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File Number(s):	Report No. 84/09; Case 12.525
Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Nelson Ivan Serrano Saenz v. Ecuador
Doc. Type:	Report
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo G. Carozza.
Dated:	6 August 2009
Citation:	Serrano Saenz v. Ecuador, Case 12.525, Inter-Am. C.H.R., Report No. 84/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Alejandro Ponce Villacis
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## I. SUMMARY

1. On March 10, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition against the Republic of Ecuador (hereinafter “the State”), alleging said State is responsible for the illegal detention of Nelson Iván Serrano Sáenz, citizen boasting the dual nationality of Ecuador and United States, and his immediate deportation to United States. Afterwards, Mr. Serrano Sáenz was accused of murdering four persons in the state of Florida and was then sentenced to death, punishment yet to be executed at the time this report was adopted. The petition was submitted by the attorney Alejandro Ponce Villacís, at the petition of María del Carmen Polit Molestina and Alfredo Luna Serrano, mother and nephew, respectively, of Mr. Serrano Sáenz (jointly “the petitioners”). It is alleged that the incidents entail violations to the following rights protected by the American Convention on Human Rights (hereinafter “the American Convention”): right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial and judicial protection (Articles 8 and 25), freedom from ex post facto laws (Article 9), right to privacy (Article 11), right to nationality (Article 20), right to freedom of movement and residence (Article 22), and right to equal protection (Article 24), in conjunction with not fulfilling the duty of protecting and guaranteeing all rights (Article 1.1).

2. In turn, during the admissibility stage, the State asserted that the actions of which it is accused do not constitute violations of rights recognized in the American Convention and, as a result, the case should be dismissed. This position is based on that the State considers that Mr. Serrano was registered as a foreigner in the different databases of said country; that he had never expressed his desire to recover his Ecuadorian nationality to which he was entitled; and that his

right to due process was not violated since he was registered as a foreigner and deported as such by immigrations authorities. The State did not submit additional observations on the merits.

3. The Inter-American Commission declared the admissibility of the petition through Report N° 52/05 of October 24, 2005, as it was deemed the requirements established in Articles 46 and 47 of the American Convention had been met with respect to the petitioners' claims, except in the case of the allegations regarding violation of the right to equal protection, the right to protection against ex post facto laws, and the right to privacy.[FN1] In this merits report, the IACHR concluded that the Ecuadorian State is responsible for violations to the detriment of Nelson Iván Serrano Sáenz's right to humane treatment (Article 5 of the American Convention), right to personal liberty (Article 7), right to a fair trial and judicial protection (Articles 8 and 25), right to nationality (Article 20), in conjunction with not fulfilling the general duties of protection and guarantee and adjusting national legislation (Articles 1.1 and 2); and put forward the corresponding recommendations. The IACHR considered the information presented by the parties regarding compliance with the recommendations issued in the merits report and decided to make its findings public and include them in its annual report to the General Assembly of the OAS.

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[FN1] IACHR, Admissibility Report N° 52/05, Case 12.525 – Nelson Iván Serrano Sáenz, Ecuador, October 12, 2005, 2005 Annual Report, OEA/Ser.L/V/II.124, Doc. 7. The Inter-American Commission declared the admissibility of the petition with respect to Articles 1, 5, 7, 8, 20, 22, and 25 of the American Convention.

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## II. PROCEEDINGS SUBSEQUENT TO REPORT N° 52/05

4. In accordance with Article 38.1 of the Commission's rules of procedure, on November 2, 2005, the Inter-American Commission sent Report No. 52/05 to both parties and set the period of two months for the petitioners to submit their additional observations on the merits. At the same time, based on Article 38.2 of the rules of procedure, the IACHR made itself available to the two parties in an attempt to reach a friendly settlement in compliance with Article 48.1.f of the American Convention, and requested they pronounce on the matter as soon as possible.

5. On February 21, 2006, the petitioners conveyed to the Inter-American Commission that despite their attempts to initiate proceedings for a friendly settlement, it had not been possible due to the absence of a favorable response from the State, and they asked for the processing of the case to be continued. On April 20, 2006, the IACHR acknowledged receipt of this communication and brought the petition to the attention of the State of Ecuador. On December 19, 2006, the petitioners forwarded another communication in which they reiterated their interest in obtaining a pronouncement of the merits of the case, and to which a legal report prepared by Edgar Terán was annexed.

6. The Human Rights Ombudsman of Ecuador, Claudio Mueckay Arcos, forwarded a communication dated on March 21, 2007, which presents Ombudsman Judgment No. 01-AP-

2007 issued on January 10, 2007, with respect to the case of Nelson Iván Serrano Sáenz. The documents on which this judgment is based were also forwarded at this time.

7. On June 14, 2007, the Inter-American Commission received a communication sent by Alfredo Luna, which annexed a draft of the friendly settlement agreement with the letterhead of the Office of the Attorney General of the State of Ecuador (though unsigned).

8. On June 28, 2007, the Secretary General of the Office of the Human Rights Ombudsman of Ecuador submitted to the IACHR a certified copy of Ombudsman File 29721 regarding case of Mr. Serrano Sáenz.

9. The petitioners forwarded additional information on June 28, 2007, of which receipt was acknowledged on July 23, 2007. On July 31 of the same year, the petitioners submitted their additional observations on the merits and requested that the IACHR issue its report, pursuant Article 50 of the American Convention.[FN2]

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[FN2] With this brief, the petitioners forwarded a copy of a communication addressed to the Attorney General of the State of Ecuador, annulling the signing of the friendly settlement agreement by the legal representative of Nelson Iván Serrano Sáenz, due to the “silence and lack of official pronouncement” with respect to said document.  
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10. On August 24, 2007, the IACHR forwarded the petitioners’ communication to the Ecuadorian State and granted it the chance to submit the corresponding additional observations on the merits. At the time this report was adopted, the Commission had yet to receive a response from the State on said request for observations or any other communication.

### III. POSITION OF THE PARTIES WITH RESPECT TO THE MERITS

#### A. Position of the petitioners

11. In their brief dated July 31, 2007, the petitioners expressed that they ratify the allegations of their initial petition, as they believe that “the State has not been able to discredit the incidents that constitute violation to the fundamental rights of the Ecuadorian national Nelson Serrano Sáenz,” and then put forward some additional considerations. First, they noted the friendly settlement proceedings attempted by the parties and mentioned that they lasted several months and included the important participation of the Human Rights Ombudsman of Ecuador. In this sense, they stressed the progress aimed at recognizing the international responsibility of the State, and the steps to make reparations, in a draft agreement initially signed by Alfredo Luna Serrano, the legal representative of Mr. Serrano Sáenz. Nonetheless, according to the petitioners, this process failed in the end due to the lack of response by the authorities.

12. The petitioners state that Nelson Iván Serrano Sáenz, an Ecuadorian citizen, acquired U.S. nationality in December 1971 by means of naturalization proceedings. They report that on August 10, 1998, Ecuador adopted a new Constitution, Article 11 of which provided that:

“Ecuadorians by birth who become or who have become naturalized citizens of other countries may retain their Ecuadorian citizenship.” In accordance with this provision, Mr. Serrano Sáenz visited the Consulate of Ecuador in Miami and requested he be issued an Ecuadorian passport, which was duly delivered to him on May 8, 2000. Using that passport, Mr. Serrano entered the Republic of Ecuador on August 21 of that year.

13. On May 17, 2001, on an indictment from a grand jury, the courts of Polk County, Florida, United States of America, ordered Mr. Serrano’s arrest on four counts of murder in the first degree. The petitioners express that under that order the General Intendent of Police for Pichincha began deportation proceedings against Mr. Serrano Sáenz on August 31, 2002. That same day, the Intendent also ordered that the adjudication hearing be held and the constitutional detention warrant be issued. After an exceedingly short proceeding, the Police Intendent issued a judgment ordering the deportation of Nelson Iván Serrano Sáenz, in spite of his Ecuadorian citizenship.

14. Although there was no prior notification, the judgment was carried out immediately; in other words, on August 31, 2002. Mr. Serrano was therefore taken to Mariscal Sucre Airport and, after spending the night detained in an animal cage, was placed on a flight headed to the United States, during which time he was kept incommunicado. The petitioners add that, after having learning of the situation, on September 2, 2002, his family filed an appeal before the Interior Minister; this was turned down on September 12, on the grounds that Article 30 of the Migration Law specifically states that deportation decisions admit no appeals whatsoever.

15. As to the violations of the American Convention, the petitioners asserted in their brief that Nelson Iván Serrano Sáenz “is an Ecuadorian citizen, who was equally entitled to another nationality, as established in the Ecuadorian legal system, which recognizes the plurality of nationalities.” Additionally, this “in no case means losing the rights pertaining to him as an Ecuadorian, including the right not to be expelled from his own country with the purpose of placing him under the jurisdiction of another State to be tried for a crime abroad,” not even under extradition, since Ecuador rejects the application of this legal concept for its nationals.[FN3]

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[FN3] Communication of the petitioners on July 31, 2007, page 3.  
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16. The petitioners stress that the legislation in force in Ecuador provides that Ecuadorians by birth, who obtained a distinct nationality by naturalization, reacquired Ecuadorian nationality from the date the Constitution of 1998 entered into force. They indicate that it was precisely under said constitutional rules that Nelson Iván Serrano Sáenz obtained an Ecuadorian passport and in this manner entered Ecuador on August 21, 2000. The petitioners did not question the fact that Mr. Serrano Sáenz had lost his nationality by means of naturalization proceedings, but indicate that the very State recognized his Ecuadorian nationality at different times since the issuance of the passport in May 2000. Furthermore, they stress that the very Office of the Attorney General of the State, in response to a consultation on the issue, maintained the criteria that there are no requirements at all to make effective the dual nationality.[FN4]

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[FN4] Office of the Attorney General of the State of Ecuador, Order No. 022355 of June 28, 2007, addressed to the National Secretary of Migration, page 2.

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17. The petitioners reiterate their allegations set forth in their initial denunciation, in the sense that “Nelson Iván Serrano Sáenz was and continues to be Ecuadorian despite obtaining a second nationality” and that as a result “has and had all the rights pertaining to all Ecuadorians, with no discrimination whatsoever.”[FN5] In spite of this, they maintain that “he was deported from Ecuador after a summary procedure in which the right to due process was not respected, since, in addition to not having a defense attorney of his choice, he was also not even allowed to communicate with his family or let anyone know about the situation in which he found himself.”[FN6] They add that the deportation order was issued by the General Intendent of Police (in other words, an administrative functionary depending directly on the executive power) and not by a judicial officer.

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[FN5] Communication of the petitioners on July 31, 2007, page 4.

[FN6] Idem.

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18. The petitioners also allege that while:

The “trial” was carried out not only in a reserved and secret manner, but also that the deportation of an Ecuadorian was decided in less than one and a half hours, even though the very deportation order not only clearly shows the date of his latest entrance in Ecuador, but also that said entrance occurred with an Ecuadorian passport. In this respect, Articles 8 and 25 of the Convention were violated, as well as Article 20 of the Convention.

As an Ecuadorian citizen, he could never have been deported or expelled from his own country, since an Ecuadorian national never may be found to be in the situation of infringing migratory rules with respect to his permanence and stay in his own country.[FN7]

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[FN7] Communication by the petitioners on July 31, 2007, pages 4 and 5.

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19. In accordance with the petitioners, these incidents additionally constitute violations to the right to movement and residence established in Article 22 of the American Convention. The petitioners maintain that, in accordance with this article, the State also incurred in the violation of the rights indicated in the initial petition.

B. Position of the State

20. The Ecuadorian State has not used its right to submit additional observations on the merits of the case. It has also not challenged the allegations or the documents sent by the

petitioners after Admissibility Report No. 52/05 was adopted. The State has also not put forward observations on the investigation undertaken by the Office of the Human Rights Ombudsman of Ecuador with respect to this case, which establishes that the human rights of Mr. Serrano Sáenz were violated and attributes the responsibility to the authorities of said country. The only communication in which the Ecuadorian State claims allegations on this case was forwarded to the IACHR on August 4, 2003. In this respect, the principal arguments put forward with respect to the merits of this case will be summarized as follows.

21. The State's first argument is that "Mr. Serrano is registered as a foreigner in the different databases of Ecuador" and that he himself "never expressed his desire to recover the Ecuadorian nationality to which he was entitled." [FN8] The State adds that "for the exercise of the constitutional right to a dual nationality, all persons who previously renounced Ecuadorian nationality must undertake a simple procedure of recovering their Ecuadorian nationality as established in national law" and that the very constitution of 1998 indicates that "citizenship will be recovered pursuant the law." [FN9] Although the State admits that the procedure to recover Ecuadorian nationality, as established in the Law of Naturalization and its regulations, has been partially revoked by the reforms to the constitution published in the Official Registry in January 1995, the State maintains that "the principle is maintained that the desire to recover Ecuadorian citizenship must be formally expressed to the Ministry of Foreign Relations." [FN10] The State explains that the objective of this mechanism is to "conserve legal stability" and that in the present case "the police authorities were not authorized to enter into discretionary considerations on whether or not Mr. Serrano had tacitly recovered Ecuadorian nationality without an official statement from the competent authority." [FN11]

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[FN8] Order No. 02508 of the Office of the Attorney General of the State on July 23, 2003, page 1 (appendix to the communication by the State on August 4, 2003).

[FN9] Ibid, page 2.

[FN10] Ibid.

[FN11] Ibid, page 4.

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22. As a second argument, the State expresses that "there was no violation to due process. Since the database of the Civil Registry, the Ministry of Foreign Affairs, and the Office of Migration and Foreign Services, registered him as a foreign citizen of U.S. nationality, the deportation was applied, which is in keeping with foreign citizens." [FN12] For that reason, the State argues, "Ecuadorian authorities proceeded to deport him, respecting the principles of this process." The State asserts that the authorities based this on the detention order of May 17, 2001, issued in Polk County, Florida, on four counts of murder in the first degree and that these charges "were made after several years of police investigation in the United States of America and based on conclusive evidence." [FN13]

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[FN12] Ibid, page 5.

[FN13] Ibid, page 6.

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23. In the following terms, the State explains the provisions in force for the deportation procedure of Mr. Serrano Sáenz:

Chapter V of the Migration Law, published in Official Registry No. 382 of December 30, 1971, indicates the procedure to be followed for the deportation of foreigners, and states:

Art. 19 – The Interior Minister, through the Migration Service of the National Civilian Police shall proceed to deport all foreigners subject to national jurisdiction that reside in the country understood in the following cases:

...

IV. Ordinary offenders who cannot be tried in Ecuador in the absence of territorial jurisdiction.

Art. 20 – police agents of the Migration Service that learn of incidents constituting grounds for deportation may execute the provisional arrest of a charged foreigner so the General Intendent of the Police of the province in which the detention was executed may initiate the respective action with no possibility for bail.

In this case, through Order No. 001769-IGPP dated August 31, 2002, a preventive detention warrant was ordered against this man for having been charged in criminal deportation proceedings, issuing to the effect the corresponding constitutional detention warrant, which by an involuntary typing error was dated August 30, 2002. Furthermore, a public defender was appointed for the accused, pursuant to Article 12 of the Criminal Procedure Code.

Art. 25- The Intendent General of Police in office, within the twenty-four hours following the preliminary investigation of criminal deportation proceedings, must summon the appointed representative of the Public Ministry, the foreigner, his court-appointed lawyer, if necessary, on the date and at the time set for that appointment, not to exceed a period of twenty-four additional hours, in order to hold the hearing to rule on the criminal deportation proceeding.”

In this case, during the criminal deportation hearing, the accused may avail himself of the right to silence. As documented in the case, it is known that Mr. Nelson Iván Serrano Sáenz became a naturalized national of the United States. This decision was recorded in his birth certificate and index card in the General Office of the Civil Registry. The file also includes several public documents, which record this man as a U.S. citizen. Likewise, the proceedings include a certification on his migratory movements, which show that Mr. Nelson Iván Serrano Sáenz entered the country on April 8, 2000, with the T-3 Visa (tourist visa) for sixty days. Lastly, there is the arrest warrant issued by the judge from the state of Florida, Karla Foreman Wright.

With respect to the petition for appeal filed by Mr. Alfredo Luna Serrano, father of the accused, which was denied through a ruling issued on September 4, 2002, the case was raised before the Minister of Interior, Police, Municipalities, and Religions, through a ruling on September 4,

2002. Through a ruling on September 12, 2002, the appeal was denied and the Intendent General of Police for Pichincha orders the re-execution of the deportation order.

Article 30. The decision of the Intendent General of Police ordering the deportation of a foreigner shall admit no administrative or judicial appeals and shall be carried out by police officers in the established fashion, conditions, and timeframe.

Art. 34 – The exclusion or deportation orders, and the security measures adopted for their execution, are of public order for all legal purposes.

Art. 35 – Any foreigner affected by an exclusion or deportation order will be sent to the country he came from previous to his arrival; the country he embarked from with destiny to Ecuador, the county of origin; the country he resided in prior to his arrival or the country accepting him.[FN14]

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[FN14] Ibid. pages 6 and 7.

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24. Later, the State asserts that this was a summary procedure, but that it does not mean all judicial guarantees were not granted or that the due process of the accused was ignored. Later, the State notes that the passport “is simply a travel document and not an identity document” and that the consular authority that issued said document in the name of Nelson Iván Serrano Sáenz did not have a database that allowed it to know if said person had renounced Ecuadorian nationality.

25. With respect to the allegations concerning the violation of the humane treatment of Mr. Serrano Sáenz, the State asserts that the medical certification issued by the Judicial Police after checking him indicated, “there are no superficial traces of violence.”[FN15] With respect to personal liberty, the State alleges that Mr. Serrano was detained in compliance with the Ecuadorian constitution, the Migration Law and its regulations, and applicable legislation. The State alleges that the judicial guarantees were also respected, and that he even had available to him the appeal of habeas corpus, but did not make use of it. Lastly, the State considers that Nelson Iván Serrano Sáenz “is trying to use the Inter-American Commission of Human Rights as a mechanism to avoid appearing before the criminal courts of the United States, where he is being tried for his alleged responsibility in the death of four citizens from the United States.”[FN16] It concludes with the request to reject the petition, as it deems it is “glaringly groundless and inadmissible and does not state facts that tend to establish a violation of the fundamental rights protected by diverse international instruments.”[FN17]

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[FN15] The certificate accompanying the State does not have a date. It is signed by Dr. Carlos Pazmiño Pinos, legal physician for the Judicial Police.

[FN16] Ibid. page 10.

[FN17] Ibid. page 11.

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#### IV. ANALYSIS OF THE MERITS

##### A. Facts

26. As follows, the proven facts of this case will be presented. The IACHR observes that the State does not challenge most of the allegations of the petitioners with respect to the facts, as seen in its position prior to the admissibility report focused on demonstrating that Mr. Serrano Sáenz did not enjoy Ecuadorian nationality when he was detained. Moreover, the State did not present any arguments in the merits stage of this case.

27. Nelson Iván Serrano Sáenz was born in Quito, Ecuador, on September 15, 1938. On December 3, 1971, he became a naturalized U.S. citizen and renounced his Ecuadorian nationality, pursuant to the Ecuadorian constitution of 1967, which was in force at the time and did not allow dual citizenship. On October 31, 1978, the Ecuadorian Ministry of Foreign Relations communicated this fact to the Office of the Civil Registry, which registered him in Act 3706 and later recorded him as a U.S. citizen.

28. On August 10, 1998, the Ecuadorian constitution entered into force, Article 11 of which provides that “whoever has Ecuadorian citizenship with the issuance of this constitution shall continue to enjoy so” and the “Ecuadorians by birth, who naturalize or have been naturalized in another country, may keep their Ecuadorian citizenship.” Based on this rule, Nelson Iván Serrano Sáenz went before the Consulate of Ecuador in Miami, Florida, and presented his birth certificate, based on which his passport was issued on May 8, 2000, with a validity of 6 years. On this same date, Mr. Serrano Sáenz granted a general power, act in which the consular authority records that he is a “citizen of Ecuadorian nationality.”

29. Mr. Serrano Sáenz entered Ecuador on April 8, 2000, with his U.S. passport and immigration authorities granted him a T3 visa for foreign tourists. On August 21, 2000, Nelson Iván Serrano Sáenz newly entered the country with his Ecuadorian passport, and was admitted as such as recorded in the stamp issued by the immigration authority. From this date, he established his residency in Ecuador as a national of said country, and exercised legal actions as an Ecuadorian, as recorded in a deed of sale before the First Notary Public Office in Quito on April 8, 2002, which acknowledges said nationality in his personal information.

30. On May 17, 2001, the courts of Polk County, Florida, United States of America, ordered Mr. Serrano Sáenz’s arrest for the murder in the first degree of four persons in said location. On August 30, 2002, the General Intendent of Police for Pichincha ordered Mr. Serrano Sáenz’s arrest based on Article 17.8 of the Criminal Procedure Code and Sections II and VI of the Migration Law. The following day, said person was detained at approximately 3:30 p.m. while he was having lunch in a restaurant in the city of Quito.

31. According to the findings in the case, at 5:10 p.m. on August 31, 2002, the Police Intendent for Pichincha ordered the preventive detention of Mr. Serrano Sáenz and ordered his trial for the same day at 5:50 p.m. In the same ruling, the Police Intendent expresses that under

his orders is the “citizen of U.S. nationality Nelson Iván Serrano Sáenz, the same person wanted by justice authorities from the United States of America for the commission of several murders.”

32. The ruling of August 31, 2002, mentions that a public defender was appointed to assist Nelson Iván Serrano Sáenz. The detained person was not allowed to communicate with a lawyer of his choice and he was not able to speak with his family. He was also not informed that a criminal deportation proceeding had been initiated. [FN18] At 5:50 p.m. on August 31, 2002, the adjudication hearing was initiated in which it is not recorded Mr. Serrano Sáenz was allowed to exercise the right to defense. In this regard, the lawyer only expressed that “the situation of the accused should be resolved through the documents attached to the police report”[FN19] and that the detained person has availed himself of the right to silence. At 6:20 p.m. it is added that Mr. Serrano Sáenz denied signing the content of the adjudication act.

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[FN18] Under Ecuadorian legislation deportation proceedings are provided for in the Migration Law as a special criminal process under the authority of the General Police Superintendent.

[FN19] According to the State, said documents included the past records of the U.S. nationality of Mr. Serrano Sáenz, his registration in the General Office of the Civil Registry, “several public documents in which this person is registered as a U.S. citizen,” the certification on migratory movement, in particular his entrance in Ecuador on April 8, 2000, with a tourist visa, and the arrest warrant of the judge from the state of Florida, Karla Foreman Wright.

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33. At 6:30 p.m. of the same day, the deportation ruling was issued against Nelson Iván Serrano Sáenz, based on the detention order issued by the prosecutor of the Circuit Court of Polk County, Florida, United States for the murder of four persons.[FN20]

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[FN20] The Spanish translation of the arrest warrant included in the file for the deportation process states next to the name of Nelson Iván Serrano that “if this person is found in his county, arrest him and keep him in a safe place to take this person before the judge in one of the previously mentioned courts in and for Polk County, Florida (Criminalist Division) in the previously mentioned court.” The order was signed on February 11, 2002.

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34. In another document attached to the deportation process, it is asserted that on December 3, 1997, four persons were found dead with gunshots to the head in the city of Bartow, Florida, including George Gonsalves, former business partner of Mr. Serrano Sáenz; Frank Dosso, son of another former business partner; his sister Diane Patisso, prosecutor for Polk County; and George Patisso, her husband. Likewise, it is asserted in the document that Mr. Serrano Sáenz was formally accused of these acts by a grand jury and that the collaboration of the Ecuadorian police had allowed locating said person in Quito. The document adds, “The U.S. government is interested in being able to capture this criminal. One of the victims was a district attorney of Florida. It is believed that the easiest way would be to capture him and DEPORT HIM. We trust in this process because it is fast and timely.” (Capital letters in the original text.) The document continues with elements aiming to establish that Mr. Serrano Sáenz would only have U.S.

nationality and concludes, “therefore, IMMEDIATE DEPORTATION will proceed along with turning him over to U.S. authorities so this horrendous CRIME will not remain unpunished.” (Capital letters in the original text.) Lastly, the document asserts that, in view of the submission of the deportation or extradition request, Mr. Serrano Sáenz will not be able to recover his Ecuadorian nationality and that, if he tries to, it would be exclusively to avoid legal action. Said document was not legalized in an Ecuadorian Consulate, as required by legislation of said country so it may have evidentiary value.

35. The criminal process lasted one hour and twenty minutes, from 5:10 p.m. until 6:30 p.m. on August 31, 2002. The ruling of the Police Intendent for Pichincha was sent to the National Migration Director of Ecuador at 7:45 p.m. and was also made known to the prosecutor, but not to Nelson Iván Serrano Sáenz. He was transferred to the Mariscal Sucre Airport in the city of Quito and was enclosed in an animal cage until 7:00 a.m. the next day. During this time, Mr. Serrano Sáenz was kept incommunicado, without access to a public defender or family members.

36. At 7:00 a.m. on September 1, 2002, Mr. Serrano Sáenz boarded a commercial flight headed to the United States. He was detained by U.S. authorities on the flight. In the early afternoon of that same day, after having been deported, Mr. Serrano Sáenz’s family members learned of what happened.

37. On September 2, 2002, the family members submitted an appeal before the Interior Minister. The appeal was denied based on Article 30 of the Migration Law, which provides that the deportation was not susceptible any appeal. On September 12, 2002, the Interior Minister confirmed the deportation order and the inadmissibility of the appeal.

38. On October 2006, the jury from Polk County, Florida, recommended the death penalty for Nelson Iván Serrano Sáenz for the quadruple murder committed in 1997. On June 2007, the circuit court judge, Susan Roberts, confirmed the recommendation of the jury. At the time this report was adopted, Mr. Serrano Sáenz continues to be deprived of his liberty while waiting for the execution of the sentence.[FN21]

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[FN21] The Human Rights Ombudsman of Ecuador issued a press release on December 29, 2007, in which the following is stated:

CASE NELSON SERRANO: The decision of the U.S. Court of Justice to suspend, until 2008, the executions of those sentenced to death by lethal injection, was well received by the Human Right Ombudsman of Ecuador, who submitted evidence in favor of the Ecuadorian Nelson Iván Serrano, sentenced to death by a judge from Bartow County, under the charge of murdering four persons in the State of Florida. Mueckay demonstrated to the judge that Serrano had dual nationality, since he entered Ecuador with a passport granted by the Ecuadorian authorities. Nonetheless, in violation of laws and procedures, he was detained and deported to the United States. According to the Human Rights Ombudsman, Serrano should have been tried in Ecuador, because an extradition process was not possible since the Ecuadorian constitution prohibits extraditing an Ecuadorian. Mueckay explained that this postponement gives him –and the lawyers defending Nelson Iván Serrano- time to substantiate and gather more material for the appeal submitted before the County Court of Florida.

Objetivos y Metas del Defensor del Pueblo Alcanzaron Pleno Cumplimiento en el 2007. Bulletin 07-121, December 29, 2007.

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B. Right to personal liberty (Article 7 of the American Convention)

39. The right to personal liberty is recognized in the American Convention in the following terms:

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

40. The Inter-American Court has pronounced on the right to personal liberty in the following terms:

In the case of Article 7 of the Convention, this protects exclusively the right to physical liberty and covers physical conducts that presuppose the actual presence of the holder of the right and that are normally expressed in physical movement. Security should also be understood as protection against all unlawful or arbitrary interference with physical liberty. However, this right may be exercised in many ways, and what the American Convention regulates are the limits or restrictions that the State may impose. This explains why Article 7.1 establishes in general terms the right to liberty and security and the other subparagraphs refer to the different guarantees that must be provided when depriving a person of their liberty. This also explains why the way in which domestic laws affect the right to liberty is characteristically negative, when they allow liberty to be deprived or restricted. Consequently, liberty is always the rule and the limitation or restriction always the exception.[FN22]

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[FN22] I/A Court H.R., Case of Chaparro Álvarez and Lapo Íñiguez. Preliminary objections, merits, reparations, and costs. Judgment of November 21, 2007.

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i. Article 7.2

41. In this case, it has been established that on August 30, 2002, at 3:30 p.m. Ecuadorian police agents detained Mr. Serrano Sáenz, while he was in a restaurant in the city of Quito with his wife and other persons. The arrest report written by police officer Luis Moreno asserts that Mr. Serrano was informed of his rights. Nonetheless, in the case opened by the Office of the Ecuadorian Human Rights Ombudsman, several eyewitnesses declared that the detention was carried out without an arrest warrant and he was not read his rights. Gustavo Adrián Concha Monje declared that he had lunch that day at the Hotel Embassy Building with Nelson Iván Serrano Sáenz and other persons. According to Mr. Concha Monje, Mr. Serrano was violently intercepted by armed police with bulletproof vests as he left the premises. Jaime Oswaldo Muñoz Ribadeneira, another eyewitness that testified on the circumstances of the detention, also had been having lunch with Mr. Serrano Sáenz on that day and recounts what happened when he left the restaurant:

We were surprised by a group of six uniformed police officers, as well as some others dressed in civilian clothes, all of them armed. They proceeded to restrain Mr. Serrano and pushed him over to a truck parked in front. So, I protested the measures taken by these men and a police officer pushed me against the wall. I was kept like that when they forced Mr. Serrano in the [truck]. In this respect, they told us that everything would be explained in a timely fashion, but the truck left with Mr. Serrano inside. [...] We waited with Gustavo Concha for about one hour at the entrance of the Migration Office and at 5:15 p.m. the same green truck arrived, the same one that entered the driveway of the Migration Office. I saw that they took Mr. Nelson Serrano out of the truck with three police officers. We were on the sidewalk in front of the entrance of the Migration Office. Then a female police officer asked for Mr. Gustavo Concha, who entered the Migration Office Building for Mr. Serrano's personal effects. We waited to see if there was any explanation, but they told us that we had to see a lawyer on Monday. They also said it wouldn't be a problem if we brought Mr. Serrano, who would spend the night there, something to eat and a blanket. Lastly, we were told that the Mr. Serrano's situation would be settled on Monday. Unfortunately, the next day, Sunday, the police told us that Mr. Nelson Serrano had been taken from the country.[FN23]

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[FN23] Ombudsman File No. 29721 initiated to deport Nelson Iván Serrano Sáenz, statement by Jaime Oswaldo Muñoz Rivadeneira on December 8, 2006, page 17.

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42. With respect to the guarantee recognized in Article 7.2 of the American Convention, the State stresses that, pursuant the Ecuadorian constitution, in the cases, persons may deprived of their liberty with a warrant issued by a competent judge for the time and with the formalities prescribed by law. The State adds, "in this case, Mr. Serrano was deprived of his liberty as

established by the constitution, the Migration Law and its regulations, and other legislation in force.”[FN24]

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[FN24] Order No. 02508 of the Office of the Attorney General of the State on July 23, 2003, page 1 (appendix to the communication by the State on August 4, 2003).

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43. Article 23 of Ecuador’s Migration Law authorizes the General Intendent of Police to initiate actions to deport foreigners. However, that provision establishes that said official should base this on an express report of the police officer from the Migration Service, the respective notification from the judge or court, the Director of the prison establishment, or the director of the Consular Department of the Ministry of Foreign Affairs. Nonetheless, as revealed by the facts of this case, when the deportation proceedings were initiated, Mr. Serrano Sáenz was already detained as a result of the order dated August 30, 2002, which was issued pursuant Article 17.8 of the Criminal Procedure Code and sections II and VI of the Migration Law of Ecuador. Therefore, to the contrary of that asserted by the State, the actions were not in compliance with Ecuadorian law.

44. Furthermore, pursuant Article 167 of Ecuadorian Criminal Procedure Code, detaining someone requires evaluating sufficient grounds of the existence of a crime qualifying to public indictment. This entails clear and specific grounds that the accused is the author or accomplice of a crime, and that it concerns a crime punished with a custodial sentence greater than a year. The documents used by the General Intendent of the Police to issue the custodial sentence and recorded in the deportation file are simple photocopies, not signed and without a stamp whatsoever to give them legal value. Pursuant Ecuadorian legislation, the General Intendent of Police lack competency to order the detention of persons, since this act must be requested by the judge from criminal jurisdiction in accordance with Article 167 of the Criminal Procedure Code.

45. On the basis of the information supplied by the parties, the Inter-American Commission concludes that Mr. Nelson Ivan Serrano Saenz was deprived of liberty in violation of the rules set forth in the Constitution of Ecuador and the laws approved pursuant to it. Accordingly, the Ecuadorian State violated Article 7.2 of the American Convention to the prejudice of the victim in this case.

ii. Article 7.4

46. The evidence in this case reveals that Mr. Serrano Sáenz was not formally notified of the grounds for his detention or of the charges against him. The Ecuadorian State has also not challenged the evidence provided by the petitioners in any way, which included statements by eyewitnesses given before the Office of the Human Rights Ombudsman. In effect, the only communication from the State in this case is that cited previously and is only a general statement cited previously on compliance with legal formalities, which is absolutely not based on the incidents established in this case.

47. On the basis of the evidence presented by the petitioners, which was not controverted by the State with legal arguments or any kind of proof, the IACHR concludes that the Ecuadorian State also violated the right enshrined in article 7.4 of the American Convention to the prejudice of Mr. Serrano Sáenz.

iii. Articles 7.5 and 7.6

48. The Inter-American Commission has established in this case that the victim was not taken before a judge in Ecuador for the determination of his rights to personal liberty. According to Ecuadorian law, the General Superintendent of Police is not competent to order the arrest of persons, since an order must be requested to that effect to the competent criminal judge, pursuant to Article 167 of the Code of Criminal Procedure.

49. On the other hand, the IACHR notes that Nelson Iván Serrano Sáenz certainly was not “entitled to recourse to a competent court in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.” It is a fact not challenged by the Ecuadorian State that he was held incommunicado during his brief detention and later deported from the country and turned over to U.S. authorities without having the slightest possibility of accessing the Ecuadorian justice system.

50. The Inter-American Commission concludes that the Ecuadorian authorities illegally detained Nelson Iván Serrano Sáenz on August 31, 2002, and held him incommunicado until he was deported, which denied him the chance to question these acts before the courts of said country. Consequently, the Ecuadorian State is responsible for the violation of the right to personal liberty and security to the detriment of the victim in this case.

### C. Right to Humane Treatment (Article 5 of the American Convention)

51. Article 5 of the American Convention establishes that every person has the right to have his physical, mental, and moral integrity respected. Likewise, it establishes that “no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.” And that “all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

52. In accordance with the acts not challenged in this case, Nelson Iván Serrano Sáenz was deprived his liberty from 3:30 p.m. of August 31, 2002, until 7:00 a.m. of September 1, of the same year, when he was deported and turned over to U.S. authorities. During this time, he was held incommunicado, in other words without access to his family or an attorney of his choice. The petitioners believe that the deprivation of contact with an attorney of his choice, prior and subsequent to his trial, constitutes an attack against his moral and psychic integrity, and that said treatment was deliberate and meant to keep him from defending himself and being able to demonstrate his Ecuadorian nationality. The petitioners also allege that Mr. Serrano Sáenz was detained in a dog cage when he arrived to the Quito airport on the night of August 31, 2002, until he was turned over to U.S. authorities at 7:00 in the morning on September 1. In turn, the State does not challenge the allegations on the violations to the right to humane treatment of Nelson

Iván Serrano Sáenz, rather it limits itself to citing the medical certificate, which indicates that “there are no superficial traces of violence.”

53. As indicated by the Inter-American Court, Article 5 of the American Convention determines that all persons deprived of their liberty have the right to live under detention conditions that are compatible with their personal dignity.[FN25] Likewise, the Inter-American Court has stressed that, as the responsible party for the prison establishments, the State must guarantee conditions for the prisoners that respect their fundamental rights and a life with dignity.[FN26] The Court has also said that “prolonged isolation and coercive solitary confinement are, in themselves, cruel and inhuman treatments, damaging to the person’s psychic and moral integrity and the right to respect of the dignity inherent to the human person.”[FN27] In view of the foregoing, the Inter-American Court has stressed that the solitary confinement may only be used exceptionally, since it generates grave effects due to the fact that “isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prisons.”[FN28]

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[FN25] I/A Court H.R., Case of Tibi. Judgment of September 7, 2004, Series C No. 114; Case of the “Juvenile Reeducation Institute”. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, paragraph 151; and Case of Bulacio. Merits, Reparations and Costs, Judgment of September 18, 2003. Series C No. 100, paragraph 126.

[FN26] Case of Tibi, supra note 21, paragraph 150; Case of the “Juvenile Reeducation Institute”, supra note 21, paragraph 152; and Case of Bulacio, supra note 21, paragraph 126.

[FN27] I/A Court H.R., Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, paragraph 87; Bámaca Velásquez Case. Judgment of September 25, 2000. Series C No. 70, paragraph 150; and Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, paragraph 83.

[FN28] Cfr. Case of Maritza Urrutia, supra note 23, paragraph 87; Bámaca Velásquez Case, supra note 23, paragraph 150; and Cantoral Benavides Case, supra note 23, paragraph 84.

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54. The Inter-American Commission concludes that the treatment given to Nelson Iván Serrano Sáenz during his illegal deprivation of liberty constitutes cruel, inhumane and degrading treatment. Consequently, the IACHR concludes that the Ecuadorian State is responsible for violations to the right to humane treatment of the victim in this case.

#### D. Right to a fair trial (Article 8 of the American Convention)

55. The right to due process has been recognized in the following terms by the American Convention:

##### Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the

substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

1. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
2. prior notification in detail to the accused of the charges against him;
3. adequate time and means for the preparation of his defense;
4. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
5. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
6. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
7. the right not to be compelled to be a witness against himself or to plead guilty; and
8. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

56. As established by the Inter-American Court of Human Rights, the process "is a means to ensure, insofar as possible, an equitable resolution of a difference," which contributed to "the body of procedures, of diverse character and generally grouped under the heading of the due process."<sup>[FN29]</sup> Article 8 of the American Convention established general guidelines for the so-called due process of law or the right to procedural defense,<sup>[FN30]</sup> which "includes the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination."<sup>[FN31]</sup>

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[FN29] I/A Court H.R., The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paragraph 117.

[FN30] I/A Court H.R., Case of Genie-Lacayo. Judgment of January 29, 1997. Series C No. 30, paragraph 74.

[FN31] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 28.

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57. In this report, it has been established that Nelson Iván Serrano Sáenz was illegally deprived his liberty and that he suffered from solitary confinement. In addition to these violations, it is important to bear in mind that due process in this case should have applied in the determination of his nationality, which could result in his deportation to a country where he was accused of crimes carrying the death penalty.

58. The petitioners allege that Mr. Serrano Sáenz was denied the right to a hearing before a judge or independent court for the substantiation of the charges against him. In this regard, the petitioners stress that the Police Intendent for Pichincha is not a judicial officer, rather he depends directly on the executive branch. As a result, he may be freely removed by his superior, the Minister of Interior. Likewise, they allege that the duration of his trial was not reasonable, as it lasted a total of one hour and twenty minutes so as to not allow him to exercise any kind of defense that would affect the deportation from Ecuador, country of his nationality. As alleged by the petitioners, the real intention of the Ecuadorian authorities was to extradite Mr. Serrano Sáenz to the United States to face the justice system in said country. Nonetheless, this procedure was expressly prohibited by the Ecuadorian constitution for the case of the victim, since first it does not allow the extradition of Ecuadorians and second the law prohibits extradition if the accused may be sentenced to death.

59. It is noted that the Ecuadorian State did not present objections to the petitioners' allegations on the merits of the case. In the stage prior to admissibility, the State's defense focused on demonstrating that Mr. Serrano Sáenz did not enjoy Ecuadorian nationality at the time he was deprived his liberty and deported to the United States. This position is based on the fact that he did not carry out the domestic procedures for the determination of his nationality and because he had several personal documents indicating he had U.S. nationality. The Ecuadorian State argues that:

The loss or renunciation of Ecuadorian nationality, as well as any other, brings with it legal consequences that modify certain subjective rights of the individual. To recover these powers and prerogatives, the individual must express his desire before the competent authority so the existing obstacles are lifted. Reviewing the facts of the case of Mr. Serrano, we see that in the respective databases of the State institutions, the referred to man continued to be registered as a U.S. citizen, and therefore he should have been given the common treatment for foreigners. Without an official pronouncement from the competent authority, the police authorities were not authorized to enter into discretionary considerations on whether or not Mr. Serrano had tacitly recovered the Ecuadorian nationality. Even in the Civil Registry, this man is registered as a foreigner.[FN32]

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[FN32] Office of the Attorney General of the State of Ecuador, Order No. 02508 of July 23, 2003, page 4 (appendix to the State communication of August 4, 2003).  
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60. Nonetheless, subsequent to said assertion included in the brief by the Office of the Attorney General of the State dated on July 23, 2003, this same institution issued a completely

contrary interpretation, which was cited by the petitioners and was never challenged by the Ecuadorian State:

Ecuadorians residing abroad, who [have] naturalized, nationalized, or acquired the citizenship of another country prior to the political constitution of the Republic entering into effect in 1998, maintain their Ecuadorian citizenship or nationality and continue to be fully entitled to it, without requiring any requirement for this purpose, pursuant cited Article 10 of the constitution in force until August 9, 1998, in compliance with the first section of Article 1.1 of the present constitution.[FN33] (Underlined in the original text.)

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[FN33] Office of the Attorney General of the State of Ecuador, Order No. 022355 of June 28, 2007, addressed to the National Migration Secretary, page 2.

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61. Mr. Serrano Sáenz did not have the chance to submit any evidence to ensure respect for his rights, since he was detained incommunicado and deported in a summary police procedure, before establishing any kind of contact with his family or the attorney of his choice. In accordance with the jurisprudence of the Inter-American System, the guarantees of Article 8 of the American Convention are not only enforceable at the different instances making up the judicial power of a specific State, but also should be respected by all agencies exercising materially jurisdictional functions. In this respect, the Inter-American Court has indicated the following:

Although the jurisdictional function belongs, in particular, to the Judiciary under the separation of powers that exists in the rule of law, other public organs or authorities may exercise functions of the same type [...]. In other words, when the Convention refers to the right of everyone to be heard by a “competent judge or court” to “determine his rights”, this expression refers to any public authority, whether administrative, legislative, or judicial, which, through its decisions determines individual rights and obligations. For that reason, this Court considers that any State organ that exercises functions of a materially jurisdictional nature has the obligation to adopt decisions that are in consonance with the guarantees of due legal process in the terms of Article 8 of the American Convention.[FN34]

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[FN34] I/A Court H.R., Case of the Constitutional Court. Judgment of January 31, 2001. Series C No. 71, paragraph 104.

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62. The evidence submitted in this case demonstrates that Mr. Serrano Sáenz did not receive a detailed communication of the procedure for the determination of his legal situation, and he certainly did not have the time or the material possibility of preparing any kind of defense. Furthermore, he was appointed a public defender, who also did not undertake any action to advise the victim on this case. The deportation order was not legally notified to Mr. Serrano Sáenz, hence he also did not have the right to resort to it.

63. The Ecuadorian State violated the right to due process of Nelson Iván Serrano, in particular the provisions to Article 8.1 of the American Convention, which recognize his right to a hearing with the due guarantees and by a competent, independent and impartial judge or court for the determination of his rights. In effect, it has been seen that the decision to deprive him his liberty and deport him were carried out and executed without being brought before a judge.

64. Likewise, there were violations to the right of Nelson Iván Serrano Sáenz to be presumed innocent until legally proved guilty. In this case, the victim was not informed of the charges against him –as indicated by the State, a criminal procedure was applied in this case- and he was submitted to a deportation sanction, which was executed immediately. The information of this case demonstrates that the determination of his rights was undertaken in clear contradiction to established Ecuadorian domestic legislation and against the parameters of due process established in international human rights law.

E. Right to nationality (Article 20 of the American Convention) and the Right to Movement and Residence (Article 22 of the American Convention)

65. Article 20 of the American Convention establishes that every person has the right to a nationality, be it the state in whose territory he was born or another. The same provision prohibits the arbitrary deprivation of nationality, as well as the right to change it. The language used also understands the right to dual nationality, when this has been recognized by the constitution or law, as is the case of Ecuador since 1998.

66. In turn, the right to movement and residence established in Article 22 of the American Convention includes the right to move about and reside in a State, subject to the provisions of the law. The same article also establishes the prohibition of expelling someone from the territory of the State of which he is a national, and prescribes that foreigners lawfully in the territory of a State Party to the American Convention may be expelled from it only pursuant to a decision reached in accordance with law.

67. In this case, there is no disagreement concerning the fact that Nelson Iván Serrano Sáenz was born in Ecuador; therefore this constitutional provision is fully applicable for his case. As seen above, the Ecuadorian State expressly recognizes automatic entitlement to the benefits of Ecuadorian nationality for those who have renounced it. Although the Ecuadorian State had alleged in this case that it did not attempt to deprive Mr. Serrano Sáenz of his nationality, the facts demonstrate the contrary. The actions of all the authorities intervening in the detention and summary deportation of Mr. Serrano Sáenz deprived him of an elemental right inherent to nationality: the right to remain in it and not be deported. The arbitrary nature of the authorities to the detriment of the victim is clearly evident, as an Ecuadorian could not be deported and the extradition procedures to be applied to a foreign citizen in the circumstances of this case were not followed. Definitively, a process was applied, which was completely alien to the constitution, the extradition treaty in force between Ecuador and United States, and relevant domestic legislation.

68. In light of the foregoing, the IACHR concludes that the Ecuadorian State is responsible for the violation of the right protected in Article 20 of the American Convention to the detriment

of the victim in this case. As for the allegations concerning the presumed violation to Article 22 of the American Convention, the Inter-American Commission considers that this is included in the conclusions on the violation of the rights to personal liberty and nationality, which have already been established in this report.

F. Right to judicial protection (Article 25 of the American Convention)

69. Effective judicial appeal is recognized in Article 25 of the American Convention, which provides that “everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

70. The Inter-American Court has argued that the State Parties to the American Convention are obliged to provide effective judicial recourse to the victims of human rights violations (Article 25), recourses that should be substantiated pursuant the rules of the due process of law (Article 8.1), all within the general obligation of guaranteeing the free and full exercise of the rights recognized in the Convention for all persons subject to their jurisdiction (Article 1.1).[FN35] Furthermore, the Court has asserted that the main purpose of international human rights law is to protect persons against the arbitrary exercise of power by the State. In this sense, “the lack of effective domestic remedies renders the victim defenseless.”[FN36] Therefore, the absence of an effective judicial remedy to make reparations to the victims of rights protected by the Convention is a violation, separate from the Convention.[FN37] Moreover, the Inter-American Court has repeatedly stated that the guarantee of an effective judicial remedy “constitutes one of the basic pillars, not only of the American Convention, but also the rule of law itself in a democratic society, in the terms of the Convention.”[FN38]

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[FN35] I/A Court H.R., Case of Palamara-Iribarne. Judgment of November 22, 2005. SeriesC No. 135 paragraph 163; Case of the Moiwana Community. Judgment of June 15, 2005. SeriesC No. 124, paragraph 142; and Case of the Serrano-Cruz Sisters. Judgment of March 1, 2005. SeriesC No. 120, paragraph 76.

[FN36] I/A Court H.R., Constitutional Court Case. Judgment of January 31, 2001. Series C. N° 71, paragraph 89.

[FN37] Ibid.

[FN38] Ibid, paragraph 90.

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71. In the this case, it has been observed that Nelson Iván Serrano Sáenz did not have a simple or effective recourse that allowed him to protect himself against the illegal detention and summary deportation from the country of his own nationality. In effect, not even the administrative recourse before the Minister of Interior to question the actions of the Police Intendent for Pichincha had an effect, since in addition to being rejected it was decided when Mr. Serrano Sáenz was outside of Ecuadorian jurisdiction, precisely pursuant to the decision of these authorities.

72. The Inter-American Commission concludes that the Ecuadorian State is responsible for the violation of the right to judicial protection of Nelson Iván Serrano Sáenz.

G. General Obligations of Respecting and Guaranteeing Human Rights (Articles 1.1 and 2 of the American Convention)

73. Article 1.1 of the American Convention establishes that:

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

74. In turn, Article 2 of said international instrument provides that:

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

75. The Inter-American Court has issued pronouncements on two provisions:

[T]he general obligations of the State, established in Article 2 of the Convention, include the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the Convention, and also the adoption of laws and the implementation of practices leading to the effective observance of the said guarantees.[FN39]

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[FN39] I/A Court H.R., Case of “The Last Temptation of Christ” (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C N° 73, paragraph 85.

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76. The Court added that:

In international law, customary law establishes that a State, which has ratified a human rights treaty, must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. This law is universally accepted, and is supported by jurisprudence. The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of this Convention, in order to guarantee the rights that it embodies. This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of *effet utile*). This means that the State must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires. Such measures are only effective when the State adjusts its actions to the Convention’s rules on protection.

77. In this case, it has been verified that domestic legislation grants powers to police authorities to order the detention of persons and subject them to a trial of minimal duration and with the consequence of their expulsion from the country. As also has been verified in the case of Mr. Serrano Sáenz, these provisions may be interpreted as not having an effective judicial control to determine the rights of a person, with special gravity for the victim in this case that led him to a procedure in which he was sentenced to death in another country. The IACHR deems that Ecuador has been remiss in its duty to bring its domestic legislation into line with international obligations, in particular relating to the procedure of arresting persons for deportation.

78. Based on the facts analyzed in the previous sections of this report, the IACHR concludes that the Ecuadorian State did not comply with its duty to guarantee Nelson Iván Serrano Sáenz the free and full exercise of his rights established in the American Convention when he was illegally detained and deported from his own country and sent to United States, where he faces his probable execution through the application of the death sentence. Furthermore, the Ecuadorian State should adjust its domestic law in order to make effective the rights and liberties of the American Convention. In particular, the State must adopt the necessary measures to review and modify the provisions allowing the application of a police process that allows detaining and deporting persons without being brought before a judge.

## V. CONCLUSIONS

79. The Inter-American Commission concludes that the Ecuadorian State illegally detained Nelson Iván Serrano Sáenz on August 31, 2002, in Quito, held him incommunicado and in inhumane conditions, and later illegally and summarily deported him to the United States, where the victim has been sentenced to death for the murder of four persons, incidents for which he has declared himself innocent. The State is responsible for the violation of the rights to humane treatment, personal liberty, judicial guarantees, nationality, movement and residence, and judicial protection, respectively, in Articles 5, 7, 8, 20, and 25 of the American Convention. Additionally, the IACHR concludes that by means of the conduct of its authorities, the Ecuadorian State has been remiss in its general obligations to respect and guarantee these rights, and in the duty to bring its domestic legislation into line with international human rights obligations, as established in Articles 1.1 and 2 of the American Convention.

## VI. RECOMMENDATIONS

80. Based on the analysis and conclusions of this report,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE ECUADORIAN STATE TO:**

1. Immediately recognize the human rights violations committed by its authorities to the detriment of Nelson Iván Serrano Sáenz, and take the necessary and timely measures, legal and diplomatic, with a view to the return of said person to his country of birth, from where he was arbitrarily deported.

2. To provide Nelson Ivan Serrano Saenz with legal assistance in accordance with international law.
3. Bring its domestic legal system into line with Article 25 of the American Convention in order to grant a simple and effective recourse in the judicial sphere to persons subjected to deportation processes.
4. Make adequate reparations to Nelson Iván Serrano Sáenz for the violation of his human rights as established in this report.

81. The Commission agreed to forward this report to the Ecuadorian State, and set the period of two months for compliance with the recommendations put forward. Said period of time started from the date of transmission of this report to the State, which was not be authorized to publish it. The Commission also agreed to notify the petitioner on the approval of a report as regards Article 50 of the Convention.

## VII. PROCEEDINGS SUBSEQUENT TO REPORT NO. 29/08 AND 32/09

82. On July 17, 2008, during its 133<sup>o</sup> Sessions, the IACHR adopted Report N° 29/08, pursuant to Article 50 of the American Convention. The Report was transmitted to the Ecuadorian State on September 9, 2008, with two months to comply with the recommendation in paragraph 80.

83. On September 9, 2008 the petitioners were informed of the approval of Report N°29/08 and they were required to present, within on month, their position regarding the referral of the matter to the jurisdiction of Court. They were also required to submit the position of the victim, their powers of attorney, any additional evidence, details on witnesses and expert witnesses, as well as their claims on reparations and attorney's fees.

84. On October 9, 2008 the petitioners indicated their wish that the case be submitted to the Inter-American Court's jurisdiction. Regarding their claims on reparations they indicated that the State should "restitute the situation prior to the violation of Mr. Serrano Sáenz's human rights". They indicated, however, that "due to the fact that he is under the custody of a third State and restitutio in integrum is not possible, it is vital for the Ecuadorian State to adopt measures to remedy the consequences of the deportation. The only measure that could partially remedy these consequences is that of providing the best defense available and prevent the execution of the death penalty [...]".

85. On November 11, 2008, the State requested "a 30 day extension to comply fully with the recommendations made in the IACHR preliminary report on the merits." On November 14, 2008, the State informed the Commission that

The Ministry of the Interior, the Ministry of Justice and Human Rights, the Ombudsman, and the Office of the Attorney General are part of a Technical Committee to analyze Mr. Serrano's deportation process. In particular, the Ministry of Justice is taking steps to implement all the recommendations and, in that framework, is adopting special and urgent measures through legal and diplomatic channels to secure the return of Mr. Serrano, and to hire lawyers to provide him with legal counsel. Therefore, and in keeping with Article 51(1) of the American Convention on

Human Rights, I ask that you grant an extension in order to comply with the recommendations in full. In the light of said request, the Ecuadorian State expressly waives the right to invoke a preliminary objection against any application filed by the IACHR before the Inter-American Court on the ground that the statutory time limit to refer said application has elapsed.

86. The victim's representative did not oppose to the granting of an extension given the State's disposition to meet and discuss possible avenues of compliance with the recommendations.

87. On November 24, 2008 the Commission granted the requested extension to comply with the recommendations issued in Report 29/08. On December 23, 2008 the State requested a second extension to comply with the recommendations. The State gave the following grounds for its request: (1) On October 8 2008 the State adopted a decree creating a special commission for the investigation of Serrano Sáenz's deportation which in its final report, dated December 8, 2008, acknowledged that the State had violated Serrano Sáenz's rights. (2) By resolution dated December 19, 2008 the Ministry of Justice decided to hire specialized counsel in the area of death penalty appeals to provide legal representation to Mr. Serrano Sáenz in the United States. (3) The National Secretariat for Migrants and the Ministry of Justice are preparing draft legislation on "Human Mobility" incorporating international human rights standards in the area of deportation. (4) State officials have held meetings with Mr. Serrano Sáenz's family members in order to agree upon reparations on the basis of the human rights violations established by the IACHR. Finally the State indicated that "in consideration of Article 51.1 of the Convention a new extension is hereby requested to comply with the IACHR recommendations. In view of this request, the Ecuadorian State waives the right to invoke a preliminary objection against any application filed by the IACHR before the Inter-American Court on the ground that the statutory time limit to refer said application has elapsed".

88. On December 29, 2008 the victim's representative confirmed that the Government had engaged in discussions towards establishing mechanisms for compliance with the recommendations, in particular the hiring of specialized legal representation for the defense of Mr. Serrano in the US, on that same date. The victim's representative indicated his conformity with the alternative of the IACHR granting an additional one month extension.

89. In light of these elements, the Commission decided to grant a second extension for a period of two months, beginning December 31, 2008, at the end of which the State had an additional period to report on compliance with the recommendations of Report No. 29/08. During that period, the time limit established in Article 51.1 of the American Convention for the referral of case No. 12.525 to the Court was suspended until March 8, 2009. The State was asked to report on compliance with the recommendations of Report No. 29/08, before February 28, 2009. The State failed to file its report before the expiration of the extension.

90. On March 2, 2008, the victim's representative reported on a number of measures adopted by the State to comply with IACHR recommendations as well as areas in which the State had failed to comply. Specifically, among the measures aimed at complying with the recommendations, the victim's representative referred to: (1) The inter-ministerial report recognizing irregularities in the deportation process of Mr. Serrano Sáenz and issuing various

recommendations similar to those contained in the IACHR's report. (2) The hiring, by the end of December, 2008, of an attorney to represent Mr. Serrano in his appeal before the Florida State Supreme Court.

91. On the other hand, the victim's representative considered that the State had failed to comply with the recommendations in issued by the inter-ministerial commission recognizing irregularities in Mr. Serrano Sáenz's deportation. They also indicate that when hiring the attorney representing Mr. Serrano in Florida, the State undertook to provide all necessary documentation for his defense. However this undertaking had not been fulfilled. The translation of the inter-ministerial commission report recognizing irregularities in the deportation process was among the documents that failed to be delivered by the State to Mr. Serrano's attorney. Likewise, despite verbal offerings of Ministry of Justice officials, a note of protest required by Mr. Serrano's attorney had not been sent to the United States.

92. In conclusion, the victim's representative argued that despite the extensions granted by the Commission, the Ecuadorian State had failed to comply with all recommendations and therefore considered that once expired the additional period granted to the State, the case should be referred to the Inter-American Court of Human Rights."

93. Finally, on March 4, 2009, the State reported that the Ministry of Justice and Human Rights had hired translation services for all reports issued by the inter-ministerial commission and their annexes to be sent to the attorney hired for Mr. Serrano defense. The State also indicated that officials from the Ministry of Justice and Human Rights met periodically with Mr. Serrano's family members and legal representative in order to keep them informed of any action adopted by the State with regards to the case and to receive their suggestions on the implementation of the recommendations. In addition, the State reiterated that it is preparing draft legislation on human mobility as well as an action on the unconstitutional nature of legislation on deportation, recovery of Ecuadorians and extradition currently incompatible with international instruments.

94. The State indicated that on January 29, 2009 the Ministries of Justice and Government made public the "Report of the Commission for the Investigation of the Deportation Process of Nelson Iván Serrano Sáenz". The Report acknowledges human rights violations committed against him as well as the illegality of the deportation process. In conclusion, the State considers that "all the efforts and pertinent actions to comply with the IACHR's recommendations have been carried out; nonetheless, given the complexity of the case, their full compliance will require a longer time period than that established by the IACHR".

95. On March 6, 2009 the Ecuadorian State sent a note of protest to the Government of the United States of America enclosing the "Report of the Commission for the Investigation of the Deportation Process of Nelson Iván Serrano Sáenz" indicating inter alia that

The Ecuadorean Government, by Resolution of the Ministry of Government, requires and demands the immediate devolution of Ecuadorean citizen Nelson Serrano to his country of origin, Ecuador, where he would be prosecuted as it should have been had the legislation, the

Ecuadorian Constitution and the extradition treaty signed between the United States and Ecuador, been respected[FN40].

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[FN40] Communication No. 12385-GM/SAB/2009 of the Ministry of Foreign Affairs, Commerce and Integration of March 6, 2009, sent to the IACHR by Note 4-2-60/2009 of the Ecuadorian Mission to the OAS, dated March, 2009.

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96. The Commission values the efforts made by the Ecuadorean State to comply with the recommendations. Particularly, after the adoption of Report N°29/08 and during the extensions granted by the Commission, the State adopted measures to acknowledge responsibility and address its duty to avoid repetition of human rights violations. The State adopted measures to acknowledge responsibility for the violations committed against Mr. Serrano Sáenz and the illegality of the deportation process. The State also sent a note of protest to the United States of America. The State is complying with the recommendation to provide legal representation for Mr. Serrano in his pending appeal in the United States.

97. Nonetheless, the State has not adopted all measures necessary to ensure the return of Mr. Serrano to Ecuador, in compliance of the IACHR's recommendations. There is no information on compliance with the undertaking of the State to provide reparations. Finally, no reforms to the legal framework have been adopted.

98. In view of the above and the measures adopted by Ecuador to comply with its recommendations, on March 6, 2009 the IACHR resolved by an absolute majority not to refer this case to the jurisdiction of the Inter-American Court of Human Rights, as established in its Rules.

99. On March 20, 2009 the IACHR adopted Report 32/09 pursuant to Article 51 of the American Convention. In its report it ratified the conclusions established in Report 29/08 and reiterated its recommendations to the Ecuadorian State that it continue granting legal assistance to Nelson Iván Serrano Sáenz according to international law; modify domestic legislation to ensure simple and effective recourse to the courts pursuant to Article 25 of the American Convention for anyone subject to deportation proceedings; and provide adequate reparations for the violations of Nelson Iván Serrano Sáenz's rights established in this report. The Commission transmitted Report 32/09 to the State of Ecuador, in accordance with Article 51 of the Convention, and granted a period of one month to take the necessary measures in order to comply with the recommendations, as from the date of transmission of the Report. The Commission also transmitted the Report to the Petitioners and indicated to both parties that they were not authorized to make it public, unless the Commission subsequently took a decision to that effect.

100. On June 16, 2009 the State submitted a report on the measures adopted to comply with the recommendations issued by the IACHR[FN41]. The submission highlights the continuity of specialized legal representation hired to conduct the appeal of Mr. Serrano's conviction before the courts of Polk County, Florida, in the United States. It highlights the steps taken to make

public the note of protest sent to the United States, including press conferences in Miami. It reiterates Ecuador's commitment to provide reparations to Mr. Serrano Sáenz, with the participation of his family members and legal representatives. The State also provides information regarding the drafting process of the bill on Human Mobility, presently in a phase of legal and social information gathering after which it should be submitted for consideration before the Legislative Assembly, pursuant to the Constitution.

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[FN41] Communication 4-2-129/2009 of the Ecuadorian Mission to the OAS and the Ministry of Foreign Affairs, Commerce and Integration of June 16, 2009 and enclosures including press clippings and draft articles, among other documents.  
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101. On June 19, 2009 the IACHR sent a copy of the State's submissions to the petitioners for observations within one month. The time limit expired without receiving observations from the petitioners.

#### VIII. CONCLUSIONS

102. Based on the considerations of facts and law above, the Inter-American Commission ratifies its conclusion that Nelson Iván Serrano Sáenz was illegally detained by the State of Ecuador on August 31, 2002 in Quito; that the State maintained him incommunicado and in inhumane conditions; and that it deported him later in an equally illegal and expedite manner to the United States where the victim has been convicted for the murder of four people, where he pleaded not guilty, and sentenced to death.

103. The Inter-American Commission also reiterates that the State is responsible for the violation of the rights to humane treatment, personal liberty, fair trial, nationality, freedom of movement and residence and the right to judicial protection respectively provided for in Articles 5, 7, 8, 20, 22 and 25 of the American Convention. The IACHR concludes that in virtue of the conduct of its authorities the Ecuadorean State has failed to comply with its general obligations to respect and guarantee these rights and with its obligation to adapt its domestic legislation to its international commitments, as provided for in Articles 1.1 and 2 of the Convention.

#### IX. RECOMMENDATIONS

104. Based on the analysis and conclusions of the present report, the Inter-American Commission on Human Rights reiterates to the Ecuadorian State the following recommendations,

1. Continue granting legal assistance to Nelson Iván Serrano Sáenz according to international law.
2. Modify domestic legislation to ensure simple and effective recourse to courts pursuant to Article 25 of the American Convention for anyone subject to deportation proceedings.
3. Provide adequate reparations for the violations of Nelson Iván Serrano Sáenz's rights established in this report.

## X. PUBLICATION

105. Based on the foregoing considerations and pursuant to Articles 51(3) of the American Convention and 45 of its Rules of Procedure, the Commission resolves to publish the instant report and include it in its Annual Report to the OAS General Assembly. In keeping with its mandate, the Commission will continue to evaluate the steps taken by the Republic of Ecuador in connection with the aforementioned recommendation until full compliance therewith is reached.

Done and signed in the city of Washington, D.C., on the 6 day of the month of August 2009.  
(Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro and Paolo G. Carozza, Commissioners.