

## REPORT No. 105/11

PETITIONS 233–04 (MANFRED AMRHEIN PINTO, RONALD FERNANDEZ PINTO, CARLOS OSBORNE ESCALANTE, CARLOS MANUEL GONZALEZ LIZANO AND ARTURO FALLAS ZÚÑIGA); 669-04 (RAFAEL ANTONIO ROJAS MADRIGAL); 1174-04 (DAMAS VEGA ATENCIO); 221-05 (MIGUEL MORA CALVO); 587-05 (MANUEL HERNANDEZ QUESADA); 1083-06 (JORGE ALBERTO MARTINEZ MELENDEZ); 1111-06 (GUILLERMO RODRÍGUEZ SILVA AND MARTÍN ROJAS HERNÁNDEZ); 1256-06 (CARLOS EDUARDO YÉPEZ CRUZ, LUIS ARCHBOLD JAY, ENRIQUE FLOYD ARCHBOLD JAY, FERNANDO SALDARRIAGA SALDARRIAGA AND MIGUEL ANTONIO VALVERDE)

ADMISSIBILITY

COSTA RICA

July 22, 2011

### I. SUMMARY

1. The present report refers to the following eight petitions received by the Inter-American Commission on Human Rights (hereinafter, the “Commission”, “Inter-American Commission” or “IACHR”): P 233-04<sup>1</sup>: Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos Manuel González Lizano and Arturo Fallas Zúñiga; P 669-04<sup>2</sup>: Rafael Antonio Rojas Madrigal; P 1174-04<sup>3</sup>: Damas Vega Atencio; P 221-05<sup>4</sup>: Miguel Mora Calvo; P 587-05<sup>5</sup>: Manuel Hernández Quesada; P 1083-06<sup>6</sup>: Jorge Alberto Martínez Meléndez; P 111-06<sup>7</sup>: Guillermo Rodríguez Silva and Martín Rojas Hernández; P 1256-06<sup>8</sup>: Carlos Eduardo Yépez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde, (hereinafter, the “alleged victims”), in which they allege that the State of Costa Rica (hereinafter, “Costa Rica”, “the State” or “the Costa Rican State”) was internationally responsible for alleged violations of rights enshrined in the American Convention on Human Rights (the “American Convention” or the “Convention”). The Commission decided to join the eight separate petitions and examine them in a single report.

2. All the petitions allege that the State violated the judicial guarantees established in Articles 8 and 25 of the Convention, and in particular, Article 8(2)(h), because of the alleged lack of an ordinary appeals procedure for the comprehensive examination of the convictions imposed on the alleged victims. Some of the petitions also made specific allegations about presumed violations of the guarantee of impartiality of the judges; alleged deficiencies in the office of the public defender; alleged failure to give a formal reading of the charges and of legal counsel, and/or alleged inadequate conditions of detention, among others.

3. The State refutes the petitioners’ allegations, argues that it has not committed human rights violations, and that the intention is to use the IACHR as a superior instance, because of the petitioners’ subjective disagreement with the convictions handed down in the various criminal cases. It therefore contends that the allegations do not constitute violations of the American Convention, and requests the IACHR to declare the various complaints inadmissible. Regarding the alleged violation of

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<sup>1</sup> Presented by Derechos Humanos para las Américas (HR Américas) and Servicios Interamericanos de abogados en Derechos Humanos, represented by Carlos Rafael Urquilla Bonilla and Víctor Manuel Rodríguez Recia.

<sup>2</sup> Presented by Rafael Antonio Rojas Madrigal on his own behalf.

<sup>3</sup> Presented by Damas Atencio Vega.

<sup>4</sup> Presented by Miguel Mora Calvo on his own behalf.

<sup>5</sup> Presented by Manuel Hernández Quesada on his own behalf and represented by Rafael Antonio Rojas Madrigal.

<sup>6</sup> Presented on October 11, 2006 by Ricardo Barahona Montero. In a communication received on August 31, 2010, the alleged victim stated that his new representatives would be Lilliam Blanco Araya and José Martínez Meléndez.

<sup>7</sup> Presented by Guillermo Rodríguez Silva and Martín Rojas Hernández.

<sup>8</sup> Presented by Carlos Eduardo Yépez Cruz on his own behalf on May 21, 2007. On May 27, 2010, the IACHR informed the Parties of its decision to incorporate Messrs. Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde into the petition, in response to the petitioner’s request that the cases be joined.

Article 8(2)(h) of the Convention, it contends that with the adoption of Law 8.503 “Law for the Opening of the Criminal Appeal [*Casación*]”, the legal system was brought into line with the Convention, and that the subsequent adoption of Law 8.837 “Creation of an appeals procedure, other reforms to the appeals system and implementation of new rules on oral proceedings in criminal cases”, strengthened the protection of the fundamental rights and guarantees of due process, in order to assure the principle of legal certainty. It also presents specific allegations concerning each of the petitions.

4. Without prejudging the merits of the complaints, having examined the positions of the parties, and in conformity with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for the purpose of examining the alleged violation of Article 8 (2) (h) of the American Convention, in conjunction with Articles 1.1 and 2 thereof. By virtue of the allegations made by some of the petitioners, it further decides that when it examines the merits, it will examine the alleged violation of Articles 5, 7, 8 and 25 of the Convention, also in conjunction with Articles 1.1 and 2 thereof. The Commission decides to declare the other articles invoked by the petitioners to be inadmissible. The Commission further decides to notify the Parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

### **Petition 233-04: Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos Manuel González Lizano and Arturo Fallas Zúñiga**

5. The petition was received on March 24, 2004. On September 17, 2004, it was forwarded to the State, along with a deadline of two months in which to submit its observations. The response was received on February 8, 2005. Information was also received from the petitioners on April 22 and August 4, 2005; September 13, 2006; January 16, 2007; and June 20, 2010. These notes were transmitted to the State. Costa Rica forwarded information on June 20 and September 22, 2005; February 5 and May 4, 2007; and May 21 and August 5, 2010. These notes were transmitted to the petitioners.

### **Petition P-669-04: Rafael Antonio Rojas Madrigal**

6. The petition was received on July 29, 2004<sup>9</sup>, and was forwarded to the State on November 17, 2008, along with a deadline of two months in which to submit its observations. An extension having been granted, the response was received on March 9, 2009. The petitioner also forwarded information to the Commission on January 5, February 6, May 19, July 23 and 30, August 31, September 4, and October 7, 2009; and February 28, June 10, July 20 and October 28, 2010; January 11, 2011 and April 7, 2011. The notes were transmitted to the State. Costa Rica forwarded information on August 6 and September 24, 2009; April 29 and September 15, 2010; January 17, 2011, and June 14, 2011. The notes were transmitted to the petitioner.

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<sup>9</sup> The petitioner forwarded additional information on 37 occasions.

**Petition P-1174-04: Damas Vega Atencio**

7. The petition was received on November 3, 2004 and was transmitted to the State on August 4, 2010<sup>10</sup>, along with a deadline of two months in which to submit its observations. The response was received on October 30, 2010. The Commission also received information from the petitioner on March 16, 2011; that information was transmitted to the State. Costa Rica forwarded information on June 14, 2011. The note was transmitted to the petitioner.

**Petition P-221-05: Miguel Mora Calvo**

8. The petition was received on March 3, 2005 and was transmitted to the State on October 8, 2008, along with a deadline of two months in which to present its observations. The response was received on December 8, 2008. The Commission also received information from the petitioner on March 3 and July 1, 2009; and on March 15, August 10, and November 29, 2010. The notes were transmitted to the State. Costa Rica forwarded information on April 22 and August 10, 2009; on September 15, 2010 and on January 25, 2011, which information was transmitted to the petitioners.

**Petition P-587-05: Manuel Hernández Quesada**

9. The IACHR received the petition on May 24, 2005<sup>11</sup>. The petition was transmitted to the State on November 4, 2008, along with a deadline of two months in which to present its observations. Its response was received on December 9, 2008. The Commission also received additional information from the petitioner on July 30, August 31 and November 30, 2009; July 7, 2010 and January 19, 2011. The communications were transmitted to the State. Costa Rica forwarded notes on May 12 and September 24, 2009; January 25 and September 15, 2010, and February 19, 2011, which were transmitted to the petitioners.

**Petition P-1083-06: Jorge Alberto Martínez Meléndez**

10. The petition was received on October 11, 2006. It was transmitted to the State on July 3, 2008, along with a deadline of two months in which to present its observations. Its response was received by the IACHR on September 2, 2008. The Commission also received information from the petitioner on January 22 and August 4, 2009; February 16, March 10 and July 29, 2010; and February 21; April 12 and June 2, 2011. The communications were transmitted to the State. Costa Rica forwarded communications on December 3, 2008; April 13, June 1, August 6 and September 24, 2009; April 14, May 6, and October 20, 2010, and July 1, 2011, which were transmitted to the petitioners.

**Petition P-1111-06: Guillermo Rodríguez Silva and Martín Rojas Hernández**

11. The IACHR received the petition on October 18, 2006. It was transmitted to the State on May 23, 2007, along with a deadline of two months in which to present its observations. The response was received on July 21, 2007. The Commission also received additional information from the petitioners on November 6, 2007, May 16, 2008, October 6, 2008 and February 13, 2009. The communications were transmitted to the State. Costa Rica forwarded communications on December 21, 2007, June 2, 2008, December 8, 2008 and May 19, 2009, which were transmitted to the petitioners.

**Petition P-1256-06: Carlos Eduardo Yépez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga and Miguel Antonio Valverde**

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<sup>10</sup> On May 25, 2006 the IACHR received a petition presented by Anabella Alfaro Flores and her children, and gave it case No. 514-06. On August 30, 2010, the IACHR informed the Parties that the petition had been joined with petition No. 1174-04.

<sup>11</sup> The petitioner provided additional information on February 23 and July 12, 2006, and August 24 and September 18, 2007.

12. The IACHR received the petition on November 14, 2006<sup>12</sup>. Additional information was received on May 21, July 5 and September 11, 2007. It was transmitted to the State on November 4, 2008, along with a deadline of two months in which to present its observations. The response was received on December 8, 2008. The Commission also received additional information from the petitioners on January 29 and September 17, 2009; and February 4, June 2, September 14, 2010, October 21 and November 22 2010; and January 10, April 11 and June 1, 2011. The communications were transmitted to the State. Costa Rica forwarded communications on May 12 and November 20, 2009, June 24, 2010, February 15 and June 9, 2011, which were transmitted to the petitioners.

13. On July 22, 2011, the IACHR decided to join petitions 233-04; 669-04; 1174-04; 221-05; 587-05; 1063-06; 1111-06; 1256-06.

### **III. POSITIONS OF THE PARTIES**

#### **A. Petitioners**

##### **- Allegation common to all the petitions**

14. All the petitions covered by the present report claim an alleged violation by the State of Article 8.2 (h) of the American Convention.

15. The petitioners allege violation of Article 8(2)(h) of the Convention, claiming that Costa Rica's legal system does not have an ordinary proceeding that would allow for a comprehensive examination of all criminal convictions. It is alleged that the State adopted Law 8.503<sup>13</sup> on "Law for the Opening of the Criminal Appeal [*Casación*]" in 2006, (hereinafter, "Law 8.503") and, in 2010, Law 8.837<sup>14</sup> on "Creation of an Appeals Procedure, other Reforms to the appeals system, and implementation of new rules on oral proceedings in criminal cases", (hereinafter, "Law 8.837"), in order to give effect to the American Convention in the domestic legal system; however, they allege that the reforms do not satisfy the judicial guarantees required by the Convention. They so claim because Law 8.837 –which will come into force in December 2011- does not afford the alleged victims the right to file an appeal; the only right they would have is to enter a request for a review procedure, which, according to the petitioners, would be on more limited grounds than those provided for in the previous legislation. Petitioners Rojas Madrigal and Hernández Quesada allege that this latter point also constitutes a violation of the right to equal protection of the law set forth in Article 24 of the American Convention.

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<sup>12</sup> Additional information was received from the petitioner on May 21, July 5 and September 11, 2007.

<sup>13</sup> Law published in the Official Gazette [*Diario Oficial La Gaceta*] on June 6, 2006.

<sup>14</sup> Law published in the Official Gazette on June 9, 2010.

- **Specific allegations**

16. Some petitions also make specific allegations about presumed violations of the guarantee of impartiality of judges; alleged deficiencies in the office of the public defender; alleged failure to formally present the charges and failure of legal counsel and/or alleged inadequate conditions of detention; allegedly excessive preventive imprisonment, among others.

17. They also claim, in general terms, that the guarantee of impartiality in Article 8.1 of the Convention was violated-- for example, the same judges that rule in appeals cases also do so in review proceedings<sup>15</sup>. They allege that the public prosecutor is both judge and an interested party in the preparatory stage of the investigation.

18. <sup>They</sup> also allege that there are obstacles to finding the assistance of a public defender, which would mean lack of proper defense<sup>16</sup>, because, for example, in order to use a public defender to file a request for review, that request must first have been declared admissible.

19. It is further alleged that the alleged victims' right to a defense would be violated, because the formal notification of the charges was not done in accordance with due process guarantees; in particular, there would be no formal notification in accordance with Article 8 (2) (b) of the American Convention. They add that at the pre-trial hearing, the accused would not know of the charges and evidence against him and would therefore not be able to exercise his defense, and; once the preliminary investigation is completed, -when the charges are brought and a preliminary hearing is set-, only testimony would be taken in evidence. They also allege that in the preliminary hearing prior to the trial – which is conducted subsequent to the prosecution's presentation of the accusation and in which the judge rules on whether the accusation or complaint is in order-<sup>17</sup> the accused is not obliged to attend and, and if he does attend, the accused's testimony is dependent on the judge's decision. They also say that the accused is unable to present evidence during the trial that he did not request during the preliminary hearing.

20. They further allege inadequate prison conditions, and also that as a result of legal reforms, some judgments are issued on CD, which hinders access to them and as a result, hampers their defense.

**Petition 233-04: Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos Manuel González Lizano and Arturo Fallas Zúñiga**

21. The alleged victims were prosecuted in a criminal case as members of the Board of Directors of the Banco Anglo Costarricense, and were sentenced in judgment No 746-2001 of June 18, 2001, handed down by the Trial Court of the First Judicial Circuit of San José, as perpetrators of the crime of embezzlement as a continuing offense, to 15 years of prison, with a ten-year ban on holding public office. They report that the Appeals Court [*Tribunal de Casación*] reduced the sentence from 15 to 12 years of prison. They allege violation of Articles 7.3, 8, 9, 11, 23 and 25 of the Convention, in conjunction with Articles 1.1 and 2 thereof.

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<sup>15</sup> They cite, for example, Article 451 bis of Law 8.503 (entitled "Remand of cases" [*Juicio de reenvío*]), which provides that: "An appeal lodged against a judgment to remand the case shall be heard by the respective Appeals Court, made up of judges other than those who ruled on the previous occasion. If the court cannot be composed of new judges because the impediment covers both principals and alternates, or if there is an insufficient number of alternates, jurisdiction will be taken by those principals that may be necessary, regardless of the legal grounds and with no liability for disciplinary action against them".

<sup>16</sup> For example, petitioner Rojas Madrigal reports that in the "La Reforma" detention center, there are 1,200 convicts and one legal advisor.

<sup>17</sup> Petitioner Rojas Madrigal alleges that the defense attorney and the accused do not receive a copy of the prosecution's accusation, which is made known to defense counsel and physically made available to the the accused at the preliminary hearing.

22. The petitioners allege that the typification of the crime of embezzlement violates the guarantee of the rule of law, because it is open-ended and therefore, any conduct of a civil servant, even if lawful, could be considered a crime<sup>18</sup>. They also allege that the criminal proceedings were unjustifiably delayed, and did not guarantee them equal opportunity to exercise their right to a broad defense to enter, question and examine the evidence; and, inter alia, that the evidence was not evaluated according to the rules of sound judicial discretion<sup>19</sup>. They also allege that the guarantees of the presumption of innocence and of protection of their dignity and good name were violated, since officers of the court, including the first judge of instruction, expressed value judgments about the trial, which meant prejudging the culpability of the alleged victims in the eyes of the public.

23. With regard to the requirement in the Convention that domestic remedies be exhausted first, they allege that domestic remedies were exhausted with the filing of the appeal; it was denied on September 22, 2003 and notified on September 25, 2003<sup>20</sup>, and that the appeals procedure is the only judicial remedy that can be filed against a final judgment. They also allege that the request for review is per se an extraordinary one, and the petition for a writ of *amparo* is not in order to contest judicial decisions.

#### **Petition 669-04: Rafael Antonio Rojas Madrigal**

24. Mr. Rafael Antonio Rojas Madrigal was charged in three criminal trials that ended with the following judgments: 1) judgment No. 1536-02 of the Trial Court of the First Judicial Circuit of San José on December 12, 2002<sup>21</sup>, which sentenced him to 24 years in prison for the crime of rape and sexual abuse of a minor; 2) judgment No. 172-00 of the Trial Court of the Second Judicial Circuit of Alajuela on March 28, 2001, which sentenced him to four years of prison for the crime of using false papers<sup>22</sup>, and 3) judgment No. 614-09 handed down by the Criminal Court of the First Judicial Circuit of San José on July 2, 2009, which sentenced him to five years in prison for the concurrent crimes of using false papers and fraud<sup>23</sup>. He alleges violation of Articles 2, 4, 5, 7, 8, 9, 13 and 25 of the Convention, in conjunction with Article 1.1 thereof; and of Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Inter-American Convention to Prevent and Punish Torture.

25. The petitioner alleges a number of violations of due process in the criminal cases brought against him. Specifically with respect to judgment No. 1536-02, he states that the public defender did not file an appeal, and that he had to enter it himself with the Third Chamber of the Supreme Court, without technical assistance, and that the appeal was denied. He also alleges that the public defender did not appear at the hearing during the procedural phase of the case<sup>24</sup>. With regard to judgment No. 172-2000, he alleges that by filing petitions with the court, he was able to have the prison term reduced from four years to one; however, the petitions were decided late, given that the first conviction was in 2000, and its modification took place in 2010, once he had served the sentence. Regarding judgment No. 614-09, he

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<sup>18</sup> According to the petitioners, during the trial, conduct by the accused were characterized as crimes, but they were not culpable or unlawful acts, but were merely were administrative acts. They also allege that the crime of embezzlement must be with criminal intent, but however, the defendants had been convicted by omission because legal and administrative conduct had been interpreted as signs of culpability and had been condemned by analogy.

<sup>19</sup> For example, they say that a witness gave false testimony in the oral proceedings, but was not prosecuted.

<sup>20</sup> Regarding the filing of an appeal, the petitioners allege that they did not have the time or the resources needed to prepare their defense.

<sup>21</sup> Case No. 99-029291-042-PE.

<sup>22</sup> Case No. 99-000136-065-PE. According to the information provided, the judgment was quashed in terms of the length of the sentence, which was reduced to one year's imprisonment.

<sup>23</sup> The petitioner indicates that he was sentenced in two other cases in the nineteen eighties, and served his sentences. He says that he received another judgement during that decade, but that the conviction had been suspended. He alleges that the State had refused him a copy of those case files, and that they denied his petition for a writ of *amparo* in this matter.

<sup>24</sup> He also alleges that the public defenders deal with matters related to the execution of the sentence, and do not file petitions for review.

alleges that he did not have access to the written text, and that that had made it impossible for him to exercise his defense<sup>25</sup>. He states that he filed an appeal against that judgment, and that that appeal was limited by his not having the judgment in written form<sup>26</sup>.

26. He also contends that his right to health was violated, because he was not provided with medical care, despite having requested it; that the detention center was unhygienic and without sanitary facilities, is overcrowded and there is a shortage of food. He also alleges that the detainees are victims of psychological torture by the corrections personnel, and that there is a lack of police protection<sup>27</sup>. He alleges a progressive worsening of security in the prison, and states that there are cases of inmates having been wounded with sharp instruments and that many have died in prison<sup>28</sup>; but that it is difficult to file complaints about these acts with no State protection.

27. With regard to the requirement in the Convention that domestic remedies be exhausted, he claims that domestic remedies have been exhausted. He states that he presented an appeal against judgment No. 1536-02, along with 10 requests for review<sup>29</sup>; two appeals from judgment No. 172-10, and 10 review procedures; and one appeal against judgment No. 614-09, which was in process at the time of writing of the present report<sup>30</sup>.

28. As to the conditions of detention and medical care, he contends that he filed three criminal complaints to the Office of the Public Prosecutor [*Ministerio Público*] of Alajuela against prison employees, on grounds of danger to his personal safety, but that they had been denied. He also states that he filed petitions for writs of *amparo* with the Constitutional Chamber of the Supreme Court; and that he presented a complaint to the National Institute of Criminology, which gave rise, he said, to an investigation by the Ministry of Justice. He also mentions a number of proceedings that he had filed regarding his health situation because of alleged lack of medical care.

#### **Petition 1174-04: Damas Vega Atencio**

29. The petition presents as alleged victims Mr. Damas Vega Atencio and members of his family: Anabella Alfaro Flores, former spouse<sup>31</sup>; Yaritza Vega Alfaro, daughter; Alison Alondra Vega Alfaro, grand-daughter (daughter of Yaritza Vega Alfaro); Patricia Vega Alfaro, daughter; Anet Vega Alfaro, grand-daughter (daughter of Patricia Vega Alfaro); Rebeca Vega Alfaro, daughter, Raquel Vega

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<sup>25</sup> On this matter, he states that the penitentiary prohibited the use of a CD copier or reader, and that as a result, they cannot read the judgments. He contends that he filed a petition for a writ of *amparo* on account of this situation, but that it had been denied by the Constitutional Chamber of the Supreme Court.

<sup>26</sup> He further claims that his freedom of expression was violated because the prison authorities prevented him from being interviewed by a television channel, and he alleges that all his legal materials were taken from him.

<sup>27</sup> The petitioner also alleges that he had been detained incommunicado for more than 70 hours without a court order; and that he was beaten when he refused a body search. That on that account, he had filed for a writ of *habeas corpus*, which was admitted in part. He states that no-one was punished.

<sup>28</sup> The petitioner makes reference to some specific situations.

<sup>29</sup> He indicates that following adoption of Law 8.503, he lodged three requests for review, two of which were joined. He alleges that some of the judges who heard the petitions had previously heard the matter.

<sup>30</sup> As to the guarantee in Article 8 (2) (h) of the Convention, the petitioner alleges that when he realized that it was impossible to find relief through filing requests for review, he presented a request for a pardon, a petition for *habeas corpus*, a denunciation to the Office of the Ombudsman [*Defensoría de los Habitantes*], a case of civil and disciplinary liability to the Full Bench of the Supreme Court, a complaint with the Interdisciplinary Office of the Public Defender, and a complaint to the Office of the Judicial Inspector of the Court, *inter alia*, and stated that those cases had been denied.

<sup>31</sup> Mrs. Alfaro Vega –married to the alleged victim at the time of his conviction- alleges that the State violated Article 5 of the Convention with regard to herself and her children, because the sentence imposed on her now ex-husband had adversely affected his family, because of the place of detention and the change in living conditions. She states that three of the petitioner's children and his grand-daughters are young children, and require special protection from the State in accordance with Article 19 of the Convention.

Alfaro, daughter; and Axel Damián Vega Alfaro, son<sup>32</sup>. According to the petition, Mr. Damas Vega Atencio was tried in two criminal trials that ended in judgments: 1) No. 106-2002, handed down on October 2, 2002, by the Criminal Court of the Judicial Circuit of the Southern Zone, Ciudad Neily, Corredores, which sentenced him to twenty- years' prison as perpetrator of two concurrent criminal offenses of attempted criminal homicide and aggravated robbery; and 2) judgment No. 92-2002 handed down on April 4, 2002 by the Court of the First Judicial Circuit of the Atlantic Zone, which convicted him as the perpetrator of the crime of aggravated robbery and sentenced him to three years, four months' imprisonment. He alleges the State violated Articles 2, 5, 7, 8, 17, 19, 24 and 25 of the American Convention in relation to Article 1.1 thereof, and the rights set forth in Articles 1, 2, 3 and 4 of the Additional Protocol to the American Convention, the "Protocol of San Salvador" were violated to the prejudice of himself and, as pertinent, his family.

30. He alleges a number of violations of due process during the handling of the criminal cases filed against him<sup>33</sup>. He also alleges inadequate prison conditions, and in particular, that the medical care and diet are insufficient, especially for people who require a special diet because of their illness. He states that he has diabetes, that he had been without medical care for around four months, and that care was provided to him after he had filed a petition for a writ of *amparo*<sup>34</sup>. He also alleges that conditions in the detention center are unhygienic, the sanitary facilities are inadequate, and abuses are committed during security checks, both of prisoners and of visitors<sup>35</sup>. He adds that there are security problems, and no protection in the prison. He further states that the practice of physical and psychological torture and mistreatment has been noted. In this regard, he says that the prison staff had the practice of beating prisoners with sticks, kicking them, and using mustard gas<sup>36</sup>. He alleges that they are hindered in their filing of complaints, and that in his case, he was the victim of reprisals by the penitentiary system on account of the complaints that he had filed.

31. With regard to his detention in the "La Reformat" detention center, he alleges that it caused the breakdown of his family, because they were able to visit him only once a year, and that he could not have conjugal visits with his wife, because the center is 400 km. away from his home and transportation is very costly<sup>37</sup>. He also claims that the entire family is dependent on Mr. Damas Vega Atencio and that the State had not provided them with protection or assistance. He also maintains that he is not adequately paid for the work he does in the prison, which would allow him to maintain his family.

32. As to prior exhaustion of domestic remedies, he states that there is no ordinary appeals procedure available, and that for that reason, he could not avail himself of the guarantee contained in Article 8.2 (h) of the Convention<sup>38</sup>.

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<sup>32</sup> The petitioner also identified his mother: Anabelle Alfaro Flores, his 13 siblings and 5 nieces and nephews. On October 29, 2008, he requested that his domestic partner, Patricia Núñez Garita, be considered as a victim.

<sup>33</sup> The petitioner also alleges that the rules of the Criminal Code violate the principle of the rule of law, because law No. 4.573 that enacted the Criminal Code had been unlawfully altered on two occasions (Nos. 7538 and 7732), beginning with Articles 374 and 375, making use of a legislative technique of wrong numbering. He alleges that Article 213 of the Penal Code does not establish clearly and precisely what conduct is unlawful, and that it also violates the principle of the rule of law.

<sup>34</sup> He also alleges that no ambulances are available for those who are ill or wounded.

<sup>35</sup> The petitioner alleges that these are done illegally, touching the genitals of persons searched and that at times, they have been asked to "undress completely".

<sup>36</sup> He states that on September 28, 2008, he was transferred to a maximum security cell for having led a hunger strike to protest the living conditions in the prison, that he was kept incommunicado for 27 hours, and that he was not allowed at that time to present an incident complaint to the judge supervising execution of the sentence, but that he did present it subsequently.

<sup>37</sup> The petitioner alleges that he has filed a number of requests to be transferred to the detention center closer to his home, but without a positive response.

<sup>38</sup> The information provided indicates that the petitioner had filed an appeal against judgment No 106-2002, which was decided on March 28, 2003, and was denied. He has also filed two requests for review of that judgment, which were admitted in part on April 16, 2004 and June 7, 2006. Regarding judgment No 92-2002, he filed around five requests for review, which were denied (the most recent was decided on July 5, 2007). The petitioner indicates that his defense attorney had not presented an appeal



### **Petition 221-05: Miguel Mora Calvo**

33. It appears from the petition that Mr. Miguel Mora Calvo was tried in three criminal trials, which ended in the following judgments: a) judgment No. 736-98 of the First Circuit Court of Alajuela (*Tribunal del Primer Circuito Judicial*) on September 24, 1998, which sentenced him to seven and a half years' imprisonment for the crime of breaking the law on psychotropic drugs to the prejudice of public health; b) judgment No. 632-00 handed down by the Court of the Second Judicial Circuit of San José on December 5, 2000, which sentenced him to 15 years' imprisonment for the crime of possession, transportation and storage of drugs, aggravated by having been committed internationally, and c) judgment No. 218-03 of the Court of the First Judicial Circuit of Alajuela on April 29, 2003, which had been completed. The petitioner alleges that Costa Rica violated Articles 2, 8.1, 8.2.h and 25 of the American Convention, in conjunction with Article 1.1 thereof.

34. The petitioner alleges a number of violations of due process during the handling of the criminal cases in which the abovementioned judgments were issued. As to the requirement in the Convention that domestic remedies be exhausted, he claims that the exceptions contained in Article 46 (2) (a) and (b) of the Convention apply. He alleges that even though he did avail himself of the remedy available in Costa Rica, that is, the appeals procedure, that procedure does not satisfy the standards of Article 8.2 (h) of the Convention, and that there is no ordinary appeals proceeding<sup>39</sup>. He alleges that at the time of his convictions—prior to Law 8.503-- the appeals procedure was formalistic, inaccessible and contrary to the American Convention. With respect to the review procedure provided for in Transitional Article I of that law, he alleges that it is insufficient because his convictions were *res judicata*, as demonstrated when he filed a request for review of judgment No. 736-98 in which he alleged a lack of guarantee against double jeopardy, and it was declared inadmissible.

35. Regarding judgment No. 736-98, the petitioner presented one appeal and four petitions for review—at least two subsequent to law 8.503—whose outcomes did not endorse his claims<sup>40</sup>. As to judgment No. 218-03, he filed an appeal which was denied on August 20, 2004. He claims that he did not seek a review, given that the judges that would hear the case would be the same as those who sat on the appeals case. He filed two requests for review of judgment No. 632-00. The first was prior to the entry into force of Law 8.503; it was denied, and the other was after [the law], which was denied on the merits on September 16, 2009<sup>41</sup>.

### **Petition 587-05: Manuel Hernández Quesada**

36. It appears from the petition that Mr. Manuel Hernández Quesada was sentenced on June 17, 2003, in judgment No. 332-2003 of the Court of the First Judicial Circuit of Alajuela, to 24 years' imprisonment for two concurrent crimes of rape, and one crime of sexual abuse of a minor. The petitioner alleges that the State is responsible for violation of Articles 2, 4, 5, 7, 8, 9, 25 and 29 of the American Convention, in relation to Article 1.1 thereof. He alleges that non-compliance with Article 8 (2) (h) constitutes a violation of his right to life because of arbitrary denial of freedom.

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...continuación

against that judgment. It also appears that the petitioner had filed a number of petitions for *amparo* and *habeas corpus* in reference to the claims in the present petition.

<sup>39</sup> The petitioner adds that both the Commission and the Inter-American Court indicate—in the case of Mauricio Herrera Ulloa vs. Costa Rica— that domestic remedies are considered exhausted with the filing of an appeal.

<sup>40</sup> The request for review filed by the petitioner on September 5, 2008 against judgment No. 736-98 was declared inadmissible on November 25, 2008.

<sup>41</sup> It also appears from the case file that on May 23, 2005, the petitioner filed a petition for a writ of *amparo*, because he was not granted the right to appeal his three convictions. On May 31, 2005, the Constitutional Chamber denied the petition in full. On December 28, 2005, the petitioner filed a *habeas corpus* petition for violation of Article 8.2 (h), and on January 6, 2006, the Constitutional Chamber rejected it.

37. The petitioner alleges a number of violations of due process in the handling of the criminal case whose outcome was his conviction<sup>42</sup>.

38. With regard to the requirement in the Convention that domestic remedies be exhausted, he alleges that in Costa Rica there is no simple remedy for a violation of Article 8 (2) (h) of the Convention, for which reason, the exception in Article 46 of the Convention applies, and the six-month deadline should not be taken into account. However, he indicates that he filed an appeal against the conviction, which was denied. He indicates that no comprehensive examination of the judgment was carried out, but rather that the verdict merely examined the defense complaints<sup>43</sup>. He also indicates that subsequent to Law No. 8.503, he filed a petition for review in which he requested that a comprehensive examination of the judgment be carried out, but it was denied, and he was advised that he should identify the procedural irregularities that were causing him injury<sup>44</sup>.

#### **Petition 1083-06: Jorge Alberto Martínez Meléndez**

39. It appears from the petition that Mr. Jorge Alberto Martínez Meléndez was sentenced by the Court of the First Judicial Circuit of San José, in judgment No. 680-2007 of July 17, 2007, to nineteen years' imprisonment for twelve crimes of embezzlement against the State of Costa Rica<sup>45</sup>. The petitioners allege violation of Articles 5.6, 7 subparagraphs 1, 3 and 5, 8.2 and 22.7 of the American Convention and of Articles XVII and XXV of the American Declaration of the Rights and Duties of Man.

40. The petitioners allege a number of violations in the criminal proceedings that ended with the judgment that convicted the alleged victim<sup>46</sup>. The specific allegations include the claim that he was arbitrarily held in preventive detention. They state that the maximum length of preventive detention for complex cases [*trámite complejo*] is thirty-six months, and that this period ended on June 3, 2006, without the application of legal exceptions to his case<sup>47</sup>. They state that on June 2, 2006, the Trial Court ordered an indefinite extension of his preventive detention until such time as the judgment was handed down. They say that following the judgment in the first instance, preventive detention was extended twice.

41. They also allege that under Article 22.7 of the American Convention, every person "has the right to seek and be granted asylum". However, they say that the State compared the alleged victim's request to Canada for political asylum to an act of evasion of justice, and that that caused him serious consequences, both in the determination of preventive detention and in his criminal conviction. They maintain that the alleged victim did not flee, but rather exercised his right under the Convention to seek asylum.

42. As to the requirement in the Convention that domestic remedies be exhausted, the petitioners allege that a criminal appeal was lodged against judgment No. 680-2007 on September 28, 2007. This petition was denied by the Third Chamber of the Supreme Court of Justice, in a judgment of March 11, 2008. They contend that the appeals procedure is the only, and final, procedure permitted by

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<sup>42</sup> The petitioner alleges violation of the principle of the rule of law in the rules on criminal offenses related to sexual crimes. He also claims that the judgments were not delivered to him in written form, but rather on CD, which made it difficult for him to access them.

<sup>43</sup> Notification was given of the case on January 26, 2004.

<sup>44</sup> He indicates that he can neither read nor write the official language of Costa Rica, and that it is improper to demand that he indicate the grounds for injury in a review petition, because the comprehensive examination should be carried out by the court.

<sup>45</sup> When the petition was filed with the IACHR on October 11, 2006, the criminal proceedings against Mr. Martínez Meléndez were still in process.

<sup>46</sup> The petitioners indicate that the criminal case was handled according to the procedural rules for "complex cases".

<sup>47</sup> They argue that Article 378 of the Code of Criminal Procedure –on complex cases–, sets a maximum period of preventive detention at 18 months, which may be extended for an additional 18 months, and that Article 258 of that Code provides for exceptions that are not applicable to the assumptions in the case against Mr. Martínez Meléndez.

Costa Rica's legal system to contest a guilty verdict. Additionally, with regard to the petitions filed against preventive detention, they allege that three *habeas corpus* petitions were filed: on June 7, 2006, on August 28, 2007<sup>48</sup> and on January 24, 2008<sup>49</sup>; and that they were decided on June 23, 2006, September 7, 2007 and February 1, 2008 respectively, without addressing the alleged victim's defense claims. They indicate that under the Code of Criminal Procedure, there is no provision for an ordinary case of appeal from a decision of preventive imprisonment handed down by a trial court, and hence the only legal recourse permissible against such a decision is to file for a writ of *habeas corpus*.

**Petition P-1111-06: Guillermo Rodríguez Silva and Martín Rojas Hernández**

43. The information available indicates that judgment No. 248-2004 of the Criminal Trial Court of Desamparados convicted Guillermo Rodríguez Silva of two crimes of aggravated rape and one crime of sexual abuse of a minor female, one crime of aggravated rape of another girl, all of which were concurrent criminal offenses, and as an accomplice in two crimes of aggravated rape of the same girls, for which he was sentenced to 42 years in prison. In the same judgment, Martín Rojas Hernández was convicted of two crimes of aggravated rape of the same girls, and was sentenced to a total of twenty-eight years in prison. They allege the international responsibility of the State of Costa Rica for alleged violation of the rights enshrined in Articles 4, 7, 8 and 9 of the American Convention.

44. They allege a number of violations of due process in the handling of the criminal case that ended with their conviction<sup>50</sup>. As to the requirement in the Convention that domestic remedies be exhausted, they indicate the following with regard to the State's allegation that a request for review was not filed subsequent to the coming into force of Law 8.503: 1) that the law only allows a request for review in respect of procedural irregularities not claimed at appeal, which would not apply in their case<sup>51</sup>; 2) that they are illiterate and do not have the resources to engage an attorney to file a request for review, and the public defender rejected their request to file a review petition. They allege, therefore, that exhaustion of domestic remedies may not be required in their case.

45. As to the filing of a claim of unconstitutionality, the petitioners allege that under domestic law, filing such an action requires that there be a case pending before the courts, which they state was not so in their case, since the conviction was final and unappealable. They also say that it is required that they be represented by legal counsel, and that they do not have access to one. As to the filing of a petition for *habeas corpus*, they allege that if the public defender did not file for a writ of habeas corpus during the trial, they could not demand one, and that that was a failing of the public defender's office. They maintain that such a petition is not in order after a conviction has been handed down. Regarding the request for a writ of *amparo*, they allege that even assuming it were granted, it would have no effect, but rather, would translate into reprisals by the prison system.

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<sup>48</sup> This petition was filed subsequent to the judgment in the first instance. It was alleged that, according to the text of the operative part of the judgment, preventive detention of the alleged victim was extended on the assumption that he was detained without an order of preventive detention from July 17 to August 17, 2007.

<sup>49</sup> They indicate that it was claimed in the petition that the alleged victim had been detained for seven days without the justification of a preventive detention order.

<sup>50</sup> The petitioners allege that the formal reading of the facts in Costa Rica is surprising. They also mention poor prison conditions, an alleged violation of the guarantee of the rule of law in a number of rules in the Criminal Code, and lack of protection in the penitentiary.

<sup>51</sup> They state that they made all their complaints in the appeals proceedings, and could therefore not present them again in the review process. They specify that they were informed of this concept by the public defender as grounds for not proceeding on their request to file for review. They also allege that the appeals proceedings to which they had access was decided prior to approval of law No 8.503 and that it was therefore decided in a formalistic and limited way, without allowing for a review of the facts of the judgment.

**Petition 1256-06: Carlos Eduardo Yépez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga Saldarriaga and Miguel Antonio Valverde<sup>52</sup>**

46. It appears from the petition that the alleged victims were sentenced to 12 years' imprisonment for the crime of international transport of drugs, by the Trial Court of the Southern Zone, Golfito Bench, in judgment 068-2004 dated June 14, 2004. The petitioners allege violation of Articles 2, 5, 8, 25 and 29 of the American Convention in relation to Article 1.1 thereof.

47. The petitioners allege a number of violations of due process in the handling of the criminal case that resulted in the conviction. Specifically, they allege that they did not have an interpreter during the reading of the charges or during the preliminary hearing. They indicate that those irregularities were reviewed by the courts, but that their claims were denied. They also claim poor conditions in the prison, mistreatment, overcrowding, poor medical care and lack of protection in the prison<sup>53</sup>. As to the requirement in the Convention that domestic remedies be exhausted, they claimed in their initial communications that they had exhausted domestic remedies, but they subsequently alleged that since the domestic legal system does not provide for an ordinary appeals procedure, there are no remedies to be exhausted. Nevertheless, they say that they filed an appeal against the conviction, along with about five requests for review in order to find a judicial remedy, without receiving outcomes favorable to them<sup>54</sup>.

**B. The State**

**- Common allegations**

48. The State refutes the petitioners' allegations, contends that it has not committed any violations against the alleged victims, and that the intention is to use the IACHR as a superior body, in light of their subjective disagreement with the various convictions handed down in the criminal cases brought against them. It states that the alleged victims have had full access to the various instances provided in the national legal system. With regard to the alleged violation of Article 8(2)(h) of the Convention, the State argues that both that Article and the holding in the judgment in the case of *Herrera Ulloa vs. Costa Rica* by the Inter-American Court of Human Rights, do not state that the appeal [*recurso de apelación*] of a criminal verdict is the only means of appeal that will guarantee effective protection of the right to appeal a ruling to a superior judge or court<sup>55</sup>.

49. Nonetheless, it indicates that by virtue of the judgment in the case of *Herrera Ulloa vs. Costa Rica* –of July 2, 2004–, legislative reforms were set in motion, at the same time as the Third Chamber of the Supreme Court of Justice and the Appeals Courts, which are responsible for guaranteeing the right of appeal in criminal matters, took administrative measures and interpretations of jurisprudence in order to expand admissibility, eliminate formalities, assure the principle of objectivity (the same judge would not intervene at two different times in a case), and allow those courts to evaluate evidence as to the facts.

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<sup>52</sup> The petitioners claim that the violations to which the alleged victims are subjected have an impact on their family members. They also allege that Luis Archbold Jay and Enrique Floyd Archbold Jay do not speak the official language of Costa Rica, and that by education and culture, they are from the island of San Andrés, where English is spoken.

<sup>53</sup> They also allege that members of their families were prevented from entering the detention center.

<sup>54</sup> The information available shows that the alleged victims appealed the conviction, which was denied on the merits on September 9, 2004. They subsequently filed requests for review. The requests were decided on June 10, 2005, and were declared inadmissible, on April 19, 2007, also found inadmissible, and July 5, 2007, found inadmissible in part, and in part dismissed. The alleged victims, Luis Archbold Jay, and Enrique Floyd Archbold Jay, lodged two requests for review, which were decided on October 20, 2006 and July 10, 2009, and were dismissed. Petitioner Carlos Eduardo Yépez Cruz filed a claim of unconstitutionality regarding a number of rules in the Code of Criminal Procedure, alleging that they were contrary to Article 8.2 (h) of the Convention. The Constitutional Chamber of the Supreme Court denied the action on the merits in a judgment dated November 30, 2005..

<sup>55</sup> With respect to Mr. Martínez Meléndez's claim, the State claims that the petitioners do not specify or provide considerations of fact or of law as to why they consider that the appeals procedure was not an effective means of appealing for a comprehensive examination of the decision as required under Article 8 (2) (h) of the Convention.

50. The State indicates that subsequently, with the passage of Law 8.503, on June 6, 2006, which was preceded by thinking in jurisprudence that developed the so-called principle of “opening up the proceedings”, the appeals procedure was changed in order to avoid procedural formalisms and thus reduce possible causes of inadmissibility. It notes that the law also provided for the possibility that all convicted persons whose appeals cases would not have allowed for a comprehensive examination of the judgment could file a request for review of their sentence<sup>56</sup>. It notes that Law 8503: a) Makes the appeals process less formal (*casación*), in terms of admissibility requirements and other formalisms and rituals traditional to the appeals process; b) “violation of due process or right to a defense” may be alleged; c) orders a broad examination and evaluation of the proceedings in the case, via examination of the acts and records of the hearing to establish the grounds for the parties’ claims; d) the Appeals Court (*casación*) may order that the oral evidence be reheard, and is authorized to make a direct evaluation of the documentary evidence; e) authorizes the building of evidence to show how the trial records were kept; introduction of evidence in the accused’s favor, and the court is authorized ex officio to introduce evidence when it deems it pertinent and useful to resolution of the case; evidence is admitted concerning a previously unknown fact, or new facts; f) it makes the review procedure less formal; and establishes that it can be use when the appeal (*casación*) failed on the grounds of admissibility based on the regulations that were in effect prior to Law 8503.

51. It states that these norms were the mechanism for protecting the judicial guarantee in Article 8 (2)(h) of the Convention in cases where there was a final judgment, prior to giving effect in Costa Rica’s the domestic legal system in attendance with the Inter-American Court’s decision in its judgment in the case of *Herrera Ulloa*.

52. It specifies that the adjustments and changes made by Law No 8.503 involve a number of “misalignments or imperfections” in the criminal appeals system and in the judicial structure responsible for applying it; while these do not imply that the right to appeal the verdict to a higher court or judge was adversely affected, they did require structural reforms to address them. It adds that Law 8.837, “Creation of an Appeals Procedure, other Reforms to the Appeals System, and implementation of new rules on oral proceedings in criminal cases”, published on July 9, 2010, which will come into force on December 10, 2011-, will reinforce the protection of the fundamental rights and guarantees of the American Convention, since what is sought is uniformity in the system to assure the principle of legal certainty<sup>57</sup>. It notes that given the date of its entry into force, the petitioners’ allegations may not reflect injury and therefore do not entail a violation of Article 8 (2) (h) of the Convention.

53. The State adds that in accordance with Transitory Provision III of Law 8.837, the alleged victims may file, for one time only, for a review of their judgment, within six months following the law’s entry into force<sup>58</sup>. It also contends that the alleged infraction of the judicial guarantees in Article 8 (2) (h) may not be presumed to be *iuris tantum* in all criminal cases in which judgment was passed prior to Law 8.837, but rather that in each particular case, it must be determined in which specific matters the right to comprehensive review of the decision may have been violated.

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<sup>56</sup> Transitory provision I of the Law on Criminal Appeals. The State indicates that this transitional provision is the procedural mechanism whereby persons convicted prior to the reform introduced by that law are guaranteed the possibility that the judgment against them may be reviewed, even if it is substantively *res judicata*, for the purpose of remedying an infraction of the judicial guarantee set forth in Article 8.2 (h) of the Convention, as a result of the formalisms that used to characterize the appeals proceedings.

<sup>57</sup> The State indicates that protection of due process will be guaranteed when an ordinary procedure exists to appeal the judgment, and that there is also the possibility of alleging violation of due process and the right of defense by filing an appeal. It states that this is importance, since the review of the judgment, if admissible on that matter, would be resolved prior to its becoming *res judicata*.

<sup>58</sup> The State says that in the said review procedure, neither generic allegations nor repetition of claims previously heard in appeals or review procedures will be admissible, unless they were denied because of rigid, formalistic or unjustified restrictions on a comprehensive review of the decision that should have been performed by the higher court in order to decide on the disagreements raised by the party, and on evaluation of absolute defects, which, under the new law, the higher court may rule on ex officio.

54. The State considers it important that by resolution of the Inter-American Court of November 22, 2010 concerning supervision of the execution of the sentence in the case of *Herrera Ulloa*, the Court concluded the case, in light of the aforementioned law, and ordered it archived, finding that Costa Rica had fully complied with the decision in that judgment. Therefore, it contends that the Inter-American Court found that Costa Rica gave effect to the provisions of Article 8 (2) (h) of the American Convention, guaranteeing broad supervision or enforcement of the decisions of the trial courts.

55. As to allegations about deficiencies in the Office of the Public Defender, the State indicates that in domestic law and practice, if the accused does not choose his own defense attorney, he is assigned a public defender whose role and competences are regulated in the Code of Criminal Procedure and in the Law establishing the Judiciary [*Ley Orgánica*], and providing that he may intervene at all stages of the criminal proceedings. It adds that after having studied a judgment, a public defender may submit a negative report on whether a case is in order, based on his technical opinion<sup>59</sup>. It also alleges that domestic law and practice fully comply with the principle of impartiality of the judge.

56. With regard to a challenge of the charges, it states that the right to a defense is a constitutional guarantee that includes the "accused's guarantee to have timely knowledge of the charges against him, and the possibility of contesting them, and to offer evidence on his own behalf throughout all the proceedings brought against him". Specifically, it states that all persons who are the subject of a criminal procedure are referred to the Public Prosecutor [*Ministerio Público*] where they are informed of the charges being investigated against them, and of the rights they have in the criminal proceedings, and they may choose their own defense counsel, if they find it necessary having heard the facts under investigation.

57. It reports that once the preparatory proceedings have been concluded by the Public Prosecutor, --the first phase of the criminal proceedings- a concluding report is issued, in which one of the possibilities is an accusation against the person investigated, in which the charges are formally brought; these are made known during the procedural stage known as the "intermediate proceedings", on two precise occasions: First, the decision to convene the preliminary hearing, at which the parties are notified of the contents of the accusation, and the accused is granted five days in which to examine the proceedings and the evidence gathered during the investigation. During that period, the accused may question the accusation, file objections, offer evidence, and, *inter alia*, make procedural requests. Second, during the preliminary hearing, the Office of the Public Prosecutor [*Ministerio Público*] orally states the account of the facts and the factual and legal grounds for the accusation, and specifies the evidence used and offered for the public oral trial. It states that during that hearing, the defense may make any objections it deems pertinent, and offer such evidence as it considers necessary to resolve the claims raised and for the public oral trial, and that the accused has the possibility of speaking in his own defense<sup>60</sup>.

58. Regarding the allegations about the delivery of sentences or judgments in electronic or digital form, the State claims that many resolutions handed down in Costa Rica's criminal courts are digitally recorded on audio-visual tapes, which are available to the Parties to a case, who may request the copies they need in order to exercise their right to a defense. It adds that on August 10, 2009, the "Protocol for proceedings in Criminal Trial Courts" was approved, Article 3 of which provides that whenever one of the Parties claims that he does not have access to recording technology or IT support, the matter will be taken under advisement and, *inter alia*, a transcript of the relevant decision may be ordered, and that "in every event, the administration will guarantee protection of the parties' right to

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<sup>59</sup> The State asserts that in Costa Rica, the public defender deals with requests for review of convictions of between 15 and 50 years, since particular attention is in fact paid to convictions carrying a higher term.

<sup>60</sup> The State also indicates that if it is decided to open a case to trial, the Public Prosecutor's Office orally informs the accused of the charges, at the beginning of the proceedings, and that the accused has the right to remain silent or to speak at any time during the trial, up until it is declared closed.

information on the decision”<sup>61</sup>. It indicates that the Constitutional Chamber of the Supreme Court established a provision of a similar nature in its jurisprudence<sup>62</sup>.

59. As to conditions of detention, the State alleges that in order to safeguard citizen security, it isolates and deprives of their liberty persons who have violated the law, while respecting human rights<sup>63</sup>. It adds that traditionally, Costa Rica has maintained high levels of quality in important aspects of the operations of the penitentiary system, including a low percentage of “unconvicted prisoners”. It reports, however, that over the last two years, the prison population grew by more than 30%, while the historical rate of growth was 4% per year, and that this caused overcrowding of the prison system that has affected the prisoners’ living conditions. It adds that investments have been made, and that the National Development Plan 2011-2014 includes a chapter on citizen security, and enhancement of the police and the penitentiary system. It adds that judges overseeing execution of the sentence (*Jueces de la Ejecución de la Pena*) are empowered to require the prison administration to take corrective measures needed to guarantee full respect for the rights of prisoners.

- **Specific allegations**

**Petition 233-04: Manfred Amrhein Pinto, Ronald Fernández Pinto, Carlos Osborne Escalante, Carlos Manuel González Lizano and Arturo Fallas Zúñiga**

60. The State refutes all of the allegations that have been presented<sup>64</sup>. In particular, it indicates that the allegations are, on the one hand, a reiteration of the arguments presented in the appeals proceedings (*recurso de casación*), which claims were validly rejected by the court; and on the other, that there are a number of claims that could have been presented and discussed in the domestic jurisdiction, but that the petitioners did not file the relevant procedures, and thereby eliminated the State’s opportunity to consider their claims. It adds that, with regard to the time limit for filing an appeal, the petitioners sought retroactive application of a rule that granted a longer time period; this was out of order, considering that it was a procedural and not a substantive rule, and hence the principle of positive criminal retroactivity does not apply. It additionally alleges that the subject of the case was a matter of public knowledge, given the dimensions of the charges in the case.

61. As to the requirement in the Convention that domestic remedies be exhausted, the State alleges that the petitioners did not make use of the legal remedies available domestically, since they did not request a review procedure.

**Petition 669-04: Rafael Antonio Rojas Madrigal<sup>65</sup>**

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<sup>61</sup> The State claims that if an individual has difficulty accessing his sentence or verdict, the most appropriate means of having the matter heard would be to request a writ of *amparo*, without prejudice to other administrative actions that that might be filed in such an event.

<sup>62</sup> As to petition No 587-05, the State particularly indicates that on this matter, the petitioner does not offer convincing evidence that in his particular case, he was denied the possibility of making use of technical equipment to study the judgment against him.

<sup>63</sup> The State provides information on the conditions of imprisonment in the “La Reforma” detention center. It indicates that for infrastructure reasons, some people are sleeping on the floor, “and some have been provided with foam or a mattress”. As to security, it indicates that the Penitentiary Police provide custody and security on the perimeter of the penitentiary facility and to the prison population, prison staff and visitors. As to food, it reports that in the La Reforma center, from 2009 to date, food is given out under supervision to ensure that it is evenly shared and adequate for all prisoners.

<sup>64</sup> The State claims that all of the accused had the opportunity to effectively exercise his rights; that the judges based their decisions on legal criteria; that he does not specifically state how the principles of evaluating and interpreting the evidence were violated; that the criminal figure used is not an open-ended one and that it does set out the elements required, that the evidence in the case file provided evidence that served as an objective basis for the verdict; that it is not true that “vital” evidence was rejected, (contd.) nor that evidence favoring the defense was ignored; that the alleged victims were detained as the result of their criminal conviction, similarly for the ban on holding public office for ten years.

<sup>65</sup> The State alleges that the court files show no judicial cases regarding the alleged victim during the period 1980--1989, and it therefore maintains that his claim is invalid.

62. The State refutes the petitioner's allegations. In particular, it contends that the petitioner has filed many petitions for writs of *amparo* and *habeas corpus*, analysis of which confirms that he has enjoyed judicial protection, even in repeated cases. As to the alleged partiality of the justices, it states that it has not violated the Convention, and that faced with the multiplicity of actions filed by the petitioner, it became impossible to appoint judges that had not participated in one or other of the claims. It explains that that does not imply violation of the principles of impartiality and objectivity.

63. As to the exhaustion of domestic remedies, the State contends that the fact that most of the outcomes of the cases filed by the petitioner do not satisfy his expectations does not mean that his human rights were violated. As to supposed violations of Article 5 of the Convention, the State asserts that the petitioner has not adequately exhausted domestic remedies<sup>66</sup>. Regarding the criminal case in which judgment No 614-09 was handed down, it contends that it is still under way, given that appeals proceedings are still pending a decision. With respect to the alleged failure to formally read the charges, it claims that the petitioner did not exhaust domestic remedies, that he does not offer facts to support his claim, and that he had the opportunity to present his complaints regarding procedural irregularities during the preliminary hearing and that he did not do so.

#### **Petition 1174-04: Damas Vega Atencio**

64. The State rejects the petitioner's allegations. In particular, it maintains that even though the alleged victim was transferred to "Maximum Security" as a precautionary measure in the face of an uprising and hunger strike that occurred on September 28, 2008, this does not mean that he was put in isolation<sup>67</sup>. It further alleges that the principle of the rule of law is not violated in the Criminal Code as a whole, nor in its Article 213; that Mr. Vega Atencio worked on several jobs and that he received the corresponding remuneration for them, under the terms and conditions provided for in the regulations and signed agreements; that he has available to him the pertinent health and nutritional services, that his health condition is monitored, and that he is provided with a special diet. It indicates that the placement of convicts in the country's various prisons is done in accordance with the legal regulations.

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<sup>66</sup> On this matter, the State alleges that the petitioner has available to him a number of remedies before the Court supervising execution of the sentence (*Juzgado de Ejecución de la Pena*), which is the body responsible for such matters as cases of illness, complaints, isolation, etc., none of which he has used. It also states that Mr. Rojas Madrigal is a prisoner who is constantly filing cases with the various administrative and judicial bodies to present his disagreements. It claims that in none of these complaints has it been determined that his rights were violated by alleged aggressions and wounds inflicted by staff of the Penitentiary Security unit.

<sup>67</sup> The State indicates that the Director of "La Reforma" reported that prisoners housed in these cells do not have contact with each other, but are not in a state of isolation.



**Petition 221-05: Miguel Mora Calvo**

65. The State rejects the petitioner's allegations. It specifically contends that the petitioner has not exhausted domestic remedies. It states in particular that: a) at the time the petition was submitted to the IACHR, requests for review of judgments No. 736-98 and No. 632-2000 were still awaiting decision; b) he did not file a request for review of judgment No. 218-03<sup>68</sup>. It stresses that persons who were sentenced for a crime prior to the Law on Criminal Appeals, who may have been prevented from filing an appeal against their sentence because of the previous rules on admissibility of such an appeal, may avail themselves of the review procedure to bring their claims before the court (claims of fact or of law that may not have been resolved through the appeals procedure).

**Petition 587-05: Manuel Hernández Quesada**

66. The State rejects the petitioner's allegations. As to the requirement that domestic remedies be exhausted, the State alleges that such domestic remedies were not exhausted<sup>69</sup>. Regarding the alleged unconstitutionality of laws Nos. 8.503, 7.728 and 7.333 that, in the petitioner's view, adversely affect the principle of impartiality and violate Article 8 of the American Convention, the State contends that such allegations were not presented for a domestic debate, through an unconstitutionality action, which would have been the most appropriate procedure in the event those rules had been applied in any case to the prejudice of the petitioner. It also claims, in relation to alleged problems of access to the judgment because it was not available in written form, that the petitioner did not exhaust domestic remedies, where the most appropriate course would have been to petition for a writ of *amparo*, or take other administrative actions. The State further claims that the petition was presented out of time.

**Petition 1083-06: Jorge Alberto Martínez Meléndez**

67. The State rejects the petitioners' allegations. His particular allegations include, notably, the alleged improper extension of preventive detention, which the State claims was a decision in accordance with national norms<sup>70</sup> and jurisprudence, as well as international guidelines on the matter. It states that the alleged victim's conduct was an essential consideration, given that Mr. Martínez Meléndez had fled the country for four years while under a preventive measure less onerous than a custodial sentence, and that it was therefore reasonable and proportionate that the measure be extended given the danger of flight. Indeed, the State maintains that the measure imposed on Mr. Martínez Meléndez should be examined as a very exceptional measure in light of the particular circumstances of the case and that the purpose of the measure was to ensure that the purposes of the trial were fulfilled.

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<sup>68</sup> The State contends that the petitioner may not use groundless arguments for not having filed a petition for review – i.e., that the judges that would hear the review request would be the same as those who decided the appeals case- given that the legal system operates with alternate or substitute judges.

<sup>69</sup> Despite this, the State asserts that the petitioner had the opportunity to file for a review procedure under the rules of Law No 8.503, which was decided by the Third Chamber of the Supreme Court on May 23, 2007 on substantiated legal grounds, and the review was denied.

<sup>70</sup> The State contends that even though the regular and special periods of preventive detention expired on June 3, 2006, the Trial Court's decision dated June 2, 2006, which ordered extension of preventive detention, was based on Articles 258 and 329 of the Code of Criminal Procedure.

**Petition P-1111-06: Guillermo Rodríguez Silva and Martín Rojas Hernández**

68. The State rejects the petitioners' allegations. As to the allegations of supposed deficiencies in the conditions of detention, the State stresses that the Constitutional Chamber of the Supreme Court has repeatedly ordered the penitentiary system to take corrective measures, seeking to provide those in custody with the minimum conditions to ensure that their custody is not humiliating.

69. Regarding the requirement that domestic remedies be exhausted, the State alleges that domestic remedies have not been exhausted. It specifically alleges that subsequent to the adoption of Law 8.503, the petitioners could have filed a request for review. It also states that they could have availed themselves of a petition of unconstitutionality to contest the defects in the law that they allege. As to the claim that at the time they were detained, they were not given judicial guarantees, it indicates that they did not exhaust the *habeas corpus* petition, and that they could have filed a petition for a writ of *amparo* concerning the supposedly inadequate prisons conditions.

70. The State indicates that even if the IACHR were to consider that domestic remedies had been exhausted, it should take into account that notification of the appeal was given on August 6, 2005, that is, more than one year before the petition was presented to the IACHR and therefore it was presented out of time.

**Petition 1256-06: Carlos Eduardo Yépez Cruz, Luis Archbold Jay, Enrique Floyd Archbold Jay, Fernando Saldarriaga and Miguel Antonio Valverde**

71. The State rejects the petitioners' allegations. In particular, with regard to the alleged absence of an interpreter at the time of notification of the charges and the preliminary hearing, the State contends that such allegations may not be made once the criminal case has been closed, since that shows that the petitioners did understand all the actions that took place during the trial<sup>71</sup>. It also contends that during the criminal trial, the petitioners had the assistance of defense counsel, and it therefore contends that it is illogical that defense counsel would not have noticed that his clients did not understand the acts taking place in the proceedings in which they sentenced, or that he would have failed to take the appropriate steps to have the court authorities appoint an official interpreter to safeguard the interests of his clients.

72. As to exhaustion of domestic remedies, the State contends that the petitioners did not bring judicial or administrative actions in relation to claims about the conditions of detention.

**IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

**A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae***

73. The petitioners are entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names as alleged victims individual persons with respect to whom the State of Costa Rica has assumed the commitment of respecting and assuring the rights set forth in the American Convention. As for the State, the Commission notes that Costa Rica has been a State Party to the American Convention since April 8, 1970, the date on which it deposited its instrument of ratification; to the Protocol of San Salvador since November 16, 1999, and to the Inter-American Convention to Prevent and Punish Torture since June 2, 1996. The Commission therefore has competence *ratione personae* to examine the petition.

74. The Commission has competence *ratione loci* to examine the petition, inasmuch as it alleges violations of rights protected in the American Convention, the Protocol of San Salvador and the Inter-American Convention to Prevent and Punish Torture, which are alleged to have taken place in the

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<sup>71</sup> The State also contends that both petitioners are Colombian nationals and know the Spanish language.

territory of Costa Rica, a State Party to those treaties. The Commission has competence *ratione temporis*, inasmuch as the obligation to respect and guarantee the rights protected in the American Convention, the Protocol of San Salvador, and the Inter-American Convention to Prevent and Punish Torture was in force for the State at the time that the acts alleged in the petition are said to have taken place.

75. The Commission has competence *ratione materiae*, because the petition denounces possible violations of human rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture. As to the Protocol of San Salvador, while the IACHR lacks competence *ratione materiae* under its system of individual petitions to rule in an individual case regarding violations of Articles 1, 2, 3, and 4 of that Protocol, the IACHR may, bearing in mind the provisions of Articles 26 and 29 of the American Convention, consider the provisions of that Protocol in its interpretation of other applicable provisions of the American Convention and of other treaties over which it does have competence *ratione materiae*<sup>72</sup>. As a result, the Inter-American Commission will interpret articles of the Protocol of San Salvador to the extent that they may be relevant to its application of the American Convention<sup>73</sup>.

76. As to the alleged violation of Articles XVII and XXV of the American Declaration, it notes that since the time the American Convention entered into force for Costa Rica, it is the latter, and not the Declaration, that became the source of applicable law<sup>74</sup>, provided the petition refers to an alleged violation of rights that are substantially identical in both instruments. In this case, the rights under the Declaration that were allegedly violated by the State are protected under the Convention, and the acts that gave rise to the complaint took place after the American Convention came into force for Costa Rica. Therefore, the Commission will refer only to alleged violations of the Convention, and not of the Declaration.

## **B. Exhaustion of domestic remedies**

77. Article 46 (1) (a) of the American Convention provides that admissibility of a petition presented to the Inter-American Commission under Article 44 of the Convention requires that domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is intended to allow the national authorities to examine the alleged violation of a protected right and, where appropriate, to have the opportunity to resolve it before it is heard in an international venue.

78. The main subject of the claims set out in the various petitions refers to 1) alleged violation of Article 8 (2) (h) of the American Convention, because the alleged victims were convicted without having available to them in domestic law a remedy that would allow for a comprehensive examination of the respective judgments; 2) Alleged deficiencies in the public defender's office; hindrances to the defense; alleged lack of the guarantee of impartiality of the judges; alleged failure to formally present the charges, and of adequate legal representation.

### **1) Alleged violation of Article 8 (2) (h) of the American Convention**

<sup>72</sup> See IACHR, Report No. 44/04, Laura Tena Colunga *et al* (Inadmissibility, Mexico, October 13, 2004, paras. 33-40; IACHR, Jorge Odir Miranda Cortez *et al* (Admissibility, El Salvador, Case 12.249, Report No. 29/01, para. 36.

<sup>73</sup> Article 19.6 of the Protocol of San Salvador provides as follows: "Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights."

<sup>74</sup> Speaking to the legal force of the American Declaration, the Court confirmed that, in principle, for States Party to the Convention, the specific source of their obligations with respect to the protection of human rights is the Convention itself. I/A Court H.R., *Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man) of July 14, 1989*, para. 46. The Inter-American Commission has ruled in the same way; see, Report 38/99, Argentina, *Annual Report of the IACHR 1998*, para. 13, and Report No. 112/99, Colombia, Álvaro Lobo Pacheco *et al* (19 Tradesmen), September 27, 1999, para. 17.

79. In the instant case, the petitioners claim their right to a comprehensive examination of the convictions handed down by the courts of law of Costa Rica. For its part, the State contends that with the adoption of Law 8.503, the legal system gave effect to the Convention, and the subsequent adoption of Law 8.837 “Creation of an Appeals Procedure, other Reforms to the appeals system, and implementation of new rules for oral proceedings in criminal trials”, reinforced the protection of the fundamental rights and guarantees of due process, to guarantee legal certainty.

80. For the purposes of examining admissibility, the Commission notes that prior to the entry into force of Law 8.503 in June 2006, the Inter-American Court found that the appeal procedure (*recurso de casación*) provided for challenging a conviction did not satisfy “the requirement that it be a liberal remedy that would permit the higher court to do a thorough analysis or examination of all the issues debated and analyzed in the lower court”<sup>75</sup>. The Commission thus observes that the legislation prior to the legal reform of June 2006 did not provide an appropriate procedure compatible with the American Convention.

81. Also, the IACHR notes that subsequent to the coming into force of Law 8.503, the remedies available to the alleged victims –appeal [*casación*] and revision- were limited in scope and did not offer a comprehensive examination because of the rules that governed them. For other part, the Commission observes that the remedy of appeal [*recurso de apelación*] as created by Law 8.837 does not apply to the alleged victims in the present case, because when the referred Law enters in force, the alleged victims will be entitled, for one time only, to present a request for a revision.

82. Therefore, for the purposes of admissibility, the Commission will analyze in the merits if the domestic legislation offered the alleged victims an appropriate remedy for the protection of the right to a comprehensive examination of their convictions. Article 46 (2) (a) of the American Convention provides that one of the exceptions to the requirement that domestic remedies be exhausted is that the domestic legislation of the State does not afford due process of law for the protection of the right allegedly violated. As a result, the Commission finds that this exception applies in the case regarding the alleged violation of Article 8 (2) (h) of the American Convention.

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<sup>75</sup> I/A Court H.R., *Case of Herrera Ulloa Vs. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 167.

**2) Alleged deficiencies in the office of the public defender; hindrances to the defense; alleged failure to guarantee the impartiality of the judges; alleged failure to formally present the charges and legal counsel; allegedly excessive preventive detention**

83. The Commission observes that a number of claims have been made regarding the conditions of detention. The information available indicates that some petitioners have filed judicial and/or administrative actions on particular situations such as medical care or food, and have thus brought the alleged situation to the attention of the prison authorities. For its part, the State argues that it maintains high standards of quality in the penitentiary system. It does, however, report that there is overcrowding in the corrections facilities that has affected the detainees' living conditions.

84. As to the allegedly prolonged preventive detention of Mr. Jorge Martínez Meléndez, the petitioners contend that domestic remedies were exhausted by means of the three *habeas corpus* proceedings that were filed. The State has presented no specific allegations on this matter. In this regard, the Commission notes that three *habeas corpus* petitions were filed to complain of the alleged extension or illegality of the preventive detention. Specifically, the first petition was filed on June 7, 2006 against the decision of the Criminal Court of the First Judicial Circuit of June 2, 2006, which prolonged indefinitely the precautionary measure of preventive detention until such time as the verdict should be handed down. It is alleged that this extension was given beyond the expiry of the lawful periods and without a date certain. In its resolution of June 23, 2006, the Constitutional Chamber of the Supreme Court denied the petition, finding that the extension was based on applicable legal norms, and that it was also based on "the still latent danger of flight, since the accused previously took advantage of his state of freedom to leave the country for Canada, where he remained for four years,...", and that "the purpose sought with this measure is to ensure that the purposes of the trial are fulfilled". In addition, on August 28, 2007 and January 28, 2007, two *habeas corpus* petitions were filed to challenge the fact that the alleged victim had been in detention without an order for imprisonment that could justify such a measure. Both petitions were decided by the Constitutional Chamber of the Supreme Court, one on September 7, 2007, which was denied, and the second on February 1, 2008, admitting the petition but not ordering the release of the alleged victim. It is therefore considered that the requirement for exhaustion of domestic remedies provided for in Article 46.1 of the American Convention was effectively complied with, in respect of that aspect of the complaint.

**C. Timeliness of the petition**

85. Article 46.1.b of the Convention provides that in order for the petition to be found admissible, it must have been filed within six months of the date on which the interested Party was notified of the final decision exhausting domestic remedies. This rule does not apply when the Commission finds that any of the exceptions to exhaustion of domestic remedies set forth in Article 46.2 of the Convention have occurred. In such cases, the Commission must determine whether the petition was presented within a reasonable time, in accordance with Article 32 of its Rules of Procedure.

86. As stated, the Commission concluded that in the instant case, the exception provided for in Article 46.2.a of the American Convention applies. In view of the date or dates on which each of the petitions was filed –as noted in the pertinent sections on processing by the IACHR–, the Commission considers that the petitions were filed within a reasonable time period. Regarding the complaint concerning the prolonged preventive detention of Mr. Martínez Meléndez, it finds that the petition was submitted in accordance with the six-month deadline, given that the final petition for *amparo* ended subsequent to the submission of the original petition.

#### **D. Duplication of proceedings and international *res judicata***

87. Article 46 (1) (c) of the Convention provides that admission of the petitions is subject to the requirement "that the subject of the petition or communication is not pending in another international proceeding for settlement", and Article 47 (d) of the Convention stipulates that the Commission shall not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization. In the petitions considered in the present report, the Parties have not put forward either of these two circumstances, nor are they inferred from the case files.

#### **E. Characterization of the alleged facts**

88. For purposes of admissibility, the Commission must determine whether the petition sets out facts that tend to establish a violation, as stipulated in Article 47 (b) of the American Convention, whether the petition is "manifestly groundless", or whether it is "obviously out of order", pursuant to Article 47(c). The standard for evaluating those requirements differs from that required to rule on the merits of a petition. The Commission must perform a *prima facie* examination to determine whether the petition establishes the bases for a possible or potential violation of a right guaranteed under the Convention, and not to determine the existence of a violation. Such an examination is a preliminary analysis that does not imply a pre-judgment on the merits.

89. The petitioners allege that the State violated the judicial guarantees established in Articles 8 and 25 of the Convention, and in Article 8 (2) (h) in particular, because of the alleged lack of an ordinary procedure for the comprehensive examination of the alleged victims' convictions. In addition, some of the petitions make specific claims about alleged violations of the guarantee of impartiality of the judges; alleged deficiencies in the office of the public defender; alleged lack of a formal reading of the charges and of legal counsel, and/or alleged inadequate prison conditions.

90. When examining the merits, the Commission will analyze whether in the criminal trials of the alleged victims, there was a violation of Article 8 (2) (h) of the American Convention, regarding the alleged lack of an ordinary procedure for a comprehensive examination of the alleged victims' convictions. As to the allegations concerning inadequate prison conditions, the Commission finds that they are not manifestly groundless or obviously out of order; and will therefore examine them during the merits phase. With respect to the allegations in petition 1083-06 concerning the alleged extension of preventive detention, the Commission considers that the allegations are not manifestly groundless or obviously out of order.

91. As to the allegations in petition 233-04 on rights established in Articles 11 and 23 of the Convention, the Commission finds that the information supplied does not give grounds for considering an alleged violation. The Commission also finds that the allegation in petition 1083-06 on Article 22.7 of the Convention does not tend to establish a violation, since it does not appear that the State impeded or hindered the alleged victim's right to seek asylum. As to the allegations presented in petition 664-09 concerning an alleged violation of Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Convention to Prevent and Punish Torture, the Commission finds that no factual allegations have been presented concerning the specific situation of the alleged victim, Mr. Rojas Madrigal, that would enable it to consider a supposed violation of those rights. As to the violations alleged in petition 1174-04 regarding the rights upheld in Articles 17 and 19 of the American Convention, and in petition 587-05 regarding the alleged violation of Article 4 of the Convention, the Commission considers that no arguments have been presented to sustain an alleged violation of those rights. The Commission observes that several petitioners presented claims of alleged violations of Articles 9 and 24, but it finds that the arguments do not tend to establish possible violations of the Convention. It also indicates that no arguments have been presented to establish a possible violation of Article 29 of the American Convention.

92. By virtue of the foregoing, the IACHR finds that the claims presented by the alleged victims could establish or characterize a violation of the right upheld in Article 8 (2) (h) of the American Convention, in conjunction with Articles 1.1 and 2 thereof. By virtue of the allegations made by some of the petitioners, it also decides that when examining the merits, it will examine the alleged violation of

Articles 5, 7, 8 and 25 of the Convention, inasmuch as the lack of grounds or inadmissibility of those aspects of the complaint are not evident. Thus, as to these aspects, the Commission concludes that the petition satisfies the requirements set forth in Article 47.b) and c) of the American Convention.

## **V. CONCLUSIONS**

93. Based on these considerations of fact and of law, and without prejudging the merits of the case, the Inter-American Commission concludes that the petitions meet the admissibility requirements set forth in Articles 46 and 47 of the American Convention, and therefore,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To find the case admissible for the purpose of examining the alleged violation of Article 8 (2) (h) of the American Convention, in conjunction with Articles 1.1 and 2 thereof.
2. Additionally, in light of the allegations put forward by some petitioners, decides that it will examine the alleged violation of Articles 5, 7, 8 and 25 of the Convention during the merits phase.
3. The Commission decides that the remaining articles invoked are inadmissible.
4. To notify the State and the petitioners of this decision.
5. To publish this decision and to 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 22<sup>nd</sup> day of the month of July, 2011.  
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.