

REPORT No. 7/14
CASE 12.739
MERITS
MARÍA INÉS CHINCHILLA SANDOVAL
GUATEMALA
April 2, 2014

I. SUMMARY

1. On March 23, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission,” or “the IACHR”) received a petition lodged by the Institute for Comparative Studies in Criminal Sciences (*Instituto de Estudios Comparados en Ciencias Penales*) through its legal representative, Alejandro Rodríguez Barrillas (hereinafter “the petitioner”), against the State of Guatemala (hereinafter “the State,” “the Guatemalan State,” or “Guatemala”) for acts connected with the death of María Inés Chinchilla (hereinafter “the alleged victim”) on May 25, 2004, allegedly as a result of a failure to receive proper medical attention at the facility where she was deprived of liberty.

2. The petitioner says that in spite of the fact that the State was aware of the ailments and illnesses from which Ms. Chinchilla suffered, they failed to provide her with adequate medical care, which resulted in her being hospitalized on multiple occasions. The petitioner says that several times the judge refused Ms. Chinchilla permission to go to medical appointments and that on the day she died she was not received adequate medical care either. The petitioner holds that the State has not diligently investigated Ms. Chinchilla's death. For its part, the State says that it is not responsible since it supplied adequate medical care. It says that the illnesses from which Ms. Chinchilla suffered were not attributable to the conditions of her detention, that she was granted leave on multiple occasions to go for medical appointments, and that she was taken to the emergency room whenever that proved necessary. The State says that on the day she died Ms. Chinchilla received adequate care from one of the nurses at the Female Orientation Center (*Centro de Orientación Femenino*) (hereinafter “COF”) and since her death was from “natural” causes, there was no crime to prosecute.

3. Having examined the arguments as to fact and law offered by the parties, the Commission has concluded that the State is responsible for the violations of the rights recognized in Articles 4, 5, 8, and 25 of the American Convention on Human Rights to the detriment of María Inés Chinchilla Sandoval, and of the rights enshrined in Articles 8 and 25 thereof to the detriment of the next of kin named in the relevant section of this report; all of these rights being taken in conjunction with Articles 1 (1) and 2 of the American Convention.

II. PROCESSING SUBSEQUENT TO ADMISSIBILITY REPORT 136/09

4. After it received the initial complaint, the Commission proceeded to open it as petition 321-05 and begin its processing. On November 13, 2009, the Commission adopted the Report 136/09 in which it declared the case admissible.¹ On December 2, 2009, the Commission transmitted the report on admissibility to the parties and granted the petitioner two months to submit arguments as to merits. In the same communication, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter.

5. The Commission received the petitioner's observations on merits on March 3, 2010, and those of the State on July 13, 2010. On February 26, 2010, the petitioner notified the IACHR that Ms. Marta María Gantenbein Chinchilla and Luz de María Juárez Chinchilla, daughters of Maria Ines Chinchilla Sandoval, had expressed their desire to participate in the proceedings as victims in the case. In addition, the IACHR

¹ IACHR, Report No. 136/09 Petition 321/05, Admissibility, María Inés Chinchilla Sandoval, Guatemala, November 13, 2009. Available at: <http://www.cidh.oas.org/annualrep/2009eng/Guatemala321-05eng.htm>

received further information from the petitioners on October 27, 2010. That communication was duly forwarded to the State. Likewise, the IACHR received observations from the State on March 24, 2010. That communication was duly forwarded to the petitioners. On January 24, the IACHR requested to the State copy of the preliminary investigation related to the death of Ms. Chinchilla. The State provided that information on March 14, 2014.

III. POSITIONS OF THE PARTIES ON MERITS

A. The Petitioners

6. The petition states that Maria Ines Chinchilla Sandoval was sentenced to 30 years in prison for the crimes of aggravated larceny and murder. She was ordered to serve her sentence at the Female Orientation Center (COF). The petitioner says that because of her multiple illnesses and ailments, which worsened during her internment at the COF, Ms. Chinchilla had to be hospitalized and taken to hospital emergency rooms on several occasions.

7. The petitioner says that on May 25, 2004, Ms. Chinchilla was moving around in a wheelchair when she fell down a step at approximately 8:30 a.m. He says that although the presence of the chief of medical services of the corrections system was requested, he did not come and the person who provided care was a nurse, who found Ms. Chinchilla's blood pressure to be very high and recommended that she be taken to hospital. However, she died at around 11: 30 a.m. without having been transferred.

8. The details regarding the facts and procedure in the investigation of Ms. Chinchilla Sandoval's death will be dealt with in the Commission's analysis of the facts based on the information supplied by both parties. This section summarizes the main arguments advanced by the petitioners with respect to the rights recognized in the Convention.

9. As regards the right to life, the petitioner says that Ms. Chinchilla did not receive medication, treatment, or an adequate diet at the COF, which led her diabetes to worsen. Therefore, the State violated its duty to ensure her right to life. With respect to the right to humane treatment, the petitioner mentions that the lack of medical care constituted a form of cruel, inhuman, and degrading treatment which, coupled with the mistreatment arising from her worsening illness, should be regarded as torture. He says that for Ms. Chinchilla to receive permission from a judge to leave the prison and go to the hospital for attention entailed a lengthy procedure and that as a result she missed a number of appointments, either because she was not given permission or because there was no way to take her to hospital.

10. As for the right to a fair trial and judicial protection, he says that the investigation undertaken by the Public Prosecution Service (*Ministerio Público*) into Ms. Chinchilla's death did nothing more than request that the case be dismissed on the ground that there was no criminal act to prosecute since the death was from natural causes. He says that the next of kin were never advised about the investigation procedures, nor were they offered assistance so as to enable them to institute legal proceedings. In addition, he says that the fact that the domestic remedies were not effective violated the right to justice within a reasonable time. He argues that the Public Prosecution Service had to investigate and determine whether or not the death was due to medical negligence, which it did not do. Finally, the petitioner said that the motions for release that were filed were turned down without taking into account Ms. Chinchilla's health.

B. The State

11. The State said that Mrs. Chinchilla was found guilty of the crimes of "aggravated larceny and murder" and that her illnesses were not attributable to it. It mentioned that in 2004 and 2005, Guatemala City had the highest mortality rate for diabetes mellitus, with females being at greater risk. It said that in 2004 there were 367 reported deaths from the disease, and 553 in 2005, a 51% jump in the mortality rate.

12. The State held that Ms. Chinchilla was granted permission to go to medical appointments on a large number of occasions. It calculated that in a period of seven years of confinement, one year, five months and six days were given over to providing the inmate with access to health services, in other words, 622 days, while she only missed appointments on 11 days, “which amounts to 20% of the time.” The State also mentioned that Ms. Chinchilla was not cooperative when it came to providing her with medical care and a proper diet. It said that signs were found that confirmed rumors of a possible breakout and also that Ms. Chinchilla refused to be transferred to the prison infirmary (*Hospitalito de Encamamiento*) where she could be better cared for. The State claims that one hour and 45 minutes elapsed between Ms. Chinchilla's fall and her death and that during that time she received immediate attention from nurses at the COF.

13. As to the alleged violation of the right to life, the State said that Ms. Chinchilla enjoy benefits during her imprisonment, including the construction of a toilet and hand-washing basin in light of the fact that the inmate was in a wheelchair; study grants; opportunities to leave the prison to buy materials to make the crafts that she sold; and during the time that she was confined in the maternal wing she had her own room with a refrigerator and a television. As regards the right to humane treatment, it said that the claims of torture were without basis in fact or law.

14. With respect to the investigation of her death, it said that the Public Prosecution Service conducted investigative procedures that included an examination of the scene and the cadaver, it's removal, and having a report prepared by a pharmaceutical chemist. It pointed out that the motion to dismiss the criminal suit stemmed from the fact that the death was from natural causes and, therefore, the necessary elements for it to be classed as a crime were lacking. It said that there was a “lack of interest” on the part of the family in the case as they did not file a criminal complaint. Finally, it argued that the applications for early release were examined in accordance with due process and their refusal was fully justified. It said that the law was strictly adhered to at all times and that Ms. Chinchilla was represented by an attorney appointed by the Public Criminal Defender Service and paid for by the State of Guatemala.

IV. ANALYSIS OF MERITS

A. Determinations of fact

1. Background

15. Ms. María Inés Chinchilla Sandoval was arrested on May 13, 1995 and sentenced to 30 years in prison for the offenses of murder and aggravated larceny committed in a single act. Had she served her full sentence, she would have been released on May 29, 2025,² and it was ordered that she serve her sentence at the Female Orientation Center.³

16. Ms. Chinchilla had two children from her second marriage: a girl called Luz de María Juárez Chinchilla, fifth, and a boy named Luis Mariano Juárez Chinchilla, born on October 24, 1989.⁴ In her first marriage she had had two daughters who had made homes of their own. When Ms. Chinchilla was deprived of her liberty, her two minor children remained in the care of their older sisters.⁵

² In addition, she would be eligible for time off for good behavior from November 29, 2014 and could apply for parole from November 30, 2017. Appendix 1. Certification of final decision 429-96. Judiciary. *Final Decision 429-96. 7th official*, December 3, 1996. Page 6. Appendix 8 to the initial petition

³ Appendix 1. Certification of final decision 429-96. Judiciary. *Final Decision 429-96. 7th official*, December 3, 1996. Page 6. Appendix 8 to the initial petition

⁴ Appendix 2. Incidental Motions for Early Release. Public Criminal Defender Institute Social Services Unit Socioeconomic report April 6, 2004, Pages 41-47. Appendix 3 to the initial petition.

⁵ Appendix 2. Incidental Motions for Early Release. Public Criminal Defender Institute Social Services Unit Socioeconomic report April 6, 2004, Pages 41-47. Appendix 3 to the initial petition.

17. At the COF Ms. Chinchilla did handicrafts and paintings, and sold coffee and tea. The costs of caring for her two minor children were covered by the maternal grandmother and their two older sisters. Ms. Chinchilla also owned two apartments, one of which was let.⁶ Ms. Chinchilla's mother bought her the provisions that she needed.⁷

2. Ms. Chinchilla's health during her detention at the COF and the permission that she was granted to go to medical appointments

18. Ms. Chinchilla had several ailments and illnesses for which she had to request authorization from the Judge of the Second Criminal Enforcement Court (hereinafter "the Judge") to go to hospitals for appointments. As regards the procedure for deciding if such permission should be granted, the Judge applied circular 16-02 from the Secretariat of the Supreme Court of Justice.⁸ The state of Guatemala did not provide this document. However, in a response to one of the requests, the Judge mentioned that the social worker had to corroborate the appointment at the hospital and "only then would any permission to leave the prison because of illness be granted."⁹

2.1 1997

19. Ms. Chinchilla's health records date from 1997, when she was 43 years old.¹⁰ She was first seen by a doctor during an external consultation at San Juan de Dios Hospital (hereinafter "HSJD") on March 4, 1997, after being diagnosed with lower-extremity venous insufficiency, with a history of a previous varicose vein removal procedure on her left leg. In May 1997 Ms. Chinchilla was diagnosed with an "ANTERIOR VAGINAL BULGE;" in June and July that year she was seen for a "diagnosis of COMPENSATED DIABETES MELLITUS" and in July she was "seen again for a PARAURETHRAL MASS."¹¹ She also manifested dysuria and the sensation of having a "mass" in the vaginal region and "stage I-II uterine prolapse."¹² She was also reported to have "tooth decay, missing teeth, loose teeth, periodontitis."¹³

20. In 1997 the Judge granted Ms. Chinchilla permission to keep medical appointments on the following dates: March 25, 1997;¹⁴ May 8, 1997;¹⁵ May 20 and May 27, 1997;¹⁶ May 27, 1997;¹⁷ June 5,

⁶ Appendix 2. Incidental Motions for Early Release. Public Criminal Defender Institute Social Services Unit Socioeconomic report April 6, 2004, Pages 41-47. Appendix 3 to the initial petition.

⁷ Appendix 2. Incidental Motions for Early Release. Public Criminal Defender Institute Social Services Unit Socioeconomic report April 6, 2004, Pages 41-47. Appendix 3 to the initial petition.

⁸ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 OF- 7º Communication from the Second Criminal Enforcement Court to María Inés Chinchilla Sandoval, September 11, 2003. Page 683. Appendix 8 to the initial petition

⁹ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 OF- 7º Communication from the Second Criminal Enforcement Court to María Inés Chinchilla Sandoval, September 11, 2003. Page 683. Appendix 8 to the initial petition

¹⁰ Appendix 1. San Juan de Dios General Hospital, Official Letter No. 375, September 22, 1997. Page 190. Appendix 8 to the initial petition

¹¹ Appendix 1. San Juan de Dios General Hospital, Official Letter No. 375, September 22, 1997. Page 190. Appendix 8 to the initial petition

¹² Appendix 1. Certification of final decision 429-96. Official Letter No, 006-97 Communication from the COF Duty Physician to the Deputy Director of the CODF, February 8, 2011. Page 51. Appendix 8 to the initial petition

¹³ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Communication from the Center's dentist, dated 91 [TR: sic] June, 1997 Page 91. Appendix 8 to the initial petition

¹⁴ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7. Decision of the Second Criminal Enforcement Court of March 18, 1997. Page 63. Appendix 8 to the initial petition

1997;¹⁸ June 25, 1997;¹⁹ June 17, and July 23 and 29, 1997;²⁰ July 31;²¹ August 5, 1997;²² August 20, 1997;²³ October 7 and 14, 1997;²⁴ November 3, 4 and 11, 1997;²⁵ November 18, 19 and 20, 1997;²⁶ November 27, 1997²⁷ and December 8, 11, 12, 15, and 23.²⁸ That year (1997) the Judge refused permission to leave the prison for a medical appointment on the following dates: June 5, 1997,²⁹ July 17, 1997,³⁰ September 11,

¹⁵ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7. Decision of the Second Criminal Enforcement Court of April 28, 1997. Page 66. Appendix 8 to the initial petition

¹⁶ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of May 15, 1997. Page 69. Appendix 8 to the initial petition

¹⁷ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of May 21, 1997. Page 72. Appendix 8 to the initial petition

¹⁸ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 269-97 Classification SRIA_ACF. Communication of the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, May 28, 1997. Page 77. Appendix 8 to the initial petition

¹⁹ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of June 19, 1997. Page 89. Appendix 8 to the initial petition

²⁰ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of July 16, 1997. Page 151. Appendix 8 to the initial petition

²¹ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of July 24, 1997. Page 158. Appendix 8 to the initial petition

²² Appendix 1. Certification of final decision 429-96. Judiciary. 7^o Decision of the Second Criminal Enforcement Court of August 1, 1997. Page 161. Appendix 8 to the initial petition

²³ Appendix 1. Certification of final decision 429-96. Judiciary. 7^o Decision of the Second Criminal Enforcement Court of August 18, 1997. Page 164. Appendix 8 to the initial petition

²⁴ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of October 2, 1997. Page 184. Appendix 8 to the initial petition

²⁵ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of October 31, 1997. Page 192. Appendix 8 to the initial petition

²⁶ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of November 14, 1997. Page 201. Appendix 8 to the initial petition

²⁷ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of November 21, 1997. Page 203. Appendix 8 to the initial petition

²⁸ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of December 2, 1997. Page 205. Appendix 8 to the initial petition

²⁹ Ms. Chinchilla did not go “for her lung X-ray” because she was not notified that [...] she had permission to go and have that examination done.” The Court later gave permission for Ms. Chinchilla to go to San Juan de Dios Hospital for a lung X-ray on June 5, 1997. Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 269-97 Classification SRIA_ACF. Communication of the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, May 28, 1997. Page 77. Appendix 8 to the initial petition. Certification of final decision 429-96. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of May 29, 1997. Page 78. Appendix 8 to the initial petition Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 276-97 Classification SRIA_ACF. Communication from the Acting Director of the Female Orientation Center to the Second Criminal Enforcement Court, May 30, 1997. Page 80. Appendix 8 to the initial petition Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of June 2, 1997. Page 81. Appendix 8 to the initial petition

³⁰ The Director of the COF reported that Ms. Chinchilla missed her appointment because “at this center we are short of custodial staff and, therefore, there was no one to guard the aforesaid inmate.” Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official letter, Ref. illegible SRIA_ACF. Communication from the Director of the Female Orientation Center to the Second Criminal Enforcement Court, July 17, 1997. Page 153. Appendix 8 to the initial petition

1997,³¹ December 12, 1997³², December 15, 1997³³ and January 8, 22 and 27, 1998.³⁴ Ms. Chinchilla mentioned in a communication that the patrol car that was supposed to take her to the hospital for appointments had not turned up on three occasions.³⁵ In response to this situation, the Judge ruled that if the patrol car did not appear, then a telephone call could be made to the Director of the National Police in order to request one.³⁶

21. On November 4, 1997, Ms. Chinchilla fainted on arrival at the hospital, so the guards took her to the emergency room. Although the doctor “wanted to keep her in for observation,” she refused and said that should be taken back to the prison and that she would ask “to be brought back at another time.”³⁷ On November 6, 1997, Ms. Chinchilla was taken to hospital as a matter of emergency for a blood transfusion.³⁸

2.2 1998

22. On January 2, 1998, the Judge requested the judiciary Forensic Medicine Service to re-examine Ms. Chinchilla in order to “verify the illness that she says she has” and “know if she needs to go to a

³¹ On August 18, 1997, the Judge of the Second Criminal Enforcement Court ruled that the “request was WITHOUT MERIT” because “the requirements set forth in Article 49 of the Criminal Code” were not met. Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Of. 7^o Decision of the Second Criminal Enforcement Court of September 10, 1997. Page 179. Appendix 8 to the initial petition

³² On December 2, 1997, the deputy director of the COF requested authorization from the Second Criminal Enforcement Court for Ms. Chinchilla to go to Roosevelt Hospital for a laboratory test on December 12, 1997, since “San Juan de Dios General Hospital lacked the necessary equipment to perform the test.” On December 3, 1997, the Second Criminal Enforcement Judge denied the request on the grounds that Ms. Chinchilla had an appointment approved for “San Juan de Dios General Hospital and, therefore, a new appointment need[ed] to be arranged at Roosevelt Hospital.” The Commission has no knowledge if that appointment was rescheduled as soon as possible. Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of December 3, 1997. Page 205. Appendix 8 to the initial petition

³³ Ms. Chinchilla was not allowed to leave “because the patrol car needed to take her to San Juan de Dios General Hospital did not arrive.” Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 597-97 Ref. SRIA_AMDS/acf. Communication from the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, December 16, 1997. Page 214. Appendix 8 to the initial petition

³⁴ On December 1, 1997, the deputy director of the COF requested the Second Criminal Enforcement Court for permission for Ms. Chinchilla to leave the prison on January 5, 8, 22, and 27, 1998. The Second Criminal Enforcement Judge gave approval for her to leave the prison on January 5 and 20, 1998, in order to go to the Dr. Guerrero clinics and San Juan de Dios General Hospital. The Commission notes that the Judge made no mention of the appointments requested for January 8, 22, and 27, 1998. Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 578-97 Ref. SRIA_AMDS/acf. Communication from the Director of the Female Orientation Center to the Second Criminal Enforcement Court, December 1, 1997. Page 204. Appendix 8 to the initial petition

³⁵ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 301-97 Ref. SRIA_AMDS/acf. Communication from the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, December 16, 1997. Page 215. Communication from Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, December 16, 1997. Pages 216-217. Appendix 8 to the initial petition

³⁶ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of December 18, 1997. Page 218. Appendix 8 to the initial petition

³⁷ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Communication from the prison guards to the Deputy Director of the Female Orientation Center. Page 196. Appendix 8 to the initial petition

³⁸ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 553-97 Ref. SRIA_AMDS/acf. Communication from the Director of the Female Orientation Center to the Second Criminal Enforcement Court, November 7, 1997. Page 199. Appendix 8 to the initial petition

hospital.”³⁹ The medical examiner replied that the request could not be met “because there was no vehicle in a good condition.”⁴⁰

23. Ms. Chinchilla was again rushed to HSJD as an emergency on January 12, 1998 and admitted⁴¹ until January 21, 1998,⁴² with an abscess in the right buttock.⁴³

24. On March 5, 1998, the judge again requested the medical examiner to examine Ms. Chinchilla.⁴⁴ The medical examiner's report revealed that she had “problems of leukemia, osteoporosis, and diabetes. History of a splenectomy (January 1998).” As well as being “generally unwell from being run down” and it was suggested that she receive treatment through appointments at the HSJD.⁴⁵

25. On July 13, 1998, the Judge received a brief from Mrs. Chinchilla requesting a “private hearing in his chambers” on matters to do with her situation.⁴⁶ On July 14, 1998, the Judge said that the Inspector General of the court would be visiting the COF “soon, so you may explain your problem to him.”⁴⁷

26. On August 20, 1998, the Judge asked the judiciary medical examiner to re-examine Ms. Chinchilla in order to determine “if the excessive requests for hospital visits that this inmate is making are necessary.”⁴⁸ The medical examiner reported that “she has a urethral cyst” as well as “gynecological, diabetic, and urethral problems,” and he suggested that appointments could be made with the HSJD to obtain care.⁴⁹

27. In 1998 the Judge granted Ms. Chinchilla permission to go to medical appointments on the following dates: January 5 and 20, 1998;⁵⁰ January 6, 1998;⁵¹ May 12, 1998;⁵² June 11 and 23, 1998 ;⁵³ July 1,

³⁹ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of January 2, 1998. Page 223. Appendix 8 to the initial petition

⁴⁰ Appendix 1. Certification of final decision 429-96. Judiciary. Forensic Medicine Division. Communication of January 7, 1998, Page 229. Appendix 8 to the initial petition

⁴¹ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 007-98 Ref. SRIA_AMDS/acf. Communication from the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, January 13, 1998. Page 232. Appendix 8 to the initial petition

⁴² Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 008-98 Ref. SRIA_AMDS/acf. Communication from the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, January 22, 1998. Page 236. Appendix 8 to the initial petition

⁴³ Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

⁴⁴ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of March 5, 1998. Page 238. Appendix 8 to the initial petition.

⁴⁵ Appendix 1. Certification of final decision 429-96. Judiciary. Forensic Medicine Division. Communication dated March 24, 1998. Page 240. Appendix 8 to the initial petition.

⁴⁶ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Communication from Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, June 13, 1998. Page 269. Appendix 8 to the initial petition

⁴⁷ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of July 14, 1998. Page 270. Appendix 8 to the initial petition.

⁴⁸ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 28, 1998. Page 285. Appendix 8 to the initial petition.

⁴⁹ Appendix 1. Certification of final decision 429-96. Judiciary. Forensic Medicine Division. Communication of September 3, 1998. Page 303. Appendix 8 to the initial petition.

⁵⁰ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of December 2, 1997. Page 205. Appendix 8 to the initial petition.

2, and 13, 1998;⁵⁴ July 21, 22, 23, and 30, 1998;⁵⁵ August 4 and 12, 1998;⁵⁶ August 24 and 25, 1998;⁵⁷ September 14, 17, and 18, 1998;⁵⁸ October 12, 1998;⁵⁹ October 27 and 29, 1998.⁶⁰ Conversely, the Judge did not grant Ms. Chinchilla permission to go to appointments on the following dates: March 12, 1998,⁶¹ November 2, 9 and 12, 1998.⁶²

28. On December 29, 1998, one of the Center's doctors reported that Ms. Chinchilla was "refusing treatment offered by the medical staff at the Center" and "asking to go to hospital, making threats

⁵¹ Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of January 5, 1998. Page 226. Appendix 8 to the initial petition.

⁵² Appendix 1. Certification of final decision 429-96. Judiciary. Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of April 20, 1998. Page 245. Appendix 8 to the initial petition.

⁵³ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of May 29, 1998. Page 255. Appendix 8 to the initial petition.

⁵⁴ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of June 25, 1998. Page 262. Appendix 8 to the initial petition.

⁵⁵ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of July 17, 1998. Page 272. Appendix 8 to the initial petition.

⁵⁶ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of July 30, 1998. Page 276. Appendix 8 to the initial petition.

⁵⁷ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 20, 1998. Page 280. Appendix 8 to the initial petition.

⁵⁸ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of September 8, 1998. Double page 319 and 321. Appendix 8 to the initial petition.

⁵⁹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of September 23, 1998. Page 311. Appendix 8 to the initial petition.

⁶⁰ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of October 14, 1998. Page 316. Appendix 8 to the initial petition.

⁶¹ On March 4, 1998, the deputy director of the COF requested the Second Criminal Enforcement Court for permission for Ms. Chinchilla to go to San Juan de Dios Hospital on March 12, 1998. On March 5, 1998, the Judge requested the judiciary Forensic Medicine Service to re-examine Ms. Chinchilla in order to "verify the illness that she says she has and thus know if she needs to go to a hospital or can be treated at the Center." On March 25, 1998, the Judge forwarded Ms. Chinchilla's appointments card to the director of the COF, saying that her appointments for March 12 of that year were submitted late.⁶¹ On March 26, 1998, the Judge asked the COF to advise Ms. Chinchilla that she "may arrange an appointment at San Juan de Dios General Hospital." Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 020-98 Ref. SRIA_AMDS/acf. Communication from the Deputy Director of the Female Orientation Center to the Second Criminal Enforcement Court, March 4, 1998. Page 237. Appendix 8 to the initial petition. Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of March 5, 1998. Page 238. Appendix 8 to the initial petition. Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of March 25, 1998. Page 242. Appendix 8 to the initial petition. Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of March 26, 1998. Page 241. Appendix 8 to the initial petition.

⁶² On October 29, 1998, the deputy director of the COF requested the Second Criminal Enforcement Court for permission for Ms. Chinchilla to go for medical appointments on November 2, 9, and 12, 1998 at Clinic No. 33 of San Juan de Dios General Hospital. On October 30, 1998, the Judge of the Second Criminal Enforcement Court returned the appointment card so that the Female Orientation Center's social worker might arrange "another medical appointment." Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 112-98 Ref. SRIA_AMDS/acf. Communication from the Director of the Female Orientation Center to the Second Criminal Enforcement Court, October 29, 1998. Page 317. Appendix 8 to the initial petition. Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of October 30, 1998. Page 318. Appendix 8 to the initial petition.

and holding us responsible anything happen.” It was reported that “according to officials and fellow inmates,” Ms. Chinchilla “ha[d] not taken the medicine (hypoglycemic agents) and was off her diet, consuming sugars, soft drinks, etc., purely for the sake of getting to the General Hospital.” A request was made for Ms. Chinchilla to be evaluated by the medical examiner.⁶³ On December 29, 1998, a COF doctor again reported that Ms. Chinchilla was refusing “to be examined by the Center’s doctors” and “reportedly not taking medicine and eating an uncontrolled diet.”⁶⁴

2.3 1999

29. On January 15, 1999, at the request of the Judge,⁶⁵ the judiciary Forensic Medicine Service performed the examination and reported that Ms. Chinchilla showed “awareness in terms of time, her physical surroundings, and herself as a person, and has a more or less years-long history of diabetes, which is being treated with oral hypoglycemic drugs.” The report indicated that Ms. Chinchilla could be treated at the COF.⁶⁶

30. On January 6, 1999, the director of the COF reported that a search had been made of the inmates’ cells and a bag found containing two wigs, a necklace, a bracelet, a girdle with padded buttocks, a black dress, a white dress, a jacket with a printed design, a pair of black shoes, a white camisole, and makeup “belonging to the inmate: MARIA INES CHINCHILLA.”⁶⁷ The Center’s authorities had reportedly “heard rumors that the aforementioned inmate was planning to escape during one of her visits to the hospital and it was presumed, therefore, from the things that were found that she had planned it in advance.”⁶⁸

31. On January 20, 1999, the Judge said that the permission requested by Ms. Chinchilla was “without merit” because the “medical examiner’s report says that she can receive medical treatment for her diabetes at the Center where she is currently confined.” It was also requested that “the entry of the appropriate medications” be permitted.⁶⁹ The record shows that on January 27, 1999,⁷⁰ and February 3, 1999,⁷¹ Ms. Chinchilla went to the HSJD for an appointment.

⁶³ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official letter 0125-98, Communication from Dr. Magdalena Recinos de Barrios to the deputy director of the COF, December 29, 1998. Page 324. Appendix 8 to the initial petition.

⁶⁴ Appendix 3. Female Orientation Center. Communication from the doctor at the COF clinic to the Deputy Director of the COF, December 29, 1998, Appendix 1 to the State’s brief of July 13, 2010.

⁶⁵ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of January 4, 1998. Page 325. Appendix 8 to the initial petition.

⁶⁶ Appendix 1. Certification of final decision 429-96. Judiciary Forensic Medicine Division. Communication of January 15, 1998. Page 332. Appendix 8 to the initial petition.

⁶⁷ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 01-99 Ref. SRIA_AMDS/acf. Communication from the Director of the Female Orientation Center to the Director General of the Correctional System, January 6, 1999. Page 327. Appendix 8 to the initial petition.

⁶⁸ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official Letter No. 01-99 Ref. SRIA_AMDS/acf. Communication from the Director of the Female Orientation Center to the Director General of the Correctional System, January 6, 1999. Page 327. Appendix 8 to the initial petition.

⁶⁹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of January 20, 1999. Page 333. Appendix 8 to the initial petition.

⁷⁰ Appendix 1. Certification of final decision 429-96. San Juan de Dios General Hospital. Communication of January 27, 1999. Page 334. Appendix 8 to the initial petition.

⁷¹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of February 4, 1999. Page 335. Appendix 8 to the initial petition.

32. On August 20, 1999, the COF doctor asked the Director of the COF to request an examination of Ms. Chinchilla by the Medical Examiner, as she “presented general poor health and had a history of diabetes.” She said that glucose urine test produced four crosses and therefore she believed “that her blood glucose must be high.”⁷² On August 24, 1999, the Judge requested that a medical examiner be appointed.⁷³ On September 9, the medical examiner suggested that she be evaluated at the HSJD.⁷⁴ The Judge approved the visit to the HSJD on September 16, 1999.⁷⁵

2.4 2000

33. On February 9, 2000, the Director of the COF requested an evaluation of Ms. Chinchilla who had “decompensated diabetes, which has caused foot ulcers. She also has a firm and painful mass in her abdomen that measures more than 8 x 10 cm and is growing.”⁷⁶ Following authorization from the Judge,⁷⁷ on March 4, 2000, the doctor reported that Ms. Chinchilla presented “a firm, mobile mass above the pubic hairline, tender upon superficial and deep palpation; she also presents arterial pressure problems and an ulcer on her left foot.” The doctor suggested an endocrinological evaluation at the HSJD.⁷⁸ On April 6, 2000, the Judge granted permission for Ms. Chinchilla to visit the endocrinology clinic.⁷⁹

34. The judge gave approval for Ms. Chinchilla to go to medical appointments on April 12,⁸⁰ 17, and 26,⁸¹ October 30,⁸² November 11 and 29, 2000.⁸³ In 2000, the Judge refused permission for Ms. Chinchilla to go to an appointment on June 5, 2000,⁸⁴ on account of the fact that after permission was requested on May

⁷² Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official letter 074-99. August 20, 1999. Page 40. Appendix 8 to the initial petition.

⁷³ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 24, 1999. Page 343. Appendix 8 to the initial petition.

⁷⁴ Appendix 1. Certification of final decision 429-96. Judiciary Forensic Medicine Service. Communication of September 9, 1999. Page 344. Appendix 8 to the initial petition.

⁷⁵ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 13, 1999. Page 345. Appendix 8 to the initial petition.

⁷⁶ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Communication from the Director of the COF, February 9, 2000. Page 346. Appendix 8 to the initial petition.

⁷⁷ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of February 10, 2000. Page 347. Appendix 8 to the initial petition.

⁷⁸ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Forensic Medicine Service. Communication of March 4, 2000. Page 348. Appendix 8 to the initial petition.

⁷⁹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of April 6, 2000. Page 349. Appendix 8 to the initial petition.

⁸⁰ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of April 6, 2000. Page 349. Appendix 8 to the initial petition.

⁸¹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of April 14, 2000. Page 351. Appendix 8 to the initial petition.

⁸² Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 10, 2000. After page 354. Appendix 8 to the initial petition.

⁸³ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of November 21, 2000. Page 356. Appendix 8 to the initial petition.

⁸⁴ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of June 5, 2000. Marked with the number 102 prior to Page 353. Appendix 8 to the initial petition.

24,⁸⁵ on the following day the judge asked the social worker to verify the appointment;⁸⁶ however, that report was not submitted until June 2, 2000.⁸⁷ On June 5, 2000, the judge turned down the request because “the social worker's report was received late.”⁸⁸

35. Ms. Chinchilla was hospitalized from August 29 to September 14, 2000 with an abscess on the big toe of her left foot. She was again hospitalized on December 19, 2000 with “an abscess on the big and second toes of her right foot, as a result of which “the sole of her foot was washed and debrided. Diabetic retinopathy was also documented.”⁸⁹

2.5 2001

36. Ms. Chinchilla left hospital on February 26, 2001.⁹⁰ After returning to the COF, the Judge gave authorization for her to leave the prison for medical appointments on the following dates: March 7,⁹¹ 6, 8,⁹² 23,⁹³ and 30;⁹⁴ April 4,⁹⁵ 10, 20, and 27;⁹⁶ and May 8, 15, 16, 24, and 31.⁹⁷ During that period, with regard to the appointment requested for March 1, 2001,⁹⁸ the judge refused it on the ground that the request was time-

⁸⁵ Appendix 1. Certification of final decision 429-96. Female Orientation Center. Official letter 0039/2000. Communication from the Director of the COF, May 24, 2000. No page number; appears after the page marked No. 351. Appendix 8 to the initial petition.

⁸⁶ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of May 25, 2000, page situated before page 353 in the record. Appendix 8 to the initial petition.

⁸⁷ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Social worker's report. June 2, 2000. Page 353. Appendix 8 to the initial petition.

⁸⁸ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of June 5, 2000. Marked with the number 102 prior to Page 353. Appendix 8 to the initial petition.

⁸⁹ Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

⁹⁰ Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

⁹¹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of March 5, 2001. Page 364. Appendix 8 to the initial petition.

⁹² Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of March 5, 2001. Page identified with number 423, before to page 371. Appendix 8 to the initial petition.

⁹³ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of March 5, 2001. Page identified with number 423, before to page 371. Appendix 8 to the initial petition.

⁹⁴ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of March 5, 2001. Page 372. Appendix 8 to the initial petition.

⁹⁵ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of March 5, 2001. Page 372. Appendix 8 to the initial petition.

⁹⁶ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of April 9, 2001. Page 378. Appendix 8 to the initial petition.

⁹⁷ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of May 4, 2001. Page 381. Appendix 8 to the initial petition.

⁹⁸ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o. Official Letter No. 15/2001 Ref. Sria/IGP. Communication from the Assistant Director of the COF, February 27, 2001. Page 360. Appendix 8 to the initial petition.

barred.⁹⁹ On March 2, 2001, the Deputy Director of the COF requested the Judge to approve a medical appointment, since the appointment of March 1 “was not possible” and “the lady has a graft on her foot and it needs to be checked.”¹⁰⁰ On March 5, the Judge ruled that “the decision of March 1 of this year shall be abided by.”¹⁰¹

37. On March 5, 2001, Ms. Chinchilla informed the Judge that her foot was “giving off a bad smell” and she was “afraid that if it [was] not treated in time [she] might lose it.”¹⁰² That same day, the judge gave permission for Ms. Chinchilla to leave the prison in order to go to Service Clinic “Uno cm.”¹⁰³

38. On May 25, 2001, the HSJD certified that Ms. Chinchilla “had been receiving treatment since March 1997 for type II diabetes mellitus” and that she had been readmitted that year with “decompensated diabetes and an abscess on the big toe of her left foot.” She was diagnosed with “type II diabetes mellitus” and “urethrocele.”¹⁰⁴

39. Ms. Chinchilla was taken to the HSJD in an emergency on May 28, 2001.¹⁰⁵ The doctor in charge reported that “a cleansing and debriding procedure had to be performed on her right foot,” that she had “an infection with three types of bacteria,” and “the evaluation has been very slow.”¹⁰⁶ Ms. Chinchilla remained in hospital until August 8, 2001.¹⁰⁷

40. The judge gave approval for Ms. Chinchilla to go to medical appointments on August 15, 23,¹⁰⁸ and 29;¹⁰⁹ September 3,¹¹⁰ 6,¹¹¹ 10,¹¹² 17,¹¹³ 24,¹¹⁴ 25,¹¹⁵ and 28,¹¹⁶ 2001;¹¹⁷ October 4,¹¹⁸ 24,¹¹⁹ 15,¹²⁰

⁹⁹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 2, 2001. Page 362. Appendix 8 to the initial petition.

¹⁰⁰ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º. Official Letter No. 016/2001 Ref. Sria/IGP. Communication from the Assistant Director of the COF, March 2, 2001. Page 363. Appendix 8 to the initial petition.

¹⁰¹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 5, 2001. No number, prior to Page 364. Appendix 8 to the initial petition.

¹⁰² Appendix 1. Certification of final decision 429-96. Final Decision 429-96. Official letter 7º. Brief presented on behalf of Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, March 5, 2001. Page 456. Appendix 8 to the initial petition.

¹⁰³ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 5, 2001. Page 364. Appendix 8 to the initial petition.

¹⁰⁴ Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Certification dated May 25, 2001. Page 6.

¹⁰⁵ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of May 28, 2001. Page 386. Appendix 8 to the initial petition.

¹⁰⁶ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Official letter No. 304-2, 001 DRA, MRdB REF/SERVICIOS MEDICOS, Communication from the Correctional System Medical Services Coordinator, July 19, 2001. Page 390. Appendix 8 to the initial petition.

¹⁰⁷ Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

¹⁰⁸ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of August 13, 2001. Page 394. Appendix 8 to the initial petition.

¹⁰⁹ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of August 24, 2001. Page 398. Appendix 8 to the initial petition.

¹¹⁰ Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of August 24, 2001. Page 398. Appendix 8 to the initial petition.

and 31;¹²¹ and December 13,¹²² 26, and 11 2001.¹²³ The Judge refused permission to leave the prison for an appointment on October 29¹²⁴ because the appointments book was not enclosed.¹²⁵

41. On November 14, 2001, Ms. Chinchilla requested approval from the Judge to go to medical appointments on November 20, 25, and 26, 2001.¹²⁶ On November 19, 2001 the judge asked the social worker to report on the veracity of the appointments.¹²⁷ On November 20, 2001, having failed to elicit a response from the Judge, the Director of the COF wrote to the Judge saying, "We beg your authorization for her to go to the hospital's emergency room as she has a cancerous sore on her foot that needs constantly to be cleaned."¹²⁸ On November 20, 2001, the Judge gave permission for her to leave the prison.¹²⁹ That same day,

¹¹¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of July 23, 2001. Page 403. Appendix 8 to the initial petition.

¹¹²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 6, 2001. Page 405. Appendix 8 to the initial petition.

¹¹³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 12, 2001. Page 408. Appendix 8 to the initial petition.

¹¹⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 12, 2001. Page 408. Appendix 8 to the initial petition.

¹¹⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court to the Director General of the National Civil Police, September 17, 2001. Page 410. Appendix 8 to the initial petition.

¹¹⁶Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 12, 2001. Page 408. Appendix 8 to the initial petition.

¹¹⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 12, 2001. Page 408. Appendix 8 to the initial petition.

¹¹⁸Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 3, 2001. Page 415. Appendix 8 to the initial petition.

¹¹⁹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 3, 2001. Page 415. Appendix 8 to the initial petition.

¹²⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 9, 2001. Page 417. Appendix 8 to the initial petition.

¹²¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 3, 2001. Page 415. Appendix 8 to the initial petition.

¹²²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court to the Director General of the National Civil Police, November 12, 2001. Page 442. Appendix 8 to the initial petition.

¹²³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of November 21, 2001. Page 456. Appendix 8 to the initial petition.

¹²⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96. Communication from the Director of the COF, October 23, 2001. Page 437. Appendix 8 to the initial petition.

¹²⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 24, 2001. Page 438. Appendix 8 to the initial petition.

¹²⁶Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96. Communication from the Director of the COF, November 14, 2001. Page 445. Appendix 8 to the initial petition.

¹²⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of November 19, 2001. Page 448. Appendix 8 to the initial petition.

¹²⁸Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96. Communication from the Director of the COF, November 20, 2001. Page 457. Appendix 8 to the initial petition.

the social worker submitted the report that had been requested of her, saying that Ms. Chinchilla “may be taken to the laboratory on the 26th of this month [...] and there is no record of the appointment on the 25th”; she had another appointment on December 11.¹³⁰ Accordingly, the Judge gave approval for Ms. Chinchilla to go to the verified appointments.¹³¹ On November 29, 2001 the judge asked the social worker to reconfirm Ms. Chinchilla's appointment for December 20.¹³² In response, on December 4, the social worker indicated that there was no record of it.¹³³

42. On December 7, 2001, Ms. Chinchilla was taken to the HSJD emergency room and “admitted because of the seriousness of her condition.”¹³⁴ She was kept there until February 15, 2002 with “necrosis on the sole and second and fifth toes of her right foot as well as a subcapital fracture of the right humerus.” “The affected area was cleaned and surgically debrided on two occasions.” She presented necrosis on the fifth toe of her right foot, which was amputated, while the sole of the foot was cleaned and debrided. The “the fracture was treated by simply immobilizing it.”¹³⁵

2.6 2002

43. On February 19, 2002, the Judge gave approval for Ms. Chinchilla to go to a medical appointment scheduled for February 22, 2002.¹³⁶ On February 25, 2002, Ms. Chinchilla requested authorization to go to a medical appointment at the HSJD on March 1, saying “that because of the very severe illness she has to visit the clinic weekly on Fridays.”¹³⁷ The social worker informed that Ms. Chinchilla “was not registered in the appointment book for Friday every week.”¹³⁸ On March 1, 2002, the Judge refused permission¹³⁹ and on March 4 wrote to the COF, requesting it to bear in mind that “in future all requests [...] must be submitted with sufficient notice for the social worker to verify the request.”¹⁴⁰

¹²⁹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of November 20, 2001. Page 452. Appendix 8 to the initial petition.

¹³⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication of the Social Worker to the Second Criminal Enforcement Court, November 20, 2001. Page 458. Appendix 8 to the initial petition.

¹³¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of November 21, 2001. Page 456. Appendix 8 to the initial petition.

¹³²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication of the Second Criminal Enforcement Court to the Social Worker, November 29, 2001. Page 465. Appendix 8 to the initial petition.

¹³³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication of the Social Worker to the Second Criminal Enforcement Court, December 4, 2001. Page 466. Appendix 8 to the initial petition.

¹³⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96. Official letter 257-2001, Communication from the Director of the COF, December 10, 2001. Page 468. Appendix 8 to the initial petition.

¹³⁵Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

¹³⁶Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of February 19, 2002. Page 478. Appendix 8 to the initial petition.

¹³⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96. Communication from the Deputy Director of the COF, February 25, 2002. Page 481. Appendix 8 to the initial petition.

¹³⁸Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication of the Social Worker to the Second Criminal Enforcement Court, February 28, 2002. Page 484. Appendix 8 to the initial petition.

¹³⁹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 1, 2002. Page 485. Appendix 8 to the initial petition.

¹⁴⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Second Criminal Enforcement Court to the Deputy Director of the COF, March 4, 2002. Page 489. Appendix 8 to the initial petition.

44. On March 15, 2002, Ms. Chinchilla was taken to hospital in an emergency after the Center's doctor examined her and found that she "presented a color change in her left foot and fibrin accumulation with a very bad odor, leading to the amputation of the little toe."¹⁴¹

45. On March 18, 2002, the judge was requested to authorize medical appointments for Ms. Chinchilla on March 22 and 27, and April 5, 12, 19, and 26.¹⁴² The judge said that before ruling he required a report from the social worker to verify the request.¹⁴³ On March 22, 2002, the social worker reported that Ms. Chinchilla could be taken on March 27. Her report also said that on the doctor's indication the wounds needed constant cleaning.¹⁴⁴ On March 25, the Judge gave approval for Ms. Chinchilla to go to the verified appointments.¹⁴⁵

46. Ms. Chinchilla was hospitalized from April 12¹⁴⁶ to June 9, 2002.¹⁴⁷ She was found to have an "ulcer on her right foot, osteomyelitis, and a fractured humerus." "Partial thickness skin grafts were taken and placed on the sole of the right foot" and "she was included on a program of physical medicine and rehabilitation." It was mentioned that "the treatment could not be concluded because the patient asked to be discharged against doctors' indications." In addition "she was diagnosed with diabetic retinopathy and it was suggested that she have laser surgery at Roosevelt Hospital. Onychomycosis was also identified on the nails of our feet and hands."¹⁴⁸

47. On June 9, 2002, the Director of the COF sought authorization for Ms. Chinchilla to go to all her medical appointments for "physical medicine and rehabilitation" every Friday.¹⁴⁹ Following a report from the social worker,¹⁵⁰ on June 13, 2002, the Judge of the Second Criminal Enforcement Court gave approval for Ms. Chinchilla to leave the prison on Monday, June 17 and every Friday in June.¹⁵¹ Subsequently, the Judge authorized a further departure from the prison for August 14, 2002.¹⁵²

¹⁴¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Official letter 054-2002, Communication from the Deputy Director of the COF, March 15, 2002. Page 493. Appendix 8 to the initial petition.

¹⁴²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96. Communication from the Deputy Director of the COF, March 18, 2002. Page 496. Appendix 8 to the initial petition.

¹⁴³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication of the Social Worker to the Second Criminal Enforcement Court, March 29, 2002. Page 497. Appendix 8 to the initial petition.

¹⁴⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication of the Social Worker to the Second Criminal Enforcement Court, March 22, 2002. Page 498. Appendix 8 to the initial petition.

¹⁴⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of March 25, 2002. Page 500. Appendix 8 to the initial petition.

¹⁴⁶Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Director of the COF, April 15, 2002. Page 511. Appendix 8 to the initial petition.

¹⁴⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Deputy Director of the COF, June 11, 2002. Pages 515 and 516. Appendix 8 to the initial petition.

¹⁴⁸Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

¹⁴⁹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Deputy Director of the COF, June 11, 2002. Pages 515 and 516. Appendix 8 to the initial petition.

¹⁵⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication of the Social Worker to the Second Criminal Enforcement Court, June 13, 2002. Page 519. Appendix 8 to the initial petition.

¹⁵¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of June 13, 2002. Page 520. Appendix 8 to the initial petition.

¹⁵²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of August 13, 2002. Page 540. Appendix 8 to the initial petition.

48. Ms. Chinchilla was admitted to hospital on August 20, 2002,¹⁵³ with “an abscess in the right foot, wet gangrene on the right foot, decompensated diabetes mellitus, and arterial hypertension.” That same day, doctors performed “a supracondylar amputation of the right foot” and “she developed an infection of the stump, which was treated with local cleaning and antibiotics.” She also presented “obstructive arterial disease in the lower left leg” as well as “mild dilation of the left ventricle without hypertrophy of the walls and preserved systolic function.”¹⁵⁴ Ms. Chinchilla was discharged on November 26, 2002.¹⁵⁵ That same day, authorization was requested for her to go to medical appointments on December 11, 2002.¹⁵⁶ On December 30, 2002 permission was sought for January 8 and 29, 2003.¹⁵⁷ On January 2, 2003, the Judge gave permission for her to leave the prison on January 9 and 29, 2003.¹⁵⁸

2.7 2003

49. On January 2, 2003, the duty nurse informed the Medical Coordinator of the Correctional System that Ms. Chinchilla “refuses to have her wounds cleaned by [her], since she says that the inmate Gina is cleaning them and that she can continue doing her the favor.” The nurse said that “the lady is very negative” and explained that “on December 31, Marlene Lavavigno came to the Center, was informed of the problem, and went to block “C” to talk to the inmate, but she continued with her negative attitude.” She said that “the lady is very difficult and [she did] not know what could be done to prevent the infection of those wounds because of the bad practice employed by the inmate cleaning them.”¹⁵⁹

50. According to the information available, Ms. Chinchilla was given permission to go for medical appointments on January 9,¹⁶⁰ 15,¹⁶¹ and 29;¹⁶² March 28;¹⁶³ April 4, 14,¹⁶⁴ and 23, 2003.¹⁶⁵

¹⁵³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Written Communication from the Deputy Director of the COF, August 21, 2002. Page 552. Appendix 8 to the initial petition. Appendix 2. Incidental Motions for Early Release. Brief of Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, March 3, 2004, Page 3. Appendix 3 to the initial petition.

¹⁵⁴Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification 447/04. March 2, 2004, Pages 2 and 3. Appendix 3 to the initial petition.

¹⁵⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Written Communication from the Director of the COF, November 26, 2002. Page 557. Appendix 8 to the initial petition. Appendix 2. Incidental Motions for Early Release. Brief of Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, March 3, 2004, Page 2.

¹⁵⁶Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Written Communication from the Director of the COF, November 26, 2002. Page 557. Appendix 8 to the initial petition.

¹⁵⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Written Communication from the Deputy Director of the COF, December 30, 2002. Page 558. Appendix 8 to the initial petition.

¹⁵⁸Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of January 2, 2002. Page 559. Appendix 8 to the initial petition.

¹⁵⁹Appendix 3. Female Orientation Center. Communication from the duty nurse to the medical coordinator of the correctional system. 2 January 2003. Appendix 4 to the State’s brief of July 13, 2010.

¹⁶⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of January 2, 2002. Page 559. Appendix 8 to the initial petition.

¹⁶¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of January 10, 2002. Page 563. Appendix 8 to the initial petition.

¹⁶²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of January 2, 2002. Page 559. Appendix 8 to the initial petition.

¹⁶³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 20, 2003. Page 596. Appendix 8 to the initial petition.

¹⁶⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of April 3, 2003. Page 600. Appendix 8 to the initial petition.

51. On March 14, 2003, the duty nurse at the COF reported that the cleaning of Ms. Chinchilla's wounds was not carried out because "she refused it, deciding that the inmate Gina Samayoa, housed in the same block, was doing it." She said that she "talked to her to make her aware of the need for it, that a nurse should do the cleaning." She said that "the inmate will not see reason" and that she became negative, "telling her to stop bothering her." She said that "for the time being, she does not need cleaning because the stump has tried and the area is clean."¹⁶⁶

52. Ms. Chinchilla was taken to the HSJD in an emergency on May 4, 2003 after falling and breaking her hip, which required her to have surgery to perform a "hip osteosynthesis."¹⁶⁷ She stayed in hospital until May 15, 2003.¹⁶⁸

53. The Judge authorized her to leave the prison for medical appointments on June 29,¹⁶⁹ 12, 19,¹⁷⁰ 26, and 27;¹⁷¹ and August 1, 14,¹⁷² and 17.¹⁷³ A petition presented on August 4, 2003, sought permission for a medical appointment on August 8;¹⁷⁴ however, the social worker only presented her report on August 11,¹⁷⁵ after Ms. Chinchilla's appointment.

54. On August 7, 2003, the judiciary medical examiner reported that he had visited the COF to perform a medical-legal examination of Ms. Chinchilla and found that the "inmate [was] well known for her problems of: (a) Diabetes mellitus, (b) arterial hypertension, (c) fracture of the right femur, (d) occlusive disease of the left lower extremity, (e) cervical cancer, and (f) diabetic retinopathy." The report said that the inmate "is in a wheelchair with sequelae from her diabetes and her health is in marked decline."¹⁷⁶

¹⁶⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of April 22, 2003. Page 609. Appendix 8 to the initial petition.

¹⁶⁶Appendix 4. Female Orientation Center. Communication from the duty nurse to the medical services coordinator. March 14, 2003. Appendix 5 to the State's brief of July 13, 2010.

¹⁶⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Written Communication from the Deputy Director of the COF, May 5, 2003. Page 612. Appendix 8 to the initial petition.

¹⁶⁸Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Written Communication from the Deputy Director of the COF, May 5, 2003. Page 612. Appendix 8 to the initial petition.

¹⁶⁹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of May 27, 2003. Page 622. Appendix 8 to the initial petition.

¹⁷⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of June 6, 2003. Page 631. Appendix 8 to the initial petition.

¹⁷¹Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of June 25, 2003. Page 635. Appendix 8 to the initial petition.

¹⁷²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 13, 2003. Page 658. Appendix 8 to the initial petition.

¹⁷³Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 13, 2003. Page 658. Appendix 8 to the initial petition.

¹⁷⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Written communication from the Director of the COF, August 4, 2003. Page 651. Appendix 8 to the initial petition.

¹⁷⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 11, 2003. Page 656. Appendix 8 to the initial petition.

¹⁷⁶Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Forensic Medicine Service. Judiciary Medical Examiner's Report No. 30-2003. August 7, 2003 Page 657. Appendix 8 to the initial petition.

55. Subsequently, appointments were authorized for August 14¹⁷⁷ and 17,¹⁷⁸ September 11,¹⁷⁹ 17,¹⁸⁰ and 30;¹⁸¹ and October 8,¹⁸² 13, and 31, 2003.¹⁸³ Regarding a request for September 2 and 17,¹⁸⁴ the social worker's report was not submitted until September 3, 2003.¹⁸⁵ The Judge added that in future all requests "must be presented at least eight days in advance [...] otherwise they will be denied."¹⁸⁶

56. On September 23 and October 2, 2003, the Judge requested a medical examination of Ms. Chinchilla.¹⁸⁷ The report indicated that she was known "to have long-term diabetes mellitus associated with arterial hypertension, diabetic retinopathy, occlusive disease of the left lower extremity, fracture of the femur in the right lower extremity, and cancer of the cervix" and that in the evaluation "she presents a gradual loss of sight" and "she gets around in a wheelchair." The doctor suggested medical treatment at the correctional center's clinic.¹⁸⁸ On October 16, 2003, the Judge indicated that the appropriate person or persons be ordered "to provide medical treatment consistent with her diabetic condition."¹⁸⁹

57. On October 9, 2003, a nurse reported that on that day she went down to the maternal block to administer a dose of insulin to Mrs. Chinchilla but "she did not open the door" and said "that she was not to

¹⁷⁷Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 13, 2003. Page 658. Appendix 8 to the initial petition.

¹⁷⁸Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 Pf- 7^o Decision of the Second Criminal Enforcement Court of August 13, 2003. Page 658. Appendix 8 to the initial petition.

¹⁷⁹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court to the Director General of the National Police. September 1, 2003. Page 668. Appendix 8 to the initial petition.

¹⁸⁰Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 4, 2003. Page 663. Appendix 8 to the initial petition.

¹⁸¹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court, September date illegible, 2003. Page 681. Appendix 8 to the initial petition.

¹⁸²Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of September 4, 2003. Page 663. Appendix 8 to the initial petition.

¹⁸³Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court to the Director General of the National Police. October 3, 2003. Page 702. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

¹⁸⁴Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Written Communication from the Director of the COF, August 28, 2003. Page 664. Appendix 8 to the initial petition.

¹⁸⁵Appendix 1. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Social worker's report, September 3, 2003. Page 666. Appendix 8 to the initial petition.

¹⁸⁶Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court to María Inés Chinchilla Sandoval, September 11, 2003. Page 683. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

¹⁸⁷Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court, September 23, 2003. Page 692. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005. Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the Second Criminal Enforcement Court to the Chief of the Forensic Medicine Service. October 2, 2003. Page 704. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

¹⁸⁸Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Communication from the judiciary medical examiner to the Second Criminal Enforcement Court October 14, 2003. Page immediately after page 705. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

¹⁸⁹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Decision of the Second Criminal Enforcement Court of October 16, 2003. Page immediately before 706. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

be given insulin,” and that she “would send for the medication.” The nurse said that on that day “she only allowed the director to enter her room” and that she gave her the “syringe with insulin” from outside “so that she would be given the medication.”¹⁹⁰

58. On November 28, 2003, Ms. Chinchilla requested authorization to go to a medical appointment on December 12.¹⁹¹ On December 1, the judge ruled that the inmate should receive the medical treatment for her diabetes at the prison.¹⁹²

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59. On January 8, 2004, the Judge granted permission for Ms. Chinchilla to go for an appointment on January 12, 2004.¹⁹³ On January 29, 2004, Ms. Chinchilla requested authorization from the Judge to go to the Park Center Welfare Unit (*Unidad Asistencial Centro del Parque*) in San Juan Sacatepequez where an orthopedic clinic would be held for people with limited resources. It was explained that the request was made because “she had had x-rays of her hip and femur and the bones had not knitted because of her illness and they said that it would be necessary to use a prosthetic device that cost 13,000 quetzals.”¹⁹⁴

60. On February 6, 2004, the Judge sent a communication to the President of the Criminal Division of the Supreme Court of Justice with reference to “his verbal request regarding the convict Chinchilla.” He reported that “approval had been given for the permission requested for visits to the hospital, following a report from the medical examiner” and that Ms. Chinchilla could be treated at the prison clinic.¹⁹⁵

61. On February 12, 2004, the Public Defender Institute submitted a brief to the Judge, requesting the replacement of Ms. Zoila América Ordóñez de Samayoa, who had been in charge of Ms. Chinchilla’s defense.¹⁹⁶ In that communication, Ms. Chinchilla requested her transfer to San Juan de Dios General Hospital. “I have given up hope of recovering and the condition in which I find myself is torture.”¹⁹⁷ On February 13, 2004, the Judge turned down the request, saying that “the name of the LAWYER SOILA

¹⁹⁰Appendix 6. Female Orientation Center. Communication from the duty nurse to the medical services coordinator. October 9, 2003. Appendix 6 to the State’s brief of July 13, 2010.

¹⁹¹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Director of the COF to the Second Criminal Enforcement Court, November 28, 2003. Page 707. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

¹⁹²Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of December 1, 2003. Page 708. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

¹⁹³Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Director of the COF, January 8, 2004. Page 711. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

¹⁹⁴Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication of the Director of the COF to the Second Criminal Enforcement Court, January 29, 2004. Page 698. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

¹⁹⁵Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Second Criminal Enforcement Court to the Criminal Division of the Supreme Court of Justice, February 6, 2004. Page 718. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

¹⁹⁶Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Departmental Coordinator of the Public Criminal Defender Institute to the Second Criminal Enforcement Court. February 12, 2004. Page 719. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

¹⁹⁷Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Public Criminal Defender Institute. Ref. Final Decision No. 429-96 Of. 7º. Communication from Ms. María Inés Chinchilla Sandoval, February 12, 2004. Page 721. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

AMERICA ORDOÑEZ GONZALEZ DE SAMAYOA does not appear” in the report, and therefore it is not possible to replace her as requested.¹⁹⁸

62. On February 26, 2004, Ms. Chinchilla wrote a letter to the Judge requesting that “Edgardo Enríquez Cabrera of the Public Criminal Defender Institute be appointed as her defense counsel, replacing the private defender that she had had previously.”¹⁹⁹ On March 2, 2004 the Judge requested that a new defender be appointed for Ms. Chinchilla.²⁰⁰

63. On February 27, 2004, the Director of the COF informed the Judge that Ms. Chinchilla had an authorized medical appointment but had refused to attend “because the Court had arranged a patrol car to take her.”²⁰¹ One of the inmates at the COF said that “sometimes Mrs. María Inés did not want to go to the hospital because they usually took her in a pickup and because of the wheelchair it was difficult to get her in the pickup, and sometimes I think that she did not want to go because of her depression.”²⁰²

64. Ms. Chinchilla was taken to the HSJD in an emergency and stayed there from March 1²⁰³ to March 3.²⁰⁴ The Director of the COF reported that she was taken on March 20 to Roosevelt Hospital as an emergency and that because of “the seriousness of her condition she was admitted.”²⁰⁵

65. On April 7, 2004, the duty nurse at the COF reported that the Medical Services Coordinator and the Comprehensive Healthcare Coordinator ordered that Ms. Chinchilla be moved to the “Infirmery (*Hospitalito*) where a better watch could be kept over her and she could be administered her medications at the times ordered by the doctors for that purpose.” However, Ms. Chinchilla said “that she [did] not want to go up to the Infirmery” and that she would be better off in her block with her fellow inmates.²⁰⁶ On April 9, 2004, the duty nurse at the COF reported the following regarding Ms. Chinchilla's particular needs:

¹⁹⁸Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of February 13, 2004. Page 729. Appendix 8 to the initial petition.

¹⁹⁹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, February 26, 2004. Page 733. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

²⁰⁰Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 2, 2004. Page 734. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

²⁰¹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Director of the COF, February 27, 2004. Page 732. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

²⁰²Appendix 7 Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives' brief of April 16, 2006.

²⁰³Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Director of the COF, March 3, 2004. Page 735. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

²⁰⁴Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Communication from the Director of the COF, March 4, 2004. Page 736. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

²⁰⁵Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Decision of the Second Criminal Enforcement Court of March 22, 2004. Page 742. Appendix to the petitioner's communication of May 26, 2005 received on May 31, 2005.

²⁰⁶Appendix 8. Female Orientation Center. Communication from the duty nurse to the Director / Deputy Director of the COF. April 7, 2004. Appendix 7 to the State's brief of July 13, 2010.

The inmate needs someone very special to be with her 24 hours a day and attend to her personally because if she is taken up to the Infirmary she would have to be helped with all her personal and hygiene needs and the care that a special patient requires, as well as with administering her medication and everything else that she needs, in addition to giving her NPH insulin injections in the mornings and afternoons, as the doctor orders. She also needs a special diet and help with her aggressive mood swings and behavior, as well as special care when her condition becomes critical because of generalized edema and difficulty breathing. It is impossible for us to provide the special care that this inmate needs because we have to tend to the other 146 inmates. ... The inmate needs to be in stable surroundings where she can receive the emotional support and physical therapy that they prescribe for her. Also ... she refuses to sign any paper with the care and orders given to us in writing ... in order to attest to the fact that she is receiving care and we are carrying out our written instructions.²⁰⁷

66. On April 17, 2004, the COF doctor informed the Medical Services Coordinator that “the patient in question presents epigastric hardness that impedes her movement, especially deflexion movements (crouching) and flexion movements (putting her head back). Therefore, I believe it necessary to do an ultrasound on her to screen for any significant pathology.” He said that he had requested “his intervention to enable the suggested procedure to be performed on the inmate.”²⁰⁸

3. Incidental motions for early release filed by Ms. Chinchilla

67. During the time that she was deprived of liberty, Ms. Chinchilla filed a number of differently denominated incidental motions: the first, “early release under special remission of sentences”; the second, “early release due to terminal illness”; the third, “special release due to terminal illness”; and the fourth, “early release under early remission.”

68. The above incidental motions were presented under Articles 492 of the Code of Criminal Procedure,²⁰⁹ 139 of the Judiciary Law,²¹⁰ 30 of Decree 56-69 (Remission of Sentences Law).²¹¹ The Judge also found that Article 7(c) of the aforementioned decree was applicable for ruling on the last incidental motion.²¹² The following is an account of the incidental motions presented by Ms. Chinchilla.

²⁰⁷ Appendix 9. Judiciary Female Orientation Center (COF). Fraijanes. Written communication from the COF duty nurse to the Director of Comprehensive Healthcare. April 9, 2004. Page 9. Appendix 8 to the State’s brief of July 13, 2010.

²⁰⁸ Appendix 10. Judiciary Female Orientation Center (COF). Document No. 120/CM Dr. RJQ Communication of the doctor of the Center to the Coordinator of Medial Services of April 17, 1984. Appendix to the petitioner’s communication of August 9, 2006 received on August 14, 2006.

²⁰⁹ “While serving their sentence, the convicted person shall be entitled to exercise all the rights and powers that the criminal and correctional laws, and their implementing regulations, grant them, and may present to the enforcement judge such observations as they deem appropriate.” Available at: http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-cpp.pdf

²¹⁰ “If the incidental motion concerns matters of law, once the time limit for the hearing passes, the judge shall order the hearing of such evidence as the parties may offer upon presenting the motion or upon holding the hearing, which shall be examined in not more than two hearings held within the following 10 business days.” Available at: https://www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-oj.doc

²¹¹ “[a]ll convicted inmates may benefit from this law, provided that they meet the requirements set down therein, and in order to begin redeeming the sentence it is necessary for the Central Prison's Board or Regional Prisons Boards to grant approval following classification in accordance with the law.”

²¹² In addition to the powers vested in him by the Constitution, other laws, and regulations, the President of the Judiciary shall have authority to:[...]

c) Agree to and set special remissions for acts of altruism, heroism, or any other humanitarian act, at the recommendation of the Central Prisons Boards, setting out the reasons justifying such remissions. Article 7 of the Decree 56-69 (Remission of Sentences Law), of October 15, 1969.

3.1 First Incidental Motion: “for early release under special remission of sentences.”

69. On November 22, 2002, Mrs. Chinchilla filed a motion for early release.²¹³ The attached certification of the HSJD states that “[...]the patient suffers from a terminal occlusive arteriosclerotic illness of which there is currently clinical evidence in the lower left limb, which will very likely (80% probability) end up being amputated.”²¹⁴ On November 27, 2002, the Judge began to process the incidental motion.²¹⁵

70. At the judge's request, the medical examiner offered an opinion, saying that Ms. Chinchilla presented “[...] the symptoms of a terminal illness with problems in her lower limbs.”²¹⁶ For his part, the duty doctor at the COF said that she was a patient who was “depressive, rebellious, and in poor overall health,” that her “physical condition was in marked decline as a result of her diabetes mellitus, and her mobility was limited because of the amputation of the right lower limb.”²¹⁷ For its part, the report of the Public Prosecution Service Medical Examiner stated that she was in a “stable and controlled condition” and “she can continue her current treatment” at the COF, “provided that she is supplied with her medications and is regularly evaluated by the institution’s doctor and the external consultant.”²¹⁸

71. Enclosed with the file was the opinion of the COF multidisciplinary team,²¹⁹ which stated, inter alia, that Ms. Chinchilla “gets around in a wheelchair” and since “this facility lacks the necessary resources for her care ... she should be granted early release.”²²⁰ Included was the report of the director of the COF, which stated that Ms. Chinchilla’s conduct was rated as “good,”²²¹ along with a socioeconomic study that suggested “that she might be granted parole” and that the COF “does not have specialized staff to provide her with better care.”²²²

²¹³Appendix 2. Incidental Motions for Early Release. Decision No. 429-96 Of. 7. Sentence Remission Case. Public Criminal Defender Institute Motion for early release under special remission July 9, 2003 Pages 1-3.

²¹⁴Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. San Juan de Dios General Hospital Medical Records Department. Certification 2070-02. November 16, 2002. Page 3.

²¹⁵Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of November 27, 2004. Page 4.

²¹⁶Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Forensic Medicine Service. Report 30-2003. Medical examiner’s report of January 16, 2003. Page 7.

²¹⁷Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Female Orientation Center. Official letter 005-2003. Duty doctor’s report, January 25, 2003. Page 17.

²¹⁸Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Public Prosecution Service. DFM 023. Official letter 138-03 “c”. Report of the Public Prosecution Service Medical Examiner. January 30, 2003. Page 38.

²¹⁹The team comprised the Deputy Director of the COF, the legal department, the labor department, the psychology department, the social worker, and the Director of the COF.

²²⁰Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Female Orientation Center. Written communication from the multidisciplinary team. January 21, 2003. Page 9.

²²¹Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Female Orientation Center. Conduct report. January 21, 2003. Page 10.

²²²Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Female Orientation Center. Official letter 005-2003. Social worker’s report, January 27, 2003. Pages 18-19.

72. The Judge scheduled an evidence hearing for February 12, 2002.²²³ The hearing was suspended as the judiciary medical examiner was not present.²²⁴ The judge scheduled a new hearing to be held on February 14 of the same year.²²⁵

73. The evidence hearing was held on February 14, 2003.²²⁶

74. At the hearing, the HSJD doctor and the doctors from the COF and the Public Prosecution Service were in agreement as to the fact that Ms. Chinchilla's illness was not terminal.²²⁷ For his part, the judiciary doctor said, "The diabetic symptoms that Ms. Chinchilla Sandoval presents are those of a terminal illness," where terminal illness is defined as one which "at a particular point could ultimately result in death."

75. The doctors agreed that the illness could be treated in an ambulatory manner; however, (i) the doctor from San Juan de Dios General Hospital added that he did "not know if [her treatment] could [be provided at the COF] or not, since [he was] not familiar with the Center and the medical care offered there"; (ii) the judiciary doctor mentioned that "the Center has the capacity to deliver the treatment, provided that it is [allowed] entry or it is provided to her and also as long as there are no complications of any kind" but he "[did] not know who provides medication to Ms. Chinchilla as he [was] not a staff doctor at the Female Orientation Center"; (iii) the COF doctor said that "she has her own treatment as the correctional system does not provide it; if the family continues to bring her treatment, she has psychological support and rehabilitation therapy, she could carry on being treated at the Center; that is, she could receive at home the same treatment that she receives at the Center"; and (iv) the medical examiner from the Public Prosecution Service stated that at some point the patient could suffer a decompensation, "which would require hospital treatment" and that "her life could be in danger if she does not receive the right medical treatment or if she stops being properly medicated."

76. The COF doctor added that "the inmate ... does not allow the nursing staff to clean her wounds, only her cellmates." He specified that "normally the patient medicates herself" and that "to die, [Ms. Chinchilla] would have to have ketoacidosis and blood sugar levels above 600; someone whose blood sugar reaches 500 or 600 could still be taken to a hospital emergency room in time." Finally, he said that "the Center has a vehicle for transport, but before doing so a blood sugar level test is done and if it is high, permission to leave is granted."

²²³Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of February 4, 2003. Page 35.

²²⁴Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of February 12, 2003. Page 41.

²²⁵Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of February 12, 2003. Page 42.

²²⁶Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Judiciary Record of Evidence Hearing. February 14, 2003. Pages 44-50.

²²⁷The doctor from San Juan de Dios General Hospital said, "diabetes cannot be considered a terminal illness, but it can be incurable." The doctor from the COF said, "If [Ms. Chinchilla] receives the right treatment [her disease cannot be considered terminal]." Finally, the medical examiner from the Public Prosecution Service said "the illnesses from which Ms. Chinchilla Sandoval suffers, diabetes mellitus and arterial hypertension, are not considered terminal; however, the arteriosclerotic disease in the left lower limb is at an advanced stage."

77. On February 14, 2003, the Judge denied the motion on the enforcement of the sentence, stating that “although the inmate named suffers from diabetes mellitus, at this time the illness cannot be considered terminal ... and she may receive ambulatory treatment at the COF.”²²⁸

78. On February 27, 2003, Ms. Chinchilla filed an “appeal and statement of grievances” with the same court. She said that “the prison has inadequate infrastructure to allow [her] to communicate freely with [her] relatives and others; that the Center does not have the infrastructure to keep [her] medication, which needs refrigeration, such as insulin, which is indispensable for [her] to stay alive, and without refrigeration it goes bad.” She also said that she did not “have access to other medicine.” She also said that she “[did] not know if the cancer detected [in her vagina was] benign or malignant.”²²⁹

79. On March 3, 2003, the Judge of the Second Criminal Enforcement Court concluded that the challenge was out of order because it was not filed within the three-day period prescribed by the law and, “in any case, the appellant should not have appealed to a court other than the one with jurisdiction under the law.”²³⁰

3.2 Second Incidental Motion: “early release due to terminal illness”

80. On May 5, 2003, Ms. Chinchilla filed a petition for early release “due to terminal illness.”²³¹ The motion stated that, among other diseases, she suffered from “occlusive arteriosclerosis of the lower limbs, a terminal illness that obstructs blood circulation,” that in a short period of time could cause “a brain embolism.”²³² Attached to the petition were medical certifications from the Chief of the Medical Records Department,²³³ COF conduct report,²³⁴ and a communication from the COF Multidisciplinary Team stating that “this center lacks the specialized staff and infrastructure to provide her with better health care” and “she should be granted early release.”²³⁵

²²⁸Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of February 14, 2003. Pages 51-52. Appendix 3 to the initial petition.

²²⁹Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Appeal brief and statement of grievances submitted by Ms. Maria Ines Chinchilla Sandoval through her attorney. February 27, 2003. Pages 57-59. Appendix 3 to the initial petition.

²³⁰Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of March 3, 2003. Page 61.

²³¹Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Special incidental motion for release due to terminal illness. May 5, 2003 Pages 2-3. Appendix 3 to the initial petition.

²³²Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Special incidental motion for release due to terminal illness. May 5, 2003 Pages 2-3. Appendix 3 to the initial petition.

²³³Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. San Juan de Dios General Hospital. Medical Certifications 1268-72, 878-01, 2076-02, and 1802-02 of November 6, 2002, May 25, 2001, November 18, 2002, October 7, 2002, respectively. Pages 4-8. Appendix 3 to the initial petition.

²³⁴Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Female Orientation Center. Conduct report. April 14, 2002. Page 9. Appendix 3 to the initial petition.

²³⁵Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Written communication from the COF Multidisciplinary Team. May 26, 2003. Page 16. Appendix 3 to the initial petition.

81. In a certification dated May 30, 2003, the judiciary medical examiner stated that Ms. Chinchilla “presents the symptoms of a terminal illness with problems in her lower limbs.”²³⁶ Certifications were enclosed from the HSJD²³⁷ and the Public Prosecution Service medical examiner. The latter stated that Ms. Chinchilla “could stay at the Center ... provided she takes her medication regularly” and receives care from the medical and paramedic staff.²³⁸

82. The judge scheduled a hearing for July 9, 2003,²³⁹ where he issued his decision on the incidental motion, declaring it without merit.²⁴⁰ It was mentioned that the attending physician did not appear at the hearing and the Public Prosecution Service medical examiner offered his excuses for being unable to attend. However, “it was not established if the petitioner's clinical condition is terminal or not” and “the failure of the [doctors] to appear is an obstacle to a favorable ruling.”²⁴¹

3.3 Third incidental motion for special release due to terminal illness.

83. On August 6, 2003, Ms. Chinchilla filed an incidental motion for special release due to terminal illness.²⁴² A certification was included from the judiciary medical examiner, according to which Ms. Chinchilla “presents the symptoms of a terminal illness with problems in her lower limbs.”²⁴³ An opinion from the COF Multidisciplinary Team was attached, according to which “this center lacks the specialized staff and infrastructure to provide her with better health care” and “[she should be] granted a special release.”²⁴⁴ A certification was enclosed from the Chief of Unit One, Women’s Surgery²⁴⁵ and from the Public Prosecution

²³⁶Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Written communication from the Judiciary Medical Examiner. May 30, 2003. Page 18. Appendix 3 to the initial petition.

²³⁷Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. San Juan de Dios General Hospital. Written communication from the Chief of Unit One. Women’s Surgery. June 2, 2003. Pages 19-20. Appendix 3 to the initial petition.

²³⁸Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Written communication from the Public Prosecution Service Medical Examiner, June 6, 2003. Pages 24-25. Appendix 3 to the initial petition.

²³⁹Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Decision of the Second Criminal Enforcement Court of June 26, 2003. Page 36.

²⁴⁰Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Decision of the Second Criminal Enforcement Court of July 9, 2003. Pages 50-51.

²⁴¹Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 86-2003. Decision of the Second Criminal Enforcement Court of July 9, 2003. Pages 50-51.

²⁴²Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Brief presenting incidental motion for special release due to terminal illness. Page 1 *et seq.* Appendix 3 to the initial petition.

²⁴³Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Judiciary Forensic Medicine Service. Communication from the medical examiner, May 30, 2003. Double page 2 and 18. Appendix to the initial petition.

²⁴⁴Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Written communication from the Multidisciplinary Team of the Female Orientation Center, May 26, 2003. Page 16. Appendix 3 to the initial petition.

²⁴⁵Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. San Juan de Dios General Hospital. Written communication from the Chief of Unit One, Women’s Surgery, June 2, 2003. Marked as Page 4. Appendix 3 to the initial petition.

Service medical doctor.²⁴⁶ The judge scheduled a hearing for August 27, 2003,²⁴⁷ which was not held “because of the excuses submitted by fax by the Public Prosecution Service medical examiner.”²⁴⁸

84. The evidence hearing was held on August 29, 2003.²⁴⁹

85. The first to be questioned was the judiciary medical examiner, who said that he “[had] noted a marked deterioration in [the] health [of Ms. Chinchilla...], since she [suffers from] [...] DIABETES MELLITUS, and [...] all the complications associated with this disease have presented themselves, [they being] arterial hypertension, [...] occlusive arteriosclerotic disease of the left lower limb, [...] diabetic retinopathy, in addition to which she has already had the right lower limb amputated [...]. Furthermore, she has cancer of the cervix that is not connected with the diabetes.” The doctor indicated that “[her] treatment is with insulin taken via intramuscular injection” and he “[did] not know if it was administered to her at the clinic.” As to whether she had a terminal illness, he said, “No, but in light of the complications associated with the illness ... her life is in danger ... The most serious one is a diabetic coma.” He said that “if she [did] not have her medicine, the complications would be more accentuated.”

86. The attending physician at the HSJD said, “at this moment, just by looking at her, [Ms. Chinchilla is not at risk of dying].” He said that he was “not familiar with the conditions where she live[d] and so [he was] unable to say [if she could receive ambulatory treatment].” He said that he did “not know if she injected herself with insulin or if someone else did.” The doctor answered “yes” when asked if the possibility existed of instantaneous death and “probably” to the question as to whether or not the interval of 15 days between her medical visits could result in her death if she did not receive care. With regard to the “cervical cancer” he said that “[he did] not know.” Finally, he said that internal occlusive arteriosclerosis is a terminal illness.

87. The medical examiner from the Public Prosecution Service replied “no” when asked if Ms. Chinchilla had a terminal disease. He said that he was “unable to say [if she received treatment] because to do so [he] would need information on what resources the institution has.” He mentioned that “the care that the patient needs is as follows[:] regular monitoring of blood sugar levels, for someone to keep track of when she takes her medication, for someone to move her around and, depending on the complications that she might suffer, to verify if the Center has equipment or access to examinations by a consultant.” He added that “at the time that she was examined her condition was under control” and that he had “not stated that the patient ha[d] what [was] needed for her illnesses to be properly controlled.” He said that terminal occlusive arteriosclerosis was not a terminal disease but “a complication from diabetes in this case that has not been adequately controlled.” He said that gangrene “is an infectious pathology that can kill a patient if the right

²⁴⁶ The latter indicated that the patient “suffers from systematic illnesses that have no cure but can be controlled through regularly administered medications”; those systematic illnesses “are going to cause a gradual deterioration in the patient and therefore, unless said patient meets with an accidental death she will die of a complication from one of these illnesses.” It is impossible to predict when that will happen since “she is controlled.” It also stated that “the patient could stay at the Center provided she takes her medication regularly and receives conscientious care from the medical and paramedic staff assigned to this institution” Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Written communication from the Public Prosecution Service Medical Examiner, June 6, 2003. Marked as Page 4. Appendix 3 to the initial petition.

²⁴⁷ Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. 7^o Decision of the Second Criminal Enforcement Court of August 18, 2003. Page 26. Appendix 3 to the initial petition.

²⁴⁸ Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Judiciary Written communication from the secretary of the the Second Criminal Enforcement Court, August 27, 2003. Page 32. Appendix 3 to the initial petition.

²⁴⁹ Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Judiciary Record of Evidence Hearing August 29, 2003. Pages 47-54. Appendix 3 to the initial petition.

treatment is not given.” As to the cervical cancer, he said that on the day that she went to the hospital the clinical history was handed over but “it contained no record of that pathology.”

88. The COF doctor said that “[Ms. Chinchilla] buys her own insulin” and “presumably [it was administered] by the nurses.” He said that he examined Ms. Chinchilla whenever she required and that periodicity “can be constant.” As to if the COF had the necessary equipment to provide treatment, he replied, “No,” and that it would be necessary “to have special equipment for ketoacidosis, in order to revive her from a diabetic coma that she could go into at some point.” He said that her diabetes was not controlled and that “it is subject to external factors at any time.” He said that at that moment Ms. Chinchilla's life was not in danger; however, when asked if she was in danger of dying from her disease if she was imprisoned, he said that “it [was] possible, given all the complications that she has” and it was “impossible to predict when.” When asked if the lack of adequate means to treat a diabetic coma or a complication could be fatal, he answered, “Yes.” He said that Ms. Chinchilla needed 40 units of insulin in the morning and 15 in the afternoon and that internal occlusive arteriosclerosis “[was] indeed [a terminal disease]. He added that he was aware of the cervical cancer but “NOT ... OF ITS DEGREE” and that he could not say definitively “IF IT [WAS] NOT TERMINAL.” Regarding the hypertension, he said that the Center “only [had] CAPTROPIL” and that “WHEN IT WAS IN STOCK, YES [she was given it at the COF].”

89. Next, Ms. Chinchilla spoke and said,

“Amputated as I am I have to prepare my own food because I cannot eat what the center offers me; I cannot eat sugar, fat, or condiments; sometimes I have some and sometimes I do not; sometimes I can rely on my family and sometimes not. ... How can I contact my family if the telephone to which I could have access is too high for me to reach and the transportation is so limited that I don't have anyone to do it for me? I don't have warders or a friend to help me do it and as regards my health, as has been made clear, the center does not have the necessary equipment, nor does it provide me with medicine, not even insulin, which I have to obtain by my own means, ... I've already lost half the vision in my right eye and the left, so I appeal to your humanitarian kindness. ... My health is deteriorating daily and I ask you to take into account that because of my advanced age I am not going to be able to recover.”²⁵⁰

90. On August 29, 2003, the Judge denied the incidental motion. The Judge held that “these days, such diseases do not constitute a terminal illness”. The judge said that Ms. Chinchilla “can receive adequate treatment at the prison ... and not necessarily outside it.”²⁵¹

91. Ms. Chinchilla appeal against the decision on September 11, 2003.²⁵² On September 25, 2003, the Fourth Division of the Court of Appeals refused the appeal because “all three [doctors] were categorical in saying that it was impossible to determine when death could occur,” and therefore “for the time being she [was] not in imminent danger.”²⁵³

²⁵⁰Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Judiciary Record of Evidence Hearing August 29, 2003. Pages 47-54. Appendix 3 to the initial petition.

²⁵¹Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Judiciary Decision of the Second Criminal Enforcement Court of August 29, 2003. Pages 55-56. Appendix 3 to the initial petition.

²⁵²Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Appeal presented on behalf of Ms. María Inés Chinchilla Sandoval. September 11, 2003. Pages 60-63. Appendix 3 to the initial petition.

²⁵³Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case No. 169-03. Judiciary Appeal No. 243-2003. Of. 2. Ruling of the Court of Appeals, Fourth Division. September 25, 2003. Pages 67-68. Appendix 3 to the initial petition.

3.4 Fourth incidental motion “for extraordinary early release”

92. On March 3, 2004, Ms. Chinchilla filed a motion for her “extraordinary early release.”²⁵⁴ Enclosed was a certification from the Chief of Unit One, Women's Surgery, San Juan de Dios Hospital stating that she suffered from “terminal occlusive arteriosclerotic disease” with an 80 percent probability that her left leg and would eventually be amputated.²⁵⁵

93. On March 17, 2004, the Deputy Director of the COF sent the Judge a “medical photocopy issued by the Chief of Unit One, Women's Surgery, San Juan de Dios Hospital”²⁵⁶ and an “Opinion of the Multidisciplinary Team,” according to which, Ms. Chinchilla “should be granted a special release because she is unable to fend for herself and the Center does not have specialized staff to provide her a personal service.”²⁵⁷

94. At the request of the Judge, on March 15, 2004, the Public Prosecution Service conducted a medical examination of Ms. Chinchilla and said that “she presents ... pain in her left hip when she moves, as well as having a tumor.” He said, “She is not taking her medication”; however, “she does not have ... any terminal illness.”²⁵⁸ For his part, the judiciary doctor said that Ms. Chinchilla was an “inmate who merited medical treatment to address the symptoms of her diabetes and sequelae (terminal illness) at the prison clinic and/or San Juan de Dios General Hospital.”²⁵⁹

95. On March 30, 2004, Ms. Chinchilla presented various exhibits, including a psychological report stating that “she presents depression” and “her mental and physical health ... have deteriorated markedly.”²⁶⁰ A report from the Chief of the HSJD Medical Records Department was also added,²⁶¹ as was a written communication offering a guarantor to cover her medicines and ensure that she went to all her appointments in future.²⁶² Also included was a certification from medical Dr. María de los Ángeles López, who said that Ms. Chinchilla was in a “poor general state of health and nutrition,” entertained “thoughts of suicide (desires to die)” and had been diagnosed with “decompensated arterial hypertension, decompensated type II diabetes mellitus, chronic adult malnutrition, severe depression with a risk of suicide.”²⁶³ On April 2,

²⁵⁴Appendix 2. Incidental Motions for Early Release. Brief of Ms. María Inés Chinchilla Sandoval to the Second Criminal Enforcement Court, March 3, 2004, Page 1 et seq. Appendix 3 to the initial petition.

²⁵⁵Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. Certification No. 2076/02 of November 10, 2002, Page 7. Appendix 3 to the initial petition.

²⁵⁶Appendix 2. Incidental Motions for Early Release. Communication from the Deputy Director of the COF, March 17, 2004. Official letter No. 019-2004, Page 5. Appendix 3 to the initial petition.

²⁵⁷Appendix 2. Incidental Motions for Early Release. Communication from the Multidisciplinary Team, March 17, 2004, Page 6. Appendix 3 to the initial petition.

²⁵⁸Appendix 2. Incidental Motions for Early Release. Communication from the Public Prosecution Service, March 24, 2004, DMF-0-652-2004 RERG/zqp, Page 6. Appendix 3 to the initial petition.

²⁵⁹Appendix 2. Incidental Motions for Early Release. Communication from the medical examiner of March 24, 2004, Page 12. Appendix 3 to the initial petition.

²⁶⁰Appendix 2. Incidental Motions for Early Release. Women's Unit. Public Defenders' Institute Psychological report. February 17, 2004, Pages 18 to 20 Appendix 3 to the initial petition.

²⁶¹Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Medical Records Department. February 5, 2004, Page 22. Appendix 3 to the initial petition.

²⁶²Appendix 2. Incidental Motions for Early Release. Written communication from Ms. Ana María Sandoval de Valdes, March 18, 2004. Page 24. Appendix 3 to the initial petition.

²⁶³Appendix 2. Incidental Motions for Early Release. Written communication from Dr. María de los Ángeles López. Physician. Medical license No 6,070. March 18, 2004, Page 35. Appendix 3 to the initial petition.

2004, the HSJD Chief of Surgery reported with regard to the request for a medical examiner's report on Ms. Chinchilla that "there is no medical examiner to prepare the report."²⁶⁴

96. On April 14, 2004, a socioeconomic report was submitted stating that Ms. Chinchilla had been suffering from diabetes for approximately 14 years and that "the disease had been kept under control at the Guatemalan Social Security Institute until the time of the legal proceedings in which is currently involved." The report said that Ms. Chinchilla gets about in "a wheelchair, which will cause problems because of the place's confined spaces" and "the patient's state of mind and depression are of grave concern."²⁶⁵

97. The hearing was set for April 21, 2004.²⁶⁶ On April 16, 2004, Ms. Chinchilla requested that Doctor Luisa Amelia Morán García, the COF duty doctor, be summoned to give evidence at the hearing.²⁶⁷ The judge confirmed receipt of the brief on April 19, 2004 and instructed that a summons be sent to the doctor in question to submit a medical report.²⁶⁸

98. The evidence hearing was held on April 21, 2004.²⁶⁹

99. The first to be questioned was the judiciary medical examiner, who said that Ms. Chinchilla had told him "that she does not receive treatment." However, he said, "No," when asked if Ms. Chinchilla was in danger of dying in the short term. He said that "the endocrinologist is the person who would have to decide the type of treatment in terms of quantities or doses, and the people to administer it would be the prison nursing staff," but he did "not know whether or not the Center has the necessary medicine; prisons do not have teams of specialists." He said that "the patient will enter into a state of diabetic ketoacidosis and in a subsequent coma she would have a chance of getting help but the time taken to transport her to a facility that provides specialized care would be critical." He specified that "there is nothing with respect to cancer, only a fear or a cervical lesion and it is Ms. Chinchilla who claims to have cancer of the cervix." Finally, when asked what life prospects could Ms. Chinchilla have as a prisoner if Fraijanes Orientation Center did not have an endocrinologist, he answered that "her quality of life will be poor."²⁷⁰

100. The Public Prosecution Service medical examiner said that Ms. Chinchilla's ailments "are not considered a terminal illness" and "she could be prescribed ambulatory medical treatment." He said that "if the patient is not treated with drugs she tends to suffer complications that at some point could be life-threatening" and that if she were to have a ketoacidosis crisis "she must receive medical treatment as quickly as possible." He said that he was "not familiar with the facilities [of the COF] as regards health care and professional staff ... if a complication were to arise" and that he was "not familiar with the specific medical care that the patient ... from the prison ... [and] the written records on the care that the patient has received or

²⁶⁴Appendix 2. Incidental Motions for Early Release. San Juan de Dios General Hospital. Written communication from Dr. Sergio Ralon. Women's Surgery, Unit One. April 2, 2004, Page 39. Appendix 3 to the initial petition.

²⁶⁵Appendix 2. Incidental Motions for Early Release. Public Criminal Defender Institute Social Services Unit Socioeconomic report April 6, 2004, Pages 41-47. Appendix 3 to the initial petition.

²⁶⁶Appendix 2. Incidental Motions for Early Release. Decision of the Second Criminal Enforcement Court of April 14, 2004, Page 54. Appendix 3 to the initial petition.

²⁶⁷Appendix 2. Incidental Motions for Early Release. Public Defenders' Institute Brief submitted on behalf of Ms. María Inés Chinchilla Sandoval, April 16, 2004, Page 54. Appendix 3 to the initial petition.

²⁶⁸Appendix 2. Incidental Motions for Early Release. Decision of the Second Criminal Enforcement Court of April 19, 2004, Page 55. Appendix 3 to the initial petition.

²⁶⁹Appendix 2. Incidental Motions for Early Release. Judiciary Final Decision No. 429-96; Of. 7, Record of Evidence Hearing. April 21, 2004. Located from the page marked 70 to the page before the one marked 76. Appendix 3 to the initial petition.

²⁷⁰Appendix 2. Incidental Motions for Early Release. Judiciary Final Decision No. 429-96; Of. 7, Record of Evidence Hearing. April 21, 2004. Located from the page marked 70 to the page before the one marked 76. Appendix 3 to the initial petition.

is receiving at the prison.”²⁷¹ He mentioned that “[t]he clinical file from San Juan de Dios Hospital describes a tumor in the vagina in March 1997, but there are no other medical notes on the progress of the disease.”

101. When asked if Ms. Chinchilla had been brought to the hospital in adequate time, the attending physician from the HSJD said, “So far, yes.” As to whether or not Ms. Chinchilla referred [Tr: sic] the medicine that was prescribed for her, he said, “No.” When asked who administered the insulin, he said, “I do not know,” and stated that “at this moment and in the short-term it is difficult [to know if her life is in danger]; however, without proper treatment “she could suffer a diabetic complication.” He said, “Ms. Chinchilla has an illness that is not properly treated and controlled,” and “if she does not get insulin ... he could go into a hyperosmolar or ketoacidotic coma.” He said that he had “no medical knowledge ... that ... she has cervical cancer. I He said that given the illnesses that Ms. Chinchilla had, she needed “glycemia control, pre- and post- [illegible], ophthalmological monitoring, nephrological monitoring, control of irrigation in lower limb, and cardiovascular checkups.” When asked if Ms. Chinchilla was consistently receiving such treatment daily in prison, he said, “Not to my knowledge.”

102. On April 6, 2004, the COF duty doctor submitted a medical report stating that 51-year-old Ms. Chinchilla had, among other illnesses: (i) decompensated type II diabetes mellitus; (ii) arterial hypertension; (iii) blindness caused by diabetes; (iv) anasarca; (v) kidney failure screening; (vi) chronic adult malnutrition; and (vii) aggressive behavior. The report indicated that she was currently on “10 units of insulin TX in the A.M. and P.M. and Enalapril every 24 hrs”²⁷² On April 21, 2004, the Judge asked that the Central Prisons Board be requested for an early release report.²⁷³

103. On April 22, 2004, Ms. Chinchilla presented the judge with “illustrative background information on the motion for early release under special remission of sentences,” comprising a report from the Director General of the Correctional System and conditions at the COF, as well as the expert opinions and reports contained in the record.²⁷⁴

104. The Correctional System Medical Services Coordinator reported, “The prison has medicine for dealing with infectious problems as well as oral medications for treating diabetes, osteomyelitis, and arterial hypertension. However, inmate Chinchilla Sandoval requires subcutaneous insulin for her diabetic problem that is causing all the metabolic ailments from which she suffers, including chronic kidney failure, for which the prison lacks the necessary equipment to provide care.” The report said, “The Center does not have specialized hospital medical equipment to deal with crises of that magnitude. ... It does (sic) have adequate facilities for the internment of the inmate which are managed by the prison's hospital area” and that “it does not have adequate orthopedic equipment.” Finally, the report said that “Ms. Chinchilla Sandoval's condition has forced us to refer her regularly to hospitals because at given times she requires specialized care.”²⁷⁵

²⁷¹Appendix 2. Incidental Motions for Early Release. Judiciary Final Decision No. 429-96; Of. 7, Record of Evidence Hearing. April 21, 2004. Located from the page marked 70 to the page before the one marked 76. Appendix 3 to the initial petition.

²⁷²Appendix 2. Incidental Motions for Early Release. Communication from Amelia Moran, COF duty doctor, April 6, 2004. Page 78. Appendix 3 to the initial petition.

²⁷³Appendix 2. Incidental Motions for Early Release. Decision of the Second Criminal Enforcement Court of April 20, 2004, Page 76. Appendix 3 to the initial petition.

²⁷⁴Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Public Criminal Defender Institute Brief submitted on behalf of Ms. Maria Ines Chinchilla Sandoval by her attorney. Page 80. Appendix 3 to the initial petition.

²⁷⁵Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. General Directorate of the Correctional System. Office of the Medical Services Coordinator. Official Letter No. 0546-2004- DR-RECH. April 2, 2004. Page 82. Appendix 3 to the initial petition.

105. On April 28, 2004, psychological and labor reports were forwarded from Santa Teresa Women's Prison.²⁷⁶ On April 28, 2004, the COF doctor advised that she would be unable to attend the hearing on April 29 and forwarded a medical certificate.²⁷⁷

106. The evidence hearing was held on April 29, 2004.²⁷⁸ The Public Prosecution Service announced, inter alia, that "it was not possible to hear the testimony of Dr. LUISA AMELIA MORAN, which was of supreme importance for establishing at the hearing everything connected with the inmate's illness and conditions at the Female Orientation Center (COF)."²⁷⁹

107. On April 29, 2004, the Judge denied the incidental motion. The Judge ruled that "the convict in question [must] be in prison even though she has a disease that makes it even more complicated for her to stay and serve the sentence imposed." He explained with regard to the propriety of the incidental motion that

In order to grant the benefit sought it is not a requirement for the convict to be suffering a particular illness; on the contrary, as Article 7(c) of the Sentence Remission Law provides, it is essential for the convict to have performed acts of altruism, heroism, or any other humanitarian act, something that has not been accredited at any time. In addition, the same law provides that such benefits must be decided upon and set on the recommendation of the Central Prisons Board, with the reasons stated for justifying such remissions, which has not occurred in this incidental motion, despite the fact that an opinion was requested from it in that respect, which also constitutes an obstacle to granting the benefit sought. Coupled with the foregoing, Judge Aquo concluded that the benefit requested was not designed to enable a convicted person to die with dignity, but to encourage or reward a convicted person who has performed a solemn act of solidarity and compassion for another individual or individuals who have suffered misfortune."²⁸⁰

108. Also on April 29, 2004, the Judge of the First Criminal Enforcement Court sent a communication to the Judge informing him that the Central Prisons Board had been disbanded since 2002 on account of the duplication of functions between the Judge of the First Criminal Enforcement Court and the President of the Board." In light of the foregoing, "it [was] not possible to pronounce on the motion filed for early release under remission of sentence."²⁸¹

²⁷⁶Appendix 2. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Female Orientation Center. Written communication from the Deputy Director of the COF and psychological and labor reports from Santa Teresa Women's Prison, Zone 18, April 28, 2004 Pages 91-93. Appendix 3 to the initial petition.

²⁷⁷Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Communication from Dr. Luisa Amelia Morán. April 28, 2004. Pages 96-97. Appendix 3 to the initial petition.

²⁷⁸Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Judiciary. Record of Evidence Hearing. April 29, 2004. Pages 99-103. Appendix 3 to the initial petition.

²⁷⁹Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Judiciary. Record of Evidence Hearing. April 29, 2004. Pages 99-103. Appendix 3 to the initial petition.

²⁸⁰Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of April 29, 2004. Pages 115-117. Appendix 3 to the initial petition.

²⁸¹Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Communication from the First Criminal Enforcement Court, April 29, 2004. Page 118.

109. On May 17, 2004, Mrs. Chinchilla's attorney filed an appeal on her behalf arguing that the interpretation of Article 7 of the Sentence Remission Law was "outmoded, simplistic, and obsolete" and that the Central Prisons Board had not convened. Finally, it said that the incidental motion should be interpreted in a manner consistent with international treaties on observance of human rights.²⁸² The Judge confirmed receipt of the appeal on May 18, 2004, and forwarded it to the Fourth Division of the Court of Appeals for a ruling.²⁸³ After being notified on May 25, 2004 of Ms. Chinchilla's death,²⁸⁴ on June 3, 2004, the Fourth Division of the Court Of Appeals rejected the appeal on the ground that the appellant had died.²⁸⁵

4. Ms. Chinchilla's death on May 25, 2004

110. Ms. Claudia Fedora Quintana Mendoza, who was an inmate at the COF, said that the day before she died Ms. Chinchilla had arranged to come round at about 10:00 a.m. "to eat with her." She said that Ms. Chinchilla "had a bedroom in the maternal wing." According to Ms. Quintana Mendoza, on May 25, 2004

"The girls say that at around 6:00 a.m. [Ms. Chinchilla] was sitting in her wheelchair at the entrance to the maternal wing, where she lived. She could not come down because there was a step, so she asked the girls to come and let me know but they did not, so she got out of the chair and another prisoner, a Colombian, found her and helped her back into her chair, but Doña Inés got out of it again and fell. By the time they came to tell me she had already fallen. We got her up and took her back to her room. She scraped her hands and her good leg."²⁸⁶

111. Osiris Angélica Romano, another COF inmate, said that Ms. Chinchilla's fall occurred at "around 8:15 in the morning."²⁸⁷ For her part, Ms. Quintana Mendoza said that "it happened at around 7:00 or 7:30 in the morning."²⁸⁸

112. Following Ms. Chinchilla's fall, Osiris Angélica Romano said that she went to tell the nurse and she "went running to help her." She said that "by the time we returned, Doña María Inés was back in her

²⁸²Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Public Defenders' Institute. Appeal. May 17, 2004. Pages 121-143. Appendix 3 to the initial petition.

²⁸³Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Decision of the Second Criminal Enforcement Court of May 18, 2004. Page 145. Appendix 3 to the initial petition.

²⁸⁴Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court Final Decision No. 429-96 Of. 7. Sentence Remission Case. Female Orientation Center. Official Letter No. 99-2004. Communication from the Deputy Director of the COF, May 25, 2004. Page 149. Appendix 3 to the initial petition.

²⁸⁵Appendix 2. Incidental Motions for Early Release. Republic of Guatemala Judiciary Second Criminal Enforcement Court. Final Decision No. 429-96 Of. 7. Sentence Remission Case. Ruling of the Court of Appeals, Fourth Division. June 3, 2004. Page 150.

²⁸⁶Appendix 11. Affidavit of Claudia Fedora Quintana Mendoza before a notary public. Appendix to the representatives' brief of April 16, 2006. With respect to this event, Osiris Angélica Romano, who was also a prisoner at the COF, said, "Doña María Inés was moving along in her wheelchair looking for a friend but she miscalculated; she thought there was more room. As she was in her wheelchair she did not see the steps and fell. When I saw that happen, I tried to walk as quickly as possible. Other women stayed to pick her up." Appendix 7. Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives' brief of April 16, 2006.

²⁸⁷ Appendix 7. Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives' brief of April 16, 2006.

²⁸⁸Appendix 11. Affidavit of Claudia Fedora Quintana Mendoza before a notary public..Appendix to the representatives' brief of April 16, 2006.

wheelchair, complaining and crying from the pain in her knee.”²⁸⁹ The duty nurse reported that at 9:20 a.m. she was informed that Ms. Chinchilla had fallen and that when she examined her “her blood pressure was 170/100, pulse 72x, breathing 16 x.” In addition, “she had a scraped knee, which was painful and hot on palpation,” so “she administered two tablets of diclofenac and one tablet of captopril. In addition, Doctor Renato Estrada Chinchilla, Medical Services Coordinator was informed of the inmate’s fall and what she had been administered.”²⁹⁰

113. After the nurse arrived, Ms. Claudia Fedora Quintana said,

“Blanqui Hernández, the labor officer, arrived, went to see what had happened, and made notes. I went back to bathe and I told [Ms. Chinchilla] what had happened with the books. She told me that she felt alright and in that she was going to make some food. When I came back she was sitting in the chair leaning on the bed and she didn’t answer me when I spoke to her, so I nudged her and saw that she was blue. I got scared and went and called the nurse and other girls who were nearby. They began to lift her up with the chair and she sighed. They called the fire department but there was nothing they could do ... The fall happened around 7:00 or 7:30 in the morning and when I returned and saw her in the room it was about 10:30 or 11:00 in the morning. I talked to Dr. Moran and asked her what had happened, and she told me that she had been diagnosed with generalized decompensation and that when she was looking for me it was because she was already in agony.”²⁹¹

114. With regard to this fact, the duty nurse said that around 11:05 a.m. inmates informed her that Ms. Chinchilla could not breathe and “upon examining her she presented bp: 0/0; pulse: undetectable; breathing: undetectable; pupils dilated and not reflecting light; CPR proceeded to be given but she did not respond, so she was not put on an I.V. drip of Hartmann’s solution”. The nurse said that the actual time of death was declared at 11:25 a.m. and efforts to resuscitate her were made without success.²⁹²

115. The Deputy Coordinator of Medical Services informed that he was called at 11:15 a.m. and that upon arriving noted that her face showed “facies cadaverica.” He said that the patient could have presented: “(a) acute myocardial infarction; (b) type II diabetes mellitus (*insulin-dependent).”²⁹³

116. With regard to what happened, Osiris Angélica Romano said that “there is too much negligence.” She explained that on that day “Ms. Alba, the deputy director was on duty” y “she does absolutely nothing without authorization from the medical services authorities. She showed no initiative.” Ms. Romano said that after Ms. Chinchilla’s fall, the nurse “went and called the doctor on duty, the chief of medical services [who] was Renato Estrada, because they wanted to get her to hospital because her diabetes problem was very advanced ... unfortunately they told her that she could not go.”²⁹⁴ Ms. Quintana Mendoza said that “the

²⁸⁹ Appendix 7 Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives’ brief of April 16, 2006.

²⁹⁰ Appendix 10. Female Orientation Center. Communication from the duty nurse to the medical services coordinator. March 25, 2004. Appendix 11 to the State’s brief of July 13, 2010.

²⁹¹ Appendix 11. Affidavit of Claudia Fedora Quintana Mendoza before a notary public. March 20 January 18, 2005.

²⁹² Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Office of the Deputy Director of Forensic Sciences. Female Orientation Center. Communication from the duty nurse to the Deputy Director of the COF. May 25, 2004. Page 787. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

²⁹³ Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º Report of the Correctional System Medical Services Deputy Coordinator. May 25, 2004. Page 788. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

²⁹⁴ Appendix 7. Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives’ brief of April 16, 2006.

services doctor never came,”²⁹⁵ explaining that “whenever there is an emergency they have trouble making the decision to evacuate people. First they call the doctors, then the judge. There are so many things and nothing gets done.”²⁹⁶

117. The medical examiner arrived at the scene at 12:50 p.m. and examined the corpse at 1:00 p.m., saying that the estimated time of death was two hours earlier.²⁹⁷ Ms. Osiris Angélica Romano said that Ms. Chinchilla’s body was taken away “at around 3:00 in the afternoon.”²⁹⁸ For her part, the Deputy Director of the COF reported that the corpse was taken to the Judiciary Morgue at 2:10 p.m. for the statutory autopsy.²⁹⁹ After the Office of the Defender of Due Process and Prisoners requested the Judge for a report,³⁰⁰ the Judge informed that “he was not advised by the prison authorities that the inmate’s illness had worsened.”³⁰¹

5. The investigation of Ms. Chinchilla’s death

118. The Prosecution Unit for Crimes against Life and the Person was informed of the death of Ms. Chinchilla on May 25, 2004.³⁰² The autopsy conducted that very day concluded that the causes of death were “pulmonary edema and hemorrhagic pancreatitis.”³⁰³

119. On June 21, 2004, the Public Prosecution Service Chemical Analysis Department informed the prosecutor that tests were conducted on the samples of blood, liver, and gastric contents taken from Ms. Chinchilla’s corpse and it was determined, inter alia, that there was no presence of ethyl alcohol, methyl alcohol, isopropane, or acetone.³⁰⁴ Bearing in mind the above information, the Office of the Prosecutor informed the Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Guatemala that “there [were] no grounds to proceed because the cause of death [did] not constitute a criminal offense and, therefore, [was] not punishable.” Therefore, it requested that the case be

²⁹⁵Appendix 11. Affidavit of Claudia Fedora Quintana Mendoza before a notary public.. Appendix to the representatives’ brief of April 16, 2006.

²⁹⁶Appendix 11. Affidavit of Claudia Fedora Quintana Mendoza before a notary public. . Appendix to the representatives’ brief of April 16, 2006.

²⁹⁷Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Office of the Deputy Director of Forensic Sciences. Forensic Medicine Department. Examinations of the Scene of Death. Medical examiner’s report. May 25, 2004. Page 785. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

²⁹⁸Appendix 7. Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives’ brief of April 16, 2006.

²⁹⁹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Official letter No. 99-2004. Communication from the Deputy Director of the COF, May 25, 2004. Page 782. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

³⁰⁰Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7^o Human Rights Ombudsman. Office of the Defender of Due Process and Prisoners. 225-2004-JEMT., Communication from the Office of the Defender of Due Process and Prisoners to the Second Criminal Enforcement Court. May 25, 2004. Page 790. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005..

³⁰¹Appendix 5. Certification of final decision 429-96. Judiciary Final Decision No. 225-2004-JEMT., Communication from the Second Criminal Enforcement Court to the Office of the Defender of Due Process and Prisoners. May 28, 2004. Page 790. Appendix to the petitioner’s communication of May 26, 2005 received on May 31, 2005.

³⁰²Appendix 12. Public Prosecution Service. Prosecution Unit for Crimes against Life and the Person, “Vida” Office 04, MO001-2004-105950, January 11, 2005. Appendix 10 to the State’s brief of July 13, 2010.

³⁰³Appendix 13. Judiciary Forensic Medicine Service. Autopsy No. 1499-2004, June 3, 2004. Appendix 8 to the State’s brief of July 13, 2010.

³⁰⁴Appendix 14. Public Prosecution Service. Written communication from the Pharmaceutical Chemist of the Chemical Analysis Department to the Prosecutor. June 21, 2004. Pages 18-19.

dismissed and archived.³⁰⁵ On January 18, 2005, the Seventh Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Guatemala ordered to archive the case.³⁰⁶

B. Determinations as to law

1. Preliminary consideration

120. In its report on admissibility, based on the *prima facie* determination made in that stage, the Commission identified two main claims: The first concerned the medical care that Ms. Chinchilla received while she was deprived of their liberty; the second is related to her death while in the State's custody. Thus, the Commission examined the admissibility requirements taking into account those two components of the case and came to the conclusion that its pronouncement on merits would have regard to Ms. Chinchilla's death and not to the possible liability of the State for not granting her freedom on illness-related grounds under the incidental motions for early release. Therefore, what the Commission must decide is if the State fulfilled its obligation as guarantor of the rights to life and humane treatment of Ms. Chinchilla, who, as mentioned in the proven facts, died in the COF on May 25, 2004.

121. In the merits stage, a determination as to whether or not the State of Guatemala is responsible for Ms. Chinchilla's death requires a comprehensive assessment of this case, including the acts or omissions of the state authorities with respect to the progressive deterioration of the alleged victim's health while in the State's custody. The Commission notes that the parties concur on the need for this comprehensive assessment given that throughout the merits stage submissions have continued to be presented and evidence proffered on the state of Ms. Chinchilla's health prior to her death, as well as on the adequacy or inadequacy of the State's response to her state of health. All the arguments and evidence that the Commission has received regarding the situation of Ms. Chinchilla's health had been submitted to adversarial processing.

122. In light of the foregoing, the Commission will now proceed to pronounce on the State's obligations with regard to the rights to life and humane treatment and will analyze if the State acted in a manner consistent with those obligations (Articles 4 and 5 of the American Convention). Then, the Commission will pronounce on whether or not the State provided an effective remedy (Articles 8 and 25 of the American Convention). Finally, the Commission will analyze if the right to humane treatment of Ms. Chinchilla's relatives were violated (Article 5 of the American Convention).

2. General considerations on the rights to life and humane treatment in relation to medical assistance for persons deprived of their liberty

123. The Inter-American Court has held that the right to life plays a fundamental role in the American Convention as the exercise of all other rights depends on its protection.³⁰⁷ Given that nature, states have the obligation to ensure the creation of such conditions as may be required for its full enjoyment and

³⁰⁵Appendix 15. Public Prosecution Service. Prosecution Unit for Crimes against Life and the Person, "Vida" Office 04, MO001-2004-105950, January 11, 2005. Appendix 10 to the State's brief of July 13, 2010.

³⁰⁶In that regard, the court held that "after studying and analyzing the procedures described in the record, the court finds that there is no compelling evidence or legal certainty that would justify initiating criminal proceedings, bearing in mind that, according to the medical examiner's report, the causes of María Inés Chinchilla Sandoval's death were pulmonary edema and hemorrhagic pancreatitis. Therefore, this court has no choice but to make the appropriate decision under the law. ... Based on the foregoing and the above-cited laws, this court rules in favor of the Public Prosecution Service's request, dismisses the case for lack of merit and, therefore, orders the matter to be set aside. Appendix 16. Certification of final decision 429-96. Judiciary Final Decision No. 429-96 OF- 7º C-394-2005 Seventh Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Guatemala. January 18, 2005. Appendix 8 to the initial petition.

³⁰⁷I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, par. 144; *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 78.

exercise.³⁰⁸ With respect to the right to humane treatment, the Convention protects it by prohibiting, inter alia, torture; cruel, inhuman and degrading treatment; and suspension of that right during states of emergency.³⁰⁹

124. The rights to life and humane treatment require not only that the State respect them (negative obligation) but also that the State adopt all appropriate measures to protect and preserve them (positive obligation), in furtherance of the general obligation that the State undertook in Article 1(1) of the Convention,³¹⁰ from which there derive, in turn special obligations, which are determined as a function of the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself.³¹¹

125. Specifically, where persons who have been deprived of their liberty are concerned, the Commission recalls that the State is in a special position of guarantor, as the prison authorities exercise heavy control or command over the persons in their custody. The foregoing is the result of the special relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his or her rights and obligations, and by the inherent circumstances of imprisonment, where the prisoner is prevented from satisfying, on his own account, a series of basic needs that are essential for leading a decent life.³¹²

126. The State's duty to protect in the case of persons deprived of their liberty extends to the health sphere, in particular, the obligation to provide adequate medical treatment during the time that individuals are in their custody.³¹³ The Court has recognized that the rights to life and [human treatment] are directly and closely linked with human health care.³¹⁴ The Court has also held that the State, as a guarantor of health, has the duty to provide detainees with regular medical review and adequate medical care and treatment whenever necessary.³¹⁵

³⁰⁸ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala, Merits*. Judgment of November 19, 1999. Series C No. 63, par. 144.

³⁰⁹ Articles 5 and 27 of the American Convention. See, also, I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, par. 157.

³¹⁰ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala, Merits*. Judgment of November 19, 1999. Series C No. 63, par. 139.

³¹¹ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, par. 111.

³¹² I/A Court H.R., César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C, No. 260, par. 188. See, IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, pars 49 et seq.

³¹³ See: United Nations Human Rights Committee, UN HR Committee *Cabal and Pasini v. Australia* (7 August 2003) UN Doc CCPR/C/78/D/1020/2002) para. 7.7 European Court of Human Rights, *Greek case* (1969) 12 YB 170 EcomHR; *Edwards and Others v. United Kingdom* (2002) 35 EHRR 417. See, also, Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine de l'Homme, Les Temoins de Jehovah v. Zaire (1996) African Commission on Human and Peoples' Rights Comm Nos. 25/89, 47/90, 56/91, 100/93 para 47; International PEN and Others v. Nigeria (1998) African Commission on Human and Peoples' Rights Comm Nos. 137/94, 139/94, 154/86, 161/97; Malawi African Association and others v. Mauritania (2000) African Commission on Human and Peoples' Rights Comm Nos. 54/91, 61/91, 98/93, 164/97 a` 196/97 and 210/98; United Nations Human Rights Committee. *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997.

³¹⁴ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 43. Cfr. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, pars 85 and 87; *Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, par. 88; and *Case of Vélez Loor v. Panama*, par. 198.

³¹⁵ I/A Court H.R., César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C, No. 260, par. 189; *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114, par. 156.

127. When it comes to weighing the State's obligations in this area, the Standard Minimum Rules for the Treatment of Prisoners are a recognized instrument for interpreting the content of the right of persons deprived of their liberty to be treated humanely and with dignity.³¹⁶ With regard to medical services, the Rules provide, *inter alia*, that "[t]he medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures."³¹⁷ Furthermore, Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides, "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."³¹⁸

128. For its part, Principle X of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas provides, "Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being." As to the quality of medical services, that provision establishes, "Treatment shall be based on scientific principles and apply the best practices." For his part, the United Nations Special Rapporteur on question of torture noted that "States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including persons deprived of their liberty, to preventive, curative and palliative health services."³¹⁹

129. A lack of appropriate medical care "does not satisfy the minimum material requirements of humane treatment due because of a person's nature as a human being pursuant to Article 5 of the American Convention"³²⁰ and the lack of appropriate medical care to a person deprived of liberty and under State custody could be considered a violation of that right, depending on the particular circumstances of the individual, such as their state of health or the type of ailment, the time elapsed without treatment, its cumulative physical and mental effects,³²¹ and in some cases, the sex and age of the victim, among other factors.³²²

³¹⁶ I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations*. Judgment of May 14, 2013. Series C, No. 260, par. 189.

³¹⁷ *Cfr.* Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, para. 24. See, also, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Nos. 49 and 50. Adopted by General Assembly resolution 45/113, 14 December 1990.

³¹⁸ *Cfr.* Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. Adopted by General Assembly resolution 43/173, 9 December 1988, Principle 24. See, also Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by Economic and Social Council resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

³¹⁹ United Nations, report of the special rapporteur, Theo van Boven, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Annual Report to the Commission on Human Rights (today Council), E/CN.4/2004/56, adopted on 29 December 1998, para. 56.

³²⁰ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 44. I/A Court H.R., *Case of De la Cruz Flores v. Peru. Merits, Reparations and Costs*. Judgment of November 18, 2004. Series C No. 115, par. 131; *Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, par. 226.

³²¹ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006. Series C No. 150, par. 103.

³²² I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 44; *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*, Judgment of November 19, 1999. Series C No. 63, par. 74; *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*.

130. In cases in which there has been negligent or deficient medical treatment of persons deprived of liberty, the European Court of Human Rights has held states in violation of Article 3 of the European Convention on Human Rights,³²³ which prohibits, inter alia, cruel, inhuman and degrading treatment.³²⁴ The European Court has taken into account factors such as lack of emergency and appropriate specialized medical assistance, excessive deterioration of the physical and mental health of the person deprived of liberty, and exposure to severe or prolonged pain as a result of a lack of prompt and diligent medical attention, the excessive security conditions to which the person has been submitted in spite of their evident grave state of health without the existence of grounds or evidence to make them necessary, among others, in order to assess if the person deprived of liberty has been subjected to inhuman or degrading treatment.³²⁵

131. For its part, the scope of the right to life where persons deprived of liberty are concerned also includes the obligation for the State to ensure the right to health by adopting adequate measures to safeguard the lives of the persons in its custody, specifically under the obligation to provide medical treatment, which must be appropriate,³²⁶ timely,³²⁷ specialized, and suited to the special care that the persons deprived of liberty in question might require.³²⁸

132. In the case of Vera Vera, the IACHR established that right to life of the victim had been violated since he had sustained a gunshot wound in the course of his arrest and died 10 days later while in

Judgment of July 8, 2004, par. 113. For its part, the Commission has recognized the obligation to provide prompt medical treatment to persons who are deprived of their liberty and in certain cases has even considered that a state's omission to provide such special care constitutes cruel, inhuman, or degrading treatment. IACHR, *Lallion v. Grenada* Case No. 11.675 October 21, 2002, par. 87; *Jacob v. Grenada* Case No. 12.158 October 21, 2002, par. 94; *McKenzie, Downer and Tracey, Baker, Fletcher, Rose v. Jamaica* Cases Nos. 12.023, 1112.044, 12.107, 12.126, 12.146 of April 13, 2000, par. 289; *Victor Rosario Congo v. Ecuador*. Case No. 11.427 April 13, 1999, par. 68 and *Rudolph Baptiste v. Grenada* Case No. 11.743 April 13, 2000, par. 137-138; *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, pars 519 et seq.

³²³ Convention for the Protection of Human Rights and Fundamental Freedoms.

³²⁴ In examining violations of this type, the European Court has held that "ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. ... Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3. ECHR, *Case of Sarban v. Moldova*, (No. 3456/05), Judgment of 4 October 2005. Final, 4 January 2006, pars. 75 and 76.

³²⁵ ECHR, *Case of Paladi v. Moldova*, (No. 39806/05), G.C., Judgment of 10 March 2009.

³²⁶ See European Court of Human Rights, *Edwards and Others v. United Kingdom* (2002) 35 EHRR 417 para 54; *Osman v. United Kingdom* (1999) 29 EHRR 45. See also, United Nations Human Rights Committee: *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7.

³²⁷ See: Art. 25.1 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; and Principle 24 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. Adopted by United Nations General Assembly resolution 43/173, 9 December 1988.

³²⁸ For example, the United Nations Human Rights Committee has established the obligations of detention center authorities with regard to the requirement to provide specialized medical care, in cases such as *Pinto v. Trinidad and Tobago* (note 126), para 12.7; *Lewis v. Jamaica* (18 July 1996) UN Doc CCPR/C/57/D/527/1993, para 10.4; *Whyte v. Jamaica* (27 July 1998), UN Doc CCPR/C/63/D/732/1997, para 9.4; *Free Legal Assistance Group and others* (note 112), para 47; *EN and others v. The Government of the RSA and others* (note 124), paras 31, 35; *Leslie v. Jamaica* (31 July 1998), UN Doc CCPR/C/63/D/564/1993, para 3.2.

the custody of the authorities because he failed to undergo surgery in time.³²⁹ Similarly, in the case of Juan Hernández Lima, the IACHR found that the victim, who was arrested for an administrative offense and ordered to spend 30 days in prison or pay a fine, died from a bout of cholera six days after his arrest. In this case the State failed to administer sufficient rehydration remedies, transfer Mr. Hernández Lima to a hospital, and notify a third party of his arrest.³³⁰ For its part, in the case of the *Tarariyeva*, the European court concluded that the lack or deficiency of the medical care provided is not consistent with the obligation to protect the right to life of persons deprived of their liberty.³³¹ The European Court has also found a state to bear international responsibility in a case in which a person had been deprived of their liberty and died from post-operative complications because of a lack of adequate medical care.³³²

133. The United Nations Human Rights Committee has held that states, by arresting and detaining individuals, take the responsibility to care for their life. As such, it is incumbent on the State to ensure protection for that right, including adequate medical care that must be offered ex officio, and not make it incumbent on the detainee to request it.³³³ The Case law of the Inter-American Court has established that States cannot invoke economic hardships to justify imprisonment conditions that do not comply with minimum international standards and respect the inherent dignity of the human being.³³⁴

134. In sum, both the right to life and the right to humane treatment impose direct obligations on state authorities, whose compliance is particularly important, given that the situation of these persons is completely dependent upon the actions that the State takes in their favor.³³⁵ These obligations are accentuated when the person is in a greater state of vulnerability because of serious health problems.³³⁶

3. Analysis of Ms. Chinchilla's situation during her detention and her death while in custody (Articles 4 and 5 of the American Convention)

³²⁹ The IACHR took into consideration the fact that the victim received no medical treatment from April 13 to 16, 1993, while he was being held in police cells, where the standards of hygiene, sanitation, and medical care were deplorable. Furthermore, despite the fact that on April 16 the Judge of the 11th Criminal Court of Pichincha ordered the director of Santo Domingo Hospital to readmit Mr. Vera Vera for surgery, he was not admitted until April 17, at 13:00 hrs, and no surgery was performed on him until April 22, when he was treated at Eugenio Espejo Hospital in Quito. Therefore, in the 10 days that Mr. Vera Vera was in the custody of the State, various authorities, including correctional staff and medical personnel at state hospitals, committed a series of omissions that resulted in his death on April 23, 1993. IACHR, Application to the I/A Court H.R., Pedro Miguel Vera Vera et al., Case 11.535, Ecuador, February 24, 2010, pars. 1, 21, 32, 45, 46, 47, and 56.

³³⁰ IACHR, Report No. 28/96, Case 11.297, Merits, Juan Hernández Lima, October 16, 1996, pars. 1, 2, 3, 4, 5, 17, 56, and 60.

³³¹ ECHR, *Case of Tarariyeva v. Russia*, Application No. 4353/03, Judgment of 14 December 2006, para. 87.

³³² See: ECHR, *Case of Edwards and Others v. United Kingdom* (2002) 35 EHRR 417; *Case of Tarariyeva v. Russia*, Application No. 4353/03 Judgment of December 14, 2006.

³³³ See: United Nations Human Rights Committee. *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997, para 9.2; *Fabrikant v. Canada* (6 November 2003) UN Doc CCPR/C/79/D/970/2001) para 9.3; *Barbato v. Uruguay* (27 November 1982) UN Doc CCPR/C/OP/2 para 10(a).

³³⁴ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 42. *Cfr. Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, pars 85 and 87; *Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, par. 88.

³³⁵ See: United Nations Human Rights Committee. *Fabrikant v. Canada* (6 November 2003) UN Doc CCPR/C/79/D/970/2001) para 9.3. See, also, the African human rights system: International PEN and Others v. Nigeria (1998) African Commission on Human and Peoples' Rights Comm Nos. 137/94, 139/94, 154/86, 161/97 para 112; Malawi African Association and others v. Mauritania (2000) African Commission on Human and Peoples' Rights Comm Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, para 122.

³³⁶ European Court of Human Rights. *Case of Price v. United Kingdom* (2001) 34 EHRR 53, para 7.

135. In the light of the established facts, the Commission will examine the following aspects of the state's response to Ms. Chinchilla's situation: (1) The absence of a proper diagnosis of Ms. Chinchilla's health situation and the shortcomings of the State's response; (2) the treatment for Ms. Chinchilla's diabetes and related ailments; (3) the State's response to Ms. Chinchilla's disabled condition; and (4) the State's response on the day that Ms. Chinchilla died.

3.1 The absence of a proper diagnosis of Ms. Chinchilla's health situation and the shortcomings of the State's response

136. The European Court of Human Rights found in the cases of *Tarariyeva vs. Russia* and *Kudhobin vs. Russia* that when persons are deprived of their liberty and the authorities are aware of illnesses that require supervision and adequate treatment, the latter must "[keep] a record of [their] state of health and the treatment [they] underwent while in detention."³³⁷ Likewise, in the *Case of Iacov Stanciu v. Romania*, the European Court found that the authorities must ensure that a "comprehensive record is kept concerning the detainee's state of health and the treatment he underwent while in detention."³³⁸ That obligation is also described in the *Third General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. This Committee has stated that:

A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.³³⁹

137. In the present case, based on the information available, the Commission notes that this first fundamental obligation of diagnosing and keeping records in order to determine what medical treatment Ms. Chinchilla would require, in compliance with its obligation as guarantor of the rights to life and humane treatment of those in its custody, and ensuring that said treatment was provided, was not met by the state authorities.

138. Indeed, there are no certifications attesting to a comprehensive diagnosis or follow-up on all Ms. Chinchilla's ailments. This is clearly reflected in the medical certifications contained in the record, which were requested by the Judge for two reasons: One, to verify whether or not it was necessary to grant permission requested by Ms. Chinchilla to leave the prison in order to go to medical appointments; the other, to determine if the illnesses were "terminal" when it came to deciding on the motions for early release and whether or not she could receive care at the detention center.

139. One example of the consequences of the absence of a meaningful, comprehensive diagnosis of Ms. Chinchilla's health has to do with the multiple contradictory references in the record to possible cervical cancer.

³³⁷European Court of Human Rights, *Case of Kudhobin v. Russia*, Judgment of 6 October 2006, para. 83. Available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["medical diagnostic"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-77692"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{). See, also, *Case of Tarariyeva v. Russia*, Judgment of 14 December 2006, para. 76. Available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["medical diagnostic"\],"kphthesaurus":\["193"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-78591"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

³³⁸European Court of Human Rights, *Case of Iacov Stanciu vs. Romania*, Judgment of 24 July 2012, para. 170. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112420>

³³⁹European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992 Ref.: CPT/Inf (93) 12 [EN] - Publication Date: 4 June 1993, para. 39. Available at: <http://www.cpt.coe.int/en/annual/rep-03.htm#III>.

140. Thus, at the hearing on August 29, 2003, the judiciary medical examiner indicated that she presented “cancer of the cervix”; however, the attending physician at the HSJD said that “he [did] not know” of that disease, while the medical examiner from the Public Prosecution Service noted that there was “no record of that pathology” and the COF doctor said that he was aware of the cervical cancer but “not ... of its degree” or “whether or not it [was] terminal.” Subsequently, at the hearing on April 21, 2004, the judiciary medical examiner that “there [was] nothing regarding cancer, only a tumor”; for his part, the attending physician at San Juan de Dios Hospital said that he had “no medical knowledge ... that ... she ha[d] cervical or vaginal cancer” and the Public Prosecution Service medical examiner said that the file “describe[d] a tumor in the vagina in March 1997, but there [were] no other medical notes on the progress of the disease.” The disease “cancer of the cervix” is recorded as such in the certifications issued by the judiciary medical examiner on August 7, 2003 and October 14, 2003, after an “anterior vagina of bulge” was identified; and in 2000, when “a firm, mobile mass above the pubic hairline” was detected. In 2003, Ms. Chinchilla herself said that she “[did] not know if the cancer detected [in her vagina was] benign or malignant.”

141. Further clear evidence of the lack of a meaningful, comprehensive diagnosis has to do with a group of both physical and mental illnesses identified separately in Ms. Chinchilla, for which there were no subsequent certifications as to their progress or treatment. Thus, the IACHR notes that in 1998 Ms. Chinchilla was diagnosed with “problems of leukemia” and “osteoporosis”; in 2001, “urethrocele”; in 2003, “chronic adult malnutrition” and “severe depression with a risk of suicide”; and in 2004, “anasarca.”

142. Despite this information, which demanded due diligence on the part of the State in conducting thorough diagnostic assessments to identify all Ms. Chinchilla’s diseases and ailments, neither the prison authorities nor the judicial authority supervising the enforcement of her sentence adopted any measures to gain a full understanding of the state of Ms. Chinchilla’s health or, consequently, to determine her actual treatment needs and follow up on them accordingly. On the contrary, as was mentioned, the Commission notes that the State’s actions were limited to determining whether or not the permissions sought by Ms. Chinchilla were admissible or if her state was terminal. In other words, the follow-up measures adopted by the State were confined to those two aspects. Although these measures gave rise to some treatment, as will be examined below, that treatment was neither comprehensive nor consistent. This limited response falls short of the above-described standards regarding the State’s obligations to ensure the right to health in connection with the rights to life and humane treatment of individuals in deprived of their liberty.

3.2 The treatment for Ms. Chinchilla’s diabetes and related ailments

143. Based on all the doctors’ certifications and statements in the record, a significant number of Ms. Chinchilla’s diseases and ailments stemmed from the evolution of her diabetes mellitus, including, those connected with arterial hypertension, occlusive arteriosclerotic disease, and diabetic retinopathy.³⁴⁰ The foregoing is consistent with World Health Organization (WHO) Fact Sheet No. 312, “Diabetes,” which describes the effects of the disease.³⁴¹ The WHO has stated that “[h]ypertension and diabetes are closely linked, and one cannot be properly managed without attention to the other.”³⁴²

³⁴⁰ Thus, the Commission notes that the socioeconomic report of April 14, 2004, states that Ms. Chinchilla had been suffering from diabetes for approximately 14 years and that “the disease had been kept under control at the Guatemalan Social Security Institute until the time of the legal proceedings in which is currently involved.” The statement of the judiciary medical examiner on August 29, 2003, says, in turn, that the deterioration in health of Ms. Chinchilla was basically due to the fact that “she [suffered from] [...] DIABETES MELLITUS, and [...] all the complications associated with this disease [had] presented themselves, [they being] arterial hypertension, [...] occlusive arteriosclerotic disease of the left lower limb, [...] diabetic retinopathy, in addition to which she has already had the right lower limb amputated [...].” In addition, the Correctional System Medical Services Coordinator explained that Ms. Chinchilla Sandoval required subcutaneous insulin for her diabetic problem that was “causing all the metabolic ailments from which she suffer[ed].”

³⁴¹ The fact sheet states that hyperglycaemia is a common effect of uncontrolled diabetes that “over time leads to serious damage to many of the body’s systems, especially the nerves and blood vessels.” Common consequence include “foot ulcers, infection and eventual need for limb amputation”³⁴¹; “diabetic retinopathy [...], an important cause of blindness”; “kidney failure”; “neuropathy”; and an overall risk of dying that is “at least double the risk of their peers without diabetes.” See

144. The WHO has indicated that the treatment of diabetes³⁴³ “involves lowering blood glucose and the levels of other known risk factors that damage blood vessels.” Among the interventions that “are both cost saving and feasible in developing countries” the WHO recommends : (i) moderate blood glucose control; (ii) and blood pressure control; (iii) foot care; (iv) screening and treatment for retinopathy (which causes blindness); (v) blood lipid control (to regulate cholesterol levels); (vi) screening for early signs of diabetes-related kidney disease.”³⁴⁴ The WHO has made concrete recommendations for treating this disease, which include physical activity and an appropriate diet.³⁴⁵

145. The IACHR notes that at the various hearings on the incidental motions filed, doctors offered the Judge their opinions on the treatment that Ms. Chinchilla required. According to all the doctors’ statements given, that treatment involved: (i) periodic sugar control, ophthalmological monitoring, kidney monitoring, control of irrigation in lower limb, and cardiovascular checkups; (ii) verification of the times she took her medicine, help moving her, access to medical equipment and access to medicine; (iii) intramuscular insulin injections; (iv) special equipment for ketoacidosis in the event of a diabetic coma; and (v) examination by an endocrinologist.³⁴⁶ For her part, one of the COF nurses said that Ms. Chinchilla needed someone “very special to be with her 24 hours a day and attend to her personally, which they could not do because they had to see to the rest of the prison population.” The report of Dr. Edna Erika Vaquerano Martínez, which was put forward by the petitioners and not challenged by the State, also refers to the treatment that Ms. Chinchilla should have received.³⁴⁷

146. In the present case, the medical examiner from the Public Prosecution Service as well as the doctor from San Juan de Dios General Hospital and the judiciary medical examiner all said that they were not familiar with the facilities of the COF, the specific medical treatment that she received at the center, and the

World Health Organization, *Diabetes. Fact sheet No. 312. September 2012.* Available at: <http://www.who.int/mediacentre/factsheets/fs312/en/>

³⁴² World Health Organization, *A Global Brief on Hypertension*, World Health Day 2013, p. 24. Available at: http://apps.who.int/iris/bitstream/10665/79059/1/WHO_DCO_WHD_2013.2_eng.pdf

³⁴³ Which it has defined as a chronic disease that occurs either when the pancreas does not produce enough insulin or when the body cannot effectively use the insulin it produces World Health Organization, *Diet, Nutrition and the Prevention of Chronic Diseases. Report of a Joint WHO/FAO Expert Consultation.* WHO Technical Report Series 916. Geneva 2003, p. 79. Available at: http://whqlibdoc.who.int/trs/who_trs_916.pdf

³⁴⁴World Health Organization, *Diet, Nutrition and the Prevention of Chronic Diseases. Report of a Joint WHO/FAO Expert Consultation.* WHO Technical Report Series 916. Geneva 2003, p. 79. Available at: http://whqlibdoc.who.int/trs/who_trs_916.pdf

³⁴⁵Among the WHO recommendations for people with diabetes are the following: (i) Practising an endurance activity at moderate or greater level of intensity (e.g. brisk walking) for one hour or more per day on most days per week; (ii) Ensuring that saturated fat intake does not exceed 10% of total energy and for high-risk groups, fat intake should be <7% of total energy; Achieving adequate intakes of NSP through regular consumption of wholegrain cereals, legumes, fruits and vegetables. A minimum daily intake of 20 g is recommended. World Health Organization, *Diet, Nutrition and the Prevention of Chronic Diseases. Report of a Joint WHO/FAO Expert Consultation.* WHO Technical Report Series 916. Geneva 2003, p. 77.

³⁴⁶ See in this connection the statements made by medical experts at the hearings of August 29, 2003 and April 21, 2004

³⁴⁷ According to this report, ... a person with diabetes must undergo clinical evaluation, including laboratory tests (glucose pre- and post-prandial [before and after eating]) carried out regularly, preferably fortnightly or monthly, in addition to laboratory tests to examine their urine, blood chemistry, and kidney, pancreas, liver functions, etc., since diabetes is a rapidly evolving disease that affects several of the body’s systems.

... High blood pressure ... She should have been constantly reexamined in view of the terminal occlusive arteriosclerotic disease that she had in her lower limbs, as this increased the risk of deep vein thrombosis that might cause a cardiac or pulmonary embolism. An electrocardiogram performed monthly as well as blood pressure readings every 48 hours are the indicated preventive treatments. Appendix to the petitioners brief received on April 18, 2006.

staff who administered the treatment.³⁴⁸ The IACHR notes that the statements of the COF Doctor on February 14, 2003 and August 29, 2003 refer specifically to the situation at the COF and the treatment that Ms. Chinchilla received.

147. In that respect, as regards treatment, the COF Doctor said in his statements of February 14, 2003 and August 29, 2003 that the correctional system did not provide her with the insulin that she needed and that she obtained her own supply through her relatives. In his statement of February 14, 2003, the COF doctor said that Ms. Chinchilla normally administered her own treatment, while in his statement of August 29, 2003, he said that "presumably" the nurses administered it. The Commission notes that according to the statements of the duty nurses one of the inmates at the COF cleaned Ms. Chinchilla's wounds and administered her insulin.

148. With respect to the necessary equipment to provide the treatment, the Commission observes that in his statement of August 29, 2003, the COF doctor replied, "No," when asked if the COF had the necessary equipment to treat her illness. The foregoing is corroborated by the three opinions of the COF multidisciplinary team, according to which, "this facility lack[ed] the necessary resources for her care," and by the COF socioeconomic study of January 27, 2003, which reported that "the Female Orientation Center [did] not have specialized staff to provide her with better care."

149. The Commission also sees that the Correctional System Medical Services Coordinator explained that Ms. Chinchilla needed subcutaneous insulin, "for which the prison lack[ed] the necessary equipment to provide care." It was mentioned that "[t]he Center [did] not have specialized hospital medical equipment to deal with crises of that magnitude," and that "[did] not have adequate orthopedic equipment," although "it [did] have adequate facilities for the internment of the inmate which [were] managed by the prison's hospital area."

150. Specifically with regard to the medical care that she received, Ms. Chinchilla told the enforcement judge in a communication dated February 27, 2003, that there was inadequate infrastructure and that there was no way of keeping her insulin refrigerated. On August 29, 2003, she confirmed that she had to provide her own food because she could not eat what the Center offered her. She said, "Sometimes I have some and sometimes I do not; sometimes I can rely on my family and sometimes not."

151. In light of the above, the Commission finds that the COF was not in a condition to provide adequate treatment and that it did not supply Ms. Chinchilla with the insulin needed to treat her illness, bearing in mind its particular characteristics. The Commission observes that in view of the absence of adequate equipment at the COF, the Correctional System Medical Services Coordinator explained in one of his communications that Ms. Chinchilla Sandoval's condition had "forced [them] to refer her regularly to hospitals because at given times she require[d] specialized care." On this point, the Commission notes that, indeed, in the record appear multiple authorizations by the judge approving most of her requests to leave the prison for medical or laboratory appointments at the HSJD and Roosevelt Hospital, although in occasions he did not approve them, sometimes due to factors attributable to omissions by the judge or to late submissions of documents by the social worker.

³⁴⁸ In this connection, the Commission notes from the proven facts that at both the hearing of August 29, 2003 and that of April 21, 2004, the Public Prosecution Service medical examiner was consistent in his statements as to the fact that he was not familiar with the healthcare facilities and professional care at the COF or with the specific care that Ms. Chinchilla might have received or was receiving. For his part, the doctor from San Juan de Dios Hospital reiterated in his statements of February 14, 2003, August 29, 2003, and April 21, 2004, that he was ignorant as to the conditions that existed at the COF, who administered insulin to Ms. Chinchilla, and whether or not she received that treatment daily. For his part, the judiciary medical examiner said in his first statement on February 14, 2003 that the Center had the capacity to deliver the treatment, "provided that it is [allowed] entry or it is provided to her" and "also as long as there are no complications of any kind." He added that he "[did] not know who provide[d] medication to Ms. Chinchilla." In his subsequent statements on August 29, 2003 and April 21, 2004, he said that he did not know if she was given treatment, that he was not aware if the Center had the right medicine, and that prisons did not have teams of specialists.

152. The Commission finds, therefore, that although Ms. Chinchilla was granted permission to go to medical appointments, some of them emergencies, at the COF, where she was confined, she lacked the possibility of receiving adequate treatment out of ignorance of the nature of her illnesses, which, as mentioned, required, among other things, regular monitoring, specialized equipment and medicines, as well as a special diet and constant care.

153. In this regard, the Commission sees that in the *Barilo v. Ukraine*, the European Court ruled on the medical treatment that a person with diabetes should receive, finding, that "the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate."³⁴⁹ That tribunal has reiterated that the authorities "must also ensure that, where required by the nature of a medical condition, supervision is regular and systematic, and that there is a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than treating them on a symptomatic basis."³⁵⁰ Furthermore, in other cases the European Court has taken into account the principle of equivalence of health care noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, according to which, "a prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community."³⁵¹

154. Thus, in the present case, having analyzed the various certifications and statements contained in the report, the Commission concludes that: (i) The correctional system did not provide Ms. Chinchilla the medication that she needed for her diabetes mellitus and she obtained it by her own means, contingent on her financial circumstances or the possibility of her relatives to provide it; (ii) the COF lacked the facilities and specialized staff either to offer her medical treatment or provide her with care in an emergency; (iii) the COF did not provide her with the food that she needed to control her illness and she obtained it either through their own means, contingent on her possibilities to do so, or through other COF inmates; (iv) there was no strategy in place in the COF designed to furnish it with the resources for preventing her illness from growing worse; and (v) the above situation had an impact on the evolution and worsening of Ms. Chinchilla's diseases, which led, inter alia, to the amputation of one of her legs, diabetic retinopathy, and occlusive arteriosclerosis disease with an 80% chance of losing her other leg.

155. All these elements are sufficient to conclude that Ms. Chinchilla did not receive the medical treatment that she needed for her diabetes mellitus and related ailments.

3.3 The State's response to Ms. Chinchilla's disabled condition

156. In analyzing the response offered by the State of Guatemala in this case, the Commission believes that it must also take into account that, as a consequence of the evolution of her illness, Ms. Chinchilla acquired disabilities caused by the amputation of one of her legs and the progressive loss of her sight.

³⁴⁹ European Court of Human Rights, *Case of Barilo v. Ukraine*, Judgment of May 16, 2013, para 68. Available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"sort":\["docnamesort%20Ascending"\],"languageisocode":\["ENG"\],"responent":\["UKR"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"violation":\["3"\],"itemid":\["001-119675"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

³⁵⁰ European Court of Human Rights, *Case of Barilo v. Ukraine*, Judgment of May 16, 2013, para 68. Available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"sort":\["docnamesort%20Ascending"\],"languageisocode":\["ENG"\],"responent":\["UKR"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"violation":\["3"\],"itemid":\["001-119675"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

³⁵¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992 Ref.: CPT/Inf (93) 12 [EN] - Publication Date: 4 June 1993, para. 38. Available at: <http://www.cpt.coe.int/en/annual/rep-03.htm#III> and cited in European Court of Human Rights, *Case of Kudhobin v. Russia*, Judgment of 6 October 2006, para. 38. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-77692>

157. In that regard, the Inter-American Court has held that since the inception of the inter-American system the rights of persons with disabilities have been protected.³⁵² In this connection, the Court has ruled that any person who is in a vulnerable situation is entitled to special protection, based on the special duties that the State must comply with to satisfy the general obligation to respect and ensure human rights. The Court has found that "it is not sufficient for states to refrain from violating rights, and that it is imperative to adopt affirmative measures to be determined according to the particular protection needs of the subject of rights, whether on account of his personal situation or his specific circumstances, such as disability."³⁵³

158. Concerning the situation of persons with disabilities who are deprived of their liberty, the European Court of Human Rights found in the case of *Mircea Dumitrescu v. Romania* that since the alleged victim was diabetic and disabled, he "belong[ed] to a particularly vulnerable group given his severe disability." The European Court held that

[w]hen the authorities decide to place or keep disabled people in detention, they should demonstrate special care in guaranteeing conditions that correspond to their special needs resulting from their disability.³⁵⁴

159. In that case, the European Court noted that the victim continually complained that he had not been provided with his own wheelchair, that there had been insufficient disabled ramp access in the prison and that the toilet facilities and the vehicle he had been required to take had not been adapted for the disabled. The Court considered that the conditions of detention the victim had to endure, on the whole, for more than two years, must have caused him unnecessary and avoidable mental and physical suffering, diminishing his human dignity and amounting to inhuman treatment.³⁵⁵

160. Furthermore, in the case of *Price v. the United Kingdom*, which concerned a disabled person in detention, the European Court found that although there was no positive intention to humiliate or debase the victim, to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment contrary to Article 3 of the European Convention.³⁵⁶

161. In the present case, the Commission notes that the Ms. Chinchilla got around in a wheelchair. However, according to the socioeconomic report, she experienced problems "because of the place's confined spaces." Ms. Chinchilla also mentioned that she was losing her sight, that the infrastructure was inadequate, and that she could not reach the telephones to communicate with her family. The IACHR also notes that Ms. Chinchilla had two falls, the second having been caused by the steps when she tried to "get down" from where she was and had no one to push her. In that regard, there were no staff to push her, access ramps, or other objects to facilitate her movement. Finally, with respect to the transportation for her medical appointments, the IACHR notes that according to the statement of one of the inmates, sometimes Ms. Chinchilla did not want to go as they took her in a pickup truck and the wheelchair made it difficult to get her in.

³⁵² See I/A Court H.R., *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, par. 128.

³⁵³ See I/A Court H.R., *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, par. 134.

³⁵⁴ European Court of Human Rights, *Case of Mircea Dumitrescu*, Judgment of 30 July 2013, para. 56.

³⁵⁵ European Court of Human Rights, *Case of Mircea Dumitrescu*, Judgment of 30 July 2013, para. 64, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122975>

³⁵⁶ European Court of Human Rights, *Case of Price v. the United Kingdom*, Judgment of 10 July 2001. para. 30. Available at: [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"sort":\["docnamesort%20Ascending"\],"languageisocode":\["ENG"\],"respondent":\["UKR"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"violation":\["3"\],"itemid":\["001-119675"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

162. Although the State informed that at some point during her imprisonment it had installed a special toilet and hand-washing basin, and that Ms. Chinchilla had her own room with a refrigerator and a television, the Commission believes that such measures are insufficient to denote special care in ensuring the conditions appropriate to her special needs as a result of her disabilities, a fact reflected in her own statements, when she said, "[T]he condition in which I find myself is torture. I cannot fend for myself and, as I said, I am going blind. The other inmates do not help me, much less the prison warders because they are under no obligation to do so."

163. In light of the foregoing, the Commission finds that the State breached its special obligation to ensure Ms. Chinchilla's dignity and human treatment given her disabled condition.

3.4 The State's response on the day that Ms. Chinchilla died

164. The Commission has already concluded that the COF did not provide treatment that adequately met Ms. Chinchilla's special needs. Specifically with respect to life-threatening emergencies, the Commission notes that at the hearing of February 14, 2003, the Public Prosecution Service medical examiner said that Ms. Chinchilla was suffering a decompensation of her "underlying problem," needed hospital treatment, and that her life would be in danger without adequate treatment. At the same hearing, the COF doctor stated that for a diabetic to die their sugar levels would have to be above 600, so someone with between 500 and 600 could be taken to a hospital emergency room in time. However, for permission to be granted to leave the prison it was necessary to do a blood sugar level test and if it was high, permission was granted. The judiciary medical examiner, for his part, agreed at the hearing of April 21, 2004, that if the patient went into a state of diabetic ketoacidosis and then into a coma she would have a "chance" but the time taken to evacuate her would be critical.

165. The Commission further notes that by the day Ms. Chinchilla died no additional studies had been carried out on her, despite the fact that her blood pressure was high and that around a month earlier the Medical Services Coordinator was informed that Ms. Chinchilla presented "epigastric hardness" and it was suggested, therefore, that she undergo an ultrasound scan "to screen for any significant pathology."

166. From the foregoing, the Commission notes that by the day she died Ms. Chinchilla had multiple ailments, many of them neither diagnosed nor treated, as the preceding paragraphs show. Furthermore, as noted, the diabetes had progressed without it being properly treated. It was in these circumstances that the events of May 25, 2004 occurred.

167. The following is a summary of the facts that Commission has collated about what happened on the day Ms. Chinchilla died:

- Ms. Chinchilla suffered a fall because of a step that prevented her from getting by in her wheelchair, due to the fact that she had no one to help her move. As mentioned above, this situation is attributable to the State of Guatemala which neglected to implement reasonable modifications at the COF so as to afford Ms. Chinchilla conditions that were compatible with her disabled condition.
- After her fall a nurse was called, who said in her statement that she examined her and found "her blood pressure was 170/100, pulse 72x, breathing 16 x"; she also said that "she had a scraped knee, which was painful and hot on palpation" and "she administered two tablets of diclofenac and one tablet of captopril." The Commission notes that the nurse did not perform a glucose test on Ms. Chinchilla which, according to the doctor's statement, was essential to determine if hers was an emergency case so as to authorize her to go to hospital for treatment.
- According to the statements of Ms. Angélica Romano and Ms. Quintana Mendoza, Ms. Chinchilla's fall occurred between 7:00 and 7:30 a.m. or at 8:15 a.m. According to the nurse's

statement, she was called to examine Ms. Chinchilla at around 9:20 a.m. and, according to the testimony of Ms. Claudia Fedora Quintana, she herself returned to Ms. Chinchilla's room at approximately 10:30 a.m., by which time "she was blue," so she called the nurse again. The Commission observes, then, that after the nurse's superficial examination, Ms. Chinchilla did not receive any ex officio monitoring or any kind of health care for around one hour. The nurse only returned to see her when Ms. Claudia Fedora called her again.

- Ms. Chinchilla died alone, without receiving any kind of care or supervision from a doctor. On this point, the Commission recalls that the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that "[a]t every institution there shall be available the services of at least one qualified medical officer. According to the testimony of Ms. Osiris Angélica Romano, the Center had three doctors: one attended on Mondays and Thursdays in the afternoon, another on Friday mornings, and the third on Saturday mornings. Accordingly, the IACHR notes that doctors were only ever there on a part-time basis and that on Tuesdays, Wednesdays, and Sundays there was no doctor available.³⁵⁷ May 25, 2004, the day Ms. Chinchilla died, was a Tuesday. Indeed, the Commission notes that Ms. Chinchilla's fall was superficially attended to by a nurse, without any supervision by a medical officer.
- There is testimony from one of the inmates that the nurse reportedly requested authorization for Ms. Chinchilla to be taken to the hospital as an emergency. The nurse said in her declaration that she reported the situation but does not specifically say that she made such a request. The Commission notes that the outcome in either version was that Ms. Chinchilla was denied hospital treatment, which, according to the statements of the doctors, was necessary in the event of an emergency.

168. In light of the above omissions and failings, the Commission concludes that, in spite of the multiple potentially life-threatening ailments from which Ms. Chinchilla suffered, the State of Guatemala failed to provide her with adequate medical treatment on the day she died.

3.5 Conclusion

169. Based on the foregoing, the commission finds that the state of Guatemala: (i) omitted to perform as an a meaningful and comprehensive diagnostic assessment of Ms. Chinchilla's illnesses, their evolution, or their treatment; (ii) did not provide adequate treatment for her diabetes mellitus and related ailments, which worsened during her stay at the COF; (iii) neglected to adopt appropriate measures consistent with her condition as a disabled person; and (iv) failed to provide an appropriate and timely response on the day she died.

170. In light of these conclusions, the Commission finds the State responsible for violation of the rights to life and humane treatment recognized in Articles 4 and 5 of the American Convention to the detriment of Mrs. María Inés Chinchilla, including the progressive deterioration of her health, the inhuman and degrading treatment that she had to endure, the unfit living conditions for someone in her disabled condition, and her death without a proper diagnosis or treatment or having received timely emergency care.

4. Rights to a fair trial and judicial protection (Articles 8 and 25 of the American Convention)

171. Following, the Commission examines the arguments concerning the alleged failure of the State to provide judicial protection in two respects: (i) Whether or not Mrs. Chinchilla received judicial protection in relation to her health; and (ii) The inquiry into her death.

³⁵⁷Appendix 11. Affidavit of Osiris Angélica Romano before a notary public. Appendix to the representatives' brief of April 16, 2006.

4.1 Whether or not Mrs. Chinchilla received judicial protection in relation to her health while she was detained at the COF

172. Article 8(1) of the American Convention states,

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

173. Article 25(1) of the American Convention provides:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

174. Article 1(1) of the American Convention states,

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

175. In this regard, the Court has found that the States Parties have an obligation to provide effective judicial remedies to persons who claim to be victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).³⁵⁸

176. In its *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, the Commission underscored the role that enforcement judges play in protecting the rights of persons who need medical care. The IACHR noted that "judicial officials must act with diligence, independence, and humanity in cases where it is duly attested that there is an imminent risk to life of the individual owing to their deteriorated health or a fatal illness."³⁵⁹

177. In this case, the Commission observes that the Second Court consistently received regular information about Ms. Chinchilla's state of health and its impact on her life and well-being, not only through the certifications contained in the record in connection with the requests for permission to go for medical appointments, but also in communications from Ms. Chinchilla herself and the information available in the records connected with the incidental motions for early release.

178. Bearing in mind his function as a guarantor of the rights of persons deprived of their liberty, the Commission considers that the Judge had an obligation to provide judicial protection with respect to the different harm that Ms. Chinchilla suffered as a result of her ailments as well as with regard to the medical treatment that she was provided at the COF.

³⁵⁸ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 86.

³⁵⁹ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, par. 300.

179. Despite that duty, the Commission finds in the present case that the part performed by the Judge was limited, on one hand, to granting or denying permission for Ms. Chinchilla to leave the prison based on confirmations by the social worker as to whether or not those appointments were genuine and to requesting medical certifications to ascertain if the authorizations requested by Ms. Chinchilla to leave the prison were necessary. And on the other hand, in ruling on the incidental motions for early release, the role adopted by the judge was to decide whether or not Ms. Chinchilla suffered from a terminal illness. Moreover, in the last of the incidental motions, the Judge's analysis strayed completely from the issue of Ms. Chinchilla's health and dwelt solely on determining whether or not she had performed "an act of altruism, heroism, or any other humanitarian act" that might warrant granting her the benefit.

180. That the purpose of the medical certifications requested by the Judge was not to exercise his function as a guarantor in accordance with the standards described herein is confirmed with the various pronouncements and decisions by him seeking information as to whether or not "the excessive requests for hospital visits that this inmate is making [were] necessary," or to confirm "if [the appointments requested] were genuine." Furthermore, in disregard of the nature of the illnesses that Ms. Chinchilla suffered from, which could require immediate attention, on one occasion the Judge warned that in future all requests had to be presented "at least eight days in advance" otherwise they would be denied. The Commission notes that only once, in 2003, did the Judge order that Ms. Chinchilla receive treatment for her "symptoms" without following up further on the matter.

181. With respect to the incidental motions for early release, the Judge received information about the series of failings in the treatment that Ms. Chinchilla received as well as with regard to the above-described absence of requisite conditions. However, in the first three incidental motions, the judge merely pronounced on whether or not Ms. Chinchilla had a terminal illness. Despite the fact that the Fourth Division of the Court of Appeals took up the appeal against the decision on the third incidental motion on enforcement of sentences, it fails to remedy the lack of judicial protection for her right to life and humane treatment when it denied the appeal solely on the basis that all the statements agreed that it was not known when death might occur and, therefore, "for the time being she [was] not in imminent danger of dying."

182. Finally, as regards the fourth incidental motion filed, the Commission notes that the Judge applied Article 7 (c) of the Remission of Sentences Decree, which states that one of the powers of the president of the judiciary is to agree on special remissions for acts of altruism, heroism, or any other humanitarian act. However, he neglected to pronounce on Ms. Chinchilla's state of health, simply saying that the "the convict in question" had to remain in prison even though she had a disease that "ma[de] it even more complicated" for her to stay. The Judge clearly stated that the main point of this remedy was not to afford a person the possibility to die with dignity but to reward heroic acts. In that regard, both the norm and its application were focused on interests that ignored the need to protect the life and wellbeing of persons deprived of their liberty.

183. In light of the foregoing and the absence of an explanation from the State of Guatemala, the Commission notes that, aside from the communications that Ms. Chinchilla sent to the Judge of the Second Criminal Enforcement Court, there was no formal remedy that Ms. Chinchilla could access in order to denounce the harm to her health resulting from the lack of adequate treatment, to satisfy her need to be provided with conditions compatible with her dignity, and for the judge to protect her rights. Ms. Chinchilla invoked the only available remedy: incidental motions for remission of sentences. As a result, the criminal enforcement judge was regularly made aware of her state of health, the treatment failings, and the exacerbation of her illnesses. However, despite the foregoing, he failed to provide effective judicial protection for her rights to live with dignity and have her integrity respected, in violation of Articles 8 and 25 of the Convention taken in conjunction with Articles 1 and 2 thereof.

4.2 The inquiry into Ms. Chinchilla's death

184. The Court has held that when it comes to the investigation of the death of a person who was in State custody, as in this case, the relevant authorities "have a duty to initiate ex officio and without delay, a

serious, impartial, and effective investigation." Such investigations should be carried out with all available means and should be designed to establish the truth and to investigate, prosecute, and punish all those responsible."³⁶⁰

185. The Court further rules that "[i]t is possible to consider the State responsible for cruel, inhumane, or degrading treatment suffered by a person who has been in the custody of State agents, or who has died in such circumstances if, in addition, the authorities have not conducted a serious investigation of the facts followed by the prosecution of those who appear to be responsible for them."³⁶¹ In this regard, it is incumbent on the State "to provide an immediate, satisfactory, and convincing explanation of what happened to a person who was under State custody and to rebut the allegations of its responsibility, through the use of appropriate evidentiary means."³⁶²

186. As the Inter-American Court has found, the duty to investigate must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective,³⁶³ or as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.³⁶⁴

187. In the same vein, the case law of the European Court of Human Rights holds that the State has the obligation to offer a "convincing explanation" of any injury sustained by someone deprived of their liberty. It has also held that where an individual makes a "credible assertion" that his rights have been infringed at the hands of agents of the State, there should be an effective official investigation. If this were not the case, it would be possible for agents of the State to abuse the rights of those within their control with virtual impunity.³⁶⁵

188. The fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.³⁶⁶

³⁶⁰ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 87. See also I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations*. Judgment of May 14, 2013. Series C, No. 260, par. 218.

³⁶¹ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 88.

³⁶² I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 88.

³⁶³ I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 131; and I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 120.

³⁶⁴ I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 120.

³⁶⁵ *Cfr.* European Court of Human Rights, *Case of Elci and others v. Turkey*, (Nos. 23141 and 25091/94), Judgment of 13 November 2003, paras. 648 and 649, and *Case of Assenov and others v. Bulgaria*, (No. 24760/94), Judgment of 28 October 1999, para. 102.

³⁶⁶ IACHR, Annual Report 1997, Report 55/97, Case 11.137 (Juan Carlos Abella et al.), Argentina, par. 412. In this regard, see also: IACHR, Annual Report 1997, Report 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, par. 96 and 97.

^[54] The Inter-American Court has stated, for example, that "the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." I/A Court H.R., *Case of the Constitutional Court*, Judgment of

189. Of particular significance is the case of *Mendoza et al. v. Argentina*, in which the Court examined the death of a person in State custody. The Court held that “the State authorities had the obligation to follow up on a logical line of investigation designed to determine the possible responsibilities of the prison staff for the death of Ricardo Videla, since the omissions related to his detention conditions and/or his state of depression could have contributed to this act.” The Court specified that the State had “the obligation to disprove the possibility of the responsibility of its agents, taking into account the measures that they should have adopted in order to safeguard the rights of a person in its custody,” and “to collect the evidence that this entailed.”³⁶⁷

190. In the present case, the Commission notes that the conclusions of the Prosecutor’s Office and the Court were based on the fact that Ms. Chinchilla had died of a “pulmonary edema” and “hemorrhagic pancreatitis,” which led her to die of natural causes without there being a crime to investigate. However, at no time did the authority in charge of the inquiry investigate the possible responsibilities of State officials, including correctional, medical, and judicial officers, for alleged violation of their duty to ensure Ms. Chinchilla’s rights to life and humane treatment or the omissions with respect to her conditions of incarceration, the lack of adequate medical treatment, and the factors that could have contributed to her death.

191. In that regard, the Commission finds that the information in the procedural records connected with the enforcement of her sentence and the incidental motions presented pointed unequivocally to the fact that her diseases were getting worse as a result of the lack of adequate treatment. Furthermore, there was information that she was in a depressive state in the days leading up to her death and that she had epigastric hardness on which an ultrasound scan was omitted to be carried out. Those circumstances were not properly investigated.

192. The IACHR notes, in turn, that no authority conducted any analysis to identify the nature of the appropriate responsibilities under the Guatemalan legal system. On this point, the Commission emphasizes that the responsibility of agents of the state for acts such as the ones in the present may be diverse in nature. In this regard, “the determination of criminal and/or administrative responsibility each has its own substantive and procedural rules. Consequently, the failure to determine criminal responsibility should not prevent the continuation of the investigation into other types of responsibilities, such as administrative responsibilities.”³⁶⁸

193. Finally, the Commission notes that the failure to conduct an investigation has also meant a failure to disclose truth, with the result that, to date, there has still not been a judicial determination as to whether or not the “pulmonary edema” and “hemorrhagic pancreatitis” established as causes of death were linked to Ms. Chinchilla’s diseases and whether or not they were caused by the lack of adequate medical attention. This situation of uncertainty has been allowed to linger unreasonably to this day, almost 10 years since Ms. Chinchilla died.

194. The State has suggested that there was a “lack of interest” on the part of the family in the case, since they did not file a criminal complaint. However, the Commission recalls that where violations of the life or well-being of a person in state custody are concerned, it is not necessary to examine the steps that the relatives of the victim may or may not have taken with a view to the investigation of the facts, given that, since that is an *ex officio* obligation of the State, the Commission must analyze the action taken by the latter on

September 29, 1999. Series C No. 71, par. 123. See also I/A Court H.R., *Blake Case, Reparations*, Judgment of January 22, 1999. Series C No. 48, par. 65.

³⁶⁷I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations*. Judgment of May 14, 2013. Series C, No. 260, par. 223.

³⁶⁸I/A Court H.R., *César Mendoza et al. Argentina. Preliminary Objections, Merits and Reparations*. Judgment of May 14, 2013. Series C, No. 260, par. 224.

its own initiative in that regard.³⁶⁹ This is particularly important when a person has died while in state custody, where the obligation is on the State to provide a satisfactory explanation.

195. In light of the foregoing, the Commission concludes that the State violated the rights to a fair trial and judicial protection contained in Articles 8 and 25 of the American Convention, taken in conjunction with the obligations under Articles 1(1) and 2 of said instrument, to the detriment of Maria Inés Chinchilla and her next of kin, specifically Ms. Chinchilla's mother; her daughters, Marta María Gantenbein Chinchilla and Luz de María Juárez Chinchilla; her son, Luis Mariano Juárez Chinchilla; and her other daughter, whose name the Commission does not have.

VI. CONCLUSIONS

196. Based on the factual and legal arguments given above, the Commission concludes that the State of Guatemala is responsible for:

- violation of the right to life enshrined in Article 4(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of María Inés Chinchilla Sandoval;
- violation of the right to humane treatment enshrined in Article 5(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of María Inés Chinchilla Sandoval;
- violation of the rights to a fair trial and judicial protection enshrined in Articles 8(1) and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of María Inés Chinchilla Sandoval and her next of kin.

VII. RECOMMENDATIONS

1. Provide full reparation for the human rights violations found in the instant report, including both material and moral dimensions.

2. Carry out and complete an impartial, thorough, and effective investigation as soon as possible, in order to establish criminal and other responsibilities for the violations found in this report.

3. Adopt non-repetition measures, including: (i) a guarantee of timely access to adequate medical treatment at the Female Orientation Center; (ii) a guarantee of adequate conditions of confinement for persons with disabilities at the Female Orientation Center, in accordance with the standards described in this report; (iii) institutional strengthening and training for judicial officers responsible for the enforcement of sentences, to ensure that they effectively perform their role as guarantors of the rights of persons deprived of their liberty; and (iv) adoption of rules on a prompt and effective judicial remedy to protect the rights to life and humane treatment where the health needs of persons deprived of their liberty are concerned.

Signed in the Original
Emilio Álvarez Icaza L.
Secretario Ejecutivo

³⁶⁹ I/A Court H.R., *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, par. 94.