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REPORT OF THE OAS HIGH-LEVEL COMMISSION
ON THE SITUATION IN HONDURAS

Presented pursuant to resolution AG/RES. 2531 (XL-O/10)



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COMMISSION ON THE
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AG/RES. 2531 (XL-O/10)

Washington, D.C.
July 29, 2010

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THE SECRETARY GENERAL

July 29, 2010

Excellency:

I have the honor of addressing Your Excellency in order to convey to the General Assembly, through your good offices, the report of the High-Level Commission, presented in compliance with the "Resolution on the Situation in Honduras", AG/RES. 2531 (XL-O/10), for all the purposes provided for in the Inter-American Democratic Charter, in particular Articles 21 and 22 thereof.

I respectfully request that this document be distributed among the member states and be considered by the General Assembly as promptly as possible, on the date set by the Permanent Council that Your Excellency chairs.

Accept, Excellency, the renewed assurances of my highest consideration.

José Miguel Insulza

To Her Excellency
María Isabel Salvador Crespo
Ambassador, Permanent Representative of Ecuador
to the Organization of American States
Chair of the Permanent Council
Washington, D.C.

ORIGINAL TEXT IN SPANISH

REPORT OF THE HIGH-LEVEL COMMISSION ON THE SITUATION IN HONDURAS

FORMATION AND ACTIVITIES

1. On June 8, 2010, the General Assembly of the Organization of American States (OAS) adopted a Resolution on the Situation in Honduras [AG/RES. 2531(XL-O/10)], in which it decided: a) To form a High-Level Commission composed of members appointed by the Secretary General to analyze the evolution of the situation referred to in Resolution AG/RES.1 (XXXVII-E/09); and b) That the High-Level Commission will submit its recommendations to the General Assembly no later than July 30th 2010 [[See Appendix 1](#)].
2. Pursuant to the General Assembly resolution, on June 17, the Secretary General appointed a High-Level Commission composed of representatives of two countries from South America, two from Central America, one from CARICOM, and two from North America. With the subsequent addition of three other countries and an open invitation to the remaining Central American countries, the Commission was composed of the following countries' Permanent Representatives to the OAS: Argentina, Bahamas, Belize, Canada, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Peru, and United States.
3. To date, the Commission has undertaken the following activities:
 - 3.1. Heard the representative of the Government of Honduras, Mr. Arturo Corrales, Minister of Planning, on June 18 and 23 and received the documents contained in the appendices cited in this report.
 - 3.2. Analyzed the legal report submitted by the Chairman of the Inter-American Juridical Committee, Mr. Guillermo Fernández de Soto, in his personal capacity, and the OAS Secretary for Legal Affairs, Mr. Jean Michel Arrighi; both of whom traveled to Honduras from June 25-26 to gather on-site information from relevant authorities on the legal status of former President Jose Manuel Zelaya Rosales in the country.
 - 3.3. Received the report of the Secretary General and the Secretary for Political Affairs, Mr. Víctor Rico, on the meeting held with former President Zelaya and his representatives, Mr. Jorge Arturo Reina and Mr. Rodolfo Pastor, in Santo Domingo from July 1-2, as well as on the meeting with the President of Honduras, Mr. Porfirio Lobo Sosa, in Miami on July 5 as part of the Commission's work.
 - 3.4. Received former President Zelaya's representative, Mr. Rodolfo Pastor, on July 7.
 - 3.5. Obtained the opinion of the Chairman of the Inter-American Commission on Human Rights (IACHR), Mr. Felipe González, and the opinion of the Executive Secretary of the IACHR, Mr. Santiago Cantón, as well as of the Special Rapporteur for Freedom of Expression, Ms. Catalina Botero, on July 16, on steps that the Government of Honduras should take to improve the situation in this crucial aspect [[See Appendix 2](#)].

- 3.6. On July 12, Mr. Rodolfo Pastor sent this Commission a document signed on behalf of former President Zelaya. [\[See Appendix 3\]](#).
- 3.7. Received the representative of the Government of Honduras, Mr. Arturo Corrales, who provided the Commission with a more complete background on all trials involving former President Zelaya. This information was delivered on July 13 [\[See Appendix 4\]](#).
- 3.8. On July 15, the Secretary General met with the President of the Republic of Ecuador and President Pro Tempore of UNASUR, Mr. Rafael Correa, to discuss the work of the High Level Commission. On July 16, the Secretary General briefed the Commission. In the meeting between the Secretary General and President Rafael Correa, the President expressed his strong opposition to the possible return of Honduras to the OAS as long as the perpetrators of the coup d'état continue to enjoy impunity, especially for human rights abuses. He noted that any solution that does not take into account this point, or at least a clearly-defined procedure to deal with it, would be unacceptable to his government. The Permanent Mission of Ecuador to the OAS sent a note to that effect [\[See Appendix 5\]](#).
- 3.9. On July 21, the Secretary General informed the Commission of his attendance, at the invitation of President of El Salvador, Mr. Mauricio Funes, to the Special Summit of SICA that was held in San Salvador on July 20. The Heads of State and Government of Guatemala, El Salvador, Costa Rica, and Panama, as well as the Deputy Prime Minister of Belize and the Vice President of the Dominican Republic attended the Summit. During the Summit, the Secretary General gave a presentation on the work undertaken by the High-Level Commission. On the occasion of this meeting, the leaders signed a Special Declaration on Honduras, which includes a request to the states of the Organization of American States, within the framework of the OAS High Level Commission, to expedite and settle as soon as possible the return of Honduras to the OAS, and it also reiterates a call on Honduran authorities to ensure all their citizens the full enjoyment of fundamental rights [\[See Appendix 6\]](#).
- 3.10. On July 22, the Commission received Minister Advisor on Human Rights of the Government of Honduras, Ms. Ana Pineda; and the Special Human Rights Prosecutor in the Office of the Attorney General of Honduras, Ms. Sandra Ponce, who presented an extensive report on their work and on the current human rights situation in Honduras. They delivered two documents, including a summary with general information on complaints about human rights violations, which the Attorney General's Office received after the coup d'état, and a report on the status of specific cases of violations of freedom of expression and human rights as well as cases of corruption that took place during the period of the *de facto* regime [\[See Appendix 7\]](#).

BACKGROUND

1. On June 28, 2009, there was a coup d'état against the constitutional Government of Honduras, with the arbitrary arrest and expulsion of Constitutional President, José Manuel

Zelaya Rosales, from the country. This led to an unconstitutional alteration of the democratic order.

2. On June 28, 2009, the OAS Permanent Council adopted resolution CP/RES. 953 condemning the coup d'état and convening a special session of the General Assembly. On June 30, the General Assembly adopted resolution AG/RES. 1 (XXXVII-E/09), invoking Article 20 of the Inter-American Democratic Charter to condemn the coup d'état and to instruct the Secretary General "to undertake, together with representatives of various countries, diplomatic initiatives aimed at restoring democracy and the rule of law and the reinstatement of President Jose Manuel Zelaya Rosales." On July 4, Secretary General Insulza reported to the General Assembly on the consultations held in Honduras. Subsequently, and pursuant to Article 21 of the Inter-American Democratic Charter, the General Assembly adopted resolution AG/RES. 2 (XXXVII-E/09) to "suspend the Honduran state from the exercise of its right to participate in the Organization of American States" and to "instruct the Secretary General, together with duly designated representatives of various countries, to step up all diplomatic initiatives and to promote other initiatives for the reinstatement of President José Manuel Zelaya Rosales."
3. On November 29, 2009, general elections were held in Honduras. According to official figures from the Supreme Electoral Tribunal, there was a 50% voter turn-out and the presidential candidate of the National Party, Porfirio Lobo, emerged the winner, with 53% of the votes; the Liberal Party candidate, Elvin Santos, gained 35%. For Congress, which comprises 128 deputies, the National Party won 71 seats (55 in the previous legislature) while the Liberal Party took 45 (62 in the previous legislature). The remaining 13 deputies are divided among the three minority parties: Innovation and Unity Party (3); Democratic Unification Party (4); and Christian Democrats (5).
4. President Lobo assumed office on January 27, 2010, and immediately passed the Amnesty Decree, which covers political crimes and related common crimes for those involved in the events of June 28, 2009. During the swear-in ceremony, he announced the formation of a government of national unity and national reconciliation with the participation of three former presidential candidates from the country's five legally-registered political parties that participated in the November 2009 general elections, and other political leaders that had not supported his candidacy for President or had rejected the coup. There were no representatives of former President Zelaya as they refused the invitation, but one individual previously linked to the National Front of Popular Resistance, Mr. César Ham, president of the Democratic Unification Party, is part of the cabinet. He is the current Minister Director of the National Agrarian Institute.
5. Concurrently, the Directorate of the National Congress was formed with opposition deputies included in positions of Vice President, among them a representative of the Democratic Unification Party and member of the National Front of Popular Resistance.
6. That same January 27, President Lobo granted former President Manuel Zelaya safe passage so he could leave the Embassy of Brazil, where he had been staying since September 21, 2009, and in the company of President Leonel Fernández accompanied him to the airport where he boarded a plane that flew him to the Dominican Republic.

7. On June 30, 2010, the trial judges of Tegucigalpa voided trials against former President Zelaya that they considered to be covered by the Amnesty Decree.
8. The Truth and Reconciliation Commission was formally installed on May 4, under the chairmanship of former Vice President of Guatemala Eduardo Stein and comprising the former Minister of Justice of Peru and former Permanent Representative of Peru to the OAS, Ambassador María Zavala; Canadian Ambassador Michael Kergin; the President of the National Autonomous University of Honduras, Ms. Julieta Castellanos; and former President of said University, Mr. Jorge Omar Casco. These are all national and international personalities of prestige and proven track record [See Appendix 8]. The purpose of the Commission is to clarify what took place before, during and after June 28, 2009, in order to identify actions that led to a crisis situation and to be able to make recommendations aimed at preventing this situation from ever recurring.
9. Regarding the information on human rights provided by representatives of the Government of Honduras, especially the Minister Advisor on Human Rights and the Special Human Rights Prosecutor of the Office of the Attorney General, the cases of violations of freedom of expression stand out, among them the shutting down of media that opposed the coup d'état (e.g. *Radio Progreso* and Channel 36) [See Appendix 9]. Notable in terms of the cases of corruption during the *de facto* regime is the irregular approval of the concession contract for the José Cecilio del Valle Hydroelectric Dam to the Italian-origin Nacaome electric company. This case came to light in February 2010 and prompted the current Congress to create a Special Commission to review that award, which was approved by the previous Congress [See Appendix 10].
10. The foregoing notwithstanding, both the former President and the National Resistance and Liberal Party leaders loyal to him are not considered participants in the current government, as they openly denounce its actions and even its legitimacy [See Annex 11]. In addition, some sectors insist that the crackdown on the opposition, especially the National Front of Popular Resistance, and human rights violations continue. They also question the appointment of members of the *de facto* regime and military officers to senior posts in the current administration.

ANALYSIS

1. The Commission examined, firstly, statements issued by the countries before and during the regular session of the OAS General Assembly. It determined that it would deal with four fundamental matters:
 - 1.1 Conditions that would make it possible for former President Zelaya and members of his Government to return to Honduras;
 - 1.2 Former President Zelaya's joining the Central American Parliament (PARLACEN), by virtue of being a former Constitutional President of Honduras;
 - 1.3 Human rights situation in Honduras; and
 - 1.4 Broad political dialogue to resolve the crisis of democracy in Honduras.
2. The Secretary General traveled to Santo Domingo from July 1 to 2 accompanied by the OAS Secretary for Political Affairs, Mr. Víctor Rico, to seek former President Zelaya's opinion concerning the issues outlined in the preceding point. To that end, the Secretary General suggested to former President Zelaya that he meet with him and with the two individuals who would be his representatives to the Commission, Mr. Jorge Arturo Reina and Mr. Rodolfo Pastor.

As a result of the meeting, a minute was prepared with the points that former President Zelaya and his representatives wanted to see reflected in any resolution of the crisis: resolution of former President Zelaya's current status; reaffirmation of the commitment by the State of Honduras to promoting and protecting human rights; proposal of mechanisms to bolster the fight against organized crime and impunity; the expansion of the Truth and Reconciliation Commission; a call by President Lobo to a broad-based dialogue; and the establishment of an OAS Commission to track the situation in Honduras [\[See Appendix 12\]](#).

3. On July 5, the Secretary General met with President Lobo in order to get his reaction to the issues raised in the minute. At that meeting, President Lobo expressed the following points of view:
 - 3.1 Status of former President Zelaya.
 - i. Trials. President Lobo outlined the course that, as far as he knew, was being taken in open proceedings against former President Zelaya, most of which were in the process of being dismissed under the Amnesty Decree. He also referred to proceedings to which that law could not be applied, given that they involve accusations that if dismissed would constitute a violation of Article 17 of the Inter-American Convention against Corruption, which is in force in Honduras.
 - ii. Central American Parliament (PARLACEN). He stated his agreement with former President Zelaya joining that body but noted, however, that this was not a matter that depended on him. Rather, it was the former President who had to apply for membership in PARLACEN for that institution's Board to

accredit him. PARLACEN President, Nicaraguan Deputy Jacinto Suárez, confirmed this latter bit of information for the Secretary General on July 12.

- i. Security arrangement for former President Zelaya. President Lobo reaffirmed his commitment to ensuring that the Honduran State will provide security for former President Zelaya in his capacity as a former President of the Republic.
- 3.2 Human rights. The President reiterated his commitment to protect and promote human rights and agreed to implement the recommendations of the IACHR. He recalled that, to that end, he had appointed a Minister Adviser on Human Rights and had issued an open invitation to the Inter-American Human Rights Protection System. Furthermore, he welcomed the request to strengthen the work of the Special Human Rights Prosecutor of the Public Ministry and the Office of the Minister Adviser on Human Rights. The President also pointed out that in response to a request for Spanish cooperation, a Spanish judge would be visiting Honduras with a view to collaborating on the design of a comprehensive human rights policy. The visit of the Spanish judge took place a few days later [See Appendix 13].
- 3.3 Dialogue. The President expressed his willingness to resume dialogue with respect to the political as well as public security issues, and requested OAS support in this area.
- 3.4 Truth and Reconciliation Commission. The President expressed a reluctance to reopen the Decree on the Truth and Reconciliation Commission given the situation facing the country. Furthermore, he noted that the Commission is autonomous and that any change that could alter its composition should come from the Commission itself.
- 3.5 OAS Support. The President agreed to the creation of a support mechanism, indicating his willingness to request it himself.
4. With respect to the trials in which former President Zelaya is facing charges, the Commission was informed that the Congress had issued an amnesty decree on January 27, 2010 [See Appendix 14]. The Commission was also informed that the Public Ministry, through the Attorney General, had issued a press release on June 29, 2010, dismissing charges contained in the Amnesty Decree and recognizing the competence of judges to apply this decree to cases brought before them for consideration [See Appendix 15]. For their part, the trial judges of Tegucigalpa voided these trials on June 30, 2010. There are still two cases in which former President Zelaya faces trial, relating to alleged misuse of resources of the Honduran Social Investment Fund (FHIS) [See Appendix 4].
5. According to the information provided, there are still two proceedings, relating to transfers of funds in 2008 for publicity expenses for the Office of the President, which were initiated a few days after the *coup d'état*, against the former President, his Ministers of the Presidency and of Finance, as well as other officials. In these trials the amnesty applied only in part, on the grounds that they include alleged acts of corruption and their dismissal would not be compatible with Honduras' accession to the Inter-American Convention against Corruption (Article 17).

6. At the meeting held on July 7, the Commission spoke with Mr. Rodolfo Pastor about the possibility of appointing a legal representative, but former President Zelaya's representative rejected the possibility on the grounds that it would mean legitimizing courts that had perpetrated the coup d'état. That view was later confirmed by the former President himself. In telephone conversations with the Secretary General, the former President said that he was not prepared to "put himself at the mercy of his executioners" and reminded the Secretary General that those proceedings had been initiated in the days following the coup, precisely in order to justify it. According to former President Zelaya, it was up to the Attorney General and judges who had issued the resolutions to annul them.
7. Subsequently, new alternatives were considered, including the possibility of a request, through an attorney designated by former President Zelaya or by a public defender (whose designation is not objected to by former President Zelaya), to void these proceedings; or the possibility of looking into a moratorium on such cases or on any trial related to the events following June 28, until the Truth Commission issues its report.

CONCLUSIONS AND RECOMMENDATIONS

In light of the above, the Commission proposes the following as a basis for adoption by the General Assembly of such agreements as it deems fit regarding the situation of Honduras:

1. The Commission considers it useful to put an end, in accordance with Honduran law, to the legal actions initiated against former President Zelaya and his associates during the de facto regime. In adopting this recommendation, the Commission has taken the view that although the two proceedings still pending against former President Zelaya correspond to deeds that took place long before the coup d'état, those proceedings and the action brought by the Attorney General's office were formalized after former President Zelaya was overthrown as leader of the country, at the same time as he was accused of treason, abuse of authority, and other offenses, amidst an adverse political atmosphere that followed the *coup d'état*. It is obvious that when those proceedings were initiated, the situation was one of constitutional disruption and this cannot be ignored. For that reason, some perceive those accusations to be politically motivated.
2. The Commission wishes to underscore the willingness of President Lobo to grant former President Zelaya the security to which former Presidents of the Republic are entitled on Honduran territory and recommends that this be put in place once former President Zelaya returns to his country.
3. It is recommended that former President Zelaya apply to the Board of PARLACEN for membership of that institution. It is the view of the Commission that such membership would grant former President Zelaya recognition of his status as the Constitutional President of Honduras preceding President Lobo.
4. The Commission believes that the Government of Honduras' cooperation during the visit of the IACHR last May, President Lobo's correspondence to the Secretary General on this matter, the subsequent measures reported by the Minister Advisor on Human Rights and the Special Human Rights Prosecutor, and the presence of an outside advisor for the investigation of crimes against journalists and human rights advocates, among others, are positive measures. At the same time, the Commission recognizes the need for concrete actions in compliance with the recommendations of the IACHR, especially:
 - a) Steady progress in the investigations into the murder of several people, including journalists and human rights defenders;
 - b) Adoption of measures to put an end to threats and harassment against human rights defenders, journalists and other media personnel, teachers and members of the National Popular Resistance Front, and judges who took part in activities against the coup d'état, and effective implementation of mechanisms for enforcement of precautionary measures issued to protect the lives and bodily integrity of numerous persons who are at risk. The Commission received a letter from the Minister Advisor on Human Rights announcing that a Human Rights Unit was created within the Ministry of Security to support the work of the Special Prosecutor for Human Rights.

- c) Endowment of the Inter-Institutional Human Rights Commission of Honduras with suitable staff and sufficient resources to enable it to respond efficiently in defense of the human rights of Hondurans and to the precautionary measures called for by the IACHR. Through the letter sent by the Minister Advisor on Human Rights, the Commission has been informed of the decision taken by her government to create a Ministry of Justice and Human Rights.
 - d) The cessation of impunity for human rights violations, including those verified by the IACHR and the Office of the United Nations High Commissioner for Human Rights. In this regard, the Commission learned of the establishment of the Human Rights Violations Investigation Unit under the purview of the Special Prosecutor for Human Rights to support investigations in this area.
 - e) Effective support for the work of the Office of the Special Attorney for Human Rights and of the Office of the Minister Advisor on Human Rights. The Commission appreciates the work done by both institutions despite the scarce financial and human resources. It believes that this work can have a significant impact on the exercise of human rights if they are allocated the necessary resources to perform effective surveillance, provide protection, and transform the State towards a culture of human rights promotion and protection. The Commission viewed with satisfaction the Honduran government's proposals to allocate resources to these bodies, and supported implementing them soon. Equally, the Commission viewed with satisfaction the requests to the governments of Colombia and the United States for assistance to investigate human rights violations.
5. The Commission believes that the work of the Truth and Reconciliation Commission should receive the full support and cooperation of all segments of Honduran society, in order to determine what happened on June 28, 2009. The Commission notes with satisfaction the willingness of the Commission of Truth and Reconciliation Commission to examine the issues of human rights violations in the context of the coup d'état.
6. The Commission takes note of the favorable disposition of President Lobo to convene a national dialogue among all the political sectors, to discuss issues of interest to all parties, with a view to achieving the reconciliation of Honduran society. To this end, it will be necessary to avoid putting obstacles to or directing hostility towards the political sectors, especially the opponents of the current government, whose security and protection must be guaranteed by the authorities.
7. The Commission submits this report for the consideration of the General Assembly so that, in accordance with the OAS Charter and the Inter-American Democratic Charter, the General Assembly may adopt the decisions it considers appropriate in relation to the situation of Honduras.

APPENDICES

Appendix 1: Resolution of the General Assembly in Lima

- Appendix 2: Report on the visit of the IACHR to Honduras in May and press release in June 2010.
- Appendix 3: Report from former President Zelaya on the situation in Honduras
- Appendix 4: Status of trials
- Appendix 5: Verbal Note from the Permanent Mission of Ecuador to the OAS
- Appendix 6: Special Declaration on Honduras by the leaders who attended the Special Summit of SICA held in San Salvador on July 20, 2010
- Appendix 7: Letter from the Minister Advisor for Human Rights of the Government of Honduras, Ms. Ana Pineda
- Appendix 8: Decree establishing the Truth and Reconciliation Commission and biographical profiles of its members
- Appendix 9: General information provided by Minister Adviser on Human Rights of the Government of Honduras and the Special Prosecutor on Human Rights of the Public Ministry of Honduras on cases of human rights violations during the *de facto* regime
- Appendix 10: Information provided by the current Government of Honduras on specific cases of human rights and freedom of expression violations and corruption during the *de facto* regime
- Appendix 11: Press Releases from the National Front of Popular Resistance and the Liberals in Resistance
- Appendix 12: Santo Domingo Minute
- Appendix 13: Letters from President Lobo on actions taken by his administration
- Appendix 14: Amnesty Decree
- Appendix 15: Press Release by Attorney General

Appendix 1 – General Assembly Resolution

<http://scm.oas.org/pdfs/2010/AGSC00258E-1.pdf>

Appendix 2 – IACHR June 7 Press Release

<http://scm.oas.org/pdfs/2010/AGSC00258E-2.pdf>

Appendix 2 – IACHR Report

<http://scm.oas.org/pdfs/2010/AGSC00258E-2A.pdf>

Appendix 3 – Former President Zelaya’s Report on the Situation of Honduras

<http://scm.oas.org/pdfs/2010/AGSC00258E-3.pdf>

Appendix 4 – Status of Trials

<http://scm.oas.org/pdfs/2010/AGSC00258E-4.pdf>

Appendix 5 - Verbal note from the Permanent Mission of Ecuador

<http://scm.oas.org/pdfs/2010/AGSC00258E-5.pdf>

Appendix 6 - Special Declaration on Honduras by the leaders who attended the Special Summit of SICA held in San Salvador on July 20, 2010

<http://scm.oas.org/pdfs/2010/AGSC00258E-6.pdf>

Appendix 7 – Letter from Minister Adviser on Human Rights to Secretary General

<http://scm.oas.org/pdfs/2010/AGSC00258E-7.pdf>

Appendix 8 – Decree that creates Truth and Reconciliation Commission

<http://scm.oas.org/pdfs/2010/AGSC00258E-8.pdf>

Appendix 8 – Truth and Reconciliation Commission Biographical Profiles

<http://scm.oas.org/pdfs/2010/AGSC00258E-8A.pdf>

APPENDIX 9 – General information provided by Minister Adviser on Human Rights of the Government of Honduras and the Special Prosecutor on Human Rights of the Public Ministry of Honduras on cases of human rights violations during the de facto regime

<http://scm.oas.org/pdfs/2010/AGSC00258E-9.pdf>

Appendix 10: Information provided by the current Government of Honduras on specific cases of human rights and freedom of expression violations and corruption during the de facto regime

<http://scm.oas.org/pdfs/2010/AGSC00258E-10.pdf>

Appendix 11 – Position of the National Front of Popular Resistance

<http://scm.oas.org/pdfs/2010/AGSC00258E-11.pdf>

Appendix 12 – Santo Domingo Minute

<http://scm.oas.org/pdfs/2010/AGSC00258E-12.pdf>

Appendix 13 – Letter from the Government of Honduras on actions taken

<http://scm.oas.org/pdfs/2010/AGSC00258E-13.pdf>

<http://scm.oas.org/pdfs/2010/AGSC00258E-13A.pdf>

<http://scm.oas.org/pdfs/2010/AGSC00258E-13D.pdf>

Appendix 14: Amnesty Decree

<http://scm.oas.org/pdfs/2010/AGSC00258E-14.pdf>

Annex 15 –Press Release Attorney General

<http://scm.oas.org/pdfs/2010/AGSC00258E-15.pdf>