victim, Tomás Lares Cipriano, was a farmer, 55 years of age, a member of the Consejo de Comunidades Étnicas "Runujel Junam" (CERJ), and of the Comité de Unidad Campesina (CUC). As an active community leader in his town, Chorraxá Joyabaj, El Quiché, he had organized numerous demonstrations against the presence of the army in his zone, and against the apparently voluntary but in fact compulsory service by the campesino farmers in the so-called Civilian Self-Defense Patrols (PAC). In addition, he had filed numerous complaints in relation to the threats against the local population by the Military Commissioners who acted as civilian agents of the army, patrol chiefs, and, on occasion, as soldiers. On April 30 of that same year, Tomas Lares Cipriano was ambushed and assassinated by Santos Chich Us, Leonel Olgadez, Catarino Juárez, Diego Granillo Juárez, Santos Tzit, and Gaspar López Chiquiaj, members of the PAC.

980. The IACHR made the following recommendations to the Guatemalan State:

1. To carry out a complete, impartial and effective investigation of the events reported, to judge and punish all those responsible, either as abettors or perpetrators, for human rights violations with prejudice to Tomás Lares Cipriano and his family members.
2. To make reparation for the violation of the aforementioned rights as established in paragraph 128 of this report.
3. To effectively prevent the resurgence and reorganization of the Civil Self-defense Patrols.
4. To adopt the necessary measures to avoid similar events in the future, pursuant to the duty of prevention and guarantee of fundamental human rights, recognized by the American Convention.

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

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

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

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

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

986. On December 5, 2014, the IACHR requested additional information on compliance with the recommendations, specifically on the pending item pertaining to prosecuting and punishing the defendants in the case of the death of Tomas Lares Cipriano, for whom the arrest warrants have still not be executed. In a communication submitted by the State on January 5, 2015, the State claimed that the Public Ministry is continuing to monitor and look into the whereabouts of the two defendants in order to be able to execute the arrest warrants. For their part, the petitioners did not submit any information.

987. On September 11, 2015, the IACHR requested updated information from the parties regarding compliance with the recommendations. On October 28, 2015, the State reiterated the information concerning the judgment that had been imposed against Mr. Santo Chich in November 1996 for the death of

Tomás Lares, and indicated that it continues to monitor and investigate the whereabouts of Diego Granillo Juárez, Santos Tzit, and Gaspar López Chichaj to execute the pending arrest warrants. The State also reaffirmed its position as regards negotiating with the petitioners and signing an agreement for compliance with recommendations. To date, the petitioners have not submitted any information concerning compliance with the recommendations.

988. The IACHR takes note on the information provided by the State on the actions undertaken by the State to execute the arrest warrants against the other defendants in order to comply with the recommendation established in paragraph a); as well as the State's willingness to sign an agreement with the petitioners on compliance with recommendations. However, the IACHR observes that it does not have any current information on compliance with the recommendations established in paragraphs b), c), and d), and therefore it invites the State to provide specific information to the petitioners and to the IACHR concerning compliance with those items.

989. Based on the foregoing, the IACHR finds that the recommendations have been partially fulfilled and will continue to monitor compliance.

#### **Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)**

990. In Report No. 48/03 of October 8, 2003, the IACHR concluded that the Republic of Guatemala was responsible for: (1) violating Article 4 of the American Convention on Human Rights to the detriment of Martín Pelicó Coxic, in relation to Article 1(1) of said instrument; (2) violating Articles 5, 8, and 25 of the American Convention on Human Rights, in relation to Article 1(1) of that instrument, to the detriment of Martín Pelicó Coxic and his next-of-kin. The Commission determined that the responsibility of the Guatemalan State emanated from the extrajudicial execution perpetrated on June 27, 1995, by state agents, of Mr. Martín Pelicó Coxic, a Mayan indigenous member of an organization for the defense of the human rights of the Maya people, as well as the injuries inflicted on the victim and his next-of-kin by virtue of the facts mentioned and the subsequent impunity for the crime.

991. The Commission made the following recommendations to the Guatemalan State:

1. Conduct a complete, impartial, and effective investigation of the reported events leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin.
2. Comply with the obligations still pending in the area of reparations to the victim's next of kin.
3. Effectively prevent the reemergence and reorganization of the Civil Self-defense Patrols.
4. Promote in Guatemala the principles set forth in the United Nations "Declaration of the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," and take the necessary measures to ensure respect for the freedom of expression of those who have undertaken to work for the respect of fundamental rights and to protect their lives and personal integrity.
5. Adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the responsibility to prevent and to guarantee the fundamental rights recognized in the American Convention."

992. On October 15, 2007, the IACHR approved Report No. 80/07, which provides for the publication of the previously mentioned reports. On this occasion, once again the Commission expressed its

satisfaction at fulfillment of most of the commitments made in the Agreement to Comply with the Recommendations of Report No. 48/03, but it also reiterated to the State of Guatemala recommendations two and three as set forth in Report No. 12/07 and recommended that the investigation of the facts that were reported be completed impartially and effectively investigated to bring to trial and punish the principal offenders and accessories who violated the human rights against Martín Pelicó Coxic and his next-of-kin.

993. By means of a communication dated October 8, 2013, the IACHR requested the parties to provide updated information on the status of compliance with the recommendations made for the present case.

994. Concerning the recommendation of conducting an investigation into the crimes charged in the petition, prosecuting and punishing those responsible, the State of Guatemala, as on earlier occasions, submitted a timeline of the investigation and punishments of those responsible for the crimes alleged in the petition and reiterated that the Criminal Trial Court handed down an acquittal of Pedro Chaperon, who had been charged with the homicide of Mr. Martin Pelico Coxic. Additionally, it noted that the complainant and plaintiff to the civil proceedings related to the criminal proceedings stressed that she was unaware of who was responsible for the death of her husband and that she was no longer interested in pursuing the investigation into the case.

995. Concerning this item, the petitioners stated that this case is still in impunity because there is no one punished for the death of Mr. Martin Pelicó. Also, the case files submitted by the State do not show any evidence that in recent years there has been a substantial progress in the clarification of the facts. The petitioners also requested a chronological report of the investigative actions; that report was submitted by the State through the IACHR, and they requested a detailed analysis of the viability of the criminal prosecution of those responsible.

996. As to the recommendation of providing reparation, the parties concur that the State has complied with these commitments.

997. The Commission concludes in its 2013 Annual Report that “the State has complied with the recommendations outlined above, except for the recommendation pertaining to investigation. Consequently, the Commission will continue to monitor this pending item.”<sup>100</sup>

998. On December 5, 2014 and October 5 2015, the IACHR requested updated information on said compliance.

999. The State responded on January 5, 2014, arguing that it has continued to move forward in the domestic investigation into the incidents, even though the victim’s wife has not wanted the investigation to continue, inasmuch as this case involves a criminal offense of public action. The State did not respond to the last request of updated information.

1000. The petitioners presented information on November 16, 2015, reinstating that the case continues to be in impunity and that the State has not complied yet with providing a detailed report in the possible lines of action that could guide the investigation, and has only mentioned two relevant activities without specifying the dates in which they were performed nor the results obtained, if any. For this reason, the petitioners have requested that the State provides a detailed analysis of the viability of the criminal action against the responsible people, who have not yet been processed or sanctioned, including lines of investigation that it is considering for the clarification of the truth of the facts alleged, as well as the specific procedures that is undertaking for this and the results if any.

1001. Based on the foregoing, the IACHR will continue to monitor the pending item pertaining to the investigation into the incidents.

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<sup>100</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, par. 865, Available at: <http://www.oas.org/es/cidh/docs/annual/2013/docs-es/InformeAnnual-Cap2-D.pdf>



### **Case 11.422, Report No. 1/12, Mario Alioto López Sánchez (Guatemala)**

1002. On January 26, 2012, by Report No. 01/12, the Commission approved a friendly settlement agreement in the case of Mario Alioto López Sánchez. In that case, on November 11, 1994, Mario Alioto López Sánchez, a law student at the Universidad de San Carlos de Guatemala, was with a group of students protesting the increase in urban transit fares, blocking the Avenida Petapa. The petitioners noted that approximately 100 National Police agents attempted to disperse the students by throwing tear gas canisters, shooting firearms, and beating them. Consequently, several tried to flee; approximately 23 were detained. Included in this group was Mario Alioto López Sánchez, who was beaten by the security officials at the time of his arrest; and even though he was hemorrhaging from a gunshot wound in his left thigh, he did not receive immediate medical care, having been taken to Hospital Nacional approximately two hours after his arrest, where he died the day after being admitted. As for the judicial proceeding domestically, on July 30, 1997, the Third Court for Criminal and Drug-trafficking Matters handed down its judgment. Danilo Parinello Blanco, Mario Alfredo Mérida Escobar, Salvador Estuardo Figueroa, and Carlos Enrique Sánchez Gómez were convicted and sentenced to 10 years, as the perpetrators of the crime of premeditated homicide against Mario Alioto López Sánchez and for the crime of moderate lesions against students Julio Alberto Vásquez Méndez and Hugo Leonel Cabrera. Carlos Venancio Escobar Fernández was convicted and sentenced to 30 years of prison as the direct perpetrator of the crime of assassination against Mario Alioto López Sánchez and the crime of moderate lesions against the other two students. On appeal, the judgment was partially annulled, absolving the first four and reducing Escobar Fernández's sentence to 10 years in prison.

1003. On October 19, 2011, the parties signed a friendly settlement agreement. In that agreement the State recognized its responsibility for the facts in the case, and indicated that carrying out the commitments that derive from the Agreement is based primarily on helping to achieve national reconciliation by seeking the truth and the administration of justice, dignifying the victim and next-of-kin, providing assistance or making reparation as a result of the alleged violation, and strengthening the inter-American human rights system. In addition, according to the fourth point of that agreement, the main commitments assumed in friendly settlement agreement No. 01/12 include:

#### **1. Recognition of the International Responsibility of the State and acceptance of the facts**

The State of Guatemala recognizes its international responsibility derived from the direct participation of agents of the State in committing the acts and for the violations of human rights committed against Mario Alioto López Sánchez under the American Convention on Human Rights, specifically the rights set forth at the following articles: right to life (Article 4), right to humane treatment (Article 5), freedom of association (Article 16), and judicial protection (Article 25), and the obligation to respect and ensure the rights enshrined in the American Convention on Human Rights (Article 1(1)).

Implementing the commitments that stem from this Agreement is based primarily on achieving national reconciliation through the search for the truth and the administration of justice in those cases whose nature so allows; dignifying the victim and family members; assistance or reparation resulting from the alleged violation; and strengthening the inter-American system for the promotion and protection of human rights.

#### **2. Private Apology**

(a) The Guatemalan State undertakes to hold a private ceremony with high-level authorities of the Ministry of Interior and the President of the Presidential Commission for Coordinating Executive Branch Policy on Human Rights (COPREDEH), in which it will recognize its international responsibility for the human rights violations committed against Mario Alioto López Sánchez and a letter signed by the President of the Republic of Guatemala will be delivered in which it apologizes for the harm caused the victim's family.

The parties agree that the ceremony will be held within three months of the date of signing this agreement.

(b) The parties undertake to ensure that the private ceremony will be held in the facilities occupied currently by the Ministry of Interior, and that the date, program, and time will be established in due course.

(c) The State undertakes not to make public the information in this Agreement, at the specific request of the victim’s next-of-kin, to which end the parties will ask the illustrious Inter-American Commission of Human Rights to recognize, at the appropriate time, compliance by the State in relation to the commitments of this case, without disseminating the details.

**3. Measures to honor the memory of the victim**

(d) The State undertakes to place and unveil a commemorative plaque in the memory of the victim in the house ... whose material and content should be agreed upon with his next-of-kin.

(e) The State undertakes to seek, from the Universidad de San Carlos de Guatemala, books and videos that contain historical information on the struggle of Mario Alioto López Sánchez, which will be delivered to the victim’s next-of-kin to be preserved.

**4. Economic Reparation**

(a) The State recognizes that accepting international responsibility stemming from the violation of the victim’s human rights established in the American Convention on Human Rights implies the responsibility to pay fair compensation to the petitioners under the criteria which, by common agreement, are determined by the parties and the parameters established by national and international law.

The State, through the COPREDEH and in keeping with the actuarial study prepared by an expert on April 27, 2011, undertakes to grant economic compensation ... broken down as follows:

Compensation for actual damages: - Lost earnings - Actual damages	... ...
Compensation for moral damages:	...
<b>Total Compensation</b>	...

**5. Investigation, prosecution, and punishment of the persons responsible**

The State of Guatemala undertakes, through the corresponding institutions, to give impetus to the investigation to identify, prosecute, and punish the persons who are the subjects of a criminal proceeding into their role as the persons allegedly responsible for the death of Mario Alioto López Sánchez, and to address this case through the Impetus Committee (Comité de Impulso).

The State of Guatemala undertakes to convene the Impetus Committee every four months for it to give a report on the progress in the investigation, to be forwarded to the Inter-American Commission on Human Rights, the legal representatives in the case, and the victim’s next-of-kin.

1004. In the Report on Friendly Settlement, the Commission reported that still pending implementation would be: (a) delivering to the family members the books and videos from the Universidad de San Carlos on the struggle of Mario Alioto López Sánchez, for the preservation of memory, and (b) the investigation into and sanction of the persons responsible.

1005. On October 4, 2013, the IACHR asked the parties for updated information on the implementation of the other points pending of the agreement.

1006. In relation to delivering the historical information to the family members, the State indicated that even though many initiatives have been taken vis-à-vis the Universidad de San Carlos – and even with the members of Mario Aliota Sánchez López’s family – to obtain books and videos that contain historical information about his struggle, neither the University nor the family members have the respective materials. Consequently, the State said it was unable to carry out this commitment. Regarding the investigation into and punishment of the persons responsible for the events, the State indicated that it has carried out this commitment since, through what is now a firm judgment handed down on July 30, 1997, by the Third Court of Criminal Matters, Drug-trafficking, and Crimes against the Environment, Carlos Venencio Escobar Fernández, responsible for the death of Mario Aliota López Sánchez, was convicted and sentenced to serve time in prison.

1007. The petitioners indicated that in 2012 and 2013, the State has not taken the actions needed to advance in carrying out the commitments still pending.

1008. On December 12, 2014, the IACHR requested updated information on compliance with the agreement. On January 9, 2015, the State replied by reiterating what it had already asserted in the paragraphs above in the instant report. It also requested the IACHR to ask the victim’s next-of-kin for information about persons with background information about the Mr. Mario Aliota Lopez Sanchez’s struggle, in order to comply with the pending measure to honor the memory of the víctima.

1009. On October 1, 2015, the Commission requested updated information from the parties concerning the status of compliance with the pending items from the agreement. On October 21, 2015, the petitioners submitted information in which, with regard to the pending item concerning measures to honor the victim’s memory, they said that in its previous reports the State had not provided dates or given details regarding the many efforts it has undertaken to obtain historical information from the Universidad de San Carlos concerning the victim’s struggle, and therefore it has not been possible to establish whether such efforts have been carried out. They added that the State’s claim that it has made multiple efforts to get information from Mario Aliota López Sánchez’s family is not true because, according to the petitioners, the State was aware that the family members did not have such information, which is why it was established in the friendly settlement agreement that the State would undertake these efforts with the Universidad de San Carlos, where the victim had studied.

1010. With regard to the item related to the investigation, prosecution, and punishment of those responsible, the petitioners indicated that while it is true that Carlos Venencio Escobar Fernández was sentenced to prison in a judgment of July 30, 1997, in the same decision the court left open the proceedings against another defendant identified as Miguel Angel Fernández Ligorria, who disappeared during a court hearing, meaning that he fled. Therefore, the petitioners consider that the State has not fully complied with that commitment.

1011. On November 9, 2015, the State submitted information concerning the pending items from the agreement. It reiterated what it had indicated in the reports submitted in October 2013 and April 2014, in which it indicates “total compliance” with the commitments adopted by the State and notes that “the State has made every effort, to the extent possible, to comply with these commitments.” In terms of the commitment established in point 3, subparagraph e), it reiterates the efforts it has made with the Universidad San Carlos, which reported verbally that it does not have information, whether books, videos, or any other type of publication, containing historical information related to the victim. Therefore, the State has concluded that since neither the university nor the family members have photographs or videos, it is impossible for the State to fulfill this commitment. In this regard, it indicates that the commitment is pending compliance for reasons beyond its control, and it asks the IACHR to declare this commitment to have been fulfilled.

1012. On this point, the IACHR observes that it requires more information from the State as to the efforts it has undertaken to obtain the aforementioned historical information, specifically a simple copy of the formal communications it has exchanged with the university, so that the State’s efforts to comply with this point can be valued.

1013. In terms of the investigation, prosecution, and punishment of those responsible, the State reaffirms that the judgment that convicted those responsible for the death of Mr. López Sánchez, issued on July 30, 1997, is definitive, as after it was appealed it was upheld and as a result Mr. Carlos Venancio Escobar Fernández was sentenced to prison.

1014. The IACHR appreciates the information provided by the parties and at the same time observes that, based on the information provided by the State, the IACHR has no information whatsoever in terms of any steps taken to follow through with the situation of the other defendant mentioned by the Third Court of Criminal Matters, Drug Trafficking, and Crimes against the Environment in the judgment of July 30, 1997, and for which the proceedings were declared to remain open. In this regard, the IACHR urges the State to provide this Commission and the petitioners with detailed, specific information regarding compliance with the two pending items.

1015. In view of the foregoing, the Commission concludes that the State has partially carried out the friendly settlement agreement. Consequently, the Commission will continue to supervise the two points pending: delivering the historical memory to the family members, and investigating and punishing those responsible.

#### **Case 12.546, Report No. 30/12, Juan Jacobo Arbenz Guzmán (Guatemala)**

1016. On March 20, 2012, by Report No. 30/12, the IACHR approved a friendly settlement in the case of Juan Jacobo Arbenz Guzmán. By way of background, Jacobo Arbenz Guzmán was elected the constitutional president of Guatemala in 1951 and served in that position until June 27, 1954, the date on which he was overthrown by a military coup headed up by Colonel Carlos Castillo Armas and directed from Honduras by the Central Intelligence Agency of the United States of America. Juan Jacobo Arbenz and his family, made up at that time of his wife, María Cristina Vilanova de Arbenz, and their children Juan Jacobo, María Leonora, and Arabella, were expelled from the country and forced to live in exile. Juan Jacobo Arbenz Guzmán died in exile on January 27, 1971. The *de facto* government confiscated the property of Mr. Arbenz Guzmán and his family. The government junta issued Decree No. 2, on June 2, 1954, and then the dictator Castillo Armas promulgated a second decree, No. 68. Article 1 of Decree 2, ordered intervening the assets, freezing and immobilizing the deposits, creditor accounts, securities, and current accounts of the persons who were on the lists drawn up by the Ministry of Finance and Public Credit; President Arbenz was on this list. Article 1 of Decree 68 established that all securities, actions, rights, assets, and property of all types would be adjudicated to the State as compensation, with no exception, which for any reason is under the control, possession, tenure, and usufruct of the former officials and employees that appear on the list mentioned in Decree 2. The property confiscated included the farm “Finca el Cajón,” which was a property of the Arbenz family. Both Mr. Arbenz Guzmán while alive, and his next-of-kin after his death, called for the return of their properties.

1017. On May 28, 1995, Mrs. María Cristina Vilanova Castro, the widow of Arbenz, brought an action challenging the constitutionality of Decrees 2 and 68, both of 1954, before the Constitutional Court of Guatemala. On September 26, 1996, the Court declared unconstitutional Article 1 of Decree 2 and Article 1 of Decree 68. In 1996, the Office of the Government Attorney (Procuraduría General) issued opinion 8-96, in which it recognized that one should study compensation for the next-of-kin of the former president, and that the matter should be debated in the legislative branch. On January 31, 2003, the Office of the Government Attorney issued a new opinion in which it states that the Constitutional Court judgment imposed an obligation on the State of Guatemala to return the properties or to pay compensation to his heirs.

1018. On March 14, 2006, the IACHR found the case admissible for the alleged violation of Articles 8 (judicial guarantees), 21 (private property), 24 (equality before the law), and 25 (judicial protection). On May 19, 2011, the parties signed a friendly settlement agreement, the pertinent parts of which, with respect to reparation, are as follows:

## **(2) ECONOMIC REPARATION**

....

The State of Guatemala, after a valuation conducted February 21, 2007, by the Bureau of Cadastre and Appraisal of Real Properties of the Ministry of Public Finance, at farm number 3443, folio 76 of book 40 of Escuintla of the General Registry of Property, called “Finca el Cajón,” situated in the municipality of Santa Lucía Cotzumalguapa of the department of Escuintla, undertakes to pay the sum of ... as economic reparation, for former president Juan Jacobo Árbenz Guzmán, to his wife María Cristina Vilanova and their children Juan Jacobo, María Leonora, and Arabella, all with the last names Árbenz Vilanova, a sum that includes both material and moral damages. The State of Guatemala undertakes to make the payment by bank transfer immediately once the Friendly Settlement Agreement has been signed and once the petitioners deliver the notarial act identifying the beneficiaries and the special power of attorney to Mr. Erick Jacobo Arbenz Canales, which authorizes him to sign this friendly settlement and to receive the payment of the economic reparation; these documents must have all the legal authorizations required to be considered to be fully valid under Guatemalan legislation. Once the transfer is made, the petitioner undertakes to sign an administrative act of settlement to be extended to the State of Guatemala.

## **(3) OTHER FORMS OF REPARATION**

This Friendly Settlement Agreement establishes the commitment of the State of Guatemala to carry out the following commitments:

**(a) Public Ceremony for Acknowledging International Responsibility:** The State of Guatemala undertakes to dignify the memory of former president Juan Jacobo Árbenz Guzmán with a public ceremony for recognition of the international responsibility of the State, which will be held at the National Palace of Culture, and shall be presided over by the President of the Republic....

**(b) Letter of Apology:** The State of Guatemala undertakes to draft a letter of apology that the President of the Republic shall deliver to the family members of former President Árbenz Guzmán in the public ceremony for acknowledging responsibility. This letter will be signed by the President and published in the *Diario de Centro América* and in *El Periódico*.

**(c) Designation of a hall in the National History Museum:** The State of Guatemala undertakes to name, permanently, a hall of the National History Museum, to be known as the “Jacobó Arbenz Guzmán” hall.

On November 5, 2010, the State of Guatemala named the “Jacobó Arbenz Guzmán Reading Room” in the National History Museum, thus the petitioner accepted this act as part of the moral reparation in this case, as that ceremony was already held.

**(d) Review of National Basic Curriculum:** The State of Guatemala undertakes to take the necessary steps vis-à-vis the Ministry of Education to review the National Basic Curriculum specifically regarding the government of the then-constitutional President of the Republic of Guatemala, Colonel Juan Jacobo Árbenz Guzmán, and the events that occurred at the time of the 1954 military coup against him; after the State and the family members of former president Árbenz Guzmán have reviewed them, the State will take steps to implement the changes proposed.

**(e) Diploma Program in Human Rights, Multiculturalism, and Reconciliation of the Indigenous Peoples:** The State of Guatemala undertakes to create a “Diploma Program in Human Rights, Multiculturalism, and Reconciliation on Indigenous Peoples,” with the economic backing of the Universidad de San Carlos de Guatemala, in which there will be two sections: one in the western region, which will be made up of the departments of Quetzaltenango, as the principal location of the program, plus San Marcos, Retalhuleu, Suchitepéquez, Quiché, and Sololá; and the other in the eastern region, which will be made up of the departments of Zacapa, as the principal location, along with Chiquimula, Jalapa, El Progreso, and Jutiapa.

This diploma program is geared mainly to public officials of the executive and judicial branches, staff of other intermediate level offices, and indigenous leaders. It will have 10 face-to-face sessions, to be held once every two weeks. The diploma program will address issues that make it possible to analyze the inequalities among the Maya, Garifuna, Xinka, and Mestizo peoples for the purpose of helping to curb discriminatory practices.

**(f) Naming of the Highway to the Atlantic:** The State of Guatemala undertakes to take steps vis-à-vis the appropriate institution for the highway to the Atlantic be named “Juan Jacobo Arbenz Guzmán” in the course of 2011. Once that request is authorized, a public ceremony will be held for the naming of that highway.

**(g) Restitution of an area of the Finca el Cajón:** As mentioned above, farm number 3443, folio 76, of book 40 of Escuintla of the General Property Registry, called “Finca el Cajón,” situated in the municipality of Santa Lucía Cotzumalguapa, department of Escuintla, a property of the Árbenz Vilanova family, was confiscated by the State of Guatemala by Decree 2 of July 5, 1954 of the Government Junta and registered to the State of Guatemala, as regulated by Decree 68 of August 6, 1954, issued by the *de facto* President. Subsequently that farm was divided into lots by the National Institute for Agrarian Transformation (INTA). In 1996 and 2006, the Constitutional Court handed down judgments in cases 305-95 and 1143-2005, finding Decrees 2 and 68 to be unconstitutional.

In legal opinion 29-2003, issued by the Consultations Section of the Office of the Government Attorney (Procuraduría General de la Nación), that institution considered as follows: “The judgment of the Constitutional Court that corresponds to case 305-95 of September 26, 1996, which found unconstitutional and without any effect the provisions that were the basis for the expropriation, practically created an obligation for the State of Guatemala that consists of returning the properties or, in the alternative, paying compensation to the heirs thereof; accordingly that judgment is a decision of great importance for defining the dubious situation that led to the case that is analyzed today.”

In view of the foregoing, the State of Guatemala undertakes to take the steps and conduct the studies required to verify whether there is any area that is part of the Finca el Cajón that is owned by the State. If so, the State of Guatemala will take the statutory and/or administrative steps necessary for that part of the farm to be returned to the family members of former president Árbenz Guzmán.

If the study and the steps taken by the State in relation to the Finca el Cajón indicate that there is no area under the control of the State or that it is not possible to return it to the family members of former President Arbenz Guzmán, the State undertakes to pay the additional sum of ... in the course of 2011.

The family members of former President Arbenz Guzmán reserve the right to choose between the restitution of that part of the Finca el Cajón which, as a result of the study, could be returned to them, or the payment ... by the end of 2011.

....

**(i) Photography exhibit at the National History Museum:** The State of Guatemala undertakes to organize a temporary photography exhibit on former President Arbenz Guzmán and his family in one of the halls of the National History Museum....

**(j) Recovery of the photographs of the Arbenz Guzmán family:** The State of Guatemala undertakes to digitally record, in San José, Costa Rica, the photo archive of former President Arbenz Guzmán that is in the possession of his family members, with three complete digital copies and three print copies, from a selection made by mutual agreement, to be delivered to the family members. This commitment will be made in 2011.

**(k) Book of Photos:** The State undertakes to publish, in 2011, a book with a selection of photographs of former President Arbenz Guzmán....

**(l) Re-publication of the book “Mi Esposo el Presidente Árbenz”:** The State of Guatemala undertakes to reprint the book “Mi Esposo el Presidente Arbenz,” the author of which is María Cristina Vilanova de Árbenz, the wife of former President Árbenz Guzmán....

**(m) Production and publication of a biography of former President Juan Jacobo Árbenz Guzmán:** The State of Guatemala undertakes to produce and publish a biography of former President Juan Jacobo Árbenz Guzmán. To this end his family members undertake to provide the data required and to accompany the book’s author in preparing the biography; they also authorize its production and publication....

**(n) Issuance of a series of postage stamps:** The State of Guatemala undertakes to take the steps to issue a series of postage stamps whose theme and/or motive is commemorating former President Arbenz Guzmán and his period in office. The authorization, design, perforations, margins, number, value, and run is at the discretion of the corresponding authorities, with whom COPREDEH and the family members of former President Arbenz Guzmán will coordinate proposals.

**(o) Travel costs ...**

1019. In the 2013 IACHR Annual Report, the Commission considered most of the commitments adopted in the friendly settlement agreement to be fulfilled.<sup>101</sup> With regard to the commitments pending compliance, based on information provided by the parties in 2013, the IACHR ascertained that two items of the agreement are still pending:

- a. **Book of Photos.** The State indicated that it hired a professional to touch up 120 photographic images of the Arbenz family that will be used to publish the book of photos. The administrative steps required for producing the book are being taken.
- b. **Issuance of a series of postage stamps.** The State indicated that several meetings were held with the National Philatelic Council, which proposes, to be able to carry out this commitment, that a postmark be issued, which is used to mark postage stamps so they cannot be reused. Nonetheless, as this would change the object of the commitment, the State has asked the Arbenz family to indicate whether it is in agreement with this means of carrying out the commitment.

1020. On December 10, 2014, the IACHR requested updated information on compliance with the two pending items. On January 9, 2015, the State claimed that the appropriate administrative steps were being taken with regard to the photo book. With regard to the second item, the State claimed that it is still awaiting the response of the Arbenz family as to whether it agrees with the terms of compliance set forth.

1021. On October 1, 2015, the Commission requested updated information regarding compliance with the friendly settlement agreement. On October 21, 2015, the State, through the Presidential Coordinating

<sup>101</sup> See IACHR, 2013 Annual Report, Chapter II, Section D: Status of Compliance with IACHR Recommendations, par. 876-878, Available at: <http://www.oas.org/es/cidh/docs/annual/2013/docs-es/InformeAnnual-Cap2-D.pdf>

Commission on Executive Human Rights Policy, reiterated the information it had submitted on January 9, 2015, concerning the first pending item. It indicated that in terms of the second item, meetings have been held with the National Philatelic Council to continue with the administrative steps to be able to comply with this commitment.

1022. As of the date of this report, the petitioners have not submitted any additional information.

1023. Taking into consideration the aforementioned, the IACHR observes that the State has complied with a substantial part of the agreement, but there still remain some items pending for implementation. In view of the foregoing, it concludes that there is a partial compliance and will continue to supervise the two pending items of the agreement.

#### **Case 12.264, Report No. 1/06, Franz Britton (Guyana)**

1024. In Report No. 1/06, dated February 28, 2006 the Commission concluded that agents of the State security forces abducted and/or detained Franz Britton and that during the following six years his whereabouts have not been identified and that, as a result, Guyana violated the rights of Franz Britton to life, liberty, personal liberty, judicial protection, arbitrary arrest and due process of law, all recognized, respectively, in Articles I, XVIII, XXV, XXV and XXVI of the American Declaration.

1025. The Commission issued the following recommendations to the State:

1. Carry out a serious, impartial and effective investigation by means of the competent organs, to establish the whereabouts of Franz Britton and to identify those responsible for his detention-disappearance, and, by means of appropriate criminal proceedings, to punish those responsible for such grave acts in accordance with the law.
2. Adopt the necessary legislative or other measures to prevent the recurrence of such events and provide, in all cases, the required due process and effective means of establishing the whereabouts and fate of anyone held in State custody.
3. Adopt measures to make full reparation for the proven violations, including taking steps to locate the remains of Franz Britton and to inform the family of their whereabouts; making the arrangements necessary to facilitate the wishes of his family as to an appropriate final resting place; and providing reparations for the relatives of Franz Britton including moral and material damages in compensation for the suffering occasioned by Mr. Britton's disappearance and not knowing his fate.

1026. On December 4, 2014 and on 8 de septiembre de 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1027. The State submitted its last communication on November 8, 2013, indicating that it has no additional information to share with the Commission to complement its earlier submissions dated October 17, 2011 and November 2, 2011.

1028. Based on these considerations, the Commission reiterates that compliance with the recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

#### **Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)**

1029. In Report 81/07 of October 15, 2007 the IACHR concluded that the State of Guyana is responsible for the infliction of violence by police officers on brothers Daniel and Kornel Vaux while in their custody; and for failing to accord a fair trial to the Vaux brothers, particularly in the treatment of the confession evidence by the courts of that country, which prevented them from fully contesting the



voluntariness of the confession evidence tendered by the prosecution. Accordingly, the IACHR concluded that the State of Guyana violated the rights of the Vaux brothers under Articles XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man; and that execution of the Vaux brothers based upon the criminal proceedings for which they are presently convicted and sentenced would be contrary to Article I of the American Declaration.

1030. On the basis of its recommendations, the IACHR recommended to the State that it:

1. Grant an effective remedy, which includes compensation for the maltreatment inflicted on the Vaux brothers; a re-trial of the charges against the Vaux brothers in accordance with the fair trial protections under the American Declaration, or failing that, an appropriate remission or commutation of sentence.
2. Adopt such legislative or other measures as may be necessary to ensure that criminal defendants are afforded access to evidence under the control of the State that they might reasonably require necessary to challenge the voluntariness of confession evidence.
3. Undertake an investigation to identify the direct perpetrators of the beatings inflicted on Daniel Vaux and Kornel Vaux while in custody to extract confessions and to apply the proper punishment under law;
4. Adopt such legislative or other measures as may be necessary to ensure that any confession of guilt by an accused is valid only if it is given in an environment free from coercion of any kind, in accordance with Article XXV of the American Declaration.

1031. The State sent its last communication on November 8, 2013, indicating that it had no additional information to share with the Commission to complement its earlier submissions dated October 17, 2011 and November 2, 2011.

1032. The petitioner informed on March 24, 2014 that his brothers Daniel and Kornel Vaux had been transferred to Georgetown Prison and that the review of the license of parole was pending for January 2016.

1033. On December 4, 2014, the IACHR requested information on implementation of the recommendations. The petitioners did not provide any information. On February 6, 2015, the State reported on its implementation of the recommendation under point 1. In that regard, it said that following the 2010 reform of the Criminal Law Offenses Act abolishing the death penalty for persons convicted of homicide and introducing rules on life imprisonment with the possibility of parole, on January 28, 2013, the Superior Court commuted the sentence of the brothers Daniel and Kornel Vaux to life imprisonment.

1034. The IACHR takes note of and values the steps taken by the State to comply with the recommendation in point 1. However, it observes that to fulfill that recommendation effective reparation must be provided, including compensation for the maltreatment inflicted on the victims.

1035. On September 8, 2015, the IACHR requested information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

1036. Based on these considerations, the Commission notes that compliance with the aforementioned recommendations is partial. As a result, the Commission shall continue to monitor its compliance.

**Case 11.335, Report No. 78/02, Guy Malary (Haiti)**

1037. In Report No. 78/02 of December 27, 2002, the IACHR concluded that: a) the Haitian State violated the right to life enshrined in Article 4 of the American Convention to the detriment of Mr. Guy Malary; b) the Haitian State violated the right to a fair trial and the right to judicial protection enshrined in Articles 8(1) and 25 of the American Convention to the detriment of the next-of-kin of Mr. Guy Malary; and c) that these violations of human rights involves that the Haitian State breached the general obligation to respect and guarantee rights under Article 1(1) of the above-cited international instrument, to the detriment of Mr. Guy Malary and his next-of-kin.

1038. The IACHR issued the following recommendations to the State:

1. Carry out a full, prompt, impartial, and effective investigation within the Haitian ordinary criminal jurisdiction in order to establish the responsibility of the authors of the violation of the right to life of Mr. Guy Malary and punish all those responsible.
2. Provide full reparation to the next-of-kin of the victim, *inter alia*, the payment of just compensation.
3. Adopt the measures necessary to carry out programs targeting the competent judicial authorities responsible for judicial investigations and auxiliary proceedings, in order for them to conduct criminal proceedings in the accordance with international instruments on human rights.

1039. On November 22, 2010, October 24, 2011, November 19, 2012, October 7, 2013, November 24, 2014 and September 8, 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

1040. The Commission invites the parties to submit additional information on the compliance with the rest of the recommendations. Based on these considerations, the Commission reiterates that compliance with the Commission's recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

**Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)**

1041. In Report No. 49/01 dated April 4, 2001 the Commission concluded that the State was responsible for: a) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with violations of Article 1(1) of the American Convention, by sentencing these victims to a mandatory death penalty; b) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 4(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide these victims with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating the rights of the victims in Case Nos. 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 7(5) and 7(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to promptly bring the victims before a judge following their arrests, and by failing to ensure their recourse without delay to a competent court to determine the lawfulness of their detention; d) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delays in trying the victims; e) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the victims' conditions of detention; f) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton

Daley) under Articles 8(2)(d) and 8(2)(e) in conjunction with violations of Article 1(1) of the Convention, by denying the victims access to legal counsel for prolonged periods following their arrests; and g) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to make legal aid available to these victims to pursue Constitutional Motions.

1042. The IACHR issued the following recommendations to the State:

1. Grant the victims an effective remedy which included commutation of their death sentences and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5 and 8, in particular that no person is sentenced to death pursuant to a mandatory sentencing law.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4.6 of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the victims' rights to humane treatment under Articles 5.1 and 5.2 of the Convention, particularly in relation to their conditions of detention, are given effect in Jamaica.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8.1 of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

1043. In its Annual Report 2006, the IACHR declared compliance with its second recommendation and partial compliance with the first and third.<sup>102</sup>

1044. On December 3, 2014, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure.

1045. On March 4, 2015, the petitioners confirmed that the death penalty sentence of Mr. Leroy Lamey was commuted to life imprisonment by the Governor-General of Jamaica, in accordance with the decision of the Privy Council in *Pratt & Morgan*. According to the provisions of the petitioners, due to changes in its judgment, Mr. Leroy Lamey would be qualified to apply for parole after fulfilling seven years of his sentence. In this sense, considering he has already served about 21 years and 6 months, the petitioners stated that Mr. Lamey could exercise its rights at any stage, and that now are consulting on the current position concerning its possible release.

1046. The State's response was received on April 22, 2015. Concerning the first recommendation, the State indicated that, pursuant to the ruling of the Judicial Committee of the Privy Council in the *Pratt & Morgan* case (1993), it would commute the sentence of all prisoners sentenced to death to life imprisonment. Again, concerning this recommendation, the State considered the IACHR's statement about awarding compensation to the victim both vague and incoherent, explaining that the type of compensation would depend on the reason for awarding it, which the Commission had not established. The State asserted that the IACHR would be basing its opinion on a false premise if it held that compensation to the victim was fitting because the State had failed to provide an effective remedy in death penalty cases; in this regard, the State established that although the laws had been reformed pursuant to the Privy Council's ruling in the *Lambert*

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<sup>102</sup> Annual Report, paragraph 332.

*Watson v R* case (2004), prior to that ruling, imposition of the death penalty in cases like the one in question had been mandatory; therefore, compensation was awarded only to persons sentenced to death subsequent to the aforementioned Privy Council ruling, and that in this case, the compensation had already been awarded, since the death sentence had been commuted. Concerning the second recommendation, the State indicated that it had taken legislative action to guarantee that imposition of the death penalty was not mandatory, and, moreover, had amended the relevant laws. In this regard, it explained that the death penalty is now optional in all cases where it was formally mandatory, and that therefore, the Court now is required to hear the allegations, representations, and evidence of the parties before handing down a sentence. It furthermore indicated that “whenever a sentence of life imprisonment has been imposed, the court has a duty to specify the period of imprisonment that should be served before the offender will be eligible for parole”. Finally, the State noted that pursuant to the jurisprudence of the Judicial Committee of the Privy Council, Jamaica’s Court of Appeals will impose the death penalty only in cases that are more extreme and exceptional than other homicide cases.

1047. Concerning the third recommendation, the State mentioned that pursuant to section 90 of the Constitution of Jamaica, the Governor-General has the power to pardon anyone convicted of any crime, grant an indefinite stay of execution of a sentence or a stay for a specific period of time, or substitute a more lenient sentence. In this same vein, it noted that people have always had the right to appeal a death sentence, which, it pointed out, can be seen in the number of cases brought before the Judicial Committee of the Privy Council, which have resulted in the upholding of the sentence or its substitution with a more appropriate one. Concerning the fourth recommendation, the State mentioned that the prisoners sentenced to death had been returned to the general population in the prisons pursuant to the ruling in the *Lambert Watson* case; it likewise noted that the sentences of the victims in the present case had been commuted to life imprisonment. It therefore stated that Leroy Lamey can apply for parole in 2016; Messrs. Mykoo, Montique, and Daley had already applied for parole, but the applications of Messrs. Mykoo and Montique had been denied, while the decision on Mr. Daley’s application was still pending. In addition, the State asserted that conditions in prisons generally meet the standards of humane treatment and named the authorities that oversee conditions in prisons.

1048. Finally, concerning the fifth recommendation, the State considered that judicial guarantees and the right to judicial protection are duly protected under sections 13 and 16 of the Jamaica Charter of Fundamental Rights and Freedoms and that this protection has been expanded by the jurisprudence of the Judicial Committee of the Privy Council of Jamaica and the Court of Appeals.

1049. On September 29, 2015, the IACHR reiterated its request for information from both parties on compliance with the aforementioned recommendations, under Article 48(1) of its Rules of Procedure. To date, the petitioners have not furnished this information. On November 17, 2015, the State submitted its response, in which it reiterated the information provided in its earlier brief.

1050. The IACHR welcomes the information provided by the State on compliance with the recommendations, especially the gradual review of death sentences, which has led to commutation of the sentence in some cases. The IACHR views these structural changes as a step forward and urges the State to continue working toward full compliance with the recommendations in this case and to provide detailed information that will enable the Commission to review compliance with the recommendations still pending.

1051. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. The IACHR will continue supervising until full compliance is reached.

#### **Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)**

1052. In Report No. 50/01 dated April 4, 2001 the Commission concluded that the State was responsible for failing to respect the physical, mental and moral integrity of Damion Thomas and, in all of the circumstances, subjecting Damion Thomas to cruel or inhuman punishment or treatment, contrary to Articles 5(1) and 5(2) of the Convention, all in conjunction with violations of the State’s obligations under Article 1(1) of the Convention.

1053. The IACHR issued the following recommendations to the State:

1. Grant the victim an effective remedy, which included compensation.
2. Conduct thorough and impartial investigations into the facts of the pertinent incidents denounced by the Petitioners in order to determine and attribute responsibility to those accountable for the violations concerned and undertake appropriate remedial measures.
3. Review its practices and procedures to ensure that officials involved in the incarceration and supervision of persons imprisoned in Jamaica are provided with appropriate training concerning the standards of humane treatment of such persons, including restrictions on the use of force against such persons.
4. Review its practices and procedures to ensure that complaints made by prisoners concerning alleged mistreatment by prison officials and other conditions of their detention are properly investigated and resolved.

1054. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1055. On December 3, 2014 and September 29, 2015, the IACHR requested information from both parties on compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. To date, the petitioners have not furnished that information.

1056. On November 17, 2015, the State reiterated its position concerning the first recommendation: that is, that it considered the proper line of action for obtaining a remedy was for Mr. Thomas to exhaust his internal remedies in the local courts. The State furthermore indicated that it considered the IACHR's reference to compensation both vague and incoherent, since in its view, the Commission had not established the reason for the compensation or defined the principles on which it would be based. Concerning the second recommendation, the State reported that it had conducted exhaustive and impartial inquiries into Mr. Thomas's allegations, making considerable efforts following the communications of the IACHR; however, Mr. Thomas has not provided any information to facilitate the investigation.

1057. Concerning the third recommendation, the State indicated that in Jamaica, training is provided to personnel involved in the incarceration and supervision of prisoners, and there is constant oversight to guarantee that the standards of humane treatment are met. In this regard, it reported that the Inspectorate of the Department of Correctional Services provides sensitivity training for prison personnel that cover the relevant international standards and obligations, as well as Jamaican law concerning the standards of humane treatment and restrictions on the use of force. Concerning the fourth recommendation, it stated that there are different mechanisms for investigating and monitoring reports or complaints by prisoners, indicating that these reports could be made to the Warden of the pertinent prison, who is required to investigate them. It likewise stated that other competent authorities for investigating such reports are the Department of Correctional Services, in some cases the police force; the Inspectorate of the Ministry of National Security, which investigates incidents at correctional centers and can recommend disciplinary action against officers, the Parliamentary Subcommittee, which oversees the prison system and its policies; the Office of the Public Defender, as an independent commission of Parliament, and the Independent Commission of Investigation (INDECOM), which receives reports from anyone about correctional officers.

1058. The IACHR welcomes the information provided by the State on compliance with the recommendations and urges it to continue working toward full compliance with the recommendations in this case and to provide detailed information that will enable the Commission to review compliance with the recommendations still pending.

1059. Therefore, the Commission reiterates that there has been partial compliance with the recommendations. As a result, the Commission shall continue to monitor the items that are pending.

**Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)**

1060. In Report No. 127/01, dated December 3, 2001, the Commission concluded that the State was responsible for: a) violating Mr. Thomas' rights under Articles 4(1), 5(1), 5(2) and 8(1) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Mr. Thomas' rights under Article 4(6) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide Mr. Thomas with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Thomas' rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Mr. Thomas' rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the manner in which the judge instructed the jury during Mr. Thomas' trial.

1061. The IACHR issued the following recommendations to the State:

1. Grant the victim an effective remedy, which included a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which the victim is held comply with the standards of humane treatment mandated by Article 5 of the Convention.

1062. In its Annual Report 2007, the IACHR declared partial compliance with the third recommendation contained in its Report N° 127/01, and full compliance with the second recommendation with the adoption of legislative measures guaranteeing that no person can be sentenced to death under a law in which that sentence is mandatory.<sup>103</sup>

1063. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1064. On December 3, 2014, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners reported in December 9, 2014 that after attempting to visit Mr. Thomas at the prison, they were informed that he had been released on parole; they were confirming that information with the Commissioner of Corrections. The State, in turn, submitted its response on April 22, 2015. In its brief, it stated its reservations about the first recommendation, noting that the guarantees established in Article 8 of the Convention are recognized in Section 16 of the Charter of Fundamental Rights and Freedoms of the

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<sup>103</sup> Annual Report 2007, para. 511.

Constitution of Jamaica. It also reiterated that it considers that Mr. Thomas had been legally convicted, and under the laws of the State of Jamaica, had the right to appeal his conviction to the Court of Appeals and subsequently request permission to file an appeal before the Judicial Committee of the Privy Council. In this regard, it mentioned that since the separation of powers is a basic constitutional principle, the Executive branch cannot interfere in the judicial branch's exercise of its powers.

1065. The State noted that in the present case, the Court of Appeals had found that the instructions given to the jury had been fair and clear; and that pursuant to Section 91 of the Constitution, the Privy Council of Jamaica, in turn, had declared that the decision of the Court of Appeals had been satisfactory. The State added that Mr. Thomas had requested special authorization to appeal to the Judicial Committee of the Privy Council, but that the request had been denied. It therefore concluded that, given the current status of the case, a new trial is not possible; it indicated, though, that as of 2014, Mr. Thomas had been eligible to apply for parole; he had therefore submitted an application and was awaiting the decision of the relevant Board.

1066. Concerning the second recommendation, the State indicated that it had taken legislative action to guarantee that imposition of the death penalty was not mandatory; it had also amended the pertinent laws. It therefore explained that the death penalty is now optional in all cases in which it had formerly been mandatory; thus, the Court is now required to hear the allegations, representations, and evidence of the parties before handing down a sentence. It likewise indicated that in cases in which the death penalty has been imposed, the court must specify the number of years that the prisoner must serve before he can apply for parole. Finally, the State explained that pursuant to the jurisprudence of the Judicial Committee of the Privy Council, the Court of Appeals of Jamaica will only impose the death penalty in cases in which the facts are more extreme and exceptional vis-a-vis other homicide cases.

1067. Concerning the third recommendation, the State mentioned that pursuant to Section 90 of the Constitution of Jamaica, the Governor-General has the power to pardon anyone convicted of any crime, grant an indefinite stay of execution of a sentence or a stay for a specific period or substitute a more lenient sentence. In this same vein, it stated that people have always had the right to appeal a death sentence, which, it noted, can be seen in the number of cases brought before the Judicial Committee of the Privy Council, which have resulted in the upholding of the sentence or its substitution with a more appropriate one. Concerning the fourth recommendation, the State reiterated that, pursuant to the ruling in the *Pratt & Morgan* case, the sentences of all people condemned to death whose sentences had not been executed within five years had automatically been commuted to life imprisonment, adding, moreover, that the prisoners had been transferred to the general prison population. It also noted that the conditions of detention complied with the standards of humane treatment and in this regard, the Inspectorate of the Department of Correctional Services constantly monitors compliance with these standards and issues recommendations for systematic improvements. It likewise stated the Government's intention to build new prisons and begin a reclassification process to alleviate overcrowding in maximum security facilities, and it pointed out the review of the parole application process, which had resulted in a substantial increase in the number of paroles granted in the past three years.

1068. On September 29, 2015, the IACHR reiterated its request to both parties for information on compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. On October 1, 2015, the petitioners reported that Mr. Thomas's application for parole had been received by the Board on November 28, 2014 and that they were awaiting the decision of the authorities.

1069. On November 17, 2015, the State reiterated the information provided in the previous communication on the state of compliance with the recommendations. In this regard, it provided new information only in regard to the first and fourth recommendations. Concerning the first recommendation, the State indicated that the competent authority had granted Mr. Thomas a parole; the State likewise considered the IACHR's reference to awarding compensation to the victim both vague and incoherent, noting that the type of compensation would depend on the reason for awarding it, which the Commission had not established. Concerning the fourth recommendation, the State reported the Government's intention to build new prisons and begin a reclassification process to alleviate overcrowding in maximum security facilities, and

it pointed out its review of the parole application process, which had resulted in a substantial increase in the number of paroles granted in the past three years.

1070. The IACHR welcomes the information provided by the State on compliance with the recommendation, especially the gradual review of death sentences, which has led to commutation of the sentence in several cases. The IACHR views these structural changes as a step forward and urges the State to continue working toward full compliance with the recommendations in this case and to provide detailed information that will enable the Commission to review compliance with the recommendations still pending, especially in regard to the effective granting of parole to Mr. Thomas.

1071. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

#### **Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)**

1072. In Report No. 58/02 dated October 21, 2002, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Article 4(6) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide him with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Aitken of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

1073. The IACHR issued the following recommendations to the State:

1. Grant Mr. Aitken an effective remedy, which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Aitken is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

1074. In its Annual Report 2006, the IACHR declared compliance with the second recommendation and partial compliance with the first and third recommendation.<sup>104</sup>

<sup>104</sup> Annual Report 2006, para. 348.



1075. On December 3, 2014, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On March 4, 2015, the petitioners reiterated the information submitted in their note of January 7, 2009 and reported that the Governor-General of Jamaica had commuted Mr. Aitken's death sentence to life imprisonment, pursuant to the ruling of the Privy Council in the *Pratt & Morgan* case. In this regard, they added that due to the modification of his sentence Mr. Aitken would be eligible for parole after serving seven years of his sentence. Therefore, since he had now served more than 17 years, the petitioners asserted that Mr. Aitken could exercise his rights at any stage, and that at that time was making inquiries about the current position regarding his potential parole.

1076. The State, in turn, submitted information on April 28, 2015. Concerning the first recommendation, the State noted in its communication that, pursuant to the ruling of the Judicial Committee of the Privy Council in the *Pratt & Morgan* case (1993), in cases in which the time between a death sentence and the execution of that sentence had been more than five years, the execution was considered inhumane and degrading punishment. Furthermore, concerning this recommendation, the State considered the IACHR's mention of compensation for the victim both vague and incoherent, noting that the type of compensation would depend on the reason for awarding it, which the Commission had not established. The State asserted that the IACHR would be basing its opinion on a false premise if it held that compensation to the victim was fitting because the State had failed to provide an effective remedy in death penalty cases; in this respect, the State established that while the laws had been reformed pursuant to the Privy Council's ruling in the *Lambert Watson v R* case (2004), prior to that ruling, imposition of the death penalty in cases like this one had been mandatory. Therefore, compensation was awarded only to people sentenced to death subsequent to the aforementioned ruling of the Privy Council, and that in this case, the State considered compensation to have already been awarded since the sentence had been commuted.

1077. Concerning the second recommendation, the State reported that legislative action had been taken to guarantee that imposition of the death penalty was not mandatory, and that the pertinent legislation had been amended. It therefore stated that the death penalty was now optional in all cases in which imposition of that penalty had been mandatory; therefore, the Court is now required to hear the allegations, representations, and evidence of the parties before handing down a sentence. It furthermore stated that in cases in which the death penalty had been imposed, the court must specify how many years the prisoner must serve before he is eligible to apply for parole. Finally, the State reported that pursuant to the jurisprudence of the Judicial Committee of the Privy Council, the Court of Appeals of Jamaica will impose the death penalty only in cases in which the facts are more extreme and exceptional than in other homicide cases. Concerning the third recommendation, the State mentioned that pursuant to Section 90 of the Constitution of Jamaica, the Governor-General has the power to pardon anyone convicted of any crime, grant an indefinite stay of execution of a sentence or a stay for a specific period or substitute a more lenient sentence. In this same vein, it stated that people have always had the right to appeal a death sentence, which, it noted, can be seen in the number of cases brought before the Judicial Committee of the Privy Council, which have resulted in the upholding of the sentence or its substitution with a more appropriate one.

1078. Concerning the fourth recommendation, the State mentioned that people with death sentences had been transferred to the general prison population as a result of the ruling in the *Lambert Watson* case; it furthermore indicated that the Governor-General had commuted Mr. Aitken's sentence to life imprisonment pursuant to the ruling of the Judicial Committee of the Privy Council in the *Pratt & Morgan* case; in this regard, it added that Mr. Aitken had been released on May 16, 2014. Concerning this recommendation, the State affirms that conditions of detention generally comply with the standards of humane treatment and also named the authorities that oversee conditions in prisons.

1079. Finally, concerning the fifth recommendation, the State considered that judicial guarantees and the right to judicial protection are duly protected under Sections 13 and 16 of the Charter of Fundamental Rights and Freedoms of Jamaica and have been expanded by the jurisprudence of the Judicial Committee of the Privy Council of Jamaica and Court of Appeals.

1080. On September 29, 2015, the IACHR again requested information from both parties on compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. To date the petitioners have not furnished new information. On October 29, 2015, the State reiterated the information submitted in its previous communication regarding the status of compliance with the recommendations. In this regard, the State reported new information only with respect to the fourth recommendation, indicating that the Department of Correctional Services is constantly making repairs and performing maintenance on prison installations, as well as the Government's intention to build new prisons and begin a reclassification process to alleviate overcrowding in maximum security facilities. It also noted the review of the parole application process, which has resulted in a substantial increase in the number of paroles granted in the past three years.

1081. The IACHR observes and welcomes the information provided by the State, especially in relation to the fourth recommendation, in which it was informed that Mr. Denton Aitken had been released in May 2014. However, given the contradictions with the information submitted by the petitioners in March 2015, according to which they are considering submitting of a new petition for the victim's release, the IACHR considers pertinent to account with more precise information from both parties to confirm the compliance with that recommendation and therefore urges the parties to provide the pertinent information on progress toward compliance with the recommendations, in particular with regards to the conditional liberty of the victim of this case.

1082. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

#### **Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)**

1083. In Report No. 76/02 dated December 27, 2003, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his treatment and conditions in detention; c) violating Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

1084. The IACHR issued the following recommendations to the State:

1. Grant Mr. Sewell an effective remedy which includes commutation of sentence in relation to the mandatory death sentence imposed upon Mr. Sewell, and compensation in respect of the remaining violations of Mr. Sewell's rights under the American Convention as concluded above.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Sewell is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to

recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

1085. In its Annual Report 2007, the IACHR declared full compliance with the second recommendation and partial compliance with the first. Recommendation.<sup>105</sup>

1086. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1087. On December 3, 2014, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On March 4, 2015, the petitioners confirmed that in July, the Governor-General of Jamaica had commuted David Sewell's death sentence to life imprisonment, pursuant to the decision of the Privy Council in the *Pratt & Morgan* case. Therefore, they added, Mr. Sewell would be eligible to apply for parole after serving seven years of his sentence. In this regard, the petitioners stated that since Mr. Sewell had already served approximately 17 years of his sentence, he could exercise his right at any stage. They furthermore indicated that after submitting information in 2009, a report had been published under the title "*Prison Conditions in Jamaica: A Report based on James Robottom's Visit in August 2009*," which evaluated the conditions of detention of prisoners serving lengthy sentences or condemned to death and concluded that the conditions of detention in Jamaica violate the norms and standards of humane treatment. In this regard, the petitioners alleged that prison conditions have not improved and that the content of the Report was still valid.

1088. On September 29, 2015, the IACHR again requested information from both parties on compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. To date, the petitioners have not submitted any information. Concerning the first recommendation, on October 29, 2015, the State reported that, pursuant to the ruling of the Judicial Committee of the Privy Council in the *Pratt & Morgan* case (1993), any case in which the time between imposition of the death penalty and its execution is more than five years, its execution is considered inhumane and degrading treatment, and thus, commutation of the sentence is inherent for everyone sentenced to death. Likewise concerning this recommendation, the State considered the IACHR's reference to awarding compensation to the victim both vague and incoherent, noting that the type of compensation would depend on reason for awarding it, which the Commission had not established. The State asserted that the IACHR would be basing its opinion on a false premise if it held that compensation to the victim was fitting because the State had failed to provide an effective remedy in death penalty cases. In this regard, the State established that although the laws had been reformed pursuant to the Privy Council's ruling in the *Lambert Watson v R* case (2004), prior to that ruling, imposition of the death penalty in cases like this one had been mandatory. Therefore, compensation was awarded only to persons sentenced to death after the Privy Council's ruling, and in this case, the State considered that compensation had been awarded with the commutation of the sentence.

1089. Concerning the second recommendation, the State reported that it had taken legislative action to guarantee that imposition of the death penalty was not mandatory. It also recounted the pertinent legislation. It therefore explained that the death penalty is now optional in all cases in which it was formerly mandatory; therefore, the Court is required to hear the allegations, representations, and evidence of the parties before handing down a sentence. It also indicated that in cases in which the death penalty has been imposed, the court must specify how many years a prisoner must serve before becoming eligible to apply for parole. Finally, the State noted that pursuant to the jurisprudence of the Judicial Committee of the Privy Council, the Court of Appeals of Jamaica will impose the death penalty only in cases in which the facts are more extreme and exceptional than in other homicide cases. Concerning the third recommendation, the State indicated that Governor-General had commuted Mr. Sewell's sentence to life imprisonment pursuant to the ruling of the Judicial Committee of the Privy Council in the *Pratt & Morgan* case. In this regard, it added that

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<sup>105</sup> Annual Report, paragraph 528.

Mr. Sewell had been released on December 12, 2013. Regarding this recommendation, the State reported that conditions of detention generally comply with the standards of humane treatment and also named the authorities that oversee conditions in prisons.

1090. Concerning the fourth recommendation, the State considers that judicial guarantees and the right to judicial protection are duly protected under Sections 13 and 16 of the Charter of Fundamental Rights and Freedoms of Jamaica and have been expanded by the jurisprudence of the Judicial Committee of the Privy Council of Jamaica and the Court of Appeals.

1091. The IACHR observes and welcomes the information furnished by the State, especially in regard to the third recommendation; given that Mr. Sewell was released in December 2013, the Commission considers this recommendation to have been complied with.

1092. Concerning the pending recommendations, the IACHR considers that it lacks sufficient elements to evaluate compliance therewith. Therefore, the Commission reiterates that the State complied partially with recommendations 2 and 3. As a result, the Commission shall continue to monitor the items that are pending.

#### **Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)**

1093. In Report No. 41/04 of October 12, 2004, the IACHR concluded the State was responsible for: a) violating Mr. Myrie's rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his conditions of detention; b) violating Mr. Myrie's rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, due to the trial judge's failure to ensure that the jury was not present during the voir dire on Mr. Myrie's statement, and the trial judge's failure to postpone the trial when Mr. Myrie's counsel was not present and thereby denying Mr. Myrie full due process during his trial; c) violating Mr. Myrie's rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide him with the assistance of competent and effective counsel during his trial; and d) violating Mr. Myrie's rights under Articles 25 and 8 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide Mr. Myrie with effective access to a Constitutional Motion for the protection of his fundamental rights.

1094. The IACHR issued the following recommendations to the State:

1. Grant Mr. Myrie an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Myrie's conditions of detention comply with international standards of humane treatment under Article 5 of the American Convention and other pertinent instruments, as articulated in the present report.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Article 25 of the Convention and the right to a fair hearing under Article 8(1) of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

1095. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1096. On December 3, 2014 and on September 29, 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On October 29, 2015, the State furnished information, expressing its reservations about the first recommendation. In this regard, the State reported that the guarantees established in Article 8 of the Convention are recognized in Section 16 of the Charter of Fundamental Rights and Freedoms of the Constitution of Jamaica. It furthermore reiterated that it considers that Mr. Myrie had been legally convicted and that under the laws of the State of Jamaica, he had the right to appeal his conviction to the Court of Appeals and subsequently request permission to appeal to the Judicial Committee of the Privy Council. In this regard, it mentioned that due to the separation of powers, it is a basic constitutional principle that the Executive branch cannot interfere in the Judicial branch's exercise of its powers.

1097. The State mentioned that in this case, Mr. Myrie had appealed and, as a result, his sentence had been commuted to life imprisonment; thus, given the status of this case, a new trial was not possible. However, it mentioned that the Department of Correctional Services had advised granting parole to Mr. Myrie on March 19, 2010, without clarifying what the legal effect of that action would be. The State likewise indicated that it considered the IACHR's reference to awarding compensation to the victim to be vague and incoherent, since the type of compensation would depend on the reason for awarding it, which the Commission had not established.

1098. Concerning the second recommendation, the State mentioned that as a result of the commutation of Mr. Myrie's sentence, he had been transferred to the prison's general population; it also affirmed that the conditions of detention comply with the standards of humane treatment and in this regard, the Inspectorate of the Department of Correctional Services constantly monitors compliance with these standards and issues recommendations for systematic improvements. It also reported the Government's intention to build new prisons and begin a reclassification process to alleviate overcrowding in maximum security facilities, and it noted the review of the parole application process, which had resulted in a substantial increase in the number of paroles granted in the past three years. Finally, concerning the third recommendation, the State asserted that judicial guarantees and the right to judicial protection are duly protected under Sections 13 and 16 of the Charter of Fundamental Rights and Freedoms of Jamaica and have been expanded by the jurisprudence of the Judicial Committee of the Privy Council of Jamaica and the Court of Appeals. In addition, it indicated that the State does not oppose considering the provision of legal assistance to persons wishing to file constitutional challenges but maintains that it is not its obligation to provide it under Article 8 of the Convention.

1099. The IACHR observes the information furnished by the State. In this regard, it considers that it lacks sufficient elements to evaluate compliance with the recommendations of Report 41/04 and therefore urges the State to provide detailed up-to-date information on progress toward compliance with the recommendations, especially the one on the effective granting of parole to the victim in this case.

1100. Therefore, the Commission reiterates that compliance with the recommendations of Report 41/04 remains pending. As a result, the Commission shall continue to monitor its compliance.

#### **Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)**

1101. In Report No. 92/05, issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violating Mr. Gayle's right to life under Article 4 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful killing at the hands of members of the Jamaican security forces; b) violating Mr. Gayle's right not to be subjected to torture and other inhumane treatment under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of the assault perpetrated upon him by State agents and its effects, which led to his death; c) violating Mr. Gayle's right to personal liberty under Article 7 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful detention and arrest on false charges; and d) violating Mr. Gayle's rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to undertake a prompt,

effective, impartial and independent investigation into human rights violations committed against Mr. Gayle and to prosecute and punish those responsible.

1102. The IACHR issued the following recommendations to the State:

1. Grant an effective remedy, which includes the payment of compensation for moral damages suffered by Michael Gayle's mother and next-of-kin, Jenny Cameron, and a public apology by the State to the family of Michael Gayle.
2. Adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations.
3. Adopt such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, including training for members of Jamaican security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, summary executions and arbitrary detention, and undertaking appropriate reforms to the procedures for investigating and prosecuting deprivations of life committed by members of Jamaica's security forces to ensure that they are thorough, prompt and impartial, in accordance with the findings in the present report. In this respect, the Commission specifically recommends that the State review and strengthen the Public Police Complaints Authority in order to ensure that it is capable of effectively and independently investigating human rights abuses committed by members of the Jamaican security forces.

1103. The State presented information relevant to compliance of the recommendations contained in the Merits Report in this case on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier communications regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1104. On December 3, 2014 and on September 29, 2015, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. On October 29, 2015, the State reiterated the information it had provided in previous years on the payment of compensation to the mother of Michael Gayle and in this regard, mentioned that the amount of the compensation had been accepted voluntarily and formalized by the ruling of November 2, 2004. It furthermore noted that an independent suit for moral damages had not been filed, and that when the matter was before the court, Mrs. Cameron, represented by an attorney, had at no time brought evidence to the attention of the Government that would have justified any additional claim for damages. Concerning this recommendation, the State also recalled that it had issued an apology through the Attorney General and the Ministry of Justice, the text of which had been published in its entirety in the March 14-20 issue of the Sunday Herald, under the heading "The Michael Gayle Case;" this was cited extensively in a March 11, 2004 story in the Daily Gleaner entitled "Gov't 'regrets' Michael Gayle's death." Concerning the second recommendation, the State noted that the laws of Jamaica provide adequate protection against human rights violations and facilitate a proper investigation, adding that although investigations were conducted in this case, the Director of the Public Ministry concluded that there was insufficient evidence to file criminal charges. In this regard, the State explained that the decision to proceed with criminal charges rests solely with the Director of Public Ministry, pursuant to Section 94 of the Constitution of Jamaica, and that discretion regarding these decisions is not subject to the control of any individual or authority.

1105. Concerning the third recommendation, the State repeated the information furnished in earlier communications indicating that its security forces receive extensive training on international standards governing the use of force, the prohibition of torture and inhumane, cruel, and degrading treatment, extrajudicial executions, and arbitrary detention. The State explained that as a matter of policy, the Jamaican police force receives training on the fundamental rights and freedoms established in the

Constitution, adding that this training is designed to ensure that police officers are exposed to current legislation. It pointed out that measures implemented by the State to ensure the protection of human rights included the creation of the Independent Commission of Investigations, whose mandate includes investigating reports of abuse committed by the security forces in violation of human rights. Finally, the State noted that it is working to establish a National Human Rights Institution consistent with the Paris Principles for the Promotion and Protection of Human Rights.

1106. The IACHR observes and sincerely welcomes the progress made by the State, especially with the third recommendation.

1107. Therefore, the Commission reiterates that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

#### **Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)**

1108. In Report No. 61/06, adopted on July 20, 2006, the Commission concluded that the State was responsible for: a) violations of Mr. Tracey's right to counsel and his right to obtain the appearance of persons who may throw light on the facts contrary to Article 8(2)(d), (e) and (f) of the Convention, in conjunction with Articles 1(1) and 2 of the Convention, in connection with the use of his statement against him at trial; b) violating Mr. Tracey's right to a fair trial under Article 8(2)(c) of the Convention, in conjunction with a violation of Article 1(1) of the Convention, due to the inadequate time and means provide to Mr. Tracey and his attorney to prepare his defense; and c) violations of Mr. Tracey's right to a fair trial and his right to judicial protection under Article 8(2)(e) and (h) and 25 of the Convention, in conjunction with a violation of Articles 1(1) and 2 of the Convention, due to the State's failure to provide Mr. Tracey with legal counsel to appeal his judgment to a higher court.

1109. The IACHR issued the following recommendations to the State of Jamaica:

1. Grant an effective remedy, which includes a re-trial of the charges against Mr. Tracey in accordance with the fair trial protections under the American Convention.
2. Adopt such legislative or other measures as may be necessary to ensure that indigent criminal defendants are afforded their right to legal counsel in accordance with Article 8.2.e of the American Convention, in circumstances in which legal representation is necessary to ensure the right to a fair trial and the right to appeal a judgment to a higher court.
3. Adopt such legislative or other measures as may be necessary to ensure that any confession of guilt by an accused is valid only if it is given in an environment free from coercion of any kind, in accordance with Article 8.3 of the Convention.

1110. The IACHR had earlier declared compliance with recommendations 2 and 3.<sup>106</sup> On December 3, 2014, the IACHR requested from both parties information on compliance with the above-mentioned recommendation, pursuant to Article 48.1 of its Rules of Procedure. On April 22, 2015, the State expressed its reservations about the first recommendation, considering that Mr. Tracey had been legally convicted. The State indicated that it considers the guarantees established in Article 8 of the Convention are recognized in Section 16 of the Charter of Fundamental Rights and Freedoms of the Constitution of Jamaica and that under the laws of the State of Jamaica, he had the right to appeal his conviction to the Court of Appeals and subsequently request permission to appeal to the Judicial Committee of the Privy Council. In this regard, it mentioned that due to the separation of powers, it is a constitutional principle that the Executive branch cannot interfere in the judicial branch's exercise of its powers. It clarified that since the Court of Appeals had

<sup>106</sup> See IACHR, Annual Report 2014, Chapter II D, Status of Compliance with the Recommendations, para. 1000.

denied Mr. Tracey's appeal and he had not taken the case to the Judicial Committee of the Privy Council, the current laws did not permit a new trial in this case.

1111. On September 29, 2014, the IACHR again requested information from both parties on compliance with the aforementioned recommendation, pursuant to Article 48(1) of its Rules of Procedure. On November 17, 2015, the State reiterated the information furnished in regard to the first recommendation and reported that Mr. Tracy had been released on October 1, 2011, having served out his sentence.

1112. The petitioners have not furnished information on follow-up in the nine years since Merits Report No. 61/06 was issued.

1113. The IACHR takes note that Mr. Tracy was released on 2011, because he served his punishment. Therefore, to the effect of compliance of recommendation No. 1 related to an effective reparation that included a new trial of the charges imputed to Mr. Tracy, the Commission considers that in case that the victims so desires it, the State should revise the punishment so that it is adjuste to the standards on an impartial trial, in the terms of Report No. 61/06.

1114. Therefore, the Commission considers that the State partially complied with the recommendations aforementioned and will continue to monitor the pending item.

#### **Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)**

1115. In Report No. 53/01, of April 4, 2001, the Commission concluded that the Mexican State had violated, to the detriment of Ms. Delia Pérez de González and her daughters Ana, Beatriz, and Celia González Pérez, the following rights enshrined in the American Convention: the right to personal liberty (Article 7); the right to humane treatment and protection of honor and dignity (Articles 5 and 11); judicial guarantees and judicial protection (Articles 8 and 25); with respect to Celia González Pérez, the rights of the child (Article 19); all those in conjunction with the general obligation to respect and ensure the rights, provided for in Article 1(1) of the Convention. In addition, it concluded that the State was responsible for violating Article 8 of the Inter-American Convention to Prevent and Punish Torture.

1116. According to the established by the Commission, on June 4, 1994, a group of soldiers detained the González Pérez sisters and their mother Delia Pérez de González, in the state of Chiapas, to question them, and deprived them of their liberty for two hours. During that time the three sisters were separated from their mother, beaten, and raped repeatedly by the soldiers; on June 30, 1994, the complaint was filed with the Federal Public Ministry (Office of the Attorney General, or "PGR" - Procuraduría General de la República) based on a gynecological medical exam, which was corroborated before that institution by the statements by Ana and Beatriz, the two older sisters; the case was removed to the Office of the Attorney General for Military Justice ("PGJM": Procuraduría General de Justicia Militar) in September 1994; it finally decided to archive the case given their failure to come forward to make statements once again and to undergo expert gynecological exams. It was established that the State breached its obligation to investigate the facts alleged, punish the persons responsible, and make reparation for the violations.

1117. The Commission made the following recommendations to the State:

1. Conduct a full, impartial and effective investigation in the ordinary criminal jurisdiction of Mexico to determine the responsibility of all those involved in violating the human rights of Ana, Beatriz and Celia González Pérez and Delia Pérez de González.
2. Provide adequate compensation to Ana, Beatriz and Celia González Pérez and to Delia Pérez de González for the human rights violations established herein.

1118. On October 9, 2013, the Commission requested the parties to provide updated information on the status of compliance with the recommendations.



1119. As for the recommendation to investigate, prosecute and punish in the ordinary criminal jurisdiction those responsible for the crimes charged in the petition, the State noted that is working to see that the investigations that resulted from the recommendations published by the IACHR in its Report 53/01 are carried out, implemented, and conducted efficiently. It also said that subsequently it will send more information on progress in the respective investigations. For their part, the petitioners indicated that even though the transfer of this case to the civil jurisdiction is an essential condition for adequate implementation of the recommendations, the state delegation in Chiapas of the federal Office of the Attorney General (PGR) (which should be in charge of the investigation) has no record of having received a preliminary inquiry referred to it due to the lack of jurisdiction of the Office of the Attorney General for Military Justice (PGJM) over the matter.

1120. Regarding the recommendation to provide adequate reparation to the victims of Case 11.565, it can be established as fact that in 2011 the State reported that, through the Government of Chiapas, on April 4, 2011, it awarded the victims and their mother, in a private ceremony, the sum of \$2,000,000 Mexican pesos (two million pesos), or the equivalent thereof of US\$172,000, as humanitarian support. It clarified that the support granted to the victims did not constitute recognition of responsibility for the incidents that prompted the recommendations of the IACHR and it could not be viewed as reparation for damages. In 2012, the State reiterated that the government of the State of Chiapas had awarded a sum of money to the victims as humanitarian aid.

1121. In response, the petitioners indicated that the recommendation was not implemented since even though the State affirms that this economic assistance was in relation to what is indicated in Report 53/01, the agreement signed indicated that the delivery of that sum was in the way of humanitarian assistance, without it representing implementation of the recommendations made by the IACHR.

1122. On December 5, 2014, the IACHR requested updated information on compliance from both parties. On January 5, 2015, the petitioners submitted the said information, while the State did so on January 14, 2015.

1123. In their submission, the petitioners reiterated that the investigation had not moved forward, because the PGR has insisted on following the Istanbul Protocol. The petitioners and the victims object to the conducting of such an examination more than twenty years after the events took place, and have requested that the physician's certificate, which was issued in a timely fashion, be admitted as irrefutable proof of sexual violence. The petitioners further argue that insisting on following the aforementioned protocol would have an effect of profound re-victimization. Lastly, they assert that the State has still not prosecuted those responsible for the human rights violations endured by the González Pérez sisters.

1124. With regard to the obligation to provide adequate compensation to the victims, the petitioners stressed that, as of the present date, the Mexican State has not implemented any measures of reparation to fully satisfy the duty to redress the González Pérez sisters, in view of the fact that, as noted above, the humanitarian relief provided by the government does not constitute in and of itself satisfaction of the measure of reparation ordered by the Commission. Lastly, they asserted that they would be willing to enter into an agreement on compliance with the recommendations of the merits report with the Mexican State and that they were engaged in examining a counterproposal that was presented to them.

1125. In response, regarding the first recommendation, the State claimed that it was conducting appropriate investigations in the criminal jurisdiction and that it is committed to continue to do so in keeping "with the highest standards on torture and discrimination against women."

1126. As to the second recommendation, the State claimed to have received on October 29, 2014, a proposal for reparation from the petitioners, to which the State responded with a counterproposal on December 5, 2014, containing the following section titles: duty to investigate and punish, access to the investigation and participation of the victims, that the IACHR's merits report assertions should be taken into consideration in the domestic criminal investigation, Public Ceremony of Recognition of Responsibility,

measures of rehabilitation (medical and psychological treatment) and appropriate monetary compensation, in addition to other proposals put forward by the State, which are under review by the petitioners.

1127. The parties held a working meeting on March 21, 2015, under the auspices of the IACHR at its 154th regular session. At that meeting the petitioners presented their observations on the State's proposal for implementing the recommendations. The parties also discussed the various elements that the agreement would cover and that would constitute comprehensive reparation. On April 21, 2015, the petitioners also presented their observations in writing and they were duly relayed to the State for its information.

1128. With respect to the proposed agreement on compliance, the parties said at the working meeting that they would move forward with the preparation of a more detailed clause with respect to health care and the act of acknowledgment of responsibility. The State indicated that it would recalculate the amounts of financial compensation and reformulate the amounts in consequential damages as nonpecuniary damages. On the subject of investigation, the State agreed to examine alternative mechanisms to those envisaged in the Istanbul Protocol with regard to the victims, including the possibility of an analysis by an independent psychological expert. However, neither of the parties sent information regarding the conclusions of the working meeting over the remainder of the period covered by this report.

1129. On September 30, 2015, the IACHR requested both parties for updated information on implementation of the items pending. As at the date of this report, the State has not presented the information requested.

1130. The petitioners indicated on November 9, 2015 that the criminal investigation has been in the ordinary jurisdiction since 2011, however, it has not been reactivated, despite the fact that the Attorney General's Office accepted the renounce of competence by the military jurisdiction, to continue the investigation in the in the ordinary stage. The petitioners indicated that it was possible to overcome the obstacles in the practice of certain activities to collect evidence, like the Protocol of Istanbul, and instead, there were some evaluations that were presented before the local offices of San Cristobal, Chiapas. However, they mentioned that after the work meeting held at the headquarters of the Commission in the framework of the 154th Session, there has been no approach by the PGR and have not been substantial progress in the investigation. In this regard, the petitioners requested that the central authority present his case hypothesis as soon as possible, establish a detailed road map on the concrete actions that will be taken to combat impunity in this case, which include lines of inquiry, schedule of activities, the team that would intervene and their specialization, and the means employed to investigate effectively and timelines for each of the actions, ensuring the non re-victimization of the Sisters Gonzalez and their mother. On the issue of economic reparations, the petitioners indicated that the State has not yet complied with this recommendation.

1131. In general, regarding the negotiation of a possible friendly settlement agreement, the petitioners reinstated that the points of greatest interest to a negotiation would be the elements of the criminal investigation, the SEDENA participation in the act of acknowledgment of responsibility, and the no registration of the victims in programs such as the Executive Committee for Victims or similar nature. The Commission takes note of the observations of the requesting party.

1132. Based on the foregoing, the IACHR commends the parties for their willingness to reach a compliance agreement spelling out each other's duties and responsibilities. In the meantime, and until further notice is received regarding progress in the negotiations, the IACHR notes that the recommendation issued in the merits report of 2001 pertaining to the investigation, prosecution and punishment of those responsible for the crimes charged in the petition has not been fulfilled. The IACHR, however, does appreciate the humanitarian relief granted by the government of Chiapas. Notwithstanding, reiterates that the said relief does not constitute recognition of responsibility for the incidents nor reparation for damages, as the State itself has asserted.

1133. As a result, the recommendations issued in this case by the Commission are pending compliance and the Commission will thus continue to monitor compliance therewith.

**Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico)**

1134. In Report No. 2/06 dated February 28, 2006, the Commission concluded that the Mexican State was responsible for breaching the right to a fair trial and judicial protection as provided for in Articles 8 and 25 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Miguel Orlando Muñoz Guzman. It also determined that the case file did not contain any evidence that would make it possible to attribute international responsibility to the State for the alleged forced disappearance of Miguel Orlando Guzman. Consequently, it did not find the State responsible for the alleged violation of the rights to life, humane treatment and personal liberty; nor of the right to humane treatment of his next-of-kin. However, it recommended that the State investigate under the ordinary court jurisdiction the whereabouts of Miguel Orlando Muñoz Guzman and, should it be established that there was forced disappearance, punish those responsible.

1135. According to the complaint, Mr. Miguel Orlando Muñoz Guzmán, a lieutenant in the Mexican Army, disappeared on May 8, 1993, at the age of 25 years. He was last seen on that date by his comrades of the 26th Battalion of Ciudad Juárez, state of Chihuahua, Mexico, when he was preparing to go on leave. Lt. Muñoz Guzmán's family indicates that he was an officer devoted to his career, and therefore they call into question the credibility of the Army's official version, according to which he deserted and then traveled to the United States. They explain that to date no serious investigation has been carried out in Mexico to determine his whereabouts or to punish the persons responsible for his forced disappearance. They argue that the irregularities that have surrounded this case have been deliberate, with the intent of covering up the persons responsible. They also mention the fact that the family began to receive anonymous threats, which they attribute to members of the military, from the moment they went to report the facts to the authorities.

1136. The IACHR made the following recommendations to the State:

1. Conduct a complete, impartial, and effective investigation in the Mexican general jurisdiction to determine the whereabouts of Miguel Orlando Muñoz Guzmán; and, if it were determined that he was a victim of forced disappearance, to sanction all those responsible for such crime.
2. Provide adequate compensation to the relatives of the family of Miguel Orlando Muñoz Guzmán for the human rights violations established herein.

1137. By means of a communication dated November 7, 2013, the IACHR requested both parties to report on the measures taken to comply with these recommendations.

1138. The State indicated that in October 2013 a meeting was held between the Office of the Attorney General of the State of Chihuahua and the petitioners in which the actions necessary to carry out the recommendations were defined, and seven agreements were reached regarding the joint review of the design of the investigation. In addition, the State reported that it requested Mr. Miguel Orlando Muñoz Guzmán's genetic profile from his family members in order to strengthen the current lines of the investigation. The petitioners stated that they value the aforementioned agreements, and that they expect them to be fully complied with. However, they reiterated that while this happens, the Mexican State has not complied with the recommendation to investigate, prosecute, and punish. On the other hand, the petitioners reported that since the Merits Report No. 2/06 was issued, the State has not addressed the recommendation related to the reparations for Mr. Muñoz Guzman's relatives.

1139. The State presented information on the implementation of the recommendations on February 2, 2015. With regard to recommendation 1, the State informed the Commission about a number of meetings held in the country with the petitioners at which the State agreed to ensure access for the victims and their representatives to the investigation file and to send a general report to them every two months. In that connection, the State indicated that it had furnished the victims' representatives with a copy of preliminary inquiry 002/20001 (Sic). The State also listed various steps taken in the context of that investigation between March and December 2014. The IACHR notes with regard to the list of investigative

measures that most of them relate to official administrative correspondence between agencies and database searches by those same agencies.

1140. On March 21, 2015, the parties held a working meeting under the auspices of the IACHR in the context of its 154th regular session, at which the parties discussed the matter of the criminal investigation. The State provided the petitioners with a digital copy of the record of the investigation.

1141. On September 30, 2015, the petitioners advised the IACHR that, in spite of the commitment of the State to provide the victims' representatives with a report on the investigation every two months, the representatives had only received a report on March 20, 2014. According to the petitioners, the information provided by the State clearly shows that the steps taken have been inadequate, repetitive, vague and uncoordinated.

1142. On October 21, 2015, the parties held a working meeting under the auspices of the IACHR at its 156th regular session. At that meeting the petitioners again expressed their dissatisfaction with the way in which the criminal investigation was being handled.

1143. On September 30, 2015, the IACHR requested both parties for updated information on implementation of the items pending. As at the date of this report neither of parties had furnished the information requested.

1144. Based on the above, the Commission concludes that there has not been compliance with the recommendations summarized above. As a result, the Commission will continue to supervise the pending items.

**Case 11.822, Report on Friendly Settlement Agreement No. 24/09, Reyes Penagos Martínez *et al.* (Mexico)**

1145. On March 20, 2009, in Friendly Settlement Report No. 24/09, the Commission approved a friendly settlement agreement for the case of Reyes Penagos Martínez, Enrique Flores González and Julieta Flores Castillo. The complaint the petitioners filed was based on the victims' alleged unlawful detention, the acts of torture to which they were reportedly subjected and the alleged extrajudicial execution of Mr. Reyes Penagos Martínez. Summarizing, the petitioners reported that the victims were detained on December 16, 1995, when a protest sit-in organized on the ejido of Nueva Palestina was forcibly broken up; in the days following their arrest, the victims were tortured. In the case of Mrs. Flores Castillo, the petitioners added that she had also been raped. In the early morning hours of December 18, Mr. Reyes Penagos Martínez was taken to an unknown location. Some hours later, his lifeless body was found near Jaltenango. The petitioners asserted that Enrique Flores González and Julieta Flores Castillo were released two months later. The petitioners stated that a preliminary inquiry was launched by the Office of the Attorney General of the State of Chiapas to look into Mr. Reyes Penagos Martínez' detention and subsequent death. However, the petitioners were of the view that the investigation was riddled with problems and not properly carried out.

1146. On March 1, 1999, at IACHR headquarters, the parties signed the agreement to initiate a friendly settlement process and on November 3, 2006, in the city of Tuxtla Gutiérrez, State of Chiapas, they signed an agreement on reparations for damage to be paid to the victims and their relatives. The parties agreed that:

**THIRD. Measures of Satisfaction and Guarantees of Non-Repetition. (...)**

**a) Public Recognition of the International Responsibility of the Mexican State**

The State undertakes to make a public pronouncement in which it recognizes ITS RESPONSIBILITY IN the facts described in the first section, considering that the death of Reyes Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González, committed by various public servants of the state of Chiapas, are imputable to it.

The State also undertakes to apologize publicly to the victims and their family members for the facts reported to the IACHR, which were the result of a violation of human rights.

This pronouncement may be made at the moment the payment is made to make reparation for the material and non-material injury agreed upon in the preceding paragraphs.

Likewise, the State undertakes to publish the public pronouncement in two local newspapers.

**b) Investigation and punishment of the persons responsible**

In addition, the State undertakes to continue the investigations until attaining the sanction of the persons responsible for those crimes, through a serious and impartial investigation according to the international human rights standards, for the purpose of avoiding their re-victimization due to lack of access to justice.

[...]

**SIXTH. Material injury.** [...]

In this regard, the following sums have been agreed upon:

Beneficiary	For	Amount
1. Penagos Roblero family*	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 105,354.00 MN
	<b>SUBTOTAL</b>	<b>\$ 157,902.00 MN</b>
2. Julieta Flores Castillo	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	<b>SUBTOTAL</b>	<b>\$ 65,187.00 MN</b>
3. Enrique Flores González	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	<b>SUBTOTAL</b>	<b>\$ 65,187.00 MN</b>
	<b>TOTAL 1</b>	<b>\$ 288,278.00 MN</b>

**SEVENTH. Non-material injury.** [...]The sums agreed upon are as follows:

Beneficiary	For	Amount
1. Penagos Roblero family	Non-material injury	\$ 342,098.00 MN
2. Julieta Flores Castillo	Non-material injury	\$ 228,951.00 MN
3. Enrique Flores González	Non-material injury	\$ 228,951.00 MN
	<b>TOTAL 2</b>	<b>\$ 800,000.00 MN</b>

[...]

**NINTH.** Considering the changes in the living conditions of the victims and their family members, the Office of the Attorney General of Chiapas undertakes to take whatever efforts necessary, before the competent authorities, so that scholarships be granted to the three youngest children of Mr. Reyes Penagos. While the Office of the Attorney General cannot guarantee that the result of those efforts will be positive, it nonetheless expresses its commitment to diligently pursue such requests, and to seek a favorable outcome for the children of Mr. Reyes Penagos.

**TENTH.** Along the same lines, the State undertakes to make efforts for the beneficiaries to obtain medical insurance.

1147. In its Report No. 24/09, the Commission examined the measures taken by the Mexican State and acknowledged compliance with the obligations undertaken in regard to: i) recognition of the state's responsibility; ii) publication of the act of public recognition of state responsibility; iii) payment of pecuniary damages, and iv) access to medical insurance for Enrique Flores and Julieta Flores. In that report the Commission decided as follows:

2. To urge the State to take the measures necessary to carry out the commitments pending, in particular the obligation to investigate, prosecute and punish the persons responsible for the unlawful detention, torture and extrajudicial execution of Mr. Reyes Penagos Martínez and the unlawful detention and torture of Mr. Enrique Flores and Ms. Julieta Flores.

1148. On October 4, 2013, the IACHR asked the parties for updated information on the status of compliance with pending commitments. Regarding the obligation to investigate, prosecute, and punish, the State reiterated that it has been following up on its implementation. It reported that the Office of the Prosecutor Specialized in Human Rights of the Office of the Attorney General of the State of Chiapas was the institution entrusted with seeing to it that the investigations be conducted in a diligent manner. As regards the crime of rape committed against one of the victims, it reported that the Office of the Public Prosecutor (Ministerio Público) filed a criminal action on September 13, 2012, against seven persons. It highlighted that the victim has been able to gain access to the files and to the proceeding and ratified its commitment to guarantee her right to assistance. As regards the investigation into the crimes committed against Reyes Penagos and Enrique Flores, he indicated that the administrative and criminal investigations into the public servants involved were exhausted and the corresponding sanctions applied.

1149. The petitioners indicated that the State has failed to take steps to effectively investigate the extrajudicial execution of Mr. Reyes Penagos and the illegal detention and torture of Mr. Enrique Flores and Ms. Julieta Flores. They noted that the State has only made reference to certain steps in the investigations of the crime committed against Ms. Julieta Flores but no reference has been made to the human rights violations to the detriment of other victims.

1150. On December 12, 2014, the IACHR requested information on compliance once again from the parties. The parties did not submit the information requested.

1151. On January 13, 2015, the petitioners expressed their concern for the lack of information on the investigation. The State had purportedly not provided them with any information about progress in that regard since 2013 and when a representative of the victims approached the Office of the Specialized Prosecutor for Special and Important Matters of the State of Chiapas to obtain more information about what had been done, personnel at the Prosecutor's Office said that they had no knowledge of the case file.

1152. On December 3, 2015, the State presented additional information that was transmitted to the petitioners for their information. The State said in relation to the investigation of the rape of one of the victims that on June 25, 2013, Jaime Arturo Cabrera Ferro had been arrested and had filed amparo petition No. 1083/2013. The State did not indicate what decision had been adopted with respect to that petition. It also reported that Bulmaro Trejo Lopez had been arrested. However, he had filed an amparo petition and succeeded in having the arrest warrant declared unfounded and obtaining a ruling that the criminal action had lapsed. Francisco Hernández Chacón also filed an amparo petition (No. 946/2013), on which a decision was issued on October 13, 2013, invalidating the arrest warrant and the criminal proceeding. Cesar Montes Alegría, filed amparo petition No. 1284/2013, on which a decision is currently pending. Finally, arrest warrants remain outstanding for Dagoberto García Cisneros, Martin Hernández Ocaña, and Juan Otilio Lopez Guillen. The State requested that the IACHR take into consideration that the obligation to investigate is one of means and not of results and that the Office of the Attorney General had managed to arrest and try most of those responsible for the violations committed against the victims, even if it had not been possible to secure convictions.

1153. In relation to the foregoing, the IACHR takes note of the efforts of the states to identify, prosecute, and punish those responsible for the rape of one of the victims. At the same time, the Commission

recalls that that in its acknowledgment of responsibility the Mexican State accepted that the acts perpetrated by the Mexican authorities included the killing of Reyes Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González. In that regard the consistent case law of the inter-American human rights system has established that statutes of limitations that seek to prevent the investigation and punishment of those responsible for human rights violations such as torture and summary, extrajudicial, or arbitrary executions are inadmissible.<sup>107</sup> The foregoing precludes the IACHR from concluding that the State has met its commitment vis-à-vis the investigation and punishment of those responsible.

1154. On the subject of study scholarships, the State said that the General Secretariat of the Government of the State of Chiapas has awarded monthly educational scholarships to the three beneficiaries since 2008. The IACHR takes note of that information and finds that the State has been fulfilling that measure. In that regard, the IACHR observes that, in the present case, the measure includes the beneficiaries' conclusion of their professional studies. Therefore, the IACHR will continue to monitor this measure through to completion.

1155. On September 30, 2015, the IACHR requested both parties for updated information on implementation of the items pending. As at the date of this report neither of parties had furnished the information requested.

1156. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending item.

#### **Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (Mexico)**

1157. On November 12, 2008 the IACHR approved the Report on the Merits No. 117/09, in which it concluded that the Mexican State was responsible for the violation of Articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, as well as Articles 6, 8 and 10 of the Inter-American Convention to Prevent and Sanction Torture; all in violation of the guaranty of respect of human rights established in Article 1 of the American Convention on Human Rights, in the detriment of Alfonso Martín del Campo Dodd.

1158. The Commission made the following recommendations to the State:

1. Take the necessary measures to throw out the confession obtained by means of torture in facilities of the PGJDF on 30 May 1992 and all legal action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process.
2. Carry out a complete, impartial, and effective investigation to determine the culpability of all those who violated the human rights of Alfonso Martín del Campo Dodd.
3. Provide appropriate compensation to Alfonso Martín del Campo Dodd for the violations of [...] human rights established herein.

1159. In a communication dated October 7, 2013, the IACHR requested updated information from the parties concerning the status of compliance with the recommendations made in the present case.

1160. On November 7, 2013, the petitioners contended that more than eleven years have elapsed since the IACHR issued its recommendations and over the course of that period of time, the State has not complied with any of the recommendations. The petitioners claimed that that Mr. Campo Dodd continued to be deprived of his freedom. They reported that in August 2010 Mr. Martín del Campo Dodd submitted a petition for recognition of innocence to the Seventh Criminal Chamber of the Superior Court of Justice of the Federal District. In that petition, he referred to the international processing of the case and on November 25,

<sup>107</sup> I/A Court H.R., Case Barrios Altos v. Peru, Judgment of March 14, 2001, Merits, par. 41.

2011, that Chamber declared his petition unfounded. They added that on November 16, 2011, an amparo proceeding was brought against said decision, which is still under consideration as of the present time. They noted that on August 17, 2012, nine months after the amparo claim was filed, the Sixth Court ruled in their favor on April 30, 2013. As the terms of the ruling were regarded as being highly vague and failing to make the effects thereof clear, both parties filed a motion for review.

1161. In a communication of September 12, 2014, sent by the petitioners, they asserted that the legal representative of Mr. Martín del Campo Dodd filed a motion for the Supreme Court to exercise its power to settle the motion to review, normally the province of the Circuit Court (atracción). Accordingly, on November 6, 2013, the First Chamber of the SCJN, unanimously decided to take the case and the writing of the draft ruling was assigned by turn to a justice. On July 2, 2014, the discussion was conducted on said draft ruling, which argued that, based on Article 36 of the Human Rights Program Law of the Federal District, the reports of the IACHR and the decisions of the Working Group on Arbitrary Detention are binding on officials of the Federal District and, therefore, it is appropriate to order the immediate release of Mr. Martín del Campo. Because the members of the Court were unable to reach an agreement, the matter was certified out to another chamber and a vote was conducted in late 2014.

1162. In a communication of October 29, 2014, the Mexican State wrote that it had a difference of opinion with the IACHR as to the interpretation of its power to publish merits reports, when the Inter-American Court has previously determined that it does not have jurisdiction to hear a case. In the view of the Mexican State, if a case is referred to the Court, regardless of whether or not the Court rules on the merits, the IACHR may no longer publish the merits report, inasmuch as it would undermine legal certainty of the State. Thus, in its communication, the Mexican State concluded it will not provide any further observations on this case to the IACHR.

1163. On September 30, 2015, the IACHR requested both parties for updated information on implementation of the items pending. The State did not present updated information at that time.

1164. For their part, the petitioners informed the Commission that on March 18, 2015, the Supreme Court of Justice of the Nation ruled on the motion to review and ordered the immediate release of Alfonso Martín del Campo Dodd on the grounds that it had been proven that the torture to which he was subjected was designed to extract a confession and that there was no other evidence to support his conviction. The petitioners indicated that Mr. Campo had recovered his full freedom.

1165. At the same time, the petitioners said that the State had not yet implemented the recommendation concerning the provision of full reparation for the injuries caused to Alfonso Martín del Campo Dodd, nor fulfilled its duty to investigate and establish the responsibility of the persons involved in the violations of the victim's human rights in this case.

1166. The IACHR takes note of the information supplied by the petitioners and highlights the measures taken to set in motion the necessary judicial machinery to have this matter reviewed. The Commission values, in particular, the jurisprudence applied by the Supreme Court of Justice of the Nation taking into consideration the applicable international standards. In this sense, keeping in mind the judgment of the Supreme Court of Justice of the Nation and the information furnished by the petitioners, the IACHR finds that the first recommendation in Report No. 117/09 has been implemented.

1167. In light of the foregoing, the IACHR concludes that its recommendations have been partially implemented. The Commission will continue to monitor compliance with the second and third recommendations, whose implementation is still pending.

**Case 12.642, Report on Friendly Settlement Agreement No. 90/10, José Iván Correa Arévalo (Mexico)**

1168. On July 15, 2010, in Report No. 90/10, the Commission approved a friendly settlement agreement in the case of José Iván Correa Arévalo. The petition alleged that José Iván Correa Arévalo, a young



17-year-old student died on May 28, 1991 as the result of a gunshot wound to his head. The petition argued that the death of the young José Iván – which was linked to his role as an independent student leader – had not been diligently investigated by the Mexican authorities and that those responsible for his death were not convicted. In summary, the petitioners alleged that the investigation conducted by the Office of the Attorney General of the State of Chiapas had been prosecuted without due diligence and that, despite the passage of many years, Mexican justice had not succeeded in determining the motives for the murder of the alleged victim nor had it punished those responsible.

1169. In its report, the IACHR placed on record the fact that, at a working meeting held on October 24, 2008, during the 133rd regular session of the IACHR, the parties signed a document in which they committed to the following:

1. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to proceed with the investigation in a diligent and exhaustive manner and to open new lines of inquiry in order to ensure the prompt clarification of the truth surrounding the homicide of José Iván Correa Arévalo. In the course of the investigation, working panels will be held between the agents in charge of same and the coadjutors, in order comprehensively to review the case file.
2. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to hold a public act of recognition of responsibility and public apology for the failure of the authorities to conduct a diligent investigation into the homicide of José Iván Correa Arévalo. This public recognition and apology shall be published in the newspapers with the widest circulation in the State of Chiapas. The petitioners undertake to submit a draft text of public recognition of responsibility and apology within 15 days counted from today's date. The draft shall be analyzed by the authorities of the State of Chiapas within 15 days of its receipt. The final text shall be agreed by the parties. In response to the request of the petitioners that the above public ceremony be presided over by the head of the executive branch of the State of Chiapas, the Ministry of Justice undertakes to present that request to said authority, and failing that, agrees that the head of the Ministry of Justice shall preside over the ceremony. The parties shall agree on a date for holding the public ceremony, endeavoring to ensure, if at all possible, the presence of Commissioner Florentín Meléndez, Rapporteur for Mexico. In agreeing on the aforesaid ceremony the parties state that the possibility exists of signing a friendly settlement agreement in this case.
3. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to offer psychological treatment to Mr. Juan Ignacio Correa López and to include him and his family in the Seguro Popular Health Care Program, as agreed in the Minute of the Working Meeting signed in the State of Chiapas on October 8, 2008.
4. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to include Mr. Juan Ignacio Correa López in the Social Assistance Housing Program under the terms of the Minute of the Working Meeting signed in the State of Chiapas on October 8, 2008.
5. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to include Mr. Juan Ignacio Correa López in the Economic Recovery Program of the State of Chiapas for the purpose of obtaining a business loan. The Ministry of Justice of the State of Chiapas undertakes to arrange, as necessary, the repayment of the loan and its nonreimbursement on behalf of the petitioner.
6. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to grant compensation for material damages and emotional distress to Mr. Juan Ignacio Correa López in the total amount of \$600.000 pesos (six hundred thousand Mexican pesos) clear, free, and unencumbered.

7. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to make arrangements with the Municipality of Tuxtla Gutiérrez in the State of Chiapas to have the street where José Iván Correa Arévalo was deprived of his life named after him; or, failing that, to make arrangements with the relevant education authority for a commemorative plaque recording the facts in the instant case to be put up at *Colegio de Bachilleres Plantel 01 (COBACH)*, which José Iván Correa Arévalo attended.

1170. On March 21, 2009, at the working meeting held during the 134th regular session of the IACHR, they signed minutes in which they acknowledged compliance with the friendly settlement and agreed to continue monitoring points 1 and 4. Accordingly, the IACHR issued Report 90/10 approving the friendly solution reached by the parties and continued to monitor compliance with the two points not yet complied with. In its 2012 report, the IACHR deemed point 4 to have been complied with.<sup>108</sup>

1171. It follows from the above that the only point still to be complied with is the first clause in the agreement.

1. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to proceed with the investigation in a diligent and exhaustive manner and to open new lines of inquiry in order to ensure the prompt clarification of the truth surrounding the homicide of José Iván Correa Arévalo. In the course of the investigation, working panels will be held between the agents in charge of same and the coadjutors, in order comprehensively to review the case file.

1172. On January 12, 2015, the petitioners reiterated that the State had failed to investigate the facts. In particular, they indicated that even though there is sufficient information to determine that the case was a homicide, no investigative actions have been taken to determine the direct perpetrators or the authorities who aided and abetted the crime.

1173. The State presented an additional report on April 21, 2015, in which it gave an account of inquiries undertaken during the criminal investigation into the facts prior to issuance of the friendly settlement report. The State also indicated, without specifying a date that the Second Criminal Court Judge had ruled that the crime alleged in case 408/2010 had prescribed under the statute of limitations. The State indicated that those proceedings had thrown light on the facts of the case in which the victim had lost his life and that the perpetrators had been identified. However, due to the statute of limitations, it had not been possible to punish the perpetrators. The State consequently requested that the IACHR consider the measure implemented, particularly since it had diligently and exhaustively investigated the facts and credibly clarified the circumstances in which the victim had died.

1174. On September 30, 2015, the IACHR asked both parties for up-to-date information regarding compliance. To the date of closure of this report, the parties had not presented additional information.

1175. The IACHR takes note of the prescription of the criminal proceeding declared by the State and of its request that the IACHR declare the agreement fully implemented. In this regard, the IACHR considers that it does not have sufficient grounds on which to conclude that the State conducted diligent investigations and established the material truth of the facts of the case. Consequently, the IACHR urges the State to present information on the outcomes of the investigation, the steps taken to try and punish the perpetrators it reports as having been identified, and the reasons why the statute of limitations ran out. For the above reasons, the IACHR does not regard this point of the agreement as implemented.

1176. In light of the above, the IACHR concludes that the friendly settlement agreed was partially complied with. For that reason, it will continue to monitor compliance.

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<sup>108</sup> IACHR, Annual Report 2012, Ch III. D. Estado del cumplimiento de las recomendaciones de la CIDH. Párr. 873 c.

**Case 12.551, Report No. 51/13, Paloma Angélica Escobar Ledezma *Et. Al.* (Mexico)**

1177. The case refers to the lack of a timely, immediate, serious, and impartial investigation into the disappearance and subsequent death of the girl Paloma Angélica Escobar Ledezma, of age 16, whose body was found nearly one month after she disappeared, by a family of passersby at kilometer 4.5 on the highway from Chihuahua to Aldama.

1178. In its Report No. 113/12, the IACHR concluded that the Mexican State is responsible—to the detriment of Paloma Angélica Escobar—for violations of the right to a fair trial and judicial protection, the rights of the child, the right to equal protection under the law, enshrined, respectively, in Articles 8(1), 19, 24, and 25 of the American Convention, all in conjunction with the obligations imposed on the State by Articles 1(1) and 2 thereof. The IACHR further concluded that the State violated the rights of Paloma Angélica Escobar under Article 7 of the Convention of Belém do Pará. Lastly, regarding Norma Ledezma Ortega, Dolores Alberto Escobar Hinojos, and Fabián Alberto Escobar Ledezma, the Commission concluded that the Mexican State violated the right to humane treatment enshrined in Article 5(1) of the American Convention, in conjunction with the obligation Article 1(1) of that treaty imposes on the State, as well as the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25 of the American Convention with respect to the obligation imposed on the State by Articles 1(1) and 2 thereof.

1179. On August 3 and 4, 2011, the parties reached two agreements regarding compliance with the recommendations of Merits Report No. 87/10. In its Report No. 51/13, the IACHR observed that the State of Mexico had made substantial progress in implementing the recommendations contained in Report No. 87/10 and valued the efforts made by both parties to implement its recommendations. In that report, the Commission reiterated all of the recommendations to the Mexican State and determined that 10 points of the compliance agreement reached by the parties had been implemented.<sup>109</sup>

1180. On December 5, 2014, the IACHR asked the parties for information on compliance with the recommendations. On February 2, 2015, the State provided the information requested. The petitioners likewise submitted information on February 16, 2015.

1181. Following is a chart with details of the level of compliance achieved by February 2015 of each of the compromises assumed to comply with the recommendations of the IACHR, followed by a summary of the information supplied by the parties and the pertinent analysis of the Commission on their compliance.

<b>Actions established in the compliance agreement on the recommendations issued in the Merits Report No. 87/10</b>	<b>Status of Compliance</b>
<b>Recommendation No. 1:</b> Complete the investigation in a timely, immediate, serious, and impartial manner for the purpose of clarifying the murder of Paloma Angélica Escobar and identifying, prosecuting, and, as appropriate, punishing the persons responsible.	
Conduct a meaningful, impartial, and thorough investigation with due diligence into the disappearance and subsequent murder of Paloma Angélica Escobar Ledezma, to which end, the State should adopt all necessary judicial and administrative measures to complete the investigation; locate, prosecute, and, where appropriate, punish the architects and perpetrators of the crimes; and present a report on the results.	In process.
Provide Norma Ledezma with a monthly written report on the lines of investigation, procedures, and activities pursued in the case until it is clarified and, as appropriate, the persons responsible, punished.	Implemented.
Review and, as appropriate, exhaust the lines of investigation proposed by Norma Ledezma Ortega.	In process.
Ensure in full the third-party rights of Mrs. Norma Ledezma Ortega.	Implemented.

<sup>109</sup> IACHR, Report No. 51/13, Case 12.551 Paloma Angélica Escobar Ledezma *Et. Al.*, Merits, Mexico.

<b>Recommendation No. 2: Make full reparation to the next-of-kin of Paloma Angélica Escobar for the violations of human rights established herein.</b>	
Draw up a separate document, which shall be signed by the representatives of the State and Mr. Escobar Hinojos, recognizing to Mr. Escobar Hinojos, a sum in non-pecuniary damages of [...]	Implemented.
The Mexican State, through the Federal Government, will make a cash payment to the victims, Norma Ledezma and Fabián Alberto Escobar Ledezma, of a total of [...].	Implemented.
The Government of the State of Chihuahua will grant Fabián Alberto Escobar Ledezma economic assistance to pay for his university and postgraduate studies [...].	Implemented.
Norma Ledezma Ortega will receive from the State Government, [...] a dwelling from the State [...] at a location to be agreed upon by the State Government and the victim. The dwelling will be delivered within not more than three months counted from the date of the signing of this Agreement.	In process.
Provide the petitioners with medical and psychological care for as long as they may need.	Implemented.
The public ceremony of acknowledgment of responsibility held by common consent.	Implemented.
The Government of the State of Chihuahua promises that the Center for Justice for Women of the City of Chihuahua, [...] in memory of Paloma Angelica Escobar Ledezma, will carry her name.	Implemented.
To build a memorial that will include a water fountain and pigeons, as well as a commemorative plaque [...].	Implemented.
[...] inauguration of the memorial [...]at the same time as the public ceremony of acknowledgment of responsibility [...].	Implemented.
<b>Recommendation No. 3:</b> Implement, as a measure of non-repetition, a coordinated and comprehensive state policy, backed with adequate public resources, to ensure that specific cases of violence against women are adequately prevented, investigated, punished, and remedied in the city of Chihuahua.	
To complete the creation of the Special Prosecution Unit. [...] Furthermore, it shall appoint the head of the Prosecution Unit and allocate sufficient material and financial resources, within its financial and budgetary capacities, for the Unit to operate in all four of the State's zones.	Implemented.
To design a personnel training program on assistance to victims to ensure that they receive the necessary instruction on the psychosocial impact of human rights violations and violence against women. To that end, within the time limits set forth in this agreement, an awareness and training workshop will be held for professional staff of the State Health Care System and the Special Prosecution Unit for Assistance to Crime Victims and Injured Parties attached to the Office of the State Prosecutor General, which will be led by experts on the subject.	In process.
The Secretariat of the Interior will carry out a 12-month nationwide campaign consisting of publicizing government mechanisms available to both authorities and private citizens for collecting data, records, and facts about disappeared persons cases, in order to continue the creation of the various databases by the state authorities, which will be administered by the Office of the Attorney General of the Republic using a standard software package called CODIS.	The IACHR does not have enough information to determine the advances.
The State Government undertakes to continue to follow the procedures set forth in the Law Governing the Genetic Database for the State of Chihuahua. This undertaking includes the Federal Government, through the Office of the Attorney General of the Republic, screening genetic samples in an attempt to find matches between family members and victims.	The IACHR does not have enough information to determine the advances.
Within the State of Chihuahua, the State authorities pledge that as part of the consultations for the preparation of investigation protocols for disappeared women and female homicides, the consultation of the organization Justicia para Nuestras Hijas will be ensured and the effort made to heed their observations, and that instruction on the proper implementation of those protocols will be imparted by personnel suitably	In process.

trained to that end.	
<b>Recommendation 4:</b> Adopt reforms in state education programs, starting at the pre-school and early stage, in order to promote respect for women as equals and observance of their right not to be subjected to violence or discrimination.	
The State Government and the Federal Government shall encourage the inclusion of gender and human rights as a course subject in the curricula of primary, secondary, and preparatory schools, as well as public universities. To that end, insofar as the Federal Government is concerned, through the Committee on Government Policy on Human Rights, it shall invite civil society organizations to participate in the consultations that the Subcommittee on Education will coordinate, with a view to developing a concrete plan for including gender and human rights as a subject in the above curricula, which shall be submitted at the next meeting of the Committee on Government Policy on Human Rights.	The IACHR does not have enough information to determine the advances.
<b>Recommendation 5:</b> Investigate the irregularities in the investigation of the case that have been committed by state agents and punish the persons responsible.	
As regards measures designed to impose criminal or administrative penalties on officials who were involved in the investigation, verify that all the investigations that were opened into those crimes have been carried out, and notify Norma Ledezma Ortega of the results obtained and the persons responsible.	In process.
The Government of the State of Chihuahua commits to setting up a review board with Norma Ledezma Ortega, in coordination with the Special Prosecution Unit for Oversight, Review, and Evaluation, to conduct a detailed examination of the ministerial actions taken and, should it suggest suspected responsibility on the part of other officials, to institute the appropriate administrative and/or criminal proceedings in accordance with the applicable laws.	In process.
<b>Recommendation 6:</b> Strengthen the institutional capacity to fight impunity in response to cases of violence against women in the state of Chihuahua through effective criminal investigations with a gender perspective that have consistent judicial follow-up, thereby guaranteeing adequate punishment and reparation.	
Present the Protocol for Investigation of Female Homicides with a gender perspective and to include Paloma's name in it. The State will furnish the petitioners and Norma Ledezma with the relevant draft within three months in order to receive her comments and those of her representatives.	Implemented.
Draft and disseminate a Charter on the Rights of Crime Victims in line with the restructuring of the Female Homicide and Missing Persons Investigation Unit and, at the appropriate time, the Special Prosecution Unit. The State Government undertakes to present the draft to Justicia para Nuestras Hijas and, as appropriate, other organizations with an interest in the subject. It also pledges the widespread distribution of the Charter, for which purpose it will print 3,000 copies.	Implemented.
<b>Recommendation 7:</b> Implement public awareness measures and campaigns on the duty to observe and ensure children's human rights.	
Regarding the implementation of public awareness measures and campaigns on the duty to observe and ensure children's human rights, the State Government commits to heeding the opinions on the content of those campaigns of Justicia de Nuestras Hijas and other organizations specializing in the subject.	The IACHR does not have enough information to determine the advances.
<b>Recommendation 8:</b> Develop training programs for state officials that take into account the international standards established in the Istanbul Protocol, so that those officials have the technical and scientific foundations necessary for evaluating the murders of women.	
So as to have in place an effective training program, the Government of the State of Chihuahua shall impart said training to specialized personnel with the appropriate profile in criminal investigations with the aim of certifying and strengthening the capacity of personnel in charge of investigating disappearances of women and girls, feminicides, and trafficking in persons, taking into account the particular context of the State, a gender perspective, and effective implementation of the investigation	In process.

protocols agreed upon among the parties. In particular, the instruction courses shall ensure the provision of training to all the personnel of the Special Prosecution Unit in question; the trainers and topics may be suggested by Norma Ledezma and/or her representatives.	
<b>Recommendation 9:</b> Continue adopting public policies and institutional programs aimed at restructuring stereotypes concerning the role of women in the state of Chihuahua and promoting the eradication of discriminatory sociocultural patterns that impede their full access to justice, including training programs for public officials in all state sectors, including the education sector, the different branches of justice administration and the police, and comprehensive prevention policies.	
Media Sensitization Strategy “For a Mexico Free of Violence against Women”: The National Commission for the Prevention and Eradication of Violence against Women (CONAVIM) will be instructed to launch a sensitization strategy targeting the media for a Mexico free of violence against women. The engagement will be sought of civil society organizations, academic institutions, the media, and journalists.	In process.
The State Government promises to publish and distribute to the State’s public libraries, nongovernmental organizations, and community centers a book entitled Justicia para Nuestras Hijas [Justice for Our Daughters] with a prologue written by Norma Ledezma and agreed upon with the State Government. The book will contain a compilation of laws on women’s human rights [...].	In process.
The State Government recognizes the contribution of the civil association Justicia para Nuestras Hijas, [...] therefore, it undertakes to arrange an agreement with the State-owned in-bond sector so that the organization can present and implement its program.	Implemented.

1182. Regarding recommendation 1, the State provided information about the lines of enquiry being pursued with respect to the case and indicated, in general terms, the actions that have been undertaken according to the timeline of the investigation, having collected 345 witness statements, 203 police reports, and 95 expert opinions. The State indicated that it has continued to implement the working meetings with Ms. Ledezma Ortega.

1183. For their part, the petitioners indicated that the problems with the investigation are intimately related to the deficiencies that took place during its initial stage, and additionally to a lack of resources, time, and materials from the Chihuahua Police and a lack of coordination among agents of the Public Ministry and the Investigative Police who have failed to communicate the information internally. The petitioners further noted that meetings with the Office of the Prosecutor have become repetitive inasmuch as the agreements on how to proceed have not been implemented. The petitioners criticize the fact that the investigators are unfamiliar with the content of the Commission’s Merits Report and that the Office of the Special Prosecutor for Assistance to Women Victims of Gender-based Crimes took Ms. Ledezma’s statement on the same points on a number of occasions, which they believe to be “unproductive, denigrating, and a re-victimization.”

1184. The petitioners reported that 8 of the 12 monthly written reports the State was to provide to Ms. Ledezma in 2014 were delivered, and that besides the fact that this, in and of itself, constitutes a lack of compliance, those reports did not provide an account of progress made in the investigation because there has been none. Lastly, they indicated that no formal meetings have been held in the past two years to review the investigation and reiterated that timely actions have not been taken with respect to the lines of investigation due to a lack of personnel put in charge of the investigations.

1185. The IACHR takes note of the information provided by the parties and, on this issue, considers that progress still needs to be made in the investigations in order to ensure compliance with recommendation 1. In light of the foregoing, the IACHR believes that recommendation 1 is in the process of being implemented. The Commission urges the State to continue providing written reports on the investigation to Ms. Ledezma.

1186. With respect to recommendation 2, the parties both reported that the State has made the last payment that was pending to Fabián Escobar Ledezma. Regarding the dwelling to be turned over to

Ms. Ledezma, the State reported that it has not been possible to comply with this point inasmuch as the petitioner has given “personal reasons to postpone delivery thereof,” and reiterated its full willingness to formalize delivery. On this issue, the petitioners indicated that while the dwelling had indeed been assigned in 2013, the victim had refused to receive it because it failed to meet minimum safety standards in that it lacked a door and was quite deteriorated by the rain. According to the petitioners, the dwelling in question had been assigned to a different family, without another being assigned to Ms. Ledezma. The petitioners also criticized the fact that the dwelling being offered is located in an area that has been the subject of complaints made by its residents because of high levels of lead present in the environment.

1187. The IACHR takes note of the information provided by the parties and values the efforts the State has made to fully implement recommendation 2 as far as reparations are concerned. Specifically, the Commission takes a positive view of the fact that the State has fulfilled one of the two points pending for compliance, this is, the payment of Fabián Escobar Ledezma’s studies. The Commission further observes that the commitment taken on by the State to deliver a dwelling to Ms. Ledezma included having the government and the victim agree on the location thereof, and hence the IACHR urges the State to continue to make efforts firstly, to reach a consensus with the victim regarding the site of the dwelling she would live in, and secondly, to ensure that it meets minimum safety and health conditions when it is officially turned over to her. The Commission shall continue to monitor this point, which is the only one that remains pending for full implementation of recommendation 2.

1188. Regarding recommendation 3, the State indicated that on July 21, 2014, the Constitutional Governor of the State of Chihuahua put to the consideration of Ms. Ledezma the protocols for handling crimes that fall to the Office of the Special Prosecutor for Assistance to Women Victims of Gender-based Crimes under the Office of the Attorney General of the State of Chihuahua, and is currently awaiting a response from the petitioners. The State did not report on the remaining points of the agreement for compliance with this recommendation.

1189. In the case of this recommendation, the petitioners indicated that they lack information on the human and material resources that the Office of the Prosecutor has at its disposal. They also stated that they are not aware of the existence of a training program or any details about the focus thereof, nor do they have information about how the CODIS system is operating or about its dissemination campaign. The petitioners reported that the State has taken a number of actions to disseminate the disappearance mechanisms, but only online, which they consider to be inadequate given the fact that a portion of the population lacks access to the Internet; they further pointed out, along these same lines, that the campaign would have to bear in mind its target audience when it is being conducted. Lastly, the petitioners indicated that follow-up meetings were held in 2014 on the protocols, but that no protocols exist for investigating the disappearance of women. They indicated that there are two protocols currently in place: The Alba and Amber Alerts. Nevertheless, the former does not create clear strategies for investigation, and the latter applies only to the search for minors. The petitioners did not confirm whether or not they completed their review of the protocols proposed by the State and presented their input for the final version.

1190. The IACHR takes note of the information furnished by the parties and in such regard reiterates that the commitment to create the Office of the [Special] Prosecutor was declared implemented in the Merits Report 51/13.<sup>110</sup> The Commission further observes that it lacks sufficient information from the State on the development of the training program and on the CODIS dissemination campaign and urges the State to provide detailed information to both the IACHR and the petitioners regarding compliance with these points. Lastly, as regards the protocols, the Commission notes that when the Merits Report was issued, Justicia para Nuestras Hijas [Justice for Our Daughters] was in the final phase of reviewing the protocols and it is unclear whether its inputs were provided to the State for its consideration. In this respect the IACHR calls on the parties to engage in a dialogue about the points pending in such a way as to jointly fulfill this commitment in the near future.

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<sup>110</sup> IACHR, Report No. 51/13, Case 12.551 Paloma Angélica Escobar Ledezma *Et. Al.*, Merits, Mexico. Page 91.

1191. The State did not present any information on activities designed to comply with recommendation 4. For their part, the petitioners indicated that the topics of gender and human rights have not yet been incorporated into primary, secondary, preparatory, and higher education curricula. The IACHR therefore considers that it lacks sufficient information for evaluating compliance with this commitment and urges the State to report on the incorporation of a gender component into school curricula as soon as possible.

1192. As to recommendation 5, the State reported that an administrative investigation was launched under file number 211/2012 against nine government officials and provided details on the current status of each of those cases, eight of which are still awaiting a final judgment, and one of which reportedly ended in an administrative sanction of 30 days suspension without pay for one of the officials. The State also reported on eight administrative cases that were part of the same proceedings and were ultimately deemed groundless because those involved are not public servants with the Office of the Attorney General of the State. In this case, the State indicated that three of the individuals in question resigned and five passed away. The State added that as part of investigation 211/2012, an order was given to issue instructions to the Special Prosecutor for Investigating and Prosecuting Crime in the Central Zone and certified copies of the records of the investigation were forwarded so that a criminal investigation could be launched immediately against 12 public servants; hence, investigation file 7809-16273-2013 was opened in the Office of the Special Prosecutor for Investigating and Prosecuting Crime in the Central Zone, and is currently in the integration phase. Lastly, the State indicated that it remains in touch with Ms. Ledezma Ortega with whom it is jointly reviewing the integration of Preliminary Inquiry 77/202 and the administrative cases.

1193. On this matter, the petitioners indicated that the investigations conducted have been neither complete nor effective since they have been limited to looking into the planting of evidence, while ignoring other irregularities, which is why Ms. Ledezma asked the authorities to examine all anomalies committed by any government official who was either directly or indirectly involved in the investigation into the case of Paloma Escobar Ledezma. The petitioners noted that the review board met for the first and only time in January 2012 and, since then, the head of the Office of the Special Prosecutor for Oversight has changed twice, after which Ms. Ledezma has reportedly not been apprised of the proceedings or of any actions taken.

1194. The IACHR takes note of the information provided by the parties and highly values the efforts made by the State to punish the officials investigated administratively. In view thereof, the Commission will await up-to-date information on the final decisions establishing the remaining administrative sanctions, as well as on criminal case 7809-16273-2013, such that it may verify compliance with this recommendation. The IACHR is likewise awaiting documentation—minutes or other records—that will allow it to verify the way the review board is currently working with Ms. Ledezma.

1195. With respect to recommendation 6, the State indicated that the Charter on the Rights of Crime Victims was drafted and both distributed to various local authorities and posted in the different prosecutors offices and in other public institutions. The State included photographic evidence of the dissemination of the Charter in its report. The petitioners acknowledged that the Charter had been drafted, but indicate that it has not been disseminated. They further note that the Charter would need to be amended to include a reference to the 2013 General Law on Victims.

1196. On this point, the IACHR takes note of the information provided by the parties and values the efforts made by both the State and the petitioners in drafting the Charter on the Rights of Crime Victims. With respect to this issue, the Commission considers that the State has fulfilled the commitment it made to draft and disseminate the Charter, as evidenced by the photographic records it submitted, and further believes that a second edition to update the Charter to include reference to the new General Law on Victims falls outside the scope of the agreement. The IACHR thus considers this point to have been fully implemented. As a result, in view of the fact that the other commitment taken on by the State with respect to this recommendation had been met previously, recommendation 6 of Report 51/13 is hereby declared to have been implemented in full.



1197. Regarding recommendation 7, the petitioners indicated that Justicia para Nuestras Hijas has not been consulted with respect to any campaign to raise awareness on children's human rights, nor does it know if [such campaigns] have been carried out. The State did not provide information on this point. The IACHR therefore lacks sufficient information to evaluate compliance with this measure and urges the parties to work together to develop such a campaign as soon as possible.

1198. With respect to recommendation 8, the State reported that a Cooperation Agreement was reached on October 17, 2014, with the Secretariat for Government, within the Fideicomiso para el Cumplimiento de Obligaciones en Materia de Derechos Humanos [Trust for Meeting Human Rights-related Obligations]; the purpose of the agreement is to transfer federal funds for the development of programs related to this point. The petitioners reiterated that they have no information on compliance with this commitment. The IACHR takes note of the aforementioned cooperation agreement and awaits detailed information from the State on fulfillment of the commitment to train state officials that it took on under the agreement reached in this case.

1199. As to recommendation 9, the State indicated that it continues to await a draft of the prologue to the book Justicia para Nuestras Hijas [Justice for Our Daughters] from Ms. Ledezma. The Dirección General de Normatividad [General Office on Existing Legislation] has not yet received that information, and therefore has been unable to print and distribute the book. The State made no reference to the awareness-raising campaign targeting the media. The petitioners indicated that Ms. Ledezma has written the prologue for the book and that an agreement has been reached to launch the book in connection with the anniversary of the Justicia para Nuestras Hijas Association. Lastly, they indicated that no awareness-raising strategy has been developed. As a result, the IACHR believes that as far as publication of the book is concerned, the commitment is in the process of being met. As to the awareness-raising campaign targeting the media, the Commission calls on the State to provide information on this commitment such that it may evaluate the status of compliance.

1200. On March 21, 2015, the parties held a working meeting that was attended by the Commission, within the framework of its 154th regular session. At that meeting, the parties discussed measures needed to fully implement Recommendation No. 2 (housing) and Recommendation 5 (investigation).

1201. On September 30, 2015, the IACHR asked both parties for up-to-date information regarding compliance. To the date of closure of this report, the parties had not provided the updated information.

1202. In light of the information previously provided by the parties, the IACHR reiterates that the State has partially implemented the recommendations contained in Merits Report No. 51/13. The IACHR urges the parties to provide up-to-date information on progress made with implementing the recommendations.

**Case 12.769, Report No. 65/14, Irineo Martinez Torres and Candelario Martinez Damián (Mexico)**

1203. On July 25, 2014, the IACHR issued report No. 65/14 approving the friendly settlement agreement reached in favor of Irineo Martinez Torres and Candelario Martinez Damián, members of the Purépecha indigenous people from Ahuirán, in the state of Michoacán, who were alleged to have endured violations of rights protected under the American Convention during their arrest and in the criminal proceedings against them. The petitioners were reportedly physically assaulted by judicial police at the time of their arrest and, during the criminal proceeding against them, the court-appointed defender allegedly failed to act in an efficient manner. Nor was an interpreter provided for them, even though their native language is Purépecha (Tarasco) and they lacked proficiency in both understanding and speaking Spanish.

1204. The State undertook to comply with the following commitments:

1) Bearing in mind that 95.5% of the community is not registered with any health institution, the State pledges to do the following this year:

a. Disseminate information about the requirements that have to be met to be admitted into Mexico's health system.

b. Install a health forum in charge of providing advisory services to all persons of the community who request it to guarantee their right to health and, once these requirements have been met, to proceed with their registration (SS, state government).

2) On the basis of the community assessment, it was concluded that there is a large segment of the population of working age affected by the low demand for labor. The State of Mexico urges the Purépecha Community of Ahuirán to organize themselves with their traditional authorities and/or families to draw up a project that would improve the locality's conditions for the families and community and provide temporary financial support for as many persons as the project requires.

This program is being offered to men and women 16 years old and over who wish to implement projects that would contribute to improving family or community conditions.

In that regard, the State shall grant, at the request of the party, advisory services to draw up the project and would be able to pay daily wages equivalent to 99% of the minimum wage for the region. In one day, it would be possible to pay two daily wages to the persons working for the benefit of their own community as long as the project lasts, without paying more than 132 daily wages per beneficiary per year.

The specific amount of support to be granted by the State of Mexico shall depend on the project that the community itself submits to the consideration of the State and on the number of persons working on it. To this end, the State insists that the Purépecha community organize itself to submit a broad-scoped project for the community (SEDESOL).

3) The State, through the Attorney General's Office of the Republic, the National Indigenous Language Institute (Instituto Nacional de Lenguas Indígenas—INALI), the Foreign Affairs Secretariat (Secretaría de Relaciones Exteriores—SER), and the National Commission for the Development of Indigenous Peoples (Comisión Nacional para el Desarrollo de los Pueblos Indígenas), pledges to design an informative campaign using various media, including radio and print, so that the Purépecha community can learn about their rights if they are arrested and urging the community to exercise their rights (PGR, INALI, CDI, SER).

4) The State shall conduct a certification program for the training of interpreters in indigenous languages of the State of Michoacán in the field of law enforcement and administration of justice (together with the University of Michoacán, PGR or PGJ, and the Judicial Branch of Government or the Federation), so that those earning the certification diploma can be mainstreamed into the roster of interpreters and translators of indigenous languages, with the Federal Government pledging that they shall promote their use (INALI).

Proposals for the benefit of the next of kin of Irineo and Candelario Martínez

5) Onsite interviews with the petitioner and the families of the petitioners indicate that they have traditionally worked as wood craftsmen. Nevertheless, because of their socioeconomic status, they were quickly required to diversify their sources of income. The State of Mexico, recognizing their wish to work exclusively as craftsmen and taking into account that it is because of the absence of inputs and tools that they are prevented from doing so, is offering

to rehabilitate the traditional woodworking shops of the two families using the Program to Support Indigenous Productivity and the Program for the Productive Organization of Indigenous Women in amounts that vary depending on the project submitted by the petitioners (DCI, petitioners, and the Municipality of Paracho) and in accordance with what is set forth in the following subparagraph.

6) In compliance with the agreements of March 26, 2011, reached during the 141st period of sessions of the IACHR, the State offers to grant reparations for harm caused in the amount of 500,000 pesos (SEGOB).

1205. In addition, the parties agreed on the following terms for complying with the agreement:

- a) The State must show and pay the amount of 125,000.00 pesos to each one of the persons I represent by August 15, 2011 at the latest.
- b) The State must begin to take the steps to start the activities aimed at rehabilitating the traditional woodworking shops within 15 days after acceptance of the State's proposal and shall keep the representative of the petitioners informed of the progress of these activities so that the work can be completed as quickly as possible.
- c) Likewise, the State must make a public statement in the Community of Ahuirán about the human rights situation at the time of the arrest and trial of Messrs. Irineo Martínez Torres and Candelario Martínez Damian.
- d) The State must begin implementing the remaining programs within 30 days as of the proposal's acceptance.

1206. In report No. 65/14, the IACHR acknowledged substantial compliance with the agreement and said it would continue to monitor fulfillment of the programmatic commitments. According to the information provided in the report approving the agreement, the IACHR regards points 3, 4, 5, and 6 of the State's proposal, and points a, b, c, and d of the petitioners' terms of acceptance, as fully complied with. The IACHR reiterates that points 1 and 2 of the agreement relating to programmatic and/or support measures have been partially implemented.

1207. In its report approving the friendly settlement agreement, the IACHR noted that on May 31, 2012 and November 2, 2012 the State provided information on the expansion of health care coverage. Thus, the State reported that on March 26 and April 3, 2012, personnel from the Health Secretariat in Michoacán conducted campaigns resulting in the registration of 44 families in the Health System and the start of 53 affiliation procedures. In addition, on August 28, 2015, the State reported on the scope of coverage of the Seguro Popular insurance scheme. However, the IACHR currently lacks information regarding completion of the registration process for the 53 families that began the affiliation procedure.

1208. At the same time, with regard to the temporary employment project, the IACHR also noted that the State provided counseling for the municipal authorities in Paracho, during a high-level meeting held on May 2, 2012. The State and representatives of the Social Development Secretariat (SEDESOL) underscored their readiness to continue advising on ways to improve a possible project. The IACHR does not yet have sufficient information to regard this measure as implemented, so that it urges the State to provide more information about the number of people who have benefited from this aspect of the agreement, the type of support they received, and evidence of that support.

1209. According to information provided by the State on August 28, 2015, following the counseling meeting, the municipal authorities in Paracho and traditional authorities stated that they did not need counseling and that they intended to submit a package of three employment programs to SEDESOL for it to consider. However, on May 21, 2012, SEDESOL apparently reported that, due to the sums involved in the proposed projects, there was no budgetary capacity to implement them. The IACHR is awaiting information from the State on other projects and advisory services that can be offered to the population to comply with this commitment.

1210. In light of the above, the IACHR regards points 3, 4, 5, and 6 of the State's proposal, and points a, b, c and d of the petitioners' terms of acceptance, as fully complied with. The IACHR declares that the friendly settlement has been partially implemented. The Commission will continue to monitor points 1 and 2, which it regards as still pending.

**Case 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua)**

1211. On October 11, 2001, the IACHR approved the Merits Report No. 100/01 and concluded that the State of Nicaragua: (a) violated, to the detriment of Milton García Fajardo, Cristóbal Ruiz Lazo, Ramón Roa Parajón, Leonel Arguello Luna, César Chavarría Vargas, Francisco Obregón García, Aníbal Reyes Pérez, Mario Sánchez Paz, Frank Cortés, Arnoldo José Cardoza, Leonardo Solís, René Varela, and Orlando Vilchez Florez, the right to humane treatment, contained in Article 5 of the American Convention on Human Rights; and (b) violated, to the detriment of Milton García Fajardo and the 141 workers who are included in this complaint, the rights to judicial guarantees and judicial protection, and economic, social, and cultural rights, protected by Articles 8, 25, and 26 of that international instrument, in relation to the general obligation to respect and ensure the rights, provided for in Article 1(1) of the same Convention.

1212. According to the complaint, on May 26, 1993, the customs workers went on strike after having sought unsuccessfully to negotiate, through the Ministry of Labor, a set of petitions that demanded, among other things, the nominal reclassification of the particular and common positions at the General Bureau of Customs, labor stability, and 20 percent indexing of salaries in keeping with the devaluation. The Ministry of Labor resolved, on May 27, 1993, to declare the strike illegal, arguing that Article 227 of the Labor Code did not permit the exercise of that right for public service workers or workers whose activity is in the collective interest. The petitioners also alleged that the Police made disproportionate use of force during the strike held by the workers on June 9 and 10, 1993.

1213. The Commission made the following recommendations to the State:

1. To conduct a complete, impartial, and effective investigation to establish the criminal responsibility of the persons who inflicted the injuries caused to the detriment of Milton García Fajardo, Cristóbal Ruiz Lazo, Ramón Roa Parajón, Leonel Arguello Luna, César Chavarría Vargas, Francisco Obregón García, Aníbal Reyes Pérez, Mario Sánchez Paz, Frank Cortés, Arnoldo José Cardoza, Leonardo Solís, René Varela and Orlando Vilchez Florez, and to punish those responsible in accordance with Nicaraguan law.
2. To adopt the measures necessary to enable the 142 customs workers who lodged this petition to receive adequate and timely compensation for the violations of their human rights established herein.

1214. With a view to implementing the second recommendation, the State and 113 victims signed a "Minutes of Agreements and Commitments" document on June 7, 2007 (to which 20 more workers subsequently added their signatures). In its 2014 Annual Report, the IACHR concluded that it lacked sufficient information with which to assess compliance with the commitments entered into.

1215. On working meeting held on October 21, 2015, the State submitted documentation indicating that, through registered public document No. 35 of May 18, 2007, 105 workers revoked the power of attorney allowing Alfredo Barberena Campos to represent them and granted special powers to a group of 5 people to represent them before the State of Nicaragua and before the IACHR in negotiations relating to case 11.381. Furthermore, according to the documentation provided, through Public Deed No. 37 of May 22, 2007, the group appointed by the workers to be their Negotiating Committee granted power of attorney to one person to carry out the procedures relating to the signing of agreements in connection with case 11.381, before the IACHR. It is to be noted that on that date, the organizations CENIDH and CEJIL were also acting as co-petitioners.

1216. In the same documents it is established that, on June 7, 2007, the victims represented by the person appointed by the Negotiating Committee, and the State, represented by the Ministry of Finance and Public Credit, the Director General of Customs, and the Attorney General (*Procurador General*) of the Republic, signed an Agreements and Commitments document. Under that Agreement, the parties made the following commitments:

FIRST: The State of the Republic of Nicaragua, pursuant to the recommendations made by the Inter-American Commission on Human Rights in its Report on Case No. 11.381 - Milton Garcia Fajardo et al. - undertakes to pay each of the 144 former customs personnel the sum of one hundred twenty-five thousand Cordobas ( (C\$125,000.00) [...]

FOURTH: Former workers, their heirs or representatives, who have not signed the present Agreements and Commitments document, signed by the State of the Republic of Nicaragua and Former Customs Personnel, Case 11.381 of the IACHR, may join it, provided that the commitments envisaged therein are met.

#### COMMITMENTS

FIRST: The former workers undertake not to file or submit a complaint or claim against the State of the Republic of Nicaragua to the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, or any other judicial or extra-judicial jurisdiction in the national territory, or specific human rights body within any of the regional or international organizations in which Nicaragua is a State Party [...]

SECOND: The former workers commit to signing certificates of settlement in favor of the State of the Republic of Nicaragua before the State Notary, to be included in their entirety in the agreements and commitments entered into herein. To the effect the aforementioned certificates of settlement, the former workers shall appoint a single person with power of attorney to represent them before the State Notary's Office and to grant the certificates of settlement.

[...]

FOURTH: The Ministry of Finance and Public Credit and the Customs Directorate recognize the contributions not made or utilized to the Nicaraguan Social Security Institute (INSS), corresponding to the 14 years in which they were not employed. The Ministry of Finance and Public Credit and the Customs Directorate shall assume responsibility for those contributions in accordance with budget rules and the availability of funds.

FIFTH: The Ministry of Finance and Public Credit and the Customs Directorate are aware of what the petitioners are fighting for and will therefore do their best to gradually reinstate the former customs personnel in public sector jobs.

[...]

1217. With respect to Recommendation No. 1, the State indicated that it was impossible to implement given that the criminal proceedings on account of personal injuries had prescribed due to the statute of limitations. According to the State, this is because the events occurred in 1993 and the right of action expires in 5 years; in other words, the events occurred prior to the issuance of the Report on the Merits 100/01, and 17 years have elapsed since the prescription of the lawsuit.

1218. As regards Recommendation 2, the State indicated that it had complied in full with its obligations under the Agreements and Commitments document, having paid the full amounts agreed upon, including the contributions to the INSS. In addition, it said it had reinstated 46 workers.

1219. The State reported that on June 16, 2001 members of the Negotiating Committee appointed by the workers signed the minutes establishing Payment and Settlement in Full of the Agreements and Commitments document signed by the State and the workers. Those minutes stated that the former workers had received to their entire satisfaction, after detailed study and analysis, the payment made in settlement by the Ministry of Finance and Public Credit, accepted it in all respects, and had no observations to make. It also placed on record that the payments due - in the amount of 18 million córdobas, had been delivered in full. The minute expressly granted the State a certificate of settlement that the entire Agreements and Settlements document had been implemented; declared that there was nothing to claim from the State; expressly waived any right, action, or claim against the State that might arise with respect to compliance with the obligation; and expressly and entirely released the State from any obligations or responsibility toward the former customs personnel. Annexed to those minutes, as an integral part thereof, is a list naming 144 workers who received the payments, including Alfredo Barabena Campos. The State also made available the list of the checks issued to the 144 beneficiaries of the agreement.

1220. According to the information presented by the State, on June 2011, the representatives appointed by the workers presented the IACHR with a written document acknowledging the date on which the statute of limitations for lawsuits in respect of personal injuries had run out, expressing their satisfaction that the agreement had been honored, and requesting that the case be filed.

1221. In this regard, the IACHR received communications from Alfredo Barabena Campos, directly and/or through his legal representative, on October 3, 2011; March 16, October 30, December 3, and December 10, 2012; April 16, May 28, June 3, July 1, July 7, July 24, and September 21, 2013; October 24, 2014; and January 1, 2015. In those communications, the petitioner stated that he was not satisfied with the reparation payment and considered that the State had not implemented the recommendations. On June 4 and September 27, 2013, Carlos Montenegro, Carlos Mejía, and Leonel Arguello indicated that they considered that the State had not implemented the recommendations made by the IACHR.

1222. For their part, CEJIL and CENIDH stated on October 19, 2011, December 17, 2012, and November 7, 2013 that they had no further comments to make regarding compliance. On December 18, 2014, those organizations indicated that the recommendations had yet to be implemented.

1223. The IACHR convened a working meeting on March 21, 2015, during which the State presented a substantive report on the commitments undertaken as part of the agreement to implement the recommendations and asked the IACHR to declare that those recommendations had been complied with in full. Mr. Alfredo Barabena sent an aide-memoire to the IACHR on July 20, 2015, stating that the parties had reached a friendly settlement for the compliance of the recommendations during the working meeting at the Commission's headquarters. The IACHR notes that the document sent by the petitioners does not match the content of what was discussed at the working meeting.

1224. On August 14, 2015, CEJIL and CENIDH, wrote to the IACHR indicating that they would no longer act as representatives in case 11.381 because of the impossibility of monitoring implementation of the recommendations, given that a large majority of the victims had signed an Agreements and Commitments document with the State of Nicaragua, without first consulting with the organizations acting as co-petitioners. They further reported that the victims did not have a shared stance with respect to monitoring of the case and that contact with most of them had been lost, all of which prevented them from continuing to act as their representatives. They also requested that the IACHR appoint an inter-American defender to continue representation. Finally, they provided data regarding three of the victims in the case with who they were still in contact.

1225. The IACHR asked the parties for updated information on November 24, 2015 in order to evaluate implementation of the recommendations. To the date of closure of this report, none of the parties had presented updated information.

1226. Taking into consideration the information previously presented by the parties, the IACHR notes that a 105 workers had chosen a group of representatives to engage in negotiations inside the country

with the Nicaraguan State. Using the legal powers vested in them, those representatives had appointed a person to represent them as a whole. That person had signed an agreement establishing clear amounts of reparation. Another group of workers had subsequently adhered to that agreement reaching a total amount of 144 beneficiaries. The State has managed to prove that it complied with the obligations stemming from the agreement signed with the workers' representative. This was expressly stated by the Negotiating Committee appointed by notarized deed to represent the victims.

1227. The IACHR also notes that, after the request to declare that the recommendations had been implemented, 4 victims had said they did not agree with the compliance. Two of them had signed the notarized deed granting power of attorney to the Negotiating Committee. The IACHR was also able to ascertain that those four persons and the victims cited as contacts by the organizations that acted before as co-petitioners, are included in the Annex, attached to the Payment and Certificate of Settlement document, as a list of workers who benefited from the agreement and certified full compliance with the agreement. The IACHR further verified that those persons are included in the list of checks issued by the State, which makes it possible to corroborate that they received said amount. According to the furnished information, the reception of the checks implied the acceptance of this item of the compliance agreement. In light of the above considerations, the IACHR declares that the Agreements and Commitments document signed by the parties has been fully complied with and that therefore Recommendation No. 2 has been implemented.

1228. As regards Recommendation No. 1, the IACHR takes note of the prescription of the criminal proceeding declared by the State and of its request that the IACHR declare the agreement fully implemented. In this regard, the IACHR considers that it does not have sufficient grounds on which to conclude that the State conducted diligent investigations and established the material truth of the facts of the case.

1229. In light of the above, the IACHR concludes that the recommendations are partially complied with. The IACHR decides to continue to follow up on the compliance with recommendations No. 1.

**Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)**

1230. In Report No. 77/02 of December 27, 2002, the Commission concluded that the Paraguayan State: (a) had violated, with respect to Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the rights to personal liberty and judicial guarantees, enshrined in Articles 7 and 8 of the American Convention, with respect to the facts subsequent to August 24, 1989; and (b) had violated, with respect to Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the rights of protection from arbitrary arrest and to due process established by Articles XXV and XXVI of the American Declaration on the Rights and Duties of Man for the events that occurred prior to August 24, 1989.

1231. The IACHR made the following recommendations to the State:

1. Make full reparation to Mr. Waldemar Gerónimo Pinheiro, which includes appropriate compensation.
2. Make full reparation to Mr. José Víctor Dos Santos, which includes appropriate compensation.
3. Such reparation should be commensurate with the harm done, which implies that compensation should be greater for Mr. José Víctor Dos Santos, given that he spent eight years in prison, with no legal justification for his detention.
4. Order an investigation to determine who was responsible for the violations ascertained by the Commission and punish them.
5. Take the necessary steps to prevent such violations from recurring.

1232. In 2010, the Commission requested updated information from the parties. In a note dated November 22, 2010, the State requested a two-month extension to answer the request for information concerning compliance with the recommendations, in part because it did not know where the petitioners were. By the completion of this Annual Report, the parties had not presented any information regarding compliance with the Commission's recommendations.

1233. On December 5, 2012, the IACHR requested the parties to provide updated information on the status of compliance with the recommendations set forth in the report on the merits; the State did not send the information requested. On February 13, 2015, the IACHR repeated its request to the State to provide updated information, particularly on the steps taken to locate the victims. As of the writing of this report, the information solicited had not been received.

1234. On September 30, 2015, the IACHR requested updated information from the parties on implementation of the recommendations. As of the date on which this report was completed neither of the parties had submitted the information requested.

1235. Because of this, the Commission concludes that compliance with the recommendations continues to be pending. As a result, the Commission shall continue to monitor its compliance.

#### **Case 11607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)**

1236. In Report No. 85/09 of August 6, 2009, the Commission concluded that the Paraguayan State had violated the right to personal liberty, the right to humane treatment, the right to life, children's right to special measures of protection, the right to judicial protection and the right to judicial guarantees, recognized, respectively in articles 7, 5, 4, 19, 25 and 8 of the American Convention. Summarizing, they alleged that Víctor Hugo Maciel, a child 15 years of age, was recruited on August 6, 1995, to perform Compulsory Military Service (SMO) in the Paraguayan Army, even though his parents expressly objected; he died on October 2, 1995, as a result of excessive physical exertion, known in Paraguay as "flaying", a punishment for a mistake made during the so-called "closed drill." The petitioners stated that Maciel, a minor, was suffering from Chagas disease in its chronic stage, the most evident symptoms of which are heart irregularities. The petitioners alleged that a summary inquiry was launched in the military courts, and the case was dismissed on December 4, 1995. Another inquiry was under way in the regular court system, because of the media attention that the case had received and the interest shown by members of the Senate Human Rights Commission. Even so, that inquiry did not move forward.

1237. On March 8, 2005, the Inter-American Commission on Human Rights adopted Report No. 34/05, pursuant to Article 50 of the American Convention. The Paraguayan State was notified on April 20, 2005, and given two months to comply with the recommendations. In a communication dated June 17, 2005, the State requested that the time period established in Article 51(1) of the American Convention be suspended and formally requested the possibility of seeking a compliance agreement with the petitioners based on its acknowledgment of its international responsibility for the facts that gave rise to this case, which was accepted by the petitioners. On March 22, 2006, the petitioners and the State signed a friendly settlement agreement.

1238. In Report No. 85/09, the Commission concluded that despite the substantial progress made to comply with the March 22, 2006 Compliance Agreement, the State had only partially complied with the recommendation made by the IACHR in Report No. 34/05 concerning the State's obligation to investigate the facts denounced. The Commission therefore recommended to the Paraguayan State the following:

1. That it complete a full, fair and effective investigation of the facts of this case for the purpose of trying and punishing the material and intellectual authors of the human rights violations committed to the detriment of Víctor Hugo Maciel Alcaraz.

1239. In a note dated December 29, 2010, the State reported that the case titled "Complaint entered by the Attorney General of the State in connection with the Death of Conscript Victor Hugo Maciel



Alcaraz. Case No. 397/95” was with Examining and Sentencing Court No. 3, awaiting the testimony of four witnesses, as well other evidence.

1240. For their part, in a communication dated December 21, 2010, the petitioners asserted that the State had not taken any steps to conduct a useful investigation to determine the identity of those responsible for the events that resulted in Víctor Hugo Maciel’s death. It had thus failed to comply with the Commission’s recommendation. The petitioners pointed out that four years had passed since the summary proceeding was reopened, yet the procedures and proceedings had been inadequate, barely functional and without any strategic direction encompassing every aspect of the case. This information was reiterated by the petitioners in their reports dated November 21, 2011, January 4, 2013, November 15, 2013, and December 18, 2014.

1241. In its communication of February 29, 2012, the State referred to certain steps taken to move the investigation forward. In this sense, the State reported that it had requested the National Armed Forces to provide information on medical inspection protocols for the admission and rejection of applicants or recruits; it had also sent the official witness notification documents to be served; it requested the court to mandate the judge to remit the record of the testimony of a witnesses; and, requested that a note be added to the file. The State indicated in its communication that it was gathering evidence so that it could pursue investigations, but that it had not yet been able to file any charges.

1242. On December 4, 2014, the IACHR requested the parties to provide updated information on the status of compliance with Report No. 34/25.

1243. On September 2, 2015, the petitioners reiterated that the recommendation regarding investigation, trial, and punishment of those responsible for human rights violations committed to the detriment of the victim in this case had still not been implemented and that the State had done nothing to prompt an effective investigation of the facts. For its part, the State did not submit updated information.

1244. On September 15, 2015, the IACHR asked the parties to provide updated information on implementation of the recommendations. As of the date of completion of this Report, neither of the parties had submitted the information requested.

1245. The Commission observes the lack of compliance with the recommendation regarding the investigation, prosecution, and punishment of human rights violations committed to the detriment of Víctor Hugo Maciel. Therefore, the IACHR concludes that the friendly settlement agreement that the parties signed on March 22, 2006, has been only partially honored.

#### **Case 12.358, Report No. 24/13, Octavio Rubén González Acosta (Paraguay)**

1246. On March 20, 2013, the IACHR approved Friendly Settlement Report No. 24/13 in Case 12.358, Octavio Rubén Gonzalez Acosta versus the State of Paraguay. The case referred to the alleged arbitrary detention, torture, and forced disappearance of Octavio Rubén Gonzalez Acosta, on December 3, 1975 during the Alfredo Stroessner regime, by agents of the Investigations Department of the Capital Police. Pursuant to the terms of that agreement, the State committed to do the following:

1. Recognize its international responsibility for the acts of arbitrary detention, torture, and forced disappearance perpetrated by State agents in violation of the rights of the victim himself, Octavio Rubén González Acosta, and of his next of kin, namely, his wife, Mrs. Adela Elvira Herrera de González, and their children Guillermo and Mariano González.
2. Publicly acknowledge its responsibility for the forced disappearance of Octavio Rubén González Acosta and make a public apology to his next of kin.
3. Advance in the criminal courts the investigation into the facts that led to the violations in this case, and identify, prosecute and, if found guilty, punish the perpetrators.

4. Provide appropriate treatment, through the national health services and at no cost, as needed by the next of kin identified in item 1 of this agreement, once they have given their consent to that effect, as of the signing of the Friendly Settlement Agreement, and for the time required, including the supply free of charge of medicines available at the Ministry of Public Health and Social Welfare, in accordance with administrative regulations pertaining to cases of human rights violations.

5. Desist from pursuing the objection based on the limitation period presented in the case of "Adela Elvira Herrera González et al vs. the State of Paraguay, regarding compensation for damages for extra-contractual liability," which was heard by the Lower Court for Civil and Commercial Matters of the 10<sup>th</sup> Circuit of Asunción, and accept the alleged facts, leaving determination of the amount of compensation to the discretion of the court.

6. Acknowledge the historical legitimacy of the Paraguayan Communist Party prior to the coup d'état of February 2 and 3, 1989, honoring the memory of the direct victim and the citizens who were members of that Party.

7. Publish in the Official Gazette and on the official websites of the Ministry of Foreign Affairs and the Office of President of the Republic the terms of this Friendly Settlement Agreement.

1247. In accordance with Report No. 24/13, the State complied with the first and second clauses through public recognition of responsibility on March 20, 2012, in the presence of national officials, the victim's next of kin, and special guests. That report also referred to compliance of the State with the sixth clause on the acknowledgement of the historic legitimacy of the Paraguayan Communist Party, which occurred during the aforesaid public function for recognition of responsibility. Finally, the report accounts for the publication of the appropriate information in the Official Gazette and on the website of the Ministry of Foreign Affairs, as stipulated in item 7 of the agreement. On the basis of the foregoing, the IACHR finds that the State is in compliance with items 1, 2, 6, and 7 of the friendly settlement agreement.

1248. In accordance with the information provided by the petitioners, on September 13, 2013, the Lower Court for Civil and Commercial Matters of the Tenth Circuit handed down its decision in the proceeding for compensation for damages due to tort liability, case No. 4332/2010, partially upholding the petition presented by the victims and ordering the State of Paraguay to pay compensation.

1249. On December 4, 2014, the IACHR requested updated information from the parties regarding compliance with the pending items of the friendly settlement agreement. On December 12, 2014, the petitioners reported that despite having prevailed with their petition, the funds to cover the amount of compensation were not included in the general expenditure budget for 2015. They stated that they hoped that the Paraguayan government would supplement the budget to include the payments established in their favor in the judgment. The State did not submit updated information prior to completion of this report.

1250. On September 30, 2015, the State indicated, with regard to Clause 5 of the agreement, that the commitment undertaken by the State had been to procedurally abandon an objection to the lawsuit proceeding and to go along with the facts presented by the plaintiff, so that the judge could rule on compensation as he saw fit. The State indicated that the Court set the compensation amount at 2,300,020,293 guaraníes, less the sum already received by the beneficiaries under the administrative compensation pursuant to Law No. 838/1996. According to the State, as per the commitments made, the Attorney General's Office did not appeal the judgment and placed on record its willingness to comply with the agreement. The State acknowledged in its written statement that, since it received the official notification from the Court after the Executive had submitted the proposed budget law to Congress, the notification did not take effect for 2015, but it explained that that judgment has been taken into account in the preliminary draft national budget for 2016.

1251. On October 7, 2015, the IACHR requested that the parties provide it with updated information on implementation of the recommendations.

1252. The petitioning party stated on October 22, 2015 that the payment ordered in the judgment had not been made. For that reason, it asked the IACHR to continue monitoring compliance with point 5. The petitioning party also referred to the State's omission to present updated information regarding points 3 and 4, which had yet to be complied with.

1253. Regarding the aforementioned, the Commission notes that in effect, on clause 5 of the agreement the Paraguayan State undertook to desist from the exception of prescription presented in the lawsuit "Adela Elvira Herrera González and others c/ State of Paraguay s/ Economic compensation for damages for extra-contractual civil liability", before the Judge of First Instance of the Civil and Commercial Circuit Of the 10<sup>th</sup> Office of the City of Asuncion; and to adhere to the facts denounced, leaving to the Judge the decision based on the information provided by the petitioners. Additionally, in accordance to the information provided by the parties, the State through the General Attorney, desisted from the exception and accepted the allegations of the petitioners.

1254. From other part, the Commission notes that it does not have sufficient information regarding the compliance with the clause concerning the investigation, nor of the compliance with the clause regarding the health service and Access to medication.

1255. The IACHR values the information provided by the State, as well as the advances towards the compliance with the agreement. At the same time, it urges the State to provide information on the compliance with clauses third and fourth, which would be of great use to value the advances towards the integral compliance of the agreement. For this reasons, the IACHR concludes that the agreement is partially complied with. The IACHR concludes that the agreement has been partially complied.

**Case 11.031, Report No. 111/00, Pedro Pablo López González *et al.* (Peru)**

1256. In Report No. 111/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police and the Navy of Peru detained Messrs. Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez, and Carlos Martín and Jorge Luis Tarazona More on May 2, 1992, in the human settlements of "La Huaca," "Javier Heraud," and "San Carlos," located in the district and province of Santa, department of Ancash, and that subsequently it proceeded to disappear them; (b) that accordingly it was responsible for the forced disappearance of the victims identified above, thereby violating the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (c) that it had breached the general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that Convention.

1257. The Commission made the following recommendations to the Peruvian State:

1. That it carry out an exhaustive, impartial, and effective investigation to determine the circumstances of the forced disappearance of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More, and that it punish the persons responsible, in keeping with Peruvian legislation.
2. That it void any domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the detention and forced disappearance of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More. Accordingly, the State should nullify Laws 26.479 and 26.492.

3. That it adopt the measures required for the family members of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More to receive adequate and timely reparation for the violations established.

1258. In a communication received on December 10, 2010, the petitioners reported that on October 1, 2010, the First Special Criminal Chamber convicted former members of law enforcement and high-ranking government officials under the government of then President Alberto Fujimori, who were convicted of the aggravated homicide of Pedro Pablo López Gonzales, Jesús Manfredo Noriega Ríos, Carlos Martín Tarazona More, Jorge Luis Tarazona More, Roberto Barrientos Velásquez, Carlos Alberto Barrientos Velásquez, Gilmar León Velásquez, Denis Atilio Castillo Chávez and Federico Coquis Vásquez. The petitioners added that the judges in that Criminal Chamber ordered the condemned persons and the State, as a third party that bore civil liability, to pay reparations and pay for medical-psychological treatment and other forms of compensation for the pecuniary and non-pecuniary damages sustained by the victims' next of kin. The petitioners indicated that the defense counsel filed an appeal to have the verdict vacated; the Supreme Court's decision on that appeal is still pending.

1259. The petitioners asserted that the Peruvian State had not taken the measures necessary to determine the whereabouts and hand over the remains of the nine disappeared farm workers in the district of El Santa. As for the second recommendation in Report No. 111/00, the petitioners asserted that while Peru's Judicial Branch has repealed Laws Nos. 26479 and 26492, the Executive Branch has pressed for legislative measures which, if they took effect, would obstruct the investigation into serious human rights violations committed during the internal armed conflict.

1260. Throughout 2012, the petitioners remitted communications indicating that on July 20, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice had handed down judgment on appeal in the proceedings conducted to investigate on a series of crimes, including the forced disappearance of the El Santa farm workers. The petitioners pointed out the Permanent Criminal Chamber had concluded that the disappearance of the El Santa farm workers did not constitute a "crime against humanity" (*lesa humanidad*) because, although at that time there had indeed been a systematic and widespread practice of executions and disappearances, it had not been directed against the civilian population but rather at "military leaders of the Peruvian Communist Party – Sendero Luminoso and terrorists." In August 2012, the Inter-American Court of Human Rights held a hearing on this matter in its follow-up to the judgment in the Barrios Altos case and issued a resolution in September of the same year. According to information received by the IACHR, on September 27, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice annulled the verdict handed down on July 20, 2012. With that decision, a new Chamber is to be formed to hear on first appeal the criminal proceeding aimed at establishing the liability of the perpetrators and high-level government officials for the El Santa and other cases.

1261. On November 3, 2012, a working meeting on this case was held during the 146<sup>th</sup> regular session of the IACHR. At that meeting, the State indicated that it was meeting its international obligation to investigate and punish those responsible for the disappearance of the farm workers of El Santa, as a result of which the judgment handed down by the Permanent Criminal Chamber of the Supreme Court on July 20, 2012 had been voided *ex officio* by the same judicial body. For their part, the petitioners stressed that the July 20, 2012 decision illustrated a constant practice of the Permanent Criminal Chamber of issuing decisions in cases of grave human rights violations that contravened inter-American standards. The petitioners further argued that although the annulment of that decision had corrected a situation of impunity, the Supreme Court had yet to hand down a final verdict regarding the forced disappearance of the victims, even though more than 20 years had elapsed.

1262. On November 16, 2012, the IACHR asked the parties to report on progress with implementing the aforementioned recommendations. The petitioners and the Peruvian State remitted communications in which they reiterated the arguments they put forward during the working meeting of November 3, 2012. In addition, the petitioners reported that, on March 6, 2012, one of the accused, Julio

Rolando Salazar Monroe, had obtained a judgment, in the course of a *habeas corpus* proceeding, in which the Constitutional Court had ordered his removal from the criminal proceedings relating to the El Santa, Barrios Altos, and Pedro Yauri Bustamente cases. According to the petitioners, if that judgment were to be carried out, it would be tantamount to a denial of the Peruvian State's obligation to punish the aforementioned crimes appropriately. As regards financial reparation, the petitioners repeated the observations remitted in previous years, which are summarized in the section dealing with Report No. 101/01.

1263. On December 26, 2013, the State informed the IACHR, in general terms that steps had been taken to locate and exhume the victims' remains and hand them over to their next-of-kin. However, the State had not provided specific information concerning the whereabouts of the victims named in the petition. The State indicated that 2662 individual remains had reportedly been located; 1528 individuals had been identified, and 1381 remains had been handed over to the next-of-kin as of July 2013. The State also reported that the Commission on Justice and Human Rights was still examining the bills to amend the Penal Code's article on forced disappearance and that the Congress of the Republic, through the Commission on Justice and Human Rights, had scheduled the discussion to combine the three bills to adapt Article 320 of the Penal Code, which regulates forced disappearance.

1264. On September 30, 2015, the IACHR requested updated information from the parties concerning the status of compliance with the recommendations made in Report No. 111/00. The parties did not provide updated information by the IACHR's established deadline.

1265. Nonetheless and given that recommendation 3 of Report Nos. 111/00 and 101/01 is included in subparagraphs c) and d) of the joint press release signed by the IACHR and the Peruvian State on February 22, 2001, the IACHR will refer to compliance with this recommendation in the subsequent section regarding Report No. 101/01 covering both cases at the same time. The IACHR concludes that the State has not fully complied with the other recommendations and urges the State to continue to take measures toward full compliance with the recommendations.

#### **Case 10.247 et al., Report No. 101/01, Luis Miguel Pasache Vidal et al. (Peru)**

1266. In Report No. 101/01 of October 11, 2001, the IACHR concluded that the Peruvian State was responsible for: (a) violation of the right to life and to judicial guarantees and judicial protection enshrined at Articles 4, 8, and 25 of the American Convention; (b) the violation of the right to personal liberty established in Article 7 of the American Convention; (c) the violation of the right to humane treatment enshrined in Article 5 of the American Convention, and of its duty to prevent and punish torture established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; (d) the violation of the right to recognition of juridical personality enshrined in Article 3 of the Convention; and (e) the violation of the rights of the child established at Article 19 of the American Convention. All of these violations were found to the detriment of the persons indicated in the report.

1267. The Commission made the following recommendations to the Peruvian State:

1. Void any judicial decision, internal measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the summary executions and forced disappearance of the victims indicated at paragraph 252. In this regard, the State should also repeal Laws No. 26,479 and 26,492.
2. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and forced disappearances of the victims and to punish the persons responsible pursuant to Peruvian legislation.
3. Adopt the measures necessary for the victim's families to receive adequate and timely compensation for the violations established herein.
4. Accede to the Inter-American Convention on Forced Disappearance of Persons.

1268. Concerning case 10,247, APRODEH asserted that in May 2008 criminal proceedings were undertaken against Jesús Miguel Ríos Sáenz, Walter Elias Lauri Morales or Walter Elias Ruiz Miyasato and Máximo Augusto Agustín Mantilla Campos, for the kidnapping and aggravated homicide of Luis Miguel Pasache Vidal. According to what was reported, the examining phase has ended and the decision of the Superior Prosecutor is pending. As for case 11,501, APRODEH reported that on June 2, 2010, the National Criminal Chamber delivered a verdict of acquittal in favor of Santiago Enrique Martín Rivas and reserved judgment with respect to Eudes Najarro Gamboa until he is found. These individuals were tried for the aggravated homicide of Adrián Medina Puma. According to what was reported, the Public Prosecutor's Office filed an appeal to challenge the June 2, 2010 verdict of the National Criminal Chamber.

1269. In case 11,680, APRODEH reported that on January 31, 2008, defendant José Alberto Delgado Bejarano was acquitted of the aggravated homicide of Moisés Carbajal Quispe, and that the verdict was upheld by the Transitory Criminal Chamber of the Supreme Court. As for case 11,132, it reported that the forced disappearance of Edith Galván Montero was still being investigated by the Fourth Supra-provincial Criminal Prosecutor's Office.

1270. The IACHR has not received updated information on compliance with the second recommendation made in report 10/01 with respect to the following cases covered therein – 10.472, 10.805, 10.913, 10.947, 10.944, 11.035, 11.057, 11.065, 11.088, 11.161, 11.292, 10.564, 10.744, 11.040, 11.126, 11.179, 10.431, 10.523, 11.064 and 11.200.

1271. Regarding the first recommendation of report 101/01, APRODEH expressed that even though the Judicial Branch of Peru has declared that Laws No. 26479 and 26492 have no effect, the Executive Branch has promoted legislative measures that would hinder the investigation of serious violations of human rights perpetrated during the internal armed conflict.

1272. Regarding the third recommendation, the Commission notes that the cases referred to in Report Nos. 111/00 and 101/01 are included in sections c) and d) of the joint press release that the Commission and the Peruvian State signed on February 22, 2001, in which Peru undertook a formal commitment to find comprehensive solutions to the recommendations issued by the Commission on the more than 100 final merits reports adopted pursuant to articles 50 and 51 of the American Convention on Human Rights.<sup>111</sup>

1273. The petitioners observed during 2010 that despite the obligations undertaken in that joint press release and the provisions of Law No. 28592 "Law on the Comprehensive Reparations Plan," thus far no reparations had been paid. They observed that while Supreme Decree No. 005-2002-JUS of April 2003 regulated some forms of non-monetary reparations in the area of housing, education and health, the Peruvian State had not even identified the plot of land that could be given to the next of kin of the victims in cases 10.805, 10.913, 11.035, 11.605, 11.680, 10.564, 11.162, 11.179 and 10.523.

1274. The petitioners indicated that back in 2003, the Ministry of Justice granted a plot of land in the Huachipa sector, in the district of Lurigancho, province and department of Lima, to be turned over to 200 victims or their next of kin, in some of the cases mentioned in the February 22, 2001 joint press release. They include cases 10.247, 10.472, 10.878, 10.994, 11.051, 11.088, 11.161, 11.292, 10.744, 11.040, 11.126, 11.132, 10.431, 11.064 and 11.200, all of which are included under Report 101/01. They emphasized, however, that the Peruvian State had not taken steps to legalize occupation and property title to the lots on the land in question. They went on to point out that because of this, some beneficiaries had set up crude dwelling places that had no access to basic sanitation services; they lived under the constant threat of looting and third-party property takeovers.

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<sup>111</sup> See <http://www.cidh.oas.org/Comunicados/English/2001/Peru.htm>.

1275. According to the petitioners, the Ministry of Justice has made final handover of the property conditional upon a risk evaluation, because an Army weapons factory adjacent to the property has resumed operations. However, they observed that in Memorandum No. 709-2010-MML/SGDC, the Office of the Deputy Manager of Civil Defense of the Lima Metropolitan Municipality reported that the Huachipa property is approved for housing construction, and there should be no impediment to giving the 200 beneficiaries title to the lots.

1276. Finally, with regard to the fourth recommendation in Report 101/01, the Inter-American Convention on Forced Disappearance of Persons was ratified on February 8, 2002, and entered into force in Peru on February 13 of that same year.

1277. During 2011, the State submitted information regarding the measures adopted in the areas of housing, education, and health. Regarding the housing reparations, the State indicated that Supreme Decree No. 014-2006-JUS authorized the Ministry of Justice to take the actions needed to effect the transfer free of charge of 50% of the land called Sublot No. 01, located on Central Avenue, town of Huachipa, district of Lurigancho, province and department of Lima. The State indicated that at the meeting held during the 141st Regular Session of the IACHR, commitments were made to: 1) approve without further delay the Supreme Decree transferring ownership of the plots of land in Huachipa to the 200 victims benefiting from this measure; 2) report to the Commission within a period of two months on the measures that the State takes to identify possible lands for housing reparations with respect to the other 307 victims who have not been served. It also reported that on April 5, 2011, the Ministry of Justice submitted information regarding the transfer of ownership of Lot 1-B as well as the need to resolve some unexpected developments.

1278. Regarding the reparations in terms of education, the State reported that Supreme Decree No. 038-2002-ED of November 13, 2002 ordered exempting the victims or relatives included in Supreme Decree No. 005-2002-JUS from the entry examination for public Higher Education Institutes in Technology, Teaching, and the Arts at the national level, provided they have certificates indicating completion of Secondary Education. In addition, the State indicated that during the working meeting held during the 141st Regular Session of the IACHR a commitment was made to introduce the educational points agreed to in Supreme Decree No. 005-2002-JUS, regarding the reparations program, and that they are designed: 1) to extend the status of beneficiary in education to the children of the victims who have died or disappeared, and the children resulting from rape, who did not necessarily interrupt their studies as a result of the violence; and 2) to establish as components of the program: vacancy set-asides, decentralized scholarship program, special ongoing training program, and refresher plan for promoting inclusion in the workforce and development of business skills. In this respect, the State reported that it will provide public universities and higher technology and teaching institutes with the database of the Single Registry of Victims and the list of cases included in the Joint Communiqué of February 22, 2001.

1279. Regarding reparations in the area of health, the State reported that Administrative Resolution No. 082-2003/SIS incorporated the victims of human rights violations and their relatives as recognized by the IACHR in the Comprehensive Health Insurance System (SIS). It indicated that to date the Ministry of Health reports a total of 191 beneficiaries enrolled in the SIS and 68 beneficiaries enrolled with some other type of insurance. It stated that the Memorandum of Understanding of March 29, 2011, signed during the 141st regular session of the IACHR, agreed that the State, through the Ministry of Health, will issue a letter within no more than two months certifying lifetime affiliation with the SIS for each of the beneficiaries, to ensure that the beneficiaries do not encounter any obstacles when proving their affiliation with the SIS.

1280. In a communication dated November 22, 2011, the petitioners reported that although they acknowledge some progress made regarding the commitments assumed by the State in the Memorandum of Understanding signed during the 141st Regular Session of the IACHR, they are deeply concerned that so far the State has not implemented the previously announced measures regarding reparations in terms of housing, as well as some aspects concerning economic reparations in the area of health and education.

1281. In a communication on December 20, 2012, the State reported that the victims' relatives were covered by the Comprehensive Health Insurance System (SIS) and had universal access to health care services in the centers corresponding to their address. As regards reparation in the form of housing, it stated that " progress is being made with implementing the reparation [corresponding] to two hundred (200) beneficiaries, of the total number of victims covered by Supreme Decree N° 005-2002-JUS, or their legal heirs, as the case may be, pursuant to Article 3 of Supreme Decree N° 014-2006-JUS. As for financial reparation, Peru said that the intention was to pay 10,000 new soles for each victim mentioned in the press release of February 22, 2001, adding that "all the relevant steps are being taken to comply with that decision."

1282. The petitioners did not present up-to-date information in the time allowed by the IACHR. Nevertheless, given that recommendation 3 of Reports No. 111/00, No. 101/01, and 112/00 are included in paragraphs c) and d) of the joint press release issued by the IACHR and the Peruvian State on February 22, 2001, the IACHR will take information thereon submitted by the petitioners in 2012 in account. That information from the petitioners dealt with the following: justice, housing, education, and health care.

1283. Regarding actions taken by the State to investigate and punish the alleged perpetrators, the petitioners voiced their concern regarding Plenary Agreement (*Acuerdo Plenario*) No. 9/2009 of the Supreme Court of the Republic of Peru, which requires that the alleged perpetrators of forced disappearances must be government officials at the time that crime is formally defined in Peruvian legislation in 1991.

1284. Regarding reparation in the form of health care, the petitioners reported that in this period new problems had arisen because of interventions by the Household Targeting System (Sistema de Focalización de Hogares –SISFOH), which is the entity reporting to the Ministry of Social Inclusion that certifies or does not certify the poverty or extreme poverty status of persons applying for membership of the cost-free SIS, and which had rejected the affiliation of some of the victims' next of kin. The petitioners indicated that the State should include the category of "person affected by political violence" so as to avoid these kinds of problems.

1285. With respect to reparation in the form of educational facilities, the petitioners reported that one of the beneficiaries' requests was the right to transfer the education benefit to a relative, a demand supported by the Ombudsman's Office (*Defensoría del Pueblo*) but not yet met by the State. With regard to reparation in the form of housing, the petitioners reported that, while the State had taken some steps that would benefit 200 of the 507 victims included in paragraphs "c" and "d" of the joint press release, no definition had yet been reached regarding measures that would effectively benefit the remaining victims. They pointed out that, in June 2012, the Metropolitan Municipality of Lima had issued a risk assessment report lowering very high-risk status to average-risk status. They reported that the victims and their relatives were feeling overwhelmed and very disappointed by the excessive delay in the State's compliance with its commitment to transfer ownership of the plots of land, which many of them were occupying despite the lack of basic services and security in that area.

1286. As for financial reparation, the petitioners reported that there had been problems for some victims and their relatives in getting listed in the Register of Victims (Registro Único de Víctimas - RUV), which was a prerequisite for benefiting under the financial reparation program. They pointed out that, apart from the disqualifications established in Article 4 of the Reparations Law, only those accrediting permanent disability as a result of torture would benefit from financial reparation, but not those persons who had been forcibly disappeared and later turned up alive.

1287. With regard to housing-related reparation, the petitioners reported that as of the present date the State has not approved the Supreme Decree authorizing the transfer of ownership of the land located in Huachipa. They also claimed that the State has not reported to them on efforts made to locate similar parcels of land for the victims and/or next-of-kin, which are not included in the parcel of land of Huachipa. Regarding reparation in the form of health care, the petitioners noted that the State has not informed them as to whether it had taken certain steps to address the difficulties related to the process of applying for membership of the cost-free SIS, or the shortcomings in care for the beneficiaries of this measure, which were noted in previous years. With regard to measures of financial reparation, the petitioners contended that even



though the State has been paying compensation under Full Reparation Plan Law No. 28593, some victims and/or next-of-kin thereof are unable to be included under the scope of that law and, therefore, the State must take specific measures of financial reparation, outside of the purview of the aforementioned law. Lastly, with respect to reparation in the area of education, the petitioners claimed that even though they had submitted to the State a roster of names and contact information of the beneficiaries of this reparation, the State has not apprised them as of the present date about what steps it has taken in this regard, nor have they received any reply to the request they made involving the ability to transfer this benefit to another family member.

1288. On December 27, 2013, the Peruvian State reported that the bills to criminalize forced disappearance in accordance with international human rights law, international humanitarian law and international criminal law are still under study. It also detailed the procedural aspects of the respective processes.

1289. On September 30, 2015, the IACHR requested updated information from the parties. However, the petitioners did not provide updated information within the deadline set by the IACHR.

1290. On November 9, 2015, the State indicated in relation to the commitment to carry out a thorough, impartial and effective investigation, that there is a pending criminal trial for the kidnapping and subsequent murder of Luis Miguel Pasache Vidal, which at the stage of trial which resumed on February 26, 2015.

1291. The Commission appreciates the measures adopted by the State to comply with the recommendations made in Report Nos. 111/00 and N<sup>o</sup> 101/01. At the same time, it notes that there are measures that are pending compliance. Based on the above, the Commission concludes that there has been partial compliance with the recommendations, so that it will continue to monitor the pending items.

#### **Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru)**

1292. In Report No. 112/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police detained Mr. Yone Cruz Ocalio on February 24, 1991, at the agricultural station of Tulumayo, Aucayacu, province of Leoncio Prado, department of Huánuco, Peru, from where they were taken to the Military Base of Tulumayo, and subsequently proceeded to disappear him; (b) that as a consequence it was responsible for the forced disappearance of Mr. Yone Cruz Ocalio; (c) that it therefore violated the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (d) that it breached its general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that instrument.

1293. The Commission made the following recommendations to the State:

1. That it carry out an exhaustive, impartial, and effective investigation to determine the circumstances of the forced disappearance of Mr. Yone Cruz Ocalio, and that it punish the persons responsible, in keeping with Peruvian legislation.
2. That it void any domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the detention and forced disappearance of Mr. Yone Cruz Ocalio. Accordingly, the State should nullify Laws 26.479 and 26.492.
3. That it adopt the measures required for the family members of Mr. Yone Cruz Ocalio to receive adequate and timely reparation for the violations established herein.

1294. The State, by communication of December 5, 2008, reported, regarding the investigation into the facts, that by resolution of October 25, 2002, the Specialized Prosecutor on Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Mass Graves ruled to remove to the Mixed Provincial Prosecutor's Office of Aucayacu the matters in the records that include, as persons injured, Yone Cruz Ocalio, among others. It indicated that by Resolution of the Mixed Provincial Prosecutor's Office of Leoncio Prado-Aucayacu of August 9, 2004, the Prosecutor considered that it was pertinent to gather more information regarding the alleged commission of the crime of kidnapping of Mr. Cruz Ocalio and decided to order various investigative measures.

1295. Concerning the second recommendation, the Peruvian State has repeatedly observed that its institutions have a practice, based on the judgment of the Inter-American Court of Human Rights in the *Barrios Altos Case*, which is that amnesties cannot be invoked as grounds for contesting investigations undertaken to identify and punish those responsible for human rights violations.

1296. On November 16, 2002, the IACHR asked the parties to report on progress made with implementing the aforementioned recommendations. The petitioners did not reply in the time allowed. On December 20, 2012, the State presented a report describing the steps it has been taking to make reparation. That report reiterates the information submitted in the other cases covered by the joint press release of February 22, 2001, which is summarized in the Commission's follow-up to Cases 10.247 et al [sic], Report No. 101/01, Luis Miguel Pasache Vidal et al. (Peru).

1297. On February 2, 2014, the State reported that the Criminal Code in force establishes the crime of forced disappearance; it acknowledges, however, that the legal provision must be adjusted to conform to the obligations arising from treaties and international law. It goes on to report that the Congress of the Republic is discussing proposed legislative reforms on the subject of forced disappearance and that three legislative bills -1406/2012 CR, 1615/2012 CR and 1687/2012 CR- have been introduced to that end, the first intended to amend Article 320 of the Penal Code, the second to propose a Law on Crimes in Violation of International Human Rights Law and International Humanitarian Law and the third to add a chapter to the Penal Code.

1298. On September 30, 2015, the IACHR asked the parties to provide updated information. However, neither the State nor the petitioners supplied updated information within the time frame established by the IACHR.

1299. The State, for its part, reiterated November 9, 2015, that to this date it has not been possible to locate the remains of Yony Cruz Ocalio, and continues in the search, for which has made a preliminary archaeological forensic inspection in the vicinity of Aucuyacu, where a mass grave was found, to establish the feasibility of the exhumation. In this regard, the Commission would be awaiting additional information on the results of the preliminary inspection and determination of DNA evidence and other forms of identification of those remains.

1300. The Commission therefore concludes that the State has only partially complied with the recommendations contained in the report and will continue to monitor for compliance with the pending items.

#### **Case 12.191, Report No. 71/03, María Mamérita Mestanza (Peru)**

1301. This case concerns the forced sterilization of Maria Mamérita Mestanza in a surgical procedure that ultimately caused her death, and the subsequent failure to investigate and punish those responsible for what occurred. On October 10, 2003, by Report No. 71/03, the Commission approved a friendly settlement agreement in the case of María Mamérita Mestanza.

1302. The friendly settlement agreement approved by the Commission has the following sections: 1) Background; 2) Acknowledgment of liability; 3) Investigation; 4) Reparation; 5) Exclusion from the agreement of the right to compensatory damages chargeable to the criminally liable parties; 6) the State's

right to recovery (*derecho de repetición*); 7) Exemption from taxes; 8) Health care entitlements; 9) Educational entitlements; 10) Other entitlements; 11) Amendments to laws and public policies; and other clauses relating to the legal framework, interpretations, acceptance, and official confirmation (*homologación*). Following is the corresponding list of substantive commitment clauses and the extent of compliance with each of them:

Commitments established in the friendly settlement agreement approved in Report No. 71/03	Status of compliance
<b>THIRD: INVESTIGATION AND PUNISHMENT</b>	
<p>The Peruvian State commits to carrying out an exhaustive investigation into what happened and to applying the punishments provided for by law against anyone determined to have participated in the facts of the case, as instigator, perpetrator, accessory, or in any other capacity, even though he or she be a government official or public servant, civilian or military. Accordingly, the Peruvian State commits to conducting administrative and criminal investigations into assaults on personal liberty, life, the body, and health and, where applicable, to punish:</p> <p>a. Those responsible for acts violating Mrs. María Mamérita Mestanza Chávez's right to free consent to being subjected to sterilization through tubal ligation;</p> <p>b. The health care personnel who neglected the request for urgent care for Mrs. Mestanza following the surgical procedure;</p> <p>c. Those responsible for the death of Mrs. María Mamérita Mestanza Chávez.;</p> <p>d. The doctors who gave money to the spouse of the deceased in order to cover up the circumstances surrounding her death;</p> <p>e. The Investigative Committee, appointed by the Ministry of Health's Cajamarca Sub-Region IV, which, questionably, concluded that the health personnel who attended to Mrs. Mestanza bore no responsibility for what happened.</p> <p>Without prejudice to administrative and criminal penalties, the Peruvian State commits to informing the Professional Association concerned of any ethical violations committed in order for it to proceed, pursuant to its Statutes, to punish the medical personnel involved in the aforementioned acts.</p> <p>Likewise, the State undertakes to conduct administrative and criminal investigations into the part played by representatives of the Public Prosecution Service (<i>Ministerio Público</i>) and the Judiciary, who neglected to take steps to throw light on the deeds denounced by the widower of Mrs. Mamérita Mestanza.</p>	<p><b>IN THE PROCESS OF BEING IMPLEMENTED</b></p>
<b>FOURTH: COMPENSATION<sup>112</sup></b>	

<sup>112</sup> According to the text of the Agreement, the Peruvian State recognizes the following as the sole beneficiaries of any indemnification: Jacinto Salazar Suárez, husband of María Mamérita Mestanza Chávez and her children: Pascuala Salazar Mestanza, Maribel Salazar Mestanza, Alindor Salazar Mestanza, Napoleón Salazar Mestanza, Amancio Salazar Mestanza, Delia Salazar Mestanza, and Almanzor Salazar Mestanza

<p>a. Moral prejudice: The Peruvian State grants each of the beneficiaries a one-time compensation of US\$10,000.00, as reparation for moral prejudice: US\$80,000.00 in all.</p> <p>In the case of the minors, the State will deposit the corresponding sum in a trust fund on the most favorable terms offered by the banking system. The procedures shall be performed jointly with the legal representatives of the Salazar Mestanza family.</p> <p>b. Consequential damages: Damages arising as a direct consequence of the prejudicial act comprise the expenses incurred by the family as a direct consequence of what happened. These expenses were those involved in submitting and following up on the criminal complaint filed with the Public Prosecution Service on account of culpable homicide to the detriment of María Mamérita Mestanza, plus the amount spent on Mrs. Mestanza's wake and burial. The sums involved in these expenses amount to US\$2,000.00, which the State should pay back to the beneficiaries.</p>	<p><b>IMPLEMENTED IN FULL</b></p>
<p><b>EIGHTH HEALTH ENTITLEMENTS</b></p>	
<p>The Peruvian State commits to granting the beneficiaries a one-time payment of US\$7,000.00 to cover the cost of the psychological rehabilitation needed by the beneficiaries as a result of the death of Mrs. María Mamérita Mestanza Chávez. [...]</p> <p>The Peruvian State likewise commits to providing the widower and children of María Mamérita Mestanza Chávez with health insurance through the Ministry of Health or competent entity. In the case of the surviving spouse, the health insurance policy will be granted for life. In the case of the children, it shall be granted until such time as they have public and/or private health insurance.</p>	<p><b>IN THE PROCESS OF BEING IMPLEMENTED</b></p>
<p><b>NINTH: EDUCATIONAL ENTITLEMENTS</b></p>	
<p>The Peruvian State commits to providing the children of the victim with cost-free primary and secondary school education, in state schools. As regards higher education, the children of the victim will receive a cost-free education at State-run higher education establishments, provided that they meet those establishments' entry requirements and for one degree only.</p>	<p><b>IN THE PROCESS OF BEING IMPLEMENTED</b></p>
<p><b>TENTH: OTHER ENTITLEMENTS</b></p>	
<p>The Peruvian State commits in addition to paying US\$20,000.00 more to Mr. Jacinto Salazar Suárez to buy a plot of land or house under the name of the children he had with Mrs. María Mamérita Mestanza. [...]</p>	<p><b>IMPLEMENTED IN FULL</b></p>
<p><b>ELEVENTH: AMENDMENTS TO LAWS AND PUBLIC POLICIES RELATING TO REPRODUCTIVE HEALTH AND FAMILY PLANNING</b></p>	
<p>The Peruvian State undertakes to amend laws and public policies relating to reproductive health and family planning in such a way as to rid them of any discriminatory bias and to ensure that they respect women's autonomy.</p> <p>Likewise, the Peruvian State commits to adopting and implementing the recommendations made by the Ombudsperson's Office regarding public policies on reproductive health and family planning, including the following:</p> <p>a. <i>Measures to punish those responsible for violations and reparation for victims</i></p> <p>1) Conduct a judicial review of all criminal proceedings relating to human rights violations committed during implementation of the National Reproductive Health and Family Planning Program, with a view to identifying and duly punishing</p>	<p><b>IN THE PROCESS OF BEING IMPLEMENTED</b></p>

those responsible and making them, in addition, pay appropriate compensation. That applies also to the State for any responsibility it might be shown to have incurred in the matters addressed in the criminal proceedings.

2) Review the administrative proceedings related to the foregoing paragraph initiated by the victims and/or family members that are being processed or have concluded, with respect to complaints of human rights violations.

*b. Measures to monitor and guarantee observance of the human rights of the users of health care services*

1) Adopt drastic measures against those responsible for deficient pre-operative evaluation of women who submit to contraceptive procedures: a conduct observed among health professionals in some health centers in the country. Even though the Family Planning Program does require evaluation, it is not always performed.

2) Constantly conduct qualified training courses for health care personnel on reproductive rights, violence against women, domestic violence, human rights, and gender equity, in coordination with civil society organizations specializing in these fields.

3) Adopt the administrative measures needed to ensure that health care personnel comply fully with the formalities governing strict observance of the right to informed consent.

4) Guarantee that centers performing surgical sterilization procedures do so in appropriate conditions and according to the standards required by the family Planning Program.

5) Adopt strict measures to ensure that the mandatory reflection period of 72 hours is always scrupulously observed.

6) Adopt drastic measures against those who perform forced sterilizations without consent.

7) Put in place mechanisms or channels for receiving and swiftly and efficiently processing complaints of human rights violations in health facilities, in order to prevent harm or make reparation for harm done.

1303. In its 2014 Annual Report, the IACHR decided to consider that the tenth clause on other entitlements had been implemented.<sup>113</sup> In that same Report, it considered that the financial compensation clause had been partially implemented, because it found that access to the trust fund was still pending for one of the victim's children who were still a minor. However, on February 27 the petitioners wrote to say that they considered that this point had been fully complied with, so that the IACHR avails itself of this opportunity to declare it implemented.

*Clause Three on investigation and punishment of those responsible for the death of Maria Mamérita Mestanza and Clause 11.a. 1 and 2 on judicial review of all criminal proceedings regarding human*

<sup>113</sup> See IACHR, 2014 Annual Report, Chapter II, Section D: Status of Compliance with IACHR Recommendations, para. 1152.

*rights violations committed during execution of the National Reproductive Health and Family Planning Program.*<sup>114</sup>

1304. The State reported in the past that the Permanent Commission on disciplinary measures of the Regional Bureau of Cajamarca, on January 9, 2001, had established that two physicians were disqualified and that on January 18, 2001, one physician-obstetrician, two obstetricians, and one nurse were acquitted. On October 21, 2011 the Office of the Public Prosecutor ordered the reopening of the investigation regarding the forced sterilization of María Mamérita Mestanza and thousands of other women during the second half of the 1990s. Upon the conclusion of the 143rd Session, the IACHR welcomed the decision of the Prosecutor's Office and indicated that it represents an initial and important step in "the State's commitment to carry out a thorough investigation of the facts and apply legal sanctions against those who were responsible, including public officials."

1305. In a brief dated December 26, 2014, the petitioners complained that on January 22, 2014, a resolution was issued declaring that there were no grounds to bring a criminal complaint against a number of authorities who had allegedly conducted the National Reproductive Health and Family Planning Program. The resolution also reportedly declared that the criminal complaint brought against various physicians involved in the facts specifically related to the case of María Mestanza, was without merit and at the same time brought a complaint against two health officials, a "serumista" [a person serving in the Health Ministry's "Rural Medical Service" (Servicio Rural Medico) in order to meet the requirements necessary to become a professional], and two medical examiners alleged to be responsible for the death of María Mestanza. The petitioners filed a complaint on January 28, 2014, alleging that the acts committed against María Mestanza constituted a crime against humanity and that the political authorities at the time bear command responsibility. In their complaint, the petitioners also detailed a number of procedural irregularities.

1306. On October 21, 2015, the parties held a working meeting held by the Commission within its 156th regular session. During that working meeting, the petitioning part indicated that it had noted positive developments, such as the reopening of criminal investigations into human rights violations committed during execution of the National Reproductive Health and Family Planning Program and involving more than 2,000 victims. At the same time, it voiced its concern regarding compliance with reparation measures under the agreement. For its part, the State said that under the friendly settlement agreement its obligation to conduct criminal investigations was limited to the facts concerning María Merita Mestanza.

1307. On February 27, the petitioners pointed out that remedy of complaint filed against the resolution of the Second Supra Provincial Criminal Prosecutor's Office of Lima of January 22, 2014, which shelved the investigation into thousands of cases of forced sterilization, had still to be reviewed at that time. The petitioners further considered that not all those involved in the facts of the case had been included in the criminal proceedings, including those who carried out the surgical procedure and those who neglected to provide post-operative care, and others. The petitioners also considered that the State had an obligation to make reparation to all the victims of forced sterilizations, "regardless of the judicial proceedings."

1308. In its written statement of November 11, 2015 on follow-up, the State reiterated that compliance with the investigation was limited solely to the case of María Mamérita Mestanza and that the agreement does not envisage extending it to include other people. Nevertheless, the State reported that on August 6, 2015, an order had been issued to declare the case "complicated" and to extend the preliminary investigation for 180 days in order to carry out procedures and conduct inquiries ordered by higher authorities, including scheduling the taking of statements from the injured parties once their addresses had been ascertained. In addition, documentation was requested from persons who had participated in Voluntary Surgical Contraception activities under the National Reproduction and Family Planning program between 1995 and 2005. The taking of statements was scheduled to take place between August 31, 2015 and

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<sup>114</sup> This Clause will be analyzed jointly do to the accumulation of the Case of María Mamerita Mestanza and the investigation on forced sterilizations of 2002.

September 11, 2015, followed by a period for verifying victim status claims between September 27, 2015 and October 7, 2015.

1309. The IACHR greatly appreciates the information provided by the parties and notes that progress has been made toward complying with the commitment entered into by the State in the friendly settlement agreement. The IACHR was also made aware of the issuance of the Supreme Decree declaring it to be in the national interest to provide priority care to the victims of forced sterilizations carried out between 1995 and 2001 and establishing the corresponding registry. The IACHR welcomes this measure, which demonstrates the State's commitment to continue progressing toward full implementation of these investigation clauses.

1310. The IACHR is awaiting further information from the parties regarding this aspect of the agreement.

*Clause Eight: health care entitlements*

1311. Concerning Clause Eight of the Agreement, on health care entitlements, the IACHR considered that it had been partially implemented inasmuch as the financial component had been paid, but that there had been problems resulting from the linking of that component with the requirement to provide health insurance for family members of the victim. On this matter, the parties signed a document during the working meeting in November 2014 in which the State undertook to provide certification that the family members had been affiliated to the insurance system (SIS).

1312. The petitioners insisted on February 27, 2015 that they had not yet received those certificates from the State. For its part, in a report dated November 11, 2015, the State indicated that it stood by its position that the commitment had been fully complied with and that it was up to domestic mechanisms to monitor the proper working of the health insurance arrangement, "otherwise a situation might arise in which that element would be monitored indefinitely." On this matter, the IACHR considers that the State has made progress toward implementing this section of the clause by registering the beneficiaries in the SIS. Nevertheless, it reiterates that the State needs to provide certification of affiliation for a final assessment to be made of compliance with this part of the clause, particularly since the State itself committed to providing it at the working meeting held in November 2014, as recorded in minutes kept in the file on the case. In light of the above, the IACHR reiterates that the clause has been partially implemented.

*Clause Nine: educational entitlements*

1313. As regards the clause on educational entitlements, the petitioners have stated in written communications and at working meetings with the IACHR that the State has not guaranteed access to education for the beneficiaries of the agreement, particularly since there are no educational establishments at the level needed in the area where they live. Thus, at the last working meeting in connection with the 153rd session of the IACHR, the petitioners suggested the possibility of the State supporting them by defraying transfer, maintenance, and housing costs to enable them to live in a district with an appropriate educational establishment, or else defraying the daily transportation costs of getting to the right school and accessing the educational services promised in the agreement.

1314. At the working meeting on November 14, 2015, the State undertook to call upon the Ministry of Education to grant scholarships to children of the victim wishing to study. On this matter, the State reported, on November 11, 2015, that the parties had held a working meeting in the country in July 2015 to discuss various ways of gaining access to education and the possibility of obtaining a scholarship to complete the beneficiaries' studies.

1315. According to information provided by the parties, only two of the victim's children wish to continue their studies: Napoleón Salazar Mestanza and Almanzor Salazar Mestanza. The Commission is awaiting further information regarding the concrete measures explored and progress toward implementation for these two persons. For example, in its written statement on follow-up, the State indicated that Almanzor

Salazar Mestanza was in fourth grade at secondary school and that once he completed the basic education program he could receive a scholarship to go to university or other institute of higher education.

1316. At the same time, the petitioner stated that the right of Maria Mamérita Mestanza's other children to obtain reparation in the form of education should be safeguarded, because, due to the time that had elapsed and the State's failure to act, they had not been able to study earlier. For its part, the State pointed out that the victim's other children could access education in the form of alternative basic education imparted by CEBA or CETPROS in evening classes or at weekends. The IACHR takes note of the positions of the parties and considers that, since the friendly settlement agreement is based on the willingness of the parties, this issue should be handled by the parties directly with the victims.<sup>115</sup> The IACHR awaits any information the parties can provide on this matter during the monitoring process for this case.

*Clause eleventh b) Measures of monitoring and guaranty of respect of human rights of the users of health service*

1317. Regarding this clause, the petitioners have maintained in their submissions of December 26, 2014 and February 27, 2015, that this issue is still pending for compliance, and that the appropriate measure to be taken in order to comply with this point of the agreement is the modification of the Peruvian criminal law, to specifically criminalize forced sterilization. Here, the petitioners have argued that the Peruvian State needs to adapt its Criminal Code to the Statute of the International Criminal Court so that events such as those that claimed María Mamérita Mestanza and thousands of other Peruvians as victims could be classified as crimes against humanity.

1318. For its part, in its written statement of November 11, 2015, the State pointed out, in relation to legislative amendments, that the idea of amending criminal legislation to align it with the Rome Statute pertains to the petitioners and is based solely on a subjective interpretation regarding the text of the commitment made in the agreement. The State, on the other hand, requests that this point be declared implemented based on the progress made with the National Sexual and Reproductive Health Strategy in the sense that a succession of norms have been issued on the subject.

1319. The IACHR notes that Clause Eleven contains a series of components relating both to amendments to laws and public policies with respect to Reproductive Health and Family Planning and to implementation of the recommendations made by the Office of the Ombudsperson concerning public policies on Reproductive Health and Family Planning. On this, while the IACHR acknowledges some progress, it lacks sufficient information to be able to conclude that the clause has been fully complied with. In light of the above, the IACHR awaits a comprehensive information and summary report by the State, containing data that supplement the information presented on July 15, 2015 in its Report No. 77-2015-JUS/PPES on specific actions taken to comply with all the numbered sections b.1, 2, 3, 4, 5, 6, and 7, in order to assess compliance and conclude its assessment of all applicable components.

1320. The Commission appreciates the steps taken by the State to comply with the commitments undertaken in the Friendly Settlement Agreement. At the same time, it notes that with respect to some measures compliance is still pending. Therefore, the Commission concludes that there has been partial compliance with the friendly settlement. Accordingly, the Commission will continue to monitor the pending points.

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<sup>115</sup> See I/A Court H.R., Case Valle Jaramillo y Otros, vs. Colombia, Judgment of July 7, 2009, Interpretation of the Judgment on the Merits, Reparations and Costs, para. 33-40; and I/A Court H.R., Resolution of May 15, 2011, Case Valle Jaramillo vs. Colombia. Monitoring Compliance with Judgment, párr. 4-10.



**Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru)**

1321. This case concerns the failure to enforce a ruling ordering the victim's reinstatement in the Peruvian National Police. On March 11, 2004, by Report No. 31/04, the Commission approved an agreement in the case of Ricardo Semoza Di Carlo.

1322. According to the agreement, the State:

1. Acknowledged its responsibility for violation of Articles 1(1) and 25 of the American Convention on Human Rights, to the detriment of Ricardo Semoza di Carlo.
2. Granted the following benefits to the petitioner as compensation: a) recognition of the time that he was arbitrarily separated from the institution; b) immediate reinstatement in the Superior School of the National Police of Peru (ESUPOL); c) regularization of pension rights, as of the date of his reinstatement, taking into account the new calculation of his time in service; d) refund of the officers' retirement insurance (FOSEROF, AMOF etc.); and e) a public ceremony will be held.
3. Pledged to undertake an exhaustive investigation of the facts and will prosecute any person found to have participated in the deeds of this case, for which an Ad Hoc Commission will be established by the Office of International Affairs and the Legal Advisory Services of the Ministry of the Interior.

1323. By communication received on December 13, 2007, the petitioner reported that even though the State recognized the time of service during which he was separated from active duty as "real, effective, and uninterrupted," a series of benefits that derive from that recognition have yet to be implemented. Specifically, Mr. Semoza Di Carlo indicated on that occasion that repayment for fuel has not been made; with the regularization of his pension payments; with the regularization of his contributions to the Officers Retirement Insurance Fund; with the holding of the ceremony of reparation; and with the investigation and punishment of the persons responsible for failure to carry out the judicial orders handed down to protect his rights that had been violated. Finally, the petitioner mentioned that the failure to carry out the agreement in those respects indicated have caused moral injury to him personally and to his family, as well as actual damages and lost profit.

1324. According to 2005 report No. 011 on the refund of the officers' retirement insurance (FOSEROF), the Payments Department had calculated the amounts owed to the petitioner and had summoned him to inform him of the amount he was due; however, he did not make an appearance to be so informed. The State supplied certain documents containing FOSEROF-related figures and rulings, including Supreme Decree No. 009-85 ordering payment of 475,460,915 soles on October 25, 1990.

1325. The State, by means of note 7-5-M/828 received on December 14, 2009, pointed out that, as a result of Directorate Resolution No. 735-2006-DIRREHUM-PNP of January 20, 2006, Major Semoza's real and effective time of service in the Police Force was recognized and, as a result, his renewable retirement pay equivalent to the rank immediately above his own was granted; as of October 2005 the victim was granted a nonpensionable fuel subsidy; and, on February 8, 2006, the Commissioner of Surquillo ordered that the petitioner be notified to schedule the ceremony of public apologies, which according to the State the petitioner refused.

1326. In a note received on December 10, 2010, the State again reported that the Peruvian National Police has already regularized the pension rights and granted Mr. Semoza Di Carlo a renewable pension; he was also reinstated at the National Police School of Advanced Studies. It has been unable to comply with its commitment to stage a public ceremony to make apologies because the petitioner is not interested, despite the invitations sent by the appropriate office of Peru's National Police. As for the other commitments, the State observed that it will send additional information to the Commission as soon as possible.

1327. Over the course of 2011, the State indicated that the General Director of the Ministry of the Interior's Office of Internal [sic] Affairs issued Ministerial Resolution No. 0217-2010-IN, dated March 9, 2010, setting up the Ad Hoc Commission charged with identifying and establishing the responsibilities of the officials who failed to enforce the judicial mandate in favor of Mr. Ricardo Semoza Di Carlo on a timely basis. It noted that in a resolution dated January 15, 2004 the National Police of Peru assigned a vacancy to Major Ricardo Semoza Di Carlo as a participant in a master's and social sciences program for academic year 2004. It added that on February 25, 2005 he was granted a diploma as a Staff Officer after having completed that program satisfactorily. The State supplied the documentation attesting to the petitioner's reinstatement to complete the training program. Based on that information, the State maintained that it has complied with the agreement with respect to immediate reinstatement to the Superior School of the National Police of Peru. The petitioner has not contested the matter of his reinstatement. The Commission therefore deems that the State has complied with point 2.b of the agreement.

1328. The State also presented information from communications sent to the petitioner on March 15 and 19, 2010, to organize the public apology ceremony for a second time. However, it asserts that it did not receive an affirmative response from the petitioner. Hence, the State has reported that this public apology clause could not be carried out owing to the petitioner's disregard of the various invitations and contacts initiated by the State.

1329. For his part, by a communication dated May 23, 2011, the petitioner indicated that the State had complied with point 2 of the agreement, as it had recognized the petitioner's time of service in the National Police, regularization of his pension rights, the grant of a renewable pension equivalent to the immediately higher rank and reinstatement in the Superior School of the National Police of Peru. In that same communication, the petitioner indicated that he had not received the notifications for the public apology ceremonies.

1330. Regarding the Ad Hoc Commission, in a communication dated August 31, 2011, the State reported that two officials serving on the Commission had to be replaced and that work had gotten underway to compile and organize the information necessary to conduct the investigation. Because of the changes mentioned in the communication, the State reported that the inquiries had to be suspended and would resume once the new members were appointed.

1331. Regarding point 2, by a communication received on November 11, 2013, the petitioner indicated that he has not been reimbursed for fuel subsidies from August 1990 to September 2001 (approx. 75,000.00 soles), or for lost earnings from 1997 to 2003 (approx. 5,000.00 soles). He contended that the State has not complied with FOSEROF normalization (officers' retirement fund) (approx. 12,000.00 soles), had not held the public apology ceremony, and had not punished those responsible for the violation of his rights. The petitioner requested on that occasion that he be accorded the ranks of Commander, Colonel and General, respectively, that he be assigned a chauffeur and a valet, that he be assigned a vehicle befitting his rank, that his years of service be recognized to be real, effective and uninterrupted up to the present date, that his fuel subsidies be paid, that he be reimbursed for lost earnings and the FOSEROF be normalized, that a public apology ceremony be staged, that he be placed in the PNP hierarchy according to his new rank, and that the officials responsible for the violation of his rights be investigated and punished. The State did not present any compliance-related information at that time.

1332. With regard to point 3, since August 2011, the State has not provided information on the progress made in the investigation of those responsible for the failure to comply with the court decision ordering the reinstatement of the petitioner. The State has also stated on several occasions that it has notified the petitioner to make the act of atonement without success, and the petitioner in turn has indicated that it has not been notified of such activities.

1333. The IACHR requested updated information from the parties on December 8, 2014. By note dated January 8, 2015, the petitioner indicated that he was withdrawing from the agreement signed with the State owing to the latter's noncompliance. He pressed for the demands he made subsequent to the

agreement. The State requested an extension on January 9, 2015, which was granted. However, as of the date of completion of this report, the State has not yet submitted information concerning its compliance with the agreement.

1334. The IACHR takes note of the information supplied by the two parties during the period in which the IACHR has monitored compliance with the agreement. The Commission observes in this regard that the two sides have presented conflicting information. Specifically, while the State presented rulings and figures concerning the amounts to be paid, thus far it has not produced payment vouchers or any other document confirming that a payment has been made to the petitioner; nor did it provide any information as to the criteria used for the eventual payment of the lost earnings and pension. The petitioner, for his part, acknowledges that the State has paid him the amount owed, but contends that there are items not included at the time the compensation was paid; he is now seeking an additional sum and additional services which appear to exceed the boundaries of the agreement.

1335. The IACHR requested updated information from the parties on 30 September 2015. On October 1, 2015 the petitioner reiterated its position on all points, insists on the withdrawal of the agreement and waiver of compensation that the state was obliged to grant but not to the economic benefits not received.

1336. In a note dated November 11, 2015, the State referred to point 1 in terms of the recognition of responsibility, indicating that the same does not entail a commitment, but its content is declarative and includes by itself an acknowledgment of responsibility. Also in relation to point 2 a) and c), the State reiterated, as he has done repeatedly, that through the Ministry of the Interior issued two resolutions: one being the first Supreme Resolution No. 0501-2003-IN / PNP dated August 29, 2003 by which it annulled the Supreme Resolution resolved to pass Mr. Ricaro Semoza to pensioners, their return to active status in the National Police of Peru and his re-enrollment in the ranks of staff Police officers thereof rightful; and subsequently Executive Resolution No. 170-DIRREHUM-PNP dated January 7, 2005 by which Mr. Semoza service time was acknowledged as real and effective and uninterrupted in their overall computing periods remained in retirement. The State stressed the wording established in the third clause of the agreement and in this regard stated that any additional financial claim that the petitioner request must be rejected by not being part of the commitments made by the Peruvian State in the agreement; and it reported that according to the registration statement and returns of Mr. Ricardo Semoza, it had begun to pay their corresponding assets from September 2003 until he was on active duty.

1337. In relation to point 2, the State emphasized that the said point of the agreement relates to an obligation on Mr. Samoza, reiterating that it must reinstate to the PNP FOSEROF the corresponding retirement benefit which he claimed and received as well as the contributions and legal interests of that sum; the State mentioned that there is no evidence that the petitioner made that payment. Finally in relation to point 3, it stated that no information is available regarding the commitment to conduct a thorough investigation of the facts and application of the corresponding legal sanctions.

1338. In relation to the State's observations on point 1, making use of the powers expressly established by the parties in the eighth clause on the interpretation of the agreement, the Commission considered at this time, its literal content, indicating:

Mindful that unqualified protection of and respect for human rights is the foundation of a just, decent and democratic society, in strict compliance with the obligations undertaken with signature and ratification of the American Convention on Human Rights and other international human rights instruments to which Peru is party, and conscious that any violation of an international obligation that has resulted in damages or injury carries with it the duty to make adequate reparation, which in the instant case means restoring the victim to his post, the State acknowledges its responsibility for violation of Articles 1(1) and 25 of the American Convention on Human Rights, to the detriment of Ricardo Semoza di Carlo.

1339. It follows from the wording of the clause that it constitutes in itself an acknowledgment of responsibility. The Commission verified the total content of the document and interprets the enforcement

clause is contained in letter e) under the heading of "conducting public ceremony." The Commission also notes the information provided by the parties, but reiterates that additional information is needed to assess the fulfillment of all commitments. Likewise the Commission notes that the State has not submitted its observations on the allegations put forward by the petitioner in his communication of 11 November 2013, in connection with the settlement of the amounts in favor of the petitioner, and his checks cancellation and has not provided information related to the investigation of the facts, not the work of the Ad Hoc Committee, therefore urges the State to submit information. Furthermore, under Clause 8 of the agreement and in view of the observation made by the State in relation to point 1, the Commission considers and agrees that this point is a declaration of recognition of State responsibility for which is not subjected to monitoring.

1340. In relation to the withdrawal of the agreement by the petitioner, it is clear that the Commission decided at the time to approve and publish Report No. 31/04, and since that time the case is at the stage of monitoring without being possible to nulify the agreement reached by the parties or rollback the process.

1341. Based on the foregoing, the Commission reiterates does not have sufficient information to conclude that the State has fully complied with the recommendations contained in the agreement and will continue to monitor the pending items 1, 2 a, c, d, e and 3. At the same the Commission invites the parties to enter into a dialogue with a view to identifying the measures needed to achieve full compliance with the agreement. It invites the State to supply updated information on the liquidations and payments made thus far, so that the progress the State has made in this regard can be evaluated.

**Petition 711-01 et al., Report No. 50/06, Miguel Grimaldo Castañeda Sánchez et al. (Peru);  
Petition 33-03 et al., Report No. 109/06, Héctor Núñez Julia et al. (Peru); Petition 732-01 et al.,  
Report No. 20/07 Eulogio Miguel Melgarejo et al.; Petition 758-01 et al., Report No. 71/07  
Hernán Atilio Aguirre Moreno et al.; Petition 494-04 (Peru)**

1342. On March 15, 2006, by Report No. 50/06, the Commission approved the terms of the friendly settlement agreements of December 22, 2005, January 6, 2006, and February 8, 2006 signed by the Peruvian State and a group of unratified judges, who were petitioners in petition No 711-01 and others. On October 21, 2006, by Report No. 109/06, the Commission approved the terms of the friendly settlement agreements of June 26 and July 24, 2006, signed by the Peruvian State and a group of unratified judges, petitioners in petition No. 33-03 and others. On March 9, 2007, by Report No. 20/07, the Commission approved the terms of the friendly settlement agreements of October 13 and November 23, 2006, signed by the Peruvian State and a group of unratified judges who were petitioners in petition No. 732-01 and others. On July 27, 2007, by Report No. 71/07, the Commission approved the terms of the friendly settlement agreement of January 7, 2007, signed by the Peruvian state and a group of unratified judges, petitioners in petition No. 758-01 and others. On March 13, 2008, by Report No. 71/07, the Commission approved the terms of the friendly settlement agreement of April 24, 2007, signed by the Peruvian State and one unratified judge, the petitioner in petition No. 494-04.

1343. According to the text of the friendly settlement agreements included in the above-mentioned reports, the State:

1. Pledged to restore the corresponding title and facilitate the reinstatement of the judicial officials.
2. Pledged to recognize the period of service not worked in calculating duration of service, retirement, and other applicable employment benefits under Peruvian law.
3. Agreed to make compensation.
4. Will conduct a new evaluation and reconfirmation process under the purview of the National Council of the Magistracy for the judicial officials included in the instant agreement.

5. Pledged to hold a Public Reparations Ceremony for the reinstated judicial officials.

1344. By communication of December 18, 2008, the State reported that on December 9, 2008, a ceremony was held as a form of public reparation in the auditorium of the Ministry of Justice in honor of the 79 judges included in Reports Nos. 50/06 and 109/06, for the purpose of carrying out its international obligations acquired in the context of the inter-American system for the protection of human rights. In addition, the State noted that the ceremony included the presence of high-level state officials, such as the President of the Council of Ministers – in representation of the Peruvian President – the Minister of Justice, the President of the National Judicial Council, and the Executive Secretary of the National Council on Human Rights, among others; and with the presence of civil society and the group of 79 judges included in the reports of the IACHR referred to above.

1345. Some of the petitioners included in the reports that are the subject of the present section submitted information in response to the request made by the IACHR by means of a communication referred to in the preceding paragraph and also submitted information at their own initiative regarding this on different occasions in 2009. As a rule, the unratified judges included in the friendly settlement agreements pointed out the failure to totally comply with these agreements and requested the IACHR to repeat their request to the State to comply fully with the agreements that were signed.

1346. On October 27, 2010, the Commission held a working meeting during its 140<sup>th</sup> regular session, to examine compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreements concerning unconfirmed magistrates. The party who requested the working meeting, Mr. Elmer Siclla Villafuerte, pointed out that while the Constitutional Tribunal had established certain requirements that the National Council of the Magistracy must observe, the mere existence of a confirmation system in Peru whose purpose was to neither discipline nor penalize, was incompatible with international and constitutional standards on the independence of the judicial branch. He also asserted that the confirmation proceeding was incompatible with the guarantees of due process, as the right to double review did not exist. Mr. Elmer Siclla emphasized the fact that the State had not paid the compensation for costs and expenses to all the magistrates who were reinstated and had not held a ceremony to make a public apology to all the victims.

1347. The State, for its part, reported that it had assigned the Ministry of Justice an amount of money to pay a portion of the five thousand dollars in compensatory damages ordered for each magistrate covered under the friendly settlement agreements approved by the Commission. It maintained that the current case law of the Constitutional Court guaranteed magistrates their right to due process and their right to challenge the decision of the National Council of the Magistracy in the event they were not confirmed.

1348. Over the course of 2011 some petitioners reported that a group of judges had been reinstated to positions other than those they held at the time they were separated from the Office of the Attorney General or the Judicial Branch. They indicated that the State has still not held a public apology ceremony for all the judges who signed the friendly settlement agreements and payment is still pending with respect to the US\$5,000 amount of compensation.

1349. The Peruvian State indicated that it has fully complied with the clause in the friendly settlement agreement related to the restoration of titles and reinstatement of the judges. It added that a very small number of judges could not be reinstated because they had reached the judiciary's maximum age of 70 or because of personal reasons that prevented their reinstatement such as the decision to retire or to serve in an elective position. Peru asserted that it has paid the amount of US\$5,000 to a total of 79 judges and that another 97 judges have collected a portion of that amount. It added that the Ministry of Justice already has a Budget Heading transferred by the Special Fund for the Administration of Money Obtained Illicitly to the Detriment of the State (FEDADOI) that is intended for payment of the remaining amount.

1350. On October 26, 2011, a working meeting was held between the Peruvian State and the representative for petition 33-03, Mr. Elmer Siclla Villafuerte. At that time, the solicitor repeated the information provided at earlier meetings. The State, in turn, confirmed the information provided over the

course of 2011, adding that the National Council of the Judiciary and the Ministers of Justice and Foreign Relations are coordinating on a date for holding a public ceremony to recognize the State's responsibility, according to the terms indicated in the friendly settlement agreements.

1351. In communications dated December 11 and 17, 2012, the State reported that it had paid reparation in full to a portion of the judges (79) and partially to another group of judges (97), disbursing a total of US\$724,800.00. It said that in the case of Mr. Castañeda Sánchez, , it had paid the US\$5,000 agreed upon in the Friendly Settlement Agreement. For their part, some petitioners reported that the Peruvian State had still not paid the fully compensation of US\$5,000 and that it had not conducted a public apology and recognition ceremony for all the judges.

1352. Throughout 2012, the IACHR received communications in which some judges alleged that they had been subjected to disciplinary proceedings that did not respect their guarantees and that Peru had not paid their pensions or other outstanding fringe benefits. Since such propositions are not included in the friendly settlement agreements signed by the parties, and without prejudice to actions that may have been initiated by the petitioners under domestic law, the IACHR will not follow-up on the aforementioned communications in connection with the above-mentioned Friendly Settlement Reports.

1353. The State submitted information in a communication of November 27, 2013. On this opportunity, the State noted that with regard to the judges covered under Friendly Settlement Report No. 50/06 of March 15, 2006, the judges were reinstated under Resolution No. 156-2006-CNM of April 20, 2006. It also noted that it has recognized their time of service, retirement and other labor benefits; it has paid each one of them the sum of US\$5,000, as established in the friendly settlement agreement, and held the public apology ceremony on December 9, 2008.

1354. With respect to the judges covered under Friendly Settlement Report No 109/06 of October 21, 2006, the State claimed that under Resolution No 019-2007-CNM of January 11, 2007, the judges were reinstated, thus fulfilling the commitment contracted under the friendly settlement agreement. The State further reported that it has recognized their time of service for periods they did not work for the calculation of service, retirement and other labor benefits for this group of judges; and it has paid each one of them a financial reparation in the amount of US\$5,000 , as provided for in the friendly settlement agreement.

1355. The State noted, with regard to the judges covered under Friendly Settlement Report No. 20/07 of March 9, 2007, that it has recognized as of the present date, their time of service, retirement and other labor benefits; and it has paid each of them the amount of US\$3,400 as financial reparation, with payment pending of another US\$1,600 each.

1356. With regard to the judges covered under Friendly Settlement Report No 71/07 of July 27, 2007, the State reported that under Resolution No. 319-2007-CNM of October 2, 2007, the judges were reinstated. It also noted that it recognized time of service for periods they did not work in the calculation of time of service, retirement and other labor benefits for this group of judges; and it has paid them financial reparation in the amount of US\$3,400 each as financial reparation, with payment pending of another US\$1,600 each.

1357. Throughout 2013, the IACHR received communications in which judges alleged that the State had failed to comply with the public apology ceremony and had not paid off the total amount of financial reparation.

1358. The IACHR requested updated information from the parties on December 3, 2014 and on September 30, 2015. To the date of closing of this report, the petitioners have not presented the information requested.

1359. On November 24, 2015, the State presented information regarding the fulfillment of the commitments of friendly settlements. In relation to the payment of compensation, the State indicated that the share of petitioners who were part of the friendly settlement agreements approved by the Reports No. 50/06

and No. 109/06, compensation payment was made in full in 2007 and 2008; the State added that, with regard to the petitioners who took part in the friendly settlement agreements approved in Reports No. 20/07 and No. 71/07, payment was made in two parts, one in the month of January 2011 the second in January 2015, following the adoption of Decree No. 375-2014-EF. Regarding the public apology ceremony, the State indicated that it had conducted it on behalf of the petitioners who took part in the No. 109/06 friendly settlement agreements approved by Report No. 50/06, and that it was still pending to implement the measure in favor of the petitioners who took part in the friendly settlement agreements approved in Reports No. 20/07 and No. 71/07. Finally, the state broke down resolutions submitted for each report to comply with the measures related to the reinstatement of the petitioners to their positions. In this regard, he reported that: Regarding the Report No. 50/06, on April 21, 2006 the President of the National Judicial Council sent the Minister of Justice, Resolutions No. 156-2006-P-CNM and 157-2006-P-CNM. These resolutions provided for the rehabilitation of titles to 19 prosecutors and 33 judges. Regarding the Report No. 109/06, the 11 January 2007 the President of the National Judicial Council sent the Minister of Justice, Resolutions No. 19-2007-P-CNM and No. 20-2007-P -CNM, which provided for the reinstatement of the titles for 13 judges and 14 prosecutors. Regarding the Report No. 20/07, the April 25, 2007 the President of the National Judicial Council sent the Minister of Justice, Resolutions No. 123-2007-P-CNM and No. 124-2007-P -CNM that provided for the rehabilitation of the titles to 46 judges and 17 prosecutors. Finally, with regard to Report No. 71/07, on 17 October 2007 the President of the National Judicial Council sent the Minister of Justice, Resolutions No. 319-2007-P and No. 320-2007-CNM P-CNM who arranged the rehabilitation of the titles to 11 judges and three prosecutors.

1360. The Commission values the information provided by the State. Based on the information submitted by the parties, the IACHR concludes that the friendly settlement agreements included in the reports listed above have been partially carried out. Accordingly, it will continue to monitor the pending points. . The IACHR urges the State and the petitioners party to the friendly settlement agreements that were signed, to provide a list of beneficiaries and documentation verifying the payments made under points 2 and 3, the public apology ceremonies and lists of the events' invitees and attendees, so that a full assessment can be made of what measure remain to be taken.

**Petition 494-04, Report No. 20/08, Romeo Edgardo Vargas Romero (Peru)**

1361. On March 13, 2008, by means of Report No. 20/08, the Commission approved a friendly settlement agreement in the request of Romeo Edgardo Vargas Romero.

1362. According to the friendly settlement agreement:

1. The National Judicial Council will restore his title within fifteen (15) days following the approval of the instant Friendly Settlement Agreement by the Inter-American Commission on Human Rights.
2. The Judiciary or the Office of the Attorney General, in the cases, respectively, of judges or prosecutors, will order the reinstatement of the judge to his original position within the fifteen days following restoration of his title. Should his original position not be available, at the judge's request, he shall be reinstated in a vacant position of the same level in the same Judicial District, or in another one. In this case, the judge will have the first option to return to his original position at the time a vacancy appears.
3. The Peruvian State undertakes the commitment to recognize as days of service the time spent removed from his position, counted from the date of the decision on non-confirmation, for purposes of calculating time served, retirement, and other work benefits granted by Peruvian law. Should it be necessary, in order to comply with this Friendly Settlement agreement, to relocate judges to another Judicial District, their years of work shall be recognized for all legal effects in their new seats.

4. The Peruvian State agrees to pay petitioners who abide by this Friendly Settlement a total indemnity of US\$5,000.00 (five thousand United States dollars), which includes expenses and costs related to national and international processing of his petition.

5. The representative of the Peruvian State undertakes the commitment to hold a ceremony of public apology in favor of the reinstated judges.

1363. On February 3, 2011, the State attached the copy of resolution No. 133-2008-CNM, whereby the National Judicial Council (*Consejo Nacional de la Magistratura*) reinstated Mr. Romeo Edgardo Vargas' title as public prosecutor. Additionally, this resolution recalled the Attorney General to report on the reincorporation of Mr. Edgardo Vargas in his former position or any other equivalent to the title reinstated. The State did not indicate whether the reincorporation has been fulfilled by the Attorney General.

1364. The State pointed that on January 6, 2011, the Supranational Public Attorney (*Procuraduría Pública Especial Supranacional*) sent a request to the General Office of Administration at the Ministry of Justice in order to issue a check of US\$ 3,400 (three thousand and four hundred dollars) in favor of Mr. Edgardo Vargas. The State attached a copy of the receipt by the aforementioned general office.

1365. The State remitted a communication on December 18, 2012, in which it said it had complied with items 1, 2, 3, and 5 of the friendly settlement agreement, as described above. The State reiterated in a communication received on November 27, 2013, the information provided in prior years.

1366. On September 30, 2015, the IACHR requested the parties to provide it with updated information. As of the date this report was finalized, the petitioning party had not submitted that information.

1367. The State indicated that payment of compensation had been completed in January 2015, following the adoption of Supreme Decree No. 375-2014-EF authorizing the inclusion of funds in the Public Sector budget for fiscal year 2014. According to the State, the reparation ceremony was still pending. The IACHR greatly appreciates the information provided by the State and awaits further information regarding the specific sum paid on that occasion to the beneficiary, in order to determine compliance with payment of the full amount established in the agreement.

1368. Likewise, the IACHR reiterates that it continues to await information as to whether the judge was indeed reinstated by the Attorney General and regarding the specific nature of the position as well information on efforts made by the State to conduct the reparation ceremony in the presence of the beneficiary.

1369. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

**Petition 71-06 et al., Report No. 22/11, Gloria José Yaquetto Paredes et al. (Peru)**

1370. On March 23, 2011, in Report No. 22/11, the Commission approved the terms of the Friendly Settlement Agreement of September 24, 2010, signed by the Peruvian State and 21 unratified judges, whose claims were joined in Petition 71-06.

1371. Pursuant to the text of the Friendly Settlement Agreement, the State:

1. Undertook to restore the corresponding title and to order the reinstatement of the judges.
2. Undertook to recognize the unworked service time in calculating duration of service, retirement benefits and other fringe benefits under Peruvian law.



3. Agreed to a total compensation of US\$5,000 (five thousand U.S. dollars and 00/100), which includes expenses and costs of national and international proceedings relating to their petition.

4. Undertook to conduct a new evaluation and ratification procedure overseen by the National Judicial Council with respect to the judges included in the friendly settlement agreements. That procedure will be conducted in accordance with the standards and principles of the Peruvian Constitution (Articles 139 and 154), the American Convention on Human Rights, and the binding jurisprudence guaranteeing due process handed down by the Inter-American Court of Human Rights and the Constitutional Court. Applicable regulatory provisions shall be adjusted as necessary.

5. Undertook to conduct a public exoneration and apology ceremony for the reinstated judges.

1372. On January 15, 2013, the Commission requested updated information from both parties on progress made in complying with the commitments assumed by the State under the friendly settlement agreement. On that occasion, the IACHR did not receive an answer within the established time period.

1373. During the Commission's follow-up of compliance with the previous Friendly Settlement Report in 2012, the State presented information on some of the unconfirmed judges. With respect to commitments 1 and 4 of the agreement, the State notified the IACHR of the following: by resolution N° 029-2011-P-CSJS, dated September 1, 2011, Mr. Manuel Vicente Trujillo Meza was reinstated to the position of member of the Superior Court of the Judicial District of Junín, but he was not able to occupy the post because of the age limit established by law; by resolution N° 029-2011-P-CSJSU-PJ, dated September 1, Mr. José Miguel La Rosa Gómez de la Torre was reinstated to the position of member of the Superior Court of Justice of Lima, but, subsequently, he was not confirmed by the National Judicial Council during the individual evaluation and confirmation procedure conducted that same year; and by resolution N° 122-2011-CNM, dated April 14, 2011, Mr. Carlos Felipe Linares Vera Portocarreño was reinstated as a judge until early 2012 since, based on a new individual evaluation and confirmation procedure, the National Judicial Council decided not to renew its confidence in him. As for commitment 2, the State presented information solely on judges Manuel Vicente Trujillo Meza and José Miguel La Rosa Gómez de la Torre.

1374. Likewise, in 2012 Mr. José Miguel La Rosa Gómez de la Torre informed the IACHR, in connection with commitment 3, that the State had paid the amount of \$3,000, with \$2,000 still to be paid. With regard to commitment 4, Mr. José Miguel La Rosa Gómez said that the new evaluation and confirmation procedure he was subject to had not been conducted in accordance with constitutional standards and principles and the American Convention on Human Rights. Moreover, he said that the State had not complied with commitment 5 of the agreement.

1375. Judge Carlos Felipe Linares Vera Portocarreño, in a communication dated January 30, 2013, informed the IACHR with respect to commitment 1 of the agreement that the State had not reinstated him to his original position, even though it was available. Related to commitment 4, Mr. Linares said that he had been denied access to an impartial judge at the appeals level.

1376. On October 7, 2013, the IACHR asked the parties to provide up-to-date information on progress reached in the process of compliance with the commitments acquired by the State under the friendly settlement agreement. On this opportunity, the State reported in a communication of November 27, 2013, that under Resolution No. 123-2011-CNM of April 14, 2011, the judges were reinstated, and it requested the Commission to deem this commitment as fulfilled. The State also reported that it has paid the petitioners the amount of US\$3,400 as financial reparation, and that payment of US\$1,400 to each one of them is still pending.

1377. The majority of the petitioners did not submit information before the IACHR-established deadline. Petitioner Edwin Elias Vasquez Puris reported, in a communication of November 6, 2013, that with

regard to provision 2, pertaining to recognition of time of service, the State has not complied with enforcing all of the rights to “retirement and other labor benefits,” which he is entitled to under Peruvian law. Regarding the commitment to pay US\$5,000, he claimed that he has only received US\$3,000, and that he did not submit himself to a new process of evaluation and confirmation because the conditions that existed prior have not changed and, therefore, he resigned from his judge position (Vocal Superior). He further reported that the State has not held the public apology ceremony to the present day.

1378. Petitioner Fidel Gregorio Quevedo reported, in a communication of October 14, 2013, that the State had only paid him US\$3,500 as financial reparation and that it had not recognized time of service for the period he had not worked for purposes of pension and, therefore, he had filed a suit in court on this issue. Meanwhile, petitioner Carlos Felipe Linares Vera Portocarreño reported, in a communication of October 9, 2013, that the State has not complied with the commitment regarding reinstatement of his original position, and regarding the new process of confirmation by an impartial judge.

1379. On September 30, 2015, the IACHR requested the parties to provide it with updated information.

1380. The State reiterated, on November 9, 2015, that through resolutions No. 122-2011-CNM and No. 123-2011- both of April 14, 2014, it would have rescinded resolutions of no ratification and the titles of the judges included in the agreement were rehabilitated. In this regard, the Commission notes that the State had provided this information previously, following up the effect of these rulings since 2012.

1381. On the other hand, the state also reiterated in general, have made payments for monetary reparations.

1382. On November 17, 2015 Gloria Jose Yequetto stated that the reparation ceremony had not yet been held. She also stated that payment of the compensation amount was made in first half 2015, but that the State had not complied with recognition of length of service in its social benefits calculation. She ended her written statement by acknowledging that she had been reinstated in her position and that the title corresponding to that position had been restored.

1383. The Commission greatly appreciates the progress made by the Peruvian State toward compliance with the friendly settlement agreement. The Commission notes that with respect to Ms. Gloria Yequetto that the agreement has been implemented in part, with substantive progress as regards reparation and reinstatement.

1384. At the same time, the IACHR notes with concern that it lacks sufficient information with regard to the other beneficiaries of the friendly settlement agreement included in Report 22/11. Accordingly, the IACHR urges the State to present substantive information, along with supporting documentation, regarding compliance with the commitments, especially with respect to reinstatement, recognition of length of service, the amount of compensation paid, the new evaluation or ratification process, and the reparation ceremony, with regard to the following persons included in the agreement: Pedro Alberto Córdova Rojas (P 109-06), Pedro Lucio Ramos Miranda (P 120-06), Heriberto Hugo Lévano Torres (P 513-06), Víctor Ladrón de Guevara De la Cruz (P 572-06), Carlos Felipe Linares Vera Portocarrero (P 594-06), Juan Nicanor Zúñiga Bocanegra (P 634-06), Javier Rolando Peralta Andía (P 834-06), Edwin Elías Vásquez Puris (P 1066-06), Genaro Nelson Lozano Alvarado (P 1160-06), José Francisco Jurado Nájera (P 1285-06), Luís Rafael Callapiña Hurtado (P 184-07), Ricardo Quispe Pérez (P 364-07), Fidel Gregorio Quevedo Cajo (P 451-07), Aquiles Niño de Guzmán Feijoo (P 492-07), José Domingo Choquehuanca Calcina (P 627-07), José Miguel La Rosa Gómez de la Torre (P 986-07), Rodolfo Kádagand Lovatón (P 1179-07), Simón Damacén Mori (P 1562-07), Carmen Encarnación Lajo Lazo (P 638-07), and Manuel Vicente Trujillo Meza (P 714-07). It is to be noted that the follow up of all of these petitions is done within the framework of Petition No. 71/06, which is the only reference number to be used in the future.

1385. Finally, with respect to all the beneficiaries, the IACHR observes that the State has still not arranged a reparation ceremony, which in this case could take the form of a collective ceremony, after

adoption of measures needed to ensure the participation of all the victims. The IACHR awaits updated information on this matter.

1386. In view of the information received, the IACHR concludes that the friendly settlement agreement signed by the parties has been complied with in part, and it will therefore continue monitoring the items still pending.

#### **Case 12.041, Report No. 69/14, M.M. (Peru)**

1387. On July 25, 2014, the IACHR approved Friendly Settlement Report No. 69/14. The petition alleged that the State was internationally liable for violating Articles 1.1, 5, 8.1, 11, and 25 of the American Convention on Human Rights. In addition, the petitioners alleged violations of Article 3, 4, 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará), and of Articles 1 and 12.1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to the detriment of M.M., on account of the alleged sexual abuse of M.M. committed by a physician at the Carlos Monge Medrano state hospital in Juliaca, and for failings committed by the Peruvian State in the investigation and failure to punish those responsible.

1388. On March 6, 2000, the parties signed an agreement that established the following reparation measures:

1. Without prejudice to any other admissible criminal suits, the Chair of the Council of Ministers and the Minister for the Advancement of Women shall notify the Medical Association of Peru of the acts performed by the physicians, Gerardo Salmón Horna, in order for that institution to proceed, in accordance with its Statutes, adopted through Supreme Decree N° 00101-69-SA, to impose applicable penalties. It is hereby expressly placed in record that the Ministry of Health has already duly punished Dr. Gerardo Salmón Horna under administrative regulations.
2. The Ministry for the Advancement of Women and Human Development (hereinafter "PROMUDEH") will take responsibility for transferring M.M. back to Arequipa and her initial accommodation in optimal lodgings provided for her by the Arequipan Charity Hospital (*Beneficiencia Pública*).
3. The Informal Property Titling Commission (hereinafter "COFOPRI") will formally register, as expeditiously as possible, the plot of land occupied by M.M. in the A.U.I.S. Pope John XXIII shanty town in Arequipa. It will also counsel and help her to access all the benefits derived from owning a title to that property.
4. The (Construction) Materials Bank (*Banco de Materiales*) will provide social assistance to M.M. in the form of materials and help with building a home made of hardwood and corrugated iron with two bedrooms and a family room costing altogether about S/. 6,000 [approx. US\$2,000], at no cost to M.M.
5. The Ministry of Health will provide M.M. with cost-free ambulatory health care at the Honorio Delgado Hospital in the city of Arequipa, in relation to health problems derived from the acts referred to in the petition and which were already diagnosed by the Ministry of Health.
6. PROMUDEH will grant M.M. ownership of a stall in the "Siglo XXI" market in Arequipa. Ownership of that stall will be transferred according to law as promptly as possible, bearing in mind the legal procedures required for such a transfer of ownership. In the meantime, PROMUDEH will grant M.M. the right to use the stall free of charge.

7. PROMUDEH will provide M.M. with merchandise in the form of socks and underwear worth S/. 1,000, to start selling at the aforementioned market stall.

8. The State will install a Follow-Up Committee comprising representatives of the State and of the petitioners to verify compliance with the commitments made in this agreement. Said Committee shall also propose and monitor the regulatory amendments indicated in the petitioners' proposed friendly settlement, as well as the provision of specialized services to attend to victims of sexual violence nationwide.

9. At the request of M.M. herself, the State, and the petitioners, it is requested that, in its friendly settlement report on the present case, the IACHR refrain from identifying M.M. The parties commit to maintaining that confidentiality when disseminating this agreement. The costs of the aforementioned commitments shall be borne exclusively by the State. The petitioners undertake to contribute to the implementation of these agreements by accompanying M.M. during her move to the city of Arequipa and while she settles in.

1389. In Report No. 69/14, the IACHR expressed its appreciation of the progress made by the Peruvian State with compliance with the commitments undertaken in the friendly settlement agreement and concluded that the State fully implemented the clauses contained in the signed agreement. The IACHR applauds the full implementation of this agreement, which is vital for building trust between the parties in this case in particular and in general for users of the inter-American human rights system.

#### **Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)**

1390. In Report No. 28/09 issued on March 20, 2009, the Inter-American Commission concluded that Trinidad and Tobago is responsible for violating Mr. Lendore's rights under Articles 8(1) and 8(2) of the American Convention, in conjunction with violations of Article 1(1) of that international instrument, due to its failure to provide him with the assistance of competent and effective counsel during his criminal proceedings; and that the State is also responsible for violating Mr. Lendore's rights under Articles 25 and 8 of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XVIII and XXVI of the American Declaration, by failing to provide Mr. Lendore with effective access to a Constitutional Motion for the protection of his fundamental rights.

1391. On the basis of these conclusions, the IACHR recommended to Trinidad and Tobago that it:

1. Grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.

2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Lendore's conditions of detention comply with applicable international standards of humane treatment as articulated in the present report, including the removal of Mr. Lendore from death row.

3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Articles XVIII and XXVI of the American Declaration is given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions.

1392. On October 9, 2013, December 4, 2014, and October 1, 2015, the IACHR, the IACHR requested from both parties information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not presented information on compliance with the recommendations set forth above this year.

1393. Based on these considerations, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

**Case 9.903, Report No. 51/01, Rafael Ferrer Mazorra *et al.* (United States)**

1394. In Report No. 51/01 dated April 4, 2001, the Commission concluded that the State was responsible for violations of Articles I, II, XVII, XVIII and XXV of the Declaration with respect to the petitioner's deprivations of liberty.

1395. The IACHR issued the following recommendations to the State:

1. Convene reviews as soon as is practicable in respect of all of the Petitioners who remained in the State's custody, to ascertain the legality of their detentions in accordance with the applicable norms of the American Declaration, in particular Articles I, II, XVII, XVIII and XXV of the Declaration as informed by the Commission's analysis in the report; and
2. Review its laws, procedures and practices to ensure that all aliens who are detained under the authority and control of the State, including aliens who are considered "excludable" under the State's immigration laws, are afforded full protection of all of the rights established in the American Declaration, including in particular Articles I, II, XVII, XVIII and XXV of the Declaration as informed by the Commission's analysis in its report.

1396. In a communication dated December 15, 2005, the State informed the Commission that it did not share the Commission's recommendations and rejected them, and that it denied the existence of a violation of the American Declaration of the Rights and Duties of Man based on its previous responses in the case. The State has maintained the same position in recent years without citing any effort undertaken to comply with the recommendations of the IACHR.

1397. On December 5, 2014, the IACHR requested information from both parties regarding compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The parties did not submit any information concerning compliance with these recommendations.

1398. On February 3, 2015, the State reiterated that the Commission should refer to what the State indicated in 2005.

1399. On September 28, 2015, the IACHR requested updated information from the parties regarding compliance with the aforementioned recommendations. As of the date of this report, the parties have not submitted the information requested.

1400. Therefore, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

**Case 12.243, Report No. 52/01, Juan Raul Garza (United States)**

1401. In Report No. 52/01 dated April 4, 2001, the Commission concluded that the State was responsible for violations of Articles I, XVIII and XXVI of the American Declaration in condemning Juan Raul Garza to the death penalty. The Commission also hereby ratified its conclusion that the United States will perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration, should it proceed with Mr. Garza's execution based upon the criminal proceedings under consideration.

1402. The IACHR issued the following recommendations to the State:

1. Provide Mr. Garza with an effective remedy, which includes commutation of sentence; and
2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.

1403. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1404. On the other hand, the State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier submissions regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also informed that Mr. Garza was executed on June 19, 2001.

1405. Therefore, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

**Case 11.753, Report No. 52/02, Ramón Martínez Villarreal, (United States)**

1406. In Report No. 52/02 dated October 10, 2002, the IACHR concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Ramón Martínez Villarreal; and, b) should the State execute Mr. Martínez Villarreal pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

1407. The IACHR issued the following recommendations to the State:

1. Provide Mr. Martínez Villarreal with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Martínez Villarreal's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

1408. The IACHR declared in its 2013 Annual Report<sup>116</sup> that the State had fully complied with recommendation No. 1, inasmuch as the death sentence was vacated and the victim was released on October 4, 2006.

1409. The IACHR verified the information contained in all of its annual reports issued since Report 52/02. In that regard, between 2005 and 2014, the IACHR has considered that there has been partial

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<sup>116</sup> See IACHR, Annual Report 2013, Chapter II, Section D: Status of Compliance with the Recommendations of the IACHR, para. 653. Available at: <http://www.oas.org/en/iachr/docs/annual/2013/docs-en/AnnualReport-Chap2-D.pdf>

compliance with recommendation No. 2. The IACHR has welcomed the fact that the State has provided information regarding measures taken in the country to implement the obligations of the United States vis-à-vis the Vienna Convention on Consular Relations, as well as documentation on initiatives that include information, consultation, and training on consular notification and access geared toward police officers, prosecutors, and judges at the federal, state, and local level. The IACHR also takes note of the publication and widespread distribution of a manual prepared by the Department of State with complete instructions and useful information for officers who detain or arrest foreign nationals, as well as other means used by the State to distribute this information, including pocket cards for law enforcement agencies, prisons, and other entities across the country, as well as social media sites and information and training sessions, all designed to raise awareness of and increase compliance with consular notification and access obligations and explain how allegations of violations are remedied or resolved.

1410. On September 28, 2015, the IACHR requested information from both parties regarding compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The parties did not submit any information concerning compliance with these recommendations.

1411. The Commission reiterates that the State is in partial compliance with recommendation 2. Therefore, the IACHR will continue to monitor the pending item.

#### **Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)**

1412. In Report No. 75/02 dated December 27, 2002, the IACHR concluded that the State failed to ensure the Danns' right to property under conditions of equality contrary to Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.

1413. The IACHR issued the following recommendations to the State:

1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures necessary to ensure respect for the Danns' right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.
2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration.

1414. The petitioners reported on November 23, 2013, that the State has made no efforts to comply with the recommendations. They also highlighted that the United States has continued to allow destructive resource extraction activities on the ancestral lands of the Western Shoshone with no attempt to sit down and resolve the long standing and ongoing human rights violations identified in its Merits Report. They requested additional intervention by the Commission to conduct an on-site visit and to recommend a training workshop for public officials on the international human rights of indigenous peoples.

1415. For its part, the State reiterated on February 2, 2015 its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission.

1416. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1417. Therefore, the Commission reiterates that compliance with its recommendations set forth in Report No. 75/02 remains pending. Therefore, it will continue to monitor compliance with its recommendations.

**Case 11.193, Report No. 97/03, Shaka Sankofa (United States)**

1418. In Report No. 97/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Shaka Sankofa; b) by executing Mr. Sankofa based upon these criminal proceedings, the State was responsible for a violation of Mr. Sankofa's fundamental right to life under Article I of the American Declaration; and c) the State acted contrary to an international norm of *jus cogens* as encompassed in the right to life under Article I of the American Declaration by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age.

1419. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Shaka Sankofa with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that violations similar to those in Mr. Sankofa's case do not occur in future capital proceedings.
3. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

1420. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1421. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1422. Based on these considerations, the Commission reiterates that compliance with the recommendations in Report No. 97/03 remains partial. Accordingly, the Commission will continue to monitor the items still pending compliance.

**Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)**

1423. In Report No. 98/03 dated December 29, 2003, the Commission concluded that the State was responsible for violations of the petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.

1424. The IACHR issued the following recommendation to the State:

Provide the petitioners with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.

1425. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State did not submit any information regarding compliance with the aforementioned recommendations.



1426. On September 28, 2015, the petitioners reported that the State had still not adopted the necessary measures to comply with the recommendations of the Inter-American Commission on Human Rights and guarantee the right of the residents of the District of Columbia to participate in the national legislature. The petitioners indicated that the State has not provided the U.S. citizens who live in the District of Columbia the fundamental right to equal representation in the House of Representatives and the Senate, the chambers of the bicameral legislative body of the United States of America.

1427. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission.

1428. Therefore, the Commission reiterates that compliance with its recommendation remains pending. Accordingly, it will continue to monitor compliance with its recommendation.

#### **Case 11.331, Report No. 99/03, Cesar Fierro (United States)**

1429. In Report No. 99/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Cesar Fierro; and, b) should the State execute Mr. Fierro pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

1430. The IACHR issued the following recommendations to the State:

1. Provide Mr. Fierro with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Fierro's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

1431. The petitioners presented information relevant to compliance with the recommendations contained in the Merits Report on January 9, 2015. The petitioners indicated that Mr. Fierro had not been released or afforded a new trial, or that any executive, legislative, or judicial steps had been taken leading to one of these actions. Mr. Fierro remains in death row in Texas without a date scheduled for his execution, and no new court action has been filed during the past year on his behalf. Regarding the recommendation that the United States review its laws, procedures, and practices to improve compliance with consular access obligations, they reported that no such review had been initiated by the federal government, or any of the state governments. They asserted that in many cases the authorities do not provide information concerning the right to consular assistance when a foreign national is arrested in the United States, which is evident in cases at the federal and state level. The petitioners indicated that in the last 12 months the authorities have not provided access to consular assistance and that they continue to apply case law criteria from 2006. The petitioners cited case law in a number of cases decided in 2014 in which they believe there were violations of access to effective consular assistance.

1432. On February 3, 2015, its earlier communications regarding this Merits Report, in particular the one forwarded on December 17, 2012, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. With respect to the Commission's second recommendation, the State reiterated that it is a party to the Vienna Convention on Consular Relations

(VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals.

1433. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State did not submit information on compliance with the recommendations set forth above.

1434. The petitioners reiterated on October 27, 2015 that Mr. Fierro continues to wait for the execution of death penalty, which he has been waiting in the last 34 years, and the State has not taken any action to comply with the recommendations of the IACHR. In that sense, although they said they the execution has not been scheduled, the State has not advanced steps for his release.

1435. Therefore, the Commission reiterates that there has been partial compliance with its second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

#### **Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)**

1436. In Report No. 100/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Douglas Christopher Thomas to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

1437. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Douglas Christopher Thomas with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

1438. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1439. The petitioner indicated on December 16, 2014, that no reparation has been provided to the victim's next-of-kin. In terms of the second recommendation, the petitioner reported that the State has not carried out a review of its laws, procedures, and practices related to the execution of minors.

1440. On September 28, 2015, the IACHR asked both parties for information regarding compliance with the recommendations mentioned above, pursuant to Article 48(1) of its Rules of Procedure. The parties did not submit any information regarding compliance with these recommendations.

1441. Therefore, the Commission reiterates that compliance with the recommendations in Report No. 100/03 remains partial. Accordingly, the Commission will continue to monitor the items still pending compliance.

#### **Case 12.412, Report No. 101/03, Napoleon Beazley (United States)**

1442. In Report No. 101/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Napoleon Beazley to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

1443. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Napoleon Beazley with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

1444. The petitioners informed the IACHR on December 17, 2014 that the United States has been complying with the second recommendation since 2005 by banning the execution of child offenders like Mr. Beazley. However, the U.S. has made no effort to comply with the first recommendation to provide an effective remedy, including compensation, for the damage caused to Mr. Beazley' s family by his death sentence and execution. The State has not presented information on compliance with the recommendations set forth above this year.

1445. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, , without indicating efforts made to compensate the family or Mr. Beazley, the only item remaining for there to be total compliance with the recommendations in this case.

1446. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties have not submitted any updated information regarding compliance.

1447. Therefore, the Commission reiterates that compliance with the recommendations in Report N° 101/03 remains partial. Accordingly, the IACHR will continue to monitor the item still pending compliance.

**Case 12.430, Report No. 1/05 Roberto Moreno Ramos (United States)**

1448. In Report No. 1/05 dated January 28, 2005, the IACHR concluded that: a) the State was responsible for violations of Articles II, XVIII and XXVI of the American Declaration in the criminal proceedings against Mr. Moreno Ramos; and, b) should the State execute Mr. Moreno Ramos pursuant to the criminal proceedings at issue in this case, the State would commit a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

1449. The IACHR issued the following recommendations to the State:

1. Provide Mr. Moreno Ramos with an effective remedy, which includes a new sentencing hearing in accordance with the equality, due process and fair trial protections prescribed under Articles II, XVIII and XXVI of the American Declaration, including the right to competent legal representation.
  2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
1. Review its laws, procedures and practices to ensure that defendants in capital proceedings are not denied the right to effective recourse to a competent court or tribunal to challenge the competency of their legal representation on the basis that the issue was not raised at an earlier stage of the process against them.

1450. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, in particular the one forwarded on December 17, 2012, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. With respect to the Commission's second recommendation, the State reiterates that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals.

1451. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1452. Therefore, the Commission reiterates that there has been partial compliance with its recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.

#### **Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)**

1453. In Report N° 25/05 dated March 7, 2005, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Toronto Markkey Patterson to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

1454. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Toronto Markkey Patterson with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

1455. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1456. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1457. Therefore, the Commission reiterates that compliance in this case remains partial. Accordingly, the IACHR will continue to monitor the items still pending compliance.

#### **Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)**

1458. In Report N° 91/05 issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Javier Suarez Medina, by permitting the introduction of evidence of an unadjudicated crime during Mr. Suarez Medina's capital sentencing hearing and by failing to inform Mr. Suarez Medina of his right to consular notification and assistance; and b) violations of Article I, XXIV and XXVI of the American Declaration, by scheduling Mr. Suarez Medina's execution on fourteen occasions pursuant to a death sentence that was imposed in contravention of Mr. Suarez Medina's rights to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration, and by executing Mr. Suarez Medina pursuant to that sentence on August 14, 2002 notwithstanding the existence of precautionary measures granted in his favor by this Commission.

1459. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Mr. Suarez Medina with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.
3. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
4. Review its laws, procedures and practices to ensure that requests for precautionary measures granted by the Commission are implemented so as to preserve the Commission's functions and mandate and to prevent irreparable harm to persons.

1460. The petitioners last presented observations relevant to compliance with the recommendations in this case on November 22, 2012. In the aforementioned observations, they indicated that the United States has partially complied with the Commission's recommendations and repeatedly ignored two of the four recommendations detailed in the Commission's final report. Concretely, the United States has failed to ensure that unadjudicated offenses are not introduced as evidence in capital proceedings, and has failed to provide reparations to the family of Mr. Suarez Medina. Also, while the United States has recently strengthened the language in its letters to state authorities regarding the issuance of precautionary measures, it has not adopted sufficient steps to ensure that those measures are implemented. For example, the United States could conduct training workshops on the Inter-American Commission for state and local officials explaining how the Commission functions and emphasizing the importance of complying with the Commission's precautionary measures. The United States could also support petitioners' request for stays of execution in order to allow the Commission to carry out its mandate. At a minimum, the United States could take the position in legal proceedings that the Commission's precautionary measures are entitled to deference and "respectful consideration." In their view, this would lend greater weight to the efforts of petitioners to convince state courts and political decision makers that the Commission's work is of critical importance in evaluating the fairness of capital sentences and states' compliance with fundamental human rights norms. The United States has taken measures to improve compliance with Article 36 of the Vienna Convention on Consular Relations, and has filed *amicus curiae* briefs in support of Mexican nationals seeking review and reconsideration of their convictions and sentences in accordance with the decision of the International Court of Justice in *Avena and Other Mexican Nationals*. Nonetheless, the United States has failed to enact legislation implementing the *Avena* judgment, and two Mexican nationals have been executed without having received the judicial review mandated by the ICJ's decision in *Avena*.

1461. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier responses regarding this Merits Report, in particular the one forwarded on December 17, 2012, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also informed that Mr. Medina was executed on 2002.

1462. With respect to the Commission's third recommendation, the State reiterated that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals.

1463. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1464. Therefore, the Commission reiterates that there is partial compliance with the aforementioned recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.

**Case 12.534, Report No. 63/08, Andrea Mortlock (United States)**

1465. In Report N° 63/08 issued on July 25, 2008, the Inter-American Commission concluded that the United States is responsible for the violation of Article XXVI of the American Declaration to the prejudice of Andrea Mortlock, a Jamaican national who was under threat of deportation from the United States to her country, the result of which would deny her medication critical to her treatment for AIDS/HIV.

1466. As a consequence of that conclusion, the Inter-American Commission recommended to the United States that it “refrain from removing Ms. Andrea Mortlock from its jurisdiction pursuant to the deportation order at issue in this case”.

1467. The petitioners presented their last communication to the Commission on December 19, 2014. In said communication, they report again that they are unaware of any plan by the United States to remove Ms. Mortlock from its jurisdiction in compliance with the deportation order issued in this case. They underscore however that they remain very concerned for Ms. Mortlock’s life should the United States immigration authorities decide not to comply with the IACHR’s recommendation and will inform the Commission if there is any change.

1468. On the other hand, the State submitted its last report to the Commission’s request on February 2, 2015. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendation of the IACHR.

1469. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1470. Therefore, the Commission reiterates that, there has been partial compliance with its recommendation to this date. However, in light of the position previously adopted by the State with respect to the recommendation in the Merits Report, the Inter-American Commission cannot reach a determination on compliance until it receives conclusive information. Accordingly, the IACHR will continue to monitor compliance with its recommendation.

**Case 12.644, Report No. 90/09, José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García (United States)**

1471. In Report N° 90/09 issued on August 7, 2009, the IACHR concluded that the United States is responsible for the violations of the rights of José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García under Articles I, XVIII and XXVI of the American Declaration in respect of the criminal proceedings leading to the imposition of the death penalty against them. With respect to Mr. Medellín, who was executed on August 5, 2008 while he was the beneficiary of precautionary measures, the Inter-American Commission additionally concluded that “the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States”. In Report N° 90/09, the IACHR also concluded that should the State execute Messrs. Medellín, Ramírez Cardenas and Leal García, it would commit an irreparable violation of their right to life as guaranteed in Article I of the American Declaration.

1472. Accordingly, the IACHR issued the following recommendations to the State:

1. Vacate the death sentences imposed on Messrs. Ramírez Cardenas and Leal García and provide the victims with an effective remedy, which includes a new trial in accordance with the equality, due process and fair trial protections, prescribed under Articles I, XVIII and XXVI of the American Declaration, including the right to competent legal representation.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
3. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.
4. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes can apply for amnesty, pardon or commutation of sentence with minimal fairness guarantees, including the right to an impartial hearing.
5. Provide reparations to the family of Mr. Medellín as a consequence of the violations established in this report.

1473. The State submitted its last report to the Commission on February 3, 2011. In its report, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also confirms that Mr. Medellín was executed on August 5, 2008, while Mr. Leal García was executed on July 7, 2011. The State also underscores that it is a party to the Vienna Convention on Consular Relations (VCCR) and is fully committed to meeting its obligations under that instrument to provide consular notification and access in the cases of detained foreign nationals, and reiterates its request that the Commission reviews its submission made on June 23, 2010, which details the on-going efforts by the United States to improve compliance with the consular notification and access provisions of the VCCR.

1474. The petitioners presented their last communication to the Commission on November 22, 2012. The petitioners stress that the United States executed two of the victims in violation of the Commission's Merits Report and recommendations, and its repeated issuance of precautionary measures. While the petitioners recognize and appreciate the efforts of the Executive Branch of the United States government to implement the *Avena* judgment of the International Court of Justice, the fact remains that Congress has thus far failed to enact legislation that would give effect to the ICJ's ruling. Petitioner Rubén Ramírez Cardenas remains alive, but could face execution in 2013. He has not yet received review and reconsideration of his conviction and sentence in accordance with the ICJ's mandate in *Avena*. Moreover, the United States has completely ignored three of the four recommendations detailed in the Commission's final report. Concretely, the United States has failed to vacate the death sentences of all Petitioners, has failed to ensure that unadjudicated offenses are not introduced as evidence in capital proceedings, and has failed to revise its clemency procedures. Although the United States would doubtless point out that individual states control the regulations and procedures relating to executive clemency for state prisoners, the United States has taken no measures to encourage such a review by the States. Finally, the United States has failed to provide reparations to the family of Mr. Medellín.

1475. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1476. Therefore, the Commission reiterates that the State failed to comply with the recommendation issued by the Commission regarding Messrs. Medellín and Leal García and is pending compliance with the recommendations regarding Mr. Ramírez Cárdenas. Consequently, the Commission will continue its supervision of the matters pending compliance.

**Case 12.562, Report No. 81/10, Wayne Smith, Hugo Armendariz et al. (United States)**

1477. In its Report No. 81/10, approved July 12, 2010, the IACHR concluded that in light of the deportation of Wayne Smith and Hugo Armendariz from the United States, the State is responsible for violating the rights of Messrs. Wayne Smith and Hugo Armendariz enshrined in Articles V, VI, VII, XVIII, and XXVI of the American Declaration. The IACHR pointed out, moreover, that it is well-recognized under international law that a Member State must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations, such as the rights protected under Articles V, VI, and VII of the American Declaration. The administrative or judicial bodies charged with reviewing deportation orders in each Member State must be permitted to give meaningful consideration to a non-citizen resident's defense, examine it, and balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provide effective relief from deportation if merited. In Case 12.562 the United States did not follow these International norms.

1478. Consequently, the IACHR issued the following recommendations to the State:

1. Permit Wayne Smith and Hugo Armendariz to return to the United States at the expense of the State.
2. Reopen Wayne Smith and Hugo Armendariz's respective immigration proceedings and permit them to present their humanitarian defenses to removal from the United States.
3. Allow a competent, independent immigration judge to apply a balancing test to Wayne Smith and Hugo Armendariz's individual cases that duly considers their humanitarian defenses and can provide meaningful relief.
4. Implement laws to ensure that non-citizen residents' right to family life, as protected under Articles V, VI, and VII of the American Declaration, are duly protected and given due process on a case-by-case basis in U.S. immigration removal proceedings.

1479. The petitioners presented information relevant to the compliance with the recommendations contained in the Merits Report relevant to this case on November 7, 2013 and December 14, 2012. In their submissions, they highlighted that the State has failed to comply with any of the recommendations contained in the Merits Report, and underscored the importance of the State's good faith adherence to its international obligations in keeping with the *pacta sunt servanda* principle. In regards to recommendations 1, 2, and 3, the petitioners indicate that they submitted requests for humanitarian parole on behalf of Messrs. Smith and Armendariz, which were denied by U.S. immigration authorities without explanation. Mr. Smith passed away in Trinidad on July 15, 2011, without ever been granted permission to return to the United States, thus permanently and irreversibly failing to comply in this respect with Recommendations Nos. 1, 2, and 3. The State has also failed to adopt measures to provide any significant redress to Mr. Smith's family. At present, Mr. Armendariz still remains in Mexico, far from his siblings and his elderly parents, who all remain in the United States. The State has not allowed him to re-enter the United States free of charge, has not reopened his respective immigration proceedings, and has not allowed a competent, independent immigration judge to apply a balancing test to his case with due consideration of humanitarian factors, all of this in spite of repeated requests.



1480. In regards to recommendation 4, the petitioners indicate that compliance is pending, given that the United States has not undertaken reforms to relevant legislation, or notable changes in the implementation thereof. They inform that United States law still provides that those convicted of an aggravated felony – a broad term including even minor crimes – are subject to mandatory deportation without judicial discretion to consider humanitarian or other legitimate defenses to deportation, considered on a case-by-case basis, and without regard to the best interests of the children who are affected. Petitioners observe that current proposals for comprehensive legislative reform provide the State a historic opportunity to adopt the legislative measures necessary to comply with the recommendations, and to finally bring its immigration legislation in line with its international obligations by implementing recommendation 4 contained in Report No. 81/10, as well as similar recommendations issued in other cases involving the United States immigration system.

1481. The petitioners informed the IACHR on December 31<sup>st</sup>, 2014 that the State has not adopted measures to comply with recommendations 1, 2 and 3, and they reiterated that the United States has not taken any measure to provide Mr. Smith's family with redress after his death in July 2011. Regarding Mr. Amendariz, the petitioners reiterated that he remains in Mexico and has not been allowed to re-enter the United States to reunite with his family. The petitioners mentioned in this sense, that his immigration proceedings have not been reopened. Regarding recommendation 4, the petitioners informed that despite the administrative measures announced by President Obama on November 20<sup>th</sup>, 2014, these fall short of full compliance of the recommendations of the Commission and requested the Commission to urge the Executive Branch to adopt certain measures to ensure compliance of the State with this recommendation.

1482. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier submissions regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated its position during the working meeting related to this case on March 26, 2011, still declining to implement the recommendations contained in the Merits Report.

1483. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The State has not presented information on compliance with the recommendations set forth above this year. The parties did not submit information on compliance with the recommendations set forth above.

1484. Based on these considerations, the Commission reiterates that the State has failed to comply with the recommendations issued. The Commission urges the United States to fully and promptly comply with its recommendations with respect to Mr. Armendariz, as well as to provide full redress to Mr. Smith's family members. The Commission will continue its supervision with the recommendations in this case.

#### **Case 12.626, Report No. 80/11, Jessica Lenahan (González) *et al.* (United States)**

1485. In its Report No. 80/11, approved July 21, 2011, the IACHR concluded that the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. The State also failed to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration. Finally, the Commission finds that the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration.

1486. Consequently, the IACHR issued the following recommendations to the State:

1. Undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation;

2. Conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan's protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable;
3. Offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs;
4. Adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;
5. Adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;
6. Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs; and
7. Design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.

1487. The petitioners presented information on November 12, 2013, highlighting that more than two years since the Merits report was issued, few concrete steps had been taken by the State to implement the recommendations issued by the Commission. They also reiterated their concern over the State's failure to maintain adequate communication with the petitioners, or to provide them regular and meaningful responses to their requests and suggestions regarding compliance. They underscore as immediate priorities in compliance, the granting of full reparations to Jessica Lenahan and the adequate and effective investigation of the deaths of her daughters in Colorado, the investigation and sanction of the police failures in this case, and the need for the Department of Justice to adopt guidance related to gender bias in policing and to organize a roundtable on discussion on human rights and domestic violence.

1488. On October 30, 2013, the petitioners participated in a working meeting with the State related to this case during the 149<sup>th</sup> Sessions of the IACHR, in which Jessica Lenahan was present. In this meeting, the petitioners stressed the need for concrete benchmarks from the United States to facilitate implementation of the Lenahan decision through policy and education initiatives at the national level, and the importance of the State responding in writing to the correspondence submitted to them by the petitioners. The State representatives present were not able to provide any new information or make any commitments, and indicated they were unable to adequately prepare due to the government shutdown that had taken place in the weeks prior to the working meeting.

1489. In regards to recommendation 2, the petitioners report in their communications that the Office on Violence against Women has reached out to the Castle Rock Police Department to offer support and technical assistance for policy changes and training. Their understanding is that such training did take place during the Spring of 2013 for law enforcement in the judicial district which covers Castle Rock, and they would like to be informed of the next steps. The petitioners also had conversations with local officials in Colorado about the possibility of a forensic investigation into the death of Jessica Lenahan's daughters and would like to receive updates in this regard. As to recommendation 3, they request that the State explain in detail why it believes reparations are not available to be paid at the federal, state, and local levels.

1490. As to recommendation 6, the petitioners also inform that on June 20, 2013, the Office of Community Oriented Policing Services, the Office of Victims and Crime, and the Office on Violence against Women of the Department of Justice (DOJ) issued a joint statement on gender discrimination in policing. The statement announced that prevention of sex-based discrimination by law enforcement is a top priority of the Civil Rights Division of the DOJ because of the negative role gender bias plays in the law enforcement response to crimes against women. Therefore, they believe a number of next steps are essential to turn this statement into a tool for meaningful change, including DOJ informing advocates and others about its jurisdiction to investigate complaints and about its protocols for conducting investigations regarding gender-biased policing; and that DOJ should finalize updates to its publically available information to reflect that adequate investigations of domestic and sexual violence and under-enforcement of laws addressing these issues fall within DOJ's jurisdiction.

1491. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier November 1, 2012 submission regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also referred to its participation in several working meetings with the IACHR Country Rapporteur and the petitioners to discuss compliance with the Commission's recommendations.

1492. The Commission held a hearing related to the merits report adopted by the Commission in the case of *Jessica Lenahan* and the status of compliance with recommendations on October 27, 2014. The hearing took place in the framework of the Commission's 153 Period of Sessions and had the participation of the State and the petitioners in this case. After its conclusion, the Commission stated the following in a press release adopted on December 29, 2014: "The parties presented information regarding compliance with the recommendations contained in the Commission's merits decision of July 21, 2011. The petitioners, including Jessica Lenahan, shared information concerning pending challenges—including the ongoing failure, in the 15 years since the events that led to this case, to investigate the deaths of Leslie, Katherine, and Rebecca Gonzales and to grant reparations, implement policy reforms that address the root causes of violence against women, and engage meaningfully with the petitioners. The UN Special Rapporteur on violence against women, Rashida Manjoo, also participated in the hearing as part of the delegation of petitioners. In her statement, she stressed that violence against women is a pervasive human rights violation rooted in multiple, intersecting forms of discrimination, and must be addressed holistically. The State highlighted efforts to address violence against women at the federal level, including the adoption of the Violence against Women Act. It also reiterated the limitations in the U.S. federal system in relation to providing reparations and investigating the deaths of Jessica Lenahan's daughters [...]. The State also suggested that a hearing be organized concerning the case of Jessica Lenahan during the March 2015 session. The Commission expressed its concern over the pending recommendations that have not been implemented by the State, particularly its failure to investigate the deaths of Leslie, Katherine, and Rebecca Gonzales. The IACHR reminded the State of Ms. Lenahan's right to a clarification of what happened to her three daughters and who is responsible for their deaths."

1493. On September 28, 2015, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1494. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. The Commission encourages the parties to continue dialoguing on ways to implement the recommendations contained in Merits Report No. 80/11. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

**Case 12.776, Report No. 81/11, Jeffrey Timothy Landrigan (United States)**

1495. In Report No. 81/11, the Commission concluded that the United States was responsible for violating Articles II, XVIII, and XXVI of the American Declaration with respect to Jeffrey Timothy Landrigan, and that his execution on October 26, 2010, constituted a serious and irreparable violation of the basic right to life enshrined in Article I of the American Declaration.

1496. Consequently, the IACHR issued the following recommendations to the State:

1. Provide reparations to the family of Mr. Landrigan as a consequence of the violations established in this report; and
2. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, II, XVIII, and XXVI.

1497. The State submitted its last report to the Commission on February 3, 2015. In its report, the State merely reiterated its earlier December 7, 2012 submission regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.

1498. The petitioners submitted information on October 29, 2013, noting that the United States had failed to provide reparation to the family of Mr. Landrigan. They also claimed that the execution of Timothy Landrigan was carried out using a drug which was illegally imported, as determined by subsequent federal agency action and federal court decisions. They asserted that in nine out of the past thirteen executions by the State of Arizona, beginning with the execution of Timothy Landrigan on October 23, 2013, the executioners subjected prisoners to a surgically painful and invasive procedure in order to set the lethal intravenous (IV) lines.

1499. On August 13, 2015, the petitioners indicated that the State has failed to provide reparation to the family of Mr. Landrigan. Therefore, the petitioners request that the Commission makes note of the United States failure to comply with the majority of its recommendations detailed in Report 81/11, and that the Commission directs the United States to provide reparations to his family for his unlawful execution.

1500. On September 28, 2015, the IACHR asked both parties for information concerning compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The petitioners reiterated their observations of August 13, 2015. The State, for its part, did not submit any information regarding compliance with these recommendations.

1501. Based on these considerations, the Commission reiterates that the State has failed to comply with the aforementioned recommendations. Accordingly, the Commission will continue its supervision of the recommendations.

**Cases 11.575, 12.333 y 12.341, Report No. 52/13, Clarence Allen Jackey y otros; Miguel Ángel Flores, James Wilson Chambers (United States)**

1502. The Report No. 52/13 concerns cases 11.575, 12.333 and 12.341, related to the violation of articles I, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man to the detriment of Clarence Allen Lackey, David Leisure, Anthony Green, James Brown, Larry Eugene Moon, Edward Hartman, Robert Karl Hicks, Troy Albert Kunkle, Stephen Anthony Mobley, Jaime Elizalde Jr., Ángel Maturino Resendiz, Heliberto Chi Aceituno, David Powell, and Ronnie Gardner (Case 11.575); Miguel Ángel Flores (Case 12.333);

and James Wilson Chambers (Case 12.341) by the United States. The 16 alleged victims were sentenced to death in six states of the United States (North Carolina, South Carolina, Georgia, Missouri, Texas and Utah) and thereafter executed while beneficiaries of precautionary measures ordered by the Inter-American Commission on Human Rights. The Commission recommended in the Report 52/13 the following measures:

- a. Provide reparations to the families of Clarence Allen Lackey, David Leisure, Anthony Green, James Brown, Larry Eugene Moon, Edward Hartman, Robert Karl Hicks, Troy Albert Kunkle, Stephen Anthony Mobley, Jaime Elizalde Jr., Ángel Maturino Resendiz, Heliberto Chi Aceituno, David Powell, Ronnie Gardner, Miguel Ángel Flores and James Wilson Chambers as a consequence of the violations established in this report;
- b. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first statement, of his or her right to consular assistance and to request that the diplomatic authorities be immediately notified of his or her arrest or detention;
- c. Push for urgent passage of the bill for the “Consular Notification Compliance Act” (“CNCA”), which has been pending with the United States Congress since 2011;
- d. Provide every indigent person accused of a capital offense with the necessary legal representation;
- e. Ensure that the legal counsel provided by the State in death penalty cases is effective, trained to serve in death penalty cases, and able to thoroughly and diligently investigate all mitigating evidence;
- f. Review its laws, procedures and practices to make certain that no one with a mental disability at the time of the commission of the crime or execution of the death sentence, receives the death penalty or is executed. The State should also ensure that anyone accused of a capital offense who requests an independent evaluation of his or her mental health and who does not have the means to retain the services of an independent expert, has access to such an evaluation;
- g. Review its laws, procedures and practices to ensure that solitary confinement is not used as a court-imposed sentence in the case of persons sentenced to death. Ensure that solitary confinement is reserved for only the most exceptional circumstances, in accordance with international standards;
- h. Ensure that persons convicted and sentenced to death have the opportunity to have contact with family members and access to various programs and activities; and
- i. As a measure of non-repetition, ensure compliance with the precautionary measures granted by the IACHR for persons facing the death penalty.

1503. On December 5, 2014, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1504. The State, for its part, reported on February 3, 2015, that it disagrees with the Commission’s conclusions established in Merits Report No. 69/12, and it maintains that there has been no violation of the rights established in the American Declaration of the Rights and Duties of Man. The State reiterated that all persons involved in this petition have been executed.

1505. On September 28, 2015, the IACHR asked both parties for information regarding compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedures. The parties did not submit any information concerning compliance with these recommendations.

1506. Therefore, the Commission reiterates that the State has failed to comply with the recommendations made by the Commission. Consequently, the Commission will continue to monitor compliance with the pending recommendations.

**Case 12.854, Report No. 53/13, Iván Teleguz (United States)**

1507. In the Report No. 53/13 the IACHR concluded that the United States is responsible for the violation of the right to life, liberty and personal security (Article I), right to a fair trial (Article XVIII), right of petition (Article XXIV), right of protection from arbitrary arrest (Article XXV) and right to due process of law (Article XXVI) guaranteed in the American Declaration, with respect to Ivan Teleguz, who is deprived of his liberty on death row in the state of Virginia. In the said Report the Commission recommended to the United States the following measures:

1. Grant Ivan Teleguz effective relief, including the review of his trial in accordance with the guarantees of due process and a fair trial enshrined in Articles I, XVIII, XXIV and XXVI of the American Declaration;
2. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXIV, XXV and XXVI thereof;
3. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first statement, of his or her right to consular assistance and to request that the diplomatic authorities be immediately notified of his or her arrest or detention; and
4. Push for urgent passage of the bill for the “Consular Notification Compliance Act” (“CNCA”), which has been pending with the United States Congress since 2011.

1508. On December 5, 2014, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The parties did not submit information on compliance with the recommendations set forth above.

1509. The State reported on February 3, 2015, that the Commission’s recommendations were sent to the state of Virginia, which has not responded to the request for information.

1510. On September 28, 2015, the IACHR asked both parties for information regarding compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The parties did not submit any information regarding compliance with these recommendations.

1511. Therefore, the Commission reiterates that the State has failed to comply with the recommendations made by the Commission. Consequently, the Commission will continue to monitor compliance with the pending recommendations.

**Case 12.422, Report No. 13/14, Abu-Ali Abdur' Rahman (United States)**

1512. On April 2, 2014, the IACHR approved Merits Report No. 13/14, in which it stated that the United States is responsible for the violation of the right to a fair trial (Article XVIII) and the right to due process of law (Article XXVI) guaranteed in the American Declaration, with respect to Abu-Ali Abdur' Rahman, a citizen of the United States who is incarcerated on death row in the state of Tennessee. On July 13, 1987, Mr. Abdur' Rahman was convicted of first-degree murder, assault with intent to commit first-degree

murder with bodily injury, and armed robbery, and he was sentenced to death on July 15, 1987. Mr. Abdur' Rahman's execution was subsequently postponed on several occasions as a result of additional proceedings pursued on his behalf. Currently, Mr. Rahman is a beneficiary of precautionary measures adopted by the Inter-American Commission under Article 25 of its Rules of Procedure.

1513. The Commission recommended the following measures in Report 13/14:

1. Provide Mr. Abdur' Rahman with an effective remedy, which includes a re-trial in accordance with fundamental principles of due process or, where this is not possible, his release.
2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including ensuring that they are provided with competent and effective counsel.
3. The Commission also hereby reiterates its request pursuant to Rule 25 of the Commission's Rules of Procedure that the United States take the necessary measures to preserve Mr. Abdur' Rahman's life and physical integrity pending the completion of the proceedings before the Commission in this matter, including implementation of the Commission's final recommendations.

1514. On September 28, 2015, the IACHR asked both parties for information regarding compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The parties did not submit any information concerning compliance with these recommendations.

1515. Therefore, the Commission reiterates that the State has failed to comply with the Commission's recommendations. Consequently, the Commission will continue to monitor compliance with the pending recommendations.

#### **Case 12.873, Report No. 44/14, Edgar Tamayo Arias (United States)**

1516. On July 17, 2014, the IACHR approved Report on Merits No. 44/14, in which it stated that the United States is responsible for the violation of the right to life, liberty and personal security (Article I), the right to a fair trial (Article XVIII), the right of protection from arbitrary arrest (Article XXV), and the right to due process of law (Article XXVI) guaranteed in the American Declaration, with respect to Edgar Tamayo Arias, who was sentenced to death and later executed while he was a beneficiary of precautionary measures granted by the Inter-American Commission on Human Rights.

1517. The Commission recommended the following measures in Report 44/14:

1. Provide reparations to the family of Edgar Tamayo Arias as a consequence of the violations established in this report; and
2. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof;
3. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first statement, of his or her right to consular assistance and to request that the diplomatic authorities be immediately notified of his or her arrest or detention;
4. Push for urgent passage of the bill for the "Consular Notification Compliance Act" ("CNCA"), which has been pending with the United States Congress since 2011;

5. Ensure that the legal counsel provided by the State in death penalty cases is effective, trained to serve in death penalty cases, and able to thoroughly and diligently investigate all mitigating evidence;
6. Review its laws, procedures and practices to make certain that no one with a mental or intellectual disability at the time of the commission of the crime or execution of the death sentence receives the death penalty or is executed. The State should also ensure that anyone accused of a capital offense who requests an independent evaluation of his or her mental health and who does not have the means to retain the services of an independent expert, has access to such an evaluation;
7. Review its laws, procedures and practices to ensure that solitary confinement is not used as a court-imposed sentence in the case of persons sentenced to death. Ensure that solitary confinement is reserved for only the most exceptional circumstances, in accordance with international standards;
8. Ensure that persons sentenced to death have the opportunity to have contact with family members and access to various programs and activities;
9. Ensure that persons sentenced to death have access to information, in a timely manner, related to the precise procedures to be followed in their execution, the drugs and doses to be used, and the composition of the execution team as well as the training of its members. The State must also ensure that persons sentenced to death have the opportunity to challenge every aspect of the execution procedure.
10. Given the violations of the American Declaration that the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.

1518. On September 28, 2015, the IACHR asked both parties for information regarding compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The parties did not submit any information concerning compliance with these recommendations.

1519. Therefore, the Commission reiterates that the State has failed to comply with the Commission's recommendations. Consequently, the Commission will continue to monitor compliance with the pending recommendations.

#### **Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)**

1520. In Report No. 86/09 of August 6, 2009, the Inter-American Commission concluded that the State was responsible for violation of the rights that Jorge, José and Dante Peirano have under articles 7(2), (3), (5) and (6), 8(1) and (2), and 25(1) and (2), as a function of its obligations under articles 1(1) and 2 of the American Convention. It therefore made specific recommendations. Summarizing, the petitioners had alleged that the three Peirano Basso brothers were deprived of their liberty on August 8, 2002. As of the date on which the complaint was filed, i.e., October 18, 2004, they had not been formally charged and had not been tried. The petitioners alleged that by January 2005, the requirements for their release had been met, as they had already spent two and a half years in prison. The State accused them of violating Law 2230 (1893), which punishes the directors of companies in dissolution who commit tax evasion and other financial offenses. According to the complaint, persons charged with this crime need not be incarcerated during their trial; nevertheless, the Peirano Basso brothers were held in prison because of the "social alarm" brought on by the collapse of the Uruguayan banking system, which they were alleged to have caused.



1521. In its report the Commission decided the following:

1. Reiterate the recommendation that the State amends its legislation, to make it consistent with the rules of the American Convention, which guarantee the right to personal liberty.

1522. In a note dated December 20, 2010, the State reported that the Executive Branch had sent the bill to amend the Penal Code to the Parliament on November 9, 2010. The House of Representatives' Committee on the Constitution, Codes, General Legislation and Government took it under consideration on November 16, 2010. It explained that from December 15, 2010 to March 30, 2011, representatives will be able to propose amendments.

1523. In notes dated July 15, 2010 and February 7, 2011, the petitioners requested a hearing with the IACHR and stated that the judge in the case had decided to continue the proceedings despite the repeal of the article under which the Peiranos had been investigated and imprisoned (Art. 76, Law 2.230). They also reported other allegedly arbitrary actions, including an injunction prohibiting the petitioners from leaving Montevideo, the suspension of Jorge Peirano's professional credentials, and the disallowance of time served in remand custody in the United States by Juan Peirano. Subsequently, the petitioners submitted a statement dated July 18, 2011 in which they reported as very serious an April 15, 2011 decision by the Supreme Court to allow the case against the Peirano brothers to proceed, despite the repeal of Article 76 of Law 18.411 in 2008. In its decision, the Supreme Court held that, although the offense in question had been abrogated, the proceedings should continue because the State's charges against the Peiranos had been broadened in October 2006 to include the charge of "fraudulent business insolvency" (Art. 5, Law 14.095). The petitioners claim that this decision violates the principle of the retroactivity of the lighter criminal penalty set forth in Article 9 of the American Convention because the State broadened its complaint in order to justify the lengthy period of detention in view of the imminent repeal of Article 76 of Law 2.230. Furthermore, contrary to the holding of the Supreme Court, they consider the broadening of the State's charges improper, given that there have been no new facts in the case since the indictment (which, in their opinion, may not be altered) and that the sole original charge in the indictment was for a now abrogated offense.

1524. With regard to the legal reform, the petitioners reported in a communication to the Commission on November 21, 2011 that, even though the bill was before the Legislature, they had concerns about its eventual outcome, given the lack of political will to achieve the necessary changes within the executive branch and existing provisions that delayed preliminary implementation of the new criminal procedure system until 2014. The petitioners asked the IACHR to require the Uruguayan State to provide information on actions taken after approval and publication of the report.

1525. In a communication received on December 15, 2011, the Uruguayan State provided the code of criminal procedure bill that the executive branch had put before the Legislature, as well as stenographic versions of the meetings of the Senate Constitution and Legislation Committee on May 3, 10, and 31 and July 19, 2011.

1526. In its communication of January 3, 2013, the State reported that it continued to make progress on the implementation of the Commission's recommendations. It pointed out that the Chamber of Representatives' Committee on the Constitution, Codes, General Legislation and Government was still studying the bill to amend the Penal Code, and the bills to amend the General Procedural Code and the Code of Criminal Procedure. The State also mentioned that progress is being made in other areas, as in the case of the regime of penalties and alternatives to imprisonment. Here it noted that the Chamber of Representatives' Committee on the Constitution, Codes, General Legislation and Government had completed its consultations on the bill to amend Law No. 17.725 on Penalties and Alternatives to Incarceration. The corresponding report must be drawn up before the bill can be introduced in the full Chamber.

1527. In its communication the State reported that it had a number of clarifications regarding the assertions made by the petitioners in their note of August 6, 2012, where they claimed that "despite the

repeal of Article 76 of Law 2230, under which Messrs. Peirano had been tried and imprisoned, the judge presiding over the case had decided to go ahead with the proceedings.”

1528. The State said that the court’s decision was based on an interlocutory ruling on a request filed by the various defense attorneys representing all the defendants on trial –including the Peirano brothers-, seeking to have the case closed and the record of the case filed. The State indicated that the interlocutory ruling was appealed and the Criminal Appellate Court of Third Rotation overturned the ruling, and ordered the record of the proceedings closed. The public prosecutor then filed a cassation appeal to challenge the appellate court’s ruling, which the Supreme Court overturned and confirmed the original court decision. Therefore, the State argues that the case brought against the Peirano brothers and the other defendants followed appropriate procedure and that –contrary to what the petitioners are claiming- the Supreme Court’s decision is what prevented the case from being closed; the principle of retroactivity of the law was never violated.

1529. Therefore, the State contends that one cannot make the case that the principle of the retroactivity of the law most beneficial to the criminal defendant was violated because Article 76 of Law 2230 was repealed in 2008; by that time, the indictment alleging a different crime (criminalized in Article 5 of Law 14,095 of 1972) had long since been filed. The State contends that none of the circumstances posited in Article 9 of the American Convention was present. In effect, this is not a case in which the law applied was not the applicable law at the time the crime was committed (as already noted, law 14,095 dates from 1972, and the events on trial in this case occurred well thereafter). The State further contends that this is not a case in which a heavier penalty was applied, since in its indictment, the Public Prosecutor’s Office classified the criminal behavior with which the defendants were accused under the provisions Article 5 of Law 14,095. The State observes that the indictment marks the start of the criminal trial; the crime with which the defendant is charged can be changed provided that the facts for which the defendant is standing trial are not changed. Finally, the State points out that the article that was repealed was one that the Public Prosecutor’s Office did not cite in its indictment. Hence the vicissitudes of a provision that was not used in the prosecution’s case are irrelevant to the defendants since the defense arguments must go to and contest the indictment; the verdict must be rendered on the basis of the indictment. The charges against the defendant have to be analyzed in rendering a final decision.

1530. The State also asserted that the court did not deny the petitioners’ right to leave the country; instead, it authorized them to leave provided they put up bond. It added that the suspension of Jorge Peirano’s professional credentials was the result of enforcement of Article 140 of Law 15,750. It therefore contends that the application of the law in force at the time cannot be deemed a judicial abuse. As to the assertion that no allowance was made for the time that Juan Peirano served in preventive detention in the United States, the State’s contention was that the preventive detention served in the United States was in connection with another case, not the case of the Peirano brothers, Jorge, José and Dante. In effect, the State points out that Juan Peirano’s extradition from the United States was done pursuant to existing legal provisions and the extradition treaty, which are not part of case 12,553 processed with the IACHR.

1531. The petitioners provided information in a communication received on September 11, 2012, expressing their concern over the fact that the State had not complied with the Commission’s second recommendation in which the State was asked to amend its legal or other provisions in order to make them fully compatible with the rules of the American Convention that ensure the right to personal liberty, not only as a guarantee of non-repetition, but also as a measure to put an end to the violations suffered by the victims in the present case. They contend that the effect of the State’s failure to comply with the Commission’s second recommendation has been to deprive the victims of any protection against judicial abuse, and ensures that the violations of articles 8 and 25 of the American Convention of which the Peirano brothers have been victim will become continuing violations.

1532. In a communication dated November 1, 2012, the petitioners reported that once the victims in the case were released pursuant to the first recommendation in Report 35/07, they were subjected to a kind of “partial freedom”, since they were not allowed to leave Montevideo; one of them was allegedly unable

to practice his profession because his professional credentials were said to have been suspended even before he was convicted of anything; furthermore, they were allegedly granted extraditions, etc.

1533. In a communication received on July 18, 2012, the petitioners reported that the Peirano Basso brothers were still being criminally prosecuted. The petitioners observed that although enactment of Law No. 18411 of November 14, 2008, had repealed Article 76 of Law No. 2230 –for which the brothers had been prosecuted- and the criminal case was filed as a result, the Prosecutor’s Office appealed that decision, which the Uruguayan Supreme Court overturned on April 15, 2011, ordering that the decision to close the case be revoked and that the criminal proceedings were to go forward.

1534. The petitioners assert that the ground cited in the Supreme Court’s ruling was that the crime being prosecuted is established in the formal indictment, and not in the prosecution of the case; they consider this interpretation to be at variance with domestic and international law on this subject. Therefore, this is not simply a matter of the State’s failure to comply with the second recommendation; it is also a violation of international law.

1535. The petitioners add that in the case against the Peirano brothers, the only crime charged in the final order binding them over for trial was abrogated; the final order binding them over for trial is the one that spells out the crime for which the defendants are being prosecuted. They contend that the court order mapped out the legal grounds on which the case was being prosecuted, which was Article 76 of Law 2230, not Article 5 of Law 14095 (fraudulent corporate insolvency); however, the case is now being prosecuted on the basis of Article 5 of Law 14095. They are therefore arguing that the set of facts existing at the time the order to stand trial was delivered and the set of facts when the complaint was filed had allegedly changed, which is not the case.

1536. On November 18, the State reiterated that the Senate Constitution and Legislation Committee was debating a bill to reform the Code of Criminal Procedure, that it was the first chamber of the legislature to address the matter, and that it was hoped that it would be approved in December 2013. The State also informed that the bill was part of a broader criminal reform process given that a proposed organizational law creating the Office of the National Prosecutor as a decentralized department was being examined. At present, that office is still part of the Ministry of Education and Culture and the Criminal Code reform bill is currently being studied by the relevant committee in the House of Representatives.

1537. For their part, on November 25, the petitioners submitted information indicating that the Code of Criminal Procedure reform bill would not be approved under this administration because the deadline for adopting laws that entailed spending expired in October 2013. They said that national elections would soon be held and that the adoption of laws that entailed spending was also banned in an election year. As a result, they said that a new parliament would not take up the bill until 2015. Furthermore, they noted that the Peirano brothers still have to obtain judicial permission to travel outside Montevideo and that Jorge Peirano was still ineligible after eight years of preventive detention, even though the judgment at first instance had been issued, sentencing him to six years in prison. As a result, his ineligibility was being kept in place for longer than the amount of time ordered in the criminal sentence. They added that a new development that had arisen in the case was that the above judgment of first instance had been handed down 11 years after the proceedings began, which, moreover, had been set aside at one point. They claimed that this affected the right to be presumed innocent, fair trial guarantees, and other international guarantees. They said that the judgment is currently under appeal. In sum, they say that the Peiranos are still being submitted to the same criminal proceeding and procedural rules that the IACHR described as falling short of the standard set by the Convention and that the delay by the State in implementing the recommendation pending affected thousands of persons currently being or who will be subjected to an arbitrary process. The petitioners hold that despite being at liberty, in other ways, the victims are still being subjected to an ongoing violation of their rights to an impartial and fair trial.

1538. On December 2, 2014, the IACHR requested up-to-date information from the parties regarding compliance with the pending recommendation. The State sent information on December 29, 2014,

which gave an account of the passage and enactment of the new Code of Criminal Procedure (CPP) on December 19, 2014.

1539. For their part, on February 11, 2015, the petitioners presented information on compliance, indicating that the Code of Criminal Procedure had indeed been adopted but that there had not been a technical advice from the IACHR, and that they believed that [the CPP] fails to meet international standards. The petitioners requested that a public hearing be held with all the members of the IACHR to reconsider sending the case to the Inter-American Court of Human Rights. The petitioners once again noted that the Peirano brothers are still being criminally prosecuted and that the new Code of Criminal Procedure fails to indicate in its statement of purpose that it was adopted in compliance with the recommendation issued in Report No. 86/09. The petitioners further indicated that there is not a single judge in the country who has applied the “reasonable time” standard set forth in the report or even cited that document. The petitioners stressed that the aforementioned Code would enter into force in 2017 and criticized the fact that it would not go into effect sooner.

1540. Regarding the petitioners’ assertions with respect to the criminal case being pursued against the Peiranos, the IACHR observes that the report in question had recommended that “*The Uruguayan State must take all the necessary measures to release Jorge, Jose, and Dante Peirano Basso while a [judgment] is pending, without prejudice to the continuation of proceedings,*” a recommendation the IACHR considered fulfilled in the same Report No. 86/09.<sup>117</sup>

1541. With respect to the second recommendation made in Report No. 86/09, the Commission is evaluating the information provided by the State and takes note of Uruguay’s adoption of a new Code of Criminal Procedure by means of Law 19.293, as well as the enactment thereof by the Executive branch on December 19, 2014. The Commission will conduct an analysis on compliance in terms of whether the precepts of the new CPP are “fully compatible with the standards of the American Convention that ensure the right to personal liberty.”

1542. In a communication dated January 27, 2015, the petitioners expressed their disagreement with the lack of a legal opinion by the IACHR of the new Code of Criminal Procedure of Uruguay, which, in their view, does not conform to international standards. In that connection, they refer to the discussion surrounding the secondment of public prosecutors to the Ministry of Education or the Office of the President of the Republic. They consider, moreover, that the IACHR’s recommendation cannot be regarded as implemented just because of the adoption of the regulatory instrument, which will only enter into force as of 2017. In addition, the petitioners lament the fact that Uruguayan judges have not granted parole based on the international standard regarding the limits to pre-trial detention established in the Commission’s report on the merits in the instant case. Nor did they cite that decision in their rulings. Therefore, the petitioners request that the IACHR declare that the recommendations have not been implemented and that it reconsiders its decision not to refer the case to the Inter-American Court of Human Rights.

1543. As regards the petitioners’ request to reconsider the decision not to refer the case to the Inter-American Court, it is worth pointing out that, pursuant to Article 51 of the American Convention on Human Rights, the Commission decided at the time not to refer said case to the Court, but, on the contrary, to publish Report No. 86/09, dated August 6, 2009, and to include it in its Annual Report to the OAS General Assembly, which it did.

1544. Furthermore, the Commission deems it appropriate to explain that in the aforementioned report on the merits it only upheld the recommendation that the State amend legislative or other provisions in order to align them as a whole with the provisions of the American Convention guaranteeing the right to personal liberty. Accordingly, the State notified the IACHR regarding the adoption and promulgation of the

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<sup>117</sup> IACHR Report No. 86/09, Case 12.553, Merits, *Jorge, Jose, and Dante Peirano Basso*, Eastern Republic of Uruguay, August 6, 2009.

new Code of Criminal Procedure (CCP) on December 19, 2014, which will indeed enter into force on February 1, 2017.

1545. Por lo anterior, la CIDH considera que el Estado registró un avance sustantivo en el cumplimiento de la recomendación pendiente, y continuará con el análisis de adecuación convencional correspondiente, por lo cual la considera parcialmente cumplida.

**Case 12.555 (Petition 562/03), Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)**

1546. On October 27, 2006, by means of Report No. 110/06<sup>118</sup>, the Commission approved a friendly settlement agreement in the case of Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola. The case deals with the deportation, from Venezuela to Spain, of Juan Víctor Galarza Mendiola on June 2, 2002, and of Sebastián Echaniz Alcorta on December 16, 2002, both of whom are Spanish nationals of Basque origin.

1547. In the friendly settlement agreement, the Venezuelan State accepted its responsibility for violating the human rights of Juan Víctor Galarza Mendiola and Sebastián Echaniz Alcorta, by illegally deporting them and illegally handing them over to the Spanish State. The Venezuelan State also acknowledged its violation of the following articles of the American Convention: Right to Humane Treatment, Right to Personal Liberty, Right to a Fair Trial, Right to Privacy, Rights of the Family, Freedom of Movement and Residence, Right to Equal Protection, and Right to Judicial Protection, in accordance with the general obligation to respect and guarantee rights. It also admitted the violation of Article 13 of the Inter-American Convention to Prevent and Punish Torture, it undertook to provide, inter alia, pecuniary damages and guarantees of non-repetition.

1548. On October 21, 2006, the Commission adopted Report No. 110/06, in which it applauded the efforts made by both parties in reaching the friendly settlement and, in addition, clarified that the agreement referred to a series of matters beyond the jurisdiction of the Commission and/or that were not addressed in the case before it. The Commission therefore deemed it was necessary to state that the adopted report in no way implied a ruling on the individuals not named as victims in the case before the Commission, on the citizenship of Messrs. Juan Víctor Galarza Mendiola and Sebastián Echaniz Alcorta, nor on the treatment they may have received in third countries not subject to the IACHR's jurisdiction.

1549. On October 4, 2013, November 25, and October 5, 2015. The IACHR asked both parties for information on compliance with the points still pending but received no reply.

1550. Based on the foregoing, the IACHR concludes that compliance with the friendly settlement agreement remains pending. Therefore, the Commission will continue to monitor the pending items.

**Case 11.706, Report No. 32/12, Yanomami Indigenous People of Xaximú (Venezuela)**

1551. On October 1, 1999, through the good offices of the Commission, a friendly settlement agreement was executed between the Venezuelan State and the petitioners. The case is about the death of 16 Yanomami indigenous people, by a group of Brazilian gold prospectors (garimpeiros), who had also injured another group, in the region of Haximu, State of Amazonas, Venezuela, on the border with Brazil.

1552. In the agreement, the State promised to conduct surveillance and control over the Yanomami area, by establishing a Joint and Standing Surveillance and Control Plan to monitor and oversee the entry of garimpeiros and illegal mining in the Yanomami area; with regard to the health of the Yanomami people, it pledged to design, fund and put into operation, through the Ministry of Health and in coordination with the

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<sup>118</sup> IACHR Report No. 110/06, Case 12.555, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola, October 27, 2006, available at <http://www.cidh.oas.org/annualrep/2006sp/Venezuela12555sp.htm>.

Regional Council of Health of the State of Amazonas, a Comprehensive Health Program for the Yanomami Peoples. With respect to the judicial investigation of the massacre, it pledged to undertake follow-up to the judicial investigation into the criminal proceeding that is being brought before the Brazilian authorities, in order to establish responsibility and apply the appropriate criminal punishments. It also undertook to study and promote legislative measures for the protection of indigenous peoples and the appointment of an expert on indigenous affairs. Subsequently, the IACHR received information on the proposals for compliance with the agreement between the parties, specifically regarding the surveillance and control of the Yanomami area and the Yanomami health plan.

1553. On March 20, 2012, the IACHR approved Friendly Settlement Report No. 32/12<sup>119</sup> recognizing the willingness of the State to comply with the items of the agreement and the progress made in this regard, based on the information provided by the parties during the processing of the instant matter. Additionally, it assessed the proposals for compliance outlined by the petitioners. With regard to the judicial investigation proceedings into the facts of this case, the IACHR took into account that the investigation led to the punishment of those responsible by the Brazilian authorities.

1554. Consequently, the IACHR decided to:

1. Approve the terms of the friendly settlement agreement reached by the parties with the respective amendments.
2. Make the instant report public and include it in the Annual Report of the Commission to the OAS General Assembly.

1555. On October 08, 2013, the IACHR requested both parties to report on compliance with the pending items and received no reply from either side. On November 25, 2014, the IACHR received a joint communication from the Venezuelan Program of Action and Education in Human Rights [*Programa Venezolano de Educación Acción en Derechos Humanos*] (PROVEA) and CEJIL, providing information on the two pending items of the agreement: the supervision and monitoring of the Yanomami area and the provision of health services to the Yanomami people.

1556. With respect to the first item, the petitioners expressed their concern over the alleged absence of surveillance and control of the unlawful entry of garimpeiros into the area, as well as the proliferation of illegal mining, maintaining that both the former and the latter were taking place with the complicity of the Armed Forces and the Environmental Police. The petitioners alleged that those acts have had adverse effects on the community, posing major threats to the safety and lives of the Yanomami people. They alleged that those acts have resulted in the pollution of the Atabapo River and the disturbance of the waterway ecosystem in the area, as well as the introduction and expansion of endemic diseases, organized crime, different forms of violence against indigenous women, and drug trafficking. In view of the above, the petitioners assert that the Venezuelan State continues to lack appropriate policies and measures to control the unlawful entry of garimpeiros, as well as appropriate policies to control the corruption of members of the Armed Forces, who have contributed to the establishment and growth of illegal mining in the area.

1557. With respect to the second point, the petitioners assert that, in spite of the progress made by the IACHR on the issue, they have documented some setbacks: the constant and ongoing lack of adequate health personnel in rural areas and their continuous rotation; lack of continuity in medical treatments, which hinders the effective eradication of epidemics; increased mortality rate in 2013 due to infectious diseases such as malaria, pneumonia, and tuberculosis; lack of adequate transportation to access remote areas and the lack of suitable medical equipment to treat the aforementioned health crisis; and the need to continue training members of this ethnic group as “Yanomami Community Agents for Primary Health Care.” In particular, the petitioners ask that the efforts made to date be supported by increased monitoring by the

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<sup>119</sup> IACHR Report No. 32/12, Petition 11.706, Indigenous People Yanomami of Haximú, March 20, 2012, available at: <http://www.oas.org/es/cidh/decisiones/amistosas.asp>

institutions, and that the additional medicines and supplies necessary for it to complete its work be provided. Finally, the petitioners assert that the Yanomami Health Plan does not currently have a sufficient budget.

1558. On October 5, 2015, the IACHR asked for updated information on compliance. So far, the parties have not presented the information requested.

1559. Based on the foregoing, the IACHR concludes that there has been partial compliance with the recommendations made in Report 122/12. Accordingly, the Commission will continue to monitor compliance.

**Case 12.473, Report No. 63/13, Jesús Manuel Cárdenas et al. (Venezuela)**

1560. On March 2, 2005, through the good offices of the Commission, the Venezuelan State and the petitioners entered into a friendly settlement agreement. The case concerns the responsibility of the Bolivarian Republic of Venezuela for failing to comply with two court decisions issued by domestic courts upholding the 18 alleged victims' right to social security.

1561. On July 16, 2013, the IACHR approved the friendly settlement agreement in which the State agreed to the following:

1. To pay the 18 pensioners and their heirs, as appropriate, 100 percent of the pensions owed as of the date of payment.
2. To adopt a mechanism that enables the victims and survivors to collect their retirement pensions in the future, after the sums owed have been paid, in accordance with Venezuelan law.
3. The payment of six thousand U.S. dollars (US \$6,000) or its equivalent in bolívares in compensation for pecuniary and non-pecuniary damages caused to each of the victims and their families. The State may request an additional two months beyond the previously established time limit in order to comply with these reparations.
4. To take steps to satisfy the non-pecuniary claims, ensuring that the State apologizes to the victims and their families. This shall consist of the following:
  - a. Acknowledgement of the international responsibility of the Venezuelan State under international law for the violation of human rights that occurred in 1992 as a result of the privatization of the company VIASA, which infringed the vested rights of the pensioners, and the acknowledgement by President Hugo Chávez Frías of the need to resolve the situation.
  - b. Publication of the apology to the pensioners and their families in a nationally circulated daily newspaper.
  - c. Production of a special television program on the State-owned network with the largest nationwide audience in tribute to the deceased pensioner Jesús Manuel Naranjo, President of the National Association of Retired Workers and Pensioners of VIASA, and in recognition of the perseverance of the pensioners in fighting for their rights.
  - d. Implementation of an educational campaign to raise awareness about the rights of retired persons in Venezuela and benefits to which they are entitled.

1562. With respect to the first item, the approval report established that the State has been timely and consistently making the monthly retirement and pension benefits payments to the victims in the case. Nevertheless, the Commission decided to continue monitoring all of the items contained in the agreement.

1563. On August 25, the petitioners indicated that the Venezuelan State had been complying with the core aspects of the agreement. The petitioners confirmed that the beneficiaries had received the monthly payments, which they each deposit in their own bank account in a state-owned bank. Those disbursements had, from the very first disbursement, been regular and on time. The petitioners recognized the political willingness of the Venezuelan State to comply with the financial commitments. The petitioners stated that the State had also maintained the measure of treating the retired petitioners as retirees of the Ministry of People's Power for Finance. Consequently, they received all the benefits that the Ministry grants its own retirees, which exceed those envisaged in the friendly settlement agreement. The petitioners considered that the State complied with the financial aspects of the agreement. In light of the above, the IACHR greatly appreciates the efforts of the Venezuelan State to move forward with fulfilling the commitments undertaken in the friendly settlement agreement and declares that points 1, 2 and 3 of that agreement have been complied with.

1564. The petitioners indicated that the State had not complied with the commitments in respect of recognition of responsibility and television programs established in point 4 of the agreement. In light of the above, the IACHR will continue to monitor that clause.

1565. On October 1, 2015, the IACHR requested updated information on compliance with the points in the agreement. So far, neither party has replied.

1566. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.