

**OBSERVATIONS OF THE BORDER ACTION NETWORK ON THE RESPONSE
OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE
PETITION REGARDING VICTIMS OF ANTI-IMMIGRANT ACTIVITIES AND
VIGILANTE VIOLENCE IN SOUTHERN ARIZONA**

Petition No. P-478-06

June 16, 2006

Introduction

The Border Action Network (“BAN”) hereby submits its observations on the response of the United States of America (the “United States,” “U.S.” or “state”) to BAN’s petition of April 28, 2005 to the Inter-American Commission on Human Rights (the “Inter-American Commission” or “Commission”). The petition seeks redress for human rights violations caused by the United States’ failure to protect and provide legal remedies for immigrant victims of violence and intimidation by vigilante groups near the U.S.-Mexico border in southern Arizona. Further redress is sought for the government’s failure to address and prevent widespread harm caused by anti-immigrant groups and the resulting atmosphere of racism, hostility and discrimination towards U.S. citizens of Mexican ancestry in the region. Government authorities have ignored the pattern of vigilante violence by neglecting to prosecute criminal actions or take measures to discourage and prevent vigilantism, thereby violating the United States’ obligations in relation to the American Declaration of the Rights and Duties of Man.

In its response the United States does not dispute that vigilante activity has occurred as alleged and documented by the petitioner, nor does it establish that that activity has largely gone unchecked by government authorities. Instead, the United States asserts that the petition is inadmissible for failure to exhaust domestic remedies and that that it is not subject to an exception to the exhaustion requirement. In this regard, the state describes the functioning of and available remedies under its criminal and civil justice systems. Yet it can identify only one instance in recent years, out of the numerous incidents involving hundreds of victims, in which vigilantes in southern Arizona were prosecuted and convicted. As for civil remedies that may be invoked by the victims, they are inadequate as a matter of law because the alleged violations involve criminal acts that the state itself must investigate, prosecute and endeavor to prevent. Furthermore, the United States has not pointed to any domestic remedies that it contends will adequately and effectively redress the violations of the human rights of U.S. citizens of Mexican descent who are threatened by the vigilante activity.

The state alternatively argues that the petition should be declared inadmissible on the ground that the facts as alleged do not tend to establish violations of the United States’ international and regional obligations. In part, this argument rests on a flawed attempt by the state to avoid responsibility for its failure to provide redress for the violent and intimidating acts of private individuals. And in part, it rests on a repetition of the assertion that the state’s justice system works adequately to confront vigilante activity.

As will be established below, the United States has failed to sufficiently support that assertion so as to defeat the admissibility of the petition.

I. THE UNITED STATES HAS FAILED TO ESTABLISH THE EXISTENCE OF EFFECTIVE AND ADEQUATE DOMESTIC REMEDIES THAT ARE YET TO BE EXHAUSTED; HENCE THE EXCEPTION TO THE EXHAUSTION REQUIREMENT APPLIES.

A “State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.”¹ If it cannot meet this burden, then the exception to the exhaustion requirement applies. For the reasons outlined below the United States cannot meet the burden of establishing the existence of effective and adequate remedies available to address the human rights violations perpetrated by the vigilantes against immigrants and Mexican-Americans.

A. Civil remedies that may be invoked by the victims are inadequate as a matter of law, because the alleged violations involve criminal acts that the state itself must investigate, prosecute and endeavor to prevent.

The United States refers to the availability of civil remedies for victims of vigilante abuse, and it cites to ongoing civil actions that have been initiated by some such victims. *See* U.S. Response at 7-8. However, as the jurisprudence of the inter-American human rights system clearly establishes, civil remedies are inadequate as a matter of law to fully redress human rights violations that constitute criminal acts.

The human rights violations complained of in the petition involve or stem from repeated acts of violence and intimidation that are criminal in nature and the state itself must prosecute and endeavor to prevent. As set forth in the petition, at 10-14, and further established in the Appendix hereto, these acts constitute crimes under both state and federal legislation, including the following offences: Impersonation of a Federal Employee, Conspiracy Against Rights, Assault, Vicious Animal Assault, Aggravated Assault, Threatening or Intimidating, Endangerment, Conspiracy, Unlawful Imprisonment and Intimidation.²

The Commission has maintained that the need to exhaust domestic remedies does not apply when human rights violations represent “crimes of public action” and the State fails to comply with its “non-delegable” duty to criminally prosecute.³ A crime of public action is “a criminal action of the type that must be prosecuted at the initiative of the

¹ *Velásquez-Rodríguez*, Preliminary Objections, Judgment of June 26, 1987, Inter-Am. Ct. H.R. (Ser. C) no. 1, at para. 88; *see also Loayza Tamayo Case*, Preliminary Objections, Judgment of January 31, 1996, Inter-Am. Ct. H.R., at para. 40; *Maria Eugenia Morales de Sierra*, Report No 28/98, Case 11.625 (Guatemala), Inter-Am. C.H.R. at para. 28 (1997).

² *See* Appendix: Vigilante Offences Under Arizona and United States Laws.

³ *Armando Alejandro Jr., Carlos Costa, Mario De La Pena, and Pablo Morales*, Report No. 86/99, Case 11.589 (Cuba), Inter-Am. C.H.R. 586, OEA/Ser.L/V/II.106 doc. 3 rev. at para. 47 (Sept. 29, 1999).

authorities.”⁴ The vigilante activities complained of in this case undoubtedly involve alleged crimes of public action which the state itself is responsible for prosecuting.

1) The state has a duty to prosecute

The Inter-American Commission, like the Inter-American Court of Human Rights, repeatedly has affirmed that “a state’s obligation to respect and to ensure respect for the rights under the Convention entails the obligation to prevent, investigate and punish any violations of those rights.”⁵ Civil litigation is not an adequate substitute for criminal prosecutions because it does not involve the State in the prevention, investigation and punishment of human rights violations. The state itself must initiate criminal proceedings in accordance with the rules of due process:

When a crime is committed that can be prosecuted on the State’s own initiative, the State is obliged to promote and advance the criminal proceedings to clarify the events, judge those responsible, and establish the corresponding criminal sanctions.⁶

As with all remedies, these measures must be substantiated in accordance with the rules of due process of law under Article 8(1) of the Convention, all in keeping with the general obligation of states parties to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction in accordance with Article 1(1) of the Convention.⁷

The Commission has further held that states have “a duty to maintain public order, and therefore...[have] an obligation to set the criminal law system into motion and to process the matter until the end”;⁸ that states must “investigate, prosecute and punish persons liable for human rights violations”⁹; that “. . .public employees, unlike private persons, have a legal obligation to denounce all crimes of public action that they come to learn of in performing their duties”¹⁰; that “the preceding statement is confirmed in those procedural regimes that deny the victim or victim’s relatives any standing, as the state monopolizes the ability to press criminal charges”¹¹; and, that “where such standing is provided for, its exercise is not compulsory, but optional for the person who has suffered

⁴ *Jose Ruben Rivera*, Report No. 53/05, (Admissibility), Petition 880/01 (El Salvador), Inter. Am. C.H.R. (October 12, 2005) at para. 11.

⁵ *Michael Gayle*, Report No 8/03 (Admissibility), Petition 191/02(Jamaica), Inter-Am. C.H.R., at para. 40 (Feb. 20, 2003) (citing *Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru*, Case 11.581, Report N° 83/01, Annual Report of the IACHR 2001, at paras. 25-28; *La Granga, Ituango v. Colombia*, Case 12.050, Report N° 57/00, Annual Report of the IACHR 2000, at para. 41 (“*Ituango*”); *Villagrán Morales et al.*, Reparations, Judgment of May 26, 2001, Inter-Am. Ct. H.R., at para. 98 and operative para. 5).

⁶ *Michael Gayle*, *supra* note 5.

⁷ *Id.* citing *Velásquez Rodríguez*, *supra* note 1, at para. 91.

⁸ *Alejandro et al.*, *supra* note 3.

⁹ *Id.*

¹⁰ *Arges Sequeira Mangas*, Report No. 52/97, Case 11.218, Inter-Am. C.H.R., OEA/Ser.L/V/II.98 doc. 6 rev., paras. 96 & 97 (Apr. 13, 1998) (“*Mangas*”).

¹¹ *Id.* at 97.

harm, and does not take the place of state action.”¹² Criminal violations of human rights must be prosecuted by the state on its own initiative and the burden cannot be shifted to the victims to initiate criminal proceedings.¹³

The State’s obligation to protect its citizens from human rights abuses extends to undocumented immigrants. In the *Velásquez-Rodríguez* case, the Court held that States have an obligation to guarantee the free and full exercise of the rights recognized by the Convention *to all persons subject to their jurisdiction* (Art.1).¹⁴

2) Civil remedies are inadequate substitutes for the state’s prosecutorial function and hence need not be exhausted

Any civil litigation launched in response to vigilante activities does not absolve the state of its duty to prosecute the vigilante’s criminal actions. Civil judgments are not suitable to address violations of the victims’ rights to physical integrity and security of the person, or to put an end to the vigilantes’ widespread public campaign of racism and violence. The Inter-American Court has stated that “adequate domestic remedies are those which are suitable to address an infringement of a legal right.”¹⁵ In this case, civil proceedings, which are usually limited to financial restitution, are not sufficient to denounce, prevent and punish the vigilante activities.

Thus, the pending civil suits brought against vigilantes for assault, trespass and other violations do not qualify as remedies that must be exhausted. The systemic failure of the criminal justice system to prevent a pattern of human rights abuses and hold accountable those responsible is not remedied by placing the burden on victims to mount civil lawsuits after they are harmed. Furthermore, a civil judgment for damages is insufficient

¹² *Id.*

¹³ In *Gayle*, *supra* note 5, at para. 41 the Commission considered that the facts alleged violations of non-derogable rights, such as the right to life and the right to human treatment, which were offences under domestic law that could be prosecuted by the state on its own initiative. See also *Walter Huacon Baidal y Mercedes Salazar Cueva*, Report No 9/04 (Admissibility), Petition 4409/02 (Ecuador) Int. Am. C.H.R. (Feb. 26, 2004), at para. 31, where the Commission found the petition admissible, applying the Article 46(2)(a) and (c) exceptions, the petitioners having initiated both criminal and civil actions. The state had attempted to avoid its responsibility to investigate and prosecute those responsible and to shift the burden of initiating the criminal proceedings to the petitioners, even though “the State clearly has an independent interest in the investigation and punishment of crime.” *Id.* The Commission cited *Ramon Hernandez Berrios et al.*, Report No. 15/02 (Admissibility), Petition 11.802 (Honduras) Int. Am. C.H.R. (Feb. 27, 2002), at para. 25, which established that when a crime has been committed it is “incumbent on the State, particularly in light of its obligation to take punitive action, to institute, ex officio, proceedings to identify, prosecute, and punish all those responsible, diligently pursuing every stage of the proceedings to a conclusion.”

¹⁴ *Velásquez Rodríguez*, *supra* note 1, at para. 91.

¹⁵ *Velásquez-Rodríguez*, *supra* note 1, at para. 64. See also *Marcela Andrea Valdés Díaz*, Report No. 57/03 (Admissibility), Petition 12.337 (Chile), Inter-Am. C.H.R. 191, OEA/ser. L/V/II.118 doc. 5 rev. 2, at para 40 (Oct. 10, 2003), where the Commission held that the exhaustion of domestic remedies requirement is for the benefit of the state, therefore “if the alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has thus been served.”

to denounce the unlawful behavior and would have limited effect in deterring future incidences of vigilante violence. Civil litigation may be an appropriate remedy in addition to criminal proceedings but it does not on its own provide adequate resolution of the human rights violations which have occurred and are ongoing. Civil litigation does not absolve the state of its criminal prosecutorial duties therefore it can be pursued in addition to, but not in place of, criminal remedies. Accordingly, in several cases the Inter-American Commission and Court have determined that civil remedies were not adequate to redress human rights violations involving criminal behavior and hence need not be exhausted.¹⁶ Similarly, civil remedies need not be exhausted here.

[W]henver there is an investigation of a crime that can be prosecuted by the State on its own initiative, the State has the obligation to move the criminal process forward to its ultimate consequences. In these cases, one cannot demand that the victim or his or her family members assume the task of exhausting domestic remedies when it is up to the State to investigate the facts and punish the persons responsible as part of its obligation to maintain public order.¹⁷

B. The domestic criminal justice system has in fact not been effective to remedy the alleged human rights violations.

Given the foregoing, the issue of exhaustion must be determined primarily by reference to the state's criminal justice process, as opposed to available civil remedies.¹⁸ The petition herein alleges that the state's process in this context has been inadequate and ineffective, not just for the purposes of establishing an exception to the exhaustion requirement, but moreover to aver that the United States has violated the access to justice guarantees of the American Declaration on the Rights and Duties of Man. See Petition at 32-36. Thus, the question of an exception to the prior exhaustion rule is closely bound up with the merits of the complaint. Even so, the exception to the prior exhaustion rule has an "autonomous content," and it turns on a "different standard of appreciation," such that

¹⁶ In *Gayle*, *supra* note 5, at paras. 15, 17, the Commission agreed with the petitioner's assertion that a civil claim was not an adequate remedy for the victim's death because the outcome is limited to monetary compensation. The Commission went on to state, "it is this [criminal] process, initiated and pursued by the State, that should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages". *Id.*, at para. 41. Similarly, in *Velásquez-Rodríguez*, *supra* note 1, at para. 64, the Court stated that "a civil proceeding specifically cited by the Government, such as a presumptive finding of death based on disappearance, the purpose of which is to allow heirs to dispose of the estate of the person presumed deceased or to allow the spouse to remarry, is not an adequate remedy for finding a person or for obtaining his liberty." See also *Christian Daniel Domínguez Domenichetti*, Report No 51/03 (Admissibility), Petition 11.819, (Argentina) Int. Am. C.H.R. (Oct. 22, 2003), at paras. 46, 47), in which the victim's parents had civil proceedings pending against the State for the torture and death of their son. In response to Argentina's argument that the civil proceedings rendered the petition moot, the Commission noted that "while an award of civil damages may form an important component of reparation, it is but one of several aspects." *Id.*, at para. 46.

¹⁷ *Hernando Osorio Correa*, Report No. 62/00, Case 11.727 (Colombia) Inter-Am. C.H.R. 191, OEA/ser. L/V/II.111 doc. 20 rev., (Oct. 3, 2000) ("*Correa*"), at para. 24; see also *Mangas*, *supra* note 10, at paras. 96, 97.

¹⁸ See *Gayle*, *supra* note 5, at para. 41.

the threshold for establishing an exception for the purposes of admissibility need not amount to establishing a violation of substantive standards.¹⁹

At this stage it is for the United States to prove that its criminal justice system is adequate and effective so that the exception to the exhaustion rule does not apply. The United States has not only failed in this regard, it has lended credence to petitioner's claim on the merits.

1) The state's criminal justice system does not function effectively to prosecute vigilante criminal behavior

The United States does not dispute that vigilante violence as described in the petition has been occurring in southern Arizona. Rather, its defense is that the criminal justice system is working as it should in regard to any such behavior. Yet it can point to only one incident in southern Arizona – the 2003 incident occurring in Yuma County, Arizona – in which prosecutors have pursued and secured a conviction against vigilante violence, during the entire period of vigilante activity complained of in the petition. See U.S. Response at 6-7. One other incident to which the United States refers that resulted in a conviction involved vigilante activity in the border area in the state of Texas, a jurisdiction involving an entirely different set of federal and state prosecutors from that responsible for the pattern of neglect in southern Arizona. The other incidents referred to by the United States did not involve convictions for vigilante assaults on immigrants. The January 2003 judgment was for a firearm possession offense, and the February 2005 prosecution resulted in an acquittal for charges of threatening a federal officer. The September 2000 incident involved a U.S. Border Patrol agent sexually assaulting a female migrant, and the September 2003 incident involved common criminal offenders taking migrants hostage and torturing them to extort money.

The notorious absence of prosecutions of vigilantes establishes, by itself, that the U.S. justice system has been ineffective for redressing and preventing the widespread pattern of vigilante activity involving at least 24 documented incidents and hundreds of victims, incidents which the United States does not dispute. At all levels United States officials have been virtually indifferent – or worse – toward the menace of vigilante activity and the persistent threat of violence it represents.

The United States contends that “prosecutors ... carefully reviewed the investigative findings and determined that there was insufficient evidence” to prosecute. U.S. Response at 4. This is nothing but self-serving conjecture. The United State provides little to support this account of prosecutorial conduct or to rebut the Petitioner's allegations that in fact the opposite is true. The facts and supporting documentation submitted by the petitioner establish an overall pattern of prosecutorial neglect that should not be overlooked by a selective focus on particular incidents in which prosecutors may have had difficulty securing a conviction.

¹⁹ *Id.*, at para. 46.

Of the 24 incidents cited in BAN's petition and its supplemental submission to the Commission of August 19, 2005, several involved initial investigations leading to preliminary findings by law enforcement officers of violations of Arizona laws; yet no charges were laid in regard to any of these incidents. Despite numerous reports of criminal conduct towards the victims and growing media attention, there has yet to be an effective response to the ongoing practice of vigilante violence.

The government's inaction at all stages of the criminal justice process is part of an underlying pattern buttressed by outright hostility toward immigrants and neglect of their human rights. The abuse of immigrants by vigilante groups is a practice that has been tolerated by all levels of government. Evidence of this includes statements made by Cochise County Deputy Attorney Festa to the media, generally condoning anti-immigrant vigilantism when he explained that while defending property, "as long as [vigilantes] don't use deadly force, no criminal action has taken place."²⁰ The Commission has held that where high level government authorities have made statements absolving the alleged human rights violators of responsibility, "it is an indication of the negative attitude that exists as regards inflicting the punishment that those responsible for so condemnable an offense deserve."²¹

Recent government efforts at organizing "posses" to patrol border areas in search immigrants show the hostile attitude of law enforcement officials towards immigrant victims and persons of Hispanic descent. In Maricopa County, Arizona, Sheriff Joe Arpaio organized a 250 member "posse" made up of existing sheriff's deputies and unpaid volunteers.²² The posse was formed for the purpose of finding and arresting undocumented migrants. The arrests are based on an interpretation of an Arizona anti-smuggling law which is now being applied to the smuggled immigrants themselves.²³ The posse was launched on May 10, 2006 but only one person was apprehended.²⁴ Fox News commented on the "unorthodox" nature of the sheriff's department, which has built a tent city that houses 2,000 inmates who are forced to wear pink underwear.²⁵ The following comments were made by Sheriff Arpaio during media interviews:

²⁰ Bill Hess, "Millions Sought From Barnett, Dever," SIERRA VISTA HERALD, Mar. 8, 2005. (Appendix AA to Petition).

²¹ Resolution N° O1a/88, Case 9755, (Chile), Inter-Am. C.H.R. (Sept. 12, 1988).

²² See Amanda Lee Myers, "First night of posse patrols in county nets 1 immigrant arrest" THE ARIZONA REPUBLIC (May. 12, 2006).

<http://www.azcentral.com/arizonarepublic/local/articles/0512posse0512.html>

see also: Randall C. Archibold, "Arizona County Uses New Law to Look for Illegal Immigrants" NEW YORK TIMES (May 10, 2006)

<http://www.nytimes.com/2006/05/10/us/10smuggle.html?ex=1148011200&en=6ab8e1757b3ab744&ei=5070&emc=etal>.

²³ Amanda Lee Myers, "Posse will mimic anti-smuggling unit", Associated Press (May. 10, 2006) [azcentral.com](http://www.azcentral.com)

<http://www.azcentral.com/news/articles/0510ImmigrationPosse10-ON.html>.

²⁴ Archibold, *supra* note 22.

²⁵ *Id.*

We're going to arrest any illegal who violates this new law...I'm not going to turn these people over to federal authorities so they can have a free ride back to Mexico. I'll give them a free ride into the county jail.²⁶

It just makes me angry. People say these are helpless people coming into the United States just to work, and yet when they see law enforcement, they run. If they were trying to obey the law, why are they running?²⁷

That doesn't make me happy. We didn't catch anybody else, and I don't know why.²⁸

I'm going to catch as many as I can and throw them in my jail. And the jails are not that nice.²⁹

Cochise County Sheriff Larry Dever has also made derogatory comments with respect to immigrants crossing the Arizona/Mexico border:

They're running over us and they're headed your way.³⁰

We don't want the crazies here.³¹

You can see, smell and feel more of them coming. We're being drowned by a tidal wave. We are gasping for air.³²

Comments by members of the U.S. Congress indicate support for the ant-immigrant groups, such as those groups organized as the "Minutemen." Representative J.D. Hayworth of Arizona accused President Bush and others of having "maligned" the Minuteman Project. Representative Trent Franks also praised the Minutemen, and Representative Tom Tancredo of Colorado called on President Bush to "meet with the people he calls vigilantes," and "issue an apology to these folks for what he's called (them)."³³ Tancredo told the Minutemen that Bush should have to write an apology on a blackboard 100 times then erase the chalk with his tongue.³⁴ While campaigning for a Senate candidate in Illinois, Tancredo warned that illegal immigrants are "coming here to kill you and to kill me and our families."³⁵ Hayworth's comments also included a statement that he saw the Minutemen as "an unqualified success" and emphasized their

²⁶ *Myers, supra* note 22.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Myers, supra* note 23.

³⁰ Barbara Simpson, "Illegal felons: They're heading your way", WORLDNETDAILY (March 20, 2006) http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=49349

³¹ Bob Moser, Southern Poverty Law Center, "Open Season", 109 INTELLIGENCE REPORT 2 (2003) (Appendix J1 to Petition) at 3.

³² Bill Hess, "Agency's illegal immigrant figures don't surprise local residents" THE SIERRA VISTA HERALD <http://www.svherald.com/articles/2003/10/03/news/news4.txt>

³³ Billy House, "Hayworth says Bush insulted Minutemen", Republic Washington Bureau (Apr. 28, 2005) <http://www.azcentral.com/specials/special03/articles/0428minuteman-dc28.html>.

³⁴ Susy Buchanan & Tom Kim, "Meet the Nativists" ALTERNET(March 2, 2006) <http://www.alternet.org/story/32644/>.

³⁵ *Id.*

constitutional right to stand up for border security.³⁶ However, another southern Arizona Congressman, Raul Grijalva, when questioned about whether he thought anti-immigrant groups operating in Cochise County had been encouraged by a lack of prosecutions in the past, stated, “Prosecutions? There haven't been *investigations*. That's why I want an FBI investigation.”³⁷

A general antipathy toward powerless immigrants crossing the Arizona desert, as illustrated by the forging comments and actions by state and federal officials, makes virtually certain that criminal sanctions are unevenly applied to the detriment of immigrant victims. As the Inter-American Court of Human Rights has made clear, a domestic remedy is ineffective if it is not impartially applied.³⁸ In the present case, the remedy of criminal prosecution is not impartially applied to immigrants as evidenced by the State's inaction and official attitudes towards this specific group. It is likely that a contributing factor to the failure of the local and federal authorities to investigate and prosecute the offences is their relationship with the U.S. Border Patrol, as some members of the vigilante groups are former Border Patrol officers. See Petition at para. 55. The Border Patrol officers may also be reluctant to report incidents of vigilante abuse that they have received or even witnessed against former co-workers who are now members of vigilante groups.

In the *Velásquez-Rodríguez* case, the Inter-American stated:

It is a different matter, however, when it is shown that remedies are denied for trivial reasons or without an examination of the merits, or if there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others. In such cases, resort to those remedies becomes a senseless formality. The exceptions [to the exhaustion rule] would be fully applicable in those situations and would discharge the obligation to exhaust internal remedies since they cannot fulfill their objective in that case.³⁹

The ineffectiveness of the state's criminal process is further manifested in the delay by authorities in investigating and prosecuting criminal vigilante behavior. Even if it is assumed that prosecutorial action has been impartially taken to investigate vigilante abuses against immigrants, those investigations have been unduly delayed. This delay is made evident by the lack of prosecutions in the numerous incidents documented in the petition, incidents that were brought to the attention of federal or local law enforcement officers immediately after they occurred beginning in 1999.⁴⁰ A criminal investigation should be carried out promptly to preserve evidence and to protect the interests of the

³⁶ *House, supra* note 33.

³⁷ “Vigilante Watch: A newly elected congressman discusses anti-immigrant vigilantism and racism in his southern Arizona district” Southern Poverty Law Centre <http://www.splcenter.org/intel/intelreport/article.jsp?sid=10>.

³⁸ *Velásquez-Rodríguez, supra* note 1, at 66.

³⁹ *Velásquez-Rodríguez, supra* note 1, at para. 68.

⁴⁰ *See, for example, Mexican Consulate: List of Abuses (Appendix X to Petition) (listing abuses dating back to 1999 which were brought to the attention of U.S. state or federal authorities).*

victims and the rights of the suspects in the investigation.⁴¹ Accordingly, the Commission has held that, when an investigation has been prolonged to an excessive degree, without any sign that the government intends to intensify or accelerate it, domestic remedies are proven to be unavailable.⁴² The periods of prosecutorial delay with regard to the incidents documented in the petition are line with the time frames in other cases in which the Commission declared that government inaction in completing investigations constituted unwarranted delay.⁴³

The Inter-American Court has maintained that while all criminal investigations must meet a series of legal requirements, the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of defenseless victims ineffective.⁴⁴ The past and potential future victims of vigilante abuse on whose behalf the claim in this case is made should not have to continue to endure the ongoing pattern of neglect by the state as that would delay international action.

2) The Arizona law permitting the use of force against trespass in limited circumstances does not mitigate the failure of the state to prosecute vigilante behavior

With little to rebut the inferences that are to be drawn from a holistic examination of repeated instances of prosecutorial inaction, the United States compounds its conjecture about that inaction by speculating that *some* of the incidents complained of “may have” involved trespass justifying the threat of “deadly force” or “non-deadly physical” force by vigilantes. U.S. Response at 4. Hence, according to the United States, incidents in

⁴¹ Correa, *supra* note. 17, at para 25.

⁴² A number of cases before the Commission involve situations where a State had initiated investigations but were then stalled at various levels of progress, for example arrest warrants were not issued or had yet to be enforced or charges had not been laid. See *Alonso Eugenio Da Silva*, Report No. 9/00, Case 11.598 (Brazil) Inter-Am. C.H.R., at para. 52 (Feb. 24, 2000) (“*Da Silva*”), where Commission concluded that ineffectiveness, negligence or omission by authorities in investigations, which resulted in unwarranted delay in completion of police investigation, exempted petitioners of obligation to exhaust domestic judicial remedies. See also *Gilda Rosario Pizarro Jiménez et al.*, Report No. 32/03 (Admissibility), Petition 12.281 (Chile) Inter-Am. C.H.R. (“*Jiménez*”), in which the Commission concluded that lack of progress in criminal proceeding was sufficient to find that domestic remedies were not effective; See also *Gayle supra*, note 5, where the State had initiated a criminal investigation and Coroner’s Inquest, however, prosecutor declined to pursue charges against suspects despite existence of evidence. The Commission noted that the Director of Public Prosecutions had exclusive authority to make decisions concerning criminal prosecutions, “including the authority to take over and continue, or to discontinue at any stage before judgment is delivered, any criminal proceedings instituted by himself or any other person or authority. Accordingly, the State retains exclusive authority for pursuing criminal proceedings in respect of the circumstances relating to Michael Gayle.” The Commission held that the petitioners were prevented from exhausting domestic remedies and therefore the requirement did not apply.

⁴³ See, *Jesús María Valle Jaramillo*, Report No. 05/03 (Admissibility), Petition 0519/2001, Inter-Am. C.H.R. 242, OEA/ser. L/V/II.118 doc. 5 rev. 2, (Feb. 20, 2003) [“*Jaramillo*”] (5 year delay); *Correa, supra* note 50 (7 year delay); *Ituango, supra* note 5 (3 year delay); *Maria Del Consuelo Ibarguen Rengifo et al.*, Report No. 55/04 (Admissibility), Petition 475/2003 (Colombia), Inter-Am. C.H.R. 227, OEA/ser. L/V/II.122 doc. 5 rev. 1, (Oct. 13, 2004) [“*Rengifo*”] (4 year delay); see also *Da Silva* (3 year delay) & *Jiménez* (5 year delay), *supra* note 43.

⁴⁴ *Velásquez Rodríguez, supra* note 1, at para 93.

which vigilantes used such force “would not necessarily violate Arizona law.” *Id.* Such speculation does nothing more than add to the specter of a lack of impartiality and neglect toward the application of criminal laws to vigilante behavior targeting immigrants.

First, the United States cites only half the incidents described by the petitioner as possibly involving trespass on private property that might justify the threat or use of deadly or physical force under Arizona law. Other incidents clearly involved no trespass. At least 12 of the incidents happened on or near a public highway or off of private property.⁴⁵

Second, even as to those incidents occurring on private property, the record tends to indicate that the threat of force or the actual use of force was unjustified, rather than justified, under the circumstances. The threat or use of force in defense of premises is only permitted to prevent or terminate a “criminal trespass.” It is at best speculative whether in fact a criminal trespass occurred in any of these instances. Criminal trespass requires: “Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.”⁴⁶ The facts describing the incidents indicate that the victims did not possess the requisite intent to commit trespass. There is no evidence to suggest that they knowingly entered private property, that they had reasonable notice of prohibited entry, or that they ignored requests to leave. The nature of the surrounding physical landscape further suggests the absence of such notice, as the private properties involved span many acres, so the immigrants may have entered the property unknowingly especially if there were no dwellings in sight or if no trespassing signs were only printed in English. The facts also suggest that the victims were not given an opportunity to leave after they were notified that they were on private property. They were held at gunpoint and detained, some times beaten, or transported to another area to await apprehension by Border Patrol.

Even as to incidents in which criminal trespass might have occurred, evidence suggests that the use of force went beyond what could be justified even under the liberal standards of Arizona law. The threat or use of physical force in the defense of premises is justified only “to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission of a criminal trespass by the other person in or upon the premises.”⁴⁷ For example, the use of force in incident 9 described in the petitioner’s supplemental submission of August 19, 2005, and in the Petition at para. 34, which the United States lists among those incidents possibly involving trespass, clearly went beyond the reasonable person standard. According to Cochise County Sherriff’s Department report relating to that incident, “20 undocumented Aliens were

⁴⁵ See *Response to the Request of the Inter-American Commission on Human Rights for Supplemental Information on the Petition by Border Action Network in Relation to Victims of Anti-Immigrant Activity and Vigilante Violence in Southern Arizona* Petition No. P-478-06 (“Petitioner’s Supplemental Submission”), incidents 1, 2, 5, 6, 7, 11, 15, 16, 18, 21, 23 & 24.

⁴⁶ Ariz. Rev. Statutes 13-1502(A)(1).

⁴⁷ *State v. Hussain*, 189 Ariz. 336, 942 P.2d 1168 (Ct. App. 1997).

detained against their will by Roger Barnett,⁴⁸ a rancher and leader in the vigilante movement in southern Arizona. According to witnesses, Barnett approached the group of immigrants, cursing with his gun in hand. After waving the gun at them, Barnett kicked ██████████, a female victim, on her right hip. Stepping down on ██████████'s right calf, Barnett told her, "Levantate perra [Get up, bitch]." He then attempted to kick her again, but she blocked his foot with a backpack; the blow broke in half a religious statue in half inside the bag. Barnett yelled aggressively at the group, "you fucking Mexicans sit down"—adding that his dog "likes ass" and "likes to eat trespassers"—and told them not look up and keep their heads down. The Cochise County Sheriff's Department report determined that Barnett had committed the crimes of unlawful imprisonment, aggravated assault, and threatening and intimidation.⁴⁹ Yet Barnett was not prosecuted.

It may well be that in some instances vigilantes threatening to use force may have a reasonable defense based on a theory of justification to confront criminal trespass. But such a possibility should not be allowed to cripple the criminal justice process as a general matter in regard to illegal and violent vigilante behavior, as it apparently has done. The United States' insistence on the justified threat of force theory sadly reflects the attitudes of local and federal law enforcement officials of a wide margin of tolerance for vigilante behavior that borders on or is in fact illegal. This attitude, which favors vigilante behavior tending toward violence, is expressed in Cochise Deputy Attorneys statement to the media that, while defending property, "as long as [vigilantes] don't use deadly force, no criminal action has taken place."⁵⁰ If anything, then, the state's reliance on the *possibility* of a lawful defense for the threat or use of force by vigilantes contributes to the ineffectiveness of the state's criminal justice system to address vigilante activity that is in fact or is likely to be unlawful.

3) The fact that abused immigrants are often unwilling to press charges does not disprove the inadequacy of the criminal justice system

The United States further seeks to mitigate the failure of its criminal justice system to prosecute and avert illegal vigilante conduct by pointing out that in some instances the victims have been unwilling to press charges. This blame-the-victims argument, too, must be rejected. It is the responsibility of the State to investigate and prosecute criminal activities, and that burden should not fall on the victims or their families.

The unwillingness or inability of many victims of vigilante activity to press charges is quite understandably due to their status as immigrants who are subject to deportation or who have in fact been deported. This common characteristic of vigilante victims should not be allowed to function to absolve the United States of its responsibility for providing them legal protection from criminal activity. The Commission has rejected arguments that the effectiveness of criminal process turns on the cooperation of victims or their

⁴⁸ Cochise County Sheriff's Incident Report # 04-04075, prepared by L. Hernandez, Mar. 13, 2004 (Appendix W12 to Petition).

⁴⁹ *See id.*

⁵⁰ Bill Hess, "Millions Sought from Barnett, *Dever*," *supra* note 20.

families, rather than on the state itself, especially when circumstances place the victims in a position of vulnerability in relation to that process.⁵¹

The particular vulnerability of immigrants crossing into the United States without documentation has been well established within the inter-American system for the protection of human rights. The Inter-American Court of Human Rights issued an Advisory Opinion on the Juridical Conditions and Rights of Undocumented Migrants at the request of Mexico.⁵² The Court stressed the vulnerable situation of migrants, who are subject to ethnic prejudices, xenophobia and racism, making it difficult for them to integrate into society and leading to their human rights being violated with impunity⁵³ and to being denied access to public resources.⁵⁴ In applying the principles of equality and non-discrimination to migrants in general, the Court explained that, “the right to judicial protection and judicial guarantees is violated for several reasons: owing to the risk a person runs, when he resorts to the administrative or judicial instances, of being deported, expelled or deprived of his freedom, and by the negative to provide him with a free public legal aid service, which prevents him from asserting the rights in question. In this respect, the State must guarantee that access to justice is genuine and not merely formal.”⁵⁵ The Commission recognized the importance of protecting migrants against discrimination in its submissions to the Court’s in the Advisory Opinion proceeding when it stated:

The American States are obliged to guarantee the basic protection of the human rights established in the human rights treaties to all persons subject to their authority, “and [this] does not depend [...] for its application on factors such as citizenship, nationality or any other aspect of the person, including his migratory status.”⁵⁶

⁵¹ See, *Correa*, *supra* note 17, at para 24. In the *Ituango* case, *see supra* note 5, at paras. 32, 45, the State claimed that the delay in completing the investigation was due to the scant cooperation of the victims families, however, the Commission took note of the context of violence and intimidation (threats received by the victim’s family) in which the investigation occurred. The Commission held that judicial investigation was unlikely to provide an effective remedy.

⁵² Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Sept. 17, 2003, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003) at p. 11 (“OC-18/03”).

⁵³ *Id.*, at para. 113.

⁵⁴ *Id.*, at para. 112.

⁵⁵ *Id.*, at para. 126. With respect to undocumented migrant *workers*, Judge Sergio García Ramírez of the Court noted: “Undocumented workers usually face severe problems of effective access to justice. These problems are due not only to cultural factors and lack of adequate resources or knowledge to claim protection from the authorities with competence to provide it, but also to the existence of norms or practices that obstruct or limit delivery of justice by the State. This happens because the request for justice can lead to reprisals against the applicants by authorities or individuals, measures of coercion or detention, threats of deportation, imprisonment or other measures that, unfortunately, are frequently experienced by undocumented migrants. Thus, the exercise of a fundamental human right – access to justice – culminates in the denial of many rights. It should be indicated that even where coercive measures or sanctions are implemented based on migratory provisions – such as deportation or expulsion – the person concerned retains all the rights that correspond to him for work performed, because their source is unrelated to the migratory problem and stems from the work performed.” Reasoned Concurring Opinion of Judge Sergio García Ramírez in Relation to Advisory Opinion OC-18/03 on “Legal Status and Rights of Undocumented Migrants,” (Sept. 17, 2003), Inter-Am. Ct. H.R. (Ser. A) No 18 (2003) at para. 39.

⁵⁶ *OC-18/03*, *supra* note 52, at 24.

The UN General Assembly in its resolution on “Protection of Migrants” referred to “the manifestations of violence, racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world.”⁵⁷ The resolution also stressed “the situation of vulnerability in which migrants frequently find themselves, owing, *inter alia*, to their absence from their State of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles for the return to their States of origin of migrants who are non-documented or in an irregular situation.”⁵⁸

The situation of the victims in this case makes it extremely difficult for them to file criminal complaints as many of them are undocumented immigrants who were either detained following apprehension by the U.S. Border Patrol, returned to Mexico through voluntary returns or deportation, or escaped detention by the vigilantes and are working without documentation in the United States. For those who are in detention for immigration offences, to file a criminal complaint against the vigilantes could mean prolonged detention pending lengthily criminal proceedings if the vigilante perpetrators are prosecuted. The victims who were able to escape from the vigilantes and remain present within the United States face the fear of revealing their illegal immigrant status to the authorities if they were to come forward with a complaint. There are also practical barriers for victims who have returned to Mexico as they are unable to access the U.S. justice system from outside the country. Rather than serve to exonerate the United States from its prosecutorial duties, these circumstances require the United States to engage in greater and more particularized efforts in the exercise of those duties. The failure of the United States to engage in special efforts to protect immigrants and prosecute those who commit crimes against them only compounds its responsibility.

4) Preventative measures beyond ordinary criminal process are required

Even if state and federal prosecutors were diligent in pursuing criminal prosecutions for violent vigilante conduct – which they have not been, it is apparent the criminal justice system as currently configured would not suffice as an adequate remedy. As pointed out by the United States, prosecutors must have a reasonable chance of securing a conviction under the “beyond a reasonable doubt” standard. Such a standard, in light of the evidentiary problems inherent in the circumstances – problems also pointed out by the United States – means that ordinary criminal prosecution cannot alone be an effective avenue of redressing the pattern of vigilante behavior. While going a long way toward redressing illegal vigilante behavior, criminal proceedings are at best a piecemeal remedy for the broad pattern of anti-immigrant activity that involves persistent human rights violations.

⁵⁷ United Nations General Assembly, Resolution A/RES/54/166 on “Protection of Migrants” (Feb. 24, 2000).

⁵⁸ *Id.*

The United States does not dispute that violent vigilante behavior has occurred. Even the President of the United States has referred to these anti-immigrant groups as “vigilantes.”⁵⁹ Membership in these groups is growing as increased media attention publicizes their activities, attracting more volunteers and creating spin-off vigilante groups. There are now Minuteman chapters in virtually every American state.⁶⁰ The Minuteman organization recently completed a 12-city tour in May 2006 to spread their message of an “invasion” by Mexicans which must be stopped.⁶¹

Much more is required to stop the surge in vigilante activities than is available through the existing criminal justice system. Adequate remedies would entail prophylactic measures to prevent vigilante violence, including measures to discourage the culture of vigilantism that has erupted along the U.S.-Mexico border.

C. The United States has not pointed to any domestic remedies that it contends will adequately and effectively redress the violations of the human rights of U.S. citizens of Mexican descent who are threatened by the vigilante activity

In addition to alleging violations of the human rights of immigrants crossing into the United States, the petition alleges violations of the human rights of U.S. citizens of Mexican or Hispanic descent as a result of the anti-immigrant violence and related activity. *See* Petition at 32, 35, 36. Vigilantes have also terrorized U.S. citizens and legal permanent residents of Hispanic descent despite their legal status in the country. Anti-immigrant attitudes and behavior in southern Arizona has created an environment of racism and discrimination in which Mexican Americans live with feelings of perpetual fear and insecurity. The racist overtones of the vigilantes’ behavior has been well documented.⁶² As noted in the petition, an anti-immigrant activist assaulted a Mexican-American family with young children with a loaded automatic weapon.⁶³ Roger and Don Barnett detained members of the ██████████ and ██████████ families at gunpoint using harsh language and racial insults. *See* Petition at 14-15. Roger Barnett fired a round from an A-15 assault rifle into the ground and pointed the gun at the Morales adults and three young girls. *Id.* Barnett yelled at ██████████ calling him an “ignorant Mexican,” advanced on him, all the while pointing his rifle and screaming obscenities and death threats. *Id.* Following

⁵⁹ James G. Lakely, “Bush Decries Border Project” THE WASHINGTON TIMES (March 25, 2005) <http://www.washtimes.com/national/20050324-122200-6209r.htm>.

⁶⁰ Minuteman Project Website, <http://www.minutemanhq.com/hq/>.

⁶¹ *See* Associated Press, “Minuteman Project Kicks of 12-city Tour:” MSNBC.com <http://www.msnbc.msn.com/id/12608309/> (May 3, 2006); *see also* Anti-Defamation League “Extremists Declare ‘Open Season’ on Immigrants: Hispanics Target of Incitement and Violence” http://www.adl.org/main_Extremism/immigration_extremists.htm?Multi_page_sections=sHeading_4 (April 24, 2006).

⁶² *See* Border Action Network, *Hate or Heroism: Vigilantes on the Arizona-Mexico Border* (Petition Appendix A2), 10-16 (Dec. 2002).; *see generally* Southern Poverty Law Center, *The Puppeteer*, 106 INTELLIGENCE REPORT (2002) (Petition Appendix J2).

⁶³ *See* Border Action Network, *Border Vigilantes Armed With Assault Weapons Terrorize Local Douglas Families and Children*, Dec. 7, 2004, at <http://www.borderaction.org/news2.php?articleID=13> (Appendix A1 to Petition).

this incident, other local Mexican-Americans were also violently confronted by Barnett who called them “stupid dumb motherfuckers.”⁶⁴

These abuses of immigrants and U.S. citizens alike have created a growing sense of fear within the Mexican-American community of southern Arizona, which the United States has done nothing to prevent. The notorious Minutemen vigilante group has now expanded their activities to interior states and are monitoring day laborers who appear to be of Hispanic descent.⁶⁵ They photograph and videotape people whom they believe to be workers and employers and send the images to the immigration authorities. This type of racial profiling is conducted by law enforcement officers in Maricopa County, Arizona who have taken it upon themselves to target individuals who appear to be illegal immigrants. To avoid mounting accusations of racial profiling, Sheriff Joe Arpaio has instructed deputies to find probable cause for an infraction such as a minor traffic violation before detaining suspects in vehicles to ask for proof of citizenship.⁶⁶ The pretext of enforcing traffic codes, however, does not diminish the contribution that the Sheriff’s office is making to the climate of racist intimidation that targets Mexican Americans and others of Hispanic descent. The United States has not identified any effective and adequate domestic remedies to address the effects of the pattern of anti-immigrant violence and other activity on U.S. citizens of Hispanic descent.⁶⁷

II. THE PETITIONER HAS ALLEGED FACTS THAT ESTABLISH VIOLATIONS OF THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN, FOR WHICH THE UNITED STATES IS RESPONSIBLE

As an alternative to arguing that the petition should be declared inadmissible for failure to exhaust domestic remedies, the United States submits that the petition is inadmissible for failure to allege facts tending to establish violations of human rights that the Commission is competent to examine. See U.S. Response at 9. This alternative ground for challenging the admissibility of the petition should likewise be rejected.

The petitioner has alleged facts showing that the United States has avoided its responsibility to ensure the protection of individual human rights, leaving human rights violators with impunity and making it possible for them to commit further violations. More specifically, the United States is internationally responsible for failing to protect immigrants’ and Mexican-American U.S. citizens’ rights of physical integrity and security of the person, judicial protection, and equal protection under the law, all rights affirmed by the American Declaration of the Rights and Duties of Man. See Petition at

⁶⁴ Law Enforcement Incident Reports, Jan. 22, 2005 Vigilante Incident (Cochise County Sheriff’s Incident Report #05-01383) (Appendix W17 to Petition).

⁶⁵ Timothy Dwyer, “Where Laborers Go, They Will Follow: Herndon Minutemen To Observe New Site” WashingtonPost.com (December 13, 2005) <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/12/AR2005121201379.html>

⁶⁶ Archibold, *supra* note 22.

⁶⁷ *Id.*

30-39. The United States is responsible for violations of victims' physical integrity because government agents have failed to exercise the requisite diligence to prevent anti-immigrant physical abuses or prosecute the perpetrators of those abuses. The United States justice system has denied victims of anti-immigrant vigilantism access to judicial remedies through criminal proceedings and is therefore responsible for failing to protect these victims' rights to judicial protection and due process of law. Finally, because the government agents have not acted to prevent this class of abusive activity that *solely* targets persons of Mexican or Hispanic descent, the United States is responsible for violating these persons' rights to equal protection and freedom from discrimination under the law.

The United States counters the allegations of violations of the rights to judicial protection, due process, and equal protection essentially by repeating its argument that its criminal justice system is functioning adequately and on a nondiscriminatory basis. As established above, this argument cannot prevail on the record before the Commission, especially at the admissibility stage. The state adds, in respect to the equal protection claim, a conclusory reference to provisions of its domestic law that guarantee non-discrimination. However, it is not the formalities of U.S. law that are being challenged in this respect; rather, targeted are the racially discriminatory practices that are occurring, notwithstanding any provisions of domestic law to the contrary. It is well established within the inter-American system, and international law more generally, that a state's international responsibility is not determined merely by reference to the formal provisions of its domestic law.

The United States further contends that the petitioner has failed to state a claim that state actors deprived others of "life, liberty and the security of.. .person," because the Petitioners' assertions center on private actions." U.S. Response at 9. However, the responsibility alleged in the petition is not for private actions, it is for the state's inaction, that being the failure of the United States to fulfill its positive obligation to protect immigrants and Mexican-Americans from vigilante abuse. The United States, through the omissions of its agents at both the local and federal levels, is responsible for its failure to prosecute perpetrators of vigilante violence and for neglecting to protect the victims' by not exercising the requisite diligence to prevent anti-immigrant abuses. The positive obligations of states to respect human rights under international law includes the obligation to ensure that the behavior of its agents and its domestic laws comply with applicable human rights norms;⁶⁸ the obligation to affirmatively protect the human rights of *all individuals* within its national territory,⁶⁹ regardless of their immigration status (or

⁶⁸ See International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights), Advisory Opinion OC-14/94 (December 9, 1994), Inter-Am. Ct. H.R. (Ser. A.) no. 14 (1994).

⁶⁹ See Theodore Meron, HUMAN RIGHTS AND HUMANITARIAN NORMS AND CUSTOMARY INTERNATIONAL LAW 139 (1989) (on the obligation of states to effectively protect human rights). The obligation of effectiveness is made explicit in the American Convention on Human Rights, arts. 1 & 2.

lack thereof);⁷⁰ and the duty to “prevent, investigate and punish” human rights violations, including violations by private actors.⁷¹

Conclusion

For all the forgoing reasons, the Commission should reject the United States’ plea that the petition in this case should be declared inadmissible. The United States has failed to establish that there are adequate and effective remedies yet to be exhausted, just as it has failed to demonstrate that the facts alleged in the petition do not tend to establish violations of the American Declaration on the Rights and Duties of Man.

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Appendix: Vigilante Offences Under Arizona and United States Laws

⁷⁰ See *OC-18/03*, *supra* note 52.

⁷¹ See Case 11.287 (Brazil), Inter-Am. C.H.R. 379, OEA/Ser. L/V/II.95 doc. 7 rev. at para. 28 (1997); *Velásquez-Rodríguez*, *supra* note 1, at para. 172; *Godínez Cruz*, Judgment of January 20, 1989, Inter-Am. Ct. H.R. (Ser. C) no. 5, at paras. 182, 187.