

## THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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### A. LEGAL INSTRUMENTS

#### 1. BINDING INSTRUMENTS

##### 1.1 AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Adopted by the Ninth International Conference of American States in Bogotá, Colombia, in 1948, a few months before the adoption of the Universal Declaration, the American Declaration is not a legally binding instrument *per se*. However, the American Court and Commission have subsequently accepted it as a source of legal obligations for OAS (Organisation of American States) member States.<sup>1</sup> The legal basis justifying the binding nature of the Declaration lies in the treaty obligation to respect and protect human rights enshrined in the OAS Charter, a general and broad obligation that the Declaration has arguably detailed. Nonetheless, as Jo Pasqualucci points out '[n]ot all American states, including the USA, agree with that conclusion.'<sup>2</sup>

Despite the subsequent codification of the Declaration obligations in a Convention on Human Rights, the binding value of the Declaration is of utmost importance in that it is opposable to those OAS States that have not acceded or ratified the American Convention.<sup>3</sup> The Declaration constitutes the standard by which the Commission assesses States' compliance with their human-rights obligations under the Charter. However, the Commission cannot refer a case to the Inter-American Court under the American Declaration.

<http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>

#### Article I: Right to life, liberty and personal security

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<sup>1</sup> See Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, IACtHR, Series A, no. 10, paras 34–45.

<sup>2</sup> J. Pasqualucci, 'The Americas' in International Human Rights Law, D. Moeckli, S. Shah, S. Sivakumaran (eds), (Oxford: OUP, 2010), p. 435.

<sup>3</sup> E.g. the American Convention has not been ratified by the USA, Canada, and some Caribbean nations.

Every human being has the right to life, liberty and the security of his person.

**Article IV: Right to freedom of investigation, opinion, expression and dissemination**

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

**Article V: Right to protection of honor, personal reputation, and private and family life**

Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

**Article IX: Right to inviolability of the home**

Every person has the right to the inviolability of his home.

**Article XVIII: Right to a fair trial.**

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

**Article XXIII: Right to property**

Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

**Article XXV: Right of protection from arbitrary arrest.**

No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

*Special Study on the Status of Investigations into the Murder of Journalists during the 1995–2005 Period for Reasons that may be Related to their Work in Journalism*, para. 31:

‘In the context of the American Declaration, the IACHR has maintained, regarding the obligation to investigate, that “...the state has a duty to maintain public order, and therefore it has an obligation to set the criminal law system into motion and to process the matter until the end. In other words, the obligation to investigate, prosecute and punish the persons liable for human rights violations is a non-delegable duty of the state.”’, citing Annual Report 1999, Report No. 86/99, Case No. 11.589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña and Pablo Morales, Republic of Cuba, September 29, 1999, par. 47.

## 1.2 AMERICAN CONVENTION ON HUMAN RIGHTS

The Convention was adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, on 22 November 1969, and entered into force in 1978. Not all OAS members have ratified/ acceded to the Convention. Currently, it only binds twenty-four States of the 35 OAS members.

<http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>

**Article 4: Right to Life**

Para. 1: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

**Article 5: Right to Humane Treatment**

Para. 1: Every person has the right to have his physical, mental and moral integrity respected.

Para. 2: No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

**Article 7: Right to Personal Liberty**

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfilment of duties of support.

**Article 11: Right to Privacy**

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13: Freedom of Thought and Expression**

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of

frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

### **Article 21: Right to Property**

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

### **Article 22: Freedom of Movement and Residence**

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.
9. The collective expulsion of aliens is prohibited.

Other relevant provisions:

### **Article 1: Obligation to Respect Rights**

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

### **Article 2: Domestic Legal Effects**

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

**Article 8: Right to a Fair Trial**

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
  - b. prior notification in detail to the accused of the charges against him;
  - c. adequate time and means for the preparation of his defence;
  - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f. the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g. the right not to be compelled to be a witness against himself or to plead guilty; and
  - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

**Article 25: Right to Judicial Protection**

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and
  - c. to ensure that the competent authorities shall enforce such remedies when granted.

**Article 27: Suspension of Guarantees**

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required

by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

### **Article 63**

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. 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.

### **1.3. INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE**

(Adopted at Cartagena de Indias, Colombia, on December 9, 1985, at the fifteenth regular session of the General Assembly)

<http://www.cidh.oas.org/Basicos/English/Basic9.Torture.htm>

### **1.4 INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS**

(Adopted at Belém do Pará, on June 9, 1994, at the twenty fourth regular session of the General Assembly)

<http://www.cidh.oas.org/Basicos/English/Basic11.Disappearance.htm>

### **1.5 INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN** (‘Convention of Belem do Para), adopted 1994, entered into force 1995.

<http://www.cidh.oas.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>

See the clarification of the Inter-American Court of Human Rights in *Perozo et al v. Venezuela*, Judgment of January 28, 2009, para. 295:

‘The Court deems it is necessary to clarify that not all human right violation committed against a woman implies necessarily a violation of the provisions established in the Convention of Belem do Pará. Even though female reporters have been attacked in the facts of this case, in all the situations, they were attacked together with their male colleagues. The representatives have neither demonstrated in what way the attacks were “especially address[ed] to women” nor have they explained the reasons why women turned into a special target “[due to their] gender”. What it has been demonstrated in this case is that the alleged victims had to face risky situations and on several occasions, they were physically and verbally attacked by private individuals, because of their jobs at the television station Globovisión and not because of other personal condition (supra para. 143, 150, 151 and 157 to 161). Hence, it has not been proven that the facts were based on the gender or sex of the alleged victims.’

## 2. RESOLUTIONS AND STUDIES REGARDING FREEDOM OF EXPRESSION

### 2.1 *Declaration of Principles on Freedom of Expression*

(Adopted in 24 October 2000, approved by the Inter-American Commission on Human Rights during its 108 regular session)

<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>  
[http://www.oas.org/dil/access\\_to\\_information\\_human\\_right\\_Declaration\\_of\\_Principles\\_on\\_Freedom\\_of\\_Expression.pdf](http://www.oas.org/dil/access_to_information_human_right_Declaration_of_Principles_on_Freedom_of_Expression.pdf)

#### Principle 9:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state **to prevent and investigate such occurrences, to punish** their perpetrators and to ensure that victims receive due compensation.

### 2.2 *Background and Interpretation of the Declaration of Principles on Freedom of Expression* (Washington, DC., October 2000)

<http://www.cidh.org/relatoria/showarticle.asp?artID=26&IID=1>

#### Interpretation of Principle 9:

Para. 38. ‘The Commission has asserted that **attacks on journalists** are intended to silence them, and therefore also constitute violations of society’s right to have **free access to information**. An independent and critical press is fundamental to ensuring respect for other liberties that form part of a democratic system of government and the rule of law.[51] In several Latin American democracies, public institutions responsible for **oversight of the conduct and functions of the authorities are weak**. The press in these countries has become the primary instrument for oversight and dissemination of information about government activities. In many cases, the press has informed public opinion about illegal, abusive

or corrupt actions by State agents. As a consequence, the press has been targeted for attacks and persecution.’

Case-law cited: note [51]: See IACHR, Report on the Situation of Human Rights in Mexico, OEA/Ser.L/V/II.100, Doc 7 rev.1, September 24, 1998, para. 649, p.142. and Case #11,739 Report N° 5/99, Hector Felix Miranda .

Para. 39. ‘The murder, abduction, intimidation and threatening of journalists, as well as the destruction of press materials, are carried out with two concrete aims. The first is to eliminate journalists investigating attacks, abuses, irregularities or illegal acts of any kind committed by public officials, organizations or private individuals in general. This is done to make sure that **the investigations are not completed or never receive the public debate they deserve**, or simply as a form of reprisal for the investigation itself. Secondly, such acts are used as an instrument of intimidation that sends an unmistakable message to all members of civil society engaged in investigating attacks, abuses, irregularities, or illicit acts of any kind. **This practice seeks to silence the press in its watchdog role**, or make it an accomplice to individuals or institutions engaged in abusive or illegal actions. Ultimately, the goal is to keep society from being informed about such occurrences, at any cost.’

Para. 40. ‘Under the American Convention on Human Rights and other international law instruments, **States have the obligation to effectively investigate** the events surrounding the murder of journalists and to punish the perpetrators. The Inter-American Court has maintained that the investigation:

Should make sense and be undertaken by the State as its **inherent legal duty**. It should not be merely a matter of private interest that relies on the initiative of victims and families to file suit or on private sources to submit evidence; rather, the authorities must effectively seek out the truth.[52]’

Case-law cited: note [52] Inter-American Court of Human Rights, Velázquez Rodríguez Case, Judgment of July 29, 1988, para. 177.

Para. 41. ‘The Inter-American Commission on Human Rights has asserted that a State’s **failure** to carry out an effective and thorough investigation of the murder of a journalist and to apply criminal sanctions against the material and intellectual authors is particularly **serious in terms of the impact this has on society**. This type of crime has an intimidating effect not just on journalists, but on all citizens, because it inspires fear of reporting attacks, abuses and illegal activities of any kind. This effect can only be **avoided by concerted government action to punish those responsible** for murdering journalists. In this way, States can send a strong, direct message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression.[53]’

Case-law cited: note [53] Inter-American Commission on Human Rights. Report N° 50/90, Case 11.739 (Mexico) OAS/Ser/L/V/II. Doc. 57, April 13, 1999.

See also:

Preparatory Committee: Working Group to Negotiate the Draft Declaration of San Pedro Sula: “*Toward a Culture of Non-Violence*”, OEA/Ser.P, AG/CP/GTD-1/09 rev. 5, 24 March 2009

<http://scm.oas.org/>

## ***2.1 The Inter–American Legal Framework regarding the Rights to Freedom of Expression***

OEA/Ser.L/V/II, CIDH/RELE/INF. 2/09 (Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights, 30 December 2009)

<http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf>  
<http://www.cidh.org/relatoria/showarticle.asp?artID=159&IID=1>

See ‘National incorporation of the Inter–American system in national legal systems’ (Part II, p. 85 [pdf page 96], para. 1):

‘The Office of the Special Rapporteur considers it very positive that the legislative branches, national courts and other national authorities of several countries have incorporated into their decisions the standards set by the Inter–American system for the protection of human rights on matters of freedom of expression. This domestic implementation process is one of the fundamental aims of the Inter–American system in its capacity as subsidiary guarantor of the human rights of all those who inhabit the region. As such, strengthening the capacity of national systems for the protection of human rights has always been a concern of the IACH and its Office of the Special Rapporteur. Likewise, familiarity with the judicial and legislative decisions of the region’s States has enabled the regional bodies for the protection of human rights to promote and enrich their own doctrines and case law.’

## ***2.2 Special Study on the Status of Investigations into the Murder of Journalists during the 1995–2005 Period for Reasons that may be Related to their Work in Journalism***

OEA/Ser. L/V/II. 131, Doc. 35 (Organisation of American States/ Inter–American Commission on Human Rights, Special Rapporteurship for Freedom of Expression, 8 March 2008)

<http://www.cidh.oas.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLE S.pdf>

See in particular Chapter III: Conclusions and Recommendations, pp. 63–66.

## **3. OTHER RELEVANT RESOLUTIONS AND STUDIES**

### ***3.1 IAHR Report on citizen security and human rights***

OEA/Ser.L/V/II. Doc. 57, 31 December 2009

<http://www.cidh.org/pdf%20files/SEGURIDAD%20CIUDADANA%202009%20ENG.pdf>  
<http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>

### ***3.2 “Commitment to public security in the Americas”***

Working document adopted at the seventh plenary session held on October 8, 2008 and revised by the Style Committee on October 28, 2008), OEA/Ser.K/XLIX. 1 MISPA/doc.7/08 rev. 4.

<http://www.oas.org/csh/english/I-MISPA.asp>

### ***2.5 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas***

(Approved by the Commission during its 131st regular period of sessions, held from March 3–14, 2008), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006

<http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>

### ***3.3 Report on the situation of human rights defenders in the Americas***

OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006

<http://www.cidh.oas.org/countryrep/Defenders/defenderstoc.htm>

### ***3.4 OAS General Assembly Resolution: Human Rights Defenders: Support for the Individuals, Groups, and Civil Society Organisations Working to Promote and Protect human rights in the Americas***

Adopted at the fourth plenary session, held on 10 June 2003, AG/RES. 1920 (XXXIII-O-03).

[http://www.oas.org/juridico/english/ga03/agres\\_1920.htm](http://www.oas.org/juridico/english/ga03/agres_1920.htm)

### ***3.5 OAS General Assembly Resolution: Human Rights Defenders: Support for the Individuals, Groups, and Civil Society Organisations Working to Promote and Protect human rights in the Americas***

Adopted at the fourth plenary session, held on 7 June 2005, AG/RES. 2067 (XXXV-O/05)

<http://olddoc.ishr.ch/hrdo/documents/OAS/2005.pdf>

### ***3.6 Report on Terrorism and Human Rights***

OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. 22 October 2002.

<http://www.cidh.oas.org/Terrorism/Eng/toc.htm>

## **B. CLARIFICATION OF THE SCOPE OF THE CONVENTION RIGHTS**

### **Article 4: Right to Life**

Source: IAHR *Report on citizen security and human rights*

Para. 107: ‘In conducting public policy on citizen security, member states can fail to comply with their obligations vis-à-vis protection of the right to

life basically in two types of situations: (1) when the State fails to adopt effective measures of **protection against the actions of private parties** who threaten or violate the right to life of persons subject to its jurisdiction; and (2) when its **security forces** use lethal force that is beyond internationally recognized boundaries. The Commission defined the scope of these obligations when it reiterated that

(...) Article 27 of the American Convention provides that the right to life is a non-derogable right. Accordingly, states may not, even in time of war, public danger, or other emergency that threatens its independence or security, take measures suspending the protection of the right to life. [citing IACHR, Report on Terrorism and Human Rights, paragraph 84]'

Para.108. 'It is the obligation of the States to reasonably **prevent, investigate, and punish** actions that implicate violations of the right to life, including those committed by State agents or individuals.' ...

Para. 109. '...Given its **positive obligations** to guarantee and protect human rights and as part of its public policy on citizen security, the State must design and put into **practice effective prevention plans** and programs whose objective is to stop the spread of violence and crime while making available all the resources needed to pursue the perpetrators of crime and hand them over to the judicial system, especially those suspected of violence against persons.'

Para. 112. 'States have the obligation to **identify, prosecute and punish** those responsible for violating the right to life due to the close link between the obligation to prevent investigate and punish and the obligation to make reparations for human rights violations. Accordingly, the member states should earmark the necessary budgetary resources to equip themselves with the human, technical and infrastructural resources necessary to have police and prosecutors who specialize in investigating crime. The shortages in this area have always been one of the **causes of impunity** and of the mistrust in the system of the administration of justice in the Hemisphere.'

### **Article 5: Right to Humane Treatment and Article 7: Right to Personal Liberty**

Source: IAHR *Report on citizen security and human rights*

Para. 125. 'Similarly, the State has an obligation to create effective mechanisms for **preventing and punishing acts of violence** whose victims are [not only] children and adolescents, both at home, in the school and in other spheres of social life where threats of this kind can occur.'

Para. 136. '...As explained above, States are not only responsible for the violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority. States can also be responsible for the conduct of private persons

### **Article 11: Right to Privacy**

Source: *Report on the situation of human rights defenders in the Americas*

Para. 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.

### **Article 13: Freedom of Thought and Expression**

Source: *Special Study on the Status of Investigations into the Murder of Journalists during the 1995–2005*

Para. 69 ‘In terms of the murder of journalists, the IACHR has come to similar conclusions, finding that **Article 13** of the American Convention is **violated** and therefore international responsibility on the part of the State is generated **when journalists are killed because of their professional activities**. It has held that this type of crime has a “chilling effect” on other journalists and citizens in general by instilling fear about denouncing attacks, abuses, and illegal acts of all kinds. A similar argument could be made with regard to Article IV of the American Declaration.’

Case-law cited: IACHR, Annual Report 1998, Report 50/99, Case 11.739, Héctor Félix Miranda, Mexico, April 13, 1999, par. 52; Annual Report 1999, Report 130/99, Case 11.740, Víctor Manuel Orepeza, Mexico, November 19, 1999, par. 58.

### **Article 1: Obligation to Respect Rights**

–Source: *Special Study on the Status of Investigations into the Murder of Journalists during the 1995–2005*

Para. 25. ‘...The Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) has indicated, since its earlier decisions, that:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the **action or omission of any public authority constitutes an act imputable to the State**, which assumes responsibility in the terms provided by the Convention.’

Case-law cited: Velásquez-Rodríguez, Merits, Judgment of July 29, 1988, Series C No. 4, par. 164, cited also by the Inter-American Court of Human Rights in the Case of the “Five Pensioners,” Judgment of February 28, 2003, Series C No. 98, par. 163; Case of the Mayagna (Sumo) Awas Tingni Community, Judgment of August 31, 2001.

–Source: *IAHR Report on citizen security and human rights*

Para. 37. ‘...The Commission and the Court have repeatedly examined the scope of this provision [Article 1] to determine what is meant by positive obligations in the realm of human rights. The Court, specifically, has established precedent to the effect that

[P]rotection of the law consists, fundamentally, of the remedies the law provides for the protection of the rights guaranteed by the Convention. The obligation to respect and guarantee such rights, which Article 1(1) imposes on the States Parties, implies, as the Court has already stated, the duty of **the States Parties to organize the governmental apparatus** and, in general, all the

structures through which public power is exercised, so that they are capable of juridically **ensuring the free and full enjoyment of human rights.**'

Case-law cited: I/A Court H.R., Velásquez Rodríguez v. Honduras Case. Judgment of July 29, 1988. Series C No. 4, paragraph 166; and Godínez Cruz v. Honduras Case. Judgment of January 20, 1989. Series C No. 5, paragraph 175.

–Source: *Special Study on the Status of Investigations into the Murder of Journalists during the 1995–2005 Period for Reasons that may be Related to their Work in Journalism,*

Para. 50. '...The Inter-American Court has indicated, in this regard, that: Compliance with **Article 4, in relation to Article 1.1** of the American Convention, **not only** presupposes that no person may be arbitrarily deprived of life (**negative obligation**), **but** also requires that the States take all appropriate measures to protect and preserve the right to life (**positive obligation**), as part of their duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction.'

Case-law cited: Inter-American Court, Case of Zambrano-Vélez et al., Judgment of July 4, 2007, Series C No. 166, par. 80 and 81

–Source: *IAHR Report on citizen security and human rights*

Para. 40 '...The Court has recognized that

Said international responsibility may also be generated by **acts of private individuals** not attributable in principle to the State. The States Party to the Convention have erga omnes obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as **it is also reflected in the positive obligation** of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. **The State may be found responsible for acts by private individuals** in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these erga omnes **obligations embodied in Articles 1(1) and 2** of the Convention.'

Case-law cited: I/A Court of H.R., "Mapiripán Massacre" v. Colombia Case. Judgment of September 15, 2005. Series C No. 134, paragraphs 111 and 112; Moiwana Community v. Suriname Case. Judgment of June 15, 2005. Series C No. 124, paragraph 211; Gómez Paquiyauri Brothers v. Peru Case. Judgment of July 8, 2004. Series C No. 110, paragraph 91; 19 Merchants v. Colombia Case. Judgment of July 5, 2004. Series C No. 109, paragraph 183; Maritza Urrutia v. Guatemala Case. Judgment of November 27, 2003. Series C No. 103, paragraph 71; Bulacio v. Argentina Case. Judgment of September 18, 2003. Series C No. 100, paragraph 111.

### **The duty to investigate**

–Source: *IAHR Report on citizen security and human rights*

Para. 45. ‘The obligation of States **to investigate** cases of violations of these rights arises from this general obligation to guarantee the rights established in **Article 1(1)** of the Convention, **together with the substantive right** that must be protected or ensured and the due process and judicial protection guarantees set forth in **Articles 8 and 25.**’

Case-law cited: I/A Court H.R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 142; *Heliodoro-Portugal v. Panama Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 115; and *Perozo et al. v. Venezuela Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 298.

–Source: *Report on the situation of human rights defenders in the Americas*

Para 108: ‘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 defencelessness of victims and their relatives.

Case-law cited: I/A Court H.R., *Loayza Tamayo Case*, Reparations Judgment, para. 168 y 170.

–Source: *Study on the Status of Investigations into the Murder of Journalists during the 1995–2005 Period*

Para. 51 ‘The Court has indicated, in this regard, that “one of the conditions to effectively **ensure the right to life** is necessarily reflected in the **duty to investigate** abridgments of said rights. Thus, the obligation to investigate cases of violation of the right to life, are a key aspect of establishment of the responsibility of the State in the instant case.” This obligation derives from the general obligation established in **Article 1.1** of the Convention, **in conjunction with the substantive law** that should have been safeguarded, protected, or guaranteed.’

Case-law cited: *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, par. 137

## C. MONITORING SYSTEM

### 1. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IAHR)

The Commission examines individual petitions regarding alleged violations of the rights guaranteed in the American Convention. According to Article 44 of the Convention, any person or group of person or any non-governmental entity may lodge a petition with the Commission regardless of whether the applicant is a victim. The Commission may refer cases to the Court where its recommendations have not been followed.

The Commission also undertakes studies and reports (e.g. thematic or country studies), on-site visits, and proposes measures (including precautionary ones).

<http://www.cidh.oas.org/DefaultE.htm>

The Commission is also assisted by a Rapporteur on Freedom of Expression.

## 2. INTER-AMERICAN COURT OF HUMAN RIGHTS (IACtHR)

It adjudicates contentious cases, issues advisory opinions and can order states to take provisional measures where a grave or imminent danger is involved in an individual's circumstances. It can also order reparations when a violation of a human right has been found.

It is within the function of the Court to give also advisory opinions when a OSA organ or member state so requests.

[www.corteidh.or.cr](http://www.corteidh.or.cr)

There are however problems of compliance. Jo Pasqualucci noted: 'The Inter-American human rights system has made significant progress in improving the human rights situations in the Americas, although there are many improvements still to be made. ...In response to Court-ordered reparations, states have paid financial compensation to the victims in 81 per cent of the cases, amended or repealed national laws, and held that self-amnesty laws are without legal effect. In these respects, at least, the Inter-American human rights system is proving effective. The problem of impunity for human rights violations is still to be conquered. States, in general, have not complied with Court orders to investigate the violations and prosecute and punish the offenders.'<sup>4</sup>

## 3. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

The office collaborates with and receives information from (and gives information to) various organisations, civil society groups and journalists monitoring or reporting on issues regarding freedom of expression. It undertakes advisory studies, prepares thematic and annual reports, makes recommendations, issues press releases. It assists the Commission in its work (e.g. by analysing complaints, requesting information from the government, mediating to achieve friendly settlements).

<http://www.cidh.org/relatoria/index.asp?IID=1>

## D. RELEVANT CASE-LAW

- ***Perozo et al v. Venezuela, Judgment of 28 January 2009***

The case concerns allegations of harassment, physical and verbal assault, as well as hindrance to broadcast, committed by State agents and private individuals against journalists and supporting staff over a period of four years.

Held: violation of Articles 1(1) in relation to 5(1) and 13(1)

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<sup>4</sup> J. Pasqualucci, 'The Americas' in International Human Rights Law, D. Moeckli, S. Shah, S. Sivakumaran (eds), (Oxford: OUP, 2010), pp. 451-452.

- ***Plan de Sánchez Massacre v. Guatemala, Judgment of 29 April 2004***

The case concerns alleged denial of justice and other acts of intimidation and discrimination against the survivors and the next of kin of the victims of the massacre of 268 persons. The Commission pointed out that there was a situation of impunity regarding the massacre, and that the state had not conducted a serious and effective investigation to establish the facts, try and punish those responsible, neither it redressed the consequences of these incidents.

Held: violation of Articles 5(1), (2), 8(1), 11, 12(2), (3), 13(2)(a), (5), 16(1), 21(1), (2), 24, 25 and 1(1).

- ***“White Van” (Paniagua–Morales et al.) v. Guatemala, Judgment of March 8 1998***

The case concerns acts of abduction, arbitrary detention, inhuman treatment, torture and murder committed by agents of the State of Guatemala against eleven victims during 1987 and 1988.

Held: Violation of Articles 1(1) in relation to 4(1), 5(1), 5(2), 7, 8(1) and 25 of the American Convention on Human Rights, as well as Articles 1, 6 and 8 of the Inter–American Convention to Prevent and Punish Torture.

- ***Velásquez Rodríguez v. Honduras, Judgment of 29 July 1988***

The case concerns the detention and possible disappearance of a student, Angel Manfredo Velásquez Rodríguez, in the Republic of Honduras.

Held: violation of Article 1(1) in relation to Articles 4, 5, 7.

- **IAHR Case 10.548, Report N° 38/97, Peru, Hugo Bustios Saavedra, October 16, 1997.**

The case concerns the murder of the journalist Hugo Bustíos Saavedra allegedly by members of the Peruvian military patrol while he and another journalist were investigating two murders.

The Commission found that the state was responsible for violating Article 13 of the Convention, as well as Articles 4, 5, and 25 of the Convention and common Article 3 of the Geneva Conventions. It maintained that the murder of Mr. Bustíos and the injury to Mr. Rojas interfered with their right to conduct their journalistic activities and intimidated other journalists from reporting on issues related to the armed conflict.

## **E. PRECAUTIONARY MEASURES GRANTED BY THE INTER–AMERICAN COMMISSION DURING 2010**

Article 25 of IACHR’s rules of procedures:

... in serious and urgent cases, and wherever 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.

Categories of individuals identified in these communications whose physical integrity is threatened:

- i) journalists
- ii) Human Rights defenders
- iii) members of the judiciary
- iv) members of an non–governmental organisation
- v) ordinary members of the public (e.g. women)
- vi) academics

The following are the original texts of the IACHR' communications.

**PM 254–10 – Leiderman Ortiz Berrio, Colombia**

On August 20, 2010, the IACHR granted precautionary measures for Leiderman Ortiz Berrio, in Colombia. The request for precautionary measures indicated that the **journalist** Leiderman Ortiz Berrio has been the victim of a series of attacks in recent months, purportedly because of his reporting on illegal gangs. It added that the last attempt on his life took place on May 20, 2010, with the explosion of a grenade in his house in the municipality of Cauca, in Colombia's department of Antioquia. According to the information received, to date the authorities have not provided protection arrangements for Ortiz Berrio. The Inter–American Commission requested that the State of Colombia adopt the necessary measures to guarantee the life and personal integrity of Leiderman Ortiz Berrio, that it reach agreement with the beneficiary and his representatives on the measures to be adopted, and that it inform the Commission about the steps taken to prevent new acts of violence or intimidation against the beneficiary.

**PM 196–09, Amplification – Journalists from Radio Progreso, Honduras**

On June 2, 2010, the IACHR expanded Precautionary Measure PM 196–09 for Karla Patricia Rivas Sánchez, José Pablo Peraza Chávez, Rita Suyapa Santamaría Velásquez, Alfredo Bográn, Iolany Mariela Pérez Parada, Rommel Alexander Gómez, Lesly Castro, José Domingo Miranda, Héctor Hernández, Víctor Emilio Borjas, Leticia Castellanos, and Pablo Ordóñez, in Honduras. The request for precautionary measures alleges that these **journalists**, who work at Radio Progreso, have been tailed by vehicles, and that unknown individuals have been keeping the entrance of the radio station under surveillance. The Inter–American Commission asked the State to adopt the necessary precautionary measures to guarantee the life and personal integrity of the journalists who are beneficiaries of this measure; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; to inform the Commission about the steps taken to investigate the events that led to the adoption of these measures; and to inform the IACHR on the implementation of the precautionary measures granted.

**PM 196–09, Amplification – Inner Genaro Chávez and Lucy Mendoza, Honduras**

On May 3, 2010, the IACHR expanded Precautionary Measure PM 196–09 for Inner Genaro Chávez and Lucy Mendoza, in Honduras. The request for **precautionary** measures alleges that journalist Inner Genaro Chávez, who works at Radio Progreso, has received death threats, including a text message sent to his cell phone that said, “Resistance we are eliminating the chebes next come the priests,” after **journalist** Luiz Chávez and his cousin Alberto Chávez were killed on April 11, 2010. The request also alleges that the lawyer and **human rights defender** Lucy Mendoza, who has been supporting Radio Progreso journalists in criminal proceedings, has also received death threats. The Inter–American Commission asked that the State adopt the necessary measures to guarantee the life and personal integrity of Inner Genaro Chávez and Lucy Mendoza, that agreement be reached with the beneficiaries and their representatives on the measures to be adopted, and that the Commission be informed

on the steps taken to investigate the facts that led to the adoption of these measures.

**PM 36–10 – Rodrigo Callejas Bedoya and Family, Colombia**

On April 12, 2010, the IACHR granted precautionary measures for Rodrigo Callejas Bedoya and his family, in Colombia. The request for precautionary measures alleges that Rodrigo Callejas Bedoya has subject to threats and harassment, allegedly because of his work as an independent **journalist**; as a result, his life and personal integrity, as well as that of his family, are at risk. The Inter–American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and physical integrity of journalist Rodrigo Callejas Bedoya and his family; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

**PM 157–09 – Yesid Ramírez Bastidas, Colombia**

On September 13, 2010, the IACHR granted precautionary measures for Yesid Ramírez Bastidas, in Colombia. The request for precautionary measures alleges that Yesid Ramírez Bastidas has been subject to illegal telephone interceptions and intelligence activities on the part of agents of the Administrative Department of Security (DAS). The request and additional information provided by the applicants further indicate that neither Yesid Ramírez Bastidas nor his family were guaranteed a security plan following his term as a **magistrate**, which ends on September 30, 2010. The Inter–American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of Yesid Ramírez Bastidas, reach agreement with the beneficiary on the measures to be adopted, and inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

**PM 99–10 – Tránsito Jurado, María Eugenia González, and Members of the Corporación Sisma Mujer, Colombia**

On April 8, 2010, the IACHR granted precautionary measures for Tránsito Jurado, María Eugenia González, her minor children, and the members of the Corporación Sisma Mujer, in Colombia. The request for precautionary measures alleges that Sisma Mujer and two women who participate in a program coordinated by that **organization** have been subject to threats, harassment, and one act of violence, allegedly as a result of their work defending the **rights of women in a situation of displacement**. The request indicates that Ms. González began to receive intimidating telephone calls and to be the target of acts of harassment, starting in September 2009; that on December 4, 2009, an unknown individual approached her on the street and told her to leave Cali with her family; and that eight days later, her son, Jonathan Gómez, was murdered. The request adds that Ms. Jurado has also received death **threats**, and that on January 27, 2010, Sisma Mujer received an e–mail signed by the "Bloque Metropolitano de las Águilas Negras" [Metropolitan Bloc of the Black Eagles], in which the organization was declared a "military target." The request indicates that Sisma Mujer reported the aforementioned acts and met with the competent authorities, but alleges that the necessary protection measures have not been implemented to date. The Inter–American Commission asked the State of Colombia to adopt the necessary measures

to guarantee the life and personal integrity of María Eugenia González, her minor children, Tránsito Jurado, and the members of the Corporación Sisma Mujer; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

#### **PM 1–10 – Fourteen Women in a Situation of Displacement, Colombia**

On March 25, 2010, the IACHR granted precautionary measures for 14 women in a situation of displacement in Colombia, whose identity the IACHR is withholding because some of them have suffered sexual violence. The request for precautionary measures alleges that the 14 women are leaders of the displaced community in Bogotá and that as a result of these activities, they have been victims of sexual violence, physical attacks, threats, acts of harassment, and a violent home raid. The request indicates that the beneficiaries met with the Director of the Presidential Human Rights Program on December 22, 2009, and it was agreed that security measures would be taken, but that the agreement had not been implemented to date. It adds that in the time that has passed since that meeting, one of the beneficiaries has suffered an act of sexual violence, and there have been two acts of aggression and one death threat. The Inter-American Commission asked the State of Colombia to adopt the necessary **measures to guarantee the life and physical integrity of the 14 women; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.**

On May 6, 2010, the IACHR expanded the PM 1–10 precautionary measures for Ana María Perea Incel. According to the information sent by the petitioners, Ms. Perea Incel is a member of the Association of Afro Women for Peace and a participant in talks with the government of Colombia on the issue of the rights of the displaced population. It is alleged that on two occasions since December 2009, Ms. Perea Incel was approached in cars by unknown individuals who threatened her with violent acts if she does not leave her work with the Association.

#### **PM 14–10 – X and XX, Mexico**

On March 3, 2010, the IACHR granted precautionary measures for two persons in Mexico whose identity the Commission will withhold because one of the them alleges having been the object of **sexual abuse**. The request for precautionary measures indicates that the beneficiaries have been subject to threats and **harassment** since the release of X, who had reportedly been kidnapped on July 6, 2009, in the city of Acapulco, in the state of Guerrero. During the 10 days she was held, she was allegedly drugged, raped, tortured, and kept in chains. The request for precautionary measures alleges that agents of the Ministerial Police were involved in the kidnapping, a connection made because XX had previously reported alleged unlawful actions on the part of State officials. At the time of her release, the kidnappers allegedly threatened to kill her if she reported what had happened. The request indicates that X and her mother, XX, filed a complaint with the Public Ministry and with the Attorney General's Office of the state of Guerrero, where they also requested personal protection measures, but they apparently received no response. The Inter-American Commission asked the State to adopt the necessary measures to guarantee

the life and personal integrity of X and XX; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the precautionary measures, in order to remove the factors placing the beneficiaries at risk.

**PM 12–09 – Community of Alto Guayabal–Coredcito of the Emberá People, Colombia**

On February 25, 2010, the IACHR granted precautionary measures for 87 families of the Emberá People’s Community of Alto Guayabal–Coredcito—declared “So Bia Drua,” a humanitarian area of the Uradá Jiguamiandó Indigenous Reserve—in the municipality of Carmen del Darién, department of Chocó, Colombia. The request for precautionary measure alleges that this community has been subject to acts of violence that placed their lives and personal integrity at risk. It is alleged, among other facts, that on January 30, 2010, **two helicopters and a plane belonging to the armed forces carried out a machine-gun attack and bombing** 300 meters from the community’s main settlement, hitting the house of a family where there were three adults and two children, who were wounded. The request indicates, for example, that Mr. José Nerito Rubiano Bariquí was wounded in the thorax with a firearm, as a result of which he broke his spinal column and was left paraplegic. According to the applicants seeking the measures, the military presence in the area is related to the resumption of mining activity. The Inter–American Commission requested that the State of Colombia adopt the measures necessary to protect the life and personal integrity of 87 families of the Community of Alto Guayabal–Coredcito; that it come to an agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission on actions taken to investigate the events that led to the adoption of precautionary measures so as to remove the risk factors for the beneficiaries.

**PM 18–10 – Indyra Mendoza Aguilar et al., Republic of Honduras**

On January 29, 2010, the IACHR granted precautionary measures for Indyra Mendoza Aguilar, Nohelia Flores Álvarez (Noel Eduardo Flores Álvarez), Fátima Maritza Ulloa Becerra, and Ana Lourdes Ordóñez, in Honduras. Indyra Mendoza Aguilar is the director of Cattrachas, **a nongovernmental organization that works for the rights of the lesbian, gay, bisexual, transgender, and intersex (LBGTI) community.** The request for precautionary measures alleges that on December 17, 2008, in Tegucigalpa, Nohelia Flores Álvarez (Noel Eduardo), who belongs to Cattrachas, was forced to get into a vehicle of a member of the Preventive Police, who demanded sexual services at gunpoint. The request indicates that Nohelia Flores Álvarez refused, and the police officer threatened his life. It goes on to say that the next day, the policeman returned with two other men in a pickup truck and the three of them stabbed him a total of 17 times, in his throat, back, stomach, and arms. After he passed out, the men abandoned him in some bushes. In the hospital, Indyra Mendoza took photos that could serve as evidence in a trial and accompanied him in the process of filing the complaint, which is being investigated by Fátima Maritza Ulloa Becerra and Ana Lourdes Ordóñez, agents of the National Office of Criminal Investigation in Tegucigalpa. The request for precautionary measures alleges that the four beneficiaries are the object of threats and acts of harassment that place their lives

and personal integrity at risk. The Commission requested that the State of Honduras adopt the necessary measures to guarantee the life and personal integrity of Indyra Mendoza Aguilar, Nohelia Flores Álvarez (Noel Eduardo Flores Álvarez), Fátima Maritza Ulloa Becerra, and Ana Lourdes Ordóñez; that it come to an agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission about the actions taken with respect to the events that led to the adoption of the precautionary measures, so as to remove the factors placing the beneficiaries at risk.

#### **PM 196/09, Amplification – Gilberto Vides and his immediate family, Honduras**

On January 22, 2010, the IACHR expanded Precautionary Measure PM 196–09 for Gilberto Vides and his immediate family. The request for precautionary measures alleges that on January 7, 2010, **Professor Gilberto Vides, of the National School of Fine Arts**, was approached by two armed men when he was returning from a resistance march. It indicates that they shot at the windshield and back window of his car and then fled. It also alleges that his home was under surveillance on January 8 and 9, 2010. The Inter–American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of Gilberto Vides and his wife and daughter; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the these measures.

e) other similar issues

#### **PM 209–09 – Franklin José Brito Rodríguez, Venezuela**

On January 11, 2010, the IACHR granted precautionary measures for Franklin José Brito Rodríguez, Venezuela. The request for precautionary measure alleges that in the early morning hours of December 13, 2009, agents of the Metropolitan Police of Caracas moved Franklin José Brito, who had been carrying out **a hunger strike** in front of the OAS office in Caracas, to the Military Hospital. Mr. Brito alleges that he is being unlawfully deprived of his personal liberty, as he is being held in the facility against his will. It is alleged that he was transferred to the Military Hospital in response to an amparo action filed by the Public Ministry on the grounds of safeguarding his life. However, the request argues that the amparo is arbitrary, since it does not meet any of the assumptions established in the law for an amparo action. The Commission was also informed that as of January 6, 2010, Mr. Brito was still in the Military Hospital without having access to a medical doctor he trusted. Finally, the Commission was informed that on January 9, 2010, State officials allegedly sedated him against his will and transferred him again, telling his daughter that they were taking him for intensive therapy. The Inter–American Commission asked the State of Venezuela to adopt the measures necessary to permit access, treatment, and monitoring of Mr. Brito’s health situation by a doctor he trusts, and to ensure that Mr. Franklin Brito can receive regular visits. The IACHR also requested that the State inform the Commission within a 10–day period on the adoption of precautionary measures and update that information on a regular basis.