

witnesses proposed por the Inter-American Commission on Human Rights and the representatives of the presumed victims. In addition, the Court heard the final oral arguments of the Commission, the representatives, and the State on the preliminary objection and the possible merits, reparations and costs in this case.

2. Case of Sawhoyamaya Indigenous Community (Paraguay): *Monitoring compliance with judgment.* On July 15, 2009, the Court held a public hearing in order to obtain information from the State on compliance with the judgment on merits, reparations and costs handed down in this case and hear the corresponding observations of the Inter-American Commission and the representatives.

3. Matter of Gomes Lund et al. (Guerrilha do Araguaia) (Brazil): *Provisional measures.* On July 15, 2009, the Court issued an order on provisional measures in this matter (**Appendix 88**), in which it decided, *inter alia*, to reject the request for provisional measures presented by the representatives of the presumed victims in the case of Gomes Lund et al. (*Guerrilha do Araguaia*).

4. Academic activities: On July 13, 2009, a seminar was offered by the Court's lawyers on the Inter-American system for the protection of human rights and the case law of the Inter-American Court. It comprised two panel sessions; Panel 1 concerned the organs of the inter-America system for the protection of human rights (the Commission and the Court) and their functioning and the speakers were Auxiliadora Solano, Inter-American Court lawyer, and Matías Hernández, American University researcher; and Panel 2, the case law developed by the Inter-American Court of Human Rights, which was sub-divided into the following topics: "Right to Life," presented by Claudia Josi, Inter-American Court lawyer; "Indigenous Peoples' Rights," presented by Oswaldo Ruiz, Inter-American Court lawyer; and "Reparations," presented by Jorge Calderón, Inter-American Court lawyer.

In addition, on July 15, 2009, a seminar was held on current and future challenges for the inter-American system for the protection of human rights, given by judges of the Inter-American Court. This seminar comprised two panels: Panel 1 "Interaction between National and International Law: a Comparison of Perspectives and Cases," presented by Diego García-Sayán, Vice President of the Inter-American Court, and Leonardo A. Franco, Judge of the Inter-American Court; and Panel 2 "Challenges for the inter-American System and Considerations on Discrimination," presented by Sergio García Ramírez, Judge of the Inter-American Court, and Rhadys Abreu Blondet, Judge of the Inter-American Court.

5. Official activities: During this session, the Court held working meetings with senior Bolivian authorities, namely: the President of the Plurinational State of Bolivia; the Ministers of the Presidency, Foreign Affairs, Justice, Economy and Public Finances, and the Legal Defense of the State; the President of the Supreme Court of Justice; the Vice Minister and the Director General of the Ministry of Foreign Affairs and Worship, and the Prosecutor General of the Republic. The fortieth special session was inaugurated in the Government Palace on July 13, and those present were addressed by the Vice Minister of Foreign Affairs and Worship, and the Vice President of the Court. The same day, the members of Inter-American Court were declared illustrious guests of the city of La Paz, at the Office of the Mayor of La Paz.

III. SUBMISSION OF NEW CONTENTIOUS CASES

Over the course of 2009, twelve new contentious cases were submitted to the consideration of the Court:

1. Case of Gomes Lund v. Brazil

On March 26, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights, lodged an application against the State of Brazil, concerning the case of Gomes Lund. The application relates to the alleged arbitrary detention, torture and forced disappearance of 70 persons, members of the Communist Party of Brazil and peasants from the region, as a result of operations conducted by the Brazilian Army between 1972 and 1975 to eliminate the *Guerrilha do Araguaia* [the Araguaia guerrilla fighters], during the military dictatorship in Brazil. Furthermore, the Commission stated that it submitted the case to the consideration of the Court because, under the Amnesty Law, the State had not conducted a criminal investigation in order to sanction those responsible for the forced disappearance of 70 presumed victims and the extrajudicial execution of María Lucia Petit da Silva; because the civil judicial remedies filed to obtain information on the facts had not been effective; because the legislative and administrative measures adopted by the State had unduly restricted the right of access to information of the next of kin, and because the disappearance of the presumed victims, the execution of María Lucia Petit da Silva, the impunity of those responsible and the absence of access to justice, to the truth and to information had negatively affected the personal integrity of the next of kin.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Convention.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

2. Case of Chitay Nech et al. v. Guatemala

On April 17, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights, lodged an application against the State of Guatemala, concerning the case of Chitay Nech *et al.* The application relates to the alleged forced disappearance of the Maya Kaqchikel indigenous political leader Florencio Chitay Nech, that occurred as of April 1, 1981, in Guatemala City, and the alleged subsequent lack of due diligence in the investigation into the facts, as well as the alleged denial of justice to the detriment of the next of kin of the presumed victim.

In the application, the Commission asked the Court to declare the State responsible for the violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 23 (Right to Participate in Government) of the American Convention on Human Rights, in relation to the obligation contained in Article 1(1) (Obligation to Respect Rights) of this

instrument, as well as in relation to Articles I and II of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Florencio Chitay Nech; Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to the obligations contained in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of Florencio Chitay Nech and his next of kin, namely: his sons Encarnación, Pedro, Eliseo and Estermerio, and also his daughter María Rosaura, all bearing the last names Chitay Rodríguez. In addition, the Commission alleged that the State is responsible for the violation of Articles 5 (Right to Humane Treatment) and 17 (Rights of the Family) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the next of kin of Florencio Chitay Nech, namely: his sons Encarnación, Pedro, Eliseo and Estermerio, and also his daughter María Rosaura, all bearing the last name Chitay Rodríguez, and of Article 19 (Rights of the Child) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Estermerio Chitay Rodríguez, who was a child at the time.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

3. Case of Fernández Ortega *et al.* v. Mexico

On May 7, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Mexico concerning the case of Inés Fernández Ortega. The application relates to the alleged rape and torture of the indigenous woman Me'phaa Inés Fernández Ortega.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy [Honor and Dignity]) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Inés Fernández Ortega; for the violation of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of this treaty, to the detriment of the following next of kin of Inés Fernández Ortega: Fortunato Prisciliano Sierra (husband), Noemí, Ana Luz, Colosio, Nelida and Neptalí Prisciliano Fernández (children), María Lúdia Ortega (mother), Lorenzo and Ocotlan Fernández Ortega (brothers); and the violation of Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women to the detriment of Inés Fernández Ortega. Furthermore, the Commission asked the Court to declare that the State failed to comply with its obligations under Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

4. Case of Ibsen Cárdenas *et al.* v. Bolivia

On May 12, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Bolivia concerning the case of Rainer Ibsen Cárdenas and José Luis Ibsen Peña. The application relates to the alleged forced disappearance of Rainer Ibsen Cárdenas and José Luis Ibsen Peña as of October 1971 and February 1973 respectively, in the context of the military dictatorship headed by Hugo Banzer Suárez, followed by the presumed impunity of these facts, as well as the alleged absence of reparation to their next of kin for the damage caused and the uncertainty about the whereabouts of one of the victims.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to the obligation contained in Article 1(1) (Obligation to Respect Rights) of this instrument, and in relation to Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rainer Ibsen Cárdenas and José Luis Ibsen Peña; and also Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the next of kin of the presumed victims, namely: Tito Ibsen Castro, Rebeca Ibsen Castro, Raquel Ibsen Castro and Martha Castro Mendoza. In addition, the Commission asked the Court to declare that the State had failed to comply with the obligation contained in Articles III and IV of the Inter-American Convention on Forced Disappearance of Persons by not defining forced disappearance as a crime until 2004.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

5. Case of Cabrera García and Montiel Flores v. Mexico

On June 24, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Mexico concerning the case of Teodoro Cabrera García and Rodolfo Montiel Flores. The application indicates that Teodoro Cabrera García and Rodolfo Montiel Flores were presumably subjected to cruel, inhuman and degrading treatment while they were detained and in the custody of members of the Mexican Army; they were not brought promptly before a judge or other officer authorized by law to exercise judicial power so that the legality of the detention could be controlled, and various irregularities were committed in the course of the criminal proceedings filed against them. In addition, the application refers to the supposed lack of due diligence in the investigation and sanction of those responsible for the facts and, in particular, the absence of an adequate investigation into the allegations of torture, and the use of the military jurisdiction to investigate and prosecute human rights violations.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention; for failing to comply with the general obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, and for failing to comply with its obligations under Articles 1, 6, 8 and 10 of the Inter-

American Convention to Prevent and Punish Torture to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

6. Case of the Xákmok Kásek Indigenous Community of the Enxet-Language People and its Members v. Paraguay

On July 3, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Paraguay concerning the case of the Xákmok Kásek Indigenous Community. The application indicates that the State supposedly failed to guarantee the right to ancestral property of the Xákmok Kásek Indigenous Community of the Enxet-Language People and its members, because the processing of the Community's application for return of its territory has been in progress since 1990 and, to this date, it has not been resolved satisfactorily. The alleged result of this circumstance is not only the impossibility for the Community to accede to the ownership and possession of its territory, but also, owing to its characteristics, has maintained it in a vulnerable situation as regards food, health care and hygiene that constantly threatens the survival of the members of the Community and its integrity.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 21 (Right to Property), 4 (Right to Life), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in connection with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects), to the detriment of the Xákmok Kásek Indigenous Community of the Enxet-Language People and its members, and also the violation of Article 3 (Right to Juridical Personality) and 19 (Rights of the Child), in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention, to the detriment of certain member of the Xákmok Kásek Indigenous Community.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

7. Case of Rosendo Cantú *et al.* v. Mexico

On August 2, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Mexico, concerning the case of Rosendo Cantú *et al.* The application relates to the alleged rape and torture of the indigenous woman, Me'phaa Valentina Rosendo Cantú on February 16, 2002, in the State of Guerrero, Mexico, as well as the alleged lack of due diligence in the investigation and the failure to sanction those responsible for the facts; the alleged consequences of the facts of the case on the presumed victim's daughter; the supposed absence of adequate reparation in favor of the presumed victim and her next of kin; the use of the military jurisdiction to investigate and prosecute the human rights violations, and the supposed difficulties faced by indigenous people, in particular indigenous women, to obtain access to justice and to health care services in Mexico.

In the application, the Commission asked that the Court declare the State responsible for the violation of the rights established in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial), 11 (Right to Privacy [Honor and Dignity]), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to Article 1(1) (Obligation to Respect Rights) thereof, as well as Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all the foregoing to the detriment of Valentina Rosendo Cantú. Furthermore, it asked the Court to declare the international responsibility of the State for the violation of the right established in Article 5(1) (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Yenys Bernardino Rosendo, daughter of Valentina Rosendo Cantú.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

8. Case of Lysias Fleury and his family v. Haiti

On August 5, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Haiti concerning the case of Lysias Fleury. The application relates to the supposed unlawful detention and perpetration of cruel, inhuman and degrading treatment against Lysias Fleury that occurred on June 24, 2002, in Port-au-Prince; the alleged subsequent lack of due diligence in the investigation into the facts and the denial of justice to the detriment of Mr. Fleury and his next of kin, as well as the alleged violation of the personal integrity of his next of kin.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 5(1) and 5(2) (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, based on the alleged ill-treatment of Lysias Fleury by State agents and for the effect on his physical, moral and mental integrity; and also for the violation of Articles 7(2), 7(3), 7(4) and 7(5) (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, owing to the alleged unlawful arrest and detention of Mr. Fleury, in the absence of charges against him. Furthermore, the Commission asked the Court to declare the violation, to the detriment of Mr. Fleury's immediate family, of Article 5 (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, owing to the presumed violations of their personal integrity. In addition, the Commission asked the Court to declare the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Fleury and his next of kin, because it failed to open a prompt, effective, impartial and independent investigation into the violations of the human rights of Mr. Fleury and to prosecute and sanction those responsible.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

9. Case of Jesús Tranquilino Vélez Loor v. Panama

On October 8, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Panama concerning the case of Jesús Tranquilino Vélez Loor. The application relates to the alleged detention and subsequent prosecution of Jesús Tranquilino Vélez Loor, an Ecuadorian national, for offenses related to his migratory status, without due guarantees and without the possibility of being heard and exercising his right to defense; the alleged failure to investigate the complaints of torture filed before the Panamanian authorities by Mr. Vélez Loor, as well as the supposed inhuman detention conditions to which he was subjected in various Panamanian prisons from the time he was deprived of liberty on November 11, 2002, until he was deported to the Republic of Ecuador on September 10, 2003.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, as well as of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Jesús Tranquilino Vélez Loor.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

10. Case of Mejía Idrovo v. Ecuador

On November 19, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Ecuador concerning the case of Mejía Idrovo. The application relates to the State's supposed failure to comply with a judgment handed down by the Constitutional Court declaring the unconstitutionality of two executive decrees determining the discharge from the Army of José Alfredo Mejía Idrovo, and ordered reparation for the damage caused.

In the application, the Commission asked that the Court declare the State responsible for the presumed violation of the rights embodied in Articles 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to the obligations established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of José Alfredo Mejía Idrovo.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

11. Case of Chocrón Chocrón v. Venezuela

On November 25, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the State of Venezuela concerning the case of Mercedes Chocrón Chocrón. The application relates to the presumed arbitrary dismissal of the victim from the post of criminal judge of first instance in the Judicial Circuit of the

Metropolitan Area of Caracas, in the absence of even the minimum guarantees of due process, without adequate grounds, without the possibility of being heard and exercising her right to defense, and without having an effective judicial remedy to combat these violations, all as a result of the absence of guarantees under the process of transition of the Judiciary.

In the application, the Commission asked that the Court declare the State responsible for the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention on Human Rights.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

12. Case of Leopoldo López Mendoza v. Venezuela

On December 14, 2009, pursuant to Articles 51 and 61 of the American Convention on Human Rights, the Inter-American Commission on Human Rights lodged an application against the Bolivarian Republic of Venezuela concerning the case of López Mendoza. The application relates to the State's alleged international responsibility for having disqualified Mr. López Mendoza from exercising public office by means of an administrative procedure in violation of the provisions of the Convention, and for having prohibited him from taking part in the 2008 regional elections, as well as failing to grant him the pertinent judicial guarantees and judicial protection, or to make adequate reparation to him.

In the application, the Commission asked that the Court establish "the international responsibility of the Venezuelan State for failing to comply with its international obligations by violating Articles 23, 8(1) and 25 of the American Convention," in relation to "Articles 1(1) and 2 thereof," to the detriment of Mr. López Mendoza.

Based on the above, the Commission asked the Court to order the State to adopt specific measures of reparation indicated in the application, pursuant to Article 63(1) (Obligation to make Reparation) of the Convention.

IV. NEW PROVISIONAL MEASURES

During 2009, ten new requests for provisional measures were submitted to the Court:

1. Provisional measures in the case of Fernández Ortega *et al.* (Mexico)

On April 8, 2009, pursuant to Articles 63(2) of the American Convention on Human Rights, 26 of the Rules of Procedure of the Court and 74 of the Rules of Procedure of the Commission, the Inter-American Commission on Human Rights submitted to the Court a request for provisional measures to protect the life and personal integrity of Obtilia Eugenio Manuel and her family; forty-one members of the *Organización del Pueblo Indígena Tlapaneco* [Organization of the Tlapanec Indigenous People]; Inés Fernández Ortega and her family; twenty-nine members of the *Organización de la Montaña Tlanichollan* [Organization of the Tlanichollan Mountain], and also the next