



## **INICIATIVA CONVENCIONAL CONSTITUYENTE QUE ESTABLECE EL DERECHO A LA TUTELA JUDICIAL EFECTIVA.**

### **VISTOS:**

1. Que, el Párrafo 2° del Título IV del Reglamento General de la Convención Constitucional establece las iniciativas constituyentes para la elaboración de las normas constitucionales.
2. Los artículos 81 y siguientes del Reglamento General de la Convención Constitucional permiten que las y los convencionales constituyentes puedan presentar iniciativas de normas convencionales constituyentes a la Mesa Directiva, a través de la Oficina de Partes de la Secretaría de la Mesa Directiva.
3. Que, el artículo 83 del Reglamento General de la Convención Constitucional exige que las iniciativas convencionales constituyentes sean presentadas con fundamento, por escrito, con articulado y dentro de plazo.
4. Que, a su vez, el mismo artículo 83 del Reglamento General de la Convención Constitucional exige que las iniciativas convencionales constituyentes no pueden ser firmadas por menos de ocho ni por más de dieciséis convencionales constituyentes.

### **CONSIDERANDO:**

Uno de los fundamentos del Estado de Derecho es la posibilidad de que los miembros de la comunidad puedan acudir al Estado para solicitar la protección de un derecho afectado o amenazado y la resolución de sus conflictos jurídicos. La paz social se asegura, de esta manera, mediante la configuración de un Estado capaz de brindar la solución de los problemas y conflictos de distintos intereses, evitando su perpetuación y el riesgo que aquello pueda afectar la sana convivencia.

Este trasfondo democrático se traduce en un deber Estatal que sirve de contracara al derecho de acceder a la Justicia: se debe garantizar que las soluciones logradas gracias a la intervención de los Tribunales se traduzcan en soluciones efectivas y coherentes con su rol, evitando la autotutela. Surge así el derecho a la tutela judicial efectiva, la que no solo es un medio de protección frente a las vulneraciones ilícitas que puedan sufrir las personas, sino que realza la importancia de la operatividad y eficacia de las resoluciones judiciales como presupuesto trascendental para la vida democrática de un país, al punto que puede verse como parte inherente del denominado “*umbral mínimo democrático*” que como sociedad deberíamos buscar.

Así, la actuación de los Tribunales de Justicia para proteger los derechos fundamentales dista de ser algo relacionado sólo a los casos concretos, puesto que dicha acción de *conocer* y *resolver* los conflictos jurídicos conlleva, a su vez, la consolidación de las bases del Estado Democrático de Derecho. De allí emana la importancia de que el derecho a la *tutela judicial* no quede sólo en la resolución de un conflicto (o sea, en el simple hecho de que los Tribunales tramiten acciones), sino de que debe avanzar hasta ser una tutela judicial *efectiva*.

La noción de *tutela judicial efectiva* hace relación al reconocimiento de un derecho prestacional que recaba del Estado la protección jurídica debida, en el igual ejercicio de los derechos ante la justicia, proscribiendo la autotutela, y garantizando una respuesta a la pretensión de derechos e intereses legítimos con autoridad de cosa juzgada y con la eficacia coactiva que demanda la satisfacción de derechos fundamentales. De esta manera, el derecho no es visto sólo como la posibilidad de acudir al Estado, a través de los Tribunales, sino que, además, su contenido se relacionaría a un derecho que asegura que el Estado brindará una respuesta, conforme a determinados presupuestos formales y sustantivos, revestida de la posibilidad cierta de concreción en la realidad, mediante la utilización legítima de la coacción en caso de ser necesario. Así las cosas, este actuar del Estado no es meramente simbólico o testimonial, sino que está dirigido a generar un cambio en la



cotidianidad de las personas, con vocación de tutelar satisfactoriamente los derechos cuando aquellos se vean afectados o amenazados.

En Chile, la jurisprudencia ha reconocido la existencia de este derecho dentro del ordenamiento jurídico interno, a pesar de no existir una consagración expresa en el texto constitucional, ni en normas de rango infraconstitucional, lo cual debiera ser reparado en miras de los ejemplos que nos ha dado el Derecho Comparado y los aportes entregados por el Derecho Internacional de los Derechos Humanos. Sin ir más lejos, la Corte Interamericana de Derechos Humanos, mediante una interpretación de los artículos 8° y 25 de la Convención Americana sobre Derechos Humanos, ha reconocido la existencia de una obligación a cargo de los Estados de asegurar la tutela judicial efectiva de los derechos ante los órganos competentes, que consiste en la posibilidad real de que toda persona pueda requerir y obtener la protección de sus derechos.

La tutela judicial efectiva al que se hace mención tendrá una doble función desde una mirada normativa: una primera, que da cuenta de un deber impuesto al Estado-legislador para que la materialice mediante la instauración de procedimientos que permitan resguardar derechos, los medios de protección que los cautelen y la perspectiva jurisdiccional cuando sea necesario reivindicarlos en la esfera de la justicia. Pero, además habrá una segunda lectura de carácter limitante, ya que el deber de instaurar procedimientos judiciales nunca puede ser visto como la entrega de una confianza absoluta al legislador, para que esté facultado a determinar con entera discreción los procedimientos judiciales. En otras palabras, el legislador debe desarrollar el derecho, pero no arbitrariamente, sino que conforme al *estándar sustancial* inherente a la tutela judicial efectiva: asegurar el procedimiento adecuado según el tipo de conflicto, con medidas que fomenten el acceso a la jurisdicción, resguardando las debidas garantías y con una posibilidad de ejecución efectiva real.

Es en este sentido que se debe reconocer el Derecho social de la tutela judicial efectiva y su principal medida de acceso a la jurisdicción: la asistencia jurídica

gratuita para aquellos que están en desventaja económica para poder procurársela por sí mismos.

Por lo anterior, las y los convencionales constituyentes abajo firmantes, venimos en presentar la siguiente **INICIATIVA CONSTITUYENTE**:

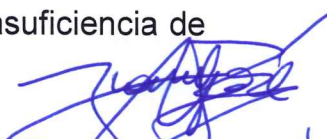
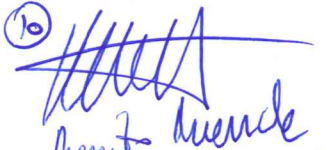
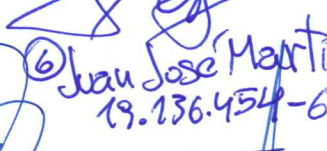
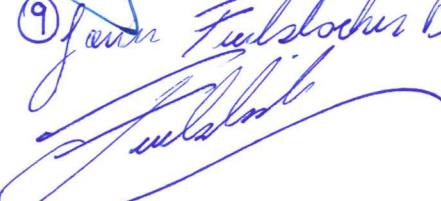
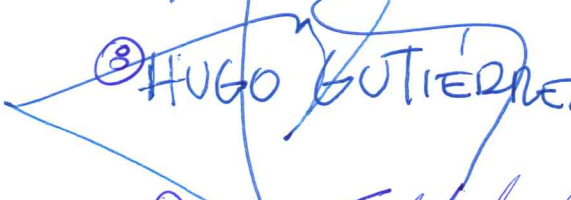

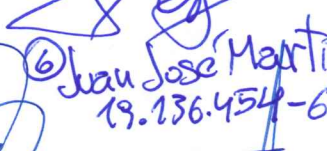
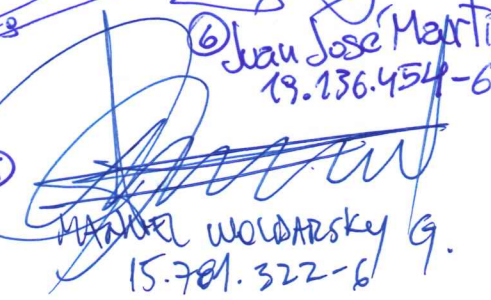
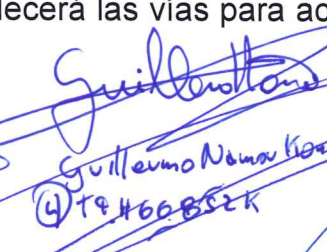
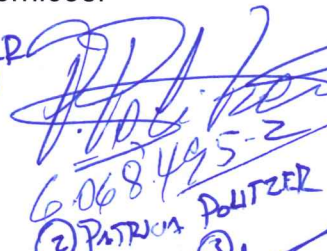

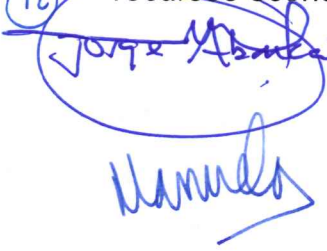
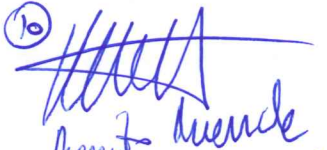
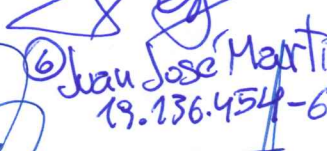
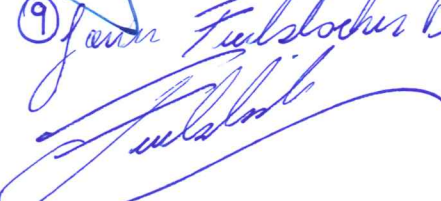
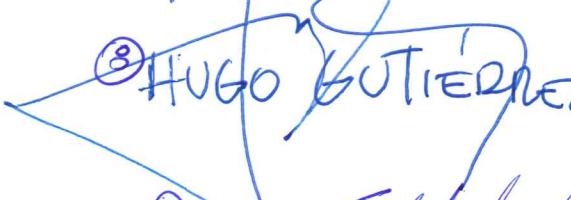

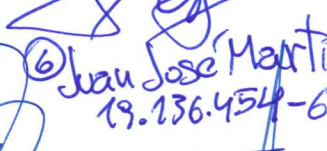
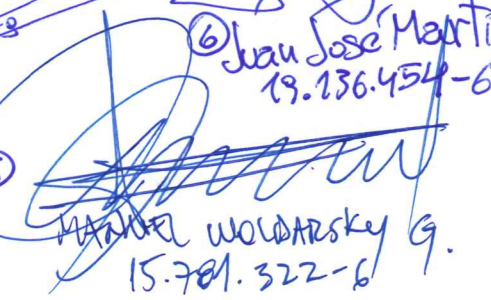
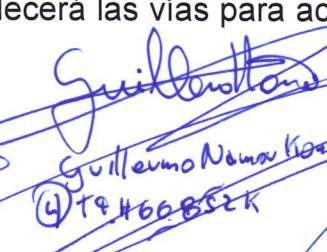
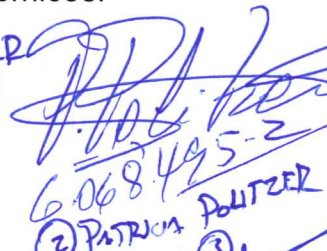

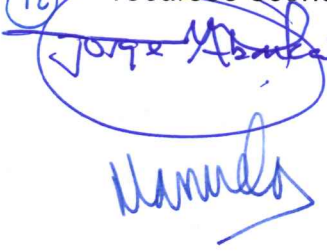
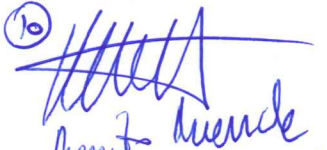
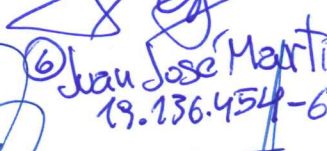
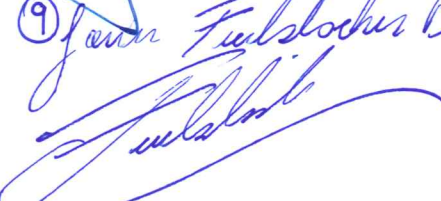
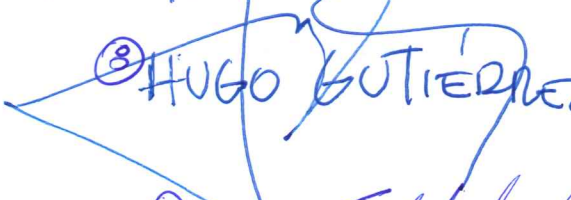

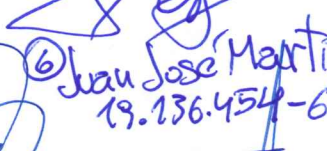
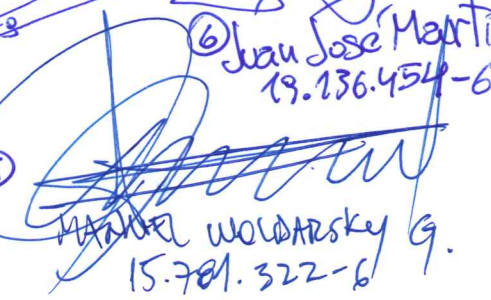
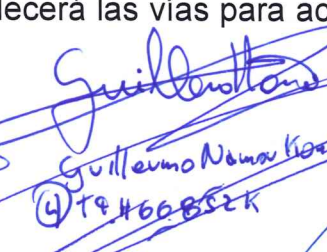
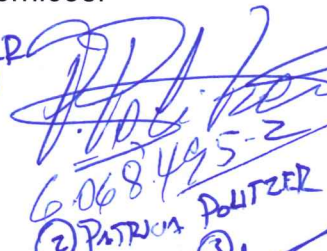

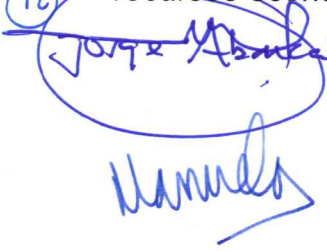
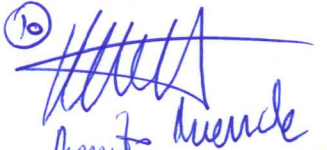
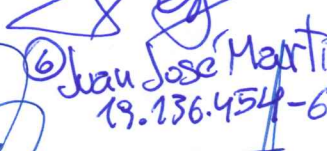
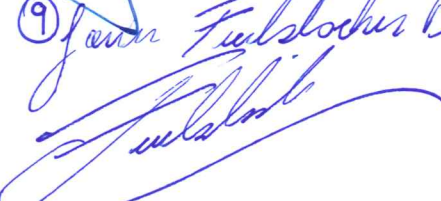
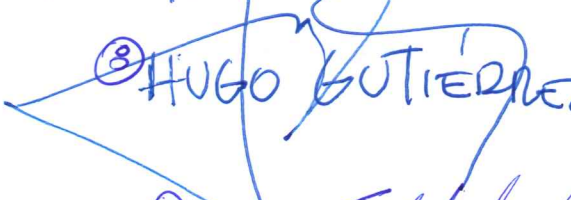

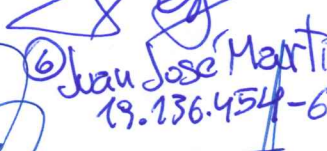
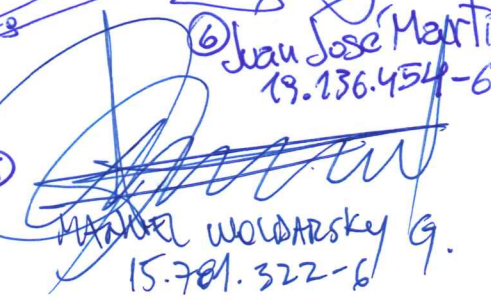
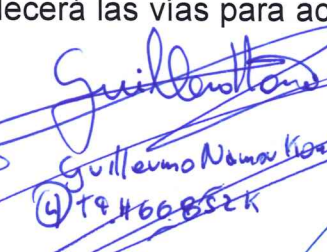
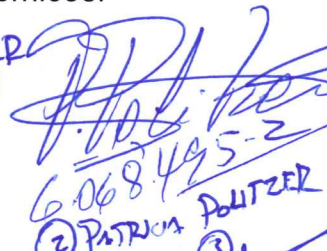

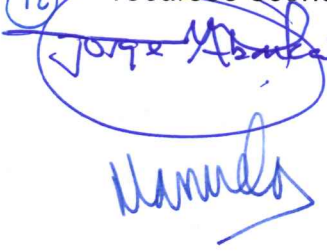
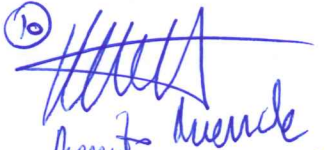
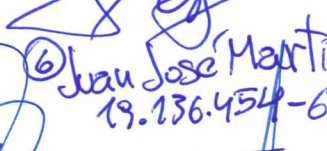
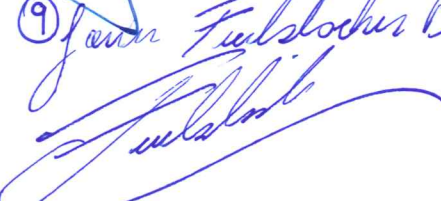
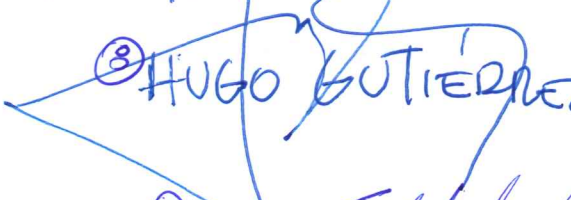

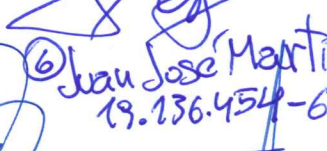
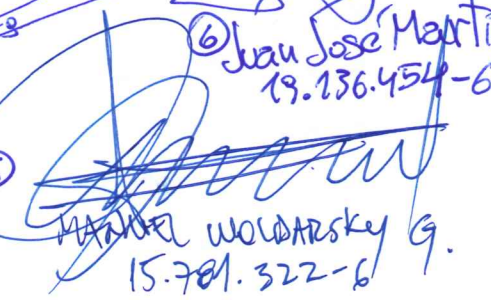
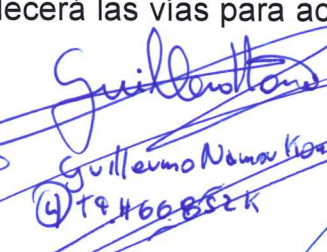
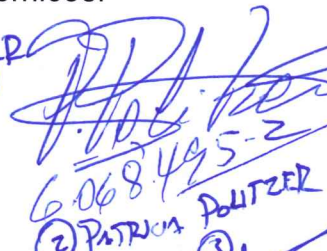

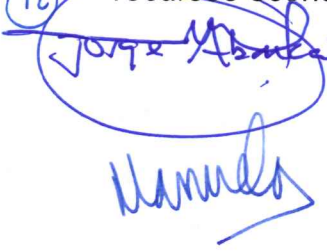
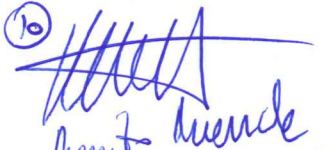
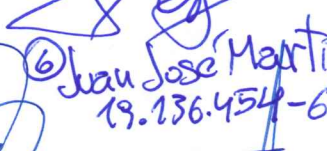
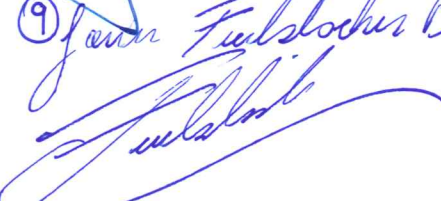
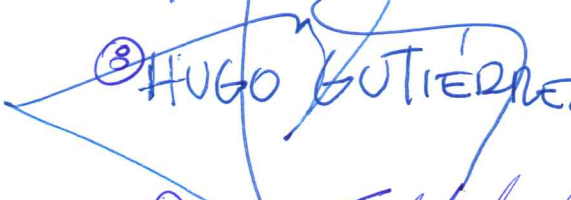

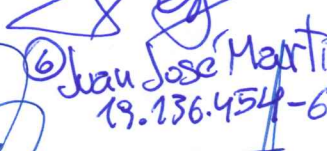
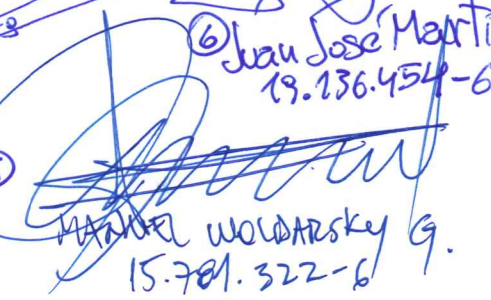
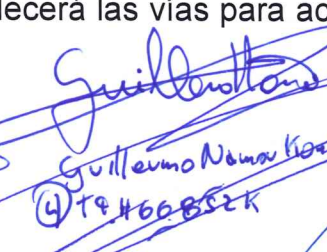
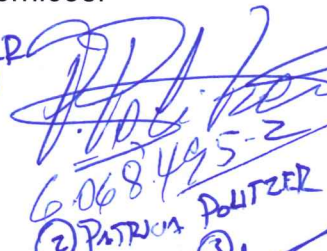

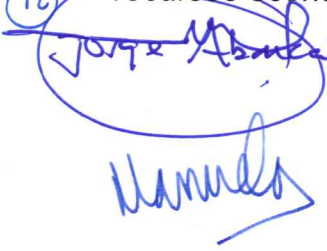
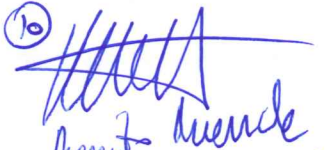
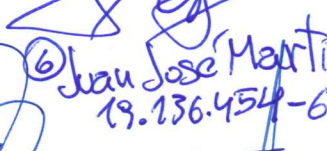
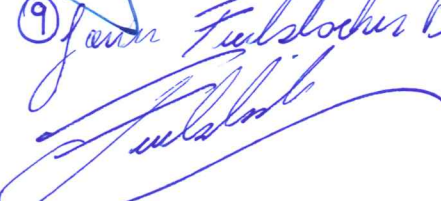
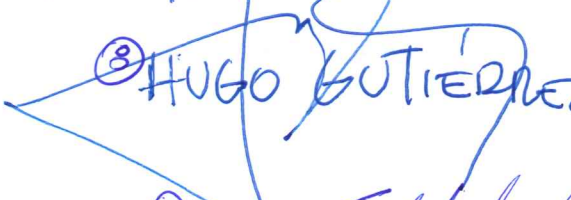

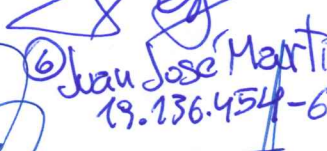
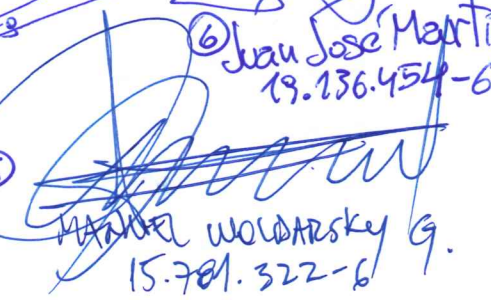
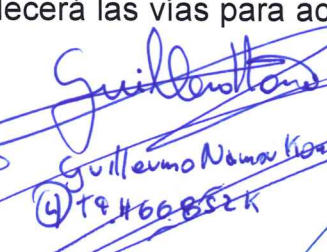
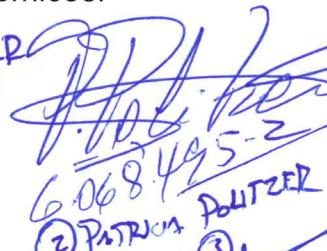

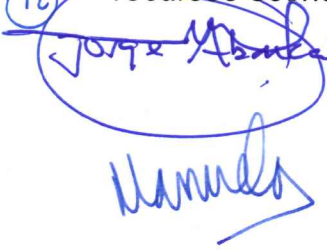
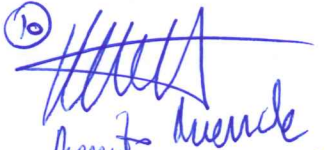
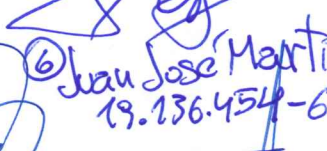
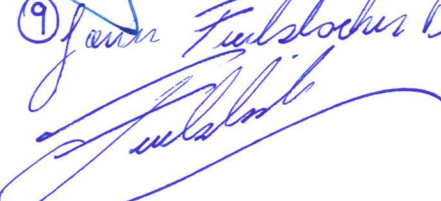
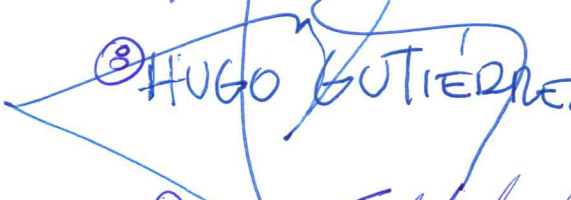

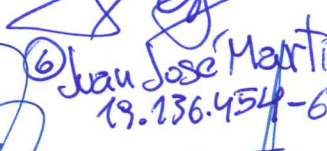
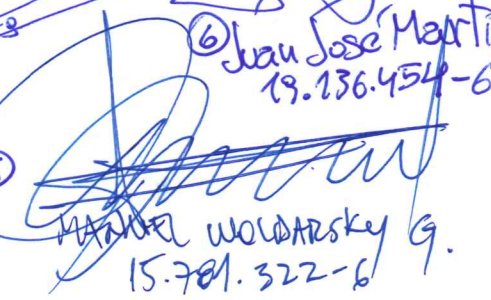
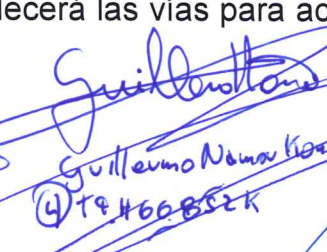
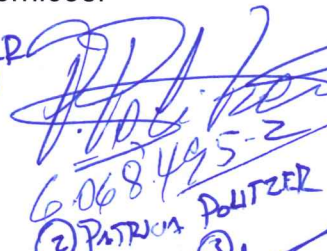

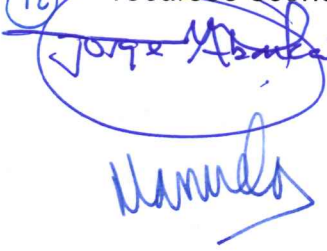
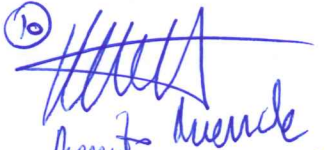
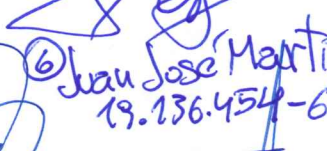
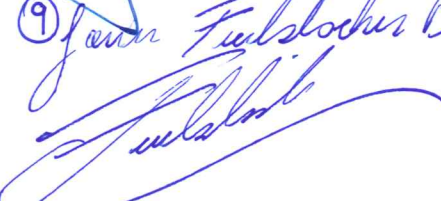
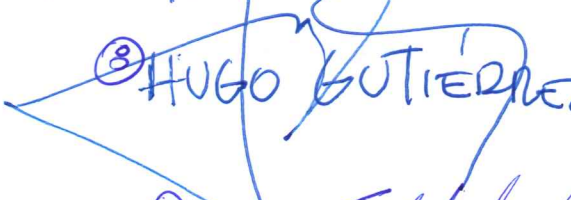

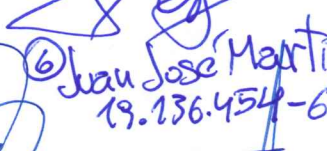
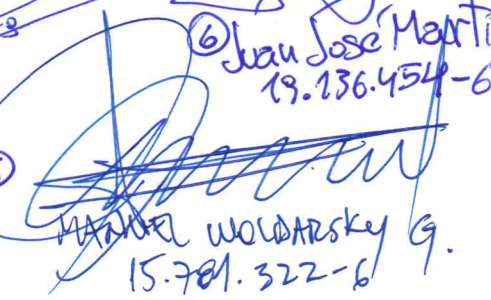
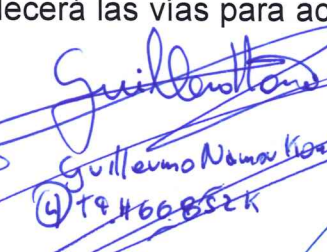
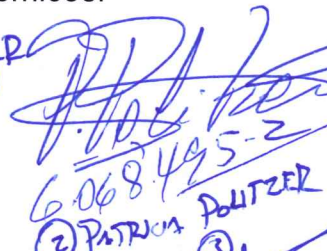

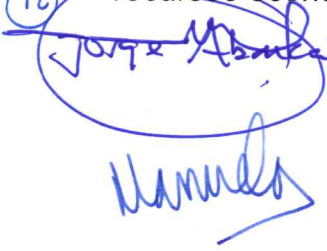
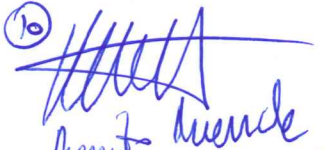
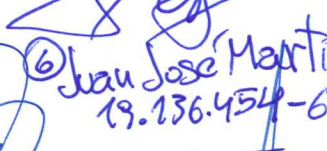
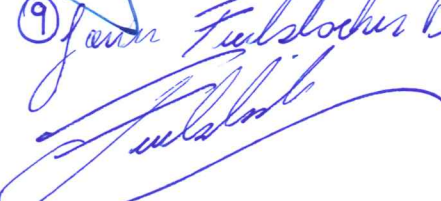
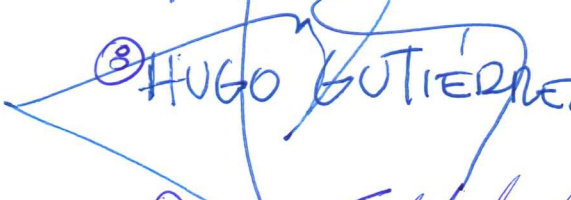

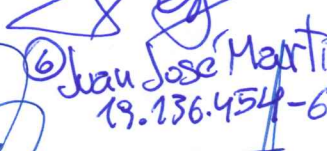
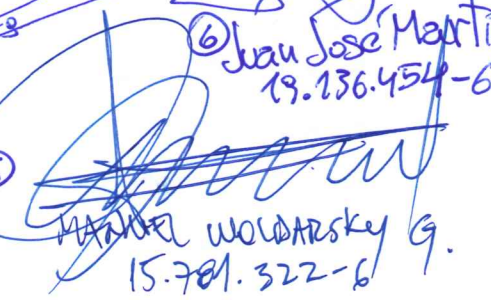
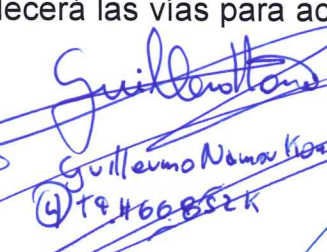
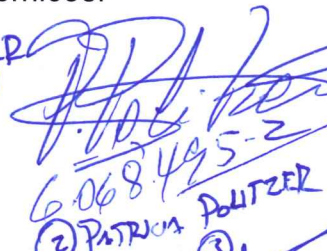

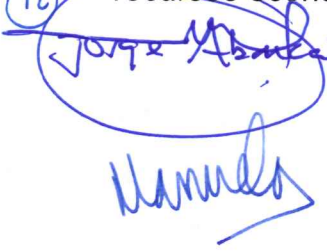
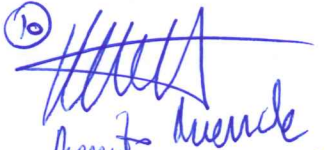
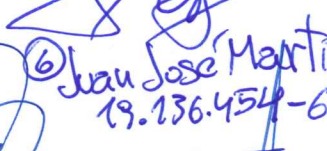
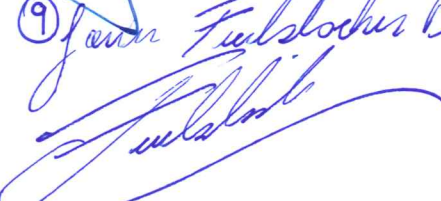
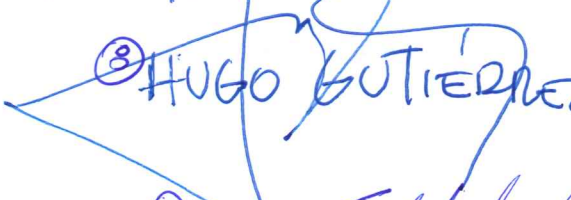

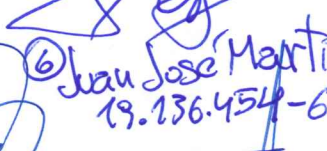
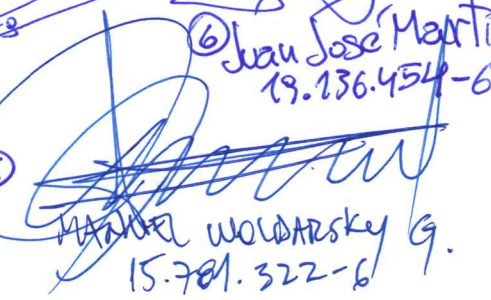
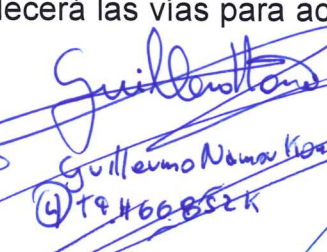
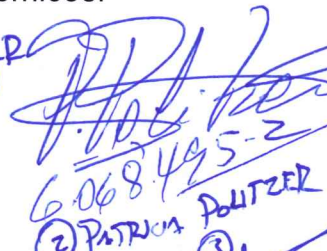

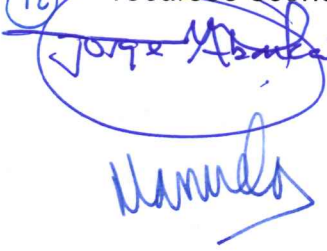
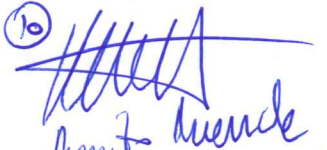
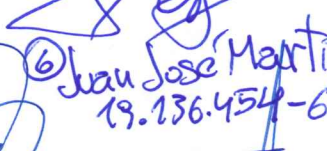
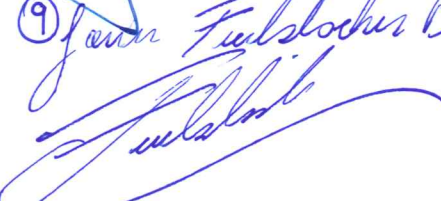
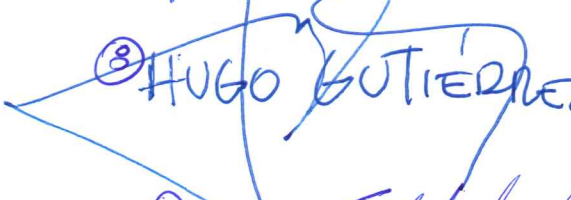

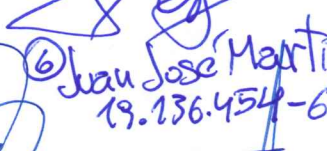
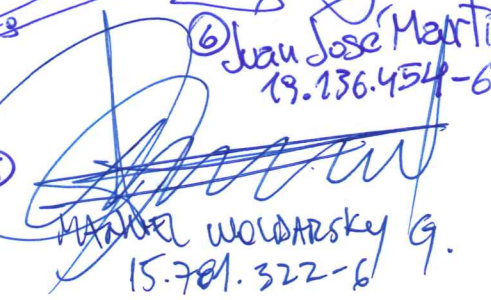
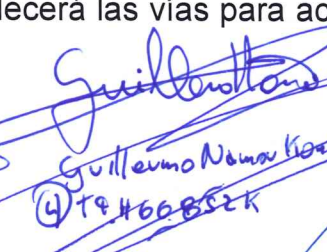
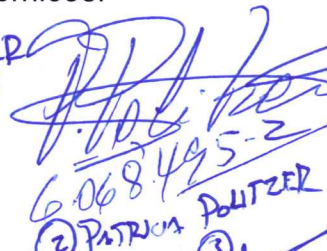

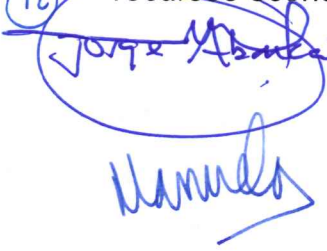
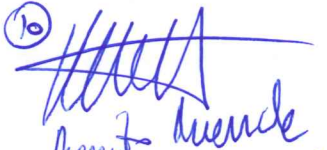
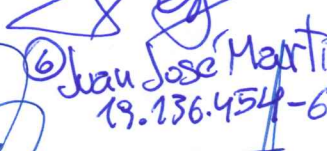
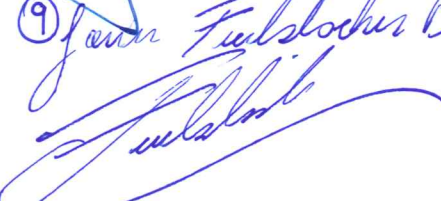
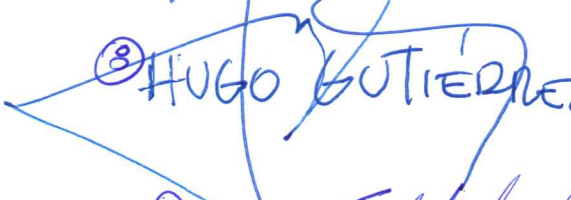

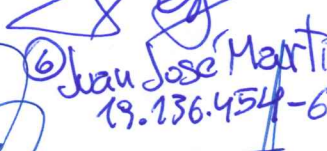
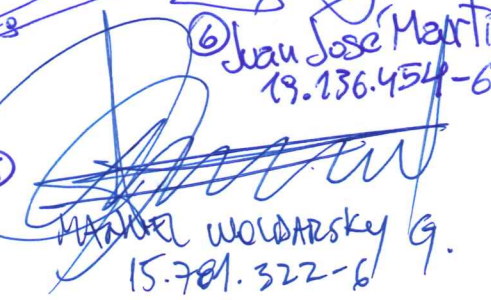
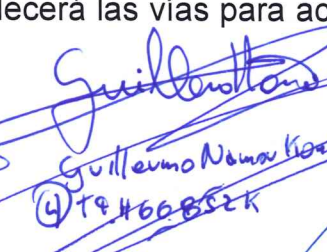
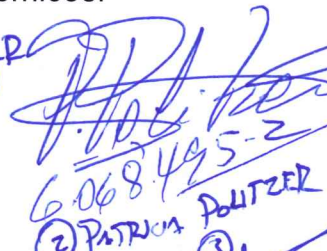

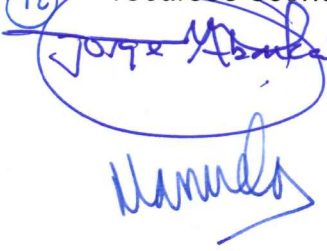
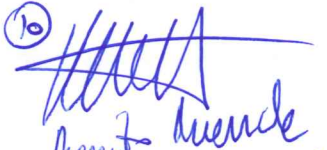
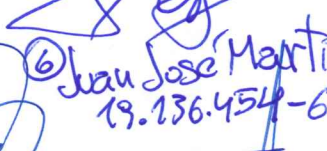
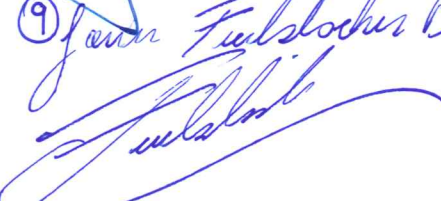
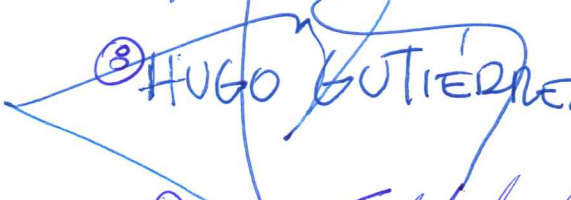

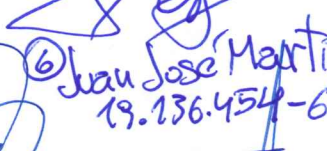
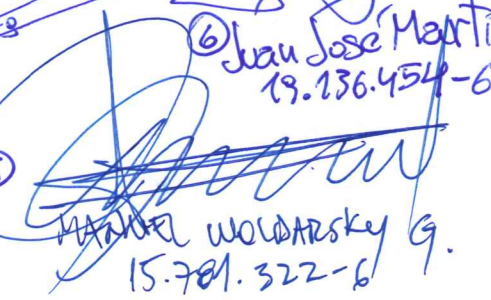
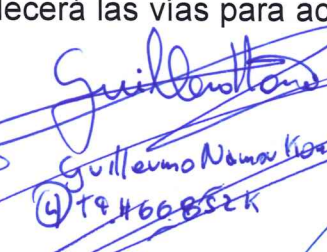
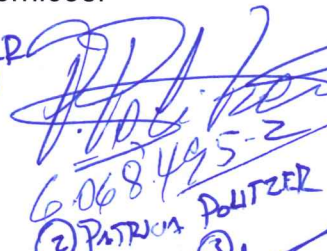

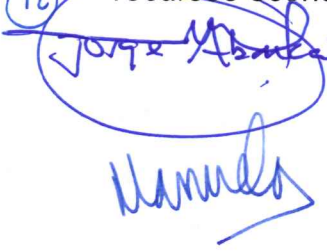
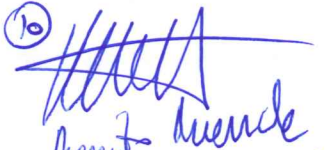
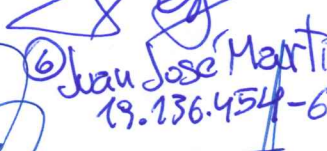
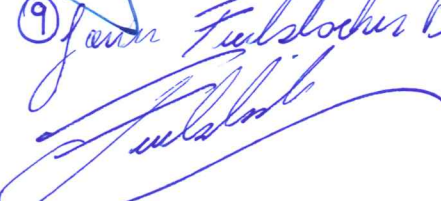
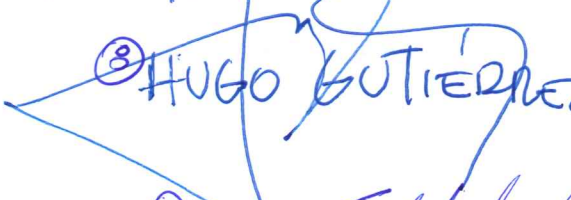

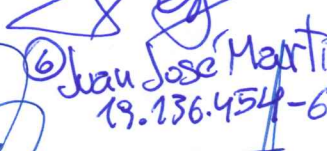
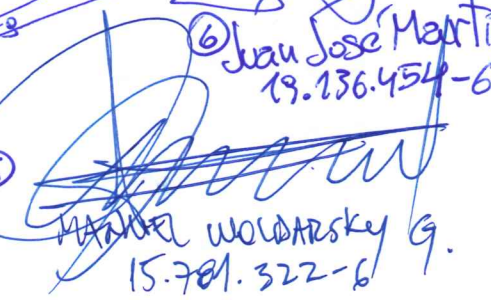
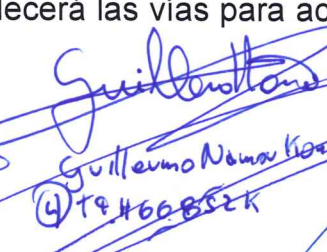
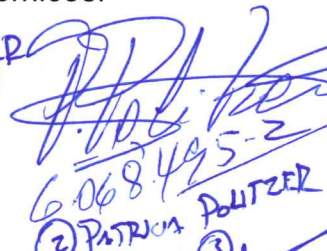

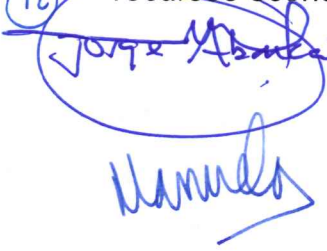
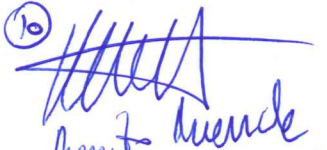
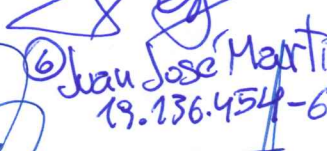
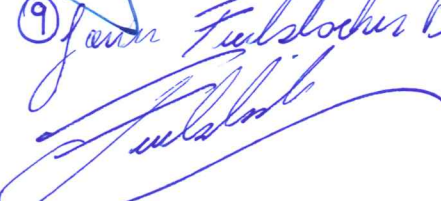
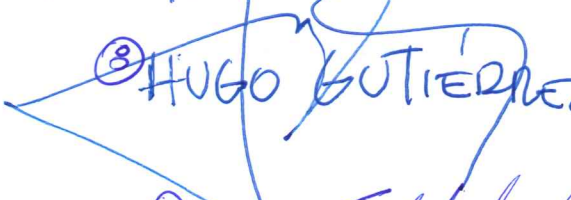

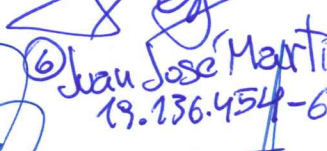
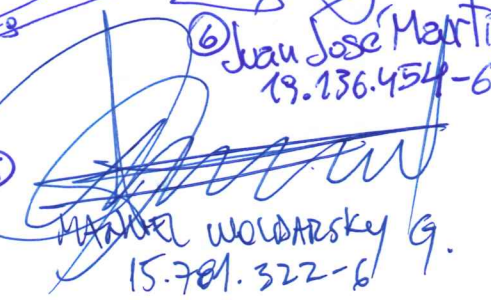
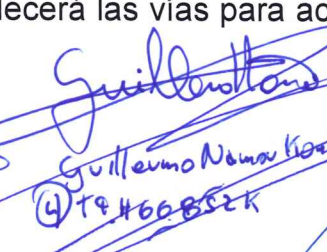
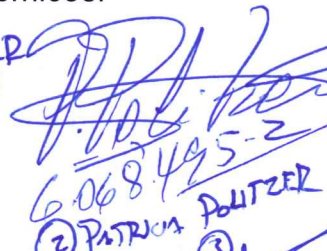

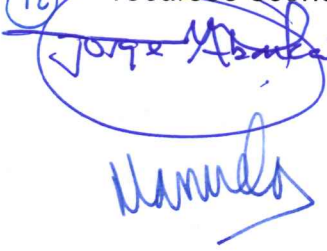
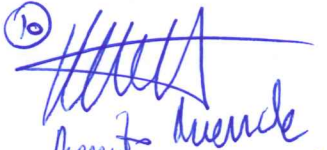
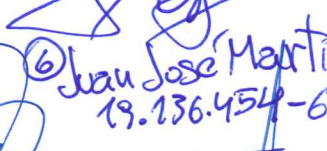
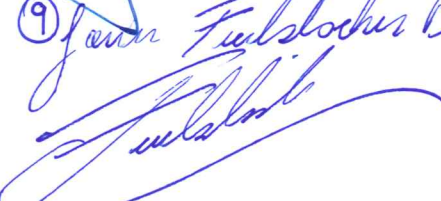
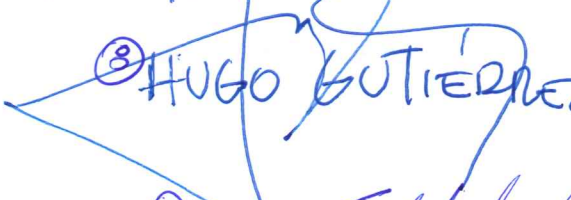

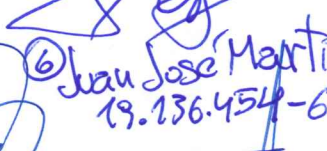
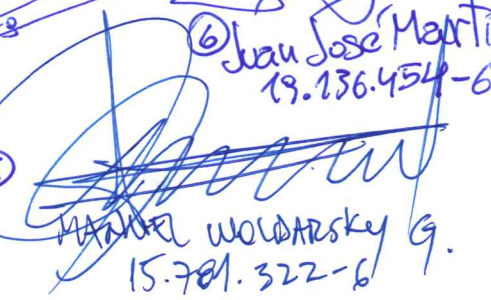
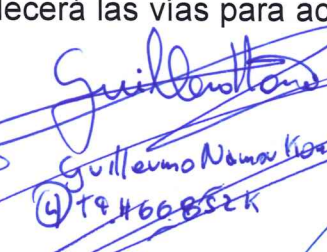
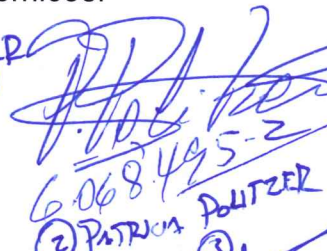

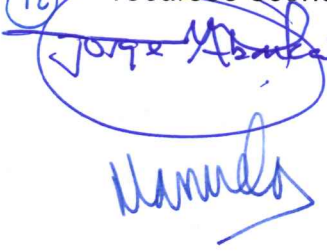
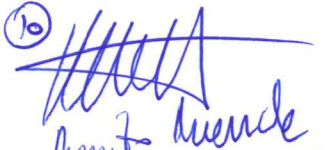
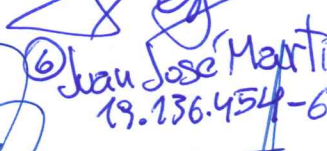
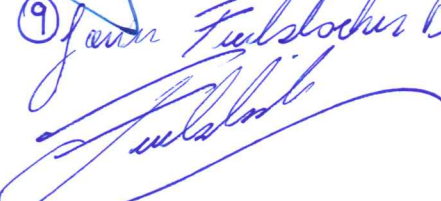
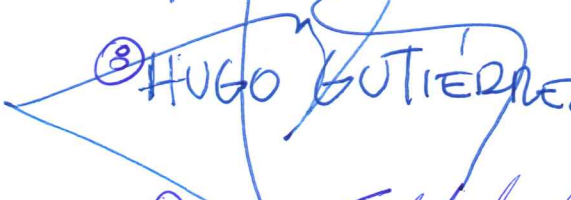

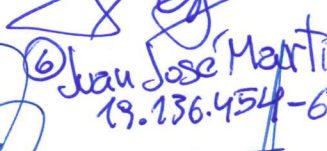
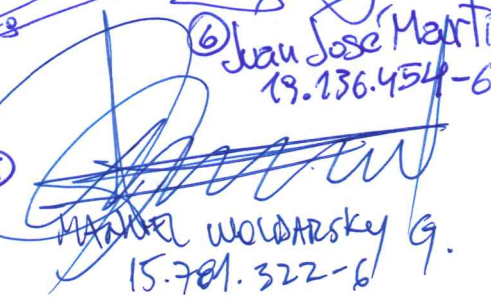
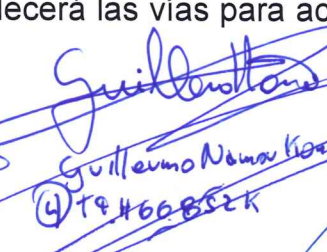
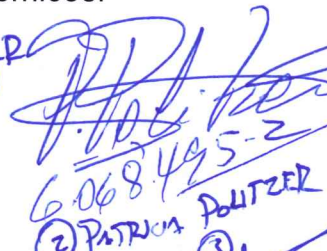

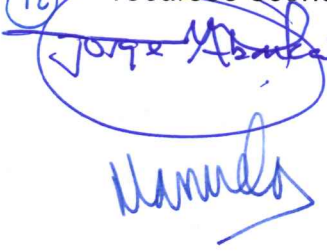
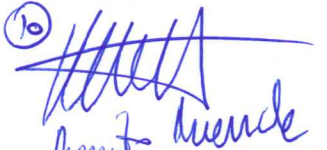
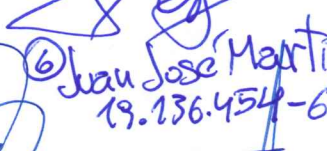
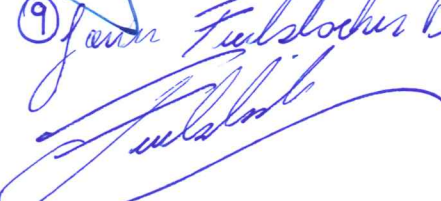
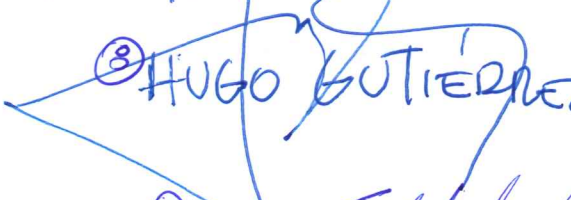

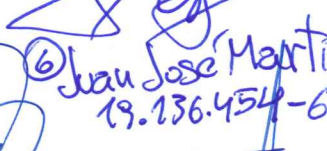
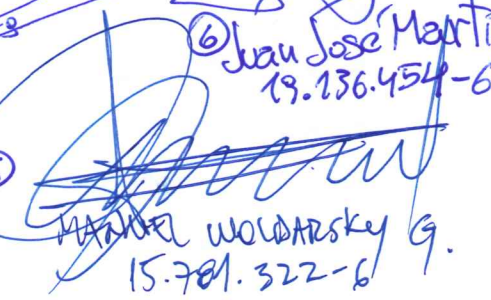
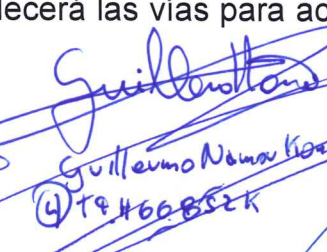
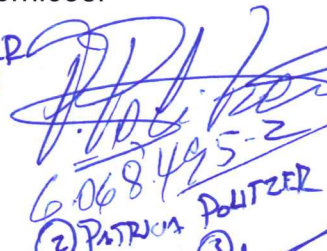

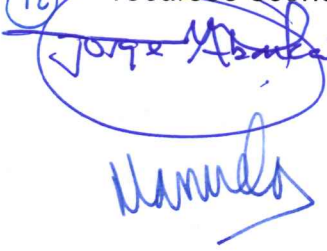
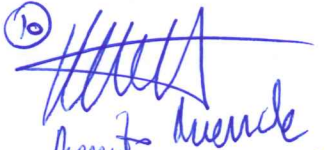
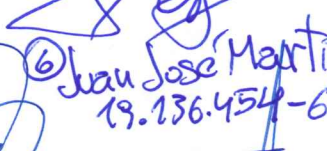
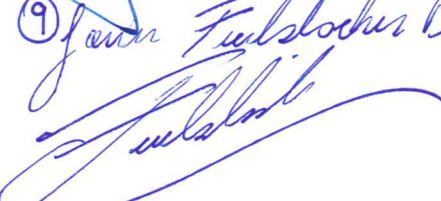
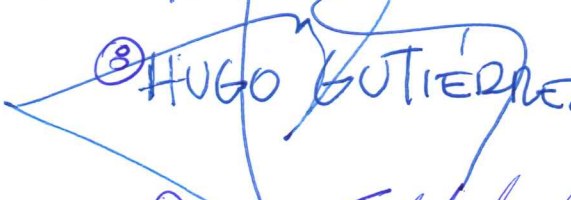

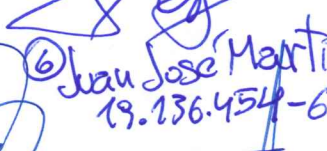
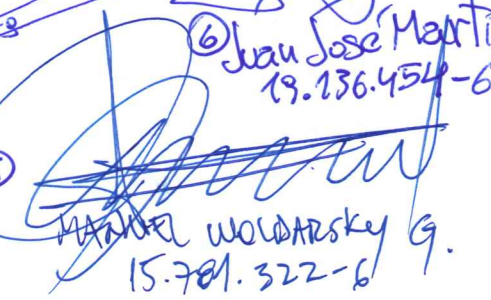
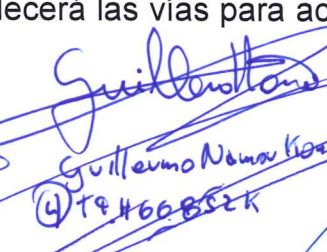
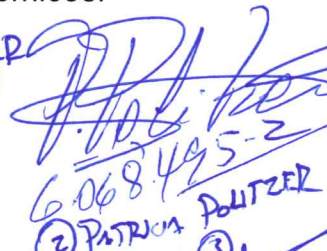

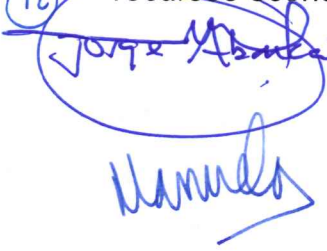
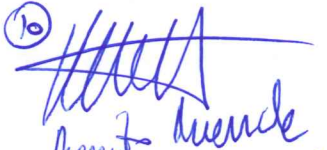
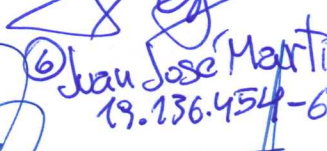
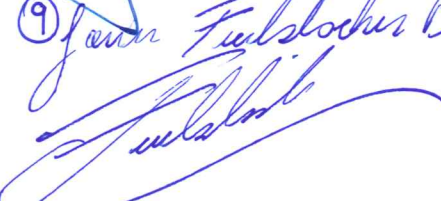
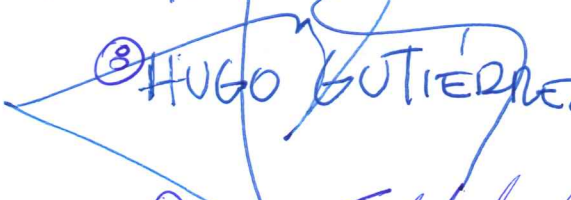

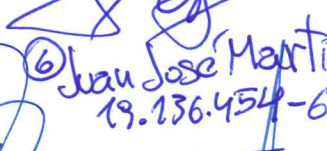
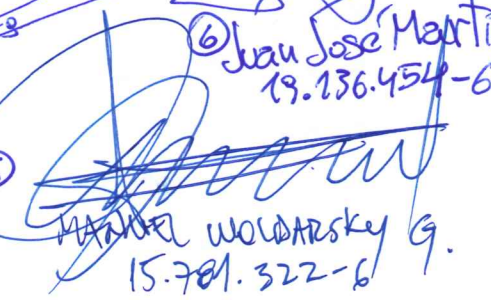
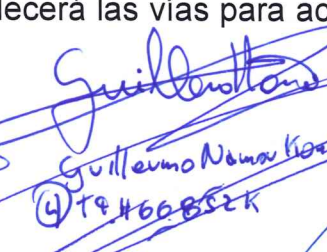
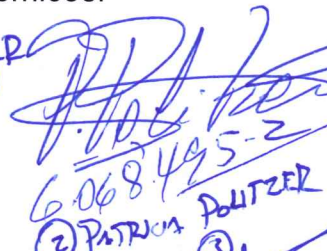

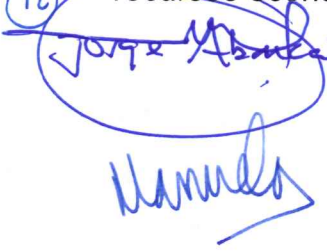
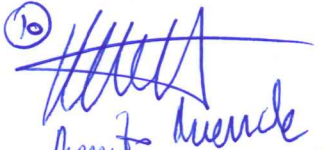
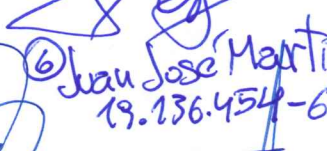
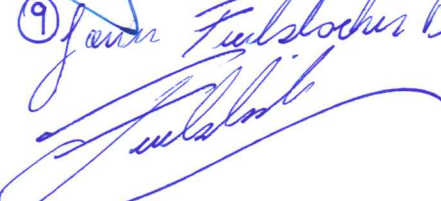
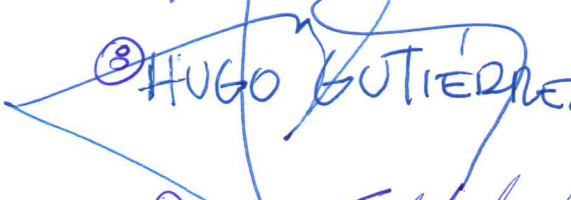

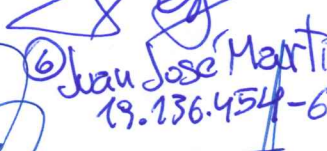
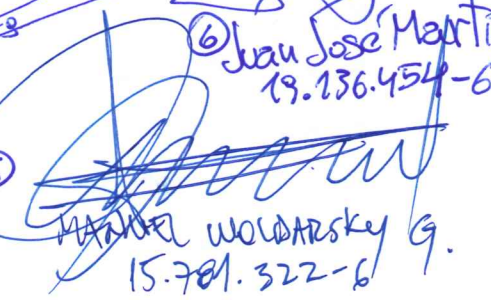
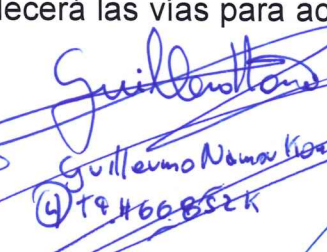
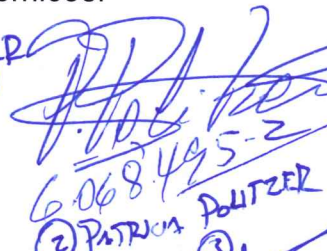

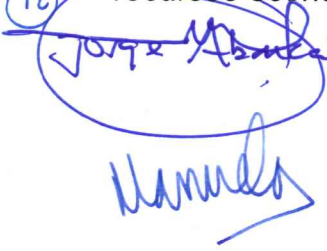
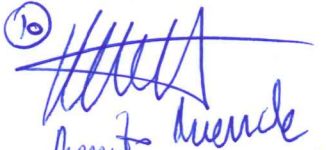
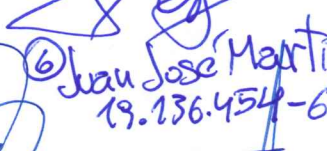
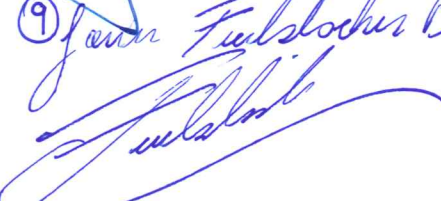
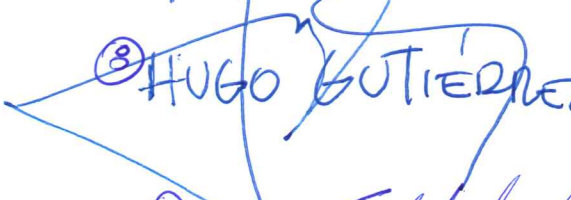

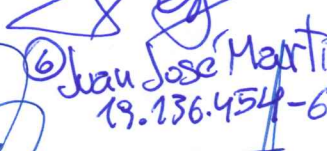
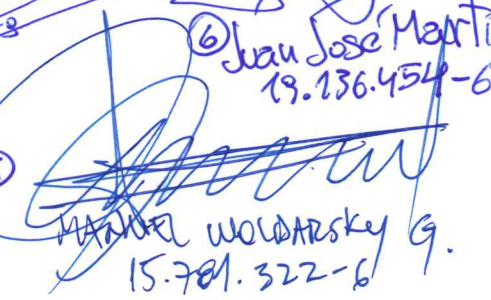
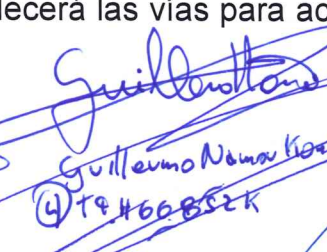
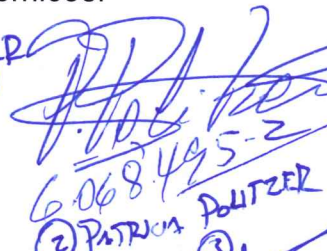

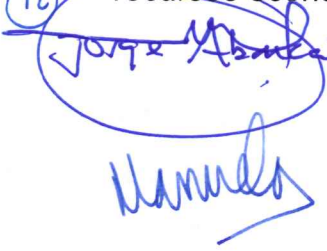
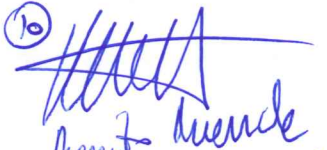
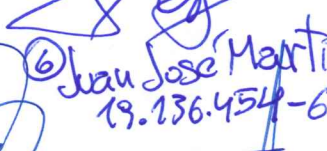
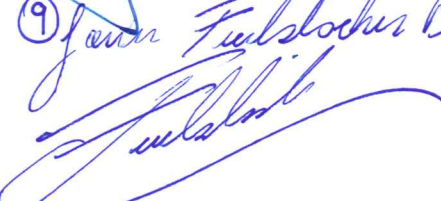
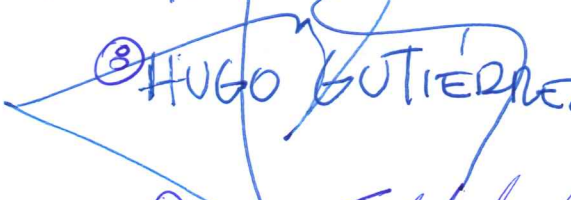

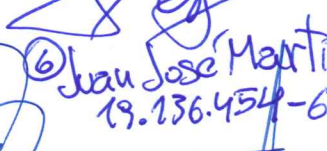
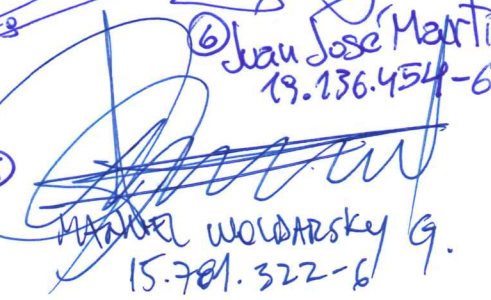
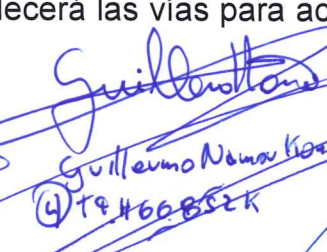
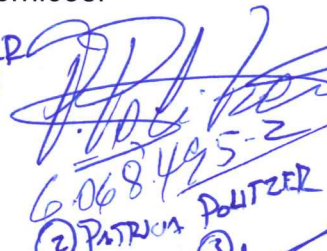

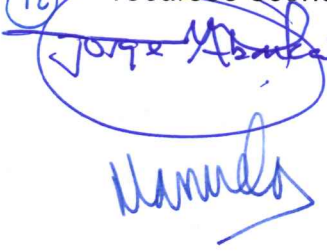
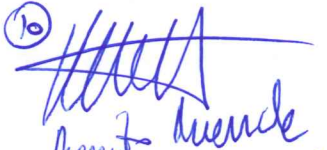
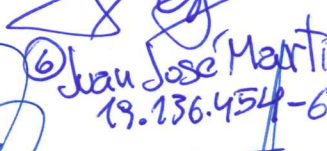
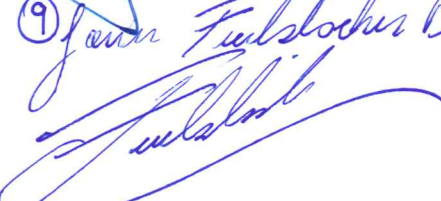
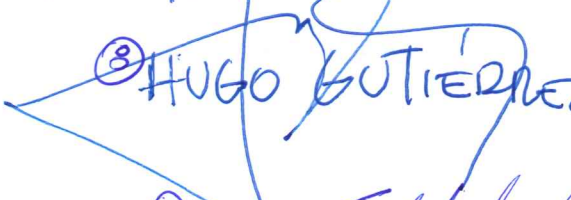

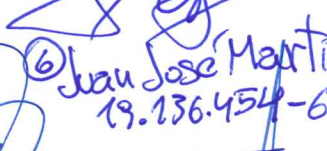
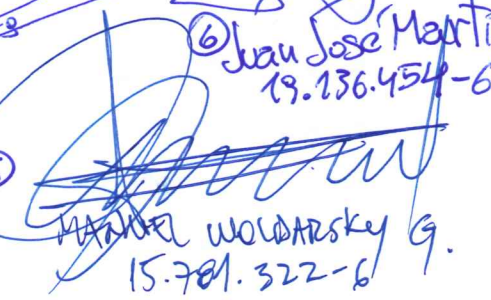
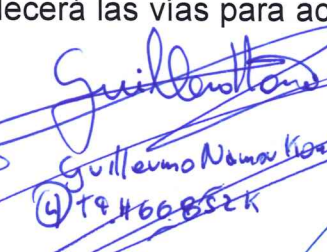
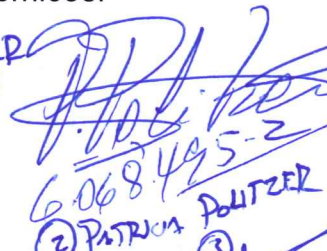

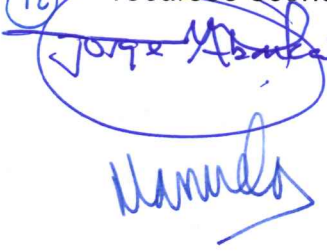
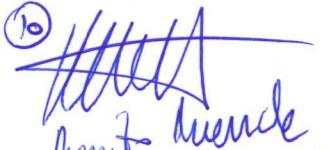
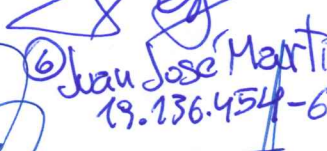
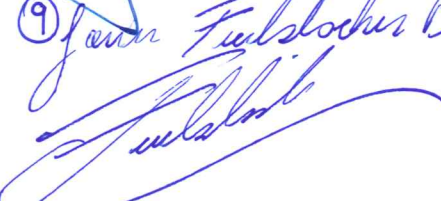
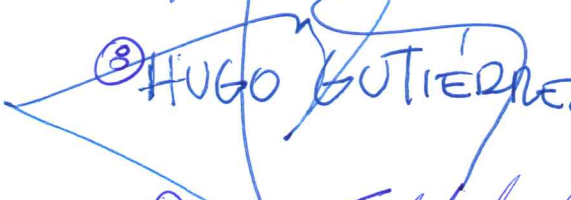

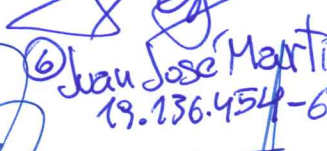
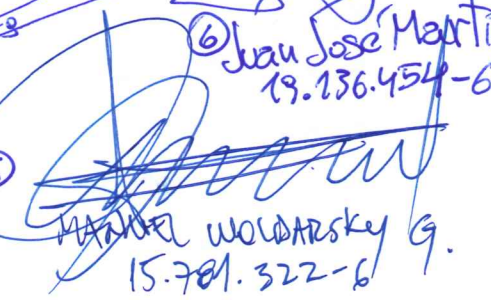
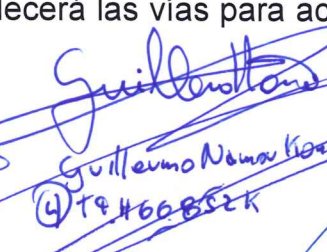
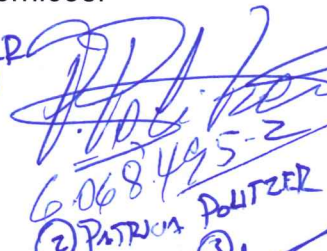

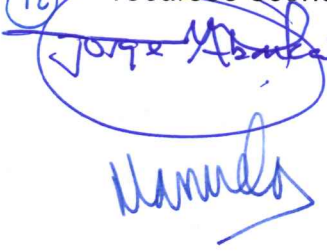
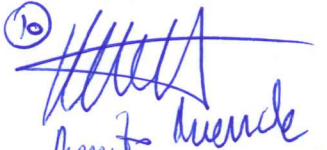
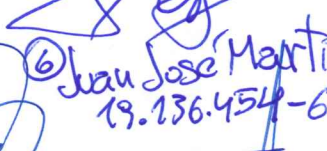
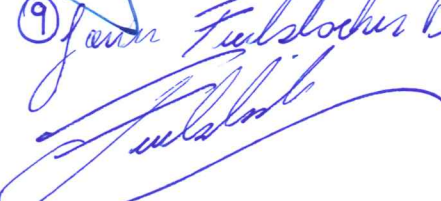
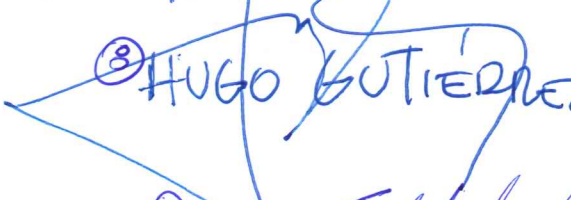

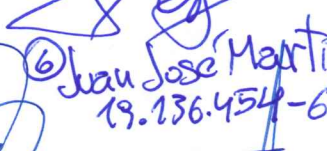
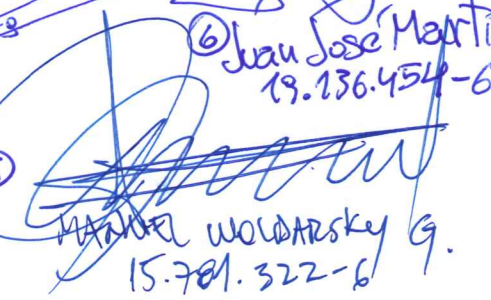
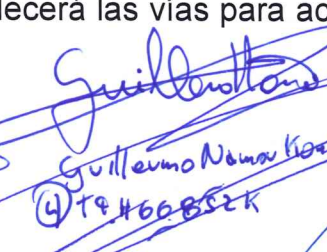
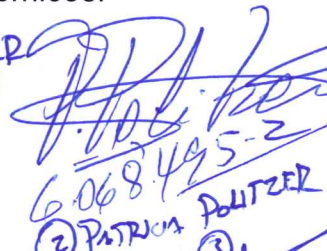

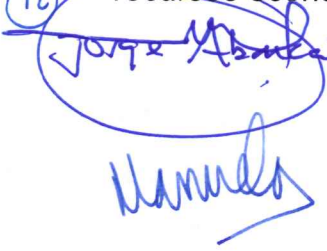
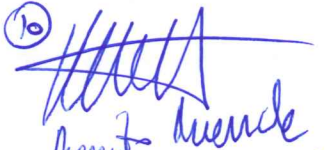
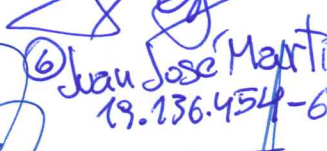
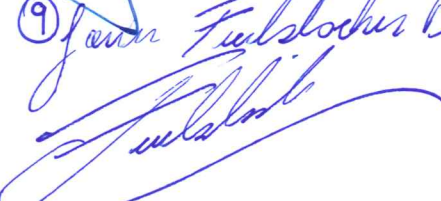
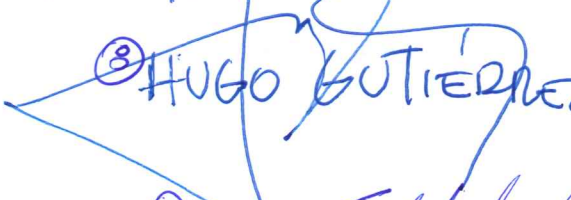

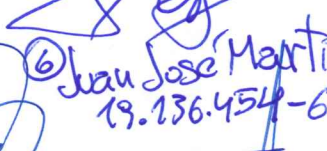
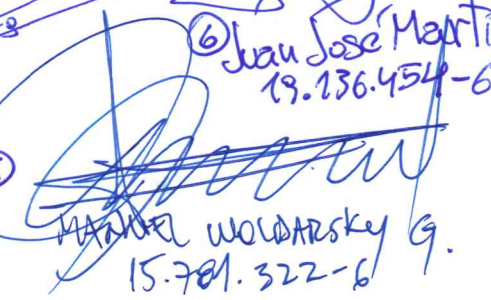
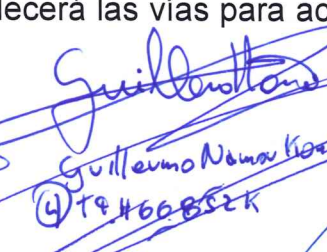
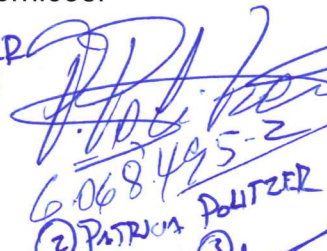

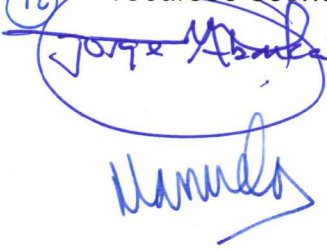
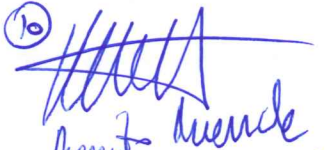
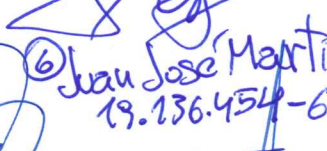
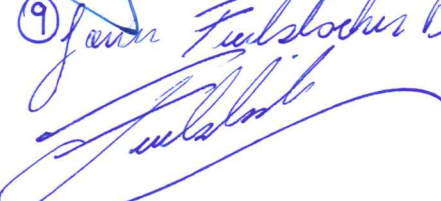
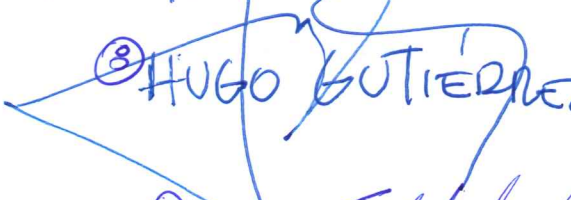

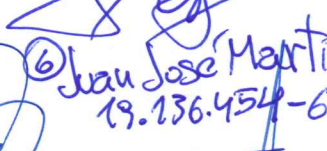
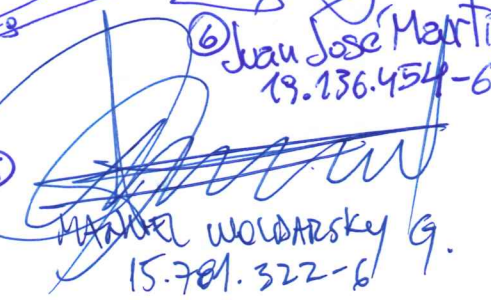
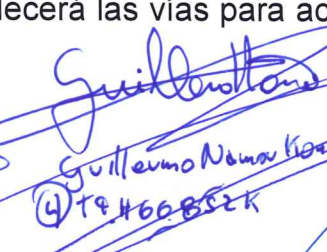
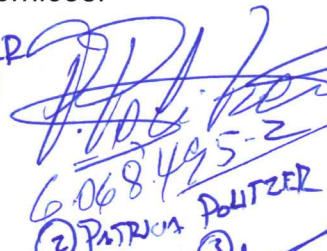

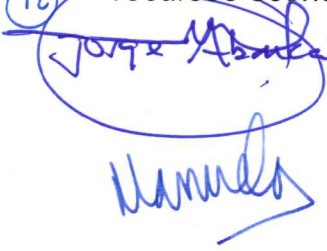
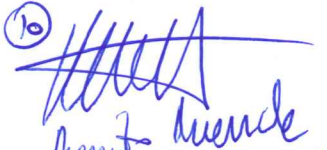
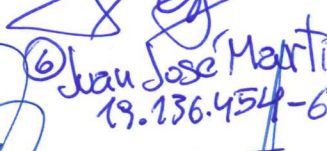
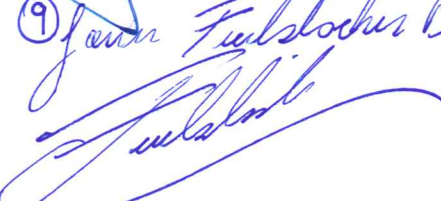
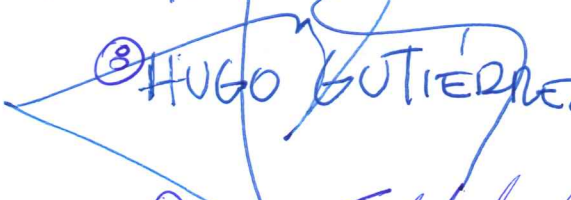

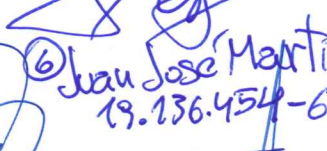
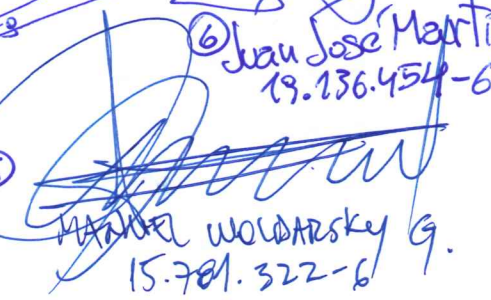
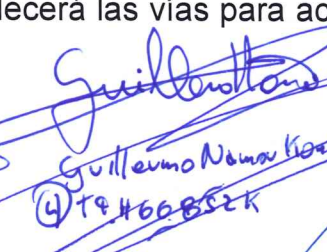
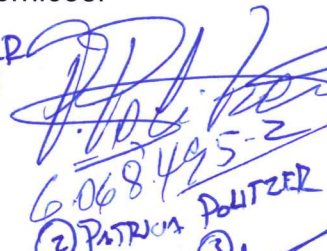

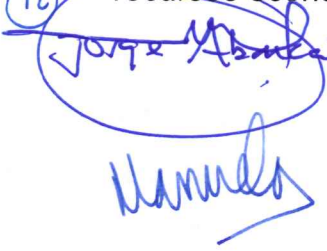
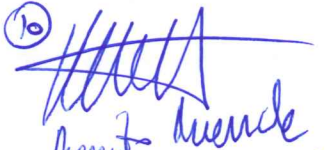
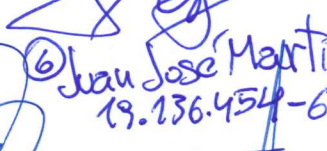
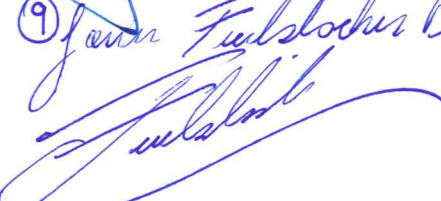
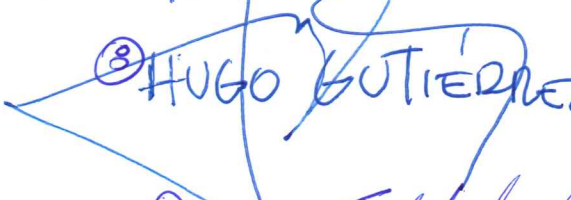

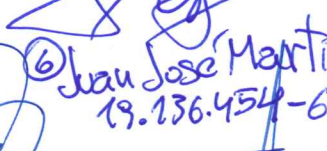
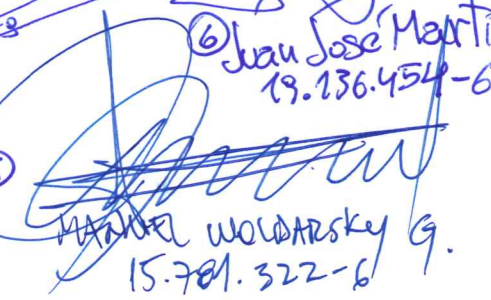
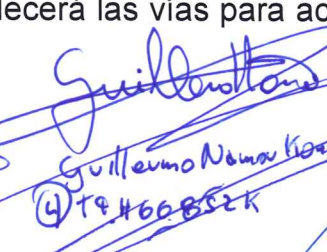
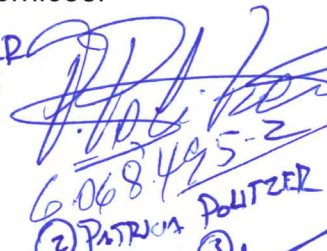

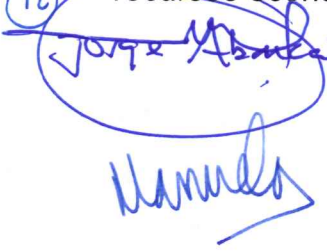
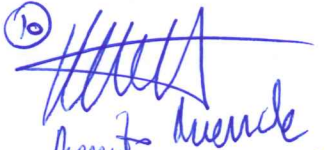
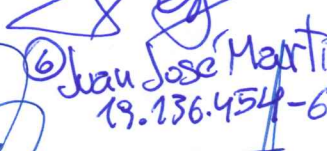
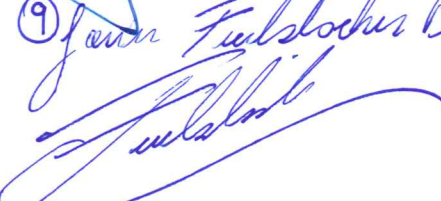
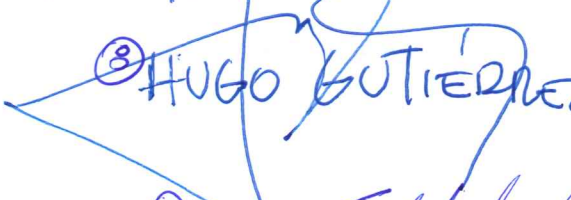

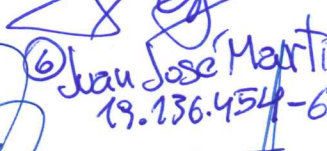
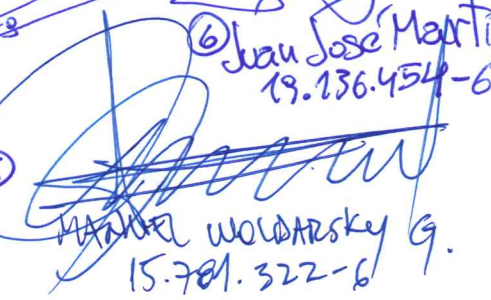
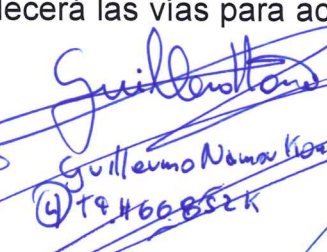
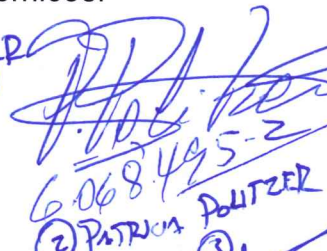

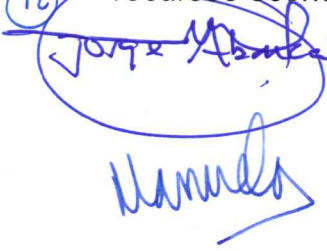
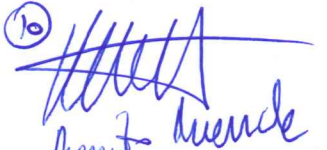
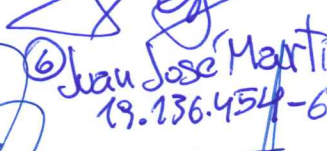
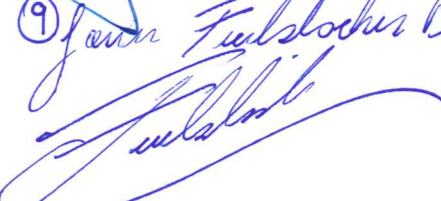
**Art. [XX]. Derecho a la tutela judicial efectiva.** La Constitución asegura a todas las personas la igual protección en el ejercicio de sus derechos e intereses y la tutela judicial por parte del Estado.

Toda persona tiene derecho al acceso a la justicia y a ser oída por los órganos que ejercen jurisdicción. La ley podrá establecer requisitos y presupuestos razonables para su ejercicio.

La ley establecerá los procedimientos adecuados y las medidas necesarias para asegurar el cumplimiento efectivo y oportuno de toda resolución judicial.

**Art. [XX]. Derecho a la asistencia jurídica.** La Constitución asegura a todas las personas la asistencia jurídica en la forma que establece la ley. Ninguna autoridad, individuo o grupo podrá impedirla o restringirla si hubiera sido formalmente requerida.

El Estado asegura la asesoría jurídica gratuita e íntegra por parte de abogadas y abogados habilitados para el ejercicio de la profesión, a toda persona que no pueda obtenerla por sí misma. La ley establecerá las vías para acreditar la insuficiencia de recursos económicos.

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