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Session: Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause: Alejandro Espino Mendez, Gerardo Alberca Pozo, Magda Atto Mendives, Maria de Jesus Benavides Diaz, Ana Maria Enriqueta Bromley Guerra, Hanmerli Rosendo Carrasco Vergaray, Pedro Gonzalo Chavarri Vallejos, Gina Liliana Coronado Lopez, Roque Alberto Diaz Mejia, Jorge Alberto Egoavil Abad, Percy Gomez Benavides, Frecia Cristel Junchaya Vera, Oscar Loayza Azurin, Gustavo Efrain Quiroz Vallejos, Jose Teodoro Torres Toro, Segundo Vicente Zarría Carbajo, Mario Armando Cavero Velaochaga, Carlos Alberto Celis Zapata, Bartolome Oscar Coayla Flores, Jorge Alex Diaz Perez, Jose Wilfredo Diaz Vallejos, Alejandro Espino Mendez, Eli Fernando Mamani Solorzano, Hector Hugo Nunez Julca, Jacobo Romero Quispe, Richard Milton Saavedra Lujan, Jorge Enrique Sanz Quiroz and Carlos Tucto Rodil v. Peru
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez Trejo, Paolo Carozza, Victor E. Abramovich.
Dated: 21 October 2006
Citation: Espino Mendez v. Peru, Petition 33-03, Inter-Am. C.H.R., Report No. 109/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. Since 2001, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”), has been receiving petitions lodged by magistrates and prosecutors who were dismissed from office after the National Council of the Magistracy (hereinafter “the CNM”) chose not to reconfirm them. The petitioners claim that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated their right to a fair trial, to protection of their honor, their political rights, their right to equal protection before the law, and their right to judicial protection, all recognized in Articles 8, 11, 23, 24, and 25, respectively, of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) in conjunction with Article 1.1 of that international instrument. The alleged violations have to do with irregularities reportedly committed by the CNM in its decision not to reconfirm the petitioners in their offices.

2. In general terms, the alleged victims argue in their respective petitions, that the resolution or act through which they were not reconfirmed did not state a reasoned basis for the decision in accordance with the provisions of the Constitution. Indeed, they assert that under Article 139(5) of the Constitution, all judicial decisions must include a written statement articulating the reasons for the decision. They also claim a violation of their right to a defense and to the principle that judges cannot be removed. The alleged victims request their reinstatement, a new evaluation and reconfirmation process, and reparations for moral and material injuries. Finally, they argue that there is no remedy available in the domestic jurisdiction by which to review the decisions of the National Council of the Magistracy.[FN3] Based on the foregoing, they assert that the exception provided in Article 46.2.a applies.

[FN3] Under Article 142 of the Constitution of 1993 in keeping with Article of the Organic Law of the National Council of the Magistracy (Law 26397), the decisions of the National Council of the Magistracy are not subject to judicial review.

3. In spite of the fact that the Constitution, the Organic Law of the National Council of the Magistracy, and the Rules of Procedure for Evaluation and Ratification of Judges and Prosecutors (Res. 043-2000-CNM and 241-2002-CNM) do not allow the possibility of administrative or judicial appeals against decisions adopted by the National Council of the Magistracy, several petitioners brought actions for relief (amparo) in the domestic jurisdiction. As observed in the section on facts and processing, although some of these petitioners lodged their respective petitions with the IACHR before a final decision was rendered on the suit filed, in the framework of the friendly settlement procedure, those amparo actions were resolved by the Constitutional Court. In this connection, the petitioners who have pursued actions for amparo can be divided into two categories: magistrates and prosecutors who have received a judgment from the Constitutional Court declaring the suit unfounded, while upholding their right to stand for a judicial posting in the future; and those magistrates and prosecutors who have received a Constitutional Court judgment declaring the respective CNM ruling without relevance and ordering that a personal interview be conducted.

4. The present friendly settlement report, issued pursuant to Article 49 of the American Convention and Article 41.5 of the Rules of the Procedure of the Inter-American Commission on Human Rights (hereinafter, “the Rules of Procedure”), includes a summary of the facts claimed by the petitioners, a transcription of the Friendly Settlement Agreement RS. 261-2005-JUS, signed by the Minister of Justice on June 26, 2006, with a group of 15 magistrates and prosecutors who were not reconfirmed by the CNM and on July 24, 2006 with a group of 12 alleged victims for a total of 27 alleged victims. This report also approves the terms of the Agreement and orders the publication of the instant report.

II. BACKGROUND

5. The Constitution of 1993 sets forth the process by which judges and prosecutors are reconfirmed in Peru. In particular, Article 154 provides that one of the functions of the National

Council of the Magistracy is to “reconfirm judges and prosecutors at all levels every seven years.”[FN4]

[FN4] Constitution of Peru, Article 154 (2). “The functions of the National Council of the Magistracy are 2) To reconfirm judges and prosecutors at all levels every seven years. Those who are not reconfirmed may not reenter the Judicial Branch or the Office of the Attorney General. The reconfirmation process is independent of disciplinary measures.”

6. The reconfirmation process for magistrates and prosecutors consists of an evaluation of each and every official, conducted by members of the National Council of the Magistracy (CNM) based on information gathered from public and private institutions relating to their professional performance, productivity rate, professional and personal reputation, and personal, family, social, and economic situation. This evaluation also includes a 30 minute interview during which they are consulted on various matters relating to the aforementioned evaluation criteria. CNM members then deliberate in private and make a decision in justice and in fairness, which is announced in the form of a resolution. These resolutions do not have to state a reasoned basis for the decision taken by the CNM members. When a decision is made not to reconfirm an official, the appointment is rescinded and he or she is barred permanently from a judicial posting. No remedy is available to appeal these resolutions before the issuing authority or before any other authority. These resolutions are not subject to review in the contentious administrative venue or through other judicial actions. The vacancies created through this process are filled by way of a competitive, merit-based public contest.

III. ALLEGATIONS, PROCESSING BY THE COMMISSION

A. Petitioners who signed the Friendly Settlement Agreement of June 26, 2006

1. Alberca Pozo, Gerardo, P 4394/2002

7. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General [Ministerio Público], the petitioners say that Gerardo Alberca Pozo was not reconfirmed in the post of Superior Court Judge of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on July 17, 2002; subsequently, in a resolution adopted on the same date, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

8. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Gerardo Alberca Pozo, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

2. Atto Mendives, Magda (or Atto Mendives, Magda Victoria)
P 33/2003

9. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, Magda Atto Mendives was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, her appointment was rescinded and her title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

10. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Ms. Magda Atto Mendives, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN5] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN5] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

3. Benavides Díaz, María De Jesús (or Benavides Díaz, María Jesús) P 4394/2002

11. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, María de Jesús Benavides Díaz was not reconfirmed in the post of Superior Court Prosecutor of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on July 17, 2002; subsequently, in a resolution adopted on the same date, her appointment was rescinded and her title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

12. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Ms. María de Jesús Benavides Díaz, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

4. Bromley Guerra, Ana María Enriqueta (or Bromley Guerra, Ana María) P 137/2004

13. According to the petition dated December 11, 2003, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the alleged victim was not reconfirmed in the post of Superior Court Judge of the Judicial

District of Callao by reason of the decisions adopted by the CNM en banc on May 11, 14 and 15, 2001; subsequently, in a resolution adopted on May 25 of that year, her appointment was rescinded and her title revoked. The alleged victim asserts that because she was not granted an interview during the evaluation and reconfirmation process in accordance with the provisions of Article 30 of the Organic Law of the CNM, she brought an action for amparo. The latter resulted in a Constitutional Court judgment declaring without relevance the resolution issued by the National Council of the Magistracy and ordering that the appellant be granted an interview. The National Council of the Magistracy, in accordance with the Constitutional Court judgment, granted the dismissed magistrate an interview on February 25, 2004, but proceeded to dismiss her afterward, pursuant to Resolution 096/2004/CNM of March 11, 2004. The alleged victim claims that the lack of grounds in the resolution ordering her dismissal, and the absence of a prior procedure in which the affected party is allowed to participate, constitute violations of due process and the right to a defense. She asserts that the lifetime ineligibility to return to a judicial appointment constitutes a violation of Article 23(1)(c) of the Convention. As regards admissibility requirements, according to the petition the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

14. On December 12, 2003, the Commission registered the petition lodged by Ms. Ana María Enriqueta Bromley Guerra with case number 1092/2003. On November 15, 2004, the petition was joined with petition number 137/2004, as they address similar facts, and on November 23 of that year, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

5. Carrasco Vergaray, Hanmerli Rosendo, P 4394/2002

15. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Hanmerli Rosendo Carrasco Vergaray was not reconfirmed in the post of Superior Court Prosecutor of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on July 17, 2002; subsequently, in a resolution adopted on the same date, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

16. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Hanmerli Rosendo Carrasco Vergaray, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

6. Chavarri Vallejos, Pedro Gonzalo (or Chavarri Vallejos, Pedro Gonzalo) P 4394/2002

17. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Pedro Gonzalo Chavarri Vallejos was not reconfirmed in the post of Superior

Court Prosecutor of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on July 17, 2002; subsequently, in a resolution adopted on the same date, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

18. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Pedro Gonzalo Chavarry Vallejos, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

7. Coronado López, Gina Liliana, P 33/2003

19. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Gina Liliana Coronado López was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, her appointment was rescinded and her title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

20. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Ms. Gina Liliana Coronado López, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN6] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN6] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

8. Díaz Mejía, Roque Alberto, P 4394/2002

21. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Roque Alberto Díaz Mejía was not reconfirmed in the post of Judge of the Superior Court of Justice in and for Lima by reason of the decision adopted by the CNM en banc on July 19, 2002; subsequently, in a resolution published on July 23 of that year, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review. Nevertheless, the petitioner

says that despite the domestic rules that prevent judicial appeal against the decisions of the CNM, he brought an action for amparo, which the Constitutional Court declared without merit in a judgment of March 27, 2003.

22. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Roque Alberto Díaz Mejía, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

9. Egoávil Abad, Jorge Alberto, P 33/2003

23. According to the petition dated December 5, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the alleged victim was not reconfirmed in the post of Judge of the Superior Court of Justice of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on July 17, 2002. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

24. On January 22, 2003, the Commission registered the petition lodged by the petitioner and assigned it case number 72/2003. On October 1, 2003, the petition was joined to case 33/2003, as it addressed similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

10. Gómez Benavides, Percy Máximo, P 494/2004

25. According to the petition dated February 8, 2005, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the alleged victim was not reconfirmed in the post of Regular Judge of the Superior Court in and for Arequipa by reason of the decision adopted by the CNM en banc on September 18, 2001; subsequently, in a resolution of September 19 of that year, his appointment was rescinded and his title revoked. As regards exhaustion of domestic remedies, the petitioner brought an action for amparo against the CNM, which the Constitutional Court declared without merit in a judgment of January 27, 2004.

26. On March 23, 2005, the Commission registered the petition lodged by the alleged victim, assigned it case number 494/2005 and joined it under the same case number with five other petitions, as they address similar facts. That same date the Commission opened the case and transmitted the pertinent portions of the petitions to the Peruvian State, requesting it to provide information on the allegations presented.

11. Junchaya Vera, Frecia Cristel, P 33/2003

27. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Frecia Cristel Junchaya Vera was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, her appointment was rescinded and her title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

28. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Ms. Frecia Cristel Junchaya Vera, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN7] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN7] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

12. Loayza Azurin, Oscar (or Loaiza Azurin, Oscar) P 33/2003

29. According to the petition dated September 18, 2003, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Oscar Loayza Azurin was not reconfirmed in the post of Superior Court Judge of the Judicial District of Ica by reason of the decision of the CNM en banc on July 3, 2003. The petitioners assert that the alleged victim brought an action for amparo and states that a judgment had not been issued at the time the petition was lodged before the IACHR. The petitioners also say that even though the alleged victim has pursued domestic remedies, said remedies are not effective because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

30. On September 22, 2003, the Commission registered the petition lodged by three judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Oscar Loayza Azurin, and assigned it case number 762/2003. On October 1, 2003, the petition was joined with petition number 33/2003, as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

13. Quiroz Vallejos, Gustavo Efraín, P 33/2003

31. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Gustavo Efraín Quiroz Vallejos was not reconfirmed in the post of

Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

32. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Gustavo Efraín Quiroz Vallejos, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN8] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN8] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

14. Torres Toro, José Teodoro, P 985/2003

33. According to the petition dated October 23, 2003, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that José Teodoro Torres Toro was not reconfirmed in the post of Superior Judge of the Superior Court of the Judicial District of Ancash by reason of the decision adopted by the CNM en banc on June 8, 2001; subsequently, in a resolution adopted on June 11 of that year, his appointment was rescinded and his title revoked. Despite the domestic rules that prevent judicial appeal against the decisions of the CNM, the petitioner says that he brought an action for amparo, which the Constitutional Court declared without merit in a judgment of March 24, 2003.

34. On November 20, 2003, the Commission registered the petition and assigned it case number 985/2003. On December 11 that year, the Commission transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

15. Zarria Carbajo, Segundo Vicente, P 958/2004

35. According to the petition dated September 6, 2004, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioner was not reconfirmed in the post of Peace Judge of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on May 25, 2001, in a resolution adopted on the same date, his appointment was rescinded and his title revoked. Despite the domestic rules that prevent judicial appeal against the decisions of the CNM, the petitioner brought an action for amparo that concluded with the judgment of the Constitutional Court of June 4, 2003, which declared without relevance the resolution issued by the CNM and ordered that the appellant be granted an interview. The National Council of the Magistracy, in accordance with the

Constitutional Court judgment, granted the dismissed magistrate an interview but proceeded to issue another resolution on March 11, 2004, ordering his non-reconfirmation.

36. On November 18, 2004, the Commission transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

B. Petitioners who signed the Friendly Settlement Agreement of July 24, 2006

16. Cavero Velaochaga, Mario Armando, P 4394/2002

37. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Mario Armando Cavero Velaochaga was not reconfirmed in the post of Superior Court Prosecutor of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on July 17, 2002; subsequently, in a resolution adopted on the same date, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

38. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Mario Armando Cavero Velaochaga, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

17. Celis Zapata, Carlos Alberto, P 571/2004

39. According to the petition dated July 4, 2005, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the alleged victim was not reconfirmed in the post of Judge of the Superior Court of Justice of the Judicial District of Lambayeque –Chiclayo- Peru by reason of the decision of the CNM en banc; subsequently, in a resolution adopted on August 17, 2001, his appointment was rescinded and his title revoked. According to the petition Mr. Carlos Alberto Zapata brought an action for amparo against the CNM, which the Constitutional Court declared without merit in a judgment of July 2, 2004.

40. On July 13, 2004, the Commission registered the petition lodged by Mr. Carlos Alberto Celis Zapata, and assigned it case number 780/2005. On January 20, 2006, the petition was joined with petition number 571/2004, as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

18. Coayla Flores, Bartolomé Oscar, P 137/2004

41. According to the petition dated March 20, 2004, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the

petitioner was not reconfirmed in the post of Superior Court Judge of the Judicial District of Puno; subsequently, in a resolution dated February 7, 2004, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

42. On March 30, 2004, the Commission registered the petition lodged by Mr. Bartolomé Oscar Coayla Flores, and assigned it case number 252/2004. On November 15, 2004, the petition was joined with petition number 137/2004, as they address similar facts, and on November 23 of that year, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

19. Díaz Pérez, Jorge Alex Or Díaz Pérez, Jorge Alejandro, P 33/2003

43. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Jorge Alex Díaz Pérez was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

44. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Jorge Alex Díaz Pérez, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN9] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN9] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

20. Díaz Vallejos, José Wilfredo, P 119/2003

45. According to the petition dated February 4, 2003, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, Mr. José Wilfredo Díaz Vallejos was not reconfirmed in the post of Specialized Judge of the Judicial District of Lima based on a decision adopted by the CNM en banc; subsequently, in a resolution adopted on August 28, 2002, his appointment was rescinded and his title as Regular Specialized Judge revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

46. On February 7, 2003, the Commission registered the petition lodged by four judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. José Wilfredo Díaz Vallejos, and assigned it case number 119/2003. On November 5, 2003, six petitions were joined under petition number 119/2003,[FN10] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN10] Petition 119/2003 includes the following petitions: 695/2003, 734/2003; 777/2003, 843/2003, 847/2003, 899/2003.

21. Espino Méndez, Alejandro, P 33/2003

47. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, Mr. Alejandro Espino Méndez was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

48. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Alejandro Espino Méndez, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN11] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN11] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

22. Mamani Solórzano, Elí Fernando, P 33/2003

49. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Elí Fernando Mamaní Solórzano was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic

jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

50. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Elí Fernando Mamaní Solórzano, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN12] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN12] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

23. Nuñez Julca, Héctor Hugo, P 764/2001

51. According to the petition dated April 13, 2005, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, Mr. Héctor Hugo Nuñez Julca was not reconfirmed in the post of Judge of the Superior Court of Justice of the Judicial District of Lambayeque by reason of the decision adopted by the CNM en banc on August 1, 2003. The petitioner brought an action for amparo against the CNM, which had not been resolved at the time the petition was lodged with the IACHR.

52. On April 25, 2005, the Commission registered the petition lodged by the alleged victim and assigned it case number 454/2005. On January 19, 2006, the petition was joined with petition number 764/2001, as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

24. Romero Quispe, Jacobo, P 456/2006

53. According to the petition dated May 4, 2006, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Jacobo Romero Quispe was not reconfirmed in the post of Regular Judge of the Mixed Court of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on November 20, 2002. According to the petition Mr. Romero Quispe brought an action for amparo against the CNM, which the Constitutional Court declared without merit in a judgment of January 5, 2006.

54. On May 8, 2006, the Commission registered the petition lodged by the petitioner and assigned it case number 456/2006. On July 20, 2006 the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

25. Saavedra Lujan, Richard Milton, P 33/2003

55. According to the petition dated April 10, 2003, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, Mr. Richard Milton Saavedra Luján was not reconfirmed in the post of Regular Provincial Prosecutor of the Judicial District of Lima by reason of the decision adopted by the CNM en banc on October 11, 2002. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

56. On April 10, 2003, the Commission registered the petition lodged by the petitioner and assigned it case number 269/2003. On October 1, 2003, the petition was joined with petition number 33/2003, as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

26. Sanz Quiroz, Jorge Enrique, P 33/2003

57. According to the petition dated December 2, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioner was not reconfirmed in the post of Regular Provincial Prosecutor for Lima by reason of the decision adopted by the National Council of the Magistracy (CNM) en banc on October 11, 2002; subsequently, in a resolution adopted on October 16 of that year, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

58. On January 8, 2003, the Commission registered the petition lodged by 16 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Jorge Enrique Sanz Quiroz, and assigned it case number 33/2003. On October 1, 2003, eight petitions were joined under petition number 33/2003,[FN13] as they address similar facts, and the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

[FN13] Petition 33/2003 includes the following petitions: 65/2003, 72/2003, 269/2003, 320/2003, 600/2003, 631/2003, 714/2003, 762/2003.

27. Tucto Rodil, Carlos, P 4394/2002

59. According to the petition dated October 14, 2002, as a result of the Process of Evaluation and Reconfirmation of Judges and Prosecutors of the Office of the Attorney General, the petitioners say that Carlos Tucto Rodil was not reconfirmed in the post of Superior Court Prosecutor of the Judicial District of Huánuco-Pasco by reason of the decision adopted by the CNM en banc on July 17, 2002; subsequently, in a resolution adopted on the same date, his appointment was rescinded and his title revoked. According to the petition, the alleged victim did

not attempt any remedies in the domestic jurisdiction because under Peruvian law the decisions of the National Council of the Magistracy are not subject to judicial review.

60. On October 23, 2002, the Commission registered the petition lodged by 26 judges and prosecutors who had not been reconfirmed, which included as an alleged victim Mr. Carlos Tacto Rodil, and assigned it case number 4394/2002. On November 18, 2002, the Commission opened the case and transmitted the pertinent portions of the petition to the Peruvian State, requesting it to provide information on the allegations presented.

IV. FRIENDLY SETTLEMENT PROCEDURE

61. On March 5, 2004, in the framework of the 119th Regular Session of the IACHR, a working meeting was held between the delegation of the Peruvian State and the petitioners whose petitions were being processed by the Commission; at that time the groundwork was laid for the negotiation of a friendly settlement of a series of petitions concerning magistrates and prosecutors who had not been reconfirmed by the National Council of the Magistracy (CNM).

62. On August 20, 2004, the State informed the IACHR that a Dialogue Committee [Instancia de Diálogo] had been created on March 19 of that year for the cases of Judges and Prosecutors who had not been reconfirmed by the CNM and whose petitions were being processed before the Commission. This committee was made up of representatives from the Judiciary, the Office of the Attorney General [Ministerio Público], the Ministry of Foreign Affairs, the National Ombudsman's Office [Defensoría del Pueblo] and the CNM, as well as a group of petitioners and representatives and attorneys of the petitioners.

63. On November 5, 2004, the State reported the establishment, through Supreme Resolution No. 207/2004/JUS of September 3, 2004, of a "High-Level Commission responsible for drafting a proposal for a friendly settlement in the cases of magistrates not reconfirmed by the CNM who had lodged complaints with the IACHR."

64. In the framework of the friendly settlement procedure, on October 25, 2004, a working meeting was held on the petitions and cases of the magistrates and prosecutors who had not been reconfirmed. Subsequently, a working meeting was held on March 2, 2005, during the Commission's 122nd Regular Session. At the meeting, the delegation of the Peruvian State gave a report on the contents of the High-Level Commission's proposal and asserted that the Peruvian State would soon adopt a decision in that regard. The proposal concerning the petitions, in general, proposed conducting a new reconfirmation process for the magistrates, adhering to due process, particularly with regard to the grounds for the resolution, and awarding each judicial official the sum of \$5,000 (five thousand U.S. dollars).

65. Subsequently, on October 19, 2005, in the framework of the 123rd Regular Session of the Commission, a working meeting was held between the parties, at which time the State reported that the parties had arrived at a friendly settlement agreement.

66. On December 27, 2005, the State forwarded a copy of Friendly Settlement Agreement R.S. N° 261-2005-JUS, signed on December 22, 2005, by the Minister of Justice and a group of

26 Magistrates and Prosecutors who had not been reconfirmed by the CNM. Taking into account that the aforementioned Agreement did not encompass the totality of the unreconfirmed Magistrates and Prosecutors who appear as alleged victims in the petitions, on January 6, 2006, the IACHR requested that the Peruvian State "...adopt the actions it deems appropriate for the Illustrious Government to express to the IACHR, within a period of one month, whether it is interested in continuing the procedure set forth in Article 48(1) of the American Convention."

67. Subsequently, on January 19, 2006, the Commission received a copy of Friendly Settlement Agreement R.S. N° 261-2005-JUS, signed on January 6, 2006, by the Minister of Justice and an additional group of 13 judges and prosecutors not reconfirmed by the CNM. This agreement expanded the original list of judges and prosecutors with which a friendly settlement agreement had been signed.

68. On February 10, 2006, the Commission received another Friendly Settlement Agreement, signed on February 8, 2006 between the Peruvian State and a group of nine magistrates who had not been reconfirmed by the National Council of the Magistracy. In addition, in the aforementioned informative note, the State also responded to the communication from the Executive Secretariat of January 6, 2006, saying that, "...it should be stated that the possibility is being evaluated of continuing with the negotiation process with a view toward pursuing the signing of additional Friendly Settlement Agreements."

69. In this connection, it should be mentioned that the 124th Regular Session of the Inter-American Commission on Human Rights saw the adoption of Report 50/06 which approved the aforementioned Friendly Settlement Agreements R.S. 261-2005-JUS, signed on December 22, 2005; R.S. 261-2005-JUS, signed on January 6, 2006; and, R.S. 261-2005-JUS signed on February 8, 2006, and ordered their publication and transmission to the parties.

70. Further to the foregoing, on July 19, 2006, the Commission received a new Friendly Settlement Agreement signed on June 26, 2006 by the Peruvian State and a group of nine magistrates who had not been reconfirmed by the National Council of the Magistracy.

71. Finally, on July 26, 2006, the Commission received a new Friendly Settlement Agreement signed on July 24, 2006, by the Peruvian State and a group of 12 magistrates who had not been reconfirmed by the National Council of the Magistracy. It should be mentioned that the last two agreements signed on June 26 and July 24, 2006, are the subject matter of this approval report on the following friendly settlement agreements.

V. FRIENDLY SETTLEMENT AGREEMENT: R.S. 261/2005/JUS (26.06.06) and
FRIENDLY SETTLEMENT AGREEMENT: R.S. 261/2005/JUS (24.07.06)

FRIENDLY SETTLEMENT AGREEMENT

FIRST CLAUSE:

ACKNOWLEDGMENT OF RESPONSIBILITY BY THE PERUVIAN STATE

The State acknowledges that the process of reconfirmation of judges and prosecutors, as it was carried out prior to the promulgation, on December 1, 2005, of the Constitutional Procedures Code (Law No. 28237), while it conformed to the interpretation of the applicable norms by the relevant institutions, did not include certain guarantees of Effective Procedural Safeguards, particularly the requirement that a resolution should state the grounds, which should be observed in any type of proceedings. This, in keeping with the provisions of the Political Constitution of Peru, human rights treaties that are binding on the Peruvian State, the binding jurisprudence on this matter from the Inter-American Court of Human Rights, and from the Constitutional Court (Judgment of August 12, 2005, handed down in the extraordinary remedy on the Amparo Process brought by Mr. Jaime Amado Álvarez Guillén), and the aforementioned Constitutional Procedures Code.

SECOND CLAUSE:

EFFECTS OF THE ACKNOWLEDGMENT OF RESPONSIBILITY

In accordance with the contents of the First Clause of this Friendly Settlement Agreement, both parties agree that, according to law, pursuant to international human rights norms that are binding on the Peruvian State and to the provisions of the Political Constitution of Peru, the National Council of the Magistracy should rescind the resolutions declaring the nonreconfirmation of the judicial officials included in the instant friendly settlement. The judicial officials are thereby reinstated to their status as such for the following effects and purposes:

Reinstatement in the Judiciary or in the Office of the Attorney General [Ministerio Público], respectively.

The National Council of the Magistracy will restore the corresponding title within 15 (fifteen) days following the approval, by the Inter-American Commission on Human Rights, of this Friendly Settlement Agreement.

The Judiciary or the Office of the Attorney General, in the cases of judges or prosecutors respectively, will order the reinstatement of the judicial official to his or her original post within 15 (fifteen) days of the restoration of the title. If the original posting is not available, at the request of the judicial official, he or she will be reinstated to a vacancy of the same level in that or in another Judicial District. In such a case, the judicial official will have first refusal for returning to his or her original posting once the respective vacancy occurs.

Other rights of the judicial officials reinstated to the Judiciary or to the Office of the Attorney General.

Recognition of length of service.

The Peruvian State pledges to recognize the period of service not worked, counted from the date of the Resolution of nonreconfirmation, in calculating length of service, retirement, and other applicable employment benefits under Peruvian law. The seniority of the services provided by the judicial officials included in this Friendly Settlement Agreement, should it become necessary

in compliance with its provisions to transfer them to another Judicial District, shall be recognized for all effects and purposes in the new location.

Acknowledgment of their right to recourse in the domestic venue

The Peruvian State defers the payment of any other amount of compensation that may be in order, in accordance with national and supranational jurisprudence, to the outcomes of the measures or actions undertaken for that purpose by the petitioner(s).

Expenses and costs of the process.

The Peruvian State grants to any petitioner who accepts this Friendly Settlement, a total compensation in the amount of US\$ 5,000.00 (Five thousand U.S. dollars and 00/100), which includes the outlays and costs derived from domestic and international proceedings related to their petition.

New evaluation and reconfirmation process.

The Peruvian State will conduct a new evaluation and reconfirmation process under the purview of the National Council of the Magistracy for the judicial officials included in the instant agreement. This new procedure will be carried out in accordance with constitutional norms and principles (Articles 139 and 154 of the Constitution of Peru), the American Convention on Human Rights, and the binding jurisprudence to ensure due process guarantees as pronounced by the Inter-American Court of Human Rights and by the Constitutional Court. The relevant legal provisions shall be adapted as necessary for this purpose.

THIRD CLAUSE

PUBLIC REPARATIONS CEREMONY

The representative of the Peruvian State pledges to hold a Public Reparations Ceremony for the reinstated judicial officials.

FOURTH CLAUSE:

LEGAL BASIS

This Agreement is signed in accordance with the provisions of Articles 2 (Fundamental Rights of the Individual), 44 (Fundamental obligations of the State), 55 (Treaties in Force), 205 (Supranational Jurisdiction), and the Fourth Final and Transitory Provision (Interpretation of Fundamental Rights) of the Constitution of Peru; Articles 1 (Obligation to respect rights), 2 (Duty to adopt provisions of domestic law), 8 (Fair Trial) and 48 (1)(f) (Friendly Settlement) of the American Convention on Human Rights, and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

FIFTH CLAUSE

INTERPRETATION

The meaning and scope of this Agreement shall be interpreted in light of Articles 29 and 30 of the American Convention on Human Rights, where relevant, and of the principle of good faith. In case of uncertainty or disagreement between the parties over the content of this Agreement, the Inter-American Commission on Human Rights shall be the one to decide on its interpretation. It is also responsible for monitoring compliance with it, and the parties are obligated to report every four months concerning its status and compliance.

SIXTH CLAUSE

APPROVAL BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)

The instant Friendly Settlement Agreement is subject to approval by the Inter-American Commission on Human Rights. The Peruvian State pledges to request such approval expeditiously and, once it has been obtained, to so inform the National Council of the Magistracy (CNM) so that it can proceed in accordance with the second clause and reserve the corresponding slots for the judicial officials who will participate in the New Evaluation and Reconfirmation Process.

SEVENTH CLAUSE

ACCEPTANCE

The parties to the signing of this Friendly Settlement Agreement freely and voluntarily express their agreement with and acceptance of each and every one of its clauses, and state for the record that it thus puts an end to the dispute in the particulars of the agreement, as well as to any complaint concerning the responsibility of the Peruvian State in the violation of the petitioners' human rights.

EIGHTH CLAUSE

EXTENSION OF THE AGREEMENT IN THE MOST FAVORABLE MANNER

The parties state for the record that should the State, following the signing of this Friendly Settlement Agreement, grant more favorable conditions to other petitioners who are in the same legal situation, such new conditions shall also extend to those who have signed the instant Friendly Settlement Agreement.

VI. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

72. The IACHR reiterates that in conformity with Articles 48.1.f and 49 of the Convention, this mechanism is used "with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention." The State's consent to pursue this avenue is evidence of its good faith in fulfilling the purposes and objectives of the Convention

based on the principle of *pacta sunt servanda*. The Commission also wishes to reiterate that with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner and, in cases involving various countries, the this procedure has proven to be a useful vehicle that both parties can utilize for the settlement of disputes.

73. In the instant case, the IACHR observes that in the first clause of the Friendly Settlement Agreement, there is an express acknowledgment of responsibility by the Peruvian State in relation to the lack of incorporation of certain guarantees of effective procedural safeguards, in particular the requirement of a resolution stating the grounds, that must be observed in any type of proceeding. The Commission appreciates the Peruvian State's acknowledgment of responsibility in failing to comply with its international obligations concerning the rights enshrined in Article 1.1 of the American Convention (general obligation to respect rights) and in Article 8 (fair trial) of that instrument. In the opinion of the IACHR, this acknowledgment has full legal merit under principles of international law.[FN14]

[FN14] See, *inter alia*, Permanent Court of International of Justice, 1933, P.C.I.J., Ser. A/B No. 53, 71 (Norway v. Denmark).

74. In relation to the procedural effects of this Friendly Settlement Agreement, the Commission took into consideration that the victims included therein are party to 10 different petitions and classified them into two groups based on the number of victims who signed the Agreement. The first group includes petitions numbers 985/2003 and 456/2006, for which the totality of victims are included in the Friendly Settlement Agreement, and, as a result, shall declare the processing of those petitions finished.

75. The second group corresponds to petitions numbers 764/2001, 4394/2002, 33/2003, 119/2003, 137/2004, 494/2004, 571/2004 and 958/2004 for which only some of the victims are included in the Friendly Settlement Agreement. The Commission understands that, in keeping with the object and purpose of the American Convention and, in particular, in view of the consensual nature of the friendly settlement procedure, it is permissible for a petition with multiple victims to arrive at an agreement involving some of them and not others. In such a case, the Commission can declare the proceedings concluded in relation to those victims who signed the agreement and, at the same time, order that the process continue, in the stage in which it is found, in relation to the alleged victims not included in the agreement.

76. At this time, the Commission has noted that a significant number of the alleged victims not included in the Friendly Settlement Agreement have expressed their intent to sign it in the terms proposed by the State, and that the latter has reported that it is evaluating the possibility of continuing the negotiation process in order to proceed with the signing of future agreements. Therefore, acting in accordance with the provisions of Article 38(2) of the Rules of Procedure, the Commission shall proceed to reiterate its intent to place itself at the disposal of the parties to arrive at a friendly settlement in the aforementioned matters.

77. The Inter-American Commission has closely monitored the development of the friendly settlement reached in the instant case. The Commission highly appreciates the efforts made by both parties to reach this settlement, which is compatible with the object and purpose of the Convention. At the same time, the Commission cannot help but note that the State has reached agreements with a number of individual victims despite that fact that several dozen others are essentially in the same position and have lodged identical complaints with the IACHR. In this connection, the IACHR notes that the State has acknowledged its international responsibility for violation of the human rights of the persons who were subject to the reconfirmation process carried out by the National Council of the Magistracy. Accordingly, the Commission urges the State to reach a comprehensive solution or come to other appropriate alternative arrangements.

VII. CONCLUSIONS

78. Based on the foregoing considerations and under the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by both parties and its satisfaction that a friendly settlement has been reached in the instant case consistent with the object and purpose of the American Convention.

79. By virtue of the considerations and conclusions set forth in this Report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the Friendly Settlement Agreement signed by the parties on June 26, 2006 and July 24, 2006.
2. To continue to monitor and oversee compliance with each of the points in the friendly settlement agreement and, in this context, to remind the parties of their obligation to report to the IACHR every three months on their compliance with the instant friendly settlement agreement, .
3. To declare the processing of petitions 985/2003 and 456/2006 closed.
4. To continue processing petitions 764/2001, 4394/2002, 33/2003, 119/2003, 137/2004, 494/2004, 571/2004 and 958/2004 in their respective stage of the process, with respect to the alleged victims not included in the Friendly Settlement Agreement.
5. To remain at the disposal of the parties in order to reach a friendly settlement in the matters discussed in the preceding paragraph.
6. To call on the State to reach a comprehensive solution to the problem of non-reconfirmation on the part of the National Council of the Magistracy.
7. To publish this report and include it in its annual report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.