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

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REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

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REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

I. INTRODUCTION

1. The human rights instruments enshrine rights that the States must respect and guarantee for all persons under their jurisdiction. The work of human rights defenders is fundamental for the universal implementation of those rights, and for the full existence of democracy and the rule of law. The tireless work of human rights defenders has been essential in the defense of rights under dictatorships, authoritarian governments, and during internal armed conflicts. Today, in a context marked by democratic governments, the work of human rights defenders continues to be essential for the process of strengthening democracies. For this reason, the day-to-day problems that human rights defenders face have been a matter of particular interest in the work of the Inter-American Commission on Human Rights (the "IACHR" or "the Commission").¹

2. Since it was established, the Commission has followed the work of, supported, and expressed its recognition for those who, with their work, have helped create the conditions for the development of human rights. In large measure, thanks to human rights defenders today we have guarantees of protection for all inhabitants of the region, including the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

3. Even today, in democratic societies, human rights defenders continue to be victims of extrajudicial executions and forced disappearances; assaults, threats, and harassment; smear campaigns, judicial actions; restriction of access to information in the hands of the state; abusive administrative and financial controls; and impunity in relation to those who perpetrate these violations.

4. The Commission considers that when efforts are made to silence and inhibit the work of human rights defenders, thousands are denied the opportunity to obtain justice for violations of their human rights. Such efforts place at great risk the work of protecting and promoting human rights, social oversight of the proper functioning of public institutions, accompaniment and judicial support for victims of human rights violations, among other tasks.

5. One of the most important mechanisms the inter-American system has to protect human rights defenders is that constituted by urgent actions, precautionary measures, and provisional measures. This report describes the effectiveness of their application in protecting the work of those persons engaged in the protection of the human rights of persons who live in this hemisphere.

6. In order to obtain the information needed for drafting the report, the Special Human Rights Defenders Unit of the Executive Secretariat, established in 2001, drew up two questionnaires to be sent to the member states and human rights organizations of the hemisphere.² The questions in the questionnaire to the states parties were divided into three issues: recognition of human rights organizations, protection of human rights defenders by the state, and acts that impede or encumber the work of the defenders and their organizations. In the questionnaire sent to the human rights organizations, questions were asked about their work and organization, acts of violence and attacks on individuals and organizations, relations with the state, and measures of protection granted by the organs of the inter-American system. The Commission would like to express its gratitude to the states and the organizations that

¹ In this regard, see, for example, IACHR, Annual Report 1997, Part II, OEA/Ser.L/V/11.43 Doc. 21 corr. 1 of April 20, 1978; Annual Report 1981-1982, Ch. V, Chile, para. 7, OAS Part II, OEA/Ser.L/V/11.57 Doc. 6 rev. 1 of September 20, 1982.

² Thirteen states and 67 human rights organizations answered the questionnaire.

sent their observations. The report also draws on the information obtained through the cases and precautionary measures that come before the system, the hearings before the Commission, the on-site visits, and regional and country consultations, from the creation of the Unit to the writing of this report.

7. The objective of this Report is to identify the patterns of violations of those who work in the defense of human rights in the region, and at the same time to highlight the special risk faced by some groups of defenders. A second objective is to reaffirm the legal framework of protection afforded by the inter-American system, which should be applied to the work of men and women engaged in the defense of human rights. The Commission points out that this report provides a preliminary overview of a variety of topics that will be examined in depth in more detailed thematic reports. Finally, through this report the Commission proposes to the states measures to legitimate, promote, and protect the work of human rights defenders.

II. THE HUMAN RIGHTS DEFENDERS UNIT

8. In its 1998 Annual Report, the Commission has highlighted the importance and the ethical dimension of the work carried out by those persons who are dedicated to promoting, monitoring, and providing legal defense for human rights and by the organizations with which many of them are affiliated. In that report the Commission recommended to the member states that they "take all necessary measures to protect the physical integrity of human rights defenders and to ensure they can work under appropriate conditions."³ When these recommendations were presented to the member states, the General Assembly adopted resolution 1671, entitled "Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas." Through this resolution, the General Assembly entrusted the Permanent Council, in coordination with the Inter-American Commission, to continue studying the issues of human rights defenders in the Americas."⁴

9. Following up on this resolution, in the context of its thirty-first session, the General Assembly asked the Commission "to consider preparing a comprehensive study in this area which, *inter alia*, describes their work, for study by the pertinent political authorities."⁵ In December 2001, mindful of this request, the Executive Secretariat decided to establish a Human Rights Defenders Unit⁶, entrusted with coordinating the activities of the Executive Secretariat in this area, directly under the Executive Secretary. Special mention should be made of the contribution to the creation of this unit by Ms. Hina Jilani, the Special Representative of the United Nations Secretary-General on Human Rights Defenders.

10. Since its was established, the Unit has carried out the following tasks: receive and analyze the communications, complaints, urgent actions, and press information that human rights organizations send the Executive Secretariat; advise the Commission on individual petitions and requests for precautionary measures related to human rights defenders; promote hearings on the subject⁷; and publicize incidents that have a detrimental effect on the full enjoyment of their rights by human rights defenders in the region.

³ IACHR, Annual Report 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, p. 1189.

⁴ OAS, General Assembly, resolution AG/RES. 1671 (XXIX-O/99), June 7, 1999.

⁵ OAS, General Assembly, resolution AG/RES. 1818 (XXXI-O/01), June 5, 2001.

⁶ IACHR, Press release N° 32/01, published on the IACHR website on December 7, 2001.

⁷ The Commission has convened hearings to look into, *inter alia*, issues such as the situation of judicial officers in Central America, the situation of freedom to form and join unions Central America and Colombia, and the situation of human rights defenders in Latin America.

11. The Unit has made several visits to the countries to evaluate specific situations. As of December 2001, the Unit has provided support for the visits by the Commission to Colombia (December 2001), Argentina (August 2001), and Guatemala (July 2002, March 2003, and July 2005). In each instance, in the context of both working and on-site visits, the Unit has scheduled meetings with human rights defenders and with the authorities in charge of protecting these persons. As a result of those visits, the Unit has provided support for the preparation of several country reports in which a special chapter has been included about the situation of human rights defenders. This has been done in the recent reports on Colombia, Guatemala, and Venezuela.⁸

12. The Unit has engaged in permanent coordination with other international and regional organizations devoted to the issue of human rights defenders. On several occasions meetings have been held, both at its headquarters and in other countries, with the Special Representative of the United Nations Secretary General on the Situation of Human Rights Defenders, and with the Special Rapporteur of the African Commission.⁹ Additionally, the Unit has participated in numerous meetings called by human rights organizations in which the issue of human rights defenders has been addressed.¹⁰

III. HUMAN RIGHTS DEFENDERS IN A DEMOCRATIC SOCIETY

A. Human rights defenders

13. The basic framework for analysis for determining who should be considered a human rights defender is found in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter “the United Nations Declaration”). Article 1 of the United Nations Declaration provides: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Therefore, every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally, must be considered a human rights defender.¹¹

⁸ See IACHR, Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999; IACHR, *Justicia e inclusión social: los desafíos de la democracia en Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, pp. 81-98; IACHR, Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118, Doc. 4 rev. 2, December 29, 2003, pp. 81-84.

⁹ In March 2004, the Unit traveled to Gambia to provide advisory services and share experiences on its work with the African Commission.

¹⁰ The Executive Secretary has attended many events convened by human rights organizations where the issues facing human rights defenders have been addressed. At such events the Executive Secretary has presented the work of the Unit and has listened to the needs of the organizations of human rights defenders at conferences such as the Dublin Platform for Human Rights Defenders (January 2002), the conference “Human Rights Defenders on the Frontlines of Freedom: Protecting Human Rights in the context of the War on Terror,” sponsored by the Carter Center and the Office of the United Nations High Commissioner for Human Rights (November 2003), and the Second and Third Latin American Consultations on Human Rights Defenders, held in Guatemala (July 2002) and Brazil (August 2004). In addition, an attorney from the Unit attended the Human Rights Defenders Seminar held in Oslo, Norway, in May 2005. In August 2005, the Executive Secretary participated in the First Central American Assembly of Human Rights Defenders.

¹¹ Along the same lines, the European Union has established that:

Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

14. The United Nations High Commissioner for Human Rights, interpreting this provision, has noted certain tools that facilitate the task of identifying who can be considered a human rights defender.¹² The High Commissioner has suggested that the determination as to whether a person is a human rights defender is based on the actions of that person, and no other considerations, such as whether he or she is paid for such work. To be considered in this category, the person must protect or promote any right or rights of persons or groups of persons, which includes promoting and protecting any civil or political right, or economic, social, or cultural right.

15. The United Nations High Commissioner notes that human rights defenders undertake to further the realization of any of the rights, which includes addressing summary executions, forced disappearances, torture, arbitrary detentions, discrimination, labor rights, the right to housing and forced evictions, among others. In addition, human rights defenders may carry out their work in certain categories of rights or persons, such as protecting the rights of women, children, indigenous peoples, refugees and forcibly displaced persons.

16. In the manual on this topic, the High Commissioner indicates that there is not a closed list of activities that are considered action in the defense of human rights. These actions may entail investigating and compiling information to report human rights violations, lobbying the national and international authorities to ensure they learn of those reports or of a given situation, actions to ensure the responsibility of state authorities and eradicate impunity, actions to support democratic governance and to eradicate corruption, the contribution to implementing, on a national scale, the international standards established by human rights treaties, and education and training in human rights. Whatever the action, the important thing is that it be aimed at promoting the protection of any component of at least one human right, and that it not involve violent methods.

17. Accordingly, the General Assembly of the OAS has called on the member states to protect the individuals, groups, and organizations of civil society engaged in efforts to protect human rights and fundamental freedoms, and to effectively do away with human rights violations, nationally and/or regionally.¹³ In addition, the General Assembly has called on the states to promote and enforce the United Nations Declaration on Defenders, as well as the provisions of the inter-American system and the decisions of its organs.

18. The Commission in this report and its subsequent work will use the broad concept of human rights defender found in the United Nations Declaration, and invites the member states to apply this standard in their domestic legislation and practices, as several states of the hemisphere do at this time.

19. The criterion that determines who should be considered a human rights defender is the activity itself. In this sense, those individuals working in State institutions whose functions relate to the promotion and protection of human rights and who, in the exercise of those duties, are victims of acts that directly or indirectly prevent or hamper their work, should receive the same protection as members of civil society who are working in the defense of human rights. This is the case insofar as such

...continuation
defenders, 100056/1/04 REV 1, Brussels, June 9, 2004. See, European Union Guidelines on Human Rights Defenders, items 2 and 3.

¹² United Nations Office of the High Commissioner for Human Rights, Protecting the Right to Defend Human Rights and Fundamental Freedoms, Fact Sheet No. 29, UN publications, Geneva, 2004.

¹³ OAS, General Assembly, resolution AG/RES. 1671 (XXIX-O/99), June 7, 1999.

acts affect the enjoyment of human rights by society as a whole. Moreover, the Commission takes into account that, in general, public officials working in entities such as human rights offices, ombudsperson's and procurator's offices [*defensorías, personerías, procuradurías*], special human rights prosecutors offices, and the like, who are constantly working to verify the proper functioning of the State and the performance of the authorities in fulfilling their human rights obligations, are more vulnerable to falling victim to hostile acts.¹⁴

B. International protection of human rights defenders

20. The Inter-American Democratic Charter reaffirms that democracy is essential for the social, political, and economic development of the peoples of the Americas¹⁵, where respect for human rights is essential to their existence.¹⁶ In addition, the Democratic Charter highlights the importance of the permanent, ethical, and responsible participation of the citizenry in a framework of legality in keeping with the respective constitutional order for the development of democracy.¹⁷ Human rights defenders, from different sectors of civil society, and, in some cases, from state institutions, make fundamental contributions to the existence and strengthening of democratic societies. Accordingly, respect for human rights in a democratic state largely depends on the human rights defenders enjoying effective and adequate guarantees for freely carrying out their activities.

21. For more than ten years, the General Assembly of the OAS has made several statements about the importance it attributes to respect for and protection of human rights defenders, and it has shown the OAS's profound concern over the situation of the defenders and their organizations. On June 8, 1990, by resolution AG/RES. 1044, approved June 8, 1990, the General Assembly reiterated "the recommendation made in prior years to the governments of the member states that they grant the necessary guarantees and facilities to enable nongovernmental human rights organizations to continue contributing to the promotion and protection of human rights, and that they respect the freedom and safety of the members of such organizations."

22. For more than five years, during its regular sessions the General Assembly has taken up a specific agenda item on the situation of human rights defenders, called on the states to provide them special protection, and has reiterated that the obligation to promote and protect human rights is first and foremost an obligation of the states. For example, in resolution AG/RES. 1920 of June 10, 2003, it acknowledged the important work, nationally and regionally, of human rights defenders, and their valuable contribution to the protection and promotion of fundamental rights and liberties in the hemisphere. Similarly, in its resolution AG/RES 2036 (XXXIV-O/04), the Assembly emphasized that "the performance by human rights defenders of their tasks contributes actively to strengthening democratic institutions and improving national human rights systems." Accordingly, the Assembly reiterated its recommendation to the governments of the member states "to continue stepping up their efforts to adopt the necessary measures to safeguard the lives, freedom, and personal safety of human rights defenders, and to conduct thorough and impartial investigations in all cases of violations against human rights defenders, ensuring that the

¹⁴ The United Nations Special Representative on Human Rights Defenders has applied the same criterion in her reports and visits, including the situation of government officials such as members of parliaments, procurators, national human rights commissions, ombudspersons, judges and prosecutors. Cfr. U.N., Commission on Human Rights, Report presented by the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2002, Doc. E/CN.4/2002/106; para.51; and Annual Report 2004, Doc. E/CN.4/2004/94, para. 30.

¹⁵ Inter-American Democratic Charter, Article 1.

¹⁶ Inter-American Democratic Charter, Article 3.

¹⁷ Inter-American Democratic Charter, Article 2.

findings thereof are transparent and publicized.”¹⁸ In addition, the Assembly has issued an appeal to the states to “promote the dissemination and enforcement of the instruments of the inter-American system and the decisions of its bodies on this matter, as well as the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.” In its most recent resolution, adopted June 7, 2005, the General Assembly acknowledged, in particular, “in view of their specific role and needs, women human rights defenders should be accorded special attention to ensure that they are fully protected and effective in carrying out their important activities.”¹⁹

23. The human rights organs of the inter-American system, for their part, have repeatedly highlighted the importance of the work of those persons who, individually or collectively, promote and seek the protection and attainment of human rights and fundamental, as well as the oversight of democratic institutions.²⁰ The Commission has stated that human rights defenders play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy.²¹ The IACHR has indicated that the work of human rights defenders, protecting individuals and groups of individuals who are victims of human rights violations, publicly denouncing the injustices that affect large sectors of society, and pointing to the need for citizen oversight of public officials and democratic institutions, among other activities, means they play an irreplaceable role in building a solid and lasting democratic society.

24. The Inter-American Court has also emphasized the importance of the work of human rights defenders, when it indicated, for example, that “respect for human rights in a democratic state depend largely on human rights defenders enjoying effective and adequate guarantees so as to freely go about their activities, and it is advisable to pay special attention to those actions that limit or hinder the work of human rights defenders.”²²

25. The work of human rights defenders has also been recognized by several international organizations. As indicated previously, the United Nations Commission on Human Rights highlighted the importance of human rights defenders in the United Nations Declaration on Defenders.²³ This document provides: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and

¹⁸ OAS, General Assembly, resolution AG/RES. 1920 (XXXIII-O-03), June 10, 2003. In the same connection, see, e.g.: AG/RES. 1842 (XXXII-O-02), June 4, 2002; AG/RES. 1818 (XXXI-O/01), June 5, 2001; Resolution AG/RES. 1671 (XXIX-O/99), June 7, 1999; and resolution AG/RES 1044 (XX-O/90), June 8, 1990.

¹⁹ OAS, General Assembly, resolution AG/RES. 2067 (XXXV-O/05), of June 7 2005, operative paragraph 2.

²⁰ In its 1998 Annual Report, for example, the Commission highlighted the importance and ethical dimension of the work done by persons dedicated to the promotion, monitoring, and legal defense of human rights and the organizations with which many of them are affiliated. In addition, the Commission recommended to the member states that they “take all necessary measures to ensure the freedom of expression of those who work for the respect of fundamental rights and to protect their lives and physical integrity.” See IACHR, Annual Report 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, p. 1237. See also: IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Chapter VI, Section C, para. 23, published April 6, 2001, OEA/Ser.L/V/II.111.

²¹ IACHR, Press Release N° 23/02 - IACHR concludes on-site visit to the Bolivarian Republic of Venezuela. Caracas, Venezuela. May 10, 2002.

²² I/A Court H.R., *Lysias Fleury Case*. Order of June 7, 2003, fifth whereas paragraph; *Nieto Palma Case*. Order of July 9, 2004, eighth whereas paragraph.

²³ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, approved December 9, 1998.

international levels."²⁴ For the purposes of fostering and protecting human rights, all persons have the right to peaceful assembly and to form non-governmental organizations and join them or participate in their work, and to communicate with such organizations.²⁵ It also provides that all persons have the right to lodge complaints in relation to the policies and actions of government officers or organs related to human rights.²⁶

26. The Secretary General of the United Nations has said: "Human rights defenders are at the core of the human rights movement the world over. They work at democratic transformation in order to increase the participation of people in the decision-making that shapes their lives. Human rights defenders contribute to the improvement of social, political and economical conditions, the reduction of social and political tensions, the building-up of a peaceful environment, domestically and internationally, and the nurturing of national and international awareness of human rights. They form the base that regional and international human rights organizations and mechanisms, including those within the United Nations, build upon in the promotion and protection of human rights."²⁷

27. In August 2000, the Secretary General of the United Nations, at the request of the Economic and Social Council, designated Ms. Hina Jilani, of Pakistani nationality, as United Nations Special Representative for Human Rights Defenders. The mandate of the Special Representative is to report on the situation of human rights defenders in all parts of the world, and on possible means for enhancing their protection.

28. In 2004, the Council of the European Union established the European Union Guidelines on Human Rights Defenders, which recognize that the fundamental responsibility for promoting and protecting human rights corresponds to the states, and supports the role played by human rights defenders in supporting the States in that area. In addition, the EU Council recognizes the fundamental role of defenders in their contribution to the states, in getting the states to adopt appropriate legislation, and to back the establishment of national human rights plans and strategies.²⁸ The guidelines provide practical suggestions for improving the action of the European Union and support and strengthen respect for the right to defend human rights. They also provide for action by the EU on behalf of human rights defenders. With a view to promoting these guidelines, the European Union entrusted Mr. Michael Matthiessen, Personal Representative on Human Rights of the Secretary General of the Council of the European Union, to direct actions this area.

29. The African Commission on Human and Peoples' Rights, during its thirty-fourth session in Banjul, Gambia, created a Rapporteurship for the protection of human rights defenders, under Commissioner Jainaba Johm.²⁹

²⁴ Declaration, Article 1.

²⁵ *See Id.*, Article 5.

²⁶ *See Id.*, Article 9(3).

²⁷ A/55/292, August 11, 2000. Report of the Secretary-General of the United Nations to the General Assembly, Fifty-fifth session.

²⁸ Council of the European Union, Draft conclusions of the Council on the EU Guidelines on Human Rights Defenders, 100056/1/04 REV 1, Brussels, June 9, 2004. *See*, European Union Guidelines on Human Rights Defenders, p. 5.

²⁹ African Commission on Human and Peoples' Rights, Resolution on the Protection of Human Rights Defenders in Africa, meeting at its 35th Ordinary, 4th June 2004, Banjul, The Gambia.

IV. LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE INTER-AMERICAN SYSTEM

30. International human rights law is based on the principle that the states have the primary responsibility to promote and protect the human rights and fundamental freedoms of all persons subject to their jurisdiction. Accordingly, the work of human rights promotion and protection carried out by persons under their jurisdiction at their own initiative is a legitimate activity that contributes to the fulfillment of an essential obligation of the states, and, therefore, gives rise to special obligations of the states to ensure the protection of those who are engaged in the promotion and protection of such rights. In a democratic society human rights activities should not only be protected, but encouraged.

31. The public authorities are under an obligation to adopt the measures needed to create the conditions that make it possible for persons who so wish to freely exercise activities aimed at promoting and protecting internationally recognized human rights. This state obligation requires that states guarantee that they will not obstruct, in any guise, the work carried out by human rights defenders. The state must provide the utmost collaboration to the initiatives of society to promote and protect human rights, including those aimed at monitoring the conduct of public affairs at every level. In addition, the states bear the responsibility of protecting the defenders from third persons who seek to impede their work.

32. The Commission finds that the promotion and protection of human rights involves three important dimensions that should be protected by the states. The first dimension is individual and is developed through the exercise of universally recognized human rights that are realized in each of the persons who have committed their lives to the defense of human rights. States must guarantee that human rights defenders, like all individuals under their jurisdiction, not suffer violations of their rights nor the unlawful curtailment of their fundamental freedoms.

33. The second dimension is collective. The defense of human rights is a matter of public interest, and generally includes the participation of various persons associated with one another. Several of the rights crucial for this defense of rights to be translated into practice have a collective aspect to them, such as the right to association, the right to assemble, or some dimensions of the freedom of expression. Accordingly, the states have the obligation to guarantee the collective dimension of those rights.

34. The third dimension is social. This dimension refers to the intention of human rights protection and protection initiatives to seek positive changes in the attainment of the rights for society in general. The purpose that motivates the work of human rights defenders involves society in general, and seeks to benefit society; accordingly, when a person is kept from defending human rights, the rest of society is directly affected.

35. The inter-American provisions have not established a single right that guarantees the work of promoting and protecting human rights. To the contrary, the inter-American system has established components of many rights whose guarantee makes possible the work of human rights defenders. Based on these provisions, society has the right and the duty to seek, by different means, to promote and realize their rights both domestically and internationally. Any person, individually or collectively, has the right to pursue peaceful activities that make it possible to attain those objectives, whether directly geared to the public authorities, or to society in general or in groups.

36. The observance of human rights is a matter of universal concern, accordingly, the right to defend those rights may not be subject to geographical

restrictions. The states must guarantee that the persons under their jurisdictions may exercise this right domestically and internationally. In addition, the state must guarantee that persons are able to promote and protect any or all human rights, including both those whose acceptance is unquestioned, and new rights or components of rights whose formulation is still a matter of debate.

37. The Commission has indicated that the defense of human rights and the strengthening of democracy require, among other things, that the citizens have broad knowledge of the work of the various organs of the state, such as budgetary aspects, the extent of attainment of the objectives proposed and the plans and policies of the state to improve society's living conditions.³⁰ Along the same lines, the United Nations Declaration on Defenders establishes the right of individuals and groups to "know, seek, obtain, receive, hold, study, publish, and discuss" any information on the means by which effect is given to human rights in the internal legislative, judicial, and administrative systems of the states.³¹ As a component of these rights, the Declaration establishes the right to participate in public hearings, procedures, and public trials to form an opinion regarding the implementation of both domestic legal provisions and international obligations.³² The United Nations Declaration on Defenders also highlights the right to participate in the conduct of domestic public affairs of the countries to seek the promotion and attainment of human rights. The defense of human rights involves the ability to make criticisms and proposals to improve the functioning of the state and to seek to call attention to any obstacle or impediment to the promotion and attainment of any human rights.³³

38. As a corollary, those persons individually or collectively have the right to protest the rules, policies, and practices of public officials and private actors who violate human rights. To this end, the states must guarantee systems of petition or other adequate means vis-à-vis the judicial, administrative, or legislative authorities at all levels of decision-making, capable of adequately processing these petitions in keeping with minimum due process standards. In addition, those persons have the right to seek the effective protection of domestic and international provisions to protect human rights and oppose any type of activity or action that causes human rights violations.³⁴ This right involves the possibility of going before international organs that protect human rights and monitor international treaties, without any type of obstacle or reprisal.

39. In addition, individuals and groups have the right to promote the protection and attainment of human rights through actions geared to society. As one component of this principle, persons have the right to publish, make known, and disseminate publicly to third persons their opinions and knowledge with respect to human rights, and to debate and develop new principles and ideas in this respect, and promote their acceptance. Accordingly, human rights defenders have the right to verify by themselves the existence of abuses, to meet with victims, witnesses, and experts (such as lawyers or forensic physicians), to speak with the authorities, study documentation, and carry out any type of investigation for the purpose of obtaining objective information. Similarly, individuals and groups have the right to offer and provide professional legal counsel or other advice and assistance relevant to the defense of the human rights and fundamental freedoms of third persons.³⁵ In addition, this right

³⁰ IACHR, Annual Report 2001. OEA/Ser.L/V/II.114, doc. 5 rev. 1, April 16, 2002, Vol. II, Chapter III.

³¹ Article 6.

³² Article 9.

³³ Article 8.

³⁴ Articles 9 and 12.

³⁵ See United Nations Declaration on Defenders, Article 9. See also, Basic Principles on the Role of Lawyers, especially principle 16.

includes the possibility of engaging in activities of representation, accompaniment, self-management, and search for recognition of communities and individuals who have been victims of human rights violations and other acts of discrimination and exclusion.

40. In order to carry out these activities, human rights defenders have the right to seek and obtain economic resources to finance their work. The states must guarantee the exercise of this right in the broadest possible manner, and promote it, for example, through tax exemptions to organizations dedicated to protecting human rights. Fundraising activities to finance the work of human rights defenders, such as the production and sale of books, reports, and newspapers on human rights, collecting professional fees, donations, and receiving legacies from individuals and organizations, and the contributions of foreign governmental and non-governmental organizations, among others, should be considered legitimate.

41. The inter-American norms for the protection of human rights constitute a minimum framework of protection that should be guaranteed by the states for all persons under their jurisdiction, and whose attainment is essential for protecting the activities described above. Only when human rights defenders have appropriate protection for their rights can they seek to protect the rights of others.³⁶ Hence, the case-law of the Commission and the Court has been establishing the parameters for protection and guarantee necessary for freely developing the promotion and defense of human rights in a democratic society. Next, the Commission will briefly outline those components of the rights recognized by the norms of the inter-American system that are a vehicle for developing the activities of human rights defenders, in its various dimensions: individual, social and collective.

A. Right to life, humane treatment, and personal liberty

1. Right to life³⁷

42. The states of the hemisphere have recognized the right to life as a fundamental and basic right for the exercise of any other right, including the right to defend human rights. At the same time, the Court and the Commission, in consistent case-law, have recognized that the rights to life and physical integrity constitute essential minimums for the exercise of any activity.³⁸

43. The Commission notes that the special impact of attacks on the right to life of human rights defenders lies in their effect beyond the direct victims.

³⁶ In this respect, the United Nations Special Representative has indicated:

Particular attention must be given to ensuring and maintaining the “**contextual space**” in which defenders operate - including rights to assembly and expression and the possibility to legally register and obtain funding for a human rights organization. With this “space” assured, defenders are in a better position to conduct their work and to defend their own rights.

UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2003, Doc. E/CN.4/2003/104; para. 87.

³⁷ The right to life is established in Article I of the American Declaration of the Rights and Duties of Man and Article 4 of the American Convention on Human Rights.

³⁸ The Inter-American Court has said in this respect that:

When the right to life is not respect, all of the other rights lack meaning. The States have the obligation to ensure that conditions are created as necessary to ensure that violations of this inalienable right not occur, and, in particular, the duty to impede its agents from attacking it.

I/A Court H.R., *Case of Children’s Rehabilitation*. Judgment of September 2, 2004. Series C No. 112, para. 156; *The Brothers Gómez Paquiyaui Case*. Judgment of July 8, 2004. Series C No. 110, para. 128; *Myrna Mack Chang Case*, Judgment of November 25, 2003. Series C No. 101, para. 152.

Accordingly, the Inter-American Court of Human Rights has established through its case-law that violations of the right to life – be they forced disappearances or extrajudicial executions – directed against human rights defenders, have a chilling effect that reaches all other human rights defenders, directly diminishing their possibilities of exercising their right to defend human rights.³⁹ As a result, the Court has highlighted the special obligation of states to ensure that persons can freely exercise their activities of promoting and protecting human rights without fear that they will be subject to any violence, and has indicated that when that protection is lacking, the ability of groups to organize to protect their interests is diminished.⁴⁰

44. The Commission has noted that a systematic and reiterated practice of attacks on the life, physical integrity, and liberty of the members of a human rights organization entails a violation of the freedom of association.⁴¹ In addition, the United Nations Special Representative has reaffirmed that assassinations, disappearances, and attacks not only constitute a violation of the right to life protected by international human rights law, but also constitute an attack on the promotion and dissemination of human rights generally, for they inhibits human rights defenders from exercising their important role in maintaining peace and security worldwide and restoring them they have been violated.⁴²

45. Under the norms of the inter-American system, the general clause of protecting the individual from the arbitrary deprivation of life, which entails an absolute prohibition on arbitrary executions and forced disappearances, interpreted in keeping with the obligation to respect and ensure human rights, gives rise to both negative and positive obligations incumbent on the states.⁴³ That generic obligation translates, in the case of human rights defenders, among other obligations, into the need to do away with environments incompatible with or dangerous for the protection of human rights. It is essential that the states, pursuant to their obligations to prevent and protect the right to life, offer adequate protection to human rights defenders, bring about the conditions for eradicating violations by state agents or private persons, and investigate and sanction the violations of that right.⁴⁴ In that regard, the Commission reiterates that an important aspect of the state's duty to prevent violations of the right to life is investigating immediately, exhaustively, seriously, and impartially where the threats come from, and

³⁹ In the case of the extrajudicial execution of a trade union leader in retaliation for his activities promoting and protecting human rights, the Inter-American Court established that

the Court considers that, in the instant case, the legitimate exercise by Mr. Pedro Huilca Tecse of the right to freedom of association, in relation to trade union activity, provoked a fatal reprisal, which in turn consummated a violation to his detriment of Article 16 of the American Convention. In addition, the Court considers that the execution of Mr. Pedro Huilca Tecse had a chilling effect on the works of the Peruvian trade union movement, and in so doing diminished the freedom of a given group to exercise that right.

I/A Court H.R., *Huilca Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. Para. 78.

⁴⁰ I/A Court H.R., *Huilca Tecse Case*. Judgment of March 3, 2005. Series C No. 121. Para. 70.

⁴¹ IACHR, Report N° 13/96, Case 10,948 (El Salvador), March 1, 1996, para. 25. See also, IACHR, Report No. 29/96, Case 11,303, (Guatemala), October 16, 1996.

⁴² UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. Para. 124.

⁴³ I/A Court H.R., *Huilca Tecse Case*. Judgment of March 3, 2005. Series C No. 121. Para. 69. See also: *Bulacio Case*. Judgment of September 18, 2003. Series C No. 100; Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99.

⁴⁴ On the duty to investigate extrajudicial executions, see: IACHR, Report No. 10/95, Case 10,580, Manuel Stalin Bolaños, Ecuador, IACHR Annual Report 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, paras. 32 to 34; Report No. 55/97, Case 11,137, Juan Carlos Abella et al., Argentina, paras. 413 to 424; and Report No. 48/97, Case 11,411, "Ejido Morelia," Mexico, IACHR Annual Report 1997, OEA/Ser.L/V/II.98, Doc. 7, rev., April 13, 1996, paras. 109 to 112.

punishing, as the case may be, those responsible, with the aim of trying to prevent the threats from being carried out.⁴⁵

2. Right to humane treatment⁴⁶

46. The defense of human rights can be exercised freely only when the persons engaged in it are not victims of threats or of any type of physical, psychological, or moral aggression, or other forms of harassment.⁴⁷ Carrying out violent acts for the purpose of diminishing the physical and mental capacity of the defenders, or the threats of having such suffering inflicted on them, constitute violations of the right to personal integrity and could constitute indirect violations of other rights protected by inter-American instruments. Depending on the circumstances in which those attacks or threats occur, they could be considered as torture⁴⁸ or cruel, inhuman, or degrading treatment.⁴⁹

47. In keeping with the obligation to respect and ensure the right to humane treatment, the states must adopt special measures of protection for human rights defenders from the acts of violence that are regularly perpetrated against them. The state's obligation is not limited to providing material measures to protect life and personal integrity, but entails the obligation to act to address the structural causes that have a detrimental impact on the security of the persons threatened. This obligation

⁴⁵ In considerations related to that aspect, the Inter-American Court of Human Rights has noted, for example, that "as an essential part of its duty to protect, the State must take effective measures to investigate and, where appropriate, punish those responsible for the acts that gave rise to the adoption of the provisional measures." (I/A Court H.R., Giraldo Cardona Case, Provisional Measures, Resolution of June 19, 1998, Operative paragraph 4. See also that the European Court of Human Rights, on considering the positive duty to adopt measures of protection for the right to life, has considered "whether in the circumstances the authorities failed in a positive obligation to protect [the victim] from a risk to his life." When these defects in the state response "removed the protection which [the victim] should have received by law" the European Court concluded that "in the circumstances ... the authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of [the victim]." (European Court of Human Rights, Mahmut Kaya v. Turkey, March 28, 2000, paras. 87, 99, and 101).

⁴⁶ The right to physical and psychological integrity is noted in generic terms in Article I of the American Declaration of the Rights and Duties of Man and in Article 5 of the American Convention on Human Rights. In addition, the general prohibition on torture is established by the Inter-American Convention to Prevent and Punish Torture at Articles 1, 2, and 3 of that instrument.

⁴⁷ The Commission has held that violations of the right to humane treatment as a reprisal may be committed in several ways. In a case regarding the persecution of a member of the Mexican military forces, as a result of his involvement in activities to defend human rights, the Commission found that:

Having already concluded that the ... Army authorities have displayed an attitude of dogged pursuit and harassment toward General ..., we must now determine whether--as a result of such persecution and harassment--General ...'s physical, mental and moral integrity has not been respected. In this regard, the Commission considers that to subject a person who occupies a high rank in the Armed Forces to the constant annoyance of having to defend himself before the Courts (in this case military tribunals), to the degradation of being detained on several occasions and to the humiliation of being the target of attacks by military authorities in the ... media, in addition to causing serious material damage to his person, also seriously damages his mental and moral integrity, as it affects the normal development of daily life and causes great tumult and perturbation to him and his family. The severity of the harassment is likewise verified by General ...'s constant uncertainty about his future, after seven years of constant harassment and more than two years in prison.

IACHR, Report N° 43/96, Case 11,430 (Mexico), October 15 1996, para. 79.

⁴⁸ In this respect, the Inter-American Court has noted: "the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered 'psychological torture.'" See I/A Court H.R., *Maritza Urrutia Case*, Judgment of November 27, 2003, para. 92.

⁴⁹ According to the Inter-American Court: "The violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation." I/A Court H.R., *Loayza Tamayo Case*, Judgment of September 17, 1997, para. 57.

includes investigating and punishing the persons responsible for harassment, threats, and attacks against human rights defenders. The Commission considers that in contexts of aggression and systematic acts of harassment an efficient and effective investigation is essential to ensure that the risk these persons run is identified and eradicated.

3. Personal liberty⁵⁰

48. The exercise of personal liberty and its full guarantee that it will not be restricted by unlawful action is a basic need for the full exercise of human rights defense. A person whose liberty is unlawfully restricted or who lives in fear of being subject to imprisonment or being held against his will because of his actions to defend the rights of other persons is directly limited in his ability to do his work.

49. The Commission recalls the case-law of the Inter-American Court, which has established that detentions by state agents should meet two kinds of requirements in order to meet the standards of the American Convention.⁵¹ First, no one should be deprived of his or her personal liberty other than for causes expressly spelled out in the law (substantive aspect), but also, strictly subject to the procedures objectively defined by the law (procedural aspect). Under these principles, a human rights defender, like any other person, may only be detained when there are well-founded reasons for considering the grounds described in the domestic laws to be present, strictly subject to the procedural formalities which, according to law, must be followed by the judicial and police authorities. Second, the states must guarantee that no human rights defender will be subjected to detention or imprisonment by causes and methods which, even if considered legal, may be incompatible with respect for the fundamental rights of the person for being, among other things, unreasonable, unforeseeable, or lacking proportionality.⁵² The Commission considers that a detention based exclusively on the activity of human rights defense does not meet the requirements of reasonability and proportionality established by international standards.

⁵⁰ On the same matter, the right to personal liberty and security, and the right to freedom from arbitrary arrest or detention are established in Article XXV of the American Declaration and Article 7 of the American Convention on Human Rights.

⁵¹ The Working Group on Arbitrary Detentions of the United Nations defines arbitrary detention as such deprivation of liberty executed by state authorities without respecting the fundamental principles that protect detained persons, and/or in open violation of the standards that the state party has undertaken to uphold vis-à-vis the international community. (UN, Commission on Human Rights, Question of the human rights of all persons subjected to any form of detention or imprisonment, report of the working group on arbitrary detention, doc. E/CN.4/1994/27). In addition, the Working Group has defined three categories for considering that a detention is arbitrary:

First category: The first category refers to persons whose detention is arbitrary because it lacks any basis in law. For example, the person is detained without a judicial order, without flagrancy, and without the arrest being publicly required.

Second category: Regarding those cases in which the detention is the result of a judicial decision for exercising a freedom or right subject to universal protection. (Right to equality, to freedom of movement and choice of residency, right of asylum, to freedom of thought and expression, of assembly and peaceful association, to vote and be elected in democratic elections.)

Third category: Cases in which the nonobservance of international provisions regarding an impartial trial is so serious that it makes the detention arbitrary. For example, because the detainee is not allowed to have defense counsel, is not assigned an interpreter in the event that he or she does not speak the country's official language, is not allowed to submit evidence to prove his or her innocence or to contradict those who incriminate him or her, if the trial is drawn out without justification and indefinitely, among others. (UN, Commission on Human Rights, Question of the human rights of all persons subjected to any form of detention or imprisonment, report of the working group on arbitrary detention, E/CN.4/1992/20).

⁵² See I/A Court H.R., *Durand and Ugarte Case*, Judgment of August 16, 2000. Series C No. 68, paras. 52-56, para. 85; *Villagrán Morales et al. Case* ("The Streetchildren Case"), Judgment of November 19, 1999. Series C No. 63, para. 131; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, para. 43; and *Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 47.

B. Right to assembly and freedom of association

50. The Commission has indicated that the right of assembly and freedom of association have been widely recognized as substantive civil rights that offer protection from the arbitrary interference of the state when persons decide to associate with others, and that are fundamental for the existence and functioning of a democratic society.⁵³ In that regard, the protection of those rights entails not only the obligation of the state not to interfere with the exercise of the right of assembly or association, but also requires, in certain circumstances, positive measures by the state to ensure the effective exercise of liberty, for example, by protecting the participants in a demonstration from the physical violence of those who might hold contrary views.⁵⁴

51. These rights are fundamental for the defense of human rights, since they protect the means by which the grievances of both human rights defenders are expressed. Accordingly, restrictions on the exercise of these rights are serious obstacles to the people's ability to vindicate their rights, make known their petitions, and foster the search for changes or solutions to the problems that affect them.

1. Right of assembly⁵⁵

52. Through the exercise of freedom of assembly, individuals have the right to share opinions, express their positions on human rights, and coordinate action plans, whether at assemblies or public demonstrations. The defense of human rights, as a legitimate issue that concerns all people and seeks the participation of society as a whole and the response of the government authorities, finds in the exercise of this right a fundamental channel for its activities. Similarly, this right is essential for the expression of political and social criticism of the activities of the authorities. For these reasons, it is difficult to exercise the defense of human rights in contexts where restrictions are placed on the right to peaceful assembly. Moreover, the exercise of the right to assembly is essential for the exercise of other rights such as freedom of expression and the right to association.

53. The exercise of this right means that human rights defenders may freely meet in private locations with the consent of the owners, in public places—in accordance with the applicable regulations—and in places of business, in the case of workers.⁵⁶ Human rights defenders have the right to participate in the preparation and direction of a meeting or demonstration, as well as in the event itself.⁵⁷

⁵³ IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 359.

⁵⁴ IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 359.

⁵⁵ Established in Article XXI of the American Declaration and Article 15 of the American Convention.

⁵⁶ On this issue, the Committee on Freedom of Information has stated that:

freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential element of trade union rights and that the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered.

Committee on Freedom of Association, see for example, Report 211, Case no. 1014 (Dominican Republic), paragraph 512; Report 233, Case No. 1217 (Chile), paragraphs 109 and 110, and Report 246, Cases No. 1129, 1169, 1298, 1344, and 1351, Para. 260.

⁵⁷ European Commission on Human Rights, *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, DR 21, p. 138, p. 148.

54. The state's obligations to protect and ensure the right to assembly include actions that, if not anticipated, impede the work of defending human rights. Hence, states have the obligation to ensure that no human rights defender is prevented from meeting or publicly expressing him or herself, which means that the state authorities must abstain from preventing the exercise of this right and must also take measures to ensure that others do not prevent it. States also must take the administrative and law enforcement steps necessary to enable defenders to carry out their activities, which includes positive steps such as detouring traffic and providing police protection for demonstrations and rallies, where necessary.⁵⁸

55. Article 15 of the American Convention protects the right to peaceful assembly without arms, and stipulates that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, or to protect public health or morals or the rights or freedom of others.⁵⁹ Inherent to the sharing of ideas and social demands as a form of expression is the exercise of related rights, such as the right of citizens to assemble and demonstrate and the right to the free flow of ideas and information. Both of the rights set forth in Articles 13 and 15 of the American Convention are vital elements for the proper functioning of a democratic system that includes all sectors of society.

56. In the Commission's view, states may regulate the use of public space, for example by establishing requirements of prior notice, but such regulations may not impose excessive demands that invalidate the exercise of the right. The Commission shares the opinion expressed by the Spanish Constitutional Court in the sense that "in a democratic society, the urban space is not only an area not only for circulation, but also a space for participation."⁶⁰ Hence, the Commission has found disproportionately restrictive a law requiring a police permit that must be requested ten days in advance of any public act, assembly, election, conference, parade, congress, or sports, cultural, artistic or family event.⁶¹ Moreover, the Commission has stated that the arrest of participants at peaceful demonstrations violates freedom of assembly.⁶²

57. The purpose of regulating the right to assembly cannot be to create the basis for prohibiting the meeting or the demonstration. To the contrary, regulations establishing, for example, advance notice, exist for the purpose of informing the authorities so that they can take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community.

⁵⁸ As the European Court has stated, "a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy, the right to counter-demonstrate cannot extend to inhibit the exercise of the right to demonstrate."

European Ct. of HR, *Case Plattform "Arzte fur das Leben" c. Austria*, Judgment of June 21, 1988, Ser. A, No. 139, para. 32.

⁵⁹ The Inter-American Court of Human Rights has stated that "necessary," while not synonymous with "indispensable," implied the existence of a "pressing social need" and that for a restriction to be "necessary" it is not enough to show that it is "useful," "reasonable," or "desirable." It also pointed out that "the legality of restrictions imposed under Article 13(2) will depend upon showing that the restrictions are required by a compelling governmental interest....That is, the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it." Inter-Am. Ct. of H.R., *Compulsory Membership in an Association Prescribed by Law for Journalists*, (Arts. 13 and 29 of the American Convention on Human Rights). Consultative Opinion OC-5/85, November 13, 1985. Series A No. 5, para. 46.

⁶⁰ Spanish Constitutional Court, Judgment 66/1995, Leaf 3.

⁶¹ IACHR, Annual Report 1979-1980, pp. 128-130.

⁶² IACHR, Annual Report 1979-1980, pp. 105-107.

58. The United Nations Human Rights Committee has stated its opinion in this regard when it asserted that the requirement to notify the police prior to a demonstration is not incompatible with Article 21 of the ICCPR (right of assembly).⁶³ Nonetheless, the requirement of previous notification should not be transformed into a demand for the prior issuance of a permit by an agent with unlimited discretionary powers. That is to say that a demonstration may not be prevented because it is considered likely to jeopardize the peace or public security or order, without taking into account whether it is possible to prevent the threat to peace or the risk of disorder by altering the original conditions of the demonstration (time, place, etc). Restrictions on public demonstrations must be intended exclusively to prevent serious and imminent danger, and a future, generic danger would be insufficient.⁶⁴

59. With respect to the right to assembly, the Commission considers that special mention should be made of familiar forms of social protest in some countries, such as street closures, pot-banging sessions, vigils, and so forth, in which many people come together to appeal to government officials and to demand direct state intervention with respect to a particular social problem. The conditions in which many of these demonstrations and demands occur are complex and require appropriate responses from the authorities in terms of respecting and ensuring human rights.

60. The Commission underscores that political and social participation through public demonstration is critical to the consolidation of democratic life in societies. Such participation, as an exercise of freedom of expression and freedom of assembly, contains a keen social interest, which leaves the state very narrow margins for justifying restrictions on this right.⁶⁵ Therefore, the purpose of regulating the right to assembly cannot be to create a basis for prohibiting the meeting or demonstration. The right to assemble or demonstrate cannot be considered synonymous with public disorder for the purpose of restricting it *per se*.

61. In this regard, the Commission reiterates the opinion of its Office of the Special Rapporteur for Freedom of Expression which, in its 2002 Report, stated that

the *per se* criminalization of public demonstrations is, in principle, inadmissible, provided they take place in accordance with the right of free expression and the right of assembly. In other words, the question is whether the application of criminal sanctions is justified under the Inter-American Court's stance whereby such a restriction (i.e. criminalization) must be shown to satisfy an imperative public interest that is necessary for the functioning of a democratic society. Another question is whether the imposition of criminal sanctions is the least harmful way of restricting the freedom of expression and right of assembly exercised through a demonstration in the streets or other public space. It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from with the object of the claim arose. Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticism of the authorities as a way of influencing

⁶³ Human Rights Committee, *Case Kivenmaa v. Finlandia*, Judgment of June 10, 1994, available at <http://www.unhchr.ch/tbs/doc.nsf/>. Communication No. 412/1990: Finland. 10/06/94. CCPR/C/50/D/412/1990 (jurisprudence), para. 9.2.

⁶⁴ IACHR, Chapter IV, Annual Report 2002, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 34.

⁶⁵ The Inter-American Commission has stated that "governments may not invoke one of the lawful restrictions of freedom of expression, such as the maintenance of "public order," as a means to deny a right guaranteed by the Convention or to impair it of its true content." If this occurs, the restriction, as applied, is not lawful." Cfr. IACHR, Chapter V, Annual Report 1994, "Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights," OEA/Ser. L/V/II.88, Doc. 9 rev.

the processes whereby state decisions and policies that directly affect them are made.⁶⁶

62. In this sense, the Commission reiterates the pressing need that States, when imposing restrictions on this form of expression, conduct a rigorous analysis of the interests it intends to protect by way of the restriction, taking into account the high level of protection merited by the right to assembly and the freedom of expression as rights that give form to citizen participation and to the oversight of State actions in public matters.

63. Finally, in the Commission's view, agents may impose reasonable restraints on demonstrators to ensure that they are peaceful or to contain those who are violent, as well as to disperse demonstrations that become violent and obstructive.⁶⁷ However, the actions of the security forces should protect, rather than discourage, the right to assembly and therefore, the rationale for dispersing the demonstration must be the duty to protect people. The law enforcement officer deployed in such contexts must contemplate the safest and quickest methods of dispersal that cause the least harm to the demonstrators.

64. The use of force is a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the state's reaction. Law enforcement officials may not, under any circumstances, resort to illegal practices to obtain the objectives entrusted to them. The Commission has stated categorically that the means that the state may employ to protect its security or that of its citizens are not unlimited.⁶⁸ As the Inter-American Court has pointed out, [...] regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends."⁶⁹

65. The legitimate use of public force entails, among other factors, that it is both necessary and proportional to the situation; that is to say that it must be exercised with moderation and in proportion to the legitimate objective being pursued while simultaneously trying to reduce to a minimum personal injury and the loss of human life.⁷⁰ The degree of force exercised by state agents, to be considered within international parameters, must not exceed what is "absolutely necessary."⁷¹ The state must not use force disproportionately and immoderately against individuals who, because they are under its control, do not represent a threat; in such cases, the use of force is disproportional.

⁶⁶ IACHR, Chapter IV, Annual Report 2002, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 35. see also IACHR, Chapter IV, Annual Report 2005, Vol. III, "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, Chapter V "Public Demonstrations as an exercise of Freedom of Expression and Freedom of Assembly, p. 99-120.

⁶⁷ See United States Court of Appeals, *Washington Mobilization Committee v. Cullinane*, Judgment of April 12, 1977, 566 F.2d 107, 184 U.S.App.D.C. 215, p. 119.

⁶⁸ IACHR, Report N° 57/02, Case 11.382 (Merits), *Finca La Exacta v. Guatemala*, October 21, 2002, para. 35 on; IACHR, Report N° 32/04, Case 11.556 (Merits), *Corumbiara v. Brazil*, March 11, 2004, para. 164 on.

⁶⁹ I/A Court H.R., *Neira Alegria et al. Case*. Judgment of January 19, 1995. Series C No. 20, para. 75.

⁷⁰ ECHR, *Case Ribitsch v. Austria*, Judgment of 4 December 1995, Series A no. 336, para. 38.

⁷¹ According to the European Court, the use of the phrase "absolutely necessary" must be interpreted using stricter and more rigorous examination than that normally used to determine whether a State action is "necessary in a democratic society." In particular, the force used must be strictly proportional to the interests being protected and the force or threat that it intends to deter. ECHR, *Case Andronicou and Constantinou v. Cyprus*, Judgment of October 9, 1997, Reports 1997-VI, no. 52, p. 2059 ff, para. 171.

66. According to the international standards that have been developed concerning the use of force by law enforcement officials in the discharge of their duties, such action must be necessary and proportional to the needs of the situation and to the objective sought.⁷² In this regard, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulate that "law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Likewise, the United Nations Code of Conduct for Law Enforcement Officials states explicitly that "the use of firearms is considered an extreme measure,"⁷³ while article 9 of the Basic Principles points out that firearms must not be used against people, except when there is an imminent danger to life.⁷⁴ Basic Principles 12, 13, and 14, refer specifically to the regulation of the use of force in legal gatherings.⁷⁵

67. The Inter-American Court has recommended the implementation of clear procedures and protocols for prevention and for the conduct of the security forces with respect to incidents that threaten public order.⁷⁶ In this regard, it has recommended the adoption of

all necessary provisions to this end, and specifically those for the education and training of all members of its armed forces and its security agencies on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency. The pretext of maintenance of public security cannot be invoked to violate the right to life. The Stat must also adjust operational plans regarding public disturbances to the requirements of respect and protection of those rights, adopting to this end, among other measures those geared toward

⁷² See the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly, Resolution 34/169, of December 17, 1979, Article 3 [hereinafter, "Code of Conduct"]; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, Articles 4-5 [hereinafter, "Basic Principles "].

⁷³ Code of Conduct, Article 3.

⁷⁴ Article 9 of the Basic Principles states:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape..."

⁷⁵ These principles stipulate:

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

⁷⁶ Moreover, the Human Rights Committee has stated that States have the duty to train personnel such as police officers and prison guards to reduce the risk of human rights violations (Human Rights Committee, General Comment 20/44, April 3, 1992, para. 10). Similarly, the European Court has pointed out that an evaluation of the use of force must take into account not only the actions of State agents directly carrying out such acts, but all the circumstances related to the case, including actions related to the planning and control of the events being studied (ECHR, *Case Andronicou and Constantinou v. Cyprus*, Judgment of October 9, 1997, Reports 1997-VI, no. 52, p. 2059 ff., para. 171).

control of actions by all members of the security forces in every field of action to avoid excesses [...] the State must ensure that, if it is necessary to resort to physical means to face situations of disturbance of public order, members of its armed forces and its security bodies will use only those means that are indispensable to control such situations in a rational and proportional manner, and respecting the rights to life and to humane treatment.⁷⁷

68. Based on these norms and principles, the Commission deems that states should establish administrative controls to ensure only exceptional use of force in public demonstrations, in cases where it is necessary, through measures for planning, prevention, and for the investigation of cases in which an abuse of force may have occurred. In particular, the Commission recommends measures such as the following: a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as a recourse in public demonstrations; b) implementation of an ammunition registration and control system; c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out; d) promotion of visible means of personal identification for police agents participating in public law enforcement operations; e) promotion of opportunities for communication and dialogue prior to demonstrations and of the activities of liaison officers to coordinate with demonstrators concerning demonstration and protest activities and law enforcement operations, in order to avoid conflict situations; f) the identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct; g) the establishment of an administrative sanctions regime for the law enforcement personnel involving independent investigators and the participation of victims of abuses or acts of violence; h) the adoption of measures to ensure that police or judicial officials (judges or prosecutors) directly involved in operations are not responsible for investigating irregularities or abuses committed during the course of those operations.

2. Freedom of association⁷⁸

69. The United Nations Declaration on Defenders reaffirms that in order to promote human rights and fundamental freedoms, all persons have the right to “form, join and participate in non-governmental organizations, associations or groups.”⁷⁹ The freedom of association, in the specific case of human rights defenders, is a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact. Because of this, when a state impedes this right, it not only restricts the freedom of association, but also obstructs the work of promoting and defending human rights.

70. The right of association should be understood not only as the right of human rights defenders to form an organization, but also the right to implement their internal structure, programs, and activities. In relation to this, the Inter-American Court held:

In labour union matters, freedom of association consists basically of the ability to constitute labour union organisations, and to set into motion their internal

⁷⁷ I/A Court H.R., *Caracazo Case. Reparations* (Article 63.1 American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 127.

⁷⁸ The freedom of association is recognized in the American Declaration (Article XXII), the American Convention (Article 16) and the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights – Protocol of San Salvador (Article 8).

⁷⁹ UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Article 5.

structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right. On the other hand, under such freedom it is possible to assume that each person may determine, without any pressure, whether or not she or he wishes to form part of the association. This matter, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.⁸⁰

71. The Inter-American Court has established that the right to associate protected by Article 16 of the American Convention protects two dimensions.⁸¹ The first dimension encompasses the right and freedom to associate freely with other persons, without the intervention of the public authorities limiting or encumbering the exercise of this right, which represents, therefore, a right of each individual. The second recognizes and protects the right and the freedom to seek the common attainment of a lawful purpose, without pressures or meddling that could alter or thwart their aim. Accordingly, in the view of the Court, “the execution of a trade union leader ... restricts not only the freedom of association of an individual, but also the right and freedom of a certain group to associate freely, without fear, hence the right protected by Article 16 has a special scope and nature. Thus the two dimensions of the freedom of association are apparent in such circumstances.”⁸² The same consequence holds for any person who defends any other type of right or human rights issue.

72. Consequently, the Court established that in its individual dimension, the freedom of association is not exhausted with the theoretical recognition of the right to form trade unions or organizations, but that it also encompasses, inseparably, the right to use any appropriate means for exercising that liberty. So when the Convention proclaims that the freedom of association includes the right to associate freely for “other purposes,” it underscores that the freedom to associate and the pursuit of certain collective purposes are indivisible, such that a restriction on the possibilities of associating represents directly, and to the same extent, a limitation on the right of society to attain the purposes proposed.

73. In this sense, the guarantee that people who associate for trade union purposes will be protected from retaliatory actions is fundamental for the exercise of this right. The Committee on Freedom of Association has stated in this regard that

[o]ne of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer, or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers’ organizations shall have the right to elect their representatives in full freedom.⁸³

⁸⁰ I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72. para. 156.

⁸¹ I/A Court H.R., *Huila Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. paras. 69-72.

⁸² I/A Court H.R., *Huila Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. para. 69.

⁸³ Committee on Freedom of Association, *Digest of Decisions and Principles on Freedom of Association*, 1985 para. 724. Among the actions that may be considered violations of freedom of association, the IACHR has included, for example, matters such as arbitrary arrests, death threats, attempts against the lives of union leaders and their arbitrary dismissal, as well as docked wages of those who participate in union assemblies, job discrimination against union members, etc. Cfr. IACHR, *Report on the Human Rights Situation in Guatemala* (1993), Cap. IX. Doc. OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993.

74. On this point, it is important to underscore that measures to protect or safeguard union delegates should not be restricted unreasonably. They should also include, for example, leaders of minority unions or those in formation, since acts of harassment sometimes occur with the consent of existing trade union structures in collusion with companies or with the state. In this regard, the Committee on Freedom of Association stated that

Any measures taken against workers because they attempt to constitute organizations of workers outside the existing trade union organization are incompatible with the principles that workers should have the right to establish and join organizations of their own choosing without previous authorization.⁸⁴ It further stated that no person should be prejudiced in his or her employment by reason of membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned.⁸⁵

75. In addition, in its social dimension, the right of association, according to the Inter-American Court, enables the members of a group or society to attain certain purposes together, and to benefit from them. The Inter-American Court, picking up on standards established by the Committee on Freedom of Association and the European Court of Human Rights, has indicated that this freedom may only be exercised in a situation in which fundamental human rights are fully respected and guaranteed, in particular the rights to life and personal security. Accordingly, this right gives rise to the state obligation to guarantee that persons can freely exercise their freedom of association free of any violence; otherwise the capacity of groups to organize to protect their interests could be diminished⁸⁶.

76. Any act that tends to impede the association of human rights defenders, or in any way impedes the purposes for which they have formally associated, is a direct attack on the defense of human rights. Acts of violence that tend to discourage membership or the activity of human rights organizations are prohibited by international law, and could give rise to the international responsibility of the state. In addition, the Commission has found that the fact that a defender must go into exile because of threats to his or her life made in retaliation for his or her work is a direct violation of the right of association.⁸⁷

77. The Commission finds that the states are free to regulate the registration and oversight of organizations within their jurisdictions, including human rights organizations. Nonetheless, the right to associate freely without interference requires that the state ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations, lest the state become responsible internationally. The formalities prescribed in the national regulations on the establishing and functioning of non-governmental organizations, trade unions, and other organizations are compatible with the provisions of the instruments of the inter-

⁸⁴ Committee on Freedom of Association, Case 1594, Ivory Coast. In the same way, the Committee affirmed that “[m]easures taken against workers because they attempt to constitute organizations or reconstitute organizations of workers outside the official trade union organization would be incompatible with the principle that workers should have the right to establish and join organizations of their own choosing without previous authorization. (CFA, 301) and that “[t]he necessary measures have to be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish.” (CLS, 302).

⁸⁵ Committee on Freedom of Association, Digest of Decisions and Principles on Freedom of Association, 1985, para. 693.

⁸⁶ I/A Court H.R., *Huila Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. para. 77.

⁸⁷ IACHR, Report N° 31/96, Case 10.526, (Guatemala), October 16, 1996, para. 119. Along the same lines see Report on the Merits No. 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico), April 13, 1999.

American system, so long as those regulatory provisions are not at odds with the guarantees prescribed in those conventions. In that regard, while those who wish to associate and exercise their rights must comply with the formalities provided for in the legislation, at the same time these formalities must not impose abusive hindrances to the right to association and to the free operation of the organizations.

C. Right to the freedom of expression⁸⁸

78. The Inter-American Court has determined that this right encompasses not only the right and the freedom to express one's own thinking, but also the right and the freedom to seek, receive, and disseminate information and ideas of all sorts.⁸⁹ In addition, the Court has determined that the freedom of expression has an individual dimension and a social dimension. Accordingly:

It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.⁹⁰

79. The freedom of expression is another of the rights essential to the work of human rights defenders. The Inter-American Court has said that the freedom of expression "is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade union, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its opinions, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free."⁹¹ As indicated below, in the case of human rights defenders, the exercise of this right is restricted not only in its individual aspect (the possibility of expressing ideas) but also in its social or collective aspect (the possibility of seeking and receiving information).

80. The Commission reiterates that the coercive power of the state may be exercised so as to negatively affect the freedom of expression of human rights defenders by using criminal laws to silence those who exercise their right to express themselves critically, accusing them of "inciting rebellion," "disseminating false information," and "harming the country's reputation."⁹²

81. Accordingly, one cannot legitimately impose a sanction that impedes or restricts the critical and necessary work of human rights defenders when they scrutinize the persons who hold public positions. An excessive sanction may have a chilling effect on such criticism. On restricting the freedom of expression to this extent, democracy is

⁸⁸ Article IV of the Declaration and Article 13 of the American Convention protect the right to freedom of expression. The Inter-American Democratic Charter establishes at its Article 4: "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy."

⁸⁹ I/A Court H.R., *The Last Temptation of Christ Case*. Judgment of February 5, 2001. Series C No. 73, para. 64. *Ricardo Canese Case*. Judgment of August 31, 2004. Series C No. 111, para. 77.

⁹⁰ I/A Court H.R., Advisory Opinion OC-5/85, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*. November 13, 1985. Series A No. 5, para. 30.

⁹¹ I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, para. 149.

⁹² UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc E/CN.4/2005/101. para. 54.

transformed into a system in which authoritarianism and human rights violations find fertile ground for imposing themselves on the will of society.

82. For these reasons, the Commission has said:

[T]he State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.⁹³

1. Access to public information

83. Another priority issue for the work of human rights defenders has to do with the exercise of the right of access to public information. From a theoretical perspective, it can be said that the interest that is accorded preferential protection in Article 13 of the Convention is the formation of public opinion through the free exchange of information and democratic criticism of the public administration.⁹⁴

84. The Inter-American Court has indicated that access to information in the hands of the state is a fundamental right of individuals, and that the states are under an obligation to guarantee it.⁹⁵ The right of access to information is a priority because it contributes to fighting corruption and defending human rights. Access to public information has proven to be a useful tool for contributing to societal knowledge of human rights violations that occurred in the past. The effective exercise of this right can also help prevent possible new violations.

85. Achieving an access to information regime that complies with the requirements of the American Convention on Human Rights is more complex than simply declaring that the public may have access to state-held information. There are specific legislative and procedural characteristics that must be exhibited by any compliant access to information regime, including a principle of maximum disclosure, presumption of publicity with respect to meetings and key documents, broad definitions of the type of information that is accessible, reasonable fees and deadlines, independent review of denials, and sanctions for noncompliance.⁹⁶

86. In June 2003, the OAS General Assembly recognized the importance of access to information with the adoption of Resolution AG/Res.1932 (XXXIII-O/03). In this resolution, the General Assembly reaffirmed Article 13 of the American Convention which provides that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.⁹⁷ Moreover, the General Assembly emphasized that States are obliged to respect and promote everyone's access to public information and to promote

⁹³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2000, Chapter II, paragraph 45.

⁹⁴ I/A Court H.R., Advisory Opinion OC-5/85 Series A, No. 5, para. 69: The "concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.... It is also in the interest of the democratic public order inherent in the American Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected."

⁹⁵ I/A Court H.R., Advisory Opinion OC-5/85, Series A. No. 5, para. 70.

⁹⁶ These concepts are developed in IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, paragraph 32 on.

⁹⁷ OAS, General Assembly, resolution AG/RES. 1932 (XXXIII-O/03), para. 1.

the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.⁹⁸ In June 2004, the OAS General Assembly approved Resolution 2057, entitled, "Access to Public Information: Strengthening Democracy." This resolution broadens the efforts established by the previous resolution on the subject and encourages OAS member states to implement laws or other provisions to provide the citizenry with broad access to public information. In both resolutions, the General Assembly resolved to "instruct the Inter-American Commission on Human Rights, through the Special Rapporteur for Freedom of Expression, to continue including in its annual report a report on access to public information in the region."

2. Action of *habeas data*

87. The concept of "access to information" is often confused with the concept of "habeas data." The IACHR has understood that "access to information" refers to state-held information that should be available to the public. An action of *habeas data* refers to the right of any individual to have access to information referring to him and to modify, remove, or correct such information when necessary.⁹⁹

88. The Commission reiterates that individuals have the right to know about the intelligence information which has been gathered about them, even when they are not faced with a criminal proceeding based on that information.¹⁰⁰ To be precise, Article XXIV of the American Declaration guarantees all individuals the right of petition and Article 25 of the American Convention guarantees the right to simple and prompt recourse against acts that violate his or her fundamental rights.

89. Moreover, the Commission deems that the right to privacy also guarantees people the right to know without delay that the state decided to gather information about them, even for the purpose of making sure that the information does not contain errors. In this regard, the IACHR has established that each person has the right to know what information exists about him or her, by means of a prompt, simple, and effective action. The action of "*habeas data*," as previously defined, is built upon three premises:¹⁰¹ 1) the right of any individual to not have his privacy disturbed, 2) the right of any individual to access information referring to him in public or private databases, and to modify, remove, or correct information if it is sensitive,¹⁰² false, biased, or discriminatory;¹⁰³ and 3) and the right of any individual to use the action of *habeas data* as an oversight mechanism.¹⁰⁴ In recent years, the action of *habeas data* remedy has become an essential tool for the investigation of human rights violations committed during past military dictatorships in the Americas. Relatives of the disappeared have brought actions of *habeas data* to obtain information about the government's behavior, to ascertain the whereabouts of the disappeared, and to

⁹⁸ *Ibid*, para. 2.

⁹⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter 4, footnote 72.

¹⁰⁰ IACHR, Report on Colombia 1999, Chapter VII Human Rights Defenders, para. 58. OEA/Ser.L/V/11.102.

¹⁰¹ See IACHR Annual Reports of the Office of the Special Rapporteur for Freedom of Expression, years 2000, 2001, and 2003.

¹⁰² "Sensitive information" is understood as any information referring to the private life of the individual.

¹⁰³ See Alicia Pierini, Valentín Lorences, and María Inés Tornabene. *Habeas Data: Derecho a la Intimidación*. Editorial Universidad, Buenos Aires, 1999, p. 16.

¹⁰⁴ See, Víctor Abramovich and Christian Courtis, *El acceso a la información como derecho*, CELS, 2000, p. 7.

determine responsibilities. Such actions ultimately constitute an important means of ensuring the "right to truth."¹⁰⁵

90. In terms of both access to public information and the exercise of the action of *habeas data*, the Commission understands that there may be certain specific cases in which state security forces would not have to reveal information, for example, when the release of such information could jeopardize national security. But the security forces cannot decide at their own discretion whether to release the information or not, in the absence of any external oversight. In this regard, the IACHR has stipulated that:

In the context of fighting terrorism, governments often attempt to restrict access to broad categories of information related to the investigation of suspected terrorists, the gathering of intelligence and the execution of police and military actions. In some of these cases, the government may have a legitimate need to keep information secret in order to protect national security or public order. At the same time, the public's need for information is greater than ever as anti-terrorism actions may be subject to abuse and the public and the press are among the most significant checks on abusive governmental behavior.¹⁰⁶

91. Article 13.2 of the American Convention on Human Rights stipulates the circumstances in which states may refuse public access to sensitive information while still complying with their obligations under international law. In this regard, the Convention provides that the restrictions must be explicitly defined in the law and must be necessary to ensure: a) respect for the rights or reputations of others, or b) the protection of national security, public order, or public health or morals. Derived from this principle¹⁰⁷ the exceptions must be established by law, and these must have been carefully written and widely disseminated, and approved through the formal mechanisms set out in the law.¹⁰⁸ The Inter-American Court stated in 1985 that limitations on the rights set forth in Article 13 "must meet certain requirements of form, which depend upon the manner in which they are expressed...and certain substantive conditions, which depend upon the legitimacy of the ends that such restrictions are designed to accomplish."¹⁰⁹

¹⁰⁵ See, for example, I/A Court H.R., *Barrios Altos (Chumbipuma Aguirre y otros vs. Perú) Case*, Judgment of March 14, 2001, Series C, Nº 75. In the Barrios Altos case, the Inter-American Commission on Human Rights argued before the Inter-American Court that:

The right to truth is founded in Articles 8 and 25 of the Convention, insofar as they are both "instrumental" in the judicial establishment of the facts and circumstances that surrounded the violation of a fundamental right. It also indicated that this right has its roots in Article 13(1) of the Convention, because that article recognizes the right to seek and receive information. With regard to that article, the Commission added that the State has the positive obligation to guarantee essential information to preserve the rights of the victims, to ensure transparency in public administration, and the protection of human rights (para. 45).

¹⁰⁶ IACHR, Report on Terrorism and Human Rights, para. 327. See also, IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, para. 41 on.

¹⁰⁷ José Antonio Guevara, "El Secreto Oficial," in *Derecho de la Información: Conceptos Básicos, Colección Encuentros*, Ecuador, August 2003, pp. 438-439.

¹⁰⁸ *Ibid*, note 342. Guevara observes that the Inter-American Court of Human Rights has established that within the framework of the protection of human rights, the word "laws" would not make sense without reference to the concept that such rights cannot be restricted at the sole discretion of governmental authorities. To affirm otherwise would be to recognize in those who govern virtually absolute power over their subjects. On the other hand, the word "laws" acquires all of its logical and historical meaning if it is regarded as a requirement of the necessary restriction of governmental interference in the area of individual rights and freedoms. The Court concludes that the word "laws" used in Article 30, can have no other meaning than that of formal law, that is, a legal norm passed by the legislature and promulgated by the Executive Branch, pursuant to the procedure set out in the domestic law of each State." Inter-American Court of Human Rights, The Word "Laws" in Article 30 of the American Convention on Human Rights Consultative Opinion OC-6/86, May 9, 1986, Inter-Am. Ct. H.R. (Ser.A) No. 6 (1986).

¹⁰⁹ I/A Court H.R., Advisory Opinion OC-5/85, para. 37.

92. Citing the Johannesburg Principles on National Security, the IACHR has added that:

Most access to information laws contain exemptions that allow the State to refuse to release information on the grounds that to do so would damage the State's national security or ability to maintain public order. These exemptions should be applied only to information that clearly affects national security as defined by [principle 2] (a restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose is to protect a country's existence or its territorial integrity against the use of threat of force...).¹¹⁰

93. The Commission understands that to ensure the protection and promotion of human rights, the State must create a mechanism that makes it possible for all persons to have expeditious access to public information and information on themselves. Such independent oversight is necessary to ensure that the security forces act within the scope of their authority and follow appropriate procedures when collecting intelligence.¹¹¹

D. Right to privacy and protection of honor and dignity¹¹²

94. If they are to do their work freely, human rights defenders need adequate protection from the state authorities to guarantee they will not be victims of arbitrary meddling in their private lives, or of attacks on their honor and dignity. This right includes state protection from harassment and intimidation, assaults, surveillance, interference with correspondence and telephone and electronic communications, and illegal intelligence activities. The Commission's experience indicates that in several countries of the region persons close to human rights defenders also have their right to privacy and protection of honor and dignity violated, as part of an effort to interfere with the activities of their family members. Accordingly, protection should be guaranteed from attacks directed at human rights defenders, and also attacks on their family members.

95. In this respect, the UN Special Representative has determined: "This type of harassment of human rights defenders bears serious repercussions for their physical and psychological integrity: it stigmatizes them, places them at risk, and in some cases has impelled them to give up their work to go into hiding. While in many cases accusations were proven wrong, no public apology was forthcoming. Such attacks constitute grave attempts to undermine the credibility and integrity of human rights work in the public eye."¹¹³

96. The Commission has found, for example, that there is a violation of the right protected at Article 11 of the Convention when the state uses its criminal justice system to indict a human rights defender for the sole purpose of harassing him and impeding his work. In an individual case, the Commission found that "the fact that so many prior investigations and the criminal cases cited have been opened; that there has been a series of suits in the wake of a declaration of innocence; that those suits target

¹¹⁰ IACHR, Report on Terrorism and Human Rights, paras. 327 and 330. See also, IACHR Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, paragraphs 41 on.

¹¹¹ IACHR, Report on Colombia 1999, Chapter VI Human Rights Defenders, para. 59. OEA/Ser. L/V/II.102.

¹¹² This right is protected by both the American Declaration (Articles V, IX, and X) and the American Convention (Article 11), and contains provisions that protect the rights of persons to the inviolability of both their home and their correspondence.

¹¹³ UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. Para. 55.

the same person; and that the individual in question has been absolved in every case tried to date, also leads to the presumption that officials of the ... Army have engaged in harassment and hounding.”¹¹⁴

97. Human rights defenders require the same protection from illegal raids or searches at both their residences and their workplaces, especially at the offices of human rights organizations. The Commission has referred to the inviolability of the home indicating that it is one of the guarantees implicit in Article 8 of the Convention. This right, in addition to operating as a guarantee of the right to privacy, guarantees due process insofar as it establishes a legal limit on the collection of evidence that incriminates an individual accused of a crime. If a home is to be searched in violation of the appropriate constitutional procedures, that guarantee keeps the evidence obtained from being considered in a subsequent judicial decision. In this way, in practice it operates like a rule to exclude illegally obtained evidence.¹¹⁵

98. As for human rights defenders’ right to honor and dignity, the Commission indicated in a contentious case that this right had been violated when “a smear campaign was undertaken by the State against them ... they were presented to public opinion as irresponsible infractors and as a threat to peace,” and also because they “were presented to Mexican and international public opinion as dangerous criminals”; nonetheless, based on the steps taken by the authorities on expelling them summarily, they never had an opportunity to defend themselves from the criminal charges against them.”¹¹⁶

99. In the same vein, the Commission has found that there is a violation of the right to honor in cases in which the state authorities make statements or issue communiqués that publicly incriminate a human rights defender, accusing him or her of acts that have not been judicially verified.¹¹⁷ In addition, the Commission has reiterated that no effort on the part of the state authorities to cast doubt on the legitimacy of the work of human rights defenders and their organizations should be tolerated. The IACHR has indicated that public officials should refrain from making declarations that stigmatize human rights defenders or that suggest that human rights organizations act improperly or unlawfully, merely because they work to promote or protect human rights¹¹⁸.

100. The Commission likewise recognizes that the government law enforcement agencies may find it necessary to conduct intelligence operations, in accordance with the law, to combat crime or protect the constitutional order, and to facilitate criminal prosecutions and specific, lawful military operations.¹¹⁹ Nonetheless,

¹¹⁴ IACHR, Report N° 43/96, Case 11.430 (Mexico), October 15, 1996, para. 47.

¹¹⁵ IACHR, Report N° 1/95 (Merits), Case 11.006 (Peru), February 7, 1995.

¹¹⁶ Report on the Merits N° 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico), April 13, 1999, para. 95.

¹¹⁷ IACHR, Report N° 43/96, Case 11.430 (Mexico), October 15, 1996, para. 76.

¹¹⁸ IACHR, Annual Report 2005, OEA/Ser.L/V/II.125. Doc. 7, 27 February 2006, Chapter IV, para. 35.

¹¹⁹ The Inter-American Court has referred to the legitimacy and limits of intelligence activities in the following terms:

The Court deems that the activities of the military forces and of the police, and of all, other security agencies, must be strictly subject to the rules of the democratic constitutional order and to the international human rights treaties and to International Humanitarian Law. This is especially valid with respect to intelligence agencies and activities. These agencies must, inter alia, be: a) respectful at all times, of the fundamental rights of persons; and b) subject to control by civil authorities, including not only those of the executive branch but also, insofar as pertinent, those of the other public powers. Measures to control intelligence activities must be especially rigorous because, given the conditions of secrecy under which these activities take place, they can drift toward committing violations of human rights and illegal criminal actions, as occurred in the instant case.

the Commission reiterates its concern over the fact that state law enforcement personnel target human rights organizations and their members for intelligence activities due exclusively to their activities.¹²⁰ The Commission emphasizes that, in keeping with its human rights obligations, the state cannot maintain intelligence files as a means of control over general information related to the citizenry.¹²¹

E. Movement and residence¹²²

101. Many of the actions entailed in promoting and protecting human rights require the physical presence of human rights defenders in the places in which they carry out their activities, such as providing permanent accompaniment of the communities at risk. The close relationship between human rights defenders and the victims they represent is necessary for the defenders to understand the problems that affect the victims, and to be able to propose appropriate lines of action and denunciation. When that bond is broken, not only does it have a negative impact on the right of the defenders to freedom of movement or to choose their place of work and residence without restrictions, it also seriously limits the victims' possibility of voicing their grievances and coming forth with their complaints.

102. The violations of these rights may be direct or indirect, understanding direct violations as the restrictions imposed on human rights defenders from leaving the country or even going to certain areas within the country, whereas indirect violations include threats and harassment seeking to restrict the movement of defenders through

...continuation

I/A Court H.R., *Myrna Mack Chang Case*. Judgment of November 25, 2003. Series C No. 101. para. 284.

¹²⁰ In its Report on Terrorism and Human Rights, the Commission affirmed that:

In the context of fighting terrorism, governments often attempt to restrict access to broad categories of information related to the investigation of suspected terrorists, the gathering of intelligence and the execution of police and military actions. In some of these cases, the government may have a legitimate need to keep information secret in order to protect national security or public order. At the same time, the public's need for information is greater than ever as anti-terrorism actions may be subject to abuse and the public and the press are among the most significant checks on abusive governmental behavior.

IACHR, Report on Terrorism and Human Rights, OEA/ser.L/V/II. , Doc. 5 rev. 1 corr., October 22, 2002, Para. 327.

¹²¹ The Commission has underscored that:

In cases where entities of the state or the private sector obtain data improperly and/or illegally, the petitioner must have access to that information, even when classified, so that individuals have control over data that affects them. The action of *habeas data* as a mechanism for ensuring the accountability of security and intelligence agencies within this context provides a means to verify that personal data has been gathered legally. The action of *habeas data* entitles the injured party or his family members to ascertain the purpose for which the data was collected and, if collected illegally, to determine whether the responsible parties are punishable. Public disclosure of illegal practices in the collection of personal data can have the effect of preventing such practices by these agencies in the future.

IACHR, Report on Terrorism and Human Rights, OEA/ser.L/V/II. , Doc. 5 rev. 1 corr., October 22, 2002, para. 292.

¹²² The right to choose and establish a place of residence, as well as the right to move about freely, are established in the inter-American system at Article VIII of the American Declaration and Article 22 of the American Convention.

fear.¹²³ The Commission has considered that threats and attacks on human rights defenders that force them to leave their countries of residence constitute violations of the rights protected at Article 22 of the American Convention.¹²⁴ Similarly, the Commission has considered that forced displacement is a direct violation of the rights of residence and movement, among others.¹²⁵

103. According to the inter-American standards, human rights defenders should enjoy adequate protection that guarantees they will not be subject to improper interference with the exercise of their freedom of movement and residence, whether in their work-related activities or in matters concerning their private lives. Among these guarantees, the authorities should refrain from imposing any restrictions, by any means, on the movement of human rights defenders to those areas of interest for their work, where they can collect field information and verify first-hand the situations in which human rights are alleged to be violated. Moreover, the states are under an obligation to guarantee that third persons not impede human rights organizations from verifying the situation of persons on the ground.

104. In addition, the United Nations representative has referred to this issue, stating that some defenders “have been barred from traveling abroad, have had their travel documents seized, been refused access to places and detained at airports in order to prevent them from reporting about the human rights situation in their country to international forums and bodies. Others have been refused visas and barred from access to places of human rights abuses, victims and clients.”¹²⁶ Similarly, the Committee on Freedom of Association has stated that “participation as a trade unionist in meetings organized by the ILO is a fundamental trade union right. It is therefore incumbent on the government of any member State of the ILO to abstain from any measure which would prevent representatives of a workers’ or employers’ organization from exercising their mandate in full freedom and independence.”¹²⁷

105. The Commission has established that in exercising their sovereign powers, the states may determine their immigration policy and legislation, and therefore may decide on the entry, stay, and expulsion of foreigners from their territory. Nonetheless, the Commission has also said that international human rights law imposes certain limitations.¹²⁸ The Commission considers that the prohibition on the entry or stay in a foreign country merely because a person is a human rights defender violates the intent to support and strengthen the work of defenders that the American states have set forth in repeated resolutions of the OAS General Assembly. To the contrary, the effective implementation of the principles set forth in those resolutions requires that the states grant – in keeping with their domestic law provisions – the permits and conditions necessary for human rights defenders to be able to develop their work in their territory, independent of a person’s national origin, and facilitate visas for access to the

¹²³ Along the same lines, the Human Rights Committee of the United Nations has considered that, pursuant to the provisions of the International Covenant on Civil and Political Rights, the freedom of movement is violated when a person must go into exile out of fear of threats, and the state does not provide the guarantees necessary for that person to be able to reside freely in his or her country of origin, even when such threats comes from non-state actors. See UN, Human Rights Committee, Case of Jiménez Vaca v. Colombia, Communication No. 859/1999, Doc. CCPR/C/74/D/859/1999, April 15, 2002.

¹²⁴ IACHR, Report N° 29/96, Case 11.303, (Guatemala), October 16, 1996, paras. 97 and 98.

¹²⁵ Report N° 32/96, Case 10.553 (Guatemala), October 16, 1996, paras. 64 and 65.

¹²⁶ UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. para. 59.

¹²⁷ ILO, Committee on Freedom of Association, see 254th report, case no. 1406 (Zambia), para. 470; and 283rd report, case no. 1590 (Lesotho), para. 346.

¹²⁸ IACHR, Fifth Progress Report of the Rapporteurship on Migrant Workers and their Families, Annual Report 2003, OEA/Ser.L/V/II.118, Doc. 70 rev. 2, December 29, 2003, Original: Spanish, para. 273.

jurisdiction for those cases in which the human rights defenders must travel to attend international meetings or similar events. The Commission finds that prohibiting the entry of some defenders to some countries has kept them from lodging and supporting complaints before international mechanisms, seriously prejudicing their work, and hindering the victims of violations from freely litigating their interests.

F. Due process and judicial guarantees¹²⁹

106. The right of victims and their family members to appropriate administration of justice in relation to human rights violations derives from Articles 8 and 25 of the Convention. Articles 8 and 25 grant persons the right of access to a remedy in the face of a violation of their rights, the right to recourse to and to be heard by a competent court, and the right to a speedy decision by the competent authorities. Furthermore, the provisions ensure that principles of due process are respected and guaranteed.

107. First, the Commission wishes to reiterate that the rule of law and democracy cannot be consolidated if the domestic judiciaries are not effective in prosecuting the very serious violations of human rights committed in many states, and if impunity continues to prevail in cases involving attacks on human rights defenders. When the state investigates and punishes the perpetrators of violations of the rights of human rights defenders, it sends a clear message to society to the effect that there will be no tolerance of those who violate human rights. Also, impunity for human rights violations corrodes the foundations of a democratic state.

108. The Commission has stated on a number of occasions that impunity helps hamper the work of human rights defenders and has an impact on society whereby intimidation prevents it from denouncing any violations it might suffer. At the Second Dublin Platform for Human Rights Defenders,¹³⁰ and at the Consultations on Human Rights Defenders held in Mexico, Guatemala, and Brazil, the issue of impunity was identified as one of the main challenges facing human rights defenders worldwide. One of the main violations of the duty to ensure rights is impunity, which the Inter-American Court has defined as

the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention... The State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations and the total defenselessness of victims and their relatives.¹³¹

109. The Commission reiterates that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.¹³² The Commission has found that in several countries of the region, the violation of the human rights of human rights defenders are among the systematic attacks organized and perpetrated by different persons at various levels of participation. The states have the obligation to investigate and punish all those persons who

¹²⁹ The rights to due process and judicial guaranties are established in the inter-American system at Article XVIII of the American Declaration and Articles 8 and 25 of the American Convention.

¹³⁰ Second Dublin Platform for Human Rights Defenders (Frontline) held on September 10 – 12, 2003.

¹³¹ I/A Court H.R., *Loayza Tamayo Case*, Reparations Judgment, para. 168 y 170.

¹³² The Inter-American Court has indicated, for example, that “the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations.” I/A Court H.R., *Constitutional Court Case*, Judgment of January 31, 2001. Series C No. 71, para. 123. See also I/A Court H.R., *Blake Case*, Reparations, Judgment of January 22, 1999, Series C No. 48, para. 65.

participate in planning and carrying out violations of the rights of persons who dedicate their lives to defending human rights. Partial investigation and punishment increases impunity, and with it, the risk affecting many human rights defenders in the hemisphere.

110. Moreover, if the judiciary is to serve as an effective organ of control, guarantee, and protection of human rights, it must not only exist formally, but also must be independent and impartial. The impartiality and independence of courts of justice cannot be guaranteed when the human, civil, labor, and association rights of those responsible for imparting justice are not respected. Therefore, the Commission is concerned that in some states, those responsible for imparting justice and investigating human rights violations are harassed through threats against their lives and unfounded administrative and job-related sanctions, including dismissal from their posts.

111. Another factor that the Commission has found to give rise to impunity in cases of violations of the human rights of human rights defenders is the fact that "most of the cases that involve human rights violations by the members of the State security forces are tried by the military criminal courts."¹³³ The Commission considers that the violations allegedly committed by officers of the state security forces against human rights defenders, as well as any accusations against human rights defenders, should not be investigated or tried by military tribunals, for they are not service-related activities.

112. Second, the United Nations Declaration on Defenders reaffirms the right of every person "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means."¹³⁴ This right includes the possibility of going before the courts and seeking protection and justice for the victims of human rights violations; demanding the urgent intervention of the judiciary to protect fundamental rights at imminent risk; bringing cases against the state arguing the responsibility of state agents who have allegedly committed violations; appealing against abuses of power such as unjust confiscations, unjustified withdrawal of legal recognition of professional associations or trade unions, or the arbitrary removal of public officials; and participating as observers at trials and public hearings to verify the observance of due process standards.

113. The complaints and appeals filed by human rights defenders must be examined in keeping with the minimum due process standards, which includes a well-founded decision within a reasonable time. The Commission finds that this right is fundamental for the exercise of the activities of human rights defenders, and must be strictly observed in both criminal and administrative proceedings, considering that such proceedings seek to protect human rights and oversee the authorities. Having judicial and administrative cases regarding the protection of human rights heard and decided on in timely fashion is essential for the public and complete revelation the truth, for justice and reparations.

114. Finally, as regards the rights to judicial protection and minimal due process guarantees, the Commission recalls that the punitive power of the state and its judicial apparatus should not be manipulated for the purpose of harassing those who are dedicated to legitimate activities such as the defense of human rights. The American Convention establishes that given that the criminal law seeks to mete out punishment, how the law defines crimes must meet certain requirements that allow for persons under the jurisdiction of the state to be informed of what conduct is considered criminal, which should be established in keeping with democratic standards. In addition, the

¹³³ IACHR, Second Report on the Situation of Human Rights in Peru, Ch. II, para. 209, published June 2, 2000. OEA/Ser.L/V/11.106.

¹³⁴ Article 13.

Convention, following the same principle of legality, establishes that judicial proceedings brought by the state authorities should be conducted in such a way that – based on objective evidence that is legally produced – only those persons who can reasonably be presumed to have committed conduct deserving of a criminal sanction are investigated and subjected to judicial proceedings.¹³⁵ Using criminal or administrative sanctions pursuing any other aim violates the guarantees established by the Convention and triggers the international responsibility of the state.

115. Moreover, the principle of legality set forth in the Convention provides that judicial processes initiated by the state authorities must be conducted in such a way that, based on objective, legally obtained evidence, only persons reasonably presumed to have committed acts subject to criminal penalties are investigated and prosecuted under the law.¹³⁶ To apply criminal or administrative penalties for any other purpose violates the guarantees set forth in the Convention and gives rise to international liability on the part of the state.

116. In this regard, the Commission reiterates that the punitive power of the state and its justice organs must not be manipulated to harass those engaged in legitimate activities. The Commission reiterates that the criminal justice system is the most severe means that the state has at its disposal to determine liability and, therefore, it must be used in strict adherence to fundamental principles such as due process (Supra § 61). The Commission also wishes to reiterate that, as established by the Inter-American Court, due process guarantees extend beyond criminal proceedings.¹³⁷ In the Commission's view, states must investigate those who break the law in their territory, but states also have the obligation to take the necessary steps to ensure that government's refrain from using investigations to subject people who demand respect and protection of their human rights through legitimate means to unfair or unfounded prosecutions.

117. In addition, the Commission stresses that the right to effective judicial protection also requires the implementation—in those states where they still do not exist—and strengthening—in those where they have been constitutionally or legally

¹³⁵ In particular, the Court has established:

Under the rule of law, the principles of legality and non-retroactivity govern the activity of all the organs of the State, in their respective areas of authority, particularly as regards the exercise of its punitive power.... In a democratic system it is necessary to take precautions to ensure that criminal law punishments are adopted with strict respect for the basic rights of persons, and only after carefully verifying the actual existence of the unlawful conduct.... In this regard, it is up to the criminal law judge, when applying the criminal law, to abide strictly by what its provisions, and observe the greatest possible rigor in fitting the conduct of the accused to the criminal law definition, to ensure that acts not punishable under the legal order are not penalized.

I/A Court H.R., *De la Cruz Sierra Case*, Judgment of November 18, 2004. Series C No. 115, paras. 80 ff.

¹³⁶ In particular, the Court has established that

Where the rule of law is in effect, the principles of legality and nonretroactivity govern the actions of all State organs, in their respective jurisdictions, particularly when it comes to the exercise of punitive power... In a democratic system, it is essential to specifically identify the precautions to ensure that penal sanctions are applied with strict respect for the basic rights of individuals and are contingent upon a painstaking verification of the actual existence of an illicit behavior... In this sense, it falls to the criminal judge, in the moment of applying criminal law, to adhere strictly to such provisions, and to observe the greatest rigor in applying the correct offense to the behavior of the incriminated person, to make sure that nonpunishable acts are not criminalized in the legal system.

I/A Court H.R., *De la Cruz Flores Case*, Judgment of November 18, 2004. Series C No. 115, paras. 80 on.

¹³⁷ Cfr. I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 70; *Paniagua Morales et al Case*. Judgment of March 8, 1998. Series C No. 37, para. 149.

established—of legal precautionary measures in the domestic venue, in situations of imminent threat or risk to the defense of human rights *inter alia*, life, personal integrity, the right to assembly, and freedom of expression and association. The Commission reiterates that precautionary and provisional measures fulfill subsidiary protective functions *vis-à-vis* the protections that correspond to the state itself and that one of the important roles of the IACHR is to promote local mechanisms for precautionary protection.

118. On this issue, the Inter-American Court has stated that “Article 25 of the American Convention provides that ‘everyone has the right to a simple and prompt recourse, or any other effective recourse to a competent court or tribunal,’” a provision that “constitutes one of the basic pillars not only of the American Convention, but of the very rule of law in a democratic society...”¹³⁸ These precautionary measures should be available for urgent cases in which the imminence or immediacy of the potential human rights violation has been demonstrated. This obligation also derives from the obligations undertaken by the states parties upon ratifying the American Convention and from the fundamental principles of the state itself.

119. Therefore, the right to judicial protection creates an obligation for states to establish and guarantee appropriate and effective judicial remedies for the precautionary protection of rights, including life and physical integrity, at the local level. Several domestic bodies of law have adopted these remedies through mechanisms such as *habeas corpus*, *amparo*, action of *tutela*, *writ of injunction*, *mandados de segurança* or individual protection measures, etc.

120. Given the special nature of these remedies, and the urgency and necessity in which they must operate, some basic characteristics are required if they are to be considered suitable in the sense established by the Commission and the Court. Such characteristics include, for example, that the remedies be simple, urgent, informal, accessible, and processed by independent bodies. It is also necessary that individuals have the opportunity to approach federal or national legal entities when bias is suspected in the conduct of state or local bodies. Likewise, these remedies must enjoy broad, active legitimacy so that they may be pursued by relatives or by public entities such as prosecutors or ombudspersons on behalf of the individuals under threat, without requiring the signature of the latter. It is also helpful if such remedies can be processed on an individual basis or as collective precautionary actions, in other words, to protect a particular group or one that is identifiable based on certain parameters as affected or at imminent risk. It is also important to provide for the implementation of protective measures in consultation with the affected parties and with special law enforcement agencies other than those under suspicion, among other provisions.

121. In this sense, because such actions are designed to protect fundamental rights in urgent cases, the evidentiary procedures should not be the same as that required in ordinary proceedings; the idea is that measures be adopted within a brief time period for the immediate protection of the threatened rights. For example, while in criminal law a threat against life only constitutes an offense upon initiation of the execution of the crime, in a precautionary situation, the protection of the right to life should include protection against any act that threatens that right, regardless of the magnitude or degree of probability of the threat, so long as it is genuine.

¹³⁸ I/A Court H.R., *Suárez Rosero Case*, Judgment of November 12, 1997, Series C No 35, para. 65; Inter-Am. Ct. H.R., *El Habeas Corpus In Emergency Situations* (Articles 27.2, 25.1 and 7.6 American Convention on Human Rights), Consultative Opinion OC-8/87 of January 30, 1987, Series A No. 8, para. 32.

G. General duty to guarantee and protect, and to adopt provisions of domestic law

122. As with all international commitments, the states are under an obligation to carry out their international human rights obligations in good faith.¹³⁹ This includes conducting themselves so as to respect and ensure the free and full exercise of human rights for all persons subject to their jurisdiction, without discrimination of any type. The Commission underscores the importance of the role assumed by state organs in implementing international human rights law. In addition, it recognizes that many of the international provisions are only operative if the states of the Americas set in motion their domestic legal systems to give them effect. Accordingly, international law ultimately leaves compliance with its obligations to the domestic organs.

123. The states have the legal duty to adopt all measures necessary to guarantee the “contextual space” in which human rights defenders and society in general can freely promote and seek the protection of their rights through national and international mechanisms. Those measures aimed at protecting the human rights of defenders, and at investigating, prosecuting, and punishing those who commit violations of their rights, merit special consideration.

124. The Commission notes that the vast majority of attacks on the right to life and physical integrity of defenders that come to the attention of the Commission are characterized by a lack of protection from threats and the subsequent impunity for the attacks and acts of aggression. The cases and requests for precautionary measures received suggest that the states should bear in mind that the inter-American system for the protection of human rights is based on the dual principle of protection and guarantee, which requires that the states investigate, prosecute, and punish the perpetrators, and make reparation to the victims of human rights violations.¹⁴⁰

125. In this sense, the Commission wishes to reiterate that any circumstance in which a public agency, institution, or official damages a right protected by the American Declaration or the American Convention gives rise to a potential failure to observe the duty to respect rights enshrined in Article 1 of the Convention and the implicit obligation in the American Declaration to ensure and respect rights, regardless of whether the agent has overstepped the limits of his authority.¹⁴¹

126. The Commission wishes to highlight that impunity in investigations, in addition to endangering the lives of hundreds of human rights defenders in the region, also helps foster a climate of intimidation and fear that impedes the full exercise of human rights defense. In addition, the Commission reiterates that the failure of a state to undertake an exhaustive and complete investigation into assassinations and disappearances of human rights defenders and the failure to criminally sanction the direct perpetrators and masterminds is especially grave due to the impact it has on society. When the state investigates and punishes the perpetrators of human rights violations, it sends a clear message to society to the effect that it will not tolerate those who commit human rights violations.¹⁴²

¹³⁹ See, I/A Court H.R., *Cases of Liliana Ortega et al.; Luisiana Ríos et al.; Luis Uzcátegui; Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of May 4, 2004, seventh whereas paragraph; *Lysias Fleury Case*. Provisional Measures. Order of December 2, 2003, seventh whereas paragraph; and *James et al. Case*. Provisional Measures. Order of December 2, 2003, sixth whereas paragraph.

¹⁴⁰ See, in this regard, IACHR, Report N° 24/98 (Merits). Case 11,287. João Canuto de Oliveira v. Brazil. April 7, 1998.

¹⁴¹ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 170.

¹⁴² IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report 2002, Chapter II, Evaluation of the Status of the Freedom of Expression in the Hemisphere, para. 224.

127. In this regard, the Commission recalls once again that the state is responsible internationally for human rights violations when private groups act as state agents, or with the approval, acquiescence, or tolerance of state agents. In this vein, if violations of the American Declaration or the American Convention result from such attacks, the state must answer internationally for the violations of rights protected by these instruments.¹⁴³

128. In this respect, the Inter-American Court has established that respect for human rights in a democratic state depends largely on the effective and adequate guarantees that human rights defenders enjoy to carry out their activities freely.¹⁴⁴ Accordingly, the States should grant effective and adequate guarantees to defenders, and pay special attention to actions that limit or hinder their work.¹⁴⁵

129. In view of this obligation, the Commission has recommended the implementation of protective measures for human rights defenders, such as

Deploy the necessary human, budgetary, and logistical resources to guarantee the implementation of adequate and effective measures of protection whenever the personal safety and lives of these persons are at risk. In addition, ensure that the security measures are effectively put into practice and maintained for as long as the risks continue.... Establish specialized units within the National Civil Police and the Office of the Attorney General, endowed with the necessary resources and training to enable them to work in a coordinated manner and respond with due diligence in investigating these acts. In addition, increase the resources of the Office of the Ombudsman for Human Rights with a view to strengthening its capacity for defending and protecting the activities carried out by the human rights defenders."¹⁴⁶

130. Among the precautionary measures underlying the states' duty to safeguard rights, the Commission stresses the important role of programs for the protection of human rights defenders, and of victims and witnesses of human rights violations. The Commission notes the efforts made by some states in the implementation of these much-needed programs and appeals for their mass replication and strengthening.

131. A comprehensive and efficient system to protect the work undertaken by human rights defenders must go beyond the mere operation of a protection program against acts of violence—although such protection is necessary and a priority—. As the OAS General Assembly has stated, a protection program should be geared toward eradicating "actions that directly or indirectly prevent or hamper the work of human rights defenders."¹⁴⁷

¹⁴³ The Inter-American Court has ruled along the same lines, on noting that an illegal act that violates human rights that initially is not imputable to a state, for example because it is the act of a private person, or because the perpetrator has not been identified, may give rise to the international responsibility of the state, not for the act itself, but due to the lack of due diligence in preventing the violation, or in treating it in the terms required by the Convention. See I/A Court H.R., Series C, No. 4, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 172.

¹⁴⁴ I/A Court H.R., *Lysias Fleury Case*. Provisional Measures. Order of June 7, 2003, fifth whereas paragraph, and Order of December 2, 2003, tenth whereas paragraph.

¹⁴⁵ OAS, General Assembly, resolution 1842 (XXXII-O/02); resolution 1818 (XXXI-O/01); and the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. AG Res. 53/144.

¹⁴⁶ IACHR, *Justicia e inclusión social: los desafíos de la democracia en Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, para. 208.

¹⁴⁷ OAS, General Assembly, resolution AG/RES. 2067 (XXXV-O/05), of June 7, 2005, resolutory point 2.

132. In this sense, the Commission deems it advisable that member states adopt effective and exhaustive prevention strategies to avert attacks against human rights defenders. This prevention and protection policy should take into account periods during which defenders are most vulnerable. The state authorities should remain vigilant during those periods and publicly declare their commitment to support and protection.

133. The Commission is of the opinion that for a protection program to be effective, in other words, to produce the desired results, it must be backed up by a strong political commitment on the part of the state. The program should form part of a national human rights plan adopted as priority policy by all institutional decision-making entities at the central and local levels.¹⁴⁸ To this end, norms must be established to clearly define the spheres of competence and the responsibilities of the central and decentralized authorities (state governments and federal government in the case of federal states), and ensure that there is coherence between the transfer of competence and of resources from the national to the local level.

134. Similarly, a protection program for human rights defenders should guarantee that the state will allocate the human, budgetary, and logistical resources needed to implement protection measures to protect the life and physical integrity of defenders. Such measures should be in effect for the time period necessary and should be determined in consultation with the defenders themselves so as to ensure their relevance and the ability of human rights defenders to continue to carry out their activities.

135. In this regard, the Commission's also deems essential for the functioning of a protection program the existence of stable, respectful, and constructive channels for consultation and dialogue with human rights organizations and with the protected individuals. Opportunities for negotiation and dialogue allow the authorities to hear the proposals of the organizations, become familiar with their needs, and evaluate the performance of the protective measures granted.

136. Based on its regional experience, the Commission recommends operational measures such as the establishment of escort corps trained to properly perform the exclusive function of protecting at-risk individuals, which should be attached to and operate hierarchically under a law enforcement agency. In addition, this corps should operate separately from intelligence and counterintelligence activities, have instructors, supervisors and security experts assigned to it exclusively, and operate out of its own facility. Risk analysis and implementation of measures, including the security of offices and homes, should be under the purview of this corps, rather than the intelligence and counterintelligence divisions of the security forces. These investigators should be specifically trained in topics such as state responsibility and international human rights law. Moreover, the process of selection, enlistment, training, and re-training of these protection officers should be conducted with absolute transparency and with the participation of representatives of the program's target population, so as to forge bonds of trust between the protected individuals and those assigned to protect them.

¹⁴⁸ In this regard, the IACHR has pointed out that "a state's human rights obligations are superior to the requirements of its domestic law and must be performed in good faith." IACHR: Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 42.

V. PROBLEMS FACED BY HUMAN RIGHTS DEFENDERS IN THE HEMISPHERE

137. A large number of human rights defenders in the Americas are victims of reprisals and undue restrictions as a result of their work of promoting and protecting the rights of persons who live in the hemisphere. This makes the work of protecting and defending human rights difficult, and, in many cases, risky. By exercising its mandate, the Commission has verified the existence of a variety of practices and acts that hinder or nullify the exercise of human rights defense.¹⁴⁹ These practices, some of them violative of internationally protected human rights, are violations of the rights to life, integrity, liberty and security, due process and a fair trial, freedom of expression, privacy, and judicial protection. These practices also include other acts that encumber the protection and promotion of human rights, such as abusive administrative and financial controls imposed on human rights organizations, and the refusal of the state to reveal public information so as to review the actions of the authorities.

138. In this chapter, the Commission will analyze the most common and representative actions entailing both violations of the human rights of defenders and restrictions on the defense of human rights, without claiming to exhaust all of them.¹⁵⁰

139. The Commission considers it necessary to clarify that patterns have been established based on disturbing incidents or incidents that constitute violations of rights. Nonetheless, there are common characteristics that make it possible to determine and classify the patterns through other forms, such as: who commits the violations, when they are committed, and the persons or groups of persons who are the victims of such conduct.

140. The Commission wishes to emphasize that one of the most serious consequences of these patterns of violations targeting human rights defenders is that they send society as a whole an intimidating message putting it in a defenseless situation. These acts are aimed at causing generalized fear, and so, at discouraging all other human rights defenders, and intimidating and silencing the denunciations, claims, and grievances of the victims of human rights violations, spurring on impunity, and impeding the full realization of the rule of law and democracy.

141. Both the Commission and the Inter-American Court have found that grave violations of the human rights of human rights defenders have a direct intimidating effect on the processes of vindicating rights or denouncing violations.¹⁵¹ The attacks on them may produce an immediate halt to or almost total reduction of their activities, as defenders must abandon the areas where they work, change their places of residence or work habits, or, in some cases, leave the country. In addition to these direct effects, the Commission has learned of collateral effects that have a detrimental impact on all other defenders, who even though not receiving the attacks directly, are victims of fear on seeing the situation of their colleagues and the ease with which the same arbitrary acts could be committed against them.

142. This same chilling and deterrent effect is suffered by the victims of human rights violations, who under the effect of fear refuse to lodge complaints, will not meet with threatened human rights defenders, and stay away from the offices of

¹⁴⁹ Many of the actions that follow these patterns are gross violations of human rights, and are considered a crime or an offense, domestically or internationally, while other actions, though not so considered, encumber or limit the work of human rights defenders.

¹⁵⁰ The acts described in this chapter are those directly related to the exercise of the defense of human rights. In that connection, such acts may be motivated by an interest in discouraging persons dedicated to this work, or as a reprisal or revenge for the results obtained by those persons.

¹⁵¹ See I/A Court H.R., *Huilca Tecse Case*, Judgment of March 3, 2005, paras. 67 ff.

organizations that have been threatened or attacked. Based on the information received, in more than one case it has been observed that the assailants seek to provoke generalized fear to avoid public denunciations not only of those who lead these processes, but of any other person who might need to pursue a human rights claim. To this end, the vulnerability-exacerbating effects of such conduct extend perversely to society as a whole, with a much more serious detrimental impact on defenders. This effect, in addition, re-victimizes those who have been targets of violations, whose search for the truth, justice, and reparation is impeded.

143. In some states violations are systematic and interrelated, producing a general atmosphere of danger for the defense of human rights. This danger is all the greater if there is a serious lack of state protection and a failure to investigate the violations.

144. Similarly, the timing of acts carried out against human rights defenders is a common element in all the patterns described. Accordingly, acts or violations that appear subtle come to appear more serious or significant when carried out at moments crucial for pressing certain claims. The Commission has found, for example, an increase in acts directed against human rights defenders when official decisions are approaching in a judicial proceeding, when violations are publicly denounced, especially in the case of state or parastatal actors, or when there are changes or progress favorable to the interests of human rights defenders.

145. The Commission has observed that in certain stages of trials vindicating rights, there is an increased risk of defenders becoming victims of violations or interference with their work. Many defenders are the victims of violations of their rights when it is known that they are going to lodge certain complaints before the national authorities such as the courts, or before international mechanisms for the protection of human rights. In these cases, one can find a direct link between the imminence of the complaint and the increased risk to defenders. In such circumstances, the assailants seek, by any means, including physical elimination, to prevent the violations from being made known, or to prevent efforts to punish the persons responsible for them.

146. On other occasions, the risk increases when grievances are put forth by defenders advocating the adoption of administrative measures or changes in state policy. This situation also arises at moments when it is crucial for defenders to give impetus to such proceedings. In other cases, the violations appear to be acts of retaliation when a favorable result is obtained, such as demarcating indigenous territories, expropriating lands for campesino communities, awarding compensation to the victims of violations, or publishing truth commission reports. These acts result in defenders having a well-founded fear that they will be punished as a result of their work, and, consequently, the stages of enforcing judicial decisions and other administrative measures become dangerous, hindering their enforcement as well as the collection of compensation by the victims of violations.

147. The Commission has learned that several human rights defenders have recently been targeted by public accusations, the institution of criminal proceedings, and threats, merely for having participated in sessions and hearings before the Inter-American Commission and the Inter-American Court. In addition, the Commission has been informed that several persons have been subject to accusations and speeches aimed at discrediting their activities, by public authorities, because of having sought measures of protection from the oversight organs of the inter-American system. The

Commission reminds the states that such conduct, in addition to violating several provisions of the system¹⁵², increases exponentially the risk that these persons face.

A. Extrajudicial executions and forced disappearances

148. Human rights defenders are frequent victims of violations of the right to life such as extrajudicial executions and forced disappearances. Such violations are one of the most serious obstacles to the work of human rights promotion and protection by society in general. In addition, they cause irreparable harm for the direct victims of the violation, their family members, the community of human rights defenders, and the persons for whom they do their work.

149. The Commission has continued to receive complaints related to forced disappearances of human rights defenders. In the vast majority of cases, despite several years having elapsed, the victims' whereabouts remain unknown, even though the cases have been reported to the respective authorities.

According to information brought to the attention of the IACHR, for several years the traditional authorities, leaders, and members of the different Embera Katío communities in Colombia have lived in a climate of threats and accusations by guerrilla and paramilitary groups who seek to control their ancestral territory. In this context, on June 2, 2001, Messrs. Kimy Pernía Domicó, Uldarico Domicó, Argel Domicó, Honorio Domicó, Adolfo Domicó, Teofan Domicó, Mariano Majoré, Delio Domicó, and Fredy Domicó were kidnapped allegedly by the AUC from the office of the Cabildos Mayores (indigenous government) of the Sinú and Verde rivers, in Tierralta, department of Córdoba, Colombia. Messrs. Uldarico Domicó, Argel Domicó, Honorio Domicó, Adolfo Domicó, Tegian Domicó, Mariano Majoré, Delio Domicó, and Fredy Domicó were subsequently released. Nonetheless, the main community and spiritual leader of the people, Kimy Domicó, continues disappeared. This disappearance was apparently motivated by the actions of Kimy Domicó in defense of the territory of the Embera people. In response, on June 2, 2001, the Commission granted precautionary measures on behalf of Kimy Domicó and all other members of the Embera Katío people of the Upper Sinú.

150. In addition, the Commission has received, with concern, repeated reports of assassinations of human rights defenders in several countries of the hemisphere. Some of them had provided information to the Commission in recent years; in other cases, the persons assassinated were beneficiaries of precautionary measures issued by the Commission, whose lack of effective implementation facilitated their being assassinated.

According to information received by the IACHR, on Wednesday, the 27th of this month, in the Tinaquillo de Machiques housing development in the state of Zulia in Venezuela, the former Coordinator of the Human Rights Office of the Apostolic Vicariate of Machiques, Joe Castillo González, was assassinated when traveling in a vehicle with his wife and minor son. The incident occurred one-half block from his residence at approximately 7:30 p.m. The subjects, two in all, on a motorcycle, fired 13 shots; Joe Castillo died from the impact of nine bullets. Both his wife and his one-year-old child were wounded, she with a gunshot to the abdomen and arm, and the child in the arm. According to his wife's testimony, they also intended to assassinate her and her son. Joe Castillo had worked with his wife for more than five years in the Human Rights

¹⁵² In this respect, Article 61 of the Commission's Rules of Procedure indicates:

The State in question shall grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission. That State may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.

*Office of the Apostolic Vicariate of Machiques, engaged in the promotion and defense of human rights, especially providing services to persons seeking refugee status coming from Colombia*¹⁵³.

151. In general, disappearances and extrajudicial executions are preceded by the lack of adequate protection for human rights defenders who report having been victims of persecution and threats. The Commission notes that the lack of adequate protection for defenders who report having been victims of persecution, surveillance, and threats, entails a lack of protection and total defenselessness that fosters attacks on their lives. In many cases, homicidal attacks may even take the lives of several persons who make up an organization, or several leaders of a community, yet the authorities fail to take adequate measures of protection.

The Commission was informed that on February 14, 2002, attorney María del Carmen Flores, a member of the Fundación Jurídica Colombiana (Corpojurídico), was traveling in a vehicle that was intercepted by six armed men in civilian dress while in the village of Guapá, department of Antioquia, Colombia. These men forced those who were traveling in the vehicle to get out, and then ordered them to get back in, and they ordered that Mrs. Flores stay with them. Mrs. Flores's remains were found during the afternoon hours. The death of Mrs. Flores Jaimes occurred after a meeting with the victim's mother, in preparation for the hearing scheduled for the 114th regular session of the IACHR in which matters were to be discussed related to a petition pending before the IACHR. The Human Rights Defenders Unit of the Executive Secretariat of the IACHR issued a press release publicly repudiating this assassination. In addition, the petitioners informed the IACHR that two brothers of the victim in the individual petition, the attorney for whom was Mrs. Flores, had been assassinated after submitting the petition to the IACHR. On August 6, 2002, the IACHR issued precautionary measures for the family members of the victim of the individual petition, and for the members of Corpojurídico.

152. The victims of homicides and disappearances are generally those who are most prominent for their work reporting human rights abuses, or for their leadership. In killing them, the assailants seek to make an "example" of the victims, bring a halt to reporting on violations, getting the human rights organizations to leave certain zones, and/or bringing about a drop in the number of complaints presented.

In October 2003, the IACHR received a request for precautionary measures from two leaders of the Xucuru indigenous people, located in the state of Pernambuco, Brazil. The request adduced that for more than 13 years the members of this indigenous peoples were awaiting the conclusion of the process of demarcating their lands. They reported that during this whole process they have suffered killings and invasions of their lands. They alleged that every time it was announced that the demarcation was to take place, there was an assassination in the community. Following this pattern, in September 1992, José Rodrigues, the son of Paje Zequinha, the spiritual leader of the Xucuru, was assassinated in an ambush attributed to the invaders. In May 1995, with the news that the demarcation of lands was to be carried out, the attorney of the Fundação Nacional do Índio (FUNAI) and an active defender of indigenous rights in the region, Geraldo Rolim, was assassinated. In May 1998, just after the lands were retaken, the Cacique Francisco de Assis Araujo – Cacique Xicao Xucuru, indigenous chief of the Xucuru people known for his struggle for recognition and demarcation of his people's lands, after having received several death threats and having survived one assassination attempt, was assassinated by three gunshot wounds to the back by a gunman whose identity is unknown to this day. Since then, every time the process of demarcation comes to a standstill, the indigenous once again take their invaded lands, and the

¹⁵³ See IACHR, Press release N° 26/03, "IACHR repudiates murder of human rights defender Joe Castillo". August 28, 2003.

conflict worsens. The petitioners report that in 2001, it was reported that the victims' names appeared in a list of indigenous persons who were to be assassinated, and, in effect, a plan to assassinate them was discovered. In April 2001 the decree for demarcation of the indigenous lands was issued by the President of the Republic, which led to increased tension in the region, and in August 2001, another indigenous person was assassinated in an ambush – the leader of the Pé de Serra do Oiti indigenous people, Francisco de Assis Santana, Chico Quelé. Because of these incidents, on October 29, 2002, the IACHR granted precautionary measures on behalf of the leaders Zenilda Maria de Araujo and Marcos Luidson de Araujo (Cacique Marquinhos).

153. The Commission has also received reports of assassinations of family members or persons closely related to human rights defenders. Those assassinations are directly related to the defenders' activities. In general, these assassinations follow the patterns of timing, impunity, and lack of prevention as the direct assassinations of human rights defenders.

The Commission received information that indicates that since June 2002, members of the Proyecto de la Alianza para la Prevención del Delito (APREDE), a coalition of Guatemalan nongovernmental organizations that work with gang youth to prevent crime, through training and activities with the residents of marginal neighborhoods, began to organize recreational activities with the youths of Villa Nueva, and as of November 2002, after they began their activities, the members of the project began to be followed, while 19 beneficiaries of the same project were assassinated. As of that moment, Juan Ixcol López and Gustavo Cifuentes, facilitators of the project, were followed and repeatedly threatened. Amidst these threats, Juan Ixcol López's brother was assassinated, and a daughter of Gustavo Cifuentes was beaten. On February 16, 2003, APREDE organized an activity in the Colonia San Antonio Zona 6 of San Miguel Petapa, Guatemala. There, at about 1:30 p.m., a corinthian red vehicle was stopped; four or five men got out with pistols in hand, and some with extra cartridges. When they got out they shouted: "don't run, halt; that's the one who assaulted your sister." The facilitator of the program, Antonio Montufar, intervened to try to calm the youths, but was violently moved away. Edgar Gómez, facilitator of the program, intervened at that moment, but one of the assailants shot him directly in the head, and then proceeded to shoot at the group that was participating in the activity. In addition to Edgar Gómez, the gunshots caused the death of William Estuardo Padilla Solares and injured another youth who had also participated in the activity. On March 17, 2003, the Commission granted precautionary measures to protect the life and personal integrity of Emilio Goubaud, Juan Luis Ixcol, José Antonio Montufar, Gustavo Cifuentes, and Gabriela Flores, all members of APREDE.

B. Attacks, threats, and other forms of harassment

154. Attacks, threats, and harassment, used as an instrument to thwart and hinder the work of human rights defenders, constitute a pattern that can be discerned in many countries of the region. The Commission states its concern over the magnitude and systematic nature of the attacks and threats against persons engaged in the defense, promotion, and protection of human rights in the hemisphere. The Commission notes that a large proportion of precautionary measures of protection granted in recent years have been motivated by situations of risk, threats, and attacks on human rights defenders. In addition, the United Nations Special Representative for Human Rights Defenders has expressed constant concern over the high number of communications from countries of the Americas, and has indicated that the Americas is the most dangerous region in the world for human rights defenders.¹⁵⁴

¹⁵⁴ UN, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. Paras. 61 and 90.

1. Assassination attempts and assaults

155. The Commission has taken note of the constant attacks on the personal integrity of human rights defenders in several countries of the hemisphere. Physical assaults on defenders include both those acts of physical violence aimed at causing the death of the defender, but which due to circumstances beyond the control of the assailant may not cause death; and those acts of physical violence whose sole purpose is to inflict physical pain on a defender or a member of his or her family.

156. Failed attempts to kill take various forms, varying in the intensity of the violence used. Many such attacks are carried out by paid gunmen. Also common is the use of explosives, which are set off in the offices, residences, or vehicles of defenders. The intensity, violence, and timing of the attacks show that the intent of the assailants is to cause death.

On February 11, 2004, the Commission received a request for measures of protection indicating that on February 1, 2004, Mr. Leonidas Iza, an Ecuadorian indigenous leader, president of the Confederación de las Nacionalidades Indígenas del Ecuador (CONAIE), returned from Cuba where he had participated in the regional meeting against the Free Trade Area of the Americas (FTAA). After being picked up by his wife, his two children, his brother, and his nephew at the Quito airport, he took a taxi to the CONAIE office. Two unknown men in a car with polarized glass followed them from the airport, shot at the president of CONAIE and his family members, and made death threats. The assailants shouted at Mr. Iza "we're going to kill you!" and tried to enter the CONAIE offices. The assailants began to shoot at the moment that three relatives of Leonidas, from inside the offices, were struggling to close the main door to the building. The 9-millimeter bullets passed through the door, and hit the three relatives (Javier Iza, Camilo Tixe, and Rodrigo Iza). These persons were taken to the Clínica Cotocollao, in the north of Quito, where they received medical care. On February 27, 2004, the Commission adopted precautionary measures for Mr. Leonidas Iza, his family members, and other members of CONAIE.

157. In addition, there have been other non-lethal attacks or physical assaults carried out as a warning, to ensure defenders know the risk to which they're exposing themselves, how far their aggressors are willing to go, and the relative ease with which they or their family members could be harmed. In other cases, non-lethal attacks are intended to inflict pain, fear, anguish, and a sense of vulnerability in order to humiliate and degrade the victims and break their physical and moral resistance.

On October 10, 2002, the IACHR received information that indicated that Mr. Lysias Fleury, a member of the Bishops' Commission for Justice and Peace and Haiti, was detained by police agents on June 24, 2002, at approximately 7 p.m., and was pistol-whipped as he was being arrested. Subsequently, Mr. Fleury was deprived of liberty, with a guard in sight, for 17 hours at the police station in Bon Repos, Haiti. That same night he was subjected to several forms of degrading treatment. For example, the officers forced him to pick up excrement with his hands. In the afternoon the police beat him, inflicting 15 double ("kalots marasa") blows, 64 blows to the abdomen, and several kicks in the clavicle. On October 15, 2002, the Commission adopted precautionary measures to protect the life and personal integrity of Mr. Lysias Fleury. On November 12, 2002, February 10, 2003, and March 5, 2003, the Commission reiterated those precautionary measures and asked the state to report on the measures adopted. On March 13, 2003, the IACHR asked the Inter-American Court to issue provisional measures to protect the life and personal integrity of Mr. Fleury. The Court, by order of June 7, 2003, granted provisional measures in the case.

2. Threats

158. Threats are generally intimidating notices that an act may be committed that will produce serious pain, such as torture, kidnapping, rape, or death. Such acts are aimed at intimidating human rights defenders or their family members, so as to get the defenders to refrain from pursuing certain investigations or complaints. The special seriousness of threats is found in the high likelihood that they will be carried out. Therefore, threats cause psychological and moral injury to human rights defenders, pushing some to distance themselves from their regular work, or to diminish their public exposure.

On March 8, 2005, the IACHR received a request for precautionary measures that alleged threats and other acts against the Centro de Estudios Jurídicos e Investigación Social (CEJIS), a Bolivian organization that for years has supported the process of clearing up title to lands, which has gone forward in order to regularize the rights of more than 500 campesino communities engaged in extracting rubber, chestnuts, and walnuts, and acknowledging their ancestral rights to the territories of the Esse Eja, Tacana, Cavineño, Chacobo, Pacawuara and Araona indigenous peoples of Bolivia. According to the communication, on January 5, 2005, approximately 30 armed persons violently entered the offices of CEJIS, and, amidst death threats, looted and destroyed office equipment and evidentiary documents regarding the existence of a latifundio owned by a U.S. citizen in the northern Amazon region, which were incinerated in the street. As they left these men gave "48 hours for CEJIS to leave Riberalta," and they threatened to burn Cliver Rocha, director of the office, if he returned to Riberalta. In response, attorneys Cliver Rocha (director of the CEJIS office in Riberalta) and Fredy Vásquez submitted their irrevocable resignations. On March 10, 2005, the Commission decided to grant precautionary measures for the members of CEJIS. On May 9, 2005, the Commission reiterated the measures and extended the protection to other members of CEJIS.

159. The Commission has received complaints of direct and indirect threats. Direct threats are received by the human rights defenders themselves, warning them of possible attacks against them or their family members. Indirect threats are aimed at family members or persons close to them, to send a message to the defender to abandon the cause.

On May 31, 2005, the Commission was informed that even though the members of the human rights NGO Colectivo de Abogados "José Alvear Restrepo" have been beneficiaries of precautionary measures since 2000, and despite the efforts to monitor compliance with them, the pattern of attacks, harassment, and threats against the members of the Colectivo de Abogados continues. The information received indicated that on the night of Friday, May 13, 2005, on arriving at her home, located in Bogotá, Colombia, the president of the Colectivo de Abogados, Soraya Gutiérrez Arguello, received from the hands of the watchman for the apartment complex where she lives a strange package left by a courier company, which was opened by members of the National Police, given the fear that it might be an explosive artifact. Inside the package was a beheaded and dismembered doll, burnt in some parts of the body, and the whole body splattered with red nail polish – like blood – with a cross drawn on the torso. Next to the doll was a hand-written note that said: "You have a very nice family, take care of it, don't sacrifice it." On May 11, 2000, the Commission granted precautionary measures of protection to the members of the Colectivo de Abogados. The measures have been extended on several occasions due to the persistence of the risks its members face.

160. Threats are usually sent through telephone calls, physical mail, emails, anonymous warnings, and other means, which are received at the organizations' offices, at the defenders' homes, and in the general milieu in which they work and operate.

These acts show that defenders are victims of prior surveillance through the identification of telephone numbers or of the places where they work or spend their free time. Oftentimes the person receives a warning that indicates that he or she is being watched. In general, these warnings are made by an unidentified person. One type of threat, which has been the subject of some complaints, and which stands out for its sophistication, is the use of condolence cards or invitations to their own funeral. Another form of intimidation that has been the subject of complaints lodged with the IACHR is the payment of anonymous ads in large-circulation newspapers announcing job openings in a given human rights organization. The organizations have indicated to the IACHR that in the context of threats and harassment such as one finds in some countries, such ads suggest that the current members of human rights organizations could be the victims of assassination attempts, which would be the reason for the supposed openings.

161. The Commission has found that in other cases the threats are directed not against particular individuals, but generically against an organization or community. According to the information analyzed by the Commission, the purpose of such threats is to veto an activity and it makes any person related to it a target. In some cases, for example, the threats are aimed at discouraging campaigns to denounce violations or to accompany communities.

On September 20, 2004, the Commission received a request for precautionary measures signed by the Consejo Indígena Popular Oaxaqueño "Ricardo Flores Magón" (CIPO RFM), on behalf of Mr. Raul Javier Gatica and other members of the organizational board of the Consejo Indígena Popular of Oaxaca, Mexico. The request noted, among other facts alleged, that beginning on September 1, 2004, the organization had been receiving threatening phone calls. On September 1 alone, 13 calls were received threatening to "romper la madre" ("tear apart"), Raúl Javier Gatica Bautista and the other members of the CIPO RFM. On September 13, 2004, a new phone call was received threatening to kill one of the members of CIPO RFM. On September 15, four more calls were received. In one of them they said "what comes next for you is the death of you all, mainly Raúl Javier Gatica Bautista." Due to these incidents, plus other acts of harassment denounced by the members of CIPO, on September 27, 2004, the Commission granted precautionary measures to ensure the life and personal integrity of Mr. Raúl Javier Gatica Bautista. Notwithstanding the granting of those measures, the beneficiary of the measures informed the Commission that due to the situation of risk, he had to leave the state of Oaxaca and cease his activity defending the human rights of indigenous communities in Oaxaca.

162. Another form of threat is that which circulates in public opinion, either as generic threats, or as lists of persons threatened. These have a chilling effect on society and especially on victims and witnesses, who don't dare report incidents or turn to those organizations that have been publicly accused through lists.

On September 10, 2003, the Commission received a request for precautionary measures on behalf of the Empresa Comunitaria de Acueducto y Alcantarillado de Saravena-ECCAS, founded more than 20 years ago by leaders of the Juntas de Acción Comunal (community action boards) of the municipality of Saravena, department of Arauca, Colombia. This self-managed and community-owned company provides drinking water and sanitation services to the inhabitants of Saravena. The ECAAS has been characterized by offering support and solidarity to cultural, sports, social, and protest initiatives of the inhabitants of Saravena and the department of Arauca. The petition indicated, inter alia, that on July 25, in central Saravena, an employee of ECAAS was detained by two persons from outside the region who were part of a group of men who have set themselves up near the police station in this locality. These men made death threats to him, and said that all the employees of ECAAS were members of the guerrillas, and then they asked him to warn his fellow-workers "that they would be

given all the lead they could swallow.” Subsequently, on August 15, 2003, at approximately 8:00 p.m., community leader and ECAAS assembly member Edgar Mantilla was assassinated, near the police station of Saravena. On the morning of August 31, 2003, the main office of ECAAS, situated just seventy (70) meters from one of the permanent observation, control, and security posts of the police station of Saravena, had a series of inscriptions and slogans painted on its outside walls, threatening the workers of that company. The intimidating signs read: “last judgment: death to ECAAS,” “death to the militia members of ECAAS,” “let’s clean up Saravena, let’s finish off ECAAS,” and others along the same lines, which were signed by the paramilitary group ACC-AUC. In response to the seriousness of these incidents, on September 22, 2003, the Commission granted precautionary measures for 20 persons, all of them directors or employees of ECAAS.

163. The Commission has verified that the lack of an effective policy for the protection of threatened human rights defenders encourages assailants to carry out their threats, especially if they feel certain that it is unlikely that they’ll be convicted for these deeds. In most cases, the latent threat of being the target of an attack remains for a long time, even years, condemning the victims and their families to a life of uncertainty and fear.

3. Surveillance

164. According to the information received by the Commission, it is also common for human rights defenders or their family members to be followed constantly wherever they go, or to be kept under surveillance at their offices, residents, and elsewhere. There are many methods used to follow these persons. In many cases, these methods are practically imperceptible; in other cases they are detected easily, since that is the assailant’s intent: for the victim to know that he or she is being watched, and that his or her movements, as well as all the persons with whom he or she meets, are known.

165. When persons are followed it is generally by vehicles without license plates. In other cases such vehicles have been reported to have official license plates. The Commission has received information that indicates that in some cases those who follow human rights defenders intercept and threaten them with firearms, or physically assault them, when they are in desolate places.

On November 6, 2002, the Commission received a request for precautionary measures on behalf of Ms. Elma Soraya Novais. The request indicated that her son was assassinated in December 1999. Apparently the assassination was committed by four police officers from the state of Pernambuco who thought that the assassinated youth had killed a police officer’s brother. Since then she has been engaged in a campaign of judicial actions and dissemination to public opinion to try to get the assassins convicted. This has entailed various sorts of threats. In July 2000, the alleged assassins surrounded her car. In September 2000 she was shot at, but she saved herself by dropping to the floor. In February 2001, there was an accidental explosion in the yard of her home that burned 45% of her body. On November 8, 2002, the Commission issued precautionary measures on her behalf, which were later extended to her children, who were threatened. In the context of those measures, on May 17, 2005, the IACHR was informed that on March 22, 2005, when Ms. Novais was heading to the local police station escorted by two police officers, she observed that she was being followed by a car in which there were two men. Further on, the car reached the escorts and tried to bump Ms. Novais’s vehicle, and then it fled at high speed. The escorts tried to follow it, but returned so as not to leave her without protection. Once at the police station, Ms. Novais perceived a car suspiciously driving around the police station at low speed, and that two men then got out of the car, and kept looking inside the police station. Ms. Novais asked the Federal Police to clarify the situation, and was informed by them that

she should take a different route to go home while they looked into the situation. The inquiry of the Federal Police determined that the car belonged to a member of the Civil Police who was on trial on charges of forming death squads.

166. The Commission has also received many complaints from human rights defenders regarding suspicious persons who move about or remain at the headquarters of the organizations or at their residences. In other cases, it has been denounced that those persons are constantly seen in places where human rights defenders work or that they frequent, such as, for example, their children's schools, or the residences of their relatives and friends. It is also common to find suspicious vehicles posted in front of the headquarters of the organizations at different times of the day or night.

On July 24, 2002, the members of the Fundación Rigoberta Menchú Tum (FRMT) asked the IACHR to grant precautionary measures, adducing that they had been victims of threats, and another series of acts of intimidation. On July 29, 2002, the IACHR decided to grant the measures requested in view of the seriousness of the risk the members of the Fundación were facing. In the context of monitoring those measures, the beneficiaries reported that on July 26, a couple was seen posted across from the organization's offices. The woman was vigilant, informing the man of everything going on. The couple came on a yellow and gray Scramber motorcycle. On July 29 and 31, the same situation was repeated. On July 31, Mr. Gustavo Meoño perceived a yellow motorcycle with two people following him one block from the offices of the Fundación. When he parked he saw how they remained across from the Fundación; the man didn't show his face. From the Fundación's camera one could see that the woman was attentive to the movements about the Fundación. On August 1, the members of the FRMT realized that the same couple was posted in the same place. On August 6, the couple returned. That day, the members of the institution and visitors were able to observe rotating surveillance. The members of the Fundación took their photos and observed that every time someone left the Fundación they made calls. Later, they saw someone approach them and have an exchange of words, and then that person took up a position a short distance away. Two more people with binoculars approached that man. At 7:40 p.m. those staff of the Fundación who were still inside refusing to leave out of fear of what appeared to be an operation outside the house asked for help. After they spoke with the special prosecutor for human rights defenders, the various persons left. On August 8, surveillance was observed once again. In addition, in the early morning hours, when Ms. Rigoberta Menchú Tum left the house, a white dual-cabin pick-up truck was observed with an old SUV-type vehicle that was outside the house. This car followed Ms. Menchú's car until she reached the offices of the Fundación.

167. In many cases, the persons entrusted with surveillance approach persons who enjoy the trust of the human rights defenders (such as domestic employees, private guards, or neighbors) stating that they are friends, to inquire about their activities or schedules, or to leave them messages.

4. Identifying human rights defenders as "enemies" and "legitimate targets" by parastatal groups

168. In some countries the acts of harassment, intimidation, and attacks against human rights defenders unfold in a context of systematic threats and selective assassinations by private groups, guerrillas or paramilitary groups, who operate outside the law, and on some occasions with the acquiescence or tolerance of the states in which they act. Notwithstanding the recommendations made by the IACHR and the United Nations about the duty of the state to dismantle such illegal groups, they persist in their threats.

169. The Commission observes that in some situations human rights defenders become a target of those groups, because of their work reporting violations

perpetrated by such groups. On other occasions, the defenders are accused of being members or sympathizers of these groups.

170. The Commission notes that in several countries of the region high-level agents of the states have expressed hostility towards human rights defenders and international personnel who accompany communities at risk. The IACHR must reiterate once again that such declarations may be considered by armed groups as an accusation that not only increases the risk to which human rights defenders are exposed, but which could suggest that the acts of violence aimed at suppressing them in one way or another enjoy the acquiescence of the governments.¹⁵⁵

171. The IACHR has received several complaints describing attacks on life and personal integrity, threats, surveillance and intimidation of defenders, as well as raids of and attacks on the offices of their organizations committed by paramilitary groups, para-police forces, or "extermination" groups that act with the permission or ineffectiveness of national or local authorities. In general, such attacks are reprisals for complaints of violations committed by these groups, or for giving impetus to criminal investigations in which members of these groups bear responsibility. In some states, illegal groups portray human rights work in a negative light, turning all human rights defenders into targets, on declaring them "military objectives," deeming them sympathetic to an opposition political position, or portraying them as enemies of the state's interests.

On March 4, 2003, the Commission received a request for precautionary measures on behalf of Mr. Over Dorado Cardona, a member of the board of the Comité Permanente por la Defensa de los Derechos Humanos "Héctor Abad Gómez." The information presented indicated that on February 28, 2003, Mr. Dorado Cardona received a written threat from the Autodefensas Unidas de Colombia (AUC) stating "your defense with the teachers and what they call human rights is totally biased and against the government ... you are getting involved where you are not being called on, you are a defender of the guerrillas ... our studies have led us to declare you a military target." In view of the risk facing the beneficiary, on March 7, 2003, the IACHR asked the Colombian State to adopt measures to protect the life and physical integrity of Over Dorado Cardona and to report on the actions taken to investigate the facts and put an end to the threats.

172. In addition, the Commission is concerned about the attacks and acts of harassment directed against local communities by the illegal armed groups; such communities resist displacing from their lands or accepting the influence of these groups, which seek military and political control of certain regions or sectors where they have influence. In those cases, the persons who lead and organize and denounce the attacks on such communities are the target of attacks and threats, assassinations and disappearances.

On October 25, 2004, the Commission received a request for precautionary measures that indicated that since mid-2003 members of the paramilitary group "Paz y Justicia" had been harassing communities of displaced persons/returnees to the northern part of

¹⁵⁵ In this regard, the UN Special Representative also expressed her repudiation of the State's inaction in the face of the mounting activities of such groups:

Human rights defenders are being targeted increasingly by non-State entities, either linked directly or indirectly to the State or private groups benefiting from the inaction of the State. The inability or unwillingness of States to call these entities to account for action against human rights defenders has increased their vulnerability and has strengthened public perception that human rights can be violated with impunity.

UN, Information drawn from the report submitted by Hina Jilani, Special Representative of the Secretary-General on Human Rights Defenders, at the 56th session of the General Assembly, September 10, 2001, para. 16. A/56/341.

the state of Chiapas, Mexico. In the course of 2004, there was an increase in such harassment and threats. Among the various acts, the complaint indicated that the following representatives of the displaced persons – Reynaldo Gómez Martínez, Mariano Sánchez Montejo, Ricardo Martínez Martínez, and Gilberto Jiménez López – have been victims of threats and intimidation for having turned to the justice system and seeking reparation for the acts that caused the displacement of the community and other forced disappearances and executions that occurred from 1995 and 1999, acts which they allege were perpetrated by members of the paramilitary group. On October 29, 2004, the Commission granted precautionary measures for several community leaders who give impetus to investigations, and to one witness and the witness's family.

173. The Commission has also received reports of armed groups that have declared leaders of indigenous communities “military targets” or have threatened them for resisting efforts to get them to leave their territories or refusing to participate in or collaborate with a given armed group.

C. Smear campaigns and criminal prosecutions detrimental to the work of human rights defenders

174. The work of human rights defenders is limited by the statements of high-level public officials aimed at discrediting their work and bringing about or aggravating a context adverse to the defense of rights. The Commission notes that in some cases defenders are harassed by the state through criminal proceedings aimed solely at impeding the free defense of legitimate interests.

1. Smear campaigns and official statements

175. The Commission has learned that in some states of the Americas human rights defenders have seen their work limited by forms of discourse that characterize their work in a negative light. In public statements, state agents have identified the work done by human rights defenders as illegal, or they have been publicly accused of being criminals, subversives, or terrorists merely because of providing legal defense to persons accused of committing certain crimes, or merely out of a desire to publicly stigmatize them.

176. The Commission observes that such declarations delegitimize and discredit the work of these social actors and increase their vulnerability. On several occasions, such declarations suggest that the non-governmental human rights organizations collaborate with armed dissident groups, plan campaigns against state security, or seek to besmirch their country's international reputation.

177. The Commission considers that the statements by state representatives, expressed in the context of political violence, sharp polarization, or high levels of social conflict, puts out the message that acts of violence aimed at suppressing human rights defenders and their organizations enjoy the acquiescence of the government. For this reason, indiscriminate and unfounded criticisms that help create adverse conditions for the work of human rights defenders are profoundly harmful to the democracies of the hemisphere.

2. Legal actions

178. Another particularly worrisome aspect is the use of legal actions against defenders, including criminal or administrative investigations or actions that are pursued to harass and discredit them. In some cases, the states use criminal laws that restrict or limit the means used by defenders to carry out their activities. The Commission notes that some countries of the region have enacted laws and revived criminal laws that had fallen into disuse, such as crimes against the form of government,

or crimes of *desacato* (contempt), a criminal law provision that the Commission has suggested that states should repeal.

179. In other cases, criminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment. Some of these proceedings have gone to advanced stages, including the prolonged provisional detention of the accused. These proceedings generally involve charges of rebellion, attacks on public order or state security, and the formation of illegal groups.¹⁵⁶

180. The Commission has received information and continues collecting more about situations in which it is alleged that the legal apparatus is being used to harm or suppress those who pursue, among other things, the work of documenting human rights situations, providing judicial defense for the criminally accused, representing victims before the courts, and accompanying communities in high-risk situations.

181. The Commission has received complaints of the persecution and harassment of defenders through successive judicial proceedings that months later are dismissed due to the failure to find the persons tried liable. Notwithstanding such dismissals, new investigations -- mostly in cases with different evidence but similar accusations -- are opened, and, as a result, new detentions or judicial restrictions are ordered. The Commission has received several complaints describing situations in which criminal accusations are made and then dismissed, in the case of a single person, and the successive opening and dismissal of investigations into several leaders of the same organization or cause.

D. Violation of the home and other arbitrary or abusive entry to the offices of human rights organizations, and interference in correspondence and phone and electronic communication

182. The violation of the home and other arbitrary or abusive entry to the offices of human rights organizations or the homes of their members is another way of diminishing the actions of human rights defenders. The Commission has observed, in carrying out its mandate, that searches of the offices of the organizations and their members' homes constitute a common practice in some states of the region. Generally, illegal searches are one of several forms of harassment directed against the organizations.¹⁵⁷ The IACHR has observed that such practices result in the collection of private information, and at the same time instill fear and have a negative impact on the institutional operations of human rights organizations.

On October 18, 2002, the Inter-American Commission on Human Rights asked the Government of Venezuela to adopt precautionary measures on behalf of Luis Enrique Uzcátegui Jiménez. The request was based on information received by the Commission that indicated that after his brother's homicide, Mr. Uzcátegui investigated the circumstances of his brother's death. In addition, the local press reported the facts and

¹⁵⁶ The UN Special Representative on Human Rights Defenders has made a similar pronouncement:

Governments tend to use the judicial system as a means of harassing and punishing defenders for upholding human rights. In order to dispel impressions that they see human rights activity as a criminal activity in itself, the trend is to charge human rights defenders for crimes such as "sedition", "incitement to revolt", "attempt to undermine institutions" and offences against the security of the State. Prosecution of human rights defenders under false charges is also a common form of harassment. [Report of the Rapporteur submitted to the General Assembly at the 57th session, July 2, 2002.]

¹⁵⁷ The Commission has stated its position in this respect in several of its reports. See, for example, IACHR, Justicia e inclusión social: los desafíos de la democracia en Guatemala, OEA/Ser.L/V/II.118, December 29, 2003, paras. 183 ff.

has publicly accused the highest-level authorities of the state of Falcón of responsibility for the systematic execution of persons allegedly engaged in criminal conduct. The information indicated, moreover, that in retaliation for these complaints, on March 15, 2001, officials of the Fuerzas Armadas Policiales of the state of Falcón proceeded to search the home of Mr. Luis Uzcátegui, without court order, to look for him. The officers knocked down the door and slapped Mr. Uzcátegui's younger brother, a minor, Carlos Eduardo Uzcátegui Jiménez, while telling him: "tell your brother to stop speaking against us, or we will do to him just what we did to your other brother." On April 13, 2002, officers of the Fuerzas Armadas Policiales of the state of Falcón who belonged to the DIPE group, in plainclothes, once again searched the Uzcátegui family's house without court order, in search of Mr. Luis Uzcátegui; after insulting and threatening his mother, Julia Jiménez, they proceeded to destroy some of the furniture before leaving. In response to the risk that Mr. Uzcátegui ran and the failure to carry out the precautionary measures, on November 27, 2002, the Inter-American Commission asked the Inter-American Court to grant provisional measures on behalf of Mr. Luis Enrique Uzcátegui Jiménez. Also on November 27, 2002, the Court issued a order directing the State to adopt, without delay, as many measures as necessary to protect the life and personal integrity of Mr. Uzcátegui.

183. The Commission observes that most of the illegal searches are characterized by the fact that objects of value are not necessarily taken from the offices or homes, and, therefore, it is difficult to consider these cases of common crime. In general, files, documents, or computer equipment are taken in order to get information on the victims of human rights violations who report the violations, as well as data on the human rights defenders. The Commission is concerned that several organizations from several member states have been subject to illegal searches despite being beneficiaries of precautionary measures.

On May 15, 2003, the IACHR granted precautionary measures on behalf of Edgar Filiberto Celada Alejos, Raúl Eduardo Najera Hernández, and all other members of the Colectivo HIJOS of Guatemala. The information available indicates that the beneficiaries were subject to a series of acts of harassment, including physical assaults and verbal threats by state agents. In view of the risk to the beneficiaries, the Commission asked the Guatemalan State to adopt the measures necessary to protect the life and personal integrity of the members of the Colectivo HIJOS. In response, the State reported on the implementation of the perimeter security at the organization's offices. Nonetheless, the Commission has continued receiving information regarding acts directed against the Colectivo, including information indicating that the Colectivo has suffered two searches in the first half of 2005.

184. Another form of arbitrary meddling is illegally intercepting correspondence and the telephone and electronic communications of human rights defenders. The illegal collection of such information tends to encumber the defenders' work, while also increasing the risks faced by these persons and by the victims they defend or the communities they accompany.

In October 2002, the Commission received a request for precautionary measures on behalf of Ms. Teresa Cedeño Galíndez, president of the Comité Permanente por los Derechos Humanos (CPDH) of Arauca, Colombia. The petitioners alleged that on October 2, 2002, a man who identified himself as Commander Mario of the Autodefensas Unidas de Colombia repeatedly called the cell phone of attorney Cedeño Galíndez, to make death threats and to compel her to leave the city and "stop defending the guerrillas." He also indicated that he would post a guard at her house and hoped not to see her. The AUC commander repeated the calls and a prosecutor from the support structure was able to verify that the calls and threats were real. On October 22, 2002, Ms. Cedeño Galíndez detected she was being followed and that that there were suspicious persons in front of her home. On October 29, 2002, the Commission granted

precautionary measures. As part of the follow-up on those measures, the IACHR was informed that on February 2, 2005, Ms. Cedeño made a call from her cell phone to the cell phone assigned to her by the Ministry of Interior's protection program, and the call was not answered by her secretary, who had the phone at that time, but instead from a place where one could hear radio communications and the voice of a man speaking through radio communications equipment. This situation recurred three times, hindering the communication she was seeking with her secretary. She reported having had similar incidents involving interception of communications in the past.

E. Intelligence activities aimed at human rights defenders

185. The Commission has received information that indicates that the security forces of some states of the region aim their intelligence activity at human rights organizations and their members. In addition, the Commission has received several complaints related to the manner in which intelligence information is collected on persons who defend human rights and their organizations. According to these complaints, one method used by the intelligence services is to obtain financial documents and other private documents without authorization. The complaints indicate that the state security forces are wiretapping and secretly taping phone conversations without judicial authorization. The Commission has been informed that the intelligence services in some countries have created files or records on human rights defenders.

186. In addition, the Commission continues to be profoundly concerned over the reports that indicate that in some instances military intelligence is used to facilitate the executions of human rights defenders at the hands of the security forces of the state or through illegal armed groups that operate with the approval or acquiescence of state agents. The Commission has indicated that surveillance activities and such executions of human rights defenders give rise to state responsibility for flagrant violations of the rights to privacy and life, among other rights protected by the Convention.¹⁵⁸

187. The Commission has also found, in some cases, that agents of the security forces in discriminatory fashion ask human rights defenders for detailed personal information which, if revealed, could put them in danger. The Commission has received complaints that indicate that agents of the state security forces also request this information through personal visits or phone calls; when those seeking the information are asked to identify themselves or to make the requests for information in writing, they usually do not do so.¹⁵⁹

F. Restrictions on access to information in the hands of the state and *habeas data* actions

188. In its 2001 report, the Office of the Special Rapporteur for Freedom of Expression concluded, in light of the information obtained for the hemisphere that "practices contributing to a culture of secrecy with respect to state-held information continue to be followed in most countries because of insufficient awareness of the specific provisions regulating this exercise or because, given the vague, general language used in the provision, agents in possession of such information opt in favor of denying it, out of fear of punishment."¹⁶⁰

¹⁵⁸ IACHR, Third Report on the Human Rights Situation in Colombia (1999), Chapter VII Human Rights Defenders, para. 55. OEA/Ser.L/V/11.102.

¹⁵⁹ See IACHR, Third Report on the Human Rights Situation in Colombia: OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26 1999, Original: English, paras. 46 to 52.

¹⁶⁰ IACHR, Annual Report 2001, Chapter III, Report on Actions of Habeas Data and Freedom of Access to Information in the Hemisphere, para. 164.

189. The Commission observes with satisfaction the progress made in reforming domestic laws that impeded or restricted access to information, and has included this information in its annual reports. Nonetheless, the Commission has concluded that “it is important to insist that Member States need to display greater political willingness to work toward amending their laws and ensuring that their societies enjoy freedom of expression and information.”¹⁶¹

190. The Commission, through its Office of the Special Rapporteur for Freedom of Expression, has received information and complaints concerning restrictions on access to state-held information in cases of human rights violations. The Commission is aware that governmental authorities and the armed forces in particular refuse to release information, even at the request of the justice system or institutions such as Truth Commissions.¹⁶²

191. It has also received complaints about practices used by the authorities to refuse to respond to petitions signed by human rights defenders, or to delay the response in order to prevent defenders from expressing timely criticism of the authorities’ performance, or, from gathering, for example, the information necessary for the submission of periodic reports to international entities. The Commission likewise has received complaints of state’s resorting to vague or imprecise responses that oblige the defenders to go back to the administration time and again or even turn to domestic legal entities.

192. The Commission has received information on restrictions on access of actions of *habeas data* concerning abusive, imprecise or damaging information about human rights defenders held by the state. In particular, the Commission has received complaints about restrictions on actions of *habeas data* seeking to establish the existence and contents of intelligence archives against human rights defenders. The Commission has received complaints of official responses to such actions that merely excuse the refusal to release the information based on arguments such as national security, or that simply include a transcription of domestic regulations authorizing security entities to gather such information.¹⁶³

G. Arbitrary administrative and financial controls imposed on the human rights organizations

193. The Commission observes that some states maintain legislation, policies, or practices that restrict or limit the work of these organizations through abusive administrative, tax, and fiscal measures. In this respect, the United Nations Special Representative has expressed her concern over the “increasing restrictions imposed by States through legal means to curtail freedom of association and the

¹⁶¹ IACHR, Annual Report 2004, Chapter III, Report on Actions of Habeas Data and Freedom of Access to Information in the Hemisphere, para. 72.

¹⁶² For example, during the visit *in loco* to Guatemala in March 2003, the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, received information indicating that sectors of the press and human rights denounced the posture of the President of the Congress of the Republic, Efraín Ríos Montt, blocking access to documents related to the approval and execution of the 2000 and 2001 budgets (see Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.118). The Rapporteur also received information that in Venezuela the Programa Venezolano de Educación-Acción en Derechos Humanos (PROVEA) had presented five actions of constitutional *amparo* before the Supreme Court of Justice to exercise its right of petition in response to ombudsman’s [*defensor del pueblo*] refusal to respond to a request for general information on cases of human rights violations and statistical data for PROVEA’s annual report on the human rights situation in Venezuela.

¹⁶³ Cfr. IACHR, Third Report on the Situation of Human Rights in Colombia: OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 48.

growing use by States of the legal system to harass human rights defenders and hinder their work."¹⁶⁴

194. The Commission has been informed of certain restrictions on the freedom to form organizations at different levels dedicated to the protection of human rights. In many cases defenders have had administrative difficulties registering and legalizing their organizations, as some states use restrictive and arbitrary conceptions of organizations and who can establish them. In other cases, states restrict the participation of the organizations in public matters, using equally arbitrary criteria.

195. In recent months, there has been an increase in the number of complaints received at the Commission regarding unjustified delays by domestic agencies in charge of entering organizations in state registries, even though the organizations have properly and timely submitted the respective documentation. The Commission has also received information recently about unjustified administrative hindrances put in place by these same institutions to keep them from being registered. The Commission has received reports of notarial offices that have refused to prepare public documents required by law for establishing organizations, or that have incurred unjustified delays in issuing those documents.

196. The Commission has noted that in several countries the authorities in charge of entering organizations in the public registries have broad discretionary powers that even allow them to unilaterally modify the organizations' articles of incorporation as regards delimiting the purpose of the activities that the organizations wish to pursue.

197. The Commission has received information that legislation in several countries provides broad powers for third persons with no stake in the activities of human rights organizations to be able to bring administrative challenges to the registration of organizations based on religious or other criteria.

198. The Commission has also been informed that in some states, the administrative and police authorities appear to be limiting the work of human rights defenders, in the guise of routine controls to require the organizations to once again go through the formalities to be established and operate, and to address administrative issues that these institutions regulate. It has been alleged before the Commission that these measures not only tend to encumber the capacity to act of these organizations, which have to earmark human and economic resources to meet those requirements, but moreover, an effort is made to harass, control, and gain access to these organizations' private information.

199. The Commission has received information that indicates that in some states the international financing of organizations engaged in the promotion and defense of human rights has been arbitrarily restricted through the control exercised by state institutions involved in international technical cooperation. In addition, information has been obtained that indicates that several organizations have had to restrict or orient their activities in keeping with the priorities defined by the administrative authorities.

200. The Commission notes that of late there has been an increase in the number of complaints regarding state restrictions on organizations that limit their ability to obtain or seek foreign funds for carrying out their activities. The Commission has been informed that through judicial and administrative decisions, organizations that receive foreign financing have been hindered from participating in public affairs, and

¹⁶⁴ UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. Para. 42.

from monitoring official activities.¹⁶⁵ In addition, broad criminal law definitions have been adopted and broadly applied to criminalize persons who belong to organizations that receive foreign financing. Based on the notion that organizations that receive foreign financing support foreign intervention in domestic political affairs, some states have enshrined criminal law definitions in their legislations such as conspiracy to destabilize the state, and similar crimes. The Commission has received several complaints from human rights defenders who have been tried on these charges, or harassed because of their sources of financing.

On June 6 2003, Mr. Carlos Nieto Palma, Coordinator General of the non-governmental organization Una Ventana a la Libertad, was visited at his home in Caracas (Venezuela) by agents of the Department of Intelligence Security and Prevention (DISIP), who informed him that they had an order to make a home visit, and they indicated to him that they lacked a judicial order to search his home, but that, as members of the DISIP they wanted to speak with him. Mr. Nieto Palma was questioned about his work as a human rights defender, the work he does in the prisons, and whether he knew the political prisoners from the Plaza Altamira, whether he had defended them, and why. In addition, they asked him why he received money from a foreign government to finance his non-governmental organization. On June 18, 2004, Mr. Nieto Palma received a summons to appear "immediately" at the office of the prosecutorial authorities (Fiscalía) in Caracas, which Mr. Nieto did that same day. The prosecutor informed him that he had been summonsed as a witness, without indicating in which case. The purpose of the interrogation to which he was subjected "appeared to suggest that Mr. Nieto Palma was the one accused of committing some crime." During that interrogation the prosecutor accused him of being a traitor ("traidor a la patria"). Based on these facts, on June 7, 2004, the Commission asked the Inter-American Court to grant provisional measures on behalf of Mr. Nieto and his family. The measures were granted on July 9, 2005.¹⁶⁶

201. The Commission has also received news that international organizations, observation missions, and international news media are having visa applications turned down when they seek to enter or establish themselves in countries. In many cases, the restrictions are imposed through procedures in which the executive authorities have full discretion and the persons impacted do not have access to remedies to challenge the decision. In some cases the states are said to have taken measures that restrict the right of movement of foreigners and nationals in certain areas in which human rights violations may be taking place.

H. Impunity in investigations into the attacks on human rights defenders

202. The Commission wishes to reiterate that the most effective way to protect human rights defenders in the hemisphere is by effectively investigating the acts of violence against them, and punishing the persons responsible. In the region of the

¹⁶⁵ In its Report on the Situation of Human Rights in Venezuela (2003), the Commission indicated:

the IACHR has been able to study several Supreme Court decisions ruling that nongovernmental organizations that receive subsidies from abroad or that have foreigners or agents of organized religions on their boards are not part of civil society and are thus ineligible to participate on the Candidacy Committees established by the Constitution for electing the members of the citizens' branch, the electoral authorities, and the Supreme Court of Justice.... The Constitutional Chamber's judgment disqualifies a good number of human rights organizations from participating on the Candidacy Committees that elect high-ranking authorities within the government. This could mean the denying one of the social movements with the greatest impact, permanence, and professionalism in Venezuela the right to contribute to the independence and selection of those public authorities.

IACHR, Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118, October 24, 2003, paras. 223-225.

¹⁶⁶ I/A Court H. R. *Carlos Nieto et al. Case*. Provisional Measures. Resolution of the Inter-American Court of Human Rights of July 9, 2004.

Americas, one of the great problems affecting human rights defenders is the failure to investigate the attacks to which they are subjected, which has accentuated their vulnerability. This is especially relevant when it comes to protecting the right to life and personal integrity.

203. The Commission states its profound concern over the high levels of impunity that persist in the region, due to the judicial practices that surround determinations of jurisdiction, the violence, the intimidation of judicial officers, the removal of evidence in the proceedings, and the bogging down of proceedings related to cases that involve the responsibility of state agents.

204. The Commission notes with concern that in recent years not only have there not been any breakthroughs in the investigations related to attacks on human rights defenders, but there have been instances in which furthering the investigation was discouraged, and in which, by omission or censorship, and even the active participation of state agents, progress has in fact been impeded. Some of these circumstances include removing public employees who were on the verge of bringing complaints against state agents.

205. Apart from the structural problems plaguing the judicial systems in the Americas, which keep them from operating soundly, the Commission observes that there is – especially in those states from which a larger number of complaints come – a lack of political will, impartiality, and independence when it comes to investigating attacks on human rights defenders. The complaints that have been received suggest that there are serious problems in the investigations, for example, they do not relate the intimidation and threats directed against defenders to the type of work they do, accordingly, clear lines of investigation are not established. The problem is also reflected in the attacks against judicial officers who seriously and effectively investigate and prosecute attacks suffered by human rights defenders.

206. In addition, as indicated previously in this report, those who may be responsible for some of the threats to human rights defenders are precisely members of the state, many of them linked to different parts of the justice system, further eroding the independence and impartiality of the investigations.

207. One serious problem that still exists in several countries of the Americas and that contributes to impunity is the jurisdiction of military courts for investigating and sitting in judgment of crimes committed by members of the military against civilians, including human rights defenders. The Commission has underscored on several occasions that the essential characteristic of a serious investigation is that it be undertaken by an independent and autonomous organ.¹⁶⁷

VI. ESPECIALLY EXPOSED GROUPS OF DEFENDERS

208. The Commission notes that in recent years certain groups of human rights defenders have been more exposed to the infringement of their rights than others.¹⁶⁸ In this connection, one should note, among others, trade union leaders, who are especially exposed during periods leading up to changes in rights in their union, campesino and community leaders who stage or organize public demonstrations, indigenous leaders who defend the rights of their peoples, and judicial officers, especially to the extent they bring cases on human rights violations. In addition, it should be noted that women human rights defenders, considering their gender, are exposed to specifically sexual threats or assaults.

¹⁶⁷ IACHR, Report on the Merits N° 33/04, Case 11,634 Jailton Néri da Fonseca v. Brazil, para. 100, published March 11, 2004.

¹⁶⁸ In this regard, see also UN, E/CN.4/2003/104 § 23.

A. Trade union leaders

209. Since they first appeared in history, trade union organizations have played a fundamental role in the defense of the human rights of thousands of workers throughout the hemisphere who have faced precarious labor conditions in their workplaces. In addition, these institutions have been key in the political and social organizing of thousands of persons, as they constitute key examples of organized political expression for presenting the labor and social demands of many sectors of society.

210. In retaliation for this social and political initiative, many trade union leaders have been victims of all types of acts aimed at thwarting their work, including serious human rights violations.¹⁶⁹ Accordingly, in many countries of the region, the exercise of trade union activity is dangerous, due to the extreme risks faced by those who seek to lead efforts to improve working and social conditions for workers.

211. Due to the natural inequality in the labor relationship, trade union leaders make easy targets of professional or labor-related reprisals for their work. The cumulative experience of the Committee on Freedom of Association has shown the interminable ways in which trade union promotion can be thwarted by anti-union discrimination in areas such as remuneration, economic, social, and fringe benefits, workloads, work hours, and opportunities for rest and vacation, among many others. In other cases, employers have recourse to lay-offs or transfers in direct retaliation for the exercise of the right to form and join trade unions, with a negative impact on the interests of trade union leaders, organizing, and the workers. Thanks to these practices, many union organizations have disappeared or have lost their capacity to negotiate and press grievances, for reprisals against trade union leaders discourage all other workers from joining unions, staying in them, or participating in their activities.

212. In addition to the types of labor-related repression within the workplace, workers who take the initiative in pressing trade-union demands are frequently victims of threats, assaults, and assassination attempts. The Commission has found that in some countries, the persecution of trade union leaders and their family members is increasingly common and systematic. The Commission has learned that most violations take place in the context of trade union activity, and occur with greater intensity when there are nationwide work stoppages, when unions are being established, during collective bargaining, or in the midst of other struggles to improve observance of social rights, such as the negotiation of trade union demands and internal union elections. These actions are aimed at limiting the bargaining power of organizations at those moments that are most crucial to improving labor conditions.

213. The IACHR has found that in many cases, repressive actions combine physical violence with threats to life, and increased harassment in the workplace, or temporary transfer of certain leaders from the workplace, as a result of which the leader loses touch with the rest of the unionized workers, and is unable to carry out his or her organizing activities.

214. The Commission also notes with concern that in some countries of the region, violent actions against trade union leaders entail a process of stigmatization that has turned many unionists into "military targets" of "self-defense" or paramilitary groups, as well as the contracting of private justice groups to direct physical violence

¹⁶⁹ According to data from the Committee on Freedom of Association, of all the complaints ever filed with it, 1,232, accounting for 52.7% of the worldwide total of cases have been complaints against OAS member states. According to the Committee, the historical trend in the hemisphere shows that anti-union discrimination, violations in the realm of collective bargaining, and attacks on the life and physical integrity of union members are, in percentage terms, the most common violations committed in the Americas. ILO, *Situación de la libertad sindical en las Américas*, Lima, Peru, July 2004, pp. 13 and 15.

against members of trade union organizations engaged in collective bargaining. In addition, the Commission has received reports of speeches and public statements by state authorities that delegitimize the work of trade unions, adducing that their members oppose the economic development of nations or productive progress, in an effort to get society to reject the legitimate work of those persons who vindicate such rights.

B. *Campesino* and community leaders

215. The backsliding in the degree of attainment of economic, social, and cultural rights, the increased inequity in the concentration of wealth, and the deepening of social exclusion that have taken place in the last decade have generated protests and deepening social exclusion in the hemisphere, giving rise to protests and social mobilizations that have extended to several countries of the Americas. The struggle for the right to land and the right to a healthy environment, demonstrations against economic reforms, and protests against greater “flexibility” in labor contracts, among many other factors, have led thousands of human rights defenders, student leaders, social leaders, and rural leaders to organize to struggle for the effective observance of their rights. The Commission has received many complaints that indicate that many leaders have been targeted by threats and attacks because of their work to protect economic and social rights.¹⁷⁰ In this regard, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission has stated that

Our hemisphere’s most impoverished sectors encounter discriminatory policies and actions, their access to information about the planning and execution of measures affecting their daily lives is nascent at best, and, in general the traditional channels of participation for publicizing their complaints are frequently blocked off to them. Faced with this, in many countries around the hemisphere, protests and social mobilizations have become a tool for petitioning the authorities and a channel for publicly denouncing human rights abuses and violations.¹⁷¹

216. The IACHR observes with concern that in some cases the institutional responses to the acts mentioned have been tended to criminalize social protest by police repression and criminal prosecution of the persons involved, distorting the application of the criminal laws of the state, and violating inter-American treaties for the protection of human rights, which protect the rights to life, physical integrity, freedom of expression, freedom of assembly, and freedom of association, among others.¹⁷²

217. The Commission wishes to reiterate that the effective exercise of democracy requires as a precondition the full exercise of the fundamental rights and freedoms of citizens. Criminalizing legitimate social mobilization and social protest, whether through direct repression of the demonstrators or through an investigation and criminal prosecution, is incompatible with a democratic society in which persons have the right to express their opinion.

¹⁷⁰ See IACHR, Press Release N° 28/05, “Vice-President and Rapporteur for Guatemala of IACHR ended a visit to the Republic of Guatemala,” para. 14.

¹⁷¹ IACHR, Chapter IV, Annual Report 2002, Vol. III “Report of the Office of the Special Rapporteur for Freedom of Expression,” OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, Para. 29.

¹⁷² In this respect, the UN Special Representative has emphasized:

The governments, in the sphere of their security activities nationally and internationally, show excessive zeal limiting the right of their populations to peaceful dissent, in particular through the unwarranted use of violent methods to control peaceful multitudes.

UN, Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on Human Rights Defenders, at the 60th session of the Commission on Human Rights, January 15, 2004, para. 45. E/CN.4/2004/94.

218. The conflicts and situations of tension provoked by the inequality in the distribution of natural resources in the vast majority of countries of the hemisphere has given rise to confrontations that create the conditions for excesses to be committed in the repression, and for human rights violations.¹⁷³ In many cases, the persons who promote and lead these initiatives to seek redress are the hardest hit, as they are considered targets who can set an example to dissuade others from participating in the protests.

219. The Commission has received information concerning the increase in the cases of excessive use of force by state agents to control demonstrations and protests of rural workers, campesino leaders, social leaders, and student leaders. The Commission has been informed that in many cases, peaceful demonstrations have become violent confrontations due to the authorities' repressive approach and the lack of comprehensive solutions.

C. Indigenous and Afro-descendant leaders

220. Indigenous and Afro-descendant leaders play a crucial role in their communities, religious as well as cultural and political. The IACHR has found that the patterns of violations of their human rights generally have a direct correlation with their activities laying claim to, defending, and protecting their territories and natural resources, defending their rights to autonomy and to cultural identity. The IACHR has noted with concern the frequency of assassinations of and threats against indigenous leaders engaged in the defense of their peoples' rights, and impunity, in the vast majority of cases, for the perpetrators of these serious violations. Similarly, the Commission has received and processed complaints of violations of leaders of Afro-descendant communities in several countries of the region, and has requested the Inter-American Court to protect threatened Afro-descendant leaders.¹⁷⁴

221. In recent years a considerable increase has been observed in the requests for precautionary measures from indigenous leaders, who have found it necessary to recur to the inter-American human rights system to attain protection for the right to life and the right to personal integrity, and respect for the special relationships indigenous peoples have with their ancestral territories. The Commission is extremely concerned over the devastating effect on the indigenous peoples and Afro-descendant communities of threats, assassinations, and the forced displacement of their leaders. In the vast majority of cases, the persons who stand up for the rights of their peoples and communities are those spiritual leaders considered a source of ancestral knowledge; they are fundamental figures for the political, spiritual, and cultural development of the communities. The unexpected absence of these leaders seriously undercuts the identity, integrity, and culture of the peoples and communities to which they belong. Accordingly, these actions have a direct negative impact on the cultural integrity and survival of the indigenous peoples.

222. In addition, the Commission is concerned about incidents involving attacks on human rights defenders who represent the rights of indigenous peoples and Afro-descendant communities in the courts. Historically, discrimination against and exclusion of ethnic minorities in the hemisphere have been accompanied by the systematic lack of access to justice. The attacks on persons who provide legal counsel to the members of indigenous peoples and Afro-descendant communities further aggravate the already-precarious judicial protection for indigenous peoples.

¹⁷³ See, e.g., IACHR, Report on the Situation of Human Rights in Brazil (1997).

¹⁷⁴ I/A Court H.R., *Case of the communities of Jigamiandó and Curbaradó*, Provisional measures, Order of March 6, 2003.

D. Judicial officers

223. In the region, there are ever more judicial officers committed to the cause of human rights, justice, and the attainment of democracy. In this regard, the Commission wishes to note the valuable work of those individuals and authorities whose functions include protecting, enforcing, promoting, or defending the human rights of individuals and communities throughout the Americas. Judges, prosecutors, public defenders, and police commissars, as agents of the administration of justice, play a fundamental role as a liaison between the state and the general population. Moreover, they are the ones who carry out the investigation, prosecution, and punishment of perpetrators of human rights violations.

224. The Commission is aware that the situation of insecurity affecting judicial officers in charge of investigating cases of human rights violations has a detrimental impact on the independence of their work, and on their personal security and that of their families. Threats, intimidation, and other acts against the life and physical integrity of judicial officers have led to a substantial increase in insecurity in the performance of their work.

225. The Commission also observes that the users of the judicial system as well as all those who answer to the call of justice to participate in the proceeding, be it as witnesses or experts, are also victims of this insecurity, which encumbers the search for justice, and determines that on many occasions citizen opt not to have recourse to the courts or to refrain from cooperating with the judicial organs.

E. Women

226. The Commission considers violence against women to entail violations of many human rights.¹⁷⁵ In this regard, the IACHR has referred to the right to be free from violence in the public sphere and in the private sphere, stipulated in Article 3 of the Convention of Belém do Pará, which includes protection of other basic rights, among them, the rights to life, to personal integrity, to liberty, to be free of torture, to equal protection before and of the law, and to effective access to justice, stipulated in Article 4.¹⁷⁶ Accordingly, there is an integral connection between the guarantees established in the Convention of Belém do Pará and the fundamental rights and freedoms stipulated in the American Convention, which applies once one treats violence against women as a human rights violation.

227. The Commission finds that there are two situations that require special attention: that faced by women human rights defenders in general, due to the historical disadvantages women and girls have suffered, and that of women human rights defenders who specifically promote and protect women's rights.

228. The Commission has learned of special types of threats, based on the gender of the threatened person. Based on information collected recently, the Commission observes that women human rights defenders and organizations that defend women's human rights continue to be subjected to systematic intimidation, persecution, kidnapping, torture and sexual abuse, among other crimes, in relation to their work, along with other forms of discrimination and physical, psychological and sexual violence

¹⁷⁵ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") defines "violence against women " in Article 1 in the following terms:

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

¹⁷⁶ IACHR, The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003, para. 120.

for gender reasons. In this respect, the Commission has received multiple petitions regarding the stigmatization of women's rights defenders, who are stigmatized due to the historical patriarchal conception that assigns an inferior role to women. As such, these defenders are stigmatized with social, degrading stereotypes concerning their sexual life, or are accused that their work for eradicating discrimination against women is against the moral values or the social institutions such as the family.

229. The Commission also recognizes the vulnerability of women who specifically work to defend women's human rights. The IACHR recognizes that by promoting and protecting the rights of other women, these women defenders increase their own risk and are exposed to yet another factor of discrimination among the many forms of discrimination suffered by women.¹⁷⁷

230. In some countries where armed conflicts persist, combatant groups frequently impose social controls on women's living conditions, dictating to them standards of daily behavior, interfering in family and community disputes, and meting out punishments as harsh as murder, torture, and cruel and degrading treatment, in situations in which these women fail to adhere to the codes of behavior imposed on them by force. In such cases, the armed actors believe that the leadership exercised by women's organizations represents an obstacle to advancing their own social and territorial control and, as a result, national and regional women's organizations operating in zones of armed conflict are subject to harassment and threats that seriously affect the community work they perform.¹⁷⁸

231. The Commission also finds that the situation of ingenuous and afro-descendent women, including those women who lead the campaigns demanding rights, is particularly critical, as they are victims of multiple forms of discrimination because of their race, ethnic group and by the virtue of being women; A situation that is aggravated in those countries that suffer from social tensions or armed conflict. Indigenous and afro-descendent women face two layers of discrimination since they are born: for belonging to their racial and ethnic group and because of their sex. Being exposed to two forms of discrimination historically, they are doubly vulnerable to abuse and mistreatment. The Commission has had knowledge that the champions of the rights of indigenous and afro-descendent women, in addition to the other forms of discrimination already indicated, are habitual victims of acts of racism, stultification and stigmatization on the part of the majority communities and, in some cases, of public authorities and people from within their own communities.

232. Given this context, the Commission reiterates that gender-based violence is unacceptable, be it in the form of murder, sexual violence, or domestic violence. Moreover, impunity for such acts reduces the visibility of these violations of rights to the point that domestic violence, for example, is the practice of an invisible crime.

VII. PRECAUTIONARY MEASURES

233. The mechanism of precautionary measures granted by the Commission is one of the most effective instruments for protecting the work of human rights defenders and their rights in the inter-American system. Like the provisional measures

¹⁷⁷ Speech by United Nations High Commissioner for Human Rights Mary Robinson, Beijing +5, Review Conference. "We must acknowledge that some human rights defenders are even more at risk because of the nature of the rights that they are seeking to protect, particularly when they relate to issues of sexuality, in particular sexual orientation and reproductive rights."

¹⁷⁸ IACHR, Press Release N° 27/05, "The Armed Conflict Aggravates the Discrimination and Violence Suffered by Colombian Women."

granted by the Inter-American Court¹⁷⁹, precautionary measures perform a “precautionary” function, in terms of preserving a legal situation vis-à-vis the exercise of jurisdiction by the Commission, and “protective” in the sense of preserving the exercise of the human rights enshrined in the provisions of the inter-American system, preventing irreparable harm to persons.

234. In practice, precautionary and provisional measures have been recognized by the member states of the OAS, the individuals who use the system, and the human rights community as a whole as an important tool for protecting human rights in the inter-American system. In recent years the Commission has made an effort geared to recording and properly analyzing the growing number of requests, defining criteria for invoking the provisions that regulate such measures, and monitoring their implementation. Below, a summary will be presented of the importance of precautionary measures of protection to human rights defenders.

A. Precautionary measures in the inter-American system

235. Precautionary or provisional measures (“interim measures”) are a procedural mechanism used by several international tribunals and quasi-judicial organs, both in the universal United Nations realm, and in the regional systems for the protection of human rights in Europe and the Americas. In the inter-American system, the Commission and the Court have the authority to decree precautionary and provisional measures, respectively.

236. Like other international organs, the Inter-American Commission has defined the existence and operation of this mechanism in its Rules of Procedure.¹⁸⁰ Article 25 states:

1. In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.

2. If the Commission is not in session, the President, or, in his or her absence, one of the Vice-Presidents, shall consult with the other members, through the Executive Secretariat, on the application of the provision in the previous paragraph. If it is not possible to consult within a reasonable period of time under the circumstances, the President or, where appropriate, one of the Vice-President shall take the decision on behalf of the Commission and shall so inform its members.

¹⁷⁹ The authority of the Inter-American Court to issue provisional measures is provided for in the American Convention on Human Rights. Article 63(2) provides:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

As appears from the text of the provision, the Court may invoke this power with regard to both cases pending before its jurisdiction and cases before the jurisdiction of the Commission. There are also precedents of provisional measures issued in relation to situations of gravity and urgency that involve the possible consummation of irreparable harm, without any link to the processing of an individual case. See, I/A Court H.R., *Case of the Communities of Jiguamiandó and Curbaradó (Colombia)*, Provisional Measures, Order of March 6, 2003.

¹⁸⁰ Thus, the power to issue provisional measures is not provided for in the International Covenant on Civil and Political Rights or its Optional Protocol, but in the Rules of Procedure of the Committee, at its Rules 86 and 91. The Committee against Torture has also established the power to issue interim measures, at Rule 108 of its Rules of Procedure. Also, the Committee on the Elimination of Racial Discrimination also established the authority to issue provisional measures at paragraph 3 of Rule 94 of its Rules of Procedure. The power of the Committee on the Elimination of Discrimination against Women to issue provisional measures was granted by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

3. The Commission may request information from the interested parties on any matter related to the adoption and observance of the precautionary measures.

4. The granting of such measures and their adoption by the State shall not constitute a prejudgment on the merits of a case.

237. The text of the provision, which entered into force on May 1, 2001, with the Commission's new Rules of Procedure¹⁸¹, reflects the elements of gravity, urgency, and irreparability present in Article 63 of the American Convention. While these elements are taken into account by the judicial and quasi-judicial organs to whose practice reference has been made, these terms have not been clearly defined in the case-law of these organs. In the view of the Inter-American Court, the appreciation of the "extreme gravity" and "urgency" of the threat that such measures are intended to prevent should be understood mindful of the nature and content of the right in question. The requirement of extreme gravity and urgency presupposes the existence of a real danger or certain imminent threat that could result in irreparable harm to the fundamental rights of persons.¹⁸²

238. This provision does not require that a case be pending before the Commission for a request for precautionary measures to be considered, in view of the circumstances in which the petitioners seeking the measure require the protection of the Commission, in order to prevent the grave and imminent consummation of an irreparable harm. When there is a case pending concerning an alleged violation of a right enshrined in the instruments of the system, the Commission can exercise its precautionary function in order to preserve circumstances which, if it were otherwise, would make its intervention in the determination of the international responsibility of States abstract. The Commission endeavors to avoid situations in which its issuance of precautionary measures, whether it be autonomous or as an accessory to a pending case, implies a pronouncement on the merits of a case about which a decision still has not been issued¹⁸³.

239. The mechanism established in Article 25 of the Rules of Procedure applies to both the member states of the OAS that have ratified the American Convention and those that have not yet done so. As the Commission has noted:

OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken

¹⁸¹ The regulatory provision in force prior to May 1, 2001, established another situation in which precautionary measures could be issued: "The Commission may, at its own initiative, or at the request of a party, take any action it considers necessary for the discharge of its functions." Regulations of the IACHR, adopted in 1980, Article 29(1).

¹⁸² The IACHR analyzes whether these requirements are met in each case, based on the information received.

¹⁸³ In relation to this, the Inter-American Court held:

6. That, in general, the purpose of provisional measures, under national legal systems (internal procedural law) is to preserve the rights of the parties to a dispute, ensuring that the future judgment on merits will not be prejudiced by their actions *pendente lite*.

7. That the purpose of provisional measures in international human rights law goes further, because, in addition to their essentially preventive nature, they effectively protect fundamental rights, since they seek to avoid irreparable damage to persons.

See Inter-American Court on Human Rights, The Case Of Haitians And Dominicans of Haitian Origin in the Dominican Republic. Provisional Measures. Order Of 26 May 2001. Considering paras. 6 and 7.

to implement measures of this nature where they are essential to preserving the Commission's mandate.¹⁸⁴

240. The foundation underlying the binding nature of what the Inter-American Court has called the "precautionary" aspect of the measures issued by the organs of the system is similar to that of the universal and regional antecedents analyzed. The Court has highlighted the obligations of the states parties in the following terms:

the States Parties to the Convention should fully comply in good faith (*pacta sunt servanda*) to all of the provisions of the Convention, including those relative to the operation of the two supervisory organs; and, that in view of the Convention's fundamental objective of guaranteeing the effective protection of human rights (Articles 1(1), 2, 51 and 63(2)), States Parties must not take any action that may frustrate the restitutio in integrum of the rights of the alleged victims.¹⁸⁵

241. The binding nature of the protective aspect of the precautionary measures decreed by the IACHR rests on the general duty of the states to respect and guarantee human rights, to adopt the legislative or other measures necessary for ensuring effective observance of human rights, and to carry out in good faith the obligations contracted under the American Convention and the Charter of the OAS, as well as the competence of the IACHR to oversee that the states parties are carrying out the commitments they assumed, established at Articles 33 and 41 of the American Convention. In this respect, the Inter-American Court has established that

the ultimate aim of the American Convention is the effective protection of human rights, and, pursuant to the obligations contracted under it, the States should ensure the effectiveness of their mechanisms (endow them with *effet utile*), which implies implementing and carrying out the resolutions issued by its supervisory organs, whether the Commission or the Court.¹⁸⁶

242. In practice, for the purposes of facilitating the study of requests for precautionary measures, the Commission has considered the requirements of gravity, urgency, and irreparability in relation to categories such as threats to life and the physical integrity of persons, threats to the environment that may result in harm to the life or health of the population or the way of life of indigenous peoples in their ancestral territories, and threats to health; the enforcement of certain types of judicial or administrative orders; and the legal situation of persons who are detained and held incommunicado.

243. Measures to protect life and physical integrity are of vital importance to human rights defenders, given the current situations of risk these persons face in many countries of the region. Given this situation, the lion's share of requests are in this category, and precautionary measures have been decreed to protect the right to life and personal integrity, whether of one person, several persons, or an entire community.

244. The decision on the request depends on the gravity of the individual or collective situation, taking into account (a) the content of the threats received (oral, written, and symbolic messages, among others) and whether they have been carried out against one or more members of a group of persons; (b) previous acts of aggression

¹⁸⁴ IACHR, Juan Raul Garza v. United States of America, Case 12.243, Report N° 52/01, April 4, 2001, para. 117.

¹⁸⁵ I/A Court H.R., *James et al. Case* (Trinidad and Tobago), Provisional Measures, Order of August 29, 1998, seventh whereas clause.

¹⁸⁶ I/A Court H.R., *Case of Penitentiaries in Mendoza*, Order of November 22, 2004, operative para. 16.

against persons similarly situated; (c) the acts of direct aggression that may have been perpetrated against the possible beneficiary; (d) the increase in threats, showing the need to take preventive action; (e) and factors such as advocacy of or incitement to violence against a person or group of persons. Second, one must consider the urgency of the situation reported based on (a) the existence of cycles of threats and attacks showing the need to act immediately; (b) the continuity and proximity in time of the threats; (c) whether a credible “ultimatum” has been stated which, for example, indicates that the potential beneficiary should leave the region where he or she lives or become the victim of violations. The interests threatened in this category – life and personal integrity – no doubt constitute the extreme of irreparability of the consequences, which the granting of precautionary measures seeks to avoid.

245. In order to evaluate these aspects, one should consider information related to the description of the acts that are the grounds for the request (phone threats/written threats/assassination attempts/acts of violence/public accusations), the identity of the origin of the threats (private persons, private persons with ties to the state, state agents, others), the complaints lodged with the authorities, the measures of protection of which they are already beneficiaries and their effectiveness, a description of the context needed to weigh the seriousness of the threats, the chronology and proximity in time of the threats made, the identification of the persons affected and their degree of risk; individually identifying persons or groups who belong to a category of individuals at risk; and a description of the measures of protection or other measures requested. In addition, on evaluating this information, one takes account of the following contextual elements in relation to the country to which the request refers: the existence of an armed conflict, whether a state of emergency is in force, the degrees of effectiveness and impunity in the functioning of the judicial system, indicia of discrimination against vulnerable groups, and the controls imposed by the Executive branch on the other branches of government.

246. In the case of protecting life and physical integrity, not only is reference made to security measures required by the beneficiary, but also, it has been noted consistently that one must judicially investigate the threats, acts of harassment, or attacks that have targeted the beneficiary directly or other persons in his or her same situation (for example, in the case of human rights defenders, other members of the organization of which he or she is a member, who have been killed or exiled because of the threats). The Inter-American Court has established in its case-law that an investigation aimed at clarifying and eliminating the causes for which provisional measures have been granted is among the measures that the State should adopt for carrying out its obligation to remove the risk factors that beset the beneficiary.

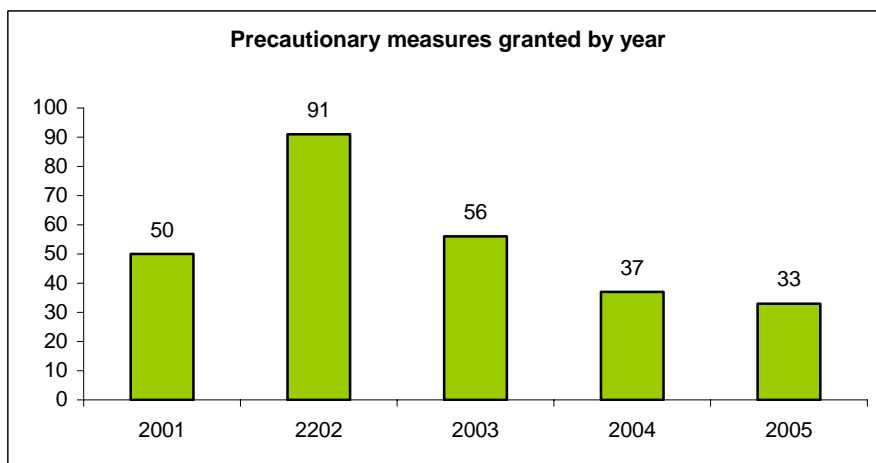
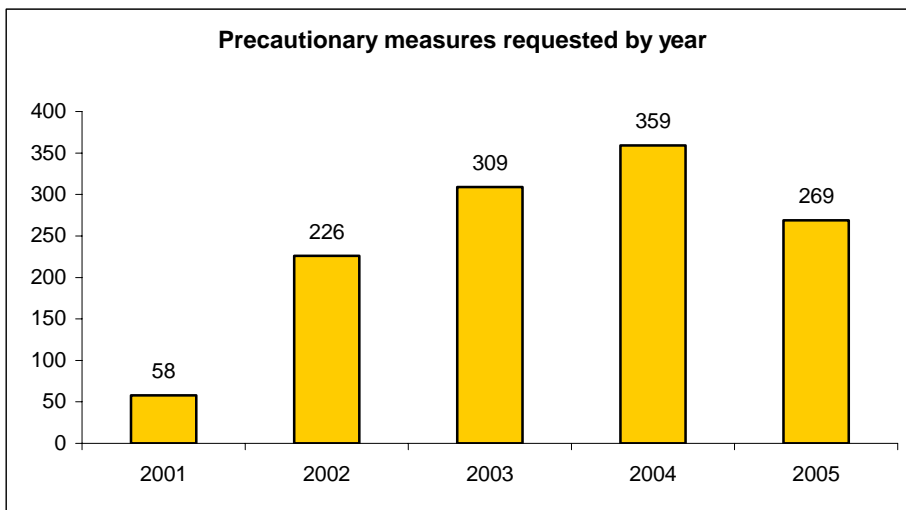
247. The Commission is satisfied to note the measures that many states have adopted to comply with the requests for precautionary measures, which have included, in some cases, implementing systems of protection and risk analysis, and it calls on all other states to adopt without delay all measures necessary to keep human rights defenders from continuing to be victims of actions that impede the free exercise of their activity.

B. Precautionary measures decreed from January 2002 to December 2005 to protect persons involved in activities of human rights defense

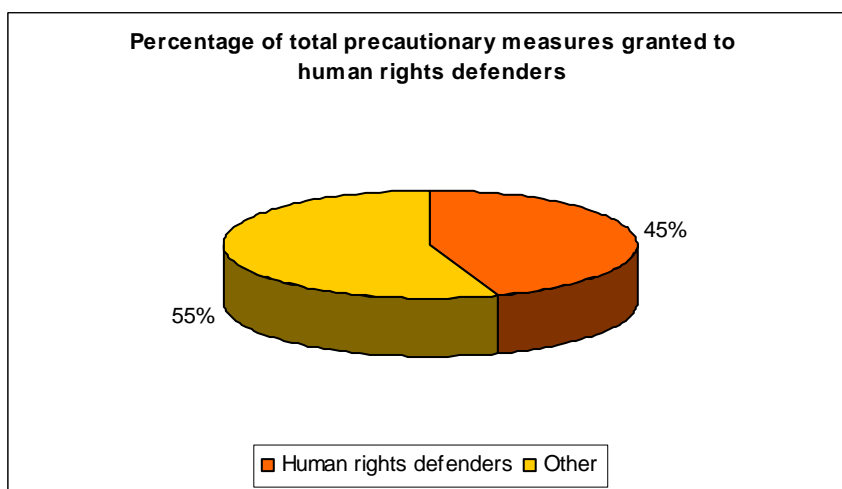
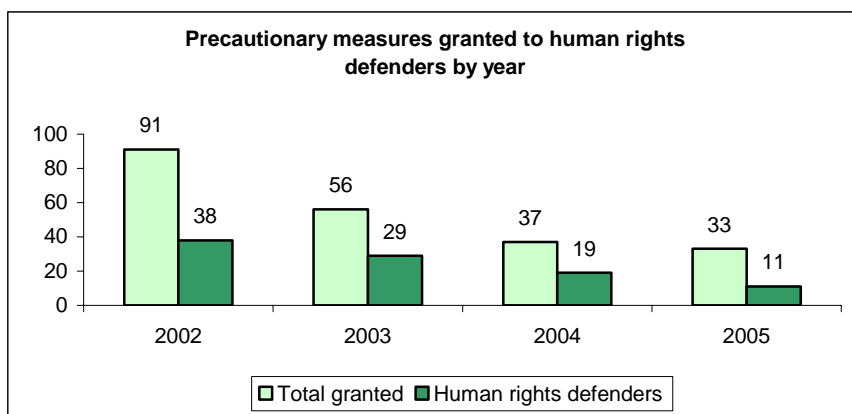
248. Since the Human Rights Defenders Unit was established, the Commission has granted a total of 217 precautionary measures¹⁸⁷ of 1163 requests received. The following graphs show the relationship between the number of requests received and the number of measures actually granted in recent years. It should be

¹⁸⁷ The period analyzed in this chapter is January 2002 to December 2005.

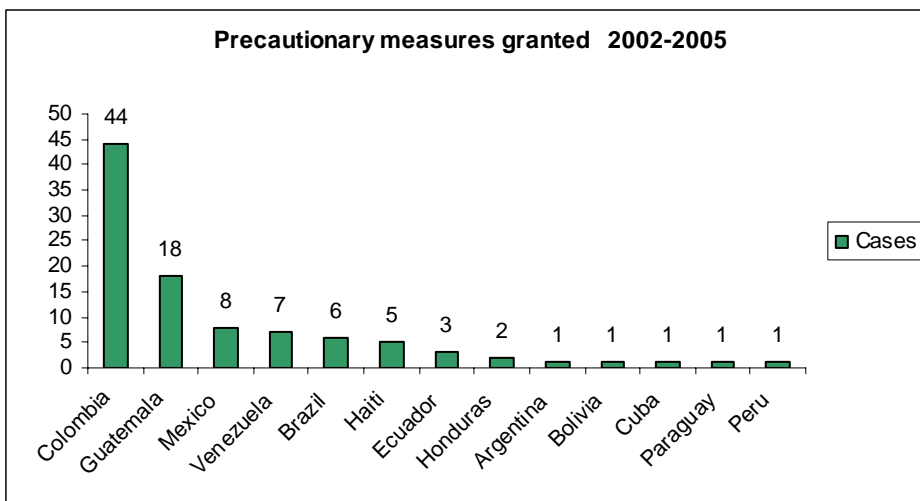
noted that the number of precautionary measures granted does not reflect the number of persons protected by their adoption, since, as noted below, many of the precautionary measures granted by the Commission extend protection to more than one person, and in certain cases to groups of persons such as communities, indigenous peoples, and civil society organizations.



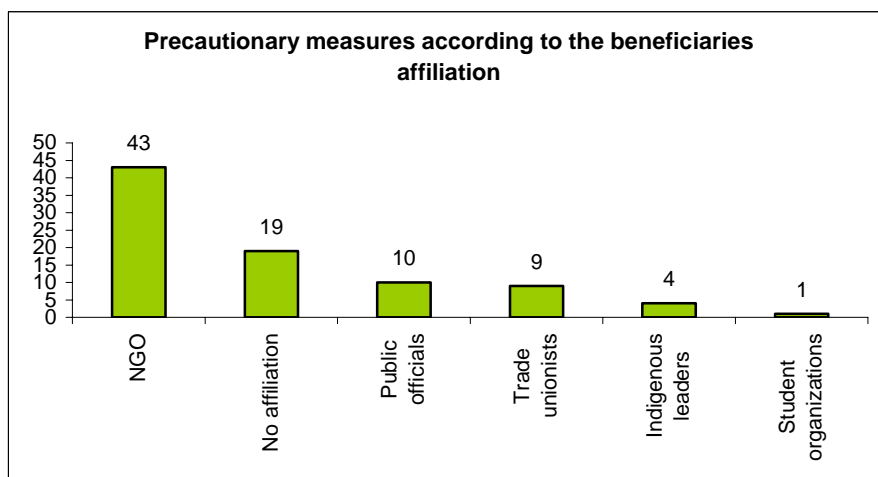
249. The Commission notes with concern that the group that has been forced to seek precautionary measures in the largest numbers corresponds to those persons who have received threats to their own rights because of their efforts to defend the human rights of other persons. Of the total number of precautionary measures granted during the period analyzed (217), 44,8% correspond to measures of protection granted to human rights defenders, which means that 97 measures in all have been granted to this group of persons.



250. Of the universe of the measures granted to defenders, the Commission notes that the largest numbers of threats come from Colombia (44), Guatemala (18), Mexico (8), Venezuela (7), and Brazil (6). In addition the situation is worrisome in Haiti, with respect to which five measures of protection have been granted, and from which one provisional measure was sought from the Inter-American Court.



251. Based on the affiliation of the beneficiaries of the measures granted, one finds that in the vast majority of these cases, they were granted to persons tied to civil society organizations, such as non-governmental human rights, peace, development, and environmental organizations. Second is a group of persons who did not say they were directly tied to a civil society organization, but who individually carry out work to defend human rights. Third were public employees such as judicial officers, personnel from the forensic medicine services, personnel from prosecutorial offices, and persons who hold popularly-elected positions such as legislators and local council members. Shared the same third persons who benefited from measures said they belonged to trade union organizations. Fourth place were indigenous leaders. Finally, in one case the beneficiaries belonged to a student organization.



252. The Commission notes that the defenders who are beneficiaries of precautionary measures undertake activities in different areas related to the promotion and protection of human rights. A large majority are involved in the judicial investigations of serious violations such as forced disappearances, extrajudicial executions, forced displacement, torture, and other forms of cruel, inhuman, and degrading treatment. Other persons work overseeing the power of the state in matters

such as denouncing corruption, denouncing police brutality, and denouncing acts of collusion between authorities and paramilitary or parapolice groups. In addition, persons dedicated to protecting the rights of children, the rights of homosexuals, lesbians, and transgenders, the right of migrants, and the cultural and territorial rights of indigenous peoples and Afro-descendant communities have been victims of threats and risks to their life and integrity related to their work. The Commission also notes the grave risk that trade union leaders, social leaders, and student leaders in several countries face as they seek redress for their grievances.

253. In every case of measures granted to defenders, the Commission concluded that the facts show grave risks to the life and integrity of these persons and, in some cases, their families. Death threats are reported in almost every case. Many threats were made through written notes in which the messages are found, and in some cases strict orders indicating the time the threatened person has to leave a given place or must stop seeking redress for a given grievance. Another type of threat has been found in the form of objects that represent death or violence that appear at the offices or homes of human rights defenders, as in the case of bullet cartridges or bloodied dolls. In other cases, the threats were made through intimidating or insulting phone calls. In one case, a defender received phone calls where only funeral music was heard.

254. In addition, in evaluating the risk defenders face, the Commission took into account that many of these persons were victims of attacks with firearms and explosive artifacts, such as "book bombs." The fact of human rights defenders or their family members being followed was also considered to show the urgent need for special protection. Commonly, vehicles without license plates or identification numbers follow the movements of human rights defenders; these vehicles park in strategic locations such as in front of their residences or offices, or by the schools attended by the children of the persons being threatened. Other defenders were arbitrarily deprived of their liberty and forced to get into vehicles in which they were beaten and threatened. In one such case, a woman human rights defender was knocked out and placed in the trunk of a vehicle, and released in another town several kilometers away.

255. In response to these incidents and the grave and imminent risk to life and physical integrity they pose to human rights defenders and their families, the Commission has made several requests to the states involved. In general, the Commission has called on the states to adopt, without delay, all measures necessary to protect the life and personal integrity of the beneficiaries. This has been translated, depending on the circumstances in each case, into the granting of perimeter protection for headquarters, offices, and residences, police escorts and private bodyguards, mechanisms of personal protection such as armored vehicles and bulletproof vests, temporarily leaving town, changes in residence, and trips outside the country.

256. The Commission has also requested the states that in carrying out the measures they pay special attention to the circumstances that produced the risk, so as to be able to fully deactivate the focal points giving rise to risk, and to keep the situations reported from recurring. In addition, the Commission finds that for this to be done, it is vital that the states allow the beneficiaries of the measures to participate in planning and implementing them. Finally, to prevent the chronic repetition of situations of risk, the Commission asks in every case, as part of the measures of protection, that a serious investigation be undertaken into the facts, so as to identify, prosecute, and punish the direct perpetrators and masterminds of the acts of intimidation and violence.

257. Even though the Commission is satisfied to receive the response from the state in most cases in which it has granted measures of protection to human rights defenders, it laments and is concerned about the lack of prompt and adequate action to provide effective protection in some cases, which has translated into fatal events, such as the death of defenders who have been beneficiaries of precautionary measures. In

addition, the Commission notes its concern over the failure of judicial investigations to advance in the vast majority of cases studied. The Commission reiterates that the failure to prosecute and sanction the persons responsible for such deeds makes it impossible to structurally dismantle the causes giving rise to risk; accordingly, the failure to undertake an adequate investigation not only prejudices the daily activities of the defenders, but also increases the risk that they might become victims of even worse acts of violence. The Commission makes an appeal to the states to take actions necessary to fully protect human rights defenders, especially those who are the beneficiaries of precautionary and provisional measures.

VIII. THE STATES' RESPONSES ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

258. The Commission underscores the importance of the role of state organs in implementing international human rights law. Accordingly, in principle the implementation of human rights in the international system is primarily an internal matter, and, therefore, the organs of protection of the inter-American system are subsidiary in nature.

259. On that basis, and in order to analyze the advances of the states' protection of defenders in keeping with the obligations they have assumed under the American Declaration and the American Convention, and reaffirmed in the most recent sessions of the OAS General Assembly, the Human Rights Defenders Unit prepared a questionnaire that it sent to the 35 member states of the OAS. The questionnaire had 20 questions, divided into three themes: recognition of the human rights organizations by the states, protection by the states, and acts that impede or encumber the tasks of human rights defenders and their organizations.

260. The Commission is grateful for the responses received from the states of Argentina, Belize, Bolivia, Chile, Costa Rica, El Salvador, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela. Below a summary of the states' responses will be presented, organized based on the topics addressed in the consultation.

A. Recognition of human rights organizations

261. The Commission asked the states four questions to determine the legal requirements demanded by the authorities for forming civil society organizations whose purpose is to promote and protect human rights, and to determine whether the domestic legislations include measures that differentiate between those organizations that are legally recognized and those that are not. In addition, the Commission asked about the possibilities of foreign individuals and organizations exercising the defense of human rights in the territory of the countries of the Americas.

262. First, the Commission asked the states specifically how their legislation provided for developing the freedom of association for the defense of human rights, and whether the domestic laws or regulations imposed any restrictions on such activity. In general, the states answered that the freedoms of assembly and association are constitutionally recognized rights and that their citizens may make use of them to carry out activities to protect human rights.

263. Argentina stated that its legislation does not establish restrictions. Those persons who so desire may form non-profit civic associations with legal status, may do so informally in keeping with the provisions of the Civil Code, or may come together as *fundaciones* under the pertinent commercial law provisions. Non-profit civic associations must meet certain requirements such as having articles of incorporation, registering with the Office of the Inspector General of Justice, and keeping books of their assemblies and accounting books.

264. Belize noted that its Constitution establishes the right of association for all persons, and, pursuant to that right, those persons so interested may form non-governmental organizations in keeping with the provisions of the Companies Act. The state also noted that such organizations are independent of governmental control in both operations and management.

265. The Government of Chile stated that in its domestic legal order there is no special legislation for associating to defend human rights, accordingly one should refer to the general rules on the subject, contained in the Civil Code. Accordingly, the requirements for organizations dedicated to defending human rights are the same as for any group. Those organizations that formalize their existence as such become corporations at private law. The Chilean State indicated that to meet this requirement the organizations must fill out the standard form bylaws drawn up by the Ministry of Justice, by which they request of the President of the Republic that he grant them juridical personality. That authority grants such recognition through a decree that must be published in the *Diario Oficial*. The request must be submitted by at least six persons or the number of persons required to serve in the positions and functions described in the respective bylaws. None of these persons can have a criminal record, and they must have a minimum of economic means to carry out their activities.

266. The Government of Costa Rica indicated that freedom of association is constitutionally recognized and that form provided for in the law for forming such organizations is that of civic association (*asociación civil*). Nonetheless, human rights organizations may also organize as *fundaciones*, or trade unions when the purpose is to defend workers' rights. According to Costa Rican legislation, any association must be constituted through a basic charter that governs its activities (articles of incorporation, or bylaws). In addition, in order for an association to carry out its activities lawfully, it must be entered in the Registry of Associations kept by the Ministry of Interior. The state emphasized that the juridical personality obtained with registration is declarative and not constitutive.

267. El Salvador indicated that if a group of persons wishes to come together to defend human rights, Salvadoran legislation offers the possibility of constituting a non-profit association that is legally formed once the founding members have the articles of incorporation put in the form of an official public document (*escritura pública*) and elect the members of the boards of directors. According to the Salvadoran authorities, the only restriction established by law is the bar on foreigners being members or founders of an association, which is only allowed if the person shows that he or she resides in the country.

268. The Government of Honduras answered that the freedoms of association, assembly, and petition enjoy constitutional rank. Accordingly, in order to constitute different types of organizations, one must make a formal request to the competent authority (Ministry of Government and Justice or Ministry of Interior) in order to obtain the juridical personality that allows it to operate legally.

269. The Mexican State reported that its legislation provides for two legal forms: Private assistance institutions (*instituciones de asistencia privada*) and civic associations (*asociaciones civiles*). The first are governed by the Law on Citizen Participation, among other laws, while the latter are regulated by provisions of the Civil Code. The State indicated that there was no restriction other than respect for the rights of all others. Thus, those persons who wish to form a private assistance institution or a civic association need only file a written request, attaching their draft articles of incorporation.

270. Panama answered noting that its Constitution recognizes the right to peaceful assembly. At the same time, this provision has been developed by an executive

decree that regulates recognition as a social-interest, non-profit association for those associations that carry out socially beneficial activities. According to this decree, any organization that wishes to obtain juridical personality must file a power-of-attorney and an application through an attorney on official paper containing the legal grounds for the association. In addition, it must file the articles of incorporation and the bylaws. The members of the board of directors must be of Panamanian nationality, unless they are staff of embassies or diplomatic personnel. The work plan for the first five years must also be attached to the application.

271. The Paraguayan Government stated that any group of persons has broad powers to associate for the defense of human rights in Paraguay, since the Constitution recognizes the freedom of association. The Civil Code has a section on non-profit associations, so long as they state their specific purposes. The only limitation is that the purpose involve the pursuit of lawful aims; the formation of secret and paramilitary organizations is forbidden. The Paraguayan Government also indicated that the existence of juridical persons begins once they have been authorized by law or by the Executive branch, and are entered in the registry at the General Bureau of Public Registries.

272. Peru also indicated that under its domestic law the right of association has constitutional rank. According to the legislation, human rights organizations must adopt the legal form of a non-profit organization, since their activities are not geared to an economic or entrepreneurial objective; rather they have to raise funding to enable them to pursue their objectives. In addition, Peru indicated that within its jurisdiction, organizations can form without prior authorization, i.e. they are not subject to administrative or any other approval. The juridical personality of these organizations begins from their entry in the respective registry. The State emphasized that the entry is a merely declaratory requirement by which access to the formal sector is sought.

273. The Uruguayan Government indicated that its laws contain no restriction on the freedom of association, which is a right recognized in the Constitution. The legal forms provided for in the domestic legislation that are best-suited to human rights organizations are civic associations (*asociación civil*) and non-profit *fundaciones*. The requirements for constituting such associations are to present the written by-laws, approved by the assembly, the articles of incorporation of the association, and the notarial stamps and other fees established by the regulation.

274. On the same subject, the Commission asked the states what differences exist, if any, in the legal treatment afforded the organizations that are legally registered before the authorities and those that carry out their work informally. In addition, the Commission asked whether there is any difference between foreign individuals and organizations, and nationals. With respect to the first inquiry, the states in general indicated that the registration of organizations was declarative and enabled organizations to exercise rights as juridical persons, and, in some cases, to receive tax benefits.

275. Argentina indicated that the only notable difference between the informal and registered organizations is that the first are considered mere civic associations, and the founding members and directors assume joint-and-several liability for the acts of the informal ones. In addition, Argentina indicated that under its legislation, associations existing in foreign countries under the same conditions as those required in Argentina are juridical persons.

276. With respect to the differences between legally recognized organizations and those that are not recognized, Belize indicated that the only distinction is that the recognized ones may benefit from tax exemptions. The Belizean State also

reported that its legislation regulates national and international organizations without distinction.

277. Chile noted that in contrast to the unregistered organizations, those with juridical personality have a full legal existence, and may acquire assets, dispose of their own property, obtain public and private financing, have bank accounts, and represent interests before the courts of justice. Similarly, non-profit organizations enjoy tax benefits. Nonetheless, the organizations without juridical personality may exercise citizen rights as natural persons. Chile indicated that there was no special regulation for foreigners and international organizations wishing to carry out activities in Chile, just as there are no special limitations on the Chileans who work in those organizations.

278. Costa Rica indicated that the informal organizations could carry out the same type of activities, but that their members would answer individually for them. In addition, some economic benefits can be granted to legally constituted organizations to which the informal groupings do not have access. With respect to foreign organizations, the Costa Rican Government reported that foreign associations, according to the associations law, may operate in Costa Rica when they establish a subsidiary or register in the country. If not in compliance with these options, they would be in the same situation as the informal organizations. The only limitation on foreign persons in Costa Rica, according to the state, is that the Constitution prohibits them from holding leadership positions in trade unions.

279. El Salvador stated that both the legally recognized organizations and the informal ones may engage in any lawful activity, peacefully and without arms. Nonetheless, the first are subjects of rights and are obligated to pay taxes, though non-profit associations may be declared to be of public utility by the General Bureau of Revenue, in which case they are exempted from payment of the income tax. El Salvador also indicated that its legislation does not have any special regulation for a foreign person to undertake human rights promotion activities, except that they cannot found an association if they do not have legal residence in the country. Nonetheless, the state recognized that "unfortunately the legislation on migration matters gives wide discretion to the authorities of the Ministry of Interior to consider whether a foreigner is becoming involved in internal political affairs, which is grounds for expulsion. One runs the risk, therefore, of the arbitrary use of that power, according to which a foreigner's activities in the promotion and protection of human rights may be considered involvement in internal politics, and that they may be expelled and repress by that channel."

280. Honduras stated that foreign persons have the same rights as nationals as provided in the Constitution. With respect to the difference between registered and informal organizations, Honduras indicated that the unrecognized organizations "may carry out their activities."

281. Mexico indicated that the legally recognized organizations have the right to enter into cooperation agreements with the state, receive tax incentives, receive donations, make investments, and receive advisory services from the *Junta de Asistencia Privada*, among other benefits. Foreigners who wish to enter the country and engage in work to monitor the human rights situation may enter as visitors, in which case they are authorized for one year, which can be extended for up to four years. If the purpose of entering the country is solely to engage in promotion activities, no special permission is required to enter the country beyond what is demanded of all foreign citizens.

282. The Panamanian State answered that the legally recognized organizations have access to tax benefits and incentives aimed at bolstering their operations, and to contract and acquire rights and obligations on behalf of the organizations. The State added that under Panamanian law no organization, registered or

unregistered, could serve as legal representative before the courts. With respect to the distinction between foreigners and nationals, the State reported that there is no provision establishing any distinction in the exercise of these rights.

283. The Government of Paraguay indicated that the differences between legally constituted organizations and others have to do with actions before the judicial, political, and administrative authorities of the state, in that the legally constituted associations may represent persons affected, whereas the informal groups cannot exercise such representation. As for the distinctions between foreigners and nationals, the State said that any foreign person must be affiliated with an internationally recognized organization to carry out human rights activities.

284. Peru indicated that the associations duly entered in the public registries may act before third persons with no limitations other than those established by law. In contrast, those not so entered do not have sufficient juridical personality to be able to act with the same facility. In addition, the State alleged that there is no limitation or distinction for foreign persons other than complying with residency requirements.

285. Uruguay said that the informal organizations cannot appear at trial, or enjoy tax benefits. Nonetheless, access to mechanisms of citizen participation, for example, on the ground, is not subject to official recognition or having juridical personality. Furthermore, the Government indicated that the recognition of international organizations whose main office is outside Uruguayan territory is subject to the special regime regulated in Decree 334/70. Among the benefits granted by that provision are, *inter alia*, the recognition of juridical personality, the inviolability of the organizations' locales and documents, exemption from customs duties and other taxes, exemption from labor charges, and visa at no charge for entering and leaving the country.

B. Protection from the State

286. In the second section of the questionnaire, the Commission inquired into the means of protection created by the state to keep human rights defenders from being victims of illegal restrictions or reprisals for their work. First, the Commission asked the states whether they have forums for dialogue with the organizations dedicated to the promotion and defense of human rights.

287. Based on the states' responses, the Commission finds that the state entities that have the most contact and dialogue with the human rights organizations are the Offices of the Human Rights Ombudsperson (*las Defensorías del Pueblo*). Accordingly, the Governments of Argentina, Costa Rica, Panama, and Venezuela indicated that the fundamental mechanism for dialogue was the Office of the Human Right Ombudsperson (*la Defensoría del Pueblo or Defensoría de los habitantes*).

288. Belize indicated that the Government provides for a mechanism of dialogue that includes quarterly meetings with the prime minister. The Government emphasized that this is the first time the Executive branch has recognized the importance of civil society, including it in the ministerial portfolio.

289. The Government of Bolivia referred to the creation of its "National Strategy for Human Rights," which it described as a mechanism for designing and carrying out public policies to promote the defense of and respect for human rights. This mechanism is entrusted to an Inter-institutional Council made up of the Ministers of Foreign Affairs and Worship, the Presidency, Education, Indigenous Affairs, and Sustainable Development, and representatives of the human rights community. The National Strategy also has an Inter-Ministerial Commission on Human Rights made up of all the vice-ministries of the Executive branch, entrusted with the essential mission of drawing up government reports on human rights to be submitted to the various international agencies and mechanisms.

290. The Government of Chile indicated that its ministries serve as liaison and generally receive requests related to human rights. In addition, the General Secretariat of Interior, through the Division of Social Organizations, has created units known as *Unidades Orgánicas*, and has developed programs to attend to organizations that represent society. In July 2001, the Presidential Advisory Commission for the Protection of Human Rights (known as the *Comisión Defensora Ciudadana*, Citizen Defense Commission) was installed; its mission is to see to the defense and protection of persons in the face of acts or omissions of state organs once a citizen has exhausted the respective initiatives, without obtaining any response.

291. Costa Rica said that in addition to the work done by the *Defensoría de los Habitantes*, the State institutionalized as forums for dialogue the National Council on Childhood and Adolescence; the Boards of Protection for Children and Adolescents, and Committees to Protect the Rights of Children and Adolescents; the Permanent Forum on the Migrant Population; and the Regional Environmental Councils.

292. The Salvadoran State indicated that “unfortunately one does not find in El Salvador any mechanism for dialogue between the State and the civil society organizations or individuals who work in the defense of human rights. To the contrary, on many occasions the relationship between them has become very tense.”

293. Honduras indicated that its Government has a mechanism for dialogue in the National Forum of Convergence (FONAC), which brings together state institutions, social and political organizations, the church, and others. The State indicated that this forum establishes and fosters consensus on social issues, including human rights.

294. Mexico answered that the mechanism for channeling dialogue is the Inter-Ministerial Commission for Attending to Mexico’s Human Rights Commitments, created in 1997 to coordinate the positions of the different offices of the public administration in order to carry out the country’s international commitments. As part of this Commission, the Mechanism of Dialogue was instituted between the Inter-Ministerial Commission and the civil society organizations for the purpose of creating institutional spaces for interaction and dialogue with the non-governmental organizations.

295. Paraguay, in addition to noting the creation of the Office of Human Rights Ombudsperson (*Defensoría del Pueblo*), indicated that inter-institutional commissions have been formed with representatives of the state and civil society. The State indicated that such commissions have undertaken specific actions, such as visiting the military barracks in order to investigate the recruitment of child soldiers, visiting the country’s penitentiaries and police stations to investigate the quality of life of the prisoners, responding to the demands of the indigenous communities, and assisting street children.

296. Peru indicated that the State has a National Human Rights Council (CNDH), which is entrusted with promoting, coordinating, and disseminating the protection and observance of human rights, and advising the Executive in this area. The CNDH is made up of the minister of justice and several representatives of other ministries, the Judicial branch, and the Public Ministry.

297. In addition, in order to learn of the states’ actions to prevent violations by promoting the culture of human rights, the Commission asked the states about the extent of human rights training for public officials, and about the mechanisms implemented by states to foster the dissemination and application of the organs of the inter-American system and the decisions of its organs with regard to human rights defenders.

298. Argentina indicated that in 2002 the Secretariat of Human Rights of the Nation began to give permanent training courses in human rights for administrative agents, including the security forces. Belize noted that the Ministry of Human Development has made an effort in this regard geared to the Ministry staff who work with women's and children's rights. Bolivia stated that the Human Rights Ombudsperson has the mission of designing, implementing, and supervising programs for the defense, promotion, and dissemination of human rights; as part of that mission, the Ombudsperson trains public officials, including the National Police and the Armed Forces. The Council of the Judiciary does the same for the Judicial branch and the Office of the Attorney General.

299. The Chilean Government stated that it offers general courses given by specialists that include training in international instruments and the incorporation of international human rights treaties into domestic law. Chile indicated that as of 2000, the Armed Forces have been receiving special training in human rights and international humanitarian law as part of the courses they take in their military training.

300. Costa Rica reported that judicial officers receive a training program at the Judicial School covering issues such as family violence, children's rights, refugees' rights, the rights of indigenous peoples, and international humanitarian law, among others. Along the same lines, the Salvadoran State indicated that the National Academy for Public Security and the National Council of the Judiciary are the entities entrusted with giving human rights training to public officials. Honduras reported that the personnel of the Office of the Attorney General and other judicial officers are providing training through short courses (*diplomados*) and in some cases are given the opportunity to attend international seminars such as the inter-disciplinary course given by the Inter-American Institute of Human Rights.

301. Mexico indicated that several courses and programs have been organized in the area of human rights education. In this vein, human rights and international humanitarian law were included in the study plans of the Military Education System, and in the permanent programs for training and instruction of the units, offices, and installations of the Mexican Army and Air Force. In addition, the State cited several programs for training in human rights that have benefited members of the armed forces and police, including graduate-level courses, short courses (*diplomados*), and other trainings.

302. Panama said that public defenders, personnel working in the administration of justice, and the members of the National Police have been trained in human rights through seminars, workshops, conferences, and even specialized studies. In addition, the Panamanian State noted that to promote the dissemination and application of the instruments of the inter-American system and the decisions of its organs in the area of human rights, human rights studies have been included in the curricula of the schools and universities.

303. Paraguay indicated that government employees are regular beneficiaries of programs to train in human rights, some designed by its own institutions, such as the Judicial branch, the Public Ministry, and others, with the support of international cooperation and non-governmental organizations. In addition, the State indicated that the mechanism most commonly used to promote the dissemination and application of human rights is holding symposia and workshops that include the participation of all the state institutions involved in human rights, and civil society organizations, as well as special guests and victims of human rights violations, who participate in the public debates held as part of those activities and events, which are widely disseminated.

304. The Government of Peru responded that the Public Ministry, the Judicial branch, and the National Police and Armed Forces include issues related to

fundamental human rights in the training they give their personnel. These trainings complement those given by the National Human Rights Council. In addition, the State pointed to Law 25,211, on the dissemination and teaching of the Constitution and treaties for the defense, promotion, and development of human rights, which mandates education in this area.

305. The Government of Uruguay said that prosecutors, public defenders, as well as judicial personnel are law graduates from the national universities, which incorporate the teaching of human rights in their programs. The same holds for the Armed Forces and Police, whose courses for entry and promotion include human rights studies.

306. Venezuela indicated that the Office of the Human Rights Ombudsperson disseminates human rights, and has designed several programs for human rights training geared to various state agencies. In addition, the State created the Area of Citizen Security and National Armed Forces in order to raise the awareness of members of the armed forces and police and optimize the systems, plans, and mechanisms for the protection of human rights. A recommendation was also made to the educational authorities at police training centers to include human rights in the curriculum.

307. The next group of questions was aimed at inquiring into the mechanisms adopted by the states to grant measures of protection to defenders when they are victims of actions that keep them from doing their work freely. In this vein, the Commission asked what provisions and measures have been adopted domestically to guarantee the freedom to defend human rights, which organs are entrusted with promoting the observance of the norms of the inter-American system in relation to human rights defenders, and what their functions are.

308. Argentina reported that its Constitution establishes the rights and freedoms of all persons, including human rights defenders. The State did not indicate an organ specially dedicated to protecting human rights defenders, but it did note that the national Ombudsperson for Human Rights, the provincial ombudspersons, the Secretariats of the Nation and the provincial ones, the National Institute against Discrimination, Racism, and Xenophobia, and the Indigenous Institute are among the institutions charged with promoting observance of the rules with respect to the protection of human rights defenders. In addition, the Argentine Constitution provides for the remedy of *amparo* to defend human rights.

309. Belize also indicated that its Constitution recognizes fundamental rights, which include, *inter alia*, the rights to life, personal liberty, and the freedoms of assembly, association, and expression. The State indicated that there is no agency specifically dedicated to protecting human rights defenders. Nonetheless, the State indicated that it has the Office of the Parliamentary Commissioner, known as the Ombudsman, which is in charge of investigating citizen complaints of corruption or illegal activities of public employees. The powers of this office include requesting support for its work from the public authorities, who are required to take all measures necessary to assist the Ombudsman.

310. El Salvador stated that the protection of rights established by the Constitution and by statute for all persons who live in its territory is entrusted to the *Procuraduría para la Defensa de los Derechos Humanos* (Office of the Human Rights Ombudsperson) and the Constitutional Chamber of the Supreme Court. Accordingly, the State indicated that the *Procuraduría para la Defensa de los Derechos Humanos* has a broad constitutional mandate that authorizes it to see to it that human rights are respected and guaranteed, to investigate human rights violations on its own initiative or when a complaint has been lodged, and to produce and publish reports, among others.

The *Procuraduría* has a staff of 425 persons no more than 60 of whom have knowledge of the law, the rest being administrative personnel.

311. The Mexican Government answered that it has a group of federal government offices made up the Ministries of Interior, Foreign Affairs, and Public Security, and the Office of the Attorney General, who meet with the possible beneficiaries to discuss what measures should be taken to protect not only the defenders, but also the possible victims of human rights violations. The group is made up of four ministries, which work on the Draft Terms of Collaboration, in keeping with the Organic Law of the Federal Public Administration.

312. The governments of Costa Rica, Chile, Uruguay, and Venezuela indicated that given that in their countries no acts occur that might impede the normal development of the activities of human rights defenders, they do not have specific mechanisms for protecting these persons. In addition, the governments of Honduras, Panama, Paraguay, and Peru indicated that they have not taken any specific measure to protect human rights defenders.

313. In the next section of the questionnaire, the Commission asked the states what internal mechanism was used to channel precautionary measures granted by the Commission. The Argentine Government stated that depending on the nature of the measure ordered, the national or provincial public authority adopts the respective measures. Bolivia indicated that once the state receives the request through the Foreign Ministry, it forwards it to the Vice-Ministry of Justice, which helps coordinate the other offices of the state so as to implement the measures ordered. Chile stated that periodic reports are requested of the institutions that carry out the measures through the Human Rights Bureau of the Ministry of Foreign Affairs.

314. El Salvador noted that it does not have a statutorily mandated mechanism for that purpose. In practice, the Ministry of Foreign Affairs, after being informed that measures have been adopted, communicates with the pertinent state office to request information. The State indicated, moreover, that "the effectiveness of this mechanism is frankly in doubt, and it was made very clear that it was useless for handling the precautionary measures granted by the IACHR in the case of persons living with HIV/AIDS, which led to the death of nearly one-third of the victims."

315. The Mexican Government reported that its Draft Terms of Collaboration provide for the creation of a Monitoring and Evaluation Committee to implement precautionary or protective measures. This Committee is in charge, among other things, of receiving, analyzing, and, as the case may be, turning over to the competent authority the requests for precautionary measures that come before it, as well as proposing to the competent authorities the precautionary or protective measures that are necessary and indispensable.

316. The Panamanian State noted that the measures are sent, through the Ministry of Foreign Affairs, to the administrative or judicial authority in charge of the case or proceeding. If the measures entail a judicial proceeding, they are processed through the presidency of the Supreme Court of Justice and the Office of the Attorney General (*Procuraduría General de la Nación*). For its part, the Paraguayan Government indicated that measures are implemented through different offices that have been established for the defense and promotion of human rights in the three branches of government, and for coordinated work in committees to that end. The actions of these offices are reported to the Commission through the Ministry of Foreign Affairs jointly with the General Bureau for Human Rights of the Ministry of Justice and Labor.

317. The Peruvian State explained that on receiving the request for measures, in the case of situations related to health, coordination is immediately

established through the Ministry of Justice with the health sector to visit the person and verify his or her health, and determine the care needed. Those actions are reported to the Commission through the Foreign Ministry. In the case of threats to physical integrity, the Ministry of Justice communicates with the Ministry of Interior, which, through a special committee, makes a visit to the person in question in order to obtain detailed information on the situation and to be able to adopt measures to protect and patrols to safeguard the physical integrity of the person affected, and his or her family and property.

C. Acts that impede or encumber the work of human rights defenders or their organizations

318. The final section of the questionnaire drawn up by the Commission was aimed at looking into the acts committed against human rights defenders, and the measures of protection, investigation, and punishment of such conduct adopted by the states. Accordingly, the Commission asked the states whether in their countries there were acts that directly or indirectly impede or encumber the work of human rights defenders. If there were such restrictions, the states were asked to indicate what measures have been taken to prevent such attacks, in how many cases there had been guilty verdicts, and how the judicial system is organized to respond to such acts. Finally, the Commission asked the states whether they faced any obstacle to attaining effective protection for the activity of human rights defenders.

319. The Argentine State indicated that "of late there have been attacks against persons who work in human rights organizations." To investigate and punish such conduct, the Government said that it has the same justice system that is involved in any other crime, through the law on regular criminal procedure. Nonetheless, the Argentine State answered that there are no known cases in which perpetrators, accomplices, or aiders and abettors in attacks on human rights defenders have been identified, other than those referring to the participants in the violations committed during the last military dictatorship. According to the Government, the only perpetrators identified have been those responsible for some attacks committed for anti-Semitic reasons by neo-Nazis, who were prosecuted. Argentina added that the main obstacle faced by persons who are dedicated to the defense of human rights may be the lack of specific policies aimed at disseminating and promoting human rights in the public administration and in the judicial branch.

320. Belize indicated that there have been some cases of confrontations between public authorities and human rights organizations. The issues that commonly give rise to such confrontations refer to police abuse, but according to the State, they have not kept human rights defenders from doing their work. With respect to the question of whether there are convictions of the perpetrators of human rights violations committed against human rights defenders, Belize answered: "Not many convictions, if any at all."

321. Bolivia indicated that it did not have a record of acts of the state that might directly or indirectly impede or encumber the work of those persons, groups, or organizations who work to protect and promote human rights. Nonetheless, the State noted it had difficulties effectively protecting the activity of human rights defenders, due to the lack of a special law and a specific state mechanism to address the issue. The Government indicated that for this reason it began work on a preliminary bill on defenders.

322. The Chilean State answered that in its jurisdiction no acts are performed that directly or indirectly impede or encumber the work of human rights defenders. The State added that in the last 12 years, it has not learned of any complaint by members of human rights organizations against the Government or its employees for

attacks on life or personal integrity, threats, harassment, violations of the home, or arbitrary interference with or attacks of any type against these organizations. Nor has it had any news of wiretapping, bugging, or other forms of intercepting communications.

323. Similarly, Costa Rica indicated that in its territory there are no acts encumbering the work of human rights defenders. To the contrary, the activities of protecting and promoting human rights are generally very well received.

324. El Salvador stated that in recent times no cases have been known that entail attacks on life, personal integrity, threats, or harassment of defenders. Nonetheless, some cases have come up in relation to the violation of the facilities where human rights organizations operate. In this respect, the State's response indicated that "there are strong suspicions – yet no evidence – that the state intelligence agency (*Organismo de Inteligencia del Estado*) wiretaps and uses electronic listening devices to listen to many persons, including human rights defenders, notwithstanding the express constitutional prohibition" on such conduct. In addition, the State noted "with great concern" that Salvadoran legislation recognizes that juridical status is granted by entry in the Registry of Associations and Foundations; and that agency is known for excessive delays in making the entry, with which efforts to form associations and *fundaciones* are held back until the entry is finally ordered. The State indicated that no measures are known of that are directly fostered by the State to prevent these acts, and that no guilty verdicts are known of in cases of the violation of human rights of human rights defenders. El Salvador concluded that there are no legal obstacles to attaining effective protection of the activity of human rights defenders, but obstacles arise given the lack of political will to foster a climate of broad respect for human rights.

325. Honduras noted some acts impede the free defense of human rights, including attacks on the life and personal integrity of the defenders. With respect to these events, the State indicated, the Office of the Attorney General of the Republic, the Ministry of Security, the National Human Rights Ombudsperson (*Comisionado Nacional de los Derechos Humanos*), and the Judicial branch undertake investigations as well as the respective corrective measures and penalties to avoid impunity. Nonetheless, the state response indicated, in very few cases have convictions been secured. The response also indicated that the Honduran State faces certain obstacles to attaining effective protection for the activity of human rights defenders, such as reticence on the part of citizens to cooperate with judicial officers, in some cases for fear of reprisals, and the lack of inter-institutional coordination.

326. The Mexican State noted that "the historical mutual distrust between government and civil society, along with the mistaken perception of some sectors of society that human rights defenders defend criminals, has created a hostile environment for the work of human rights defenders, especially in localized areas." Moreover, according to the Government, previous administrations never openly recognized the importance of civil society nor did they forcefully condemn attacks on and threats against human rights defenders, which contributed to the tense environment in which human rights defenders perform their work. According to the State, in addition to the foregoing is the lack of adequate legislation to facilitate the development of these organizations' work and fundraising efforts. The State indicated that officials of the current government, including the President of the Republic, have voiced their respect for human rights defenders and have emphasized just how necessary and useful their work is for the country in several forums. In addition, campaigns have been carried out to promote human rights in general, and the cultural of human rights; and the organizations have been recognized to have a permanent place in the Inter-Ministerial Commission on Human Rights Policy. With respect to guilty verdicts for those who have committed crimes against defenders, the State answered that it has no information in this respect. The State indicated that the main obstacles human rights defenders face in

Mexico are the different forms of inertia from the past and the inherited culture of a lack of respect for human rights.

327. The Panamanian State answered that none of the acts that the Commission gave as examples of violence against human rights defenders has been found. Nonetheless, the State indicated that it has institutional mechanisms such as the Public Ministry and the Office of the Human Rights Ombudsperson to investigate such acts should they arise. In addition, those who live in the Republic of Panama have procedures such as habeas corpus, *amparo* or special protection for constitutional guarantees, and the right of petition to claim their rights.

328. Paraguay answered that in its territory there are death threats and harassment of human rights organizations, but that those threats have not been consummated. In addition, in only a few cases have acts of vandalism against defenders been reported. The State indicated that Paraguay is taking several measures to prevent such cases. Nonetheless, the State indicated that even when the justice system has adequate laws, generally they are not used adequately by the parties in criminal cases, who do not provide the solid data and evidence needed for the measures to be adequate. Accordingly, convictions for such acts are few and far between, due to the lack of reliable evidence, "even though approximately 20 cases are on record" in which convictions were handed down. The State concluded that it finds no obstacle to the political will and mechanisms implemented to protect human rights; to the contrary, with each passing day it is further developing mechanisms for prevention and protection in this area. According to the State, the sole obstacle that comes up blindsided is the economic factor, which, if bolstered, would allow the actions to have broader coverage and be more effective.

329. The Peruvian Government indicated that at present no acts are detected that directly or indirectly impede or encumber the tasks of persons who work to promote human rights. Accordingly, with the full re-establishment of democracy in our country, there are no difficulties in the work of human rights defenders, which in general terms includes all persons engaged in activities to disseminate and promote human rights, not only from civil society, but also from the perspective of the State itself. Similarly, the Governments of Uruguay and Venezuela answered that there are no obstacles to human rights defense in their respective countries.

IX. CONCLUSIONS

A. Importance of the work of human rights defenders

330. The Inter-American Commission on Human Rights expresses its recognition for the admirable work of thousands of human rights defenders to ensure the effective observance of the human rights of the inhabitants of all the Americas. The Commission encourages and supports human rights defenders and recognizes that they are the liaison between civil society within each country and the system for the protection of human rights internationally. Their role in society is fundamental to guaranteeing and safeguarding democracy and the rule of law.

331. This irreplaceable role of human rights defenders has been acknowledged by the American States through many General Assembly resolutions and by the signing and ratification of treaties that protect defenders' rights, among them, the Inter-American Democratic Charter, the American Declaration, and the American Convention. It has also been recognized by the organs of protection of the inter-American system of human rights and several international organs, such as the United Nations and the African Commission.

B. Problems human rights defenders face in their work

332. The IACHR is seriously concerned by the grave situation of insecurity and danger in which human rights defenders must pursue their work in the hemisphere. Assassinations, forced disappearances, assaults, threats, being identified as enemies or legitimate targets, smear campaigns, legal actions aimed at intimidating them, violation of their homes, and illegal activities targeting defenders – all of these mechanisms used to impede and encumber their work – are part of their day-to-day reality. The Commission recalls that when a human rights defender is attacked, all those persons for whom he or she works are left without protection.

333. Additionally, the Commission has found other direct forms of hindering the work of human rights defenders. These include, among others, the lack of access to information in the hands of the state, and restrictions on the possibilities of financing human rights defenders' organizations, which range from financial restrictions to criminal sanctions; and the restrictions and delays in legal recognition for these organizations.

334. The Commission laments the fact that statements by state agents put human rights defenders and their organizations at risk and make them vulnerable. Such statements contradict the commitments assumed by the countries of the Americas on ratifying the American Convention and repeated statements of support for the work of defenders in the meetings of the General Assembly of the OAS.

335. The Commission notes in particular its profound concern over the alarming impunity in the countries of the hemisphere. Impunity contributes to the increased number of attacks, threats, and other violations against human rights defenders. The lack of a serious investigation into the complaints that involve defenders in some cases, as well as the sluggishness of the administration of justice, together with the failure by the states to acknowledge that defenders face obstacles in performing their activities, and that, accordingly, they need special protection, are all factors giving rise to impunity for human rights violators. Impunity fosters the vulnerability of defenders since it gives rise to the perception that it is possible to violate human rights without being punished.

C. Especially vulnerable groups of defenders

336. The IACHR notes that the states owe special attention to certain groups of human rights defenders who are more exposed to the infringement of their rights than others.¹⁸⁸ These include trade union leaders, who are especially exposed in periods leading up to labor conflicts, social leaders who carry out or organize public demonstrations, indigenous leaders who defend their rights as indigenous peoples, afro-descendent leaders, and judicial officers, especially insofar as they are involved in cases involving human rights violations. It should also be noted that women human rights defenders, by reason of their gender, are exposed to specifically sexual threats or attacks, such as threats of rape or sexual assault.

D. Duty of guarantee and protection

337. The IACHR concludes that despite some already-existing mechanisms of protection, and the growing support by the states internationally for the work of human rights defenders, in recent years the danger and insecurity defenders face have worsened in many countries of the hemisphere. The Commission understands that this is due to the fact that, unfortunately, progress in international provisions has not been accompanied by adequate domestic policies.

¹⁸⁸ In this regard, see also UN, E/CN.4/2003/104 § 23.

338. Even in those states that have created special mechanisms to protect threatened defenders, the desired results have not been obtained. The Commission observes that the lack of results is often due to the lack of political support for such institutions, the insufficient resources allocated for their operation, and the obstacles they face stemming from their lack of legitimacy in the eyes of the police, army, or judiciary.

339. In addition the Commission concludes that one of the first steps for providing effective protection to human rights defenders is publicly recognizing the legitimacy of their work, and protecting them from the moment the public authority learns that they are being threatened because of their status as human rights defenders. The number of assassinations of defenders in the region shows that the states should take a defender's complaint of threats seriously, and act immediately and effectively. In this regard, the Commission recalls that in many cases in which defenders have died, their death was preceded by threats that were properly reported to the authorities, and ignored by them.

340. The Commission sadly observes that many defenders who enjoyed special protection, whether at the initiative of the state or granted at the request of the IACHR or the Inter-American Court, have been assassinated. This situation reveals, if not the failure of the states to carry out the measures, at least the partial or ineffective manner in which they were carried out. In order to save their lives, the Commission reiterates once again the importance of special protection for those defenders whose lives are at risk, by granting precautionary measures.

341. The Commission underscores its conviction that the states have the right and the duty to adopt the measures needed to combat those who generate violence that threatens their populations. Such initiatives should be taken in keeping with the rule of law and the standards established in the American Declaration and the American Convention, which are adequate frameworks for obtaining the security to which the population legitimately aspires.

X. RECOMMENDATIONS

342. Based on the information and analysis undertaken by the Commission throughout this report, and in order to contribute to the protection of human rights defenders and ensure the effective development of their work,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATES OF THE AMERICAS:

1. Foster a culture of human rights in which the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law is recognized publicly and unequivocally. The commitment to this policy should be reflected at every level of the state – local, state or provincial, and national – and in every branch of government – executive, legislative, and judicial.
2. Publicly recognize that the exercise of the protection and promotion of human rights is a legitimate action and that, on exercising these actions, human rights defenders are not working against state institutions, but rather, to the contrary, are contributing to the strengthening of the rule of law and the expansion of all persons' rights and guarantees. All state authorities and officials at the local level should be aware of the principles regarding the activities of human rights defenders and their protection, as well as the guidelines applicable to the observance of those principles.

3. Undertake activities for education and dissemination for all state agents, society at large, and the press, to raise awareness about the importance and validity of the work of human rights defenders and their organizations. The Commission calls on the states to promote and widely disseminate the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Commission also calls on the states to design a program of specific measures to implement the Declaration.
4. Instruct their authorities to ensure that, from the highest level, forums for open dialogue are generated with human rights organizations to learn of both their opinions on public policies and the problems that beset them.
5. Implement, as a priority matter, a comprehensive policy of protection for human rights defenders. Adopt an effective and exhaustive strategy of prevention in order to prevent attacks against human rights defenders. This requires granting appropriate funds and political support to the institutions and programs. This policy of prevention and protection should take into account the periods when they are most vulnerable. The state authorities should remain vigilant especially during those periods and make public their commitment of support and protection.
6. Urgently adopt effective measures to protect the life and physical integrity of human rights defenders who are threatened, and to ensure that these measures are decided on in consultation with the defenders. Ensure the security of trade union leaders, community and campesino leaders, indigenous leaders, and judicial officers in the performance of their activities. In those countries in which the attacks on these actors are more systematic and numerous, the states should earmark all the resources needed and spelled out in this recommendation to prevent harm to the life and physical integrity of these leaders.
7. Guarantee in particular the security of women human rights defenders whenever they are at risk of attack through specific mechanisms because of their gender, and to undertake measures to obtain recognition of the importance of their role within the movement to defend human rights.
8. Allocate human, budgetary, and logistical resources to implement the adequate measures of protection sought by the Inter-American Commission or the Inter-American Court to protect the life and physical integrity of human rights defenders. Such measures should be in force for the time requested by the Commission or Court, and they should be agreed upon in consultation with the defenders to ensure they are appropriate and allow them to continue carrying out their activities.
9. Illegal armed groups are among the main perpetrators of violence against human rights defenders. States must implement a serious policy to investigate, prosecute, and punish all of the actors involved, not only their armed members, but also those who promote, direct, support, or finance such groups or participate in them.

10. The governments should not tolerate any effort on the part of state authorities to cast in doubt the legitimacy of the work of human rights defenders and their organizations. Public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights. Governments should give precise instructions to their officials in this respect and should impose disciplinary sanctions on those who do not comply with such instructions.
11. The states should ensure that their authorities or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders. The Commission reiterates that the states have the duty to investigate those who violate the law within their territory, but the states also have the obligation to take the measures needed to ensure that state investigations are not used to bring unjust and unfounded criminal proceedings against persons who legitimately call for respect and protection of human rights.
12. Adopt mechanisms to prevent the excessive use of force during public demonstrations, through planning, prevention, and investigation measures that follow, among others, the guidelines set forth in paragraph 68 herein.
13. Refrain from engaging in any type of arbitrary or abusive meddling in the home or offices of the organizations of human rights defenders, or in their correspondence and telephone and electronic communications. Instruct the authorities affiliated with the state security agencies to respect these rights, and impose disciplinary and criminal sanctions on those who engage in such practices.
14. Revise the premises and procedures governing intelligence-gathering activities targeting human rights defenders and their organizations to ensure due protection of their rights. To this end, the implementation of a mechanism for periodic, independent review of such archives is recommended.
15. Allow and facilitate the access of defenders, and the general public, to public information held by the state, as well as private information about them. The state should establish an expedited, independent, and effective mechanism for this that includes review by civilian authorities of decisions taken by the security forces to deny access to information.
16. Ensure that the procedure for entering human rights organizations in the public registries will not impede their work and that it will have a declaratory and not constitutive effect. The states should guarantee that the registry of the organizations will be processed quickly and that only the documents needed to obtain the information appropriate for registering will be required. Domestic laws should clearly establish the maximum time frames for state authorities to answer requests for registration.
17. Refrain from promoting laws and policies regarding the registration of human rights organizations that use vague, imprecise, and broad definitions of the legitimate motives for restricting their establishment and operation.

18. Ensure that the human rights organizations whose registrations are rejected have available to them a remedy to challenge that decision before an independent court. The states should also ensure an impartial remedy for situations in which organizations' registration is suspended or they are dissolved.
19. Refrain from restricting the means of financing of human rights organizations. The states should allow and facilitate human rights organizations' access to foreign funds in the context of international cooperation, in transparent conditions.
20. Guarantee effective administrative and legal measures for the protection of union delegates, including mainstream and minority unions and those in formation, against discrimination and harassment associated with carrying out their functions.
21. Undertake, as a matter of public policy, the struggle against impunity for violations of the rights of human rights defenders. The Commission calls on the states to undertake exhaustive and independent investigations into the attacks suffered by human rights defenders, and to punish their perpetrators, as a fundamental means of preventing such attacks.
22. Strengthen their mechanisms for the administration of justice and guarantee their independence, which is necessary if they are to perform their function of investigating, prosecuting, and punishing those who carry out attacks on human rights. It is essential, for such strengthening, that the states guarantee a sufficient budget and human resources adequate for ensuring effective administration of justice.
23. Take the necessary steps to ensure adequate and clear coordination within the institutional spheres of jurisdiction for the investigation and prosecution of crimes against human rights defenders who are discredited due to their activities. Establish specialized units of the police and public ministry with the necessary resources and training to act in a coordinated fashion and respond with due diligence in investigating attacks on human rights defenders.
24. Ensure that the military courts not have jurisdiction to investigate and prosecute members of the military who commit crimes against human rights and fundamental freedoms.
25. Create and strengthen legal mechanisms for effective precautionary remedies in situations of imminent threat or risk for the defense of human rights that adhere to the characteristics set forth by the Commission in paragraphs 120 and 121 herein.
26. Provide as necessary to promptly and effectively comply with the recommendations of the Inter-American Commission and the judgments of the Inter-American Court of Human Rights.