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### Inter-American System

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### III INTER-AMERICAN SYSTEM

DIEGO RODRÍGUEZ-PINZÓN\*

As usual, in this Chapter we report on the latest news of the work of both the Inter-American Commission on Human Rights (hereinafter 'Commission' or 'IACHR') and the Inter-American Court on Human Rights (hereinafter 'Court'). In this issue we are reporting on the work of the Commission.

#### 1. COMMISSION SESSIONS

The Commission's work is mainly carried out through its periodic sessions. The reported activities of each session constitute an important indication of what the most relevant issues in the human rights agenda of the hemisphere are. The Commission held two sessions after the General Assembly of the Organization of American States (hereinafter 'OAS').

##### 1.1. 128<sup>th</sup> SESSION OF THE COMMISSION

During these sessions, the Commission dealt with some thematic and country specific situations. Several non-governmental organisations (NGOs) as well as representatives of the Bolivian Government presented information on the progress and challenges in the clarification and reparation of the forced disappearances that occurred during the military dictatorships in Bolivia between 1964 and 1982. A coalition of Central American organisations and other NGOs presented a regional report denouncing human rights violations of women who work as seamstresses in the clothing manufacturing plants in Honduras, Guatemala, El Salvador and Nicaragua.

The Commission received reports about the general human rights situation in Colombia, and specifically with the situation of children and youth who have ties to the internal armed conflict. The Commission also received information on the activities of Colombia's National Commission on Reparations and Reconciliation,

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presented by the president of that commission, Dr Eduardo Pizarro, during a hearing sought by the government.

Regarding Cuba, the Commission held a hearing regarding the serious limitations that hamper the exercise of union freedom in Cuba and specifically regarding the arbitrary trial of the independent union members who have been sentenced to prison terms ranging from 20 to 25 years for expressing their opinion against the government. The hearings also dealt with the critical prison conditions resulting in serious and grave health conditions of the union members deprived of liberty, without the State offering them medical attention.

The Commission also held hearings related with threats and killings of journalists and other institutional practices that seriously affect freedom of expression in Mexico, and the situation of women in the city of Chihuahua. The presenters argued the existence of a pattern of impunity, because the State focused on Ciudad Juárez, ignoring the situation in Chihuahua and therefore has not diligently addressed the situation in the city of Chihuahua, thereby allowing the violence and impunity related to these crimes to continue. The Commission reported that a visit is being planned for the beginning of 2008 which will include the Rapporteur on the Rights of Women. Furthermore, the Special Rapporteur for Freedom of Expression reported that he will conduct a working visit to Mexico in the coming months.

Other hearings dealt with the following issues: concessions for access and usage of radio-electric frequencies in the Americas; the threats against members of the Judiciary in El Salvador and its impact in independence and impartiality of the Courts, and due process in general; the implementation of the National Plan of Action on Human Rights in Guatemala and Peru; the human rights situation in Haiti, especially the situation of violence in the town of Gonaives, related to the role of security forces and the judiciary to prevent such acts of violence, and the prison conditions and security related with the existing situation of violence; obstacles for the implementation of precautionary measures of the Commission in Honduras, and problems with independence of the judiciary in that country; sexual violence against women in the context of the internal armed conflict in Peru and the need to bring to justice those responsible; the situation of Afro-Brazilian women specifically related with the discrimination experienced by black women in Brazil; and the situation of freedom of expression in Venezuela.

Additionally, the Commission developed several activities through its thematic Rapporteurs on a variety of issues, including: a visit to Colombia by Commissioner Clare K. Roberts, Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination; a visit, among others, to Peru and Brazil by Commissioner Victor Abramovich, Rapporteur on the Rights of Women; Commissioner Paolo Carozza, Rapporteur on the Rights of Indigenous Peoples, continues to work of the Draft Declaration on the Rights of Indigenous Peoples; a visit to Haiti by Commissioner

Florentín Meléndez, Rapporteur on the Rights of Persons Deprived of Liberty; a visit to El Salvador by Mr Ignacio Alvarez, Special Rapporteur for Freedom of Expression.

It is to be noted that Rapporteur mandates of Commissioner Freddy Gutierrez from Venezuela were taken away by Commission's Resolution 03/07, approved by the Commission on 17 July 2007. This is the first time the Commission adopts such a drastic measure against one of its members. The Resolution, drafted in very serious terms indicated that

Commissioner Freddy Gutiérrez Trejo has made numerous public statements regarding the functions and mandates of the Commission in matters and pending cases concerning his country of nationality; has repeatedly abused his position as Rapporteur in order to attack the institutional integrity and impartiality of the IACHR and its members; and has made false statements regarding matters and pending cases before the Commission.

## 1.2. 129<sup>th</sup> SESSION OF THE COMMISSION

This session took place in Asunción, Paraguay, following its recent practice to hold the meetings not only in Washington DC, where the Commission is based, but in several countries of the region. The Commission held several public hearings. In the first, the Inter-American Control Observatory of Migrations presented information during a hearing on the human rights of migrant workers, refugees and displaced persons in the Americas, reporting that one immigrant dies every three minutes in the Americas from causes related to xenophobia and discrimination; in the second, the Observatory of Indigenous Peoples' Rights presented information during a hearing on the right to water and the indigenous peoples of the Andean region. The petitioners noted that the sale of water rights to companies, mainly mining concerns, has dried up some river beds and contaminated others. Finally, a hearing was held in which Diego Portales University of Chile presented a report on the situation of human rights in that country.

Before the opening of the sessions, the Rapporteur for Paraguay and Rapporteur on the Rights of Indigenous Peoples, Commissioner Paolo Carozza, conducted a two-day visit during which he met with government authorities, civil society organisations and indigenous communities, and held working meetings on pending petitions and cases.

## 2. INDIVIDUAL CASES IN THE COMMISSION'S PROCEEDINGS

The Commission continues to be very active in the processing of individual cases. The Commission adopted 23 reports on admissibility, 7 on inadmissibility, 4 on the merits, 2 on friendly settlements and 8 cases that were ordered closed.

In its 128<sup>th</sup> session, the Commission held hearings related to individual cases and petitions and precautionary measures. It heard the position of the parties as to the admissibility of Petition 1121-04 – *Rogelio Jiménez López et al. vs Mexico*, that refers to the disappearances of Minerva Guadalupe Pérez Torres, Nicolás Mayo Gutiérrez Peñate and Mateo Arco Guzmán, and the executions of Rogelio Jiménez López, Domingo Vásquez Avedaño, Sebastián Pérez López and Héctor Pérez Torres, between 1995 and 1997. The Commission also held an admissibility hearing in Petition 828-01 – *Oscar Gorigoitia et al. vs Argentina*, a series of complaints that questions the compatibility of Argentina's appeals process with Article 8(2) of the American Convention on Human Rights.

The Commission also held hearings in: 1) Case 12.582 – *Mohamad Capote, Andrés Trujillo et al. vs Venezuela*. The subject of the case is both the occurrence and the alleged lack of diligent investigation into the death of seven individuals (Jesús Mohamad Capote, Jhonny Palencia, Jesús Orlando Arellano, Juan David Querales, José Antonio Gamillo, Orlando Rojas and Víctor Reinoso), and the injuries caused to another five (Andrés Trujillo, Jean Carlos Serrano, Fernando Joel Sánchez, Elías Belmonte Torres and José Antonio Dávila Uzcátegui) during the marches and demonstrations that took place on 11 April 2002, and that preceded the attempted *coup d'état* that occurred on that same date. During the hearing, the Commissioners heard the positions of the parties, closed consideration of the friendly settlement phase and prepared to proceed to the merits stage of the case; and 2) Case 12.518 – *José Rubén Rivera vs El Salvador*. The parties in the case presented arguments on the merits in this case involving the 1983 disappearance of José Rubén Rivera, then three years of age, during a military operation in the Department of San Vicente.

The Commission also held follow up hearings regarding the precautionary measures order for persons detained in Guantánamo. The petitioners indicated that detention conditions continue to involve situations of prolonged confinement, sensory isolation, forced feeding, intimidation, religious harassment and other poor treatment. They also argued that standards under the 2006 Military Commissions Act prohibited the due exercise of the *habeas corpus* remedy before federal courts on the part of individuals who do not enjoy United States citizenship and who have been classified as 'illegal enemy combatants'. The standards also reestablish military commissions for putting these individuals on trial, similar to the military commissions which were vacated by the decision adopted by the Supreme Court on 29 June 2006, in the case of *Hamdan vs Rumsfeld*. They also alleged that the new Military Commissions Act would grant retroactive immunity for State officials who might have practiced abusive interrogation tactics. The State representatives present at the hearing limited their participation to reiterating the United States' general support of the IACHR's work, as well as the objections about the alleged lack of IACHR jurisdiction to issue precautionary measures in situations of imminent, irreparable harm for individuals under the jurisdiction of the United States and therefore abstained from providing

substantive information on the issues discussed during the hearing. Commission's President formally petitioned the US Department of State requesting consent for the IACHR to visit the installations at that detention centre. Additionally, during the hearing the Commission President reiterated the call made in Resolution No. 1/06 of July 2006, in which the IACHR urged the government of the United States to close that detention center without delay.

The Commission also held a follow-up hearing to recommendations made in IACHR Report 29/92, which established the incompatibility of Uruguay's Law of Expiration of the Punitive Power of the State with the American Convention on Human Rights. Uruguay's Institute for Legal and Social Studies, the petitioner, requested that the State provide information on the criteria used by the executive branch to determine which cases related to human rights violations perpetrated during the military dictatorship (1973–1985) are opened for investigation and which are ordered closed, and whether the government has plans to repeal the law.

The following is a brief summary of four cases recently reported by the Commission.

#### 2.1. ADMISSIBILITY CASE: *JACOBO ARBENZ GUZMAN ET AL.* *VS GUATEMALA* (REPORT NO. 27/06, PETITION 569-99)

The Commission found that the case was admissible and it has jurisdiction in regards to petitioners' claims of violations of their rights under Articles 8 (fair trial), 21 (private property), 24 (equal protection before the law) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter 'American Convention').

Petitioner was elected President of Guatemala in 1951 and remained in office until 1954 when he was overthrown by a military coup led by Col. Carlos Castillo Armas. Armas' government confiscated petitioner's property pursuant to two decrees. The first was Decree 2 of July 1954, which ordered the seizure of property, freezing of all deposits, creditors claims, securities and current accounts of petitioner as well as other individuals identified by the Armas government. And secondly, Decree 68 of August 1954, which awarded the State, in the form of damages, all securities, shares, claims, assets, and goods of any sorts, with no exceptions, that were in any form, under the control, possession, holding of former officials and employees listed in Decree 2. Among the assets confiscated was petitioners farmland.

During his lifetime petitioner demanded the return of his property in domestic proceedings but was routinely denied. After his death in 1971, his widow, Mrs Maria Cristina Vilanova Castro continued to seek compensation for their losses and return of their property from the Guatemalan Government. In May 1995, she filed suit before the Constitutional Court of Guatemala arguing that both Decree 2 and 68 of 1954 were unconstitutional. The court declared that Article 1 of Decree 2 and Article 1 of Decree 68 were both unconstitutional and that they would become null

and void after the publication of the courts ruling, which was published 4 October 1996. Subsequently, the Attorney General suggested that the legislature should address the aspects of Mrs Castro's claim by means of a decree, and on 24 June 1997, six deputies of the National Congress introduced a bill to recognise the liability of the Guatemalan State and to compensate the heirs of President Arbenz for damages incurred as a result of the taking of his farm and other assets. However, this bill did not pass. So, in April 2002, Mrs Castro requested that the then President, Alfonso Portillo Cabrera, open an administrative file and admit her request for administrative process of compensatory payment incurred in the unconstitutional expropriation of the property of her husband. On 5 July 2002, Cabrera referred the file to the Office of the Attorney General. In January 2003, the Attorney General recommended to Mrs Castro that a commission should be established to determine the appropriate administrative procedure to establish to whom the payment of damages should be made and the most appropriate and fair way of establishing the amount to be paid. In May 2004, Mrs Castro submitted a written request to the Attorney General that such a commission should be established, to which she did not receive a response.

The State now argued that the present claim is inadmissible because the President did not have the authority to grant compensation, and as such Mrs Castro should have exhausted the other legal remedies available to her, namely: initiated a process to determine civil liability of public officials and employees; file suite to reclaim property in an ordinary proceeding at the domestic level; and bring the respective petition before the Congress so that they can determine relevant compensation.

The State also argued that the Commission lacked competence *ratione temporis*, because the claims set forth in the petition occurred in 1954, prior to the entry into force of the American Convention (Guatemala has only been party of the American Convention since 25 May 1978, and accepted the adversarial competence of the Court on 9 March 1987). Finally, the State argued that the claim is inadmissible because the petitioner failed to clearly establish violations of human rights enshrined in the American Convention.

The Commission found that it has competence *ratione personae* because since 1978 the State has been a party to the Convention, and therefore it has undertaken to respect and ensure the rights enumerated in the Convention. The Commission also found it has competence *ratione loci* inasmuch as the petition alleges violations of rights enumerated in the Convention which allegedly occurred within the territory of a State party. The Commission finds it has competence *ratione temporis* because the consequences of the confiscation of property have remained constant over time (continuous violation), and because the Guatemalan Constitutional Court issued a ruling nullifying the decrees in 1996, at which time the Convention was in force in Guatemala. Finally, the Commission finds it has competence *ratione materiae* given the violations claimed in the petitions are violations of human rights protected by the American Convention.

The Commission examined the exhaustion of remedies and found that the exception set forth in Article 46(2) of the American Convention, which provides an exception to exhaustion of local remedies when domestic legislation of the State concerned does not afford due process of law for the protection of the right(s) that have allegedly been violated, applies in this case.

The Commission also found that the normal timeframe (within six months after final judgement) for filing a petition with the Commission does not apply to cases where an exception to the exhaustion requirement has been found, and instead the applicable timeframe in which a petition should be filed is 'within a reasonable period of time'. Here the Commission finds that because the Petitioner has taken steps since the 1960s to recognise her rights, and the remedies pursued have produced no results, this petition was presented within a reasonable period of time.

In examining the State's claims that the facts alleged by Petitioners are groundless the Commission finds all that is necessary is for the petitioners to establish a *prima facie* case and that the facts tend to characterise a violation that is not manifestly groundless or obviously out of order. Here the Commission finds the facts support the alleged violations of the right to property, rights to a fair trial and judicial protection. However, the Commission does not find the petition contains sufficient facts to support violations of Articles 5 (personal integrity), 7 (personal liberty), 10 (right to compensation) or 14 (correction or reply).

## 2.2. ADMISSIBILITY CASE: WAYNE SMITH VS UNITED STATES (REPORT NO. 56/06, PETITION 8-03)

The Commission found valid jurisdiction over the United States in regards to petitioners' claims of violations of their rights under Articles V (right to protection against abusive attacks on family life), VI (right to establish a family), VII (right to protection for mothers and children), XVIII (right to resort to court) and XXVI (prohibition against cruel, infamous or unusual punishment) of the American Declaration of the Rights and Duties of Man (hereinafter 'American Declaration').

Mr Smith was born in Trinidad and Tobago and came to the United States in 1967, at the age of 10. He married a US national in 1996 and the couple had one citizen child. Mr Smith became addicted to drugs and in February 1990 he was convicted of possession of cocaine and attempted distribution, and served a three year prison term. In March 1996, Mr Smith was placed in deportation proceedings, at which time he was eligible for humanitarian waiver of deportation (212(c) waiver) which permitted legal US resident subject to deportation to continue to live with their family based upon such considerations as the seriousness and how recent the offense was, the danger the applicant posed to the community, family ties, length of residence in the US and evidence of rehabilitation and other factors. However, by the time Mr Smith's case was heard, the Antiterrorism and Effective Death Penalty Act (AEDPA) had been enacted,

which eliminated 212(c) waivers. In March 1997, he was ordered deported and after unsuccessful appeals (including a *habeas* petition in November 1998 challenging the removal order) he was deported shortly after 25 November 1998. Mr Smith re-entered the US in January 1999 where he resided until March 2001 when he was stopped for a traffic ticket and was subsequently turned over to the Immigration and Naturalization Service (INS) and held in detention while awaiting removal. In March 2001, Mr Smith filed another *habeas corpus* petition, challenging the removal order, which the District Court dismissed, and he appealed to the US Court of Appeals 4<sup>th</sup> Circuit which held that Mr Smith had no constitutionally cognisable interest and affirmed the order of removal. Mr Smith was deported again in December 2001.

Petitioners argued that the US immigration laws (IIRIA) radically expanded the definition of aggravated felony to include an extremely long list of offenses including minor non-violent criminal infractions, eliminating the 212(c) waivers, and eliminating the right to judicial review by courts beyond the Board of Immigration Appeals, resulted in violations of his rights under Articles I, V, VI, VII, XVIII, IX and XXVI of the American Declaration in regards to Mr Smith. Petitioners also argued that the retroactivity of the expansion of the definition of aggravated felony violates the right not to be deprived of liberty except according to procedures established by pre-existing law.

The State argued that the American Declaration does not create legally binding obligations on OAS member States and therefore any assertion that the US has violated any of the Declaration's provisions has no validity, and furthermore is moot because Mr Smith has been deported and is no longer in the US. Secondly, the State argued that Mr Smith has failed to exhaust domestic remedies available to him. Specifically, after his first order of deportation in 1998, he failed to seek judicial review directly in the 4<sup>th</sup> Circuit Court of Appeals by filing a petition for review within 30 days and that instead he filed a *habeas corpus* petition; and Mr Smith did not seek *certiorari* review of this decision in the US Supreme Court. Finally, the State argues that the petition fails to state facts that disclose any violations of the American Declaration but instead that the petitioner's claims are disguised attacks on the US' immigration legislation, which petitioner's have no standing to assert and is beyond the mandate and jurisdiction of the Commission. The State argued that the rights the petitioners allege, such as right to family, do not outweigh a State's legitimate responsibility to provide for the welfare and security of its citizens, and further, that serious offenses, like the drug offenses committed by Mr Smith, justified his removal. In response to petitioners claims to violations of the right to fair trial the State argues that the administrative remedies set forth under appeals to the Board of Immigration Appeals and judicial review procedures before federal courts to challenge deportation and detention are sufficient to satisfy requirements under the American Declaration.

The Commission found that according to the long standing practice and jurisprudence of the Inter-American human rights system the American Declaration

of the Rights and Duties of Man constitutes a source of international obligation for the US and other OAS member States, and therefore a member State's failure to guarantee rights under the American Declaration are violations of its obligations under international human rights law. Therefore, the Commission rejects the State's argument that the American Declaration does not create legally binding obligations for member States of the OAS.

The Commission found itself competent *ratione temporis* to examine the petition because it alleges facts that occurred on or after the date on which the United States' obligations under the American Declaration took effect. The Commission also found it was competent *ratione loci* given that the petition indicates Mr Smith was under the jurisdiction of the United States at the time of his arrest, detention, and subsequent criminal proceedings.

In examining the exhaustion requirement the Commission found that there may be an exception to the exhaustion requirement if domestic legislation does not afford due process for the protection of the right in question. In the present case Mr Smith's claims focus on his inability to present his family situation and other circumstances as equitable considerations in determining whether he should have been deported from the US. The Commission notes that even if Mr Smith had undertaken the remedies the State argued he should have, the State failed to show how a constitutional challenge may have provided him with a remedy based on his family and other circumstantial claims. Further, the State did not suggest a different result if he petitioned to the US Supreme Court. Thus, the Commission found that further proceedings in US courts would not protect the right claimed here (family and other circumstantial rights), and therefore Petitioner's claims are not barred by the requirement of exhaustion of domestic remedies.

In determining whether or not the Petitioners have stated a colorable claim the Commission found, after careful review, that the information and arguments provided by the Petitioner tend to establish violations of the rights guaranteed under the American Declaration. Specifically, the Commission noted that it has recognised that rights governing the protection of the family are potentially pertinent considerations in the context of expulsion of non-citizens from OAS member States. Also noteworthy is the fact that the Petitioners rely on authorities from other regional human rights bodies (*i.e.* the European Convention on Human Rights and European Court) and while the Commission notes that the US is not party to these instruments it reiterates that it has previously held that jurisprudence of other international supervisory bodies can provide constructive insights into the interpretation and application of rights that are common to regional and international human rights systems.

### 2.3. MERIT CASE: TOMÁS EDUARDO CIRIO VS URUGUAY (REPORT NO. 124/06, CASE 11.500)

In the case of Tomás Cirio, the Commission examined a case dealing with freedom of speech and freedom of opinion which were allegedly violated as a result of criticizing the armed forces.

Tomás Eduardo Cirio is a retired military officer (since 1966) and Uruguayan citizen. In July 1972, he resigned from the Military Center, a private institution, in protest against institution because it supported the manner of questioning of Luis Carlos Batalla, an Uruguayan citizen, which ultimately resulted in his death, and which Mr Cirio felt was clearly supporting human rights violations. In a letter he wrote to the Military Center, Mr Cirio laid out his opposition to human rights violations taking place at the government level, and specifically within the Armed Forces. The Military Center forwarded a copy of this letter to the General Command of the Army, who ordered that a Tribunal of Honor (Tribunal) be established. Mr Cirio was placed under the jurisdiction of the Tribunal but refused to recognise its jurisdiction because he was a civilian (retired from the military). He was tried *in absentia* and found guilty of very serious offenses. He requested written grounds for the ruling which the Tribunal rejected. In January 1973, the Executive Branch approved the ruling of the Tribunal. He was subsequently transferred to a *situación de reforma (reforma)* which stripped him of various rights he had previously enjoyed, including the right to wear the uniform, right to occupy posts in the Ministry of Defense, rights remuneration, medical care, and impaired his moral reputation. On 2 May 1974, Petitioner lodged an appeal before the Ministry of Defense to revoke the Executive Branch's resolution and have his status restored, however due to the dictatorship in Uruguay at the time he chose not to pursue the claim, fearing for his safety and the safety of his family. Democracy was restored in 1985. In April 1990, Petitioner again brought an action before the Ministry of Defense to revoke the resolutions transferring him to *reforma*. In October 1991, Petitioner initiated action against the State in the Tribunal on Matters of Contentious Administration also to nullify the resolutions, which was rejected as time barred. Also in 1991, Petitioner initiated action for damages against the Military Center, which was also rejected as time barred. In June 1994, under the policy of National Pacification the Ministry of Defense Resolution 76.101 was issued which sought to rectify the fact that Ministry of Defense personnel had been dismissed for political or ideological reasons and in so doing modified Petitioner's *reforma* pension, but did not contain any retrospective rights.

The Petitioner argued his being cashiered to the status of *reforma* had its sole cause in the expression of his negative views expressed privately to the Military Center. The State argued that Mr Cirio questioned the actions of the armed forces in their actions against subversion, and that the letter was public in that it was read aloud in Congress and it was later published in newspapers. The Petitioner indicated he does

not know how the letter came to be published and that he had nothing to do with it being read in Congress. The Commission noted that Article IV of the American Declaration guarantees the right to freedom of opinion and the right to expression and dissemination of those opinions by whatever means. The Commission reasoned that his disqualification and transfer to *reforma* status correspond directly to the exercise of Mr Cirio's freedom of expression and cannot be justified as a means of protecting national security, public order or public morality. Consequently, the State was found to be in violation of Article 13(2)(b) of the American Convention (dealing with freedom of expression). Also, by finding that the sanctions imposed on Mr Cirio were based exclusively on the State's interest in punishing his political opinions, the Commission concluded that the State had violated Article 24 of the American Convention (right to equal protection) by taking punitive measures based exclusively on one of the internationally prohibited grounds of discrimination (political opinion).

Petitioner stated that his status as *reforma* violated his right to protection of his honour, personal reputation and private family life. The State argued that transfer to *reforma* brings with it the loss of certain military honours. However, the State recognised that the petitioner's dismissal from the armed forces was due to political, and ideological motives. Further, the Commission did not, and cannot, consider denouncing violations of human rights as being incompatible with the duty of obedience and respect for authority. The Commission found that by conferring upon Mr Cirio the status of *reforma*, the State violated the right to honour, to the detriment of Mr Cirio. And further by stripping him of status and benefits as punishment for criticising the armed forces. Therefore, the State violated Articles V of the American Declaration and 11 of the American Convention.

The Commission found that the Tribunal, a military court, lacked jurisdiction over Mr Cirio due to the fact that he was retired from the military, and as such, considered a civilian. Further, the Petitioner was within his rights when refusing to acknowledge the jurisdiction of the court and likewise not to be present. Therefore, the Petitioner did not have a chance to voice his defense. Consequently, Mr Cirio was denied due process, specifically as he was not given the right to be heard by a competent judge or tribunal, nor was the tribunal independent or impartial. Further, Mr Cirio has not had an effective recourse to protect himself against the acts of harassment by the State. As such, the Commission found the State in violation of Article XXVI of the American Declaration.

The Commission found that the State violated Mr Cirio's rights by depriving him of status and benefits as punishment for his criticism of the actions of the armed forces. And while they recognised these violations and reinstated his status, the Commission concludes that they did not offer him full reparations and therefore violated his right under Article 10 of the American Convention.

The Commission found that compensation is an indispensable requirement of non-compliance of a State with an international commitment. However, under the

*de facto* government in power during the initial violations there was no recourse for compensation. Once democratic government was restored it did not adopt measures in domestic law to compensate the Petitioner's violations. Therefore, the Commission holds the State violated Article 2 of the American Convention.

The Commission decided that the Executive Resolutions transferring Mr Cirio's status be nullified, along with the original ruling of the Tribunal that originally harmed him, and that all of his rights, benefits, honours and other prerogatives be restored to him as a retired member of the armed forces of Uruguay; and that the State adopt all necessary measures for reparation and compensation, so as to restore Mr Cirio; that the State publish a communiqué which recognises the violations of Mr Cirio's rights; acceptance of the July 1972 resignation from the Military Center; that the State promote measures that lead to the adoption of domestic legislation that conforms with the American Convention in regards to freedom of expression and due process within military justice; and that the State adopt necessary measures so that Mr Cirio and his family members receive prompt and adequate reparation, at both the material and moral level.

The Commission found that Uruguay substantially complied with all of these recommendations.

#### 2.4. MERIT CASE: MIGUEL ORLANDO MUÑOZ GUZMÁN VS MEXICO (REPORT NO. 2/06, CASE 12.130)

In this case the Commission dealt with an alleged forced disappearance and related rights, and the State's subsequent failure to investigate and provide compensation for the alleged forced disappearance. The Commission finds that the State violated Articles 1(1) (obligation to respect rights), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention but was not in violation of Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty).

On 8 May 1993, Lieutenant Miguel Orlando Muñoz Guzmán was serving in the military, where he was last seen in civilian clothes leaving the base between 7:30–8:30 p.m. Prior to his disappearance petitioner had taken part in an operation that led to a drug bust that may have left him in possession of information regarding drug trafficking in the area. Petitioner's family indicate that petitioner was feeling fearful of his colleagues in the military, however they did not know the circumstances as to why he felt that way. The State argues that Petitioner did not have enemies within the barracks. The State further argues that Petitioner went absent without leave (AWOL). Petitioner's family puts particular emphasis on Petitioner's missing briefcase, in which his family alleges he kept a personal diary outlining his missions in the Armed Forces, which may have contained harmful information. The family states that the Armed Forces actions regarding the briefcase, namely the forgery of documents attesting to its non-existence, make it likely that it did contain pertinent information and support

their theory that the Armed Forces was involved with Guzmán's forced disappearance. The State argues that criminal charges have been filed for the forgery of documents and as such is not tolerating the actions of the Armed Forces and therefore this act should not be seen as proof of any wrongdoing in the case of the disappearance of Guzmán.

Based on these facts the Commission found there is nothing to indicate the Petitioner was deprived of his liberty by military forces. However, the State retains a duty to find out what happened to Petitioner. Because the investigations have proved manifestly ineffective, therefore the State continues to owe a duty to effectively investigate with due process guarantees what happened to Guzmán.

In determining whether or not the State violated the right to a fair trial and judicial protection the Commission evaluated the effectiveness of the writ of *amparo* in regards to forced disappearances. The Commission concluded that because Mexico's *amparo* law makes it an essential requirement for the victim to say where he is being held, the writ of *amparo* is unsuitable to afford an effective remedy in forced disappearance cases. Also in regards to fair trial and judicial protection the Commission evaluated the preliminary inquiry initiated by the government and finds that despite these proceedings the State has yet to fulfill its duty to clarify what happened to Petitioner. The Commission also evaluated the investigations under military systems of justice, and found that military criminal justice system does not meet the standards of impartiality and independence required under Article 8(1) of the Convention. Therefore, for all these reasons, the Commission found that the Mexican State has violated the provision contained in Articles 1(1), 8 and 25 of the American Convention.

The Commission concluded that the Petitioner has presented insufficient evidence to establish the State's responsible for the violation of the rights of Guzmán with respect to Articles 4 (right to life), 5 (humane treatment) and 7 (personal liberty) of the American Convention.

The Commission recommended that the State conduct a complete, impartial and effective investigation to determine the whereabouts of Miguel Orlando Muñoz Guzmán, and if it were to find he was the victim of a forced disappearance to sanction all those responsible for such a crime; and to provide adequate compensation to the relatives of the family of Miguel Orlando Muñoz Guzmán for the violation of the rights found by the Commission.

The Commission found that the Mexican State has initiatives aimed at complying with their recommendations but that to date such investigations do not meet the criteria for impartial and effective investigation.