

The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System

A HANDBOOK FOR VICTIMS AND THEIR ADVOCATES

OMCT Handbook Series Vol. 2

Diego Rodríguez-Pinzón
& Claudia Martín
Revised and updated by Helena Solà Martín



2nd edition

**THE PROHIBITION OF TORTURE AND ILL-TREATMENT
IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM:
A HANDBOOK FOR VICTIMS AND THEIR ADVOCATES**

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The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 311 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to develop effective international litigation strategies to assist victims of torture and ill-treatment in obtaining legal remedies where none are available domestically, and to support them in their struggle to end impunity in states where torture and ill-treatment remain endemic or tolerated practices. In furtherance of these objectives, OMCT publishes an updated edition of the *Handbook* for victims and their advocates, which was first published in 2006. This *Handbook* is the second of a series of four volumes, each one providing a guide to the practice, procedure, and jurisprudence of the regional and international mechanisms that are competent to examine individual complaints concerning the violation of the absolute prohibition of torture and ill-treatment.

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DISCLAIMER

The views expressed in this book are solely those of the authors and do not represent those of any other institution.

FOREWORD

“Nothing can justify torture and cruel, inhuman or degrading treatment under any circumstances.” The law could not be clearer on this point. Yet implementation remains the primary challenge around the world.

This revision of the practitioners’ Handbook aims to contribute to closing the implementation gap by enabling, encouraging and supporting lawyers and human rights defenders from the Americas to integrate recourse to the Inter-American Human Rights System into its litigation and anti-torture strategies.

It is fair to say that the Inter-American Court and Commission have been at the forefront of developing robust protection for victims and the establishment of progressive international case law on the prohibition of torture, cruel and inhuman or degrading treatment. Its jurisprudence is increasingly seen as a benchmark for the interpretation of universal standards.

The progressive development of case law and protection measures also allows human rights organizations and lawyers to use the Inter-American system effectively for the purposes of strategic litigation seeking to redress systemic and institutional problems in their home countries. But integrating remedies to regional human rights systems should concern all of us as lawyers as part of our normal professional work. This is because such remedies are particularly important when we are concerned with torture.

Practiced outside the public eye, torture allegations raise serious and multiple evidentiary challenges. Practiced by state officials in an isolated case or, worse, as part of a systemic policy, litigators find themselves confronted with a strong and misguided *esprit de corps* seeking to prevent justice. Involving the public opinion and sympathy, too, can be difficult if the victim is accused of serious crimes. Moreover, seeking remedies and reparation often results in threats to victims, witnesses and human rights defenders. In light of these challenges, pursuing regional remedies to the Inter-American Commission and Court of Human Rights is often the last and only realistic way of redressing torture.

The first publication of this Handbook in 2006 was drafted by *Claudia Martin* and *Diego Rodríguez-Pinzón*, two authoritative experts on the Inter-American Human Rights System. This second edition, updated by *Helena Solà Martín*, human rights legal adviser at the OMCT, details changes brought about by the new regulations of the two pillars of the Inter-American Human Rights System. It also outlines established and emergent jurisprudential trends surrounding the prohibition of torture and cruel, inhuman or degrading treatment based on judgments and reports issued throughout the eight years elapsed since the publication of the first edition.

It takes account of the evolution of jurisprudence, for example in relation to the protection of women from violence, the scope of the obligation to investigate with a clear rejection of military jurisdiction over serious human rights violations, the role of the exclusionary rule or again on the duty to prevent and the scope of reparations for victims of torture to mention only a few areas in which case law and jurisprudence evolved.

We hope that this publication will be of practical help to lawyers and human rights defenders and the members of the SOS Torture network of the OMCT across the Americas. We thereby encourage them to contribute to closing the implementation gap and bringing us closer to the legal obligation that indeed “*nothing can justify torture under any circumstances.*”

Gerald Staberock
Secretary General
February 2014

TABLE OF CONTENTS

| | |
|---|-----------|
| <i>Acknowledgments</i> | 5 |
| <i>Disclaimer</i> | 5 |
| <i>Foreword</i> | 7 |
| INTRODUCTION | 15 |
| PART 1: INTRODUCTION TO THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS | 21 |
| 1.1 The Organization of American States: The development of the Human Rights System | 23 |
| 1.2 The Inter-American Commission on Human Rights | 27 |
| 1.2.1 Composition and Powers | 27 |
| 1.2.2 Reports and On-Site Visits | 30 |
| a. Country and thematic reports | 30 |
| b. On-site Visits | 34 |
| c. Thematic rapporteurships and units | 37 |
| 1.2.3 Individual petitions | 37 |
| a. System of individual petitions under the American Convention | 38 |
| b. System of individual complaints under the American Declaration | 43 |
| c. The legal nature of recommendations of the Inter-American Commission | 44 |
| 1.3 The Inter-American Court of Human Rights | 45 |
| 1.3.1 Contentious jurisdiction | 46 |
| 1.3.2 Advisory jurisdiction | 50 |
| PART 2: SUBMITTING A COMMUNICATION | 51 |
| 2. Submitting a communication | 53 |
| 2.1 Initiating the proceedings | 54 |
| 2.1.1 How to file a petition? | 54 |
| 2.1.2 What should the structure of a petition be? | 55 |
| 2.1.3 What kind of information is needed? | 59 |
| 2.2 Admissibility | 60 |

| | |
|---|-----------|
| 2.2.1 Jurisdiction | 62 |
| a. Who may submit a petition? (Jurisdiction <i>ratione personae</i> , active legitimation) | 62 |
| b. Against whom may a petition be submitted? (Jurisdiction <i>ratione personae</i> , passive legitimation) | 64 |
| c. Which claims may be made? (Jurisdiction <i>ratione materiae</i>) | 64 |
| i. Violation of a protected right | 64 |
| ii. Fourth Instance Formula | 66 |
| d. Where must the violation have been committed? (Jurisdiction <i>ratione loci</i>) | 67 |
| e. When must the violation have been committed? (Jurisdiction <i>ratione temporis</i>) | 68 |
| 2.2.2 Conventional and Statutory Conditions | 70 |
| a. Exhaustion of domestic remedies | 70 |
| i. Lack of due process | 72 |
| ii. Lack of access | 72 |
| iii. Unwarranted delay | 74 |
| b. Six-month rule | 76 |
| c. Duplication | 77 |
| d. Manifestly groundless or out of order | 77 |
| 2.3 Hearings | 78 |
| 2.4 Evidence | 81 |
| 2.4.1 What evidence should be presented? | 81 |
| 2.4.2 Is it possible or necessary to produce witnesses? | 84 |
| 2.4.3 Burden and standard of proof | 85 |
| 2.4.4 Presenting evidence and fact-finding | 87 |
| 2.5 Amicus curiae | 88 |
| 2.6 Confidentiality and publication | 89 |
| 2.6.1 Is the procedure confidential? | 89 |
| 2.6.2 Are the findings made public? | 90 |
| 2.7 Assistance and protection | 90 |
| 2.7.1 Is it obligatory to have legal representation? | 90 |
| 2.7.2 Is financial assistance available? | 91 |
| 2.7.3 Are protection measures provided for petitioners and witnesses? | 92 |
| 2.8 Precautionary and provisional measures | 93 |

| | |
|--|------------|
| PART 3: TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT | 99 |
| 3.1 Introduction | 101 |
| 3.2. Scope of the right to personal integrity | 103 |
| 3.2.1 Torture | 103 |
| 3.2.2 Cruel, inhuman and degrading treatment or punishment | 106 |
| 3.2.3 “[R]espect for the inherent dignity of the human person” | 108 |
| 3.3 Specific acts and situations | 111 |
| 3.3.1 Disciplinary and corporal punishments | 111 |
| 3.3.2 Violence against women | 113 |
| 3.3.3 Forced disappearances and extrajudicial executions | 117 |
| 3.3.4 Suffering caused to family members in cases of torture or other cruel, inhuman or degrading treatment | 121 |
| 3.3.5 Threats | 123 |
| 3.3.6 Conditions of detention | 124 |
| 3.3.7 Incommunicado detention and solitary confinement | 129 |
| 3.3.8 Unlawful detention | 130 |
| 3.3.9 Excessive Use of Force | 132 |
| 3.3.10 Death penalty | 135 |
| 3.4 Other prohibitions under international law related to torture and other cruel, inhuman or degrading treatment or punishment | 138 |
| 3.4.1 <i>Non-refoulement</i> (or non-return) | 138 |
| 3.4.2 Exclusionary Rule for evidence obtained under torture | 139 |
| 3.5 General duties to respect and ensure | 140 |
| 3.5.1 Duty to prevent | 142 |
| 3.5.2 Duty to investigate and punish | 145 |
| 3.5.2.1 Military criminal jurisdiction | 149 |
| 3.5.3 Duty to provide reparation | 150 |
| 3.6 Establishing State responsibility | 157 |
| 3.6.1 General | 157 |
| 3.6.2 Attribution of unlawful activity for acts and omissions | 159 |
| 3.6.3 Attribution of unlawful activity for lack of due diligence | 162 |
| BIBLIOGRAPHY | 167 |
| TABLE OF CASES | 171 |

| | |
|---|-----|
| INDEX OF TERMS | 179 |
| APPENDIX | 187 |
| 1. American Convention on Human Rights “Pact of San Jose, Costa Rica” | 189 |
| 2. American Declaration of the Rights And Duties of Man | 204 |
| 3. Statue of the Inter-American Commission on Human Rights | 210 |
| 4. Statute of the Inter-American Court of Human Rights | 215 |
| 5. Rules of Procedure of the Inter-American Commission on Human Rights | 221 |
| 6. Rules of Procedure of the Inter-American Court of Human Rights | 243 |

INTRODUCTION

This *Handbook* is a practical guide for those wishing to bring legal complaints of torture or other ill-treatment before the Inter-American Human Rights System. The prohibition of torture and cruel, inhuman or degrading treatment or punishments is well-established in various Inter-American legal instruments, including the two primary human rights instruments in the System, namely the American Convention on Human Rights (the “American Convention”) and the American Declaration of the Rights and Duties of Man (the “American Declaration”). Article 5 of the American Convention sets forth every person’s right to humane treatment and Articles XXV and XXVI of the American Declaration enshrine the right to humane treatment while in custody and the right not to be subjected to cruel, infamous or unusual punishment, respectively. The Inter-American Court of Human Rights has declared the prohibition of torture and other cruel, inhuman or degrading treatment to be a *jus cogens*, or peremptory norm.ⁱ In other words, it is absolutely prohibited without any exception or derogation whatsoever. Other international bodies as well as a number of domestic courts have also declared the prohibition of torture to be a *jus cogens* norm.ⁱⁱ Article 27 of the American Convention specifies that the right to humane treatment is a non-derogable right, which consequently prevents governments from suspending or relaxing their obligations to respect and protect this right under any circumstances, even “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party?” There is therefore clear and resounding international consensus that torture can never be justified.

This book details the procedure for bringing successful individual complaints (also known as petitions or communications) before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In so doing, the *Handbook* provides useful information on these bodies’ practices

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- i *Lori Berenson-Mejia v. Peru*, Judgment of November 25, 2004, IACtHR, (Series C) No. 119, 100; *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005, IACtHR, (Series C) No. 123, 70.
- ii *See e.g. Al-Adsani v. the United Kingdom*, Eur. Ct. H.R., No. 35763/97, November 21, 2001; *Prosecutor v. Anto Furundzija*, International Criminal Tribunal for the Former Yugoslavia, case no. IT-95-17/1-T10, December 10, 1998, 144; *Nuru v. Gonzales*, U.S. Court of Appeals for the Ninth Circuit, 404 F.3d 1207, 1222 (2005).

and provides advice as to strategy for complaints, drawing from the authors' extensive experience and long-term work with these institutions. In addition to an examination of procedural matters, the book also provides an analysis of substantive Inter-American law relating to torture and other forms of ill-treatment. Despite the focus on torture and other ill-treatment, the *Handbook* is also instructive for those preparing complaints regarding other human rights violations.

The combination of procedure and substance reflects the reality that, as in other areas of the law, the two frequently inform each other. The procedural strategies in a particular case may reflect the confines or broadness of the applicable law, and procedural rules may determine or shape the legal arguments advanced. Because it is important to bear this relationship in mind at all stages of case preparation, this *Handbook* analyzes procedural rules and substantive law together in one volume.

The book is meant to be a practical resource for readers of all levels of experience in litigating cases before the Inter-American System. It attempts throughout to furnish answers to questions and problems which may arise when filing a complaint, whether they be specialized legal questions or practical concerns. Readers with little or no experience with this regional system will find the *Handbook* a useful introduction to its organization and procedures. Short explanations have been provided for technical terms employed in order to make the contents more accessible to persons with no or little background in international law. These readers and experienced practitioners alike will benefit from the *Handbook's* detailed analyses of procedural requirements and relevant substantive law.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the two organs of the Organization of American States (OAS) which examine individual complaints regarding human rights violations. Petitioners must first bring complaints to the Commission; only thereafter may the complaint reach the Court, provided that procedural and jurisdictional conditions are met. For this reason, Commission procedures and requirements are dealt with first and, in some instances, in greater depth than those relating to the Court.

Complaints must allege a violation of one or more human rights codified by a number of OAS human rights instruments. These include the American Declaration and the American Convention, as well as the Inter-American Convention to Prevent and Punish Torture and the other OAS human rights treaties, if ratified by the defendant State. This *Handbook* prioritizes complaints filed under the American Convention. However, the legal analysis of ill-treatment claims under the American Convention is also applicable to complaints under the American Declaration and under other Inter-American human rights treaties, such as the Inter-American Convention to Prevent and Punish Torture.

In the Section following the bibliography readers will find an alphabetical table of the complete list of Commission and Court cases cited in the *Handbook* so that these can be easily identified and consulted. Moreover, the cases are also accompanied by their detailed reference as used in the first instance they are referred to in the text.

In attempting to organize this book's contents in a clear and user-friendly manner, it has been divided into three Sections. This division reflects the *Handbook's* focus: the Inter-American individual petitions procedures, for litigators and victims in general, and also for all those who wish to make allegations of torture or cruel, inhuman or degrading treatment. At the same time, the structure also aims to be consistent with the practical approach sought in order to be as helpful as possible for users actually engaging in litigation before the Inter-American monitoring bodies.

Section 1 of the *Handbook* outlines the history and organization of the Inter-American Human Rights System. It describes the functions of the Inter-American Commission on Human Rights, with special emphasis on its function of promoting and safeguarding human rights throughout the continent, and subsequently analyzes its role in the system of individual complaints under the American Convention and the American Declaration. The discussion of the Inter-American Court of Human Rights specifies its composition and explains the Court's dual jurisdictional system (contentious jurisdiction and advisory jurisdiction). This Section is an overview and will be of particular use to readers with little or no prior experience with the Inter-American System.

Section 2 examines the process of filing a complaint from beginning to end. It contains helpful information ranging from basic filing requirements to the more complex admissibility rules. This Section studies the presentation of evidence and witnesses, the hearings process and requests for precautionary and provisional measures, and addresses the issues of confidentiality and assistance to victims. Throughout, the procedural discussion incorporates substantive law in order to impart a comprehensive understanding of each step of the complaint process. The procedural flowcharts included in this book are designed to be of help while reading this Section.

Section 3 analyzes the substantive law relating to torture and cruel, inhuman or degrading punishment or treatment, as interpreted and developed by the Commission's and the Court's jurisprudence. This examination starts with a legal analysis of the scope of the right to humane treatment, including the definition of torture. It proceeds to review specific acts and situations found to violate this right, which include but are not limited to the suffering of victims' family members, threats, conditions of detention and violence against women. Section 3 also

addresses two prohibitions closely related to the general ban on perpetrating torture: sending a person to a country where he or she faces a serious risk of being tortured and the exclusion of confessions obtained through torture. It continues with an analysis of the duties to respect and ensure, making clear the fundamental distinction between the two and specifying the implications of each. Although these general obligations concern all guaranteed human rights, they are analyzed in the context of the right not to be tortured or otherwise ill-treated. The Section concludes with a review of State responsibility and rules relating to serious human rights abuses, focusing in particular on case law regarding torture and ill-treatment claims.

The two final subsection of Section 3 (General Duties to Respect and Ensure and Establishing State Responsibility) are not unique to the right to be free from torture and other ill-treatment. However, they represent elements necessary to determine whether a given State has breached a particular right. This *Handbook* discusses these issues to the extent that all complainants will need to address them for their petitions to be successful. In any event, the examination of these topics in the *Handbook* relies heavily on torture case law. These questions are particularly technical and relatively complicated. A special effort has therefore been made for their clear presentation, bearing in mind the wide readership that the *Handbook* is intended for.

Many related documents are annexed to this *Handbook* for the purpose of illustrating, clarifying and completing the information contained in it. All of the appendices relate to procedural aspects of the Inter-American System and/or substantial issues linked to the right to be free of torture and ill-treatment. The following basic documents essential for an adequate understanding of explanations in the text are printed at the end of the book:

- American Convention on Human Rights;
- American Declaration of the Rights and Duties of Man;
- Commission Statute;
- Court Statute;
- Commission Rules of Procedure; and
- Court Rules of Procedure.

Due to space constraints, a series of appendices have not been reproduced in this book; however, they are available to readers on the Section of the OMCT website dedicated to *OMCT Handbook Series*. Each appendix was specially selected to provide a tool that could help potential petitioners to navigate successfully the various stages

INTRODUCTION

of the procedure; they include the relevant conventions and reports of the OAS human rights institutions, *amicus curiae* briefs and sample submissions of the parties in various stages of the procedure.

PART 1

INTRODUCTION TO THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

*The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System:
A Handbook for Victims and Their Advocates*

1.1 The Organization of American States: The development of the Human Rights System

The Organization of American States (“OAS” or “the Organization”) is a regional inter-governmental organization which includes thirty-five Member States: the independent nations of North, Central and South America and the Caribbean.¹ Cuba remains a member, but its Government has been excluded from participation in the OAS since 1962. The OAS has also granted Permanent Observer status to sixty-two States and to the European Union.

The OAS Charter (“the Charter”), the Organization’s constituting instrument, is a multilateral treaty that was adopted and opened for signature in Bogotá, Colombia in 1948; it entered into force in December 1951.² The Charter was subsequently amended by the Protocol of Buenos Aires in 1967³ and by the Protocol of Cartagena de Indias in 1985.⁴ In 1992 and 1993, two additional amending Protocols were signed: the Protocol of Washington⁵ and the Protocol of Managua.⁶ The Protocol of Washington entered into force in 1997 once it was ratified by two-thirds of the Member States, and the Protocol of Managua came into force on January 29, 1996.

The Charter makes very few express references to human rights. Article 3(l) establishes that the “American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.” Article 17 provides that “each State has the right to develop its cultural, political, and economic life freely and naturally.”⁷ In developing these areas, however, States “shall respect the rights of the individual and the principles of universal morality.”⁸ Article 53 of the current Charter establishes the Inter-American Commission on Human Rights (“Inter-American Commission” or “Commission”) as one of the organs through which the OAS accomplishes its objectives.⁹ According to Article 106, the principal function

1 The Member States of the OAS are Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, St. Kitts and Nevis, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela.

2 OAS, Charter of the Organization of American States, signed 1948, entered into force Dec. 13, 1951, OEA/Ser.A/2 Add. 3 (SEPF) (amended 1967, 1985, 1992, 1993) (last amendment entered into force Sep. 25, 1997) (hereinafter “the Charter”).

3 <http://www.oas.org/juridico/English/treaties/b-31.htm>.

4 <http://www.oas.org/juridico/English/Treaties/A-50.htm>.

5 http://www.sap.oas.org/docs/executive_orders/1992/eo_washington_protocol_92_eng.pdf.

6 <http://www.oas.org/juridico/english/Treaties/a-58.htm>.

7 OAS Charter, *supra* note 2, arts. 3(1), 17.

8 *Ibid.*, art. 17.

9 *Ibid.*, art. 53.

of the Inter-American Commission is to promote the observance and protection of human rights and to serve as a consultative organ of the OAS in this regard.¹⁰

Initially, the 1948 Charter neither spelled out the fundamental rights referred to in what is now Article 3, nor did it create any institution for their promotion and protection.¹¹ Although the same diplomatic conference that adopted the Charter also promulgated the American Declaration of the Rights and Duties of Man (“American Declaration” or “Declaration”), because the Declaration was simply a conference resolution, it was not conceived as an instrument with binding legal force.¹²

The OAS took an initial step toward the promotion and protection of human rights when it created the Inter-American Commission in 1959. Originally considered an “autonomous entity” of the OAS, the Commission’s mandate was to promote respect for human rights. The Statute of the Commission, as adopted by the OAS Permanent Council in 1960, provided that “for the purpose of this Statute, human rights are understood to be those set forth in the American Declaration of the Rights and Duties of Man.”¹³ The principles adopted in the Declaration thereby became the human rights provisions applied by the Commission in executing its functions. The normative value of the Declaration, therefore, was significantly strengthened with the adoption of the Statute.¹⁴

The status of the Commission changed after the Protocol of Buenos Aires entered into force in 1979. This Protocol amended the Charter and transformed the Commission from an autonomous entity into a principal organ of the OAS, vesting it with “an institutional and constitutional legitimacy.”¹⁵

In 1969, OAS Member States adopted and opened for signature the American Convention on Human Rights (“American Convention” or “Convention”), which came

10 *Ibid.*, art. 106.

11 *Ibid.*, art. 3.

12 American Declaration of the Rights and Duties of Man, approved by the Ninth International Conference of American States, Bogotá, Colombia, 1948, OAS Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003) [hereinafter “American Declaration” or “Declaration”]. On its current legal value, see Salvioli, Fabián O., (in Spanish) “El aporte de la Declaración Americana de 1948, para la Protección Internacional de los Derechos Humanos,” in *El Sistema Interamericano de Protección de los Derechos Humanos en el Umbral del Siglo XXI*, Corte I.D.H., Tomo I, 2^o edición (2003), págs. 679-696, available at: <http://biblio.juridicas.unam.mx/libros/5/2454/45.pdf>.

13 OAS, Statute of the Inter-American Commission on Human Rights, art. 1(2)(b), Resolution No. 447 adopted by the OAS General Assembly, Ninth Regular Session, La Paz, Bolivia, October 1979, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003) [hereinafter “Commission Statute”].

14 Buergethal, Thomas, “The Revised OAS Charter and the Protection of Human Rights,” 69 *Am. J. Int’l L.* 828, 828-829, 835 (1975).

15 *Ibid.*, 836.

into force on July 18, 1978.¹⁶ As of July 2013, the American Convention has been ratified by twenty-four States.¹⁷ The Convention defines additional functions and procedures of the Inter-American Commission with respect to the human rights obligations of ratifying States. The Commission continues to carry out its previous functions, such as processing cases against States not parties to the American Convention. Thus, with the Convention there arose a parallel system which is now reflected in the Statute of the Inter-American Commission, approved in 1979.¹⁸

The Convention additionally created the Inter-American Court of Human Rights (“Inter-American Court” or “Court”) and established its dual jurisdictions: contentious jurisdiction and advisory jurisdiction.¹⁹ States parties to the Convention as well as OAS Member States and organs of the OAS may request advisory opinions. In contrast, only the Inter-American Commission and States parties that have submitted a declaration accepting the Court’s contentious jurisdiction may bring contentious cases before the Court.

As a result of these developments, the Inter-American System comprises a complex system of adherence:

1. The minimum level of adherence, in the form of compliance with the American Declaration, is required of all OAS Member States and is monitored by the Commission.
2. A second level applies to States that have ratified the American Convention but have not accepted the contentious jurisdiction of the Court.

16 OAS, American Convention on Human Rights, signed Nov. 22, 1969, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II Rev. 9 (2003); O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

17 Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, The Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. Trinidad and Tobago denounced the Convention on May 26, 1998 (effective May 26, 1999). Trinidad and Tobago justified its decision as an effort to minimize the cruel and unusual punishment suffered by death row inmates spending more than five years awaiting the imposition of their sentence. The Government argued that by withdrawing from the Convention, and thereby eliminating an avenue for appeal, death sentences would be imposed more swiftly. For their part, Venezuela denounced the Convention on September 6, 2012 by submitting a notice of denunciation of the American Convention on Human Rights to the Secretary General of the OAS. The measure took effect on September 6, 2013, see IACHR Press Release, September 12, 2012, No. 117/12, available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/117.asp; see also Section 1.3.1.

18 Article 22(2) of the Commission Statute provides that the Commission “shall prepare and adopt its own Regulations, in accordance with the present Statute.” Article 24(2): “The Regulations shall contain, for this purpose, the pertinent rules established in the Statute of the Commission approved by the Council of the Organization in resolutions adopted on May 25 and June 8, 1960 [...] taking into account resolutions CP/RES. 253 (343/78), “Transition from the present Inter-American Commission on Human Rights to the Commission provided for in the American Convention on Human Rights,” adopted by the Permanent Council of the Organization on September 20, 1978.” Commission Statute, *supra* note 13.

19 See Sections 1.3.1 and 1.3.2, *infra*.

These States must comply with their Convention obligations but are not subject to rulings of the Court in contentious cases involving the Convention.

3. The highest level of adherence is required of those States that have also accepted the jurisdiction of the Court. They must comply with Convention obligations and may be the subject of binding Court judgments.

The Commission and Court's powers to monitor State adherence are not alternative but cumulative; all Member States must comply with the Declaration, and all States who have ratified the Convention must comply with the Declaration and with the Convention. States that accept the Court's contentious jurisdiction must comply with the Declaration, the Convention and applicable Court judgments. The related powers and functions of the Commission and the Court will be described in detail in the following Sections.²⁰

The Member States of the OAS have adopted additional human rights conventions: the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador" (1988) ("Protocol of San Salvador");²¹ the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990) ("Convention Against the Death Penalty");²² the Inter-American Convention to Prevent and Punish Torture (1985) ("Inter-American Torture Convention");²³ the Inter-American Convention on Forced Disappearance of Persons (1994) ("Convention on Forced

20 For more historical and contextual information on the Inter-American Human Rights System, see Cançado Trindade, A.A. (in Spanish), *El Sistema Interamericano de Protección de los Derechos Humanos en el Umbral del Siglo XXI. Informe: Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer su Mecanismo de Protección*, Secretaría Corte Interamericana de Derechos Humanos, Tomo II, May 2001; Tom Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox," 19 *Hum. Rts. Q.* 510, 510-546 (1997); Robert K. Goldman, "The Protection of Human Rights in the Americas: Past Present and Future," *New York University Center for International Studies Policy Papers* 5.2 (1972); Méndez, J., and Cox, F., Eds. (in Spanish), San José, "El Futuro del Sistema Interamericano de Derechos Humanos," Instituto Interamericano de los Derechos Humanos (IIDH), 1998.

21 OAS, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," Nov. 17, 1988, *entered into force* Nov. 16, 1999; O.A.S.T.S. No. 69 (entered into force upon the ratification of eleven States); *reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System*, OAS/Ser.L/V/I.4 Rev. 9 (2003) [hereinafter "Protocol of San Salvador"].

22 OAS, Protocol to the American Convention on Human Rights to Abolish the Death Penalty, June 8, 1990; O.A.S.T.S. No. 73 (enters into force for each State that ratifies it or accedes to it); *reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System*, OAS/Ser.L/V/I.4 Rev. 9 (2003) [hereinafter "Protocol to Abolish the Death Penalty"].

23 OAS, Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, *entered into force* Feb. 28, 1987; O.A.S.T.S. No. 67; *reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System*, OAS/Ser.L/V/I.4 Rev. 9 (2003) [hereinafter "Inter-American Torture Convention" or IACPPT].

Disappearance”);²⁴ the Inter-American Convention for the Prevention, Punishment, and Eradication of the Violence against Women, “Convention of Belém do Pará” (1994) (“Belém do Pará Convention”);²⁵ and the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities (2001) (“Disabilities Convention”).²⁶ The Inter-American Convention against Racism, Racial Discrimination and Related Intolerance and the Inter-American Convention against All Forms of Discrimination and Intolerance were adopted on June 5, 2013 and at the time of writing of this manual have not yet entered into force.²⁷

All of the Conventions mentioned above with the exception of the Disabilities Convention provide for an individual complaint procedure before the organs of the Inter-American System of Human Rights.²⁸

The Commission’s power to examine individual complaints is without prejudice to its general statutory powers, which extend to all of the treaties mentioned above. Under these powers, as discussed in the following Section, the Commission may make recommendations to States regarding the adoption of measures for the promotion and protection of human rights, prepare studies and reports, request information from States, respond to States’ inquiries, submit Annual Reports to the OAS General Assembly and conduct on-site observations with the consent or invitation of the respective Government.²⁹ The Commission may also request advisory opinions from the Inter-American Court and submit draft protocols to the OAS General Assembly.³⁰

1.2 The Inter-American Commission on Human Rights

1.2.1 Composition and Powers

The Inter-American Commission on Human Rights is composed of seven members elected in their individual capacities by the OAS General Assembly from a list of

24 OAS, Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, *entered into force* Mar. 28, 1996; *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003); 33 I.L.M. 1429 (1994) [hereinafter “Convention on Forced Disappearance”].

25 OAS, Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women, “Convention of Belém do Pará,” June 9, 1994, *entered into force* Mar. 5, 1995; *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003); 33 I.L.M. 1534 (1994) [hereinafter “Belém do Pará Convention”].

26 OAS, Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities, June 7, 1999, *entered into force* Sep. 14, 2001, AG/RES. 1608; *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003).

27 For signatures and ratifications of conventions, see: <http://www.oas.org/dil/treaties.htm>.

28 For more on *ratione materiae* competence, see Section 2.2.1(c) *infra*.

29 Commission Statute, *supra* note 13, art. 18.

30 *Ibid.*, art. 19.

candidates proposed by Member States.³¹ Candidates must be persons of high moral standing and must possess recognized competence in the field of human rights.³² Commission members are elected for a term of four years and may be re-elected once.³³ The offices of the Inter-American Commission are located in Washington, D.C., where the headquarters of the OAS are based.

In accordance with its Statute, the Commission exercises three levels of powers.

1. With respect to all OAS Member States, the Commission's powers are as follows:³⁴
 - To develop awareness of human rights;
 - To recommend measures in favor of human rights in the framework of national legislation and international commitments;
 - To prepare such studies or reports as it considers advisable;
 - To request that Governments report on measures adopted domestically;
 - To respond to inquiries and provide advisory services; and
 - To conduct on-site observations with the State's consent or invitation.
2. In relation to those OAS Member States that are not parties to the American Convention, the Commission has these specific powers:³⁵
 - To pay particular attention to the observance of the following rights contained in the American Declaration: the right to life, liberty and personal security; the right to equality before the law; the right to religious freedom and worship; the right to freedom of investigation, opinion, expression and dissemination; the right to a fair trial; the right to protection from arbitrary arrest; the right to due process of law;³⁶ and
 - To examine communications, to request information and to make recommendations once it is verified that domestic remedies have been exhausted.
3. With regard to States Parties to the American Convention, the Statute authorizes the following additional powers:³⁷
 - To act on petitions and other communications;
 - To appear before the Inter-American Court of Human Rights;

31 *Ibid.*, art. 3; American Convention, *supra* note 16, art. 36.

32 Commission Statute, *supra* note 13, art. 2; American Convention, *supra* note 16, art. 34.

33 Commission Statute, *supra* note 13, art. 66; American Convention, *supra* note 16, art. 37.

34 Commission Statute, *supra* note 13, art. 18.

35 *Ibid.*, art. 20.

36 In this regard, it is important to note that the Commission considers the American Convention as a source in interpreting the rights contained in the American Declaration.

37 Commission Statute, *supra* note 13, art. 19; American Convention, *supra* note 16, art. 41.

- To request of the Inter-American Court of Human Rights provisional measures in serious and urgent cases;
- To consult the Court on the interpretation of the American Convention or other human rights treaties;
- To submit additional draft protocols to the American Convention in order to include progressively other rights and freedoms under the protection system of the Convention; and
- To submit to the General Assembly, through the Secretary General, proposed amendments to the American Convention.

Additionally, under the American Convention, the Commission may also receive and examine inter-State complaints filed by one State alleging that another State is in breach of the Convention, where both States have recognized the Commission's competence to consider such complaints, upon ratification of the Convention or at any later time.³⁸ When a State has accepted the Commission's competence and the Commission receives a communication from another State, the procedure is governed by Title II, Chapter II of the Rules of Procedure. However, inter-State communications are not explicitly established for States that have not ratified the Convention.

In summary, the Commission's authority arises from its dual nature: it is an organ of the OAS Charter with a statutory mandate based on the American Declaration, and it is also an organ of the American Convention. As mentioned above, the powers and functions of the Commission *vis-à-vis* each State will vary depending on whether the State has ratified the Convention and accepted the Court's contentious jurisdiction. Nonetheless, the different spheres of action are closely interconnected, and they are complementary rather than mutually exclusive. As a result, the Commission may consider sources of interpretation and information from one sphere and use them in another.³⁹

Throughout its history, the Commission has developed and enhanced its statutory powers and later its powers established under the American Convention, through the modification of its own Rules of Procedure. Utilizing its regulatory powers, the Commission has defined several "tools" essential to the monitoring and protection of human rights in the hemisphere, specifically, on-site visits, country reports, thematic reports and hearings, as well as the consideration of individual petitions,

38 OAS, Rules of Procedure of the Inter-American Commission on Human Rights, art. 48, *approved* by the Commission in its 137th ordinary period of sessions, held from October 28 to November 13, 2009 (amended in Sept. 2011 and March 2013) [hereinafter "Commission Rules of Procedure"]; American Convention, *supra* note 16, art. 45.

39 See *supra* note 36; "Baby Boy Case," Case 2141, Report No. 23/81, IACHR, Annual Report 1980-1981, OEA/Ser.L/V/II.54 Doc. 9 rev. 1 (1981).

and within this framework, the issuance and monitoring of precautionary protection measures. A recent example of such expansion is the adoption of the new Rules of Procedure, published on December 9, 2009, in light of reforms approved during the 137th Ordinary Period of Sessions held in October and November 2009. This new text aims to strengthen the functioning of the Inter-American System of Human Rights, including by strengthening the participation of victims and simplifying the way in which petitions are processed by reviewing the process for their presentation and for referring cases to the jurisdiction of the Inter-American Court. Practices related to the adoption, supervision and lifting of precautionary measures have also been codified.⁴⁰ The new Rules of Procedure, last modified in March 2013, are the result of a process of reflection, officially finalized in March 2013, to strengthen the Inter-American System.⁴¹

1.2.2 Reports and On-Site Visits

a. Country and thematic reports

As part of its power to observe human rights situations in OAS Member States,⁴² the Inter-American Commission publishes special reports regarding human rights situations in specific States, as well as thematic reports.

The power to prepare reports was established in Article 9 of the original Commission Statute. The wording of this article was later reproduced in Article 41(c) of the American Convention and in Article 18(c) of the current Statute. The authority to prepare reports is regulated in detail by the Rules of Procedure.⁴³

40 See IACHR “Position document on the process of strengthening of the Inter-American System for the Protection of Human Rights,” OEA/Ser.L/V/II. Doc. 68 (2012), para. 15 [“The central objective of the reform of the Rules in 2009 was to further strengthen the Inter-American System through the strengthened participation of victims, guarantees to harmonize procedural participation of the parties and enhance the publicity and transparency of the System, as well as the adoption of other necessary adjustments after the 2001 reform. These modifications involved four essential components of the System for the protection of human rights: the mechanism of precautionary measures, the processing of petitions and cases, the referral of cases to the jurisdiction of the Inter-American Court, and the holding of hearings on the situation of human rights in the Member States.”]

41 The 44th Extraordinary General Assembly of the OAS, held on March 22, 2011 in Washington, DC, concluded with the unanimous adoption of a resolution that ends the process of reflection on the functioning of the Commission to strengthen the Inter-American Human Rights System, launched in 2011 at the request of the General Assembly of the OAS. See Resolution “results of the process of reflection on the workings of the Inter-American Commission on Human Rights with a view to strengthening the inter-american human rights system,” OEA / Ser.P AG / RES. 1 (XLIV-E/13) rev. 1 adopted in the plenary session on 22 March 2013. Background: In December 2004, the Committee on Juridical and Political Affairs (“CAJP”) of the OAS decided to initiate a process of reflection on the Inter-American System in accordance with the mandate contained in the resolution of the General Assembly, “Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas,” AG / RES. 2030 (XXXIV-O/04), adopted on June 8, 2004, operational point 5.

42 Commission Rules of Procedure, *supra* note 38, arts. 56, 58; Commission Statute, *supra* note 13, arts. 18-19; American Convention, *supra* note 16, art. 41.

Although there is no express provision establishing the obligatory character of the recommendations issued by the Commission in such reports, upon adoption and/or ratification of Inter-American human rights instruments, States must comply with their provisions in good faith. Therefore, because the Commission was created to supervise compliance with the System's human rights obligations, States are obliged to abide by the findings and recommendations issued in Commission reports.⁴⁴

The language of Articles 41(c) of the Convention, 18(c) of the Statute and 58 of the Rules of Procedure indicate that the Commission may prepare studies or reports "as it considers advisable."⁴⁵

Article 59(6) of the Commission's Rules of Procedure establishes the following criteria to include a report on a particular country in Chapter IV(B) of its Annual Report:

- a. a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including:
 - there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority;
 - there has been an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order; or
 - the democratically-constituted government has been overthrown by force or the existing government has otherwise come to power through means other than free and fair election, based on universal and secret ballot, pursuant to internationally accepted norms and principles reflected in the Inter-American Democratic Charter.
- b. The free exercise of the rights guaranteed in the American Declaration or the American Convention has been unlawfully suspended, totally or partially, by virtue of the imposition of exceptional measures such as a declaration of a state of emergency, state of siege, suspension of constitutional guarantees, or exceptional security measures.
- c. There State has committed or is committing massive, serious and widespread violations of human rights guaranteed in the American Declaration, the American Convention, or the other applicable human rights instruments.
- d. The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration,

43 Commission Rules of Procedure, *supra* note 38, arts. 58-60.

44 See Section 1.2.3(c), *infra*.

45 Commission Statute, *supra* note 13, art 18(c); American Convention, *supra* note 16, art. 41(c); Commission Rules of Procedure, *supra* note 38, art. 58.

the American Convention or other applicable instruments. Factors to be considered shall include the following, among others:

- serious institutional crises that infringe the enjoyment of human rights;
- systematic noncompliance of the State with its obligation to combat impunity, attributable to a manifest lack of will;
- serious omissions in the adoption of the necessary measures to make fundamental rights effective, or in complying with the decisions of the Commission and the Inter-American Court; and
- systematic violations of human rights attributable to the State in the framework of an internal armed conflict.

Title II, Chapter V of the Commission Rules of Procedure outlines the process that the Commission must follow in adopting and publishing a general or special report on the human rights situation in a particular State.⁴⁶ Article 59(5) of the Rules states that in preparation of the report “the Commission will utilize reliable and credible information,” and continues by listing sources from which this information should be obtained, including: official State documentation, information produced by the Inter-American System, conclusions of UN bodies and regional organizations, reports from civil society organizations and public information.⁴⁷ After the Commission approves the draft report, it is sent to the Government concerned for comments. The Commission establishes a deadline for the State’s submission of its observations.⁴⁸ Once the Government responds, the Commission evaluates its comments and decides whether to amend the report based on the State response. The Commission subsequently publishes the report.⁴⁹ If the State fails to submit observations, the Commission publishes the report as it considers appropriate.⁵⁰ After the final adoption of the report, the Commission submits it to the OAS Permanent Council and General Assembly and to the State concerned.

There are no written standards set forth in the Convention, the Commission Statute or in its Rules of Procedure regarding the content of country reports. Their structure and content depend on the main problems and challenges in the country in question. The reports usually include chapters on the situation of civil and political rights, highlighting those rights which have been most violated,

46 Commission Rules of Procedure, *supra* note 38, Title II, Chapter V.

47 *Ibid.*, art. 59(5).

48 *Ibid.*, art. 60(a)-(b).

49 *Ibid.*, art. 60(c).

50 *Ibid.*, art. 60(d).

51 This point may include an analysis of the general organization of the State, and in particular the organization of the judicial power. Equally, the Commission studies the scope of the rights protected by the domestic constitution and laws. Finally, it may describe the binding international human rights obligations of the State under observation.

52 This point may include information on the reasons why the Commission is examining the general human rights situation in a country (e.g. massive human rights violations, the political situation →

as well as the structural⁵¹ and contextual⁵² causes of this situation, the situation of economic, social and cultural rights, the situation of groups or collectives in a situation of vulnerability, and the level of compliance with the resolutions of the Inter-American System. Finally, the reports usually include recommendations. Equally, in some country reports, the Commission has included, among other things, chapters on the rights of indigenous peoples, children, women, persons deprived of freedom, refugees and internally displaced persons, human rights defenders and persons with disabilities.⁵³ Reports on countries affected by internal armed conflicts include Sections on the activities of irregular armed groups.⁵⁴

Moreover, in recent years the Commission has published a wide range of thematic reports, in which information on individual Member States of the OAS is compiled.⁵⁵ In 2011, the Commission published the “Report on the Human Rights of Persons Deprived of Liberty in the Americas” and the “Report on the Death Penalty in the Inter-American Human Rights System: from restrictions to abolition.” Also, for illustrative purposes, in 2006 the Commission produced a report on the situation of human rights defenders in the Americas, the observations of which were monitored, resulting in a second report on defenders in 2011.⁵⁶ These reports have aimed to identify patterns of violations against persons who carry out human rights work in the region and to recommend measures to States to promote and protect the work of these human rights defenders.

in the State being considered, on-site visits carried out to gather information, activities undertaken by the Commission in the country in question, etc.

- 53 See for example, IACHR, *Report on the Situation of Human Rights in Jamaica*, OEA/Ser.L/V/II.144 Doc 12 August 10, 2012, Chapters IV-VIII; IACHR, *Honduras: Human Rights and the Coup d’Etat*, OEA / Ser.L / V / II Doc 55, December 30, 2009, Chapters IV-V; IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA / Ser.L / V / II, June 28, 2007; *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev., April 6, 2001; IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser.L/V/II.110 Doc. 52, March 9, 2001, Chapters V-VII-VIII-IX; IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106 Doc. 59 rev., June 2, 2000, Chapters VII-VIII, X; IACHR, *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106 Doc. 40 rev., February 28, 2000, Chapters IV-V-VI.
- 54 IACHR, *Second Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.84 Doc. 39 rev., October 14, 1993, Chapter X; IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.83 Doc. 16 rev., June 1, 1993, Chapter XI; IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83 Doc. 31, March 12, 1993, Chapter III. D.
- 55 IACHR, “*The death penalty in the Inter-American System of Human Rights: from restrictions to abolition.*” OEA / Ser.L / V / II. Doc 68, December 31, 2011, IACHR, “*Report on the Human Rights of Persons Deprived of Liberty in the Americas.*” OEA / Ser.L / V / II Doc 64, December 31, 2011, IACHR, “*Access to Justice for Women Victims of Sexual Violence in Mesoamerica.*” OEA / Ser.L / V / II Doc 63, December 9, 2011, IACHR, *Reports on the Situation of Human Rights defenders in the Americas*, OEA/Ser.L/V/II.124 Doc 5, March 7, 2006 and OEA / Ser / .L / V / II Doc 66, December 31, 2011; to consult further reports see: <http://www.oas.org/en/iachr/reports/thematic.asp>.
- 56 IACHR, “*Second Report on the Situation of Human Rights Defenders in the Americas.*” OEA/Ser.L/V/II. Doc. 66, December 31, 2011.

For the preparation of these thematic reports, the Commission usually obtains information through cases and precautionary measures, hearings, on-site visits or by sending questionnaires to Member States and human rights organizations.⁵⁷ Often, the reports draw on monitoring and protection work conducted by Rapporteurs or Units established under the Commission framework.⁵⁸

b. On-site Visits

The Commission conducts on-site visits to verify the human rights conditions in individual States.⁵⁹ These visits usually⁶⁰ result in the preparation of a special report. On-site or *in loco* observation visits have traditionally consisted of formal missions conducted by all seven members of the Commission, but recent practice shows a growing tendency to undertake more focused and limited field visits, comprised of a limited number of Commissioners, followed by press releases and special reports.⁶¹ This is, for example, the case of the visit to Honduras after the coup d'état in 2009; when the Commission conducted an on-site visit from 17 to 21 August 2009.⁶² During the visit, the Commission received 460 testimonials and complaints, 29 requests for precautionary measures and 88 documents on the situation in the country. On January 20, 2010, the Commission published the report *Honduras*:

57 See, for example, "Report on the Situation of Human Rights defenders in the Americas," OEA/Ser.L/V/II.124 Doc 5, March 7, 2006, para. 6.

58 Regarding the Rapporteur on the Rights of Persons Deprived of Liberty, see Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA / Ser.L / V / II. Doc 64, December 31, 2011, para. 1; regarding the Special Unit, now Rapporteur, on Human Rights Defenders, see *supra* note 56, para. 6.

59 This does not refer to *in loco* investigations conducted to verify the facts of an individual complaint. The publication of such findings must follow the rules that govern the processing of individual communications.

60 Though the findings of the Commission following on-site observations are usually published in a report, on some occasions they have not been made public or they were published several years after the visits took place. For example, in its 1993 Report on the Human Rights Situation in Peru, the Commission attached as appendices "preliminary reports" or "confidential communications" prepared following subsequent visits to Peru between 1989 and 1992. See IACHR, "Report on the Situation of Human Rights," Peru, *supra* note 55, pp. 33-101.

61 Visits carried out by only one Commissioner are not considered to be on-site visits; at least two commissioners should be involved. The rest are considered as working visits by thematic or country rapporteurs. For example, the Rapporteurship on the Rights of Indigenous Peoples of the Commission, headed by the Rapporteur on the Rights of Indigenous Peoples, Commissioner Dinah Shelton, paid a working visit to Guatemala from August 21 to 30, 2013 to gather information on the situation of indigenous peoples in Guatemala, with particular emphasis on discrimination and exclusion of indigenous peoples, as well as the status of their lands, territories and natural resources and the right to free, prior and informed consultation. To view on-site visits and working visits, see: <http://www.oas.org/en/iachr/activities/countries.asp>.

62 The delegation consisted of the then Commissioner Luz Patricia Mejía Guerrero, the then Commissioner Victor Abramovich, Commissioner and Rapporteur for Honduras, Felipe González, the then Commissioner Paolo Carozza and then Executive Secretary Santiago A. Canton. The Special Rapporteur for Freedom of Expression, Catalina Botero and lawyers from the Executive Secretariat were also part of the delegation.

Human Rights and the Coup d'Etat.⁶³ This conforms to the current mandates of the Special Rapporteurs⁶⁴ and the work of the Country Rapporteurs.⁶⁵ The visits also serve to gather information and to hold meetings on the progress of cases and existing precautionary measures.

It must be noted that although Article 41 of the American Convention does not provide for on-site observations,⁶⁶ Section (c) of this Article has been interpreted to allow the Commission to prepare reports or studies the Commission considers advisable in the fulfillment of its duties. Carrying out an observation *in situ* to collect information or to verify the situation of a particular State may be considered a means to the preparation of such reports or studies.

Moreover, Article 18 of the Commission's Statute⁶⁷ clearly provides that "[t]he Commission shall have the following powers with respect to the member states of the Organization of American States: ... to conduct on-site observations in a state, with the consent or at the invitation of the government in question ..."

The Commission Rules of Procedure reflect the practice it has developed on this matter. Title II, Chapter IV of the Rules of Procedure, entitled "On-Site Observations," establishes that observations *in loco* shall be carried out by a Special Commission appointed each time the Commission decides to conduct such a visit.⁶⁸ Members who are nationals of or residents in the territory of the State visited are disqualified from participating in the Special Commission.⁶⁹ The State inviting the Commission to carry out a visit to its territory, or consenting to the visit, must provide the facilities necessary for the observation. In particular, the State must respect the integrity of the persons and organizations collaborating with the Special Commission.⁷⁰ The State concerned must provide security and must ensure the availability of lodging and local means of transportation to Special Commission members as well as

63 Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>.

64 See sub-section (c) *infra*.

65 For example, between 26 and 30 September 2011, Commissioner Rodrigo Escobar Gil, in his capacity as Rapporteur for Mexico, conducted a visit to the country to discuss the general situation of human rights as well as to monitor cases and precautionary measures before the Commission, see Commission Press Release, September 30, 2011, No. 105 /11. For information on all visits, go to: <http://www.oas.org/en/iachr/activities/countries.asp>.

66 See American Convention, *supra* note 16, art. 41.

67 As stated before, the Statute of the Inter-American Commission on Human Rights is applicable to all Member States of the OAS.

68 See Commission Rules of Procedure, *supra* note 38, art. 53. Currently, Special Commissions are usually composed of at least one member, along with staff of the Secretariat.

69 *Ibid.*, art. 54.

70 *Ibid.*, art. 56.

to the staff of its Secretariat.⁷¹ The State must also provide the Special Commission with human rights documents necessary for the drafting of its report.⁷²

According to the Rules of Procedure, the Special Commission must be able to interview persons, groups or institutions freely and in private; to travel freely in the territory of the State visited; to have access to jails and other detention or interrogation centers; to interview privately persons detained therein; and to use any method appropriate for collecting, recording or reproducing information that it considers useful.⁷³

As developed in practice, the Special Commission also receives individual complaints to be processed pursuant to the Convention, Statute and Rules of Procedure. In this context, according to Article 48 of the Convention, the Commission may carry out investigations *in loco* as part of the investigation into the allegations contained in these petitions:

If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.⁷⁴

The language of Article 48 applies only to individual cases that are under consideration by the Commission in which the State concerned has had an opportunity to present its observations. The second paragraph of the same article provides for an exception:

in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.⁷⁵

It is important to note that when witness statements are received during the on-site visits, Article 39(2) of the Rules of Procedure adopted in 2009 establishes that the Commission may delegate one or more of its members to receive this testimonial evidence, according to the rules established in Article 65 on the gathering and presentation of evidence.

In practice, on-site visits are used to fulfill two functions, firstly to check the situation of human rights in the country and, secondly, to keep track of cases and measures recommended during the process, including monitoring procedures for amicable solutions.

71 *Ibid.*, art. 57.

72 *Ibid.*

73 *Ibid.*

74 American Convention, *supra* note 16, art. 48(1)(d).

75 *Ibid.*, art. 48(2).

c. Thematic Rapporteurships and Units

The Commission has also developed a practice of designating Rapporteurs to focus on specific mandates.⁷⁶ On the one hand, there are the country rapporteurships, which, according to the Rules of Procedure, must be assigned to members of the Commission. Thus, each of the commissioners is the rapporteur for several Member States, and must perform monitoring tasks assigned to them by the Commission and at least once a year must report to the plenary on their activities.⁷⁷ On the other hand, rapporteurships on thematic areas of special interest have also been established. These are called “thematic rapporteurships,” when they are led by a member of the Commission and “special rapporteurships,” when led by other persons designated by the Commission.⁷⁸ The Commission has designated rapporteurships on the rights of indigenous peoples, on the rights of women, freedom of expression, migrant workers and members of their families, rights of the child, rights of persons deprived of liberty, rights of Afro-descendants and against racial discrimination and, finally, on human rights defenders.⁷⁹ The Special Rapporteur for freedom of expression is an independent expert appointed by the Commission and holds a full-time position. The Commission has also established the Unit for the Rights of Lesbian, Gay and Trans, Bisexual and Intersex Persons,⁸⁰ and the Unit on Economic, Social and Cultural Rights.

1.2.3 Individual petitions

The system of individual petitions allows persons or groups of persons to submit to the Commission complaints alleging violations of the American Convention and the American Declaration by OAS Member States. There are two parallel complaint systems.⁸¹ On the one hand, the Commission may examine petitions under the American Declaration regarding OAS Member States that are not parties to the Convention. On the other hand, the Commission has jurisdiction to consider individual complaints denouncing violations of the American Convention by States Parties to that convention.⁸² One important distinction between the two systems is that at the end of the Commission proceedings, the Commission may

76 For more information see <http://www.oas.org/en/iachr/mandate/rappoteurships.asp>.

77 Commission Rules of Procedure, *supra* note 38, art. 15(2).

78 Commission Rules of Procedure, *supra* note 38, art. 15(3).

79 The Rapporteurship on human rights defenders has its origin in the Unit for Human Rights Defenders, founded in 2001, which in 2011 was transformed into the present Rapporteurship.

80 On February 1, 2014 the Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI), is expected to begin its functions, replacing and continuing the work of the Unit for the Rights of LGBTI persons. See: http://www.oas.org/en/iachr/media_center/PReleases/2013/094.asp.

81 Commission Rules of Procedure, *supra* note 38, art. 33.

82 American Convention, *supra* note 16, art. 44; Commission Rules of Procedure, *supra* note 38, art. 51.

only refer to the Inter-American Court a complaint alleging Convention violations against a State that has ratified the American Convention and has recognized the Court's contentious jurisdiction.⁸³ In other words, complaints filed only under the Declaration cannot reach the Court. This is a significant distinction because unlike the Court, the Commission is a quasi-judicial body that issues findings and recommendations, but it cannot issue legally binding judicial decisions in a strict sense.⁸⁴

The following analysis will first deal with petitions filed with the Commission under the American Convention. It will then briefly address the OAS Charter-based petition system and the American Declaration.

a. System of individual petitions under the American Convention

Article 41(f) of the American Convention states that the Commission shall "take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention."⁸⁵ Article 19 of the Commission Statute contains a parallel provision.⁸⁶ Title II, Chapter II of the Commission Rules of Procedure provides specific procedural rules governing the processing of individual petitions.⁸⁷

According to Article 44 of the Convention,

[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violations of this Convention by a State Party.

Article 23 of the Rules of Procedure adopts this language and states that petitions must assert "alleged violations of a human right recognized, as the case may be;" in the American Convention on Human Rights or in the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and other treaties ratified by OAS Member States which have recognized the Commission and the Court's contentious jurisdiction.⁸⁸ Article 24 of its Rules of Procedure also grants the Commission the power to initiate, *motu proprio*, the processing of a case.⁸⁹

83 American Convention, *supra* note 16, art. 33; Commission Rules of Procedure, *supra* note 38, art. 45.

84 *See also* Section 1.2.3(c).

85 American Convention, *supra* note 16, art. 41(f).

86 Commission Statute, *supra* note 13, art. 19(a).

87 Commission Rules of Procedure, *supra* note 38, Title II, Chapter II.

88 *Ibid.*, art. 23. This includes petitions against States not parties to the American Convention, but such petitions may only allege violations of rights recognized in the American Declaration. *See* Section 1.1, *supra*.

89 *Ibid.*, art. 24.

Petitions must contain information regarding the person, group of persons or non-governmental organizations filing the complaint, an account of the Convention or Declaration violation, the name of the State responsible, information regarding exhaustion of domestic remedies and whether the petition has been submitted to another international settlement mechanism.⁹⁰ In response to petitions that do not contain all of the above, the Commission may ask the petitioner to provide the omitted information.⁹¹

Under the Convention and the Commission Rules of Procedure, petitions must meet certain requirements in order to be considered admissible:

1. Domestic remedies must be exhausted;
2. The petition must be lodged within six months of the date the petitioner was notified of the final judgment or, when no decision was handed down, within a reasonable period after the moment the alleged violation occurred;
3. The petition must not be pending in another international proceeding for settlement;
4. The petition must state facts which “tend to establish a violation of the rights guaranteed by [the] Convention”; and
5. The complaint must not be “manifestly groundless or obviously out of order.”⁹²

According to the Commission Rules of Procedure, the Secretariat of the Commission will conduct the initial screening of the complaint.⁹³ In practice, the Secretariat does not make a final decision on admissibility at this stage of the procedure; the first screening entails a first sight or *prima facie* analysis of the admissibility requirements established in the Convention and the Commission Rules of Procedure. If it accepts, in principle, the admissibility of a petition, the Secretariat will initiate the contentious phase of the proceeding by requesting information from the Government concerned, which must respond within a period of three months, with the possibility of extensions that may not exceed four months from the date of transmission of the first request for information from the State.⁹⁴ This request for information does not constitute a prejudgment with regard to any decision

90 *Ibid.*, art. 28; see also Section 2.1.3, *infra*.

91 *Ibid.*, art. 26(2).

92 American Convention, *supra* note 16, arts. 46-47; Commission Rules of Procedure, *supra* note 38, arts. 31-34; see also Section 2.2, *infra*.

93 Commission Rules of Procedure, *supra* note 38, arts. 26 and 29.

94 *Ibid.*, art. 30(3).

the Commission may adopt on the admissibility of the petition. The Government observations, including considerations and challenges to the admissibility of the petition will be forwarded to the petitioner to submit their comments or refute the State's version of events.⁹⁵ Under Article 30(5), before taking the final decision on admissibility, which is adopted via a (public) report, the Commission may invite the parties to submit additional observations, either in writing or in a hearing.

Article 48(1)(f) of the Convention states that “the Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in [the] Convention.”⁹⁶ Article 40(1) of the Commission Rules of Procedure adds that “[o]n its own initiative or at the request of any of the parties concerned, the Commission shall place itself at the disposal of the parties concerned, *at any stage of the examination of a petition or case*, with a view to reaching a friendly settlement of the matter...”⁹⁷ If there is no prior statement from the parties, before proceeding to consider the merits of the case, the Commission sets a deadline before which they must make a statement on the possibility of a friendly settlement in line with Article 37(4) of the Procedure. According to Article 49 of the Convention, if a friendly settlement is reached, the Commission prepares a report briefly describing the facts and the terms of the agreement.⁹⁸

95 *Ibid.*

96 American Convention, *supra* note 16, art. 48(1)(f). In 2012, 8 friendly settlement reports were published; see IACHR, Annual Report 2012, OEA / Ser.L / V / II Doc 69 (2011), Chapter 3 (B), p. 63; by September 2011, the Commission had adopted 97 reports on friendly settlements.

97 Commission Rules of Procedure, *supra* note 38, art. 40(1) (emphasis added). This also applies to cases against States not parties to the American Convention.

98 American Convention, *supra* note 16, art. 49. The terms of an agreement under the friendly settlement mechanism vary – sometimes radically differ – from one case to another. The variation reflects the specific demands and strategies of the parties, the steps taken by the Commission, the development of negotiations and the length of the process. In 2003, for example, of 982 cases which were admitted into the system, 84 were resolved in this way, that is to say 8.5%. However the friendly settlement option has been criticized. Many authors have questioned the general propriety of employing a bargaining/trade-off model in the field of human rights law, taking into account the principles governing guarantees for truth justice and reparation for the victims. Nevertheless, the friendly settlement mechanism offers the victim the possibility to address directly the offending Government and ask it to assume its responsibilities. Furthermore, in the course of negotiation the victim may be able to enjoy reparation at an earlier stage as a result of negotiations, rather than through a decision from the Commission or Court decision, and can thereby avoid the costs of litigation. Indeed, it is important to highlight the fact that friendly settlements appear to have greater guarantees of being fulfilled. For a more complete analysis of the possibilities and limits offered by friendly settlement, see, (in Spanish) Estepa, M. C., “La solución amistosa en el marco del Sistema Interamericano de Derechos Humanos,” *Revista Estudios Socio-Jurídicos*, 2011, 13, (2), pp. 327-352; “La Efectividad del Sistema Interamericano de Protección de Derechos Humanos: Un Enfoque Cuantitativo sobre su Funcionamiento y sobre el Cumplimiento de sus Decisiones,” *Sur - Journal Revista Internacional de Derechos Humanos*, 2010, 12; Cardozo, N., “La Solución Amistosa ante la Corte,” in Méndez y Cox, *supra* note 20, pp. 391-409.

Once the Commission has found a petition admissible,⁹⁹ it will proceed with the merits phase of the case. Articles 50 and 51 of the Convention and 37 to 50 of the Commission Rules of Procedure govern the Commission's consideration of the merits in cases against States parties to the American Convention.¹⁰⁰

If the Commission finds no violation of protected rights in a particular case, it will so state in a report that is transmitted to the parties and later published. If the Commission does find a violation, it will prepare a report "setting forth the facts and stating its conclusions"; it may also include the recommendations it considers appropriate to remedy the situation (the so-called "report on Article 50" [of the Convention]).¹⁰¹ The report will only be sent to the State concerned along with a deadline to report on measures it adopts in compliance with the Commission's recommendations.¹⁰² The State will not be permitted to publish the report. The Commission will then inform the petitioner of the adoption of the report and its transmission to the State, and will ask him or her to present in one month the position of the victim or their family, if different from that of the petitioner, and the arguments to support this position, as well as their claims regarding reparations and costs.¹⁰³ This is the petitioner's only opportunity to influence the decision to submit a case to the Court, as only the Commission and States may file cases with the Court.¹⁰⁴

In cases in which States have failed to comply with the recommendations, contained in the report under Article 50 of the Convention, and when the State in question has accepted the jurisdiction of the Court, the Commission will submit the case to the Court, unless the absolute majority of the Commission's members reach a well-founded decision not to do so.¹⁰⁵ In practice, the majority of cases in which the State fails to comply are filed by the Commission with the Court.¹⁰⁶

99 See Section 2.2, *infra*.

100 American Convention, *supra* note 16, arts. 50-51; Commission Rules of Procedure, *supra* note 38, arts. 37-50.

101 American Convention, *supra* note 16, art. 50(1).

102 *Ibid.*, 51(1); Commission Rules of Procedure, *supra* note 38, art. 44(2).

103 *Ibid.*, art. 43(3).

104 American Convention, *supra* note 16, art. 61(1).

105 Commission Rules of Procedure, *supra* note 38, art. 45(1). The 2001 reform of the Rules of Procedure of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, though very positive in terms of promoting access to justice, also made more obvious the problems of an overburdened system and scarce economic and human resources.

106 The case may also be referred to the Court by the State concerned. As of this writing, the only such instance was the matter of *Viviana Gallardo et al.*, Decision of November 13, 1981, IACTHR, (Series B) No. 101/81, filed by Costa Rica. The Court declared the application inadmissible on other grounds, while not calling into question the standing of a State party to lodge a case when that same State is the respondent.

Article 45(2) of the Commission Rules of Procedure further provides that, in deciding whether to refer a case to the Court,

[t]he Commission shall give fundamental consideration to obtaining justice in the particular case, based, among others, on the following factors:

- a. the position of the petitioner;
- b. the nature and seriousness of the violation;
- c. the need to develop or clarify the case-law of the system; and
- d. the future effect of the decision within the legal systems of the Member States.¹⁰⁷

In those cases in which the Commission, by an absolute majority of its members, decides not to refer the case to the Court, it shall, within three months from the date on which it transmitted the preliminary report to the State, issue a final report containing its conclusions and recommendations, which will be monitored. Depending on the level of implementation of the recommendations, the Commission shall decide whether to publish the final report (the “report under Article 51 [of the Convention],” *see also* Article 47 of the Rules of Procedure).

The new Rules of Procedure regulate, in Article 46, practices related to the Commission’s consideration of a State application to suspend the time limit established in Article 51(1) of the Convention for the referral of cases to the jurisdiction of the Court. The State must have demonstrated, through the adoption of specific and appropriate actions, its willingness to implement the recommendations contained in the merits report (Article 50) and, in addition, must have accepted in its request that it expressly and irrevocably accepts the suspension of the time limit and consequently expressly waives the right to file preliminary objections regarding compliance with this, in the event that the matter is later referred to the Court.¹⁰⁸

The regulation also establishes a set of criteria to take into consideration when establishing the terms of suspension: the complexity of the case and the measures required to implement the recommendations, measures taken by the State prior to the application for extension of the time limit and the position of the petitioner.¹⁰⁹

Moreover, Article 41 of the Rules of Procedure provides for withdrawal by the petitioner, and Article 42 provides for the archiving of petitions and cases. Article 41 establishes that the petitioner may withdraw *at any time* their petition or case, the Commission may then archive the petition if deemed appropriate or continue to process it in the interest of protecting a particular right.

107 Commission Rules of Procedure, *supra* note 38, art. 45(2).

108 *Ibid.*, art. 46(1).

109 *Ibid.*, art. 46(2).

Article 42 establishes that the Commission may decide at any point in the proceedings to archive the file, when it verifies that the grounds for the petition do not exist or subsist, or when the information necessary for the adoption of a decision is unavailable. Before doing this, the Commission shall request that the petitioners submit the necessary information and notify the possibility of a decision to archive. The inclusion of this provision in 2009 was primarily designed to reduce cases of long procedural inactivity.¹¹⁰

In cases against a State that has not recognized the Court's contentious jurisdiction and cases which the Commission does not submit to the Court, after the expiration of the deadline, the Commission will prepare a final report with its findings, conclusions and recommendations that will be transmitted to the parties. Finally, if an absolute majority votes to do so, the Commission will publish the report.¹¹¹ A decision in a case will be final with the publication of the "final report" of the Commission.

The Commission can take follow-up measures, including hearings, to monitor compliance with the Commission's decisions in cases that are not submitted to the Court.¹¹² The Commission publishes each year in its Annual Report a list of petitions and cases and their respective situations within the different procedures, as well as the reports and recommendations issued, including precautionary measures granted and the state of compliance with the recommendations.¹¹³

b. System of individual complaints under the American Declaration

The Commission's power to consider individual communications under the Declaration is established in Article 20(b) of its Statute and Article 49 of its Rules of Procedure.¹¹⁴ Although the rules relating to States parties and to States not parties to the American Convention are found in different chapters of the Commission Rules of Procedure (Title II, Chapter II and Chapter III, respectively), the procedure is identical in the examination and deliberation phases of the process.¹¹⁵

110 According to the Commission's Annual Report 2012, *supra* note 96, at the end of 2012 there was a portfolio of 1704 pending cases (admissibility and merits), *see* Chapter 3(B), p. 60.

111 *Ibid.*, art. 47; American Convention, *supra* note 16, art. 51(3).

112 Commission Rules of Procedure, *supra* note 38, art. 48(1).

113 *Ibid.*, art. 59(2).

114 Some States have contested this power of the Commission. *See* appendix No. 25, Response of the Government of the United States of America to Inter-American Commission on Human Rights Report 85/00 of October 23, 2000 Concerning Mariel Cubans (Case 9903) *available at*: <http://www.cidh.org/Respuestas/USA.9903.htm>. However, the Commission's authority to examine petitions under the American Declaration is recognized by Inter-American rules and case law.

115 Commission Rules of Procedure, *supra* note 38, art. 52: "The procedure applicable to petitions concerning Member States of the OAS that are not parties to the American Convention shall be →

Commission Rules of Procedure Articles 28 to 44 and 47 to 49 authorize the Commission to examine petitions, adopt precautionary measures, conduct on-site visits and facilitate friendly settlements. The Commission may also issue and transmit to the parties final reports containing its views, final conclusions and recommendations. In evaluating compliance with its recommendations, the Commission shall decide whether to publish the final report, whether to include it in the Annual Report to the OAS General Assembly and/or whether to publish it in any other manner. Lastly, the Commission may initiate follow-up measures such as information requests and hearings. Petitions filed pursuant only to the American Declaration may not be referred to the Inter-American Court, and the processing of such cases ends with the Commission.¹¹⁶

c. The legal nature of recommendations of the Inter-American Commission

The Commission is widely considered a quasi-judicial body since it issues *recommendations*, as opposed to judicial decisions. Despite the Commission's authority and its fundamental and historical role within the OAS, some States continue to question the obligatory nature of Commission decisions and a few refuse to comply with them. The Inter-American Court itself has stated that "a recommendation does not have the character of an obligatory judicial decision for which the failure to comply would generate State responsibility."¹¹⁷ However, the Court later clarified in *Loayza Tamayo v. Peru* that States parties to the American Convention have "the obligation to make every effort to [comply] with the recommendation of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States."¹¹⁸ The same reasoning would apply to States that are not parties to the Convention. As the Commission stated in its 1997 Annual Report:

The Inter-American Court has indicated that States parties to the American Convention have the obligation to adopt the recommendations issued by the Commission in its reports on individual cases, in the light of the principle of good faith. This obligation extends to the member States in general, provided that, pursuant to the OAS Charter, the Commission remains one of the main organs of the Organization with the function of promoting the observance and defense of human rights in the hemisphere.

Accordingly, the Commission urges the member States, whether they are parties to the American Convention or not, to fulfill their international obligations

provided for in the general provisions included in Chapter I of Title II; in Articles 28 to 44 and 47 to 49 of these Rules of Procedure."

¹¹⁶ *Ibid.*, art. 52.

¹¹⁷ *Caballero-Delgado and Santana v. Colombia*, Judgment of December 8, 1995, IACtHR, (Series C) No. 22, para. 67.

¹¹⁸ *Loayza Tamayo v. Peru*, Judgment of September 17, 1997, IACtHR, (Series C) No. 33, para. 80.

by following the recommendations issued in the reports on individual cases and abiding by the requests of provisional measures.¹¹⁹

In turn, the OAS General Assembly has repeatedly encouraged OAS Member States to follow up on the recommendations of the Inter-American Commission on Human Rights, including precautionary measures.¹²⁰

In any event, local non-governmental organizations, academics and civil society have a crucial role to play in enforcing Commission decisions. The Center for Justice and International Law (CEJIL), a non-governmental organization that is very active before the organs of the Inter-American System, has said in this respect:

It is fortunate, since [States] have not shown the sufficient will in this regard, that not all decisions about the design of the implementation mechanisms for the international bodies rest solely in the hands of the Executive Branches of the States of the region ... the effective implementation ... probably depends, in practice, on coordinated action by different organs of the State as well as the creative petitions and solutions that academics and human rights defense attorneys come up with.¹²¹

1.3 The Inter-American Court of Human Rights

The Inter-American Court is the only judicial organ of the Inter-American Human Rights System. It is “an autonomous judicial institution” entrusted with “the application and interpretation of the American Convention.”¹²² It is composed of seven members who serve in their individual capacities. They are elected in the General Assembly by an absolute majority vote of States parties to the American Convention, from a panel of candidates nominated by those States.¹²³ To be elected to the Court, candidates must be jurists of the highest moral authority and of recognized competence in the field of human rights.¹²⁴ They must possess the qualifications required for the exercise of the highest judicial functions under

119 IACHR, *Annual Report of the Inter-American Commission on Human Rights 1997*, OEA/Ser.L/V/II.98 Doc. 6 rev. April 13, 1998, Chapter VII, para. 12.

120 See, among others, OAS General Assembly, “*Resolution on Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights*,” AG/RES. 2672, XLI-O/11 (2011), resolution point 3.b. See also IACHR, *Annual Report 2011*, OEA / Ser.L / V / II. Doc 69 (2011), “Status of Compliance with the Recommendations of the Commission,” Chapter 3.D, paras. 44-49.

121 Center for Justice and International Law, “Un-kept promises: The implementation of the decisions of the Commission and the Court,” *Gaceta* No. 10.

122 OAS, Statute of the Inter-American Court of Human Rights, art. 1, Resolution 448, adopted by the OAS General Assembly, Ninth Regular Session, La Paz, Bolivia, October 1979; reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003) [hereinafter “Court Statute”]. As stated above, the Court may exercise jurisdiction over other Inter-American conventions as long as the conventions provide for this.

123 *Ibid.*, arts. 6-7; American Convention, *supra* note 16, arts. 52-53.

124 American Convention, *supra* note 16, art. 52(1).

the laws of the nominating State.¹²⁵ The judges of the Court are elected for a period of six years and may be reelected once.¹²⁶ The Inter-American Court of Human Rights is located in San José, Costa Rica.

It should be noted that Article 19 of the new Rules of Procedure of the Court adopted in November 2009 states that judges may not participate in the hearing and deliberation of individual petitions if they are nationals of the respondent State. Furthermore, Article 20 dedicated to the “judges *ad hoc*” confirms, in line with the Court’s Advisory Opinion No. 20 of 2009, that the possibility of appointing a judge *ad hoc* only exists in interstate claims.

According to Articles 62 and 64 of the American Convention, the Inter-American Court has two different jurisdictions: contentious jurisdiction and advisory jurisdiction.¹²⁷ Each is discussed in more detail in the following Sections.

1.3.1 Contentious jurisdiction

Contentious jurisdiction may be defined as the jurisdiction to adjudicate cases concerning alleged American Convention violations by States parties to that convention.¹²⁸ In order to bring a case to the Court, the State concerned must have declared its acceptance of the Court’s contentious jurisdiction.¹²⁹ The declaration of acceptance can be made *ipso facto*, upon ratification of the Convention, at a later time or on an *ad hoc* basis with regard to one specific case. The acceptance by means of a declaration may be unconditional, conditional on reciprocity, for a specified period or for specific cases.¹³⁰ As of September 2013, twenty States parties to the American Convention had recognized the Court’s contentious jurisdiction, as general in character and for an indefinite period of time.¹³¹

As already mentioned, no individual petition can be presented directly to the Court for its consideration. Applications are only lodged before the Court after the completion of the Commission’s individual complaints process.¹³² According to Article 61(1) of the Convention, only the Commission and States parties to

125 Court Statute, *supra* note 122, art. 4; American Convention, *supra* note 16, art. 52.

126 Court Statute, *supra* note 122, art. 5; American Convention, *supra* note 16, art. 54.

127 American Convention, *supra* note 16, arts. 62, 64.

128 Thomas Buergenthal, Dinah Shelton, and David P. Stewart, *International Human Rights in a Nutshell*, 1st ed. St. Paul, Minnesota, West Publishing, 1988, p. 155.

129 American Convention, *supra* note 16, art. 62.

130 American Convention, *supra* note 16, art. 62(2).

131 Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Uruguay and Venezuela. This ceased to apply in the case of Venezuela in September 10, 2013 following the denunciation of the American Convention on Human Rights made by this country on September 6, 2012, *supra* note 17.

132 American Convention, *supra* note 16, art. 61(2).

the Convention may refer cases to the Court. In contrast with the European System, individuals are barred from directly submitting cases to the Inter-American Court. However, once the case is brought to the Court, victims, their relatives or their legal representatives may autonomously submit requests, arguments and evidence throughout the proceeding.¹³³

Article 62(2) provides that States may accept the Court's jurisdiction on condition of reciprocity. In this case, the State making such a declaration may only be subject to an inter-State complaint if the State filing the complaint has also accepted the Court's jurisdiction.¹³⁴ Nevertheless, to date not one single inter-State case has been examined by the Court.¹³⁵

In its LXXXV Ordinary Period of Sessions, held from 16 to 28 November 2009, the Court approved significant changes to its Rules of Procedure, which took effect on January 1, 2010. The different procedures for the examination of an application within the Court framework are described below, highlighting, where appropriate, the changes that the process has undergone in recent years.

Following its consideration of a petition, the Commission may submit that case to the Court by sending a copy of the report pursuant to Article 50 of the Convention (see Section 1.2.3(a) *supra*) and submitting a "note of referral," a new procedure resulting from the reform process, which replaces the former application process.¹³⁶ Before transferring the case to the Court, the Commission "shall immediately give notice of that decision to the State, the petitioner and the victim."¹³⁷ The note of referral established in Article 74(2) must contain the available information of the injured party or his or her representative, with the indication of whether the petitioner has requested that his or her identity be withheld, an appraisal of the degree of compliance with the recommendations issued in the merits report, background,

133 OAS, Rules of Procedure of the Inter-American Court of Human Rights, art. 23, *approved* by the Court in its LXXXV Ordinary Period of Sessions, held from 16 to 18 Nov. 2009, *entered into force* January 1, 2010; *reprinted* in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/II.4 Rev. 9 (2003) [hereinafter "Court Rules of Procedure"] (authorizing participation). Since 2001, the victim or the alleged victim is a "party to the case" before the Court according to art. 2(23) of the Court Rules of Procedure. The victim's activity before the Court is independent of that of the Commission, though coordination may occur, similar to many domestic legal systems in which the prosecutor and the victim's private attorney act independently before a criminal court.

134 Thomas Buergenthal, et al., "The Advisory Practice of the Inter-American Human Rights Court," 79 *Am. J. Int'l L.* 1, 5 (1985), pp. 157-58.

135 It is important to highlight that the Commission has only ever admitted one inter-State petition, see *Franklin Guillermo Aisalla Molina (Ecuador) v. Colombia*, Inter-State Petition IP-02, Report No. 112/10, IACHR, (October 21, 2010). This is the second inter-State petition submitted and the first admitted by the Commission, which in 2007 rejected a complaint presented the year before by Nicaragua against Costa Rica (see *Nicaragua v. Costa Rica*, Inter-State Petition 01/06, Report No. 11/07, IACHR, March 8, 2007).

136 Commission Rules of Procedure, *supra* note 38, art. 74.

137 *Ibid.*, art. 73.

the grounds for the referral of the case to the Court, the names of the delegates from the Commission and any other information useful for the case.¹³⁸ Furthermore, according to Article 35 of the Court's Rules of Procedure, when it submits the case, the Commission must indicate which of the facts contained in the report referred to in Article 50 of the Convention are submitted for the consideration of Court. It is essential to note that the facts alleged by the Commission constitute the factual context of the case before the Court; therefore, once the case is under the jurisdiction of the Court, it is not admissible to argue facts other than those described in it, "without prejudice to indicating those that explain, clarify or reject the facts mentioned in the report."¹³⁹ It is also important to bear in mind that the determination of who has the status of victim will have already been made by the Commission and in consequence, the Court, pursuant to Rule 35(1) of its Rules of Procedure, as the Court itself has pointed out in several judgments has no power to rule on this issue.¹⁴⁰ This is with one exception, namely when evidence is provided that it is not possible to identify one or more of the victims because the case involves violations affecting a group of people. In this case, Article 35(2) allows the Court to have the final decision over whether to consider them as victims.

When the Commission presents the case to the Court the petitioner is notified and given a time limit of two months to independently submit to the Court its pleadings, motions and evidence (Art. 40). For its part, the respondent State has two months from receipt of the petitioner's written submission to reply and file any preliminary objections (Arts. 41 and 42). As discussed in more detail in Section 2.4 (on evidence), this phase of the procedure is essential because it is the only time in which the parties may indicate what evidence and arguments they wish to present, propose and identify witnesses during the oral procedure and establish their claims, including those relating to reparations and costs.

Furthermore, the Commission must cooperate with Court requests for additional evidence, documents and information.¹⁴¹ The Commission may also request of the Court the summoning of expert witnesses¹⁴² and the adoption of

138 *Ibid.*, art. 72; see also Court Rules of Procedure, *supra* note 133, art. 33. The application shall also contain the names of the Agents or Delegates that will represent the Commission.

139 Case of the *Barrios Family vs. Venezuela*, Judgment of November 24, 2011 (Merits, Reparations and Costs), IACtHR (Series C) No. 237, para. 33. This was the first case submitted without application by the Commission under the regulatory changes adopted in 2009 and 2010.

140 See, among others, *Radilla vs. Mexico*, Judgment of November 23, 2009, IACHR (Series C) No. 209, para. 108, where the Court stated that "the Commission, and not this Tribunal, shall identify with precision and at due procedural time, the alleged victims in a case before this Court."

141 Commission Rules of Procedure, *supra* note 38, arts. 75; see also Court Rules of Procedure, *supra* note 133, art. 43.

142 *Ibid.*, art. 72.

provisional measures.¹⁴³ The Commission is authorized to participate in subsequent phases of the procedure, such as reparations, interpretation of judgments and the follow-up to Court decisions.

The Court is not bound by the Commission's prior factual findings and may at any stage obtain new evidence.¹⁴⁴ Although in its early practice the Court reviewed the entire case *ex novo*, this has changed, and the Court only solicits new evidence and reviews the facts when deemed absolutely necessary. The Court Rules of Procedure empower it to assign appropriate weight to evidence collected during the Commission proceedings. Article 57(1) of the Rules provides that "evidence tendered to the Commission shall form part of the file, provided that it has been received in a procedure with the presence of both parties, unless the Court considers it essential that such evidence should be repeated."¹⁴⁵

The judges deliberate in private and dictate a sentence that is recorded in the minutes alongside the majority, dissenting, and concurring opinions issued (Art. 65(2)). The decisions of the Court are taken by the majority of the judges present at the time of the vote and in case of a tie, the President issues the casting vote (16 4)).

The judgments of the Court are final and binding.¹⁴⁶ A decision awarding compensatory damages may be executed in the country concerned in accordance with its domestic procedures governing the execution of judgments against the State.¹⁴⁷ Furthermore, as described later in this Handbook (*see infra* Section 3.5.3), the judgments of the Court include a wide variety of reparatory measures.

To monitor compliance with judgments, the Court has developed a range of practices which were finally codified during the recent modification process of the Court's Rules of Procedure. The process for monitoring compliance with judgments is often a lengthy and complex process due in part to the difficulties and reluctance of States to implement the Court's decisions. Moreover, the monitoring stage can require considerable time for cases in which the Court ordered reparation measures which imply structural or legal modifications.¹⁴⁸

143 *Ibid.*, art. 76.

144 Court Rules of Procedure, *supra* note 133, art. 45(1).

145 *Ibid.*, art. 57(1).

146 American Convention, *supra* note 16, arts. 67-68. Court Rules of Procedure, *supra* note 133, allowing parties to request interpretation by the Court of judgments on the merits or on reparations. But this does not imply a review of the decisions, it just intends to clarify its content.

147 American Convention, *supra* note 16, art. 68(2).

148 In 2012, the Court issued 32 orders monitoring compliance with its judgments and held 5 private hearings and one public hearing concerning 14 cases. At the end of 2011, the Court had 124 contentious cases at the stage of monitoring compliance with judgment (*see IACtHR Annual Report 2012*, pp. 13-14).

The monitoring mechanism, regulated under Article 69 of the Court's Rules of Procedure, is based on the submission of reports by States, which are subject to observations by the victims and finally, by the Commission. During this process, the Court can ask for relevant information from other sources, including expert declarations and other reports which it considers to be appropriate. If the Court considers it necessary, it can convene the parties to (public or private) hearings (*see infra* Section 2.3). Since 2010, the Court has held judgment monitoring hearings on more than one case involving the same State, when the reparation measures were similar in each case.¹⁴⁹ After evaluating the documentation and testimonies presented and heard, the Court determines the state of compliance and issues the relevant orders.

1.3.2 Advisory jurisdiction

The jurisdiction of the Court to render advisory opinions interpreting American States' human rights treaty obligations is established in Article 64 of the Convention. As revealed by this article's language, States parties to the American Convention as well as other OAS Member States and OAS organs, including the Inter-American Commission, may request advisory opinions, "within their spheres of competence."¹⁵⁰ In the exercise of its advisory jurisdiction, the Court has the power to interpret the American Convention and "other treaties concerning the protection of human rights in the American states."¹⁵¹ In Advisory Opinion No. 1, the Court interpreted the phrase just quoted.¹⁵² It ruled that the language of Article 64 conferred upon it "the power to interpret any treaty as long as it is directly related to the protection of human rights in a Member state of the Inter-American System."¹⁵³ In addition, the Court is also empowered to issue advisory opinions requested by an individual OAS Member State regarding the compatibility of its domestic laws with the American Convention or other human rights treaties applicable to which it is a party.¹⁵⁴ As of September 2013, the Inter-American Court has rendered twenty advisory opinions.¹⁵⁵

149 IACtHR, Annual Report 2012, p. 14.

150 American Convention, *supra* note 16. The OAS organs that may request advisory opinions include the General Assembly, the Permanent Council, the General Secretariat and the Specialized Organizations, such as the Pan-American Health Organization and the Inter-American Commission of Women.

151 *Ibid.*

152 "Other Treaties" Subject to the Advisory Jurisdiction of the Court (art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, IACtHR, (Ser. A) No. 1.

153 *Ibid.* para. 21; *see also* Buergenthal, T, *supra* note 135.

154 *See* American Convention, *supra* note 16, art. 64(2).

155 Advisory Opinions have interpreted several provisions of the American Convention, including, among others, Articles 1, 2, 4, 7, 8, 13, 14, 19, 25, 27, 29, 41, 44, 46, 50, 51, 55 and 64. All advisory opinions can be consulted at: <http://www.corteidh.or.cr/index.php/en/advisory-opinions>.

PART 2

SUBMITTING A COMMUNICATION

2. SUBMITTING A COMMUNICATION

As detailed in the previous Section, the Inter-American System makes available an individual petitions procedure for the redress of human rights violations. Through this procedure, both the Commission and the Court supervise State compliance with the obligations contained in the American Declaration, the American Convention and the other regional human rights treaties. In this regard, the Inter-American System is unlike the United Nations System, in which each human rights treaty has a separate supervisory body.

The procedure always begins with the filing of a petition with the Commission, but the cases may evolve in different ways. A case may be rendered inadmissible in the early stages of the procedure. If the admissibility requirements are found to be met, the Commission will consider the merits. The merits examination may conclude with the Commission's final report (so-called "Article 51 Report") detailing the allegations, conclusions and recommendations based on the Commission's factual findings.¹⁵⁶ Alternatively, the case may be submitted to the Court by the Commission or by an interested State once the confidential report on the merits (the so-called "Article 50 Report").¹⁵⁷ The complaint may also be resolved in a friendly settlement between the parties at any stage of the procedure, unless the Commission or the Court determines that it is appropriate to continue to consider the case even after a friendly settlement.¹⁵⁸

There is no established period of time in which the procedure must be completed, although several stages of the proceedings are regulated by deadlines, mainly in terms of actions by the parties. Therefore, the Commission and the Court have very few time constraints. The length of the proceedings varies from case to case, as each situation has its own particular characteristics and is contingent upon the current case load and the availability of resources. The average time taken to process cases up to their resolution, once they are under the jurisdiction of the Court, has been reduced over the years and in 2011 the average was 16.4 months.¹⁵⁹ The average processing times are more complicated to establish for the various stages before the Commission, although the trend also points to the progressive reduction of these.¹⁶⁰

156 American Convention, *supra* note 16, art. 51.

157 *Ibid.*, art. 50.

158 *Ibid.*, art. 48.1(f) and 49.

159 IACtHR, Annual Report 2012, p. 9.

160 For more information on the average time and the duration of the procedure, see (in Spanish) "Maximizando la justicia, minimizando la demora" December 2011, Human Rights Clinic, The University of Texas School of Law, p. 4 and 31-36, available at: http://www.utexas.edu/law/clinics/humanrights/work/Maximizando_la_Justicia_en_la_CIDH.pdf; according to the "Position Paper →

The different phases or steps of the procedure, such as admissibility determination, the gathering and weighing of evidence and hearing requests, will be analyzed in the following Sections. During this analysis, the different rules and practices of the Commission and the Court will be described.

2.1 Initiating the proceedings

2.1.1 How to file a petition?

The petition must be addressed to the Executive Secretary of the Inter-American Commission on Human Rights.

- It can be sent by *mail* to:
1889 F Street, N.W., Washington, D.C., 20006, USA.
- The petition may instead be sent by *fax* to:
+ 1-202-458-3992 or 6215
- or sent by *e-mail* to:
cidhdenuncias@oas.org

There is also a system for presenting petitions via the Commission website, by completing an online form prepared by the Executive Secretariat, which can be accessed by visiting this page:

– https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E

To enter you must first register as a user by typing in an email and password.

The form must include all available information on the facts which may constitute human rights violations. The Commission recommends a simple and direct writing style. Copies of documents deemed relevant may also be sent, including those relating to the determination of the facts and the steps taken for the exhaustion of domestic remedies. The online system allows for electronic documents to be attached. The form can also be downloaded and sent by one of the methods mentioned above.¹⁶¹

Each petition is registered with a number in a central database, and an acknowledgment of receipt is sent to the petitioner.

on Strengthening the Inter-American System for the Protection of Human Rights” (adopted by the Commission on April 8, 2012, OEA / Ser.L / II Doc. 68), in 2010 the average duration of the initial stage of the study was 26.2 months (para. 54). According to the same document, there are possibilities that the average time will be shortened, with the aim of, in 2016, limiting the time span to 3 months for the initial study, one year for the admissibility study and one year for the merits study.

¹⁶¹ The guide published by the Commission recommends not sending original documents because documents sent will not be returned, *see*, Petition and Case System, Informational Brochure (2012), in particular pages 22 to 34, available at: <http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>.

Once the petition is submitted, the Commission proceeds according to Article 29 of its Rules of Procedure.¹⁶² A person from the team at the Executive Secretariat examines the petition and drafts an initial analysis. This initial analysis is presented to a working group within the Secretariat (known as the “GRAP”), in order to ensure that important decisions are not made at the discretion of only one person. The working group carries out a preliminary evaluation of the petition, that is to say, they recommend to the Executive Secretary whether to open the petition for processing, request further information or reject the petition.¹⁶³ The Executive Secretary will then make a decision to open or to reject the petition. The petition may be filed again stating new facts, further explaining the case or submitting additional information. A petition cannot be filed again if rejected on grounds established in Article 46(1)(b) or Article 47(b), (c) or (d) of the Convention.

Individuals may not file complaints directly before the Inter-American Court. The Commission may refer a case to the Court under the following circumstances: the Commission’s proceedings have been duly exhausted; a friendly settlement has not been reached during the course of Commission proceedings; the case has not been the subject of an Article 51 final public report; the State has not taken adequate measures to cease the alleged violation; or the State concerned recognizes the Court’s jurisdiction.¹⁶⁴ Once the Commission has activated the Court’s jurisdiction in a case, the alleged victims, their family members or their accredited representatives may directly and “autonomously” submit their brief containing pleadings, motions, and evidence throughout the proceedings before the Court.”¹⁶⁵

2.1.2 What should the structure of a petition be?

Generally, the petition’s format resembles the structure used in domestic courts. For this reason, before filing a complaint before the Inter-American Commission it is desirable to seek legal advice, although it must be pointed out that this is not obligatory.¹⁶⁶ As mentioned in the above Section, the Commission provides a standard form with instructions, which assists in structuring the complaint. The form may be completed and sent online or may be downloaded in portable document format (“PDF”) at the Commission website. A copy of the standard form with instructions is included below:

162 Commission Rules of Procedure, *supra* note 38, art. 29.

163 For more detailed information about the process for handling requests, see (in Spanish): R. Diaz, Pedro E., *Comisión Interamericana de Derechos Humanos: Admisibilidad y jurisprudencia relevantes*, págs. 388-400, disponible en: <http://www.corteidh.or.cr/tablas/r127507.pdf>.

164 American Convention, *supra* note 16, arts. 44-46.

165 See Section 1.3.1, *supra*; Court Rules of Procedure, *supra* note 133, art. 25(1).

166 Although it is important to make clear that the participation of a lawyer is not necessary to present a petition before the Commission.

Textbox 1: Petition form

FORM FOR PRESENTING A PETITION BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

SECTION I. INFORMATION ON THE ALLEGED VICTIM AND PETITIONER

1. Information on the alleged victim(s)

Please provide the information about the person or group affected by the violation(s) of human rights.

It is important to notify the Commission immediately and in writing if the alleged victim(s) wish/ wishes to change representation or become the petitioner in his/her/their own petition.

If there is more than one victim, please add the data in the "Additional Information" Section.

Name of the alleged victim:

Sex of the alleged victim: F M

Date of birth of the alleged victim: (day/month/year)

Mailing address of the alleged victim (including the street or avenue, number/name of the building or house, apartment, city, state or province, postal code, country):

Telephone number of the alleged victim (include area codes if possible):

Fax number of the alleged victim (include area codes if possible):

Email of the alleged victim:

Is (are) the alleged victim(s) deprived of liberty? No Yes

Additional information about the alleged victim(s):

2. Information on the Family Members

Please provide information regarding the close family members of the alleged victim(s) who are likely to have suffered harm as a result of the alleged violation of human rights.

Name of the family members and relationship to the alleged victim:

Mailing address of the family members (including the street or avenue, number/name of building or house, apartment, city, state or province, postal code, country):

Telephone number of the family members (include area codes if possible):

Fax of the family members (include area codes if possible):

Email of the family members:

Additional information on the family members:

3. Data on the Petitioner

Please provide information about the person or group that is submitting the petition.

It is important to notify the Commission immediately of any change in mailing address.

Name of the petitioner (In the event that it is non-governmental organization, include the name of the legal representative(s) who will receive the communications. If it is more than one organization or person, include the additional information in the space provided):

Acronym of the organization (if applicable):

Mailing address of the petitioner (including the street or avenue, number/name of building or house, apartment, city, state or province, postal code, country):

(NOTE: The Commission requires a mailing address to send notifications related to your petition.)

Telephone number of the petitioner (include area codes if possible):

Fax of the petitioner (include area codes if possible):

Email of the petitioner:

In certain cases, the Commission can keep the identity of the petitioner confidential, if expressly requested. This means that only the name of the alleged victim will be communicated to the State if the IACHR decides to process your petition.

Do you want the IACHR to keep your identity as petitioner confidential during the procedure?

No Yes

Additional information about the petitioner(s):

4. Is your petitioner related to a previous petition or a request for precautionary measures?

Have you previously submitted a petition to the Commission concerning these same facts?

No Yes

(If yes, indicate the number of the petition):

Have you submitted a request for precautionary measures to the Commission concerning these same facts?

No Yes

(If yes, indicate the reference number):

Section II. FACTS ALLEGED

1. Member State of the OAS against which the complaints is submitted
2. The facts

Provide, in chronological order, an account of the facts that is as thorough and detailed as possible. In particular, specify the place, the date, and the circumstances in which the alleged violations occurred. (Add more pages if necessary or attach a separate document in which you describe the facts alleged)

3. Authorities allegedly responsible

Identify the person(s) or authorities who you consider responsible for the facts alleged and provide any additional information as to why you consider the State responsible for the alleged violation(s).

4. Human Rights allegedly violated

Indicate the rights that you consider have been violated. If possible, specify the rights protected by the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, or the other Inter-American human rights treaties. If you wish to consult a list of the rights or treaties, see the Petition and Case System: Informational Brochure, in particular the Section referring to Human Rights in the Inter-American System.

SECTION III. LEGAL REMEDIES PURSUED TO RESOLVE THE FACTS ALLEGED

Describe the actions pursued by the alleged victim or the petitioner before the judicial bodies. Explain any other remedy pursued before domestic authorities, including administrative agencies, if any.

If it has not been possible to exhaust domestic remedies, choose from the following options the one that best explains why it was not possible:

- () the domestic laws do not ensure due process for the protection of the rights allegedly violated;
- () access to domestic remedies has not been permitted, or exhausting them has been impeded;
- () there has been unwarranted delay in issuing a final decision in the case.

Please explain the reasons:

Indicate whether there was a judicial investigation. Indicate when it began, when it ended, and the result. If it has not concluded, indicate why.

If applicable, indicate the date of notification of the final decision:

____/____/____ (day/month/year).

Section IV. AVAILABLE EVIDENCE

1. Evidence

The available evidence includes any documents that may prove the violations alleged (for example, the principal pleadings and exhibits in judicial or administrative records, expert reports, forensic reports, photographs, and video or film recordings, among others).

- If possible, attach a simple copy of these documents. (The copies do not need to be certified or legally authenticated).
- Please do not attach originals.
- If it is not possible to send the documents, you should explain why and indicate whether you will be able to send them in the future. In any event, you should indicate which documents are relevant to proving the facts alleged.
- The documents should be in the language of the State, so long as it is an official language of the OAS (Spanish, English, Portuguese, or French). If this is not possible, the reasons should be explained.

List or indicate the evidence that is the basis of your petition, and, if possible, identify which evidence you are attaching or sending with your petition:

2. Witnesses

Identify, if possible, the witnesses to the alleged violations. If those persons have given statements to the judicial authorities, send, if possible, a simple copy of the witness statements given to the judicial authorities, or indicate whether you will be able to send them in the future. Indicate whether it is necessary to keep the identity of the witnesses confidential.

SECTION V. OTHER COMPLAINTS LODGED

Indicate whether these facts have been presented to the Human Rights Committee of the United Nations or any other international organization:

No Yes If yes, indicate which organization:

Section VI. PRECAUTIONARY MEASURES

In certain serious and urgent situations, the Commission may ask a State to adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings.

For the criteria the Commission has used in practice, you may go to www.cidh.org, where a summary of the granted precautionary measures is periodically published.

If you wish to submit an application for precautionary measures, please refer to the Petition and Case System: Informational Brochure, in particular the Section entitled Serious and Urgent Situations.

Indicate whether there is a serious and urgent situation of risk of irreparable harm to persons or to the subject matter of the proceedings.

No Yes If yes, please explain the reasons:

2.1.3 What kind of information is needed?

The procedure is designed to be relatively simple and accessible. In accordance with Article 28 of the Commission Rules of Procedure, petitions must contain the following information in order to be considered:

- a. “the name, nationality and signature of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, the name and signature of its legal representative(s) and the country in which it is legally registered;
- b. whether the petitioner wishes that his or her identity be withheld from the State, and the respective reasons;
- c. the email address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number and postal address;
- d. an account of the act or situation that is denounced, specifying the place and date of the alleged violations;
- e. if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;
- f. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;
- g. compliance with the time period provided for in Article 32 of the Rules of Procedure;
- h. any steps taken to exhaust domestic remedies, or the impossibility of doing so; and
- i. an indication of whether the complaint has been submitted to another international settlement proceeding.”¹⁶⁷

As it is advisable to provide complete information to the Commission, it is highly recommended to attach copies of the final domestic decision even though there is no such requirement expressly stated. In fact, it is important to send all available information with the petition in order that the Commission is well-equipped to examine it, as highlighted in the Section on evidence (Section IV) in the form reproduced above.¹⁶⁸

167 Commission Rules of Procedure, *supra* note 38, art. 28.

168 For complete information on the steps necessary and advisable to file a petition, see: System of Petition and Case System: Informational Brochure, Section 2 [Guide to presenting a petition] (2012), especially p. 22-34, available at: https://www.cidh.oas.org/cidh_apps/manual_pdf/MANUAL2010_E.pdf.

2.2 Admissibility

The petitioners should be aware that it is essential that their petition meets a series of conditions in order to be deemed eligible. If the petition does not meet one of the following requirements, the case will be declared inadmissible and, subsequently, the Commission will reject and archive it. In order for a petition to be admissible it must meet a certain number of conditions. First, it must fall within the Commission's jurisdiction,¹⁶⁹ as it is defined in the relevant instruments. The jurisdiction of each body must be understood in terms of 1) subject matter (*ratione materiae*), 2) the person(s) or institution(s) complaining, the victim(s) and the respondent State (*ratione personae*), 3) the territory where the alleged events occurred (*ratione loci*) and 4) the moment in time when they occurred (*ratione temporis*). In addition, there are several types of admissibility criteria established in Articles 31 to 34 of the Rules of Procedure.¹⁷⁰ They provide that the petitioner must: 1) exhaust all domestic remedies, or if remedies were not exhausted, explain why an exception to the rule of exhaustion of domestic remedies applies; 2) lodge the claim within six months of the date on which the alleged victim was notified of the decision that exhausted the domestic remedies, or within a reasonable amount of time if the exhaustion requirement does not apply; 3) not duplicate procedures (as when the same petition is filed with several international adjudicatory organs, or the same petition was previously decided by the Commission); and 4) demonstrate that the petition is not manifestly unfounded or based on facts that do not amount to a violation of one of the rights protected in the Inter-American System. The Sections which follow offer a description of the various admissibility requirements.

After the Executive Secretariat of the Commission determines that the complaint is complete and *prima facie* admissible, they transmit the pertinent parts to the respondent State.¹⁷¹ The State must reply within three months of the date the request is transmitted, extendable no longer than four months after the date that the first request for information was sent, and may submit preliminary objections alleging that the complaint does not meet the applicable requirements.¹⁷²

Admissibility decisions must be studied by a Commission working group according to Article 35 of the Commission's Rules of Procedure. This working group must be comprised of three or more members of the Commission and meet between sessions in order to examine whether a petition fulfills the requirements

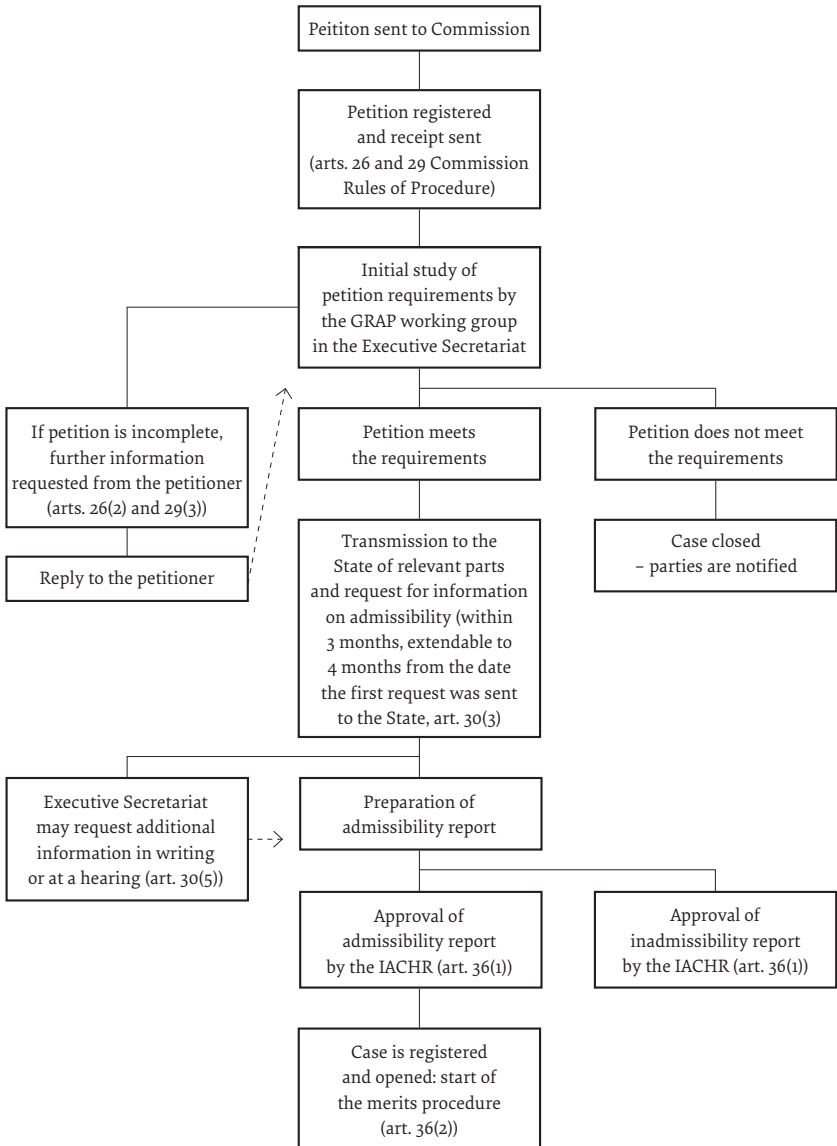
169 The legal authority of an organ to consider issues brought before it.

170 Commission Rules of Procedure, *supra* note 38, arts. 31-34.

171 *Ibid.*, art. 30(2). See Section 2.1.1 *supra*.

172 *Ibid.*, art. 30(3).

Flowchart 1: Initial admissibility procedure and process (Commission)



and then formulate recommendations.¹⁷³ However, in practice, a group with these characteristics has not been created and Secretariat staff along with a supervising Commissioner prepare the eligibility report before submitting it for final approval at the following period of sessions of the Commission.

Admissibility decisions are reported to the OAS General Assembly in the Commission's Annual Report. After a report declaring a petition admissible is adopted, the petition is registered as a "case," and proceedings on the merits begin. If the petition is declared inadmissible, the proceedings will end. There is no "appeal" of admissibility decisions because they are final and not subject to review by the Inter-American Court.¹⁷⁴

It should be added that in exceptional circumstances, under Article 36(3) of the Commission's Rules of Procedure, the decision on the admissibility of the case may be deferred until the discussion and decision on the merits. This is intended to save time in "serious and urgent" cases or when the passage of time could render ineffective the complaints procedure before the Commission.¹⁷⁵ Moreover, in accordance with the latest amendment to the Regulation which entered into force on August 1, 2013, it is possible to unify the phases of admissibility and merits when there is an exception to the requirement of exhaustion of domestic remedies (see *infra* Section 2.2.2.a.) that were "inextricably" linked to the merits of the case.¹⁷⁶

2.2.1 Jurisdiction

a. Who may submit a petition?

(Jurisdiction *ratione personae*, active legitimation)

According to Article 44 of the American Convention and Article 23 of the Commission Rules of Procedure, any person or group of persons or non-governmental entity legally recognized in one or more of the Member States of the OAS, has standing to submit petitions to the Commission on his own behalf or on behalf of third persons.¹⁷⁷ These articles employ broad language that allows non-governmental organizations or groups of persons to be petitioners. No connection between the victim and the nongovernmental organization, group of persons or

¹⁷³ *Ibid.*, art. 35.

¹⁷⁴ However, the Court may re-examine the admissibility of a petition under its contentious jurisdiction. See Section 2.2.2(a)(iii), *infra*. Former Article 54 of its Rules of Procedure authorized the Commission to reconsider decisions at the request of the respondent State of the petitioner, but this provision was removed with the 2001 Commission Rules of Procedure.

¹⁷⁵ Art. 36(3) (b) and (c) of the Commission's Rules of Procedure, *supra* note 38.

¹⁷⁶ Art. 36(3) (a) of the Commission's Rules of Procedure, *supra* note 38. See also *infra* Section 3.5.2.

¹⁷⁷ American Convention, *supra* note 16, art. 44; Commission Rules of Procedure, *supra* note 38, art. 23.

individual who submits the petition is required.¹⁷⁸ The Convention also does not require the victim's consent to the filing of a petition. However, although it is not required to have a mandate or power of attorney authorization from the victim, it is desirable. It is important to note that petitioners may request that their identity be withheld from the State, by explaining their respective reasons.¹⁷⁹

In exceptional circumstances, the Commission may begin processing a case *motu proprio*, without receiving a petition or complaint from victims or other persons or entities.¹⁸⁰ A State party to the American Convention may also submit petitions alleging violations by another State party, contingent upon its recognition of the Commission's jurisdiction over inter-State complaints.¹⁸¹

Petitions must allege a violation of the rights of a "victim." In this respect, the Inter-American Court has stated that for the Commission to admit a case it is necessary that the petition argue a concrete violation of certain individuals' human rights. As a result, a case could be declared inadmissible if the victim is not identified.¹⁸² However, as mentioned above, it is not necessary that the person submitting the petition be the victim.

The Convention does not protect the rights of juridical persons, such as corporations and nongovernmental organizations. Petitions arguing a violation of the rights of such entities will be declared inadmissible by the Commission in accordance with Article 1(2) of the American Convention. This provision defines the word "person" as used in the Convention to mean "human being."¹⁸³ However, under certain circumstances, it is possible to claim that a person's human rights are being violated when a corporation or nongovernmental organization is subjected to certain arbitrary actions by the State.¹⁸⁴

178 See e.g. "Baby Boy," *supra* note 39 (a number of co-petitioners were individuals or groups that deemed themselves morally committed with the outcome of the communication); *Constitutional Court v. Peru*, Competence, Judgment of September 24, 1999, IACtHR (Series C) No. 55, para. 3 (presented by twenty-seven Peruvian Congressional Representatives). However, most petitions are submitted by the victims or their relatives.

179 Commission Rules of Procedure, *supra* note 38, art. 28(2).

180 *Ibid.*, art. 24.

181 *Ibid.*, art. 50.

182 See *International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94, December 9, 1994, IACtHR., (Series A) No. 14, paras. 45-49; see also *Morales de Sierra vs. Guatemala*, Case 11.625, report No. 04/01, IACHR, OEA/Ser.L/V/II.111, doc. 20 rev. (2001), paras. 4-18.

183 American Convention, *supra* note 16, art. 1(2).

184 See *ABC Color v. Paraguay*, Case 9250, Report No. 6/84, IACHR, Annual Report 1983-1984, OEA/Ser.L/V/II.63 Doc. 10 (1984).

**b. Against whom may a petition be submitted?
(Jurisdiction *ratione personae*, passive legitimation)**

Under the Inter-American System, individual petitions may be filed exclusively against *States*. The System is not designed to try individuals or to determine the responsibility of a specific State organ or body.

All OAS Member States may be the object of a complaint before the Commission claiming that it failed to respect one or several rights guaranteed by the American Declaration. Upon ratification of the American Convention, a State automatically empowers individuals to submit to the Commission petitions against it that allege violations of the Convention. Similarly, individual complaints may be lodged against States parties to any other Inter-American convention that provides for a complaint mechanism.¹⁸⁵

However, in order for a communication to be referred to the Court it is not enough that the concerned State has ratified the Convention. Only those States parties to the Convention, or to another treaty authorizing the Court to receive complaints, that have expressly accepted the Court's contentious jurisdiction may be named as defendants in cases before the Court. A State may recognize the Court's contentious jurisdiction through a general declaration to that effect, or with regard only to a single specific case by special agreement.¹⁸⁶

**c. Which claims may be made?
(Jurisdiction *ratione materiae*)**

i. Violation of a protected right

A petition before the Commission may allege violations of human rights recognized in the American Declaration. Depending on the respondent State, a petition may also allege violations of the American Convention; the San Salvador Protocol; the Protocol to Abolish the Death Penalty; the Inter-American Convention to Prevent and Sanction Torture (IACPPT); the Convention on Forced Disappearance of Persons and/or the Belém do Pará Convention.¹⁸⁷

The Court has jurisdiction over "all matters relating to the interpretation or the application of the Convention."¹⁸⁸ To the extent that certain provisions of the

185 See Section 1.1 *in fine*, *supra*.

186 American Convention, *supra* note 16, art. 62(1). See also *Restrictions to the Death Penalty (Arts. 4.2 and 4.4 American Convention on Human Rights)*, Advisory Opinion OC-3/83, September 8, 1983, IACtHR, (Series A) No. 3, para. 21. As the time of writing, the only State that has accepted the Court's jurisdiction by special agreement is Nicaragua. See *Genie-Lacayo v. Nicaragua*, Preliminary Objections, Judgment of January 27, 1995, IACtHR, (Series C) No. 21, paras. 21, 23-4.

187 In order to allege a violation of these conventions, the respondent State must have ratified that instrument.

188 American Convention, *supra* note 16, art. 62(1).

American Convention make reference to other treaties, the Court may also have limited jurisdiction over those instruments. Its jurisdiction extends as well to other treaties that confer such powers on it, provided that the respondent State has duly ratified them and has recognized the Court's jurisdiction. In this way, the Convention on Forced Disappearance expressly grants the Court jurisdiction over complaints filed under that Convention.¹⁸⁹ The IACPPT broadly provides that "the case may be submitted to the international fora whose competence has been recognized by that State,"¹⁹⁰ and this has been constantly interpreted to include the Court when the State had accepted its jurisdiction.¹⁹¹ The Convention of Belem do Pará, for its part, establishes in Article 12 the possibility of presenting petitions before the Commission on violations of Article 7.¹⁹² Moreover, the Additional Protocol on Human Rights in the Area of Economic, Social and Cultural Rights authorizes the Court's limited jurisdiction over breaches of trade union rights (Article 8(a)) and the right to education (Article 13).¹⁹³ The remaining rights recognized in this protocol may not elicit individual petitions; nevertheless compliance with these rights is supervised by the Commission through other mechanisms.¹⁹⁴

The Court may not consider direct violations of treaties that do not confer jurisdiction on it, either explicitly or implicitly, even if ratified by the respondent State.¹⁹⁵ As discussed above, a State may limit the Court's jurisdiction over contentious cases filed against it to "specific cases."¹⁹⁶

Article 47(b) of the Convention expressly requires that a petition "state facts that tend to establish a violation of the rights guaranteed by [the] Convention." Allegations that fall outside the scope of the Convention are declared inadmissible.

189 Convention on Forced Disappearance, *supra* note 24, art. XIII.

190 Inter-American Torture Convention, *supra* note 23, art. 8.

191 *Paniagua-Morales et al. v. Guatemala* ("Panel Blanca"), Judgment of March 8, 1998, IACtHR (Series C) No. 37, para. 136; "*Street children*" *v. Guatemala* (*Villagran Morales et al.*), Judgment of November 19, 1999, IACtHR (Series C) No. 63, paras. 247-52; *Bámaca-Velásquez v. Guatemala*, Judgment of November 25, 2000, IACtHR (Series C) No. 70, para. 223; *Cantoral-Benavides v. Peru*, Judgment of August 18, 2000, IACtHR, (Series C) No. 69, para. 191; *Vélez Lóor c. Panama*, Judgment of November 23, 2010, IACtHR (Series C) No. 218, paras. 29-36.

192 *González et al* ("*Cotton Field*") *v. Mexico*, Judgment of November 16, 2009, IACtHR (Series C) No. 205, paras. 31-80.

193 Protocol of San Salvador, *supra* note 21, art. 19(6); *see also Baena-Ricardo et al. v. Panama*, Judgment of February 2, 2001, IACtHR, (Series C) No. 79, para. 95.

194 *Ibid.*, Art. 19(7). For more information about the jurisdiction of the Inter-American Commission and the Court with respect to ratified Conventions in the framework of the OAS, *see*: Acosta-Lopez, JI, (in Spanish) "Alcance de la competencia contenciosa de la CIDH a la luz del artículo 23 de su reglamento" in *International Law, Revista Colombiana de Derecho Internacional*, 107-131 (2009).

195 *Las Palmeras v. Colombia*, Preliminary Objections, Judgment of February 4, 2000, IACtHR, (Series C) No. 67, para. 16, Resolutions 2 and 3.

196 American Convention, *supra* note 16, art. 62(2).

The Court has applied a high standard in determining that a petition does not claim violations of protected rights. For this, the Court requires a “clear, manifest certainty so perceptible that nobody may rationally place it in doubt.”¹⁹⁷

ii. Fourth Instance Formula

The Commission has developed through its practice the so-called Fourth Instance Formula, essentially a doctrine that affords a level of deference or discretion to the State under certain conditions. The Fourth Instance Formula arose from the principle that the Commission should supervise State compliance with Inter-American human rights instruments but should not act as an appellate court for the decisions of domestic courts. Under the Fourth Instance Formula, if a petitioner merely argues that a decision of a national court is erroneous as a matter of domestic law, and alleges no violation of the Convention, the petition will be dismissed. The Inter-American Commission cannot review findings or interpretations of domestic law made by national courts unless such decisions constitute Convention violations. In *Marzioni v. Argentina*, the Commission stated:

The basic premise of this formula is that the Commission cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of the Convention is involved.

The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.¹⁹⁸

The Commission developed the formula pursuant to the requirement that petitions must state facts that tend to establish a violation of the rights guaranteed by the Convention.¹⁹⁹ On that basis, it must dismiss any claim exclusively arguing judicial error. However, the formula does not bar admissibility when the petition alleges a violation of due process, discrimination or a violation of other rights recognized by the Convention.²⁰⁰

197 *Genie Lacayo*, *supra* note 186, para. 36.

198 *Marzioni v. Argentina*, Case 11.673, Report No. 39/96,, Annual Report 1996, IACHR, OEA/Ser.L/V/II.95 Doc. 7 rev. (1996), paras. 50-51; *see also Plan de Sanchez Massacre v. Guatemala*, Case 11.763, Report No. 31/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998), para. 24; *Gilbert Bernard Little v. Costa Rica*, Case 11.472, Report No. 85/98, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6, rev. (1998), paras. 50-51; *Jorge Enrique Benavides v. Colombia*, Report No. 34/97, October 3, 1997 Petition, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6, rev. (1997), paras. 23-24.

199 American Convention, *supra* note 16, art. 47(b).

It is important to note that the Fourth Instance Formula is directly related to the existence of a functioning judiciary and to the level of discretion afforded to a domestic court in, for example, estimating the value of evidence or establishing the domestic law applicable to a case. Therefore, to override the threshold set by the Commission, a petitioner must prove that there is manifest arbitrariness in the domestic judicial proceedings such that a right protected by the Convention has been violated²⁰¹ or that there is “unequivocal evidence” that the rights to due process established under the American Convention has been violated.²⁰²

From a purely legal point of view, the Fourth Instance Formula simply recognizes that if it is alleged that a State judiciary has violated the Convention, the Commission will review the case and, if appropriate, declare the State internationally responsible. This is the same reasoning the Commission applies to petitions claiming Convention violations by agents of any other State organ. However, the basic difference arguably lies in the requirement that the violation be “manifestly arbitrary.”

d. Where must the violation have been committed? (Jurisdiction *ratione loci*)

Violations of rights alleged before the Inter-American Commission and Court are not geographically limited to those acts or omissions committed on the respondent State’s territory. Instead, in line with other major human rights treaties, the American Convention obliges States parties to “ensure to all persons *subject to their jurisdiction* the free and full exercise” of the rights guaranteed therein.²⁰³ Therefore, States parties are also liable for acts perpetrated outside of their borders, if committed by their agents in areas under the *de jure* or *de facto* control of that State.

The question has come before the Commission on several occasions, and most recently in relation to the status of detainees at the Guantanamo Bay military base. The Commission found that the detainees were under the United States’ jurisdiction, because they were “wholly within the authority and control of the United States Government,” and it further added that they were held at the “unfettered discretion of the US.”²⁰⁴

200 *Jorge Enrique Benavides*, *supra* note 198, para. 23.

201 *Carlos García Saccone v. Argentina*, Case 11.671, Report No. 8/98, IACHR, Annual Report 1997, OEA/Ser.L/V/II.102 Doc. 6 rev. (1997), paras. 53-54; *Plan de Sánchez Massacre*, *supra* note 198, para. 67.

202 *Wilma Rosa Posadas v. Argentina*, Petition 0015/00, Report No.122/01, IACHR, October 10, 2001, para. 10; *Edgar Manuel de Leon Lemus v. Guatemala*, Petition 1180-1104, Report No. 23/12, IACHR, March 20, 2012, paras. 49-55.

203 American Convention, *supra* note 16, art. 1(1). *See also* Section 3.4.1 *infra* on the extraterritorial application of obligations related to the principle of non-return or non-refoulement.

204 *Detainees in Guantanamo Bay, Cuba*, Request for Precautionary Measures, IACHR (March 13, 2002) (regarding jurisdiction over extraterritorial activities); *see also* *Djamel Ameziane v. United States*, →

e. When must the violation have been committed? (Jurisdiction *ratione temporis*)

For a petition to be admissible it must allege a violation that occurred while the relevant instrument is binding on the respondent State. As to the Declaration, this means that only violations committed after the State party joined the OAS may be the subject of a complaint before the Commission. Regarding the various conventions, the rights contained in a given treaty may only be invoked if breached after the State ratified the treaty, after it entered into force and before a State denunciation of the treaty took effect. Concerning the referral of the case to the Court, violations of the Convention must have occurred after the Convention entered into force and after the State in question ratified the Court's jurisdiction in order to be the object of a petition before the Court.²⁰⁵

Nevertheless, it is highly important to take into account that with regards to continuous violations, such as forced disappearances, the Court has found that it has jurisdiction over the ongoing effects of events that took place before the State accepted the Court's jurisdiction.²⁰⁶ The same logic could apply to continuous crimes committed before the ratification of the relevant convention. It must be added that according to the Court, torture is a violation that cannot be characterized *per se* as a continuing or recurrent violation, but instead as an instantaneous offence that is "consummated within itself."²⁰⁷ Equally, the Court has ruled that the after-effects of torture "are not equivalent to a continuous offence."²⁰⁸

However, in cases related to instances of violations of personal integrity and dignity committed before the entry into force of the obligations under the Convention and the recognition of the jurisdiction of the Court, the latter has stated that it can consider cases if the State in question has complied (prior to its recognition of the Court's jurisdiction) "with its obligation to investigate and whether it provided the appropriate remedies to file claims concerning measures of reparation [in possible cases of torture and ill-treatment which fall outside of the temporal jurisdiction of the Court], pursuant to the American Convention, and also the Inter-American Convention against Torture."²⁰⁹

Report No. 17/12, Petition P-900-08, March 20, 2012, para. 33; *Decision of the Commission as to the admissibility [of Haitians to the United States]*, Case 10.675, Report No. 28/93, IACHR, Annual Report 1993, OEA/Ser.L/V/85 Doc. 9 rev. (1994); *Salas and others v. United States*, Case 10.573, Report No. 31/93, IACHR, Annual Report 1993, OEA/Ser.L/V/85 Doc. 9 rev. (1994) (*U.S. military action in Panama*).

205 *Almonacid Arellano et al v. Chile*, Judgment of September 26, 2006, IACtHR, (Series C) No. 154, para. 82.

206 *Blake v. Guatemala*, Preliminary Objections, Judgment of July 2, 1996, IACtHR, (Series C) No. 27, paras. 29-40; see also *Genie Lacayo*, *supra* note 208.

207 *Alfonso Martín del Campo-Dodd v. México*, Preliminary Exceptions, Sentence of September 3 2004, IACtHR, (Series C) No. 113, para. 78.

208 *Ibid.*

209 *García Lucero et al v. Chile*, Judgment of August 28, 2013, IACtHR, (Series C) No. 267, para. 38.

Thus in light of the obligation to properly investigate and provide reparation, which will be discussed in more detail in Sections 3.5.2 and 3.5.3, States have the duty to investigate possible acts of torture, even when these have occurred outside the temporal framework of the Court's jurisdiction. In the case of *Ticona Estrada et al. v. Bolivia*, for example, the Commission decided not to include in the complaint the arbitrary detention and torture of Hugo Ticona in 1980 because Bolivia recognized the contentious jurisdiction of the Convention in 1993. However, 27 years later, the alleged victim had not yet had access to an effective remedy to report these events. In this situation, the Court concluded that:

... upon learning about the alleged facts, it came up [sic] an obligation for the State in order to investigate the alleged violation of the right to humane treatment to the detriment of Hugo Ticona that occurred in the context described in paragraphs 45 to 49 of this Judgment. Said obligation was pending compliance on July 27, 1993, date on which the State recognized the Court's jurisdiction. Therefore, as of that date, this Tribunal is competent to hear the non-compliance with said obligation.

In this regard, the Tribunal finds that the State did not guarantee access to justice, based on the lack of investigation, possible punishment of the responsible and full reparation derived from the consequences of the alleged acts of torture committed to Hugo Ticona. Bearing in mind the above mentioned considerations, the Court concludes that the State is responsible for the violation of the right to a fair trial and judicial protection embodied in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) therein, to the detriment of Hugo Ticona Estrada.²¹⁰

A State may free itself from convention obligations by denouncing the convention.²¹¹ Denunciation is normally subject to conditions specified in the treaty in question. The American Convention in Article 78(1) stipulates that denunciation is only possible after five years have passed since its entry into force, "by means of notice given one year in advance." As a result, the denunciation is not effective until one year after it is issued. Moreover, although it is already established in the law of treaties, the Convention specifies that "denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in [the] Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation."²¹²

With specific regard to the Court, a State may also, in its acceptance of the Court's jurisdiction, restrict in terms of time the violations that may be alleged against it by means of a condition *ratione temporis*.²¹³

210 *Ticona Estrada et al. v. Bolivia*, Judgment of November 27, 2008, IACtHR, (Series C) No. 191, paras. 97-98.

211 For further information on the case of Venezuela, see Section 1.1.

212 American Convention, *supra* note 16, art. 78(2); see also Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Judgment of June 21, 2002, IACtHR, (Ser. C) No. 94, para. 13.

213 *Serrano-Cruz Sisters v. El Salvador*, Judgment of March 1, 2005, IACtHR, (Series C) No. 120, paras. 100-106.

2.2.2 Conventional and Statutory Conditions

a. Exhaustion of domestic remedies

As mentioned above, petitioners must exhaust domestic remedies prior to filing a petition before the Commission. Exhaustion of domestic remedies requires that petitioners first attempt to redress the violation through domestic procedures available in the State. These procedures mainly refer to judicial remedies and administrative actions capable of adequately and effectively redressing the alleged violation.²¹⁴ The complainant should demonstrate that these remedies have been exhausted, or that there has been a diligent and decided attempt to exhaust them, by including details of all complaints submitted to the national authorities and evidence of any legal proceeding that may have taken place. It is important to note that the requirement of exhaustion of domestic remedies does not necessarily mean that victims must exhaust *all* available resources. As the Commission has stated, “if the alleged victim raised the issue by one of the valid and adequate alternatives in the domestic legal order and the State had the opportunity to remedy the situation in its jurisdiction, the purpose of the international provision is met.”²¹⁵

The rationale underlying the exhaustion of domestic remedies rule is the principle that States must be afforded the opportunity to resolve the matter in their jurisdictions before being brought before an international complaint procedure.²¹⁶ Thus, the jurisdiction of the Commission is “essentially subsidiary” or, put in another way, both the Commission and the Court are conventional organs of protection “reinforcing and complementing” the domestic law of States within the Inter-American System of Human Rights Protection.²¹⁷ This ensures that the State has the opportunity to correct any error that may be demonstrated within its jurisdiction, without compromising its international responsibility.²¹⁸

International law requires that domestic remedies be both adequate and effective. For instance, *habeas corpus* may appear to be the “adequate” local remedy designed

214 See *Velásquez-Rodríguez v. Honduras*, Judgment of July 29, 1988, IACtHR, (Series C) No. 4, paras. 56-68; *Godínez-Cruz v. Honduras*, Judgment of January 20, 1989, IACtHR, (Series C) No. 5, paras. 59-71; *Fairen-Garbi and Solís-Corrales v. Honduras*, Judgment of June 26, 1987, IACtHR, (Series C) No. 2, paras. 80-88, 90-93; *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights)*, Advisory Opinion OC-11/90, August 10, 1990, IACtHR (Series A) No. 11, para. 24.

215 *Rogelio Morales Martínez v. Mexico*, Petition 728/04, Report No. 67/12, IACHR, July 17, 2012, para. 34.

216 The Commission has stated that “[t]he rule of prior exhaustion of domestic remedies lies in the principle that the defendant State must be allowed, before anything else, to provide redress on its own and within the framework of its internal legal system.” *Salvador Jorge Blanco v. Dominican Republic*, Case 10.208, Report No. 15/89, IACtHR, Annual Report 1988-1989, OEA/Ser.L/V/II.76, Doc.10 (1989), Conclusion, para. 5.

217 American Convention, *supra* note 16, Preamble, para. 2.

218 *Cheryl Monica Joseph v. Canada*, Case 11.092, Report no. 27/93, IACHR, Annual Report 1993, OEA/Ser.L./V/85 Doc. 9 rev. (1994), para. C.B.13.

to protect the rights of victims of arbitrary detentions and forced disappearances. This remedy aims to protect the right to life, humane treatment and personal liberty, among other rights. It is not enough that the remedy exists in the domestic legal system, however, because such a remedy must also be in fact effective. The remedy must have the ability to achieve the result for which it was conceived, which means access to tribunals and collateral due process guarantees must be adequately secured.²¹⁹

Article 31(2) of the Commission Rules of Procedure and Article 46(2) of the American Convention describe cases in which the exhaustion of domestic remedies requirement shall not be applied.²²⁰ The requirement is waived in the following circumstances:²²¹

- a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.²²²

When a petitioner expressly claims the inability to prove compliance with the exhaustion rule, the burden of proof shifts to the State, which must then identify which specific domestic remedies should have been previously exhausted and must also demonstrate the effectiveness and availability of these remedies.²²³ Equally, when the State claims that domestic remedies have not been exhausted, it must prove that this is the case.²²⁴

219 *Velásquez-Rodríguez*, *supra* note 214, paras. 66-68; *Godínez-Cruz*, *supra* note 214, paras. 69-71; *Fairén Garbí*, *supra* note 214, paras. 91-93; *Karina Montenegro et al. v. Ecuador*, Petitions 261-03, 397-03 and 1377-04, Report No. 48/07, IACHR, OEA/Ser.L/V/II.130, doc. 22 rev. 1(2007), paras. 56 to 59; *Exceptions to the Exhaustion of Domestic Remedies*, *supra* note 214, paras. 34-36.

220 Commission Rules of Procedure, *supra* note 38, art. 31; American Convention, *supra* note 16, art. 46(2).

221 States may also expressly or implicitly agree not to invoke the rule on the exhaustion of domestic remedies. However, the Commission has declared cases to be inadmissible even when the State has agreed not to invoke the rule (see *Ciro Abdías Bodero Arellano v. Peru*, Case 12.161, Report No. 44/09, IACHR, OEA / Ser. L / V / II., doc. 51, corr. 1 (2009), paras. 26-30.

222 Commission Rules of Procedure, *supra* note 38, art. 31.

223 *Ibid.*, art. 31(3). See also IACTHR, *Velásquez Rodríguez v. Honduras*, *supra* note 214, para. 64, *Jesús Tranquilino Vélez Loor v. Panama*, *supra* note 191, para. 37.

224 *Ramón Hernández Berrios et al v. Honduras*, Case 11.802, Report No. 15/02., IACHR, OEA/Ser.L/II.117, doc. 1 rev. 1 (2002), para. 24.

i. Lack of due process (Art. 46(2)(a))

The Commission has considered the absence of due process fatal to a finding that domestic remedies are effective. In *Alan García v. Peru*²²⁵ the Commission concluded that the notion of effective remedies includes access to the remedies and the ability to exhaust them. The absence of these elements triggers one of the exceptions to the exhaustion rule. The Commission further concluded that, in order to be effective, remedies must afford due process guarantees²²⁶ in the framework of an impartial and independent judiciary.²²⁷

The Court has highlighted the lack of effectiveness of domestic remedies in situations where there is a pattern of systematic human rights violations that preclude the identification and punishment of those responsible for them.²²⁸

The Commission has also held the incompetence of military criminal jurisdiction to investigate, prosecute and punish violations of human rights as one of the reasons for applying the exception to the rule of exhaustion, due to the lack of guarantees for due process if a case is not heard under civil jurisdiction.²²⁹

Regarding the scope of the powers of National Human Rights Institutions (NHRI), including Human Rights Commissions and Ombudsmen, international human rights organs such as the Inter-American Commission have determined that a State cannot invoke the investigation of a human rights violation by a NHRI to claim that domestic remedies have not been exhausted as these organizations cannot replace the judicial examination, sanctioning and reparation work carried out by civil jurisdiction in accordance with generally recognized principles of international law.²³⁰

ii. Lack of access (Art. 46(2)(b))

Lack of access to domestic remedies within the meaning of Article 46(2)(b) of the Convention covers all circumstances that in any way might impede the exhaustion of domestic remedies. This includes not only the absence of available remedies,

225 *Alan García v. Peru*, Case 11.006, Report No. 1/95, IACHR, Annual Report 1994, OEA/Ser.L/V/II.88 Doc. 9 rev.1 (1995), para. 17.

226 *Ibid.*, para. 26.

227 *Ibid.*, para. 23.

228 *Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003, IACtHR, (Series C) No. 99, para. 135.

229 *Carlos Manuel Prada González and Evelio Antonio Bolaño Castro v. Colombia*, Case 11.710, Report No. 84/98, IACHR, OEA/Ser.L/V/II.102, doc. 6 rev. (1998), para. 41; *Valentina Rosendo Cantú et al. v. Mexico*, Case 972-03, Report No. 93/06, IACHR, OEA/Ser.L/II.127, doc. 4 rev. 1 (2006), para. 28; *Durand and Ugarte v. Peru*, Judgment of August 16, 2000, IACtHR, (Series C) No. 68, para. 117. See also Section 3.5.2.1 (Military Criminal Jurisdiction) *infra*.

230 Case 1697 Brazil (Conclusions), IACHR, March 14, 1973; *Montion v France*, European Commission of Human Rights (ECHR), No. 11192/84, May 14, 1987; *Egmez v Cyprus*, ECHR No. 30873/96, Judgment of December 21, 2000, para. 67. CAT.

but also any situation in which the State limits the exercise of existing remedies.²³¹ The existence of a general situation of corruption that obstructs access to courts or otherwise prevents victims from exhausting domestic remedies therefore falls under Article 46(2)(b) of the Convention.²³²

In *Borges Serrano v. Brazil*²³³ the Commission found that a minor who was shot and left paralyzed by a military policeman was prevented from exhausting domestic remedies. The State argued that the victim did not appeal the acquittal of the perpetrator. However, the Commission found that the existence of a provision in the Code of Military Penal Procedures permitting only a military prosecutor to appeal denied the minor the opportunity to exhaust domestic remedies. In *Emilio Tec Pop v. Guatemala*²³⁴ a minor was arbitrarily detained for one month by the Guatemalan army. The relatives of the minor filed a criminal complaint before a court, but there was no evidence that the criminal proceedings were ever instituted or pursued by the State. The Commission found that the State had a duty to prosecute *de oficio* (*motu proprio*) and that because no action had been taken, “as a practical matter, domestic remedies were unavailable to the petitioners.”²³⁵

This situation can also occur when the victim has no opportunity to exhaust existing resources due to lack of financial resources, combined with the lack or unavailability of legal aid from the State. In *Vélez Lóor*, the Commission concluded that in this case of an Ecuadorian citizen who suffered ill-treatment while being held in Panamanian prisons for 10 months, it was appropriate to apply the exception established in 46(2)(b) due to the fact that the detainee was in a precarious economic situation, he had not received any free legal aid from the Panamanian State, and as a consequence, could not exhaust any domestic remedy in Panama.²³⁶ However, it is necessary to have tried to access with due diligence state mechanisms that are responsible for managing and providing legal aid before you can claim this exception.

231 See *Exceptions to the Exhaustion of Domestic Remedies*, *supra* note 238; *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87, October 6, 1987, IACtHR, (Ser. A) No. 9, para. 24.

232 *Newton Coutinho Mendes v. Brazil*, Case 11.405, Report No. 59/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998), para. 96.

233 *Edson Damião Calixto et Roselândio Borges Serrano v. Brazil*, Cases 11.285, 11.290, Report No. 18/98, IACHR., Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), paras. 42-48.

234 *Emilio Tec Pop v. Guatemala*, Case 11.312, Report No. 53/97, IACHR, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), paras. 21-26.

235 *Ibid.*, para. 24.

236 *Jesús Tranquilino Vélez Lóor v. Panama*, *supra* nota 223, para. 44-46; see also IACtHR, *Exceptions to the exhaustion of domestic remedies*, *supra* note 214, paras. 25-31.

iii. Unwarranted delay (Art. 46(2)(c))

An unwarranted delay in obtaining a judgment in the domestic remedies accessed by the victim also triggers an exemption to the requirement of exhaustion of domestic remedies. There are three basic elements to consider when determining whether a delay is unwarranted: a) the complexity of the matter, b) the judicial activity of the interested party and c) the behavior of the judicial authorities.²³⁷ In making such a determination, the Commission does not look exclusively at the general situation of a country; it also takes into account the proceedings before local courts in investigating the violations.²³⁸ In *Genie Lacayo*, the Court indicated that in the admissibility determination regarding the exhaustion of domestic remedies, the Commission was the organ called upon to interpret the relevant provisions, subject to an eventual review by the Court.²³⁹

This exception to the rule of exhaustion is closely related to the need for States to investigate and prosecute promptly and effectively all human rights violations reported or detected. If investigations are prolonged unreasonably or excessively, victims are placed in a state of helplessness because, as the Commission argues, “these remedies have lost their effectiveness for producing the result for which they were established.”²⁴⁰ In the event of an unwarranted delay, international protection mechanisms intervene, due to the ineffectiveness of domestic remedies.

Although in these cases the first assessment of the delay in providing remedies entails a *prima facie* analysis to determine possible violations of certain rights, such as the obligation of States to investigate as an inherent duty in accordance with Article 5 (physical integrity and prohibition of torture and cruel, inhuman or degrading treatment),²⁴¹ the analysis on the basis of Article 46(2) is autonomous, *because of its nature and purpose*, and for this reason it is subject to certain parameters of assessment other than those used when analyzing articles that

237 *Suárez Rosero v. Ecuador*, Judgment of November 12, 1997, IACtHR, (Series C) No. 35, para. 72; *Genie Lacayo v. Nicaragua*, Judgment of January 29, 1997, IACtHR, (Series C) No. 30, para. 77. *supra* note 186, para. 77.

238 *Manuel Stalin Bolaños Quiñones v. Ecuador*, Case 10.580, Report No. 10/95, IACHR, Annual Report 1995, OEA/Ser.L/V/II.91 Doc. 7 (1996); *Calderón Jurado v. Colombia*, Case 10.454, Report No. 32/92, IACHR, Annual Report 1992-1993, OEA/Ser.L/V/II.83 Doc. 14 corr.1 (1993); *Alirio de Jesús Pedraza v. Colombia*, Case 10.581, Report No. 33/92, IACHR, Annual Report 1992-1993, OEA/Ser.L/V/II.83 Doc. 14 corr.1 (1993).

239 *Genie Lacayo*, *supra* note 237. The Court has claimed unrestricted authority to review admissibility. *Velásquez-Rodríguez v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, IACtHR, (Ser. C) No. 1, para. 29. See Section 2.2 *in fine*. Judge Cançado Trindade, in his dissenting opinion in *Genie Lacayo*, stated that the Court should not re-open the question of admissibility and that the question should be resolved definitively by the Commission.

240 *Alan Felipe da Silva et al v. Brazil*, Case 665-05, Report No. 40/07, IACHR, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007), para. 54.

241 See Section 3.5.2 Duty to investigate.

recognize rights.²⁴² Thus, decisions on admissibility are intended to determine, among other things, if one of the exceptions to the rule of exhaustion of domestic remedies fits the case, so that even if it is determined that the exception applies for an unwarranted delay in investigations, this does not prejudice the fact that there has been a violation of the obligation to investigate.

In cases which allege that acts of torture and ill-treatment have been committed, both the Commission and the Court have emphasized the need for prompt criminal investigation. In connection with the need for early investigation, the Court has pointed out that if there are indications that torture has been committed, the State must begin “*ex officio* and immediately” an “impartial, independent and thorough investigation” to determine the facts, identify and prosecute those responsible.²⁴³ Thus, in the case of *Alan Felipe da Silva et al*, in which the victims, ten children and young offenders detained in a juvenile facility (CTR Centro Triagem e Recepção) were tortured by guards, the Commission stated that the petition was admissible because of the unwarranted delay that characterized the investigations carried out up to that moment. Even though more than four years had passed since the allegations, not only had none of the ten accused officials been sentenced, in addition, witness statements had only been collected from two of the nine victims.²⁴⁴

In general, to determine which situations merit exceptions to the exhaustion of domestic remedies rule, it is necessary to consult the jurisprudence of the Commission and the Court. Likewise, it is relevant to review the jurisprudence of other international human rights bodies, such as the European Court of Human Rights and the United Nations Human Rights Committee, which monitors the International Covenant on Civil and Political Rights, or the United Nations Committee Against Torture and other Cruel, Inhuman and Degrading Treatments or Punishments, which supervises the application of the Convention against Torture, since both the Commission and the Court refer frequently to these human rights systems in their decisions.²⁴⁵

242 *Octavio Ruben Acosta v. Paraguay*, Case 12.358, Report No. 83/03, IACHR, OEA/Ser./L/V/II.118 Doc. 70 rev. 2 en 405 (2003), para. 28.

243 *Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, IACtHR, (Series C) No. 220, para. 135.

244 *Alan Felipe da Silva et al v. Brazil*, *supra* note 240, paras. 50-54; *see also* Resolution N° 17/87, Case No. 9425, IACHR Peru, March 28, 1987, para. 162.

245 *Gómez-Palomino v. Peru*, Judgment of November 22, 2005, IACtHR, (Series C) No. 136, para. 3; *Palamara-Iribarne v. Chile*, Judgment of November 22, 2005, IACtHR, (Series C) No. 135, paras. 219; *The Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005, IACtHR., (Series C) No. 134, paras. 106, 212-13, 234; *Raxcacó-Reyes v. Guatemala*, Judgment of September 15, 2005, IACtHR, (Series C) No. 133, paras. 7, 9, 79, 97; *Serrano-Cruz Sisters v. El Salvador*, Request for an Interpretation of the Judgment on the Merits, Reparations and Legal Costs (Art. 67 American Convention on Human Rights), Judgment of September 9, 2005, IACtHR, (Series C) No. 131, para. 33.

Lastly, regarding the exhaustion requirement, the fundamental objective of the Inter-American System is the protection of human rights primarily in the domestic sphere and secondarily in the international sphere. For this reason, civil society organizations may find it useful to submit a petition to the Commission even when domestic remedies have not been exhausted, even though the petition may run the risk of being deemed inadmissible. The purpose of this strategy is to utilize the international sphere to induce changes in the conduct of courts at the national level. The objective may be, for example, to alert the judge in a domestic case that it is the object of international scrutiny. This may create multiple effects on the domestic proceeding, such as expediting a judicial proceeding delayed by the State, or guaranteeing due process when there may be problems in that respect. In addition, the possibility of filing the petition in the future, even if it is declared inadmissible due to the failure to exhaust domestic remedies, is preserved because the case may return to the Commission when domestic remedies have been exhausted.²⁴⁶ Nevertheless, petitioners must be careful not to abuse their right of petition before the Commission.

b. Six-month rule

The communication or complaint must be sent to the Commission within six months of the date on which the alleged victim is notified of the final decision that exhausts domestic remedies. This deadline is set forth in Article 46(1)(b) of the American Convention and Article 32 of the Commission Rules of Procedure.²⁴⁷

Petitions warranting an exception to the exhaustion of domestic remedies requirement²⁴⁸ shall be presented within a reasonable period of time.²⁴⁹ In determining what constitutes a “reasonable period of time,” the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.²⁵⁰

246 Commission Rules of Procedure, *supra* note 38, arts. 32(1), 33(2)(a).

247 Commission Rules of Procedure, *supra* note 38, art. 32; American Convention, *supra* note 16, art. 46(1)(b).

248 See Sections 2.2.2(a)(i)-(iii), *supra*.

249 Commission Rules of Procedure, *supra* note 38, art. 32(2); see also Section 2.2.2(b), *supra*.

250 See Ramon Mauricio Garcia-Prieto Giralte *v. El Salvador*, Case 11.697, Report No. 27/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998), para. 52; see also Rumaldo Juan Pacheco Osco *et al. v. Bolivia*, Case 301/02, Report No. 53/04, IACHR, Annual Report 2004, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004), para. 24; Horacio Verbitsky *et al. v. Argentina*, Case 12.128, Report No. 3/04, IACHR, Annual Report 2004, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004), para. 47; Mario Alberto Jara Oñate *et al. v. Chile*, Case 12.195, Report No. 31/03, IACHR, Annual Report 2003, OEA/Ser.L/V/II.118 Doc. 5 rev. 2 (2003), para. 37.

c. Duplication

Petitions may be rejected based on duplication of procedures, pursuant to Articles 46(1)(c) and 47(d) of the Convention and Article 33 of the Commission Rules of Procedure.²⁵¹ These norms provide that the Commission shall not admit petitions that:

1. Are pending before other similar international complaint procedures;
2. Substantially reproduce other cases pending before the Commission;
3. Have already been decided by it; or
4. Essentially duplicate a claim that is pending before another international system of which the State is a member.

The individual communications procedures of the organs of the United Nations which supervise the observance of ratified treaties, such as the Human Rights Committee, the United Nations Committee Against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on Enforced Disappearances are examples of adjudicatory proceedings that may duplicate the Commission's procedure.

It is essential to highlight, however, that Article 33(2) of the Commission's Rules of Procedure, establishes exceptions to the rule of duplication which excludes petitions pending before other international bodies in the following circumstances:

However, the Commission shall not refrain from considering petitions referred to in paragraph 1 when:

- a. the procedure followed before the other organization is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or it will not lead to an effective settlement; or
- b. the petitioner before the Commission or a family member is the alleged victim of the violation denounced and the petitioner before the other organization is a third party or a nongovernmental entity having no mandate from the former.

d. Manifestly groundless or out of order

Pursuant to Article 47(c) of the Convention, petitions may be rejected if they are manifestly groundless or out of order; this includes petitions lacking in sufficient evidence to show *prima facie* that a violation occurred and those in which new and contradictory evidence arises.²⁵² The Commission explains this ground for inadmissibility in Article 34 of its Rules of Procedure as follows:

251 American Convention, *supra* note 16, arts. 46(1)(c), 47(d); Commission Rules of Procedure, *supra* note 38, art. 33(1).

252 American Convention, *supra* note 16, art. 47(c).

The Commission shall declare any petition or case inadmissible when:

- a. it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules of Procedure; or
- b. the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or,
- c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.²⁵³

There are few examples in the case law of the Commission,²⁵⁴ and the Court. In *Genie Lacayo*, the Court briefly analyzed the scope of Article 47(c) of the Convention:

The Convention not only determines what requirements a petition or communication must meet in order to be admitted by the Commission (Art. 46) but also determines cases of inadmissibility (Art. 47). The Government's arguments seem to indicate that it understands this principle, since it states "there was full proof that the criminal investigation and prosecution were proceeding normally," and the petition before the Commission was "manifestly groundless" or totally inapplicable under the terms of Article 47(c) ("The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: ... c) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order"). Nevertheless, the subjects of the investigation and the criminal proceedings are part of the merits, whereby it becomes evident that, for the Commission, it was neither "obvious" nor "manifest" that there were arguments to declare the case inadmissible. The terms of Article 47(c) exclude any conclusion based on appearance and demand a "clear, manifest certainty so perceptible that nobody may rationally place it in doubt" (Royal Spanish Academy, Dictionary of the Spanish Language), which is not the case here.²⁵⁵

2.3 Hearings

According to Article 61 of the Commission Rules of Procedure, the Commission may hold hearings at the request of an interested party or on its own initiative.²⁵⁶ The decision to hold a hearing shall be made by the President of the Commission, at the proposal of the Executive Secretary. Hearings may be held for purposes such as the following: determining admissibility, expanding on the information supplied by any interested party, initiating or developing a friendly settlement procedure, verifying the facts or merits of the matter, following up on recommendations or any other matter pertinent to the processing of the petition.

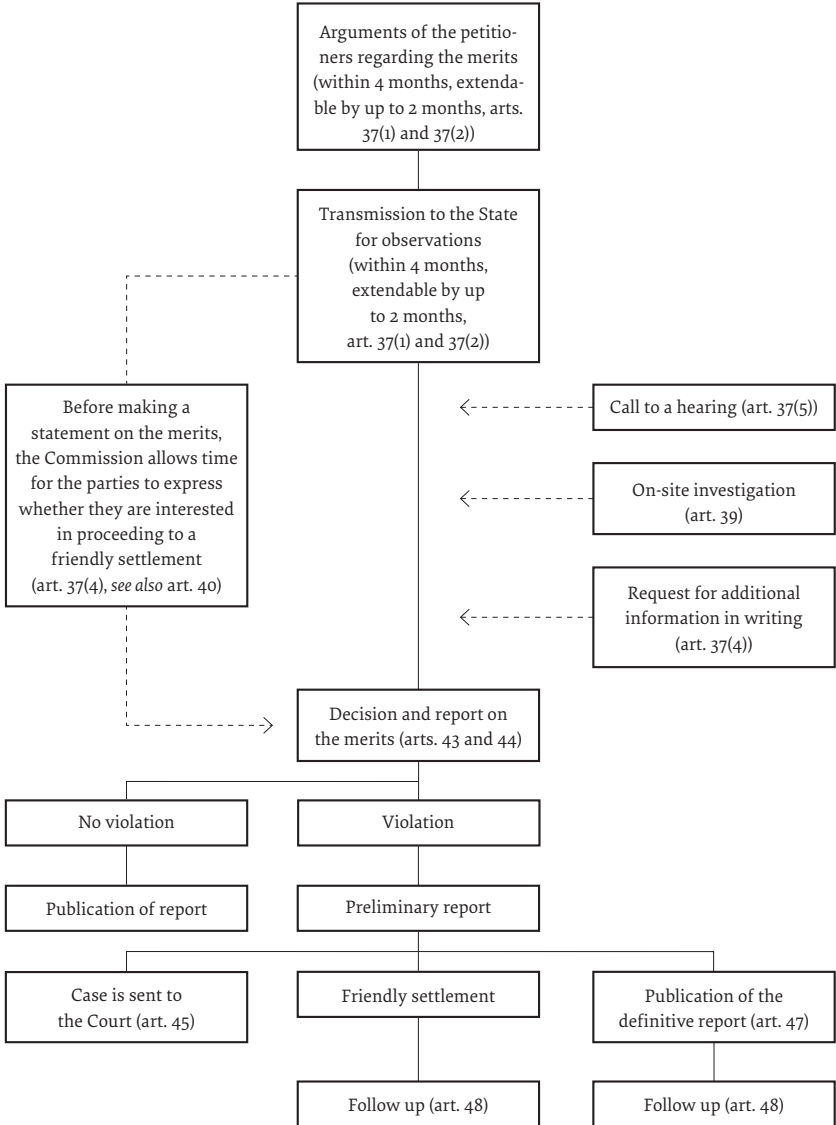
253 Commission Rules of Procedure, *supra* note 38, art. 34.

254 For example, see IACHR, *Report on the Work Accomplished during its Twentieth Session, December 2-12, 1968*, OEA/Ser.L/V/II.20 Doc. 33, May 2, 1969, p. 13.

255 *Genie Lacayo*, *supra* note 186, para. 36.

256 Commission Rules of Procedure, *supra* note 38, art. 59.

Flowchart 2: Examination of the merits (Commission)



During the hearing any document, testimony, expert report or evidentiary item may be presented.²⁵⁷ Additionally, “[a]t the request of a party or on its own initiative, the Commission may receive the testimony of witnesses or experts.”²⁵⁸

Article 64 of the Commission Rules of Procedure describes the process for requesting a hearing:

Requests for hearings must be submitted in writing at least 50 days prior to the beginning of the respective session of the Commission. Requests for hearings shall indicate their purpose and the identity of the participants...

If the Commission accedes to the request or decides to hold a hearing on its own initiative, it shall convoke both parties. If one party, having been duly notified, does not appear, the Commission shall proceed with the hearing. The Commission shall adopt the necessary measures to maintain in confidence the identity of the experts and witnesses if it believes that they require such protection.

The Executive Secretariat shall inform the parties as to the date, place and time of the hearing at least one month in advance. However, in exceptional circumstances, that time period may be reduced.²⁵⁹

The President of the Court establishes the necessary hearings when setting the date of opening of the oral proceedings.²⁶⁰ The number of hearings will be established depending on the particularities of each case, hearings are generally held for the presentation of testimonial and expert evidence, to discuss the merits of the case and, if appropriate, to discuss the preliminary objections or provisional measures. Although as a general rule the hearings are public, one of the new aspects resulting from the 2009 reform process is the possibility of holding private hearings when the Court considers it appropriate.²⁶¹ Hearings are usually held at the seat of the Court in San José, Costa Rica. Nevertheless, the Rules of Procedure establishes that the Court can commission one or more of its members to take steps in the advancement of the proceedings, including holding hearings at another location.²⁶² Moreover, if it is impossible for one of the Judges to proceed, they may commission the Secretariat to take necessary steps in the advancement of the proceedings.²⁶³ The Court shall decide who may attend such hearings. Court hearings are held with the purpose of presenting witnesses and their testimony.

257 *Ibid.*, art. 65(1).

258 *Ibid.*

259 *Ibid.*, art. 64.

260 Court Rules of Procedure, *supra* note 133, art. 45.

261 *Ibid.*, art. 15(1).

262 *Ibid.*, art. 58(d). See *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of June 27, 2012, IACtHR (Series C) No. 245, report of the visit to the Sarayaku People, para. 18 and ff. The delegation visited the Sarayaku People's territory in Ecuador in order to carry out “measures aimed at obtaining additional information about the situation of the presumed victims and the places where some of the alleged events took place.” (para. 20).

263 *Ibid.*, 58(e).

Judges may only ask questions in order to receive additional information or clarify any obscure point in the evidence already presented.

Hearings play a key role in the petitioner's litigation strategy. They are the Commission's only opportunity for the organs of the Inter-American Human Rights System to receive testimony or expert evidence directly. The impact of an oral presentation given by the victim, a witness or expert witnesses may be decisive in the final outcome of a case. However, because the Commission and Court hearings are generally held in Washington, D.C. or in San José de Costa Rica, respectively, the costs for a petitioner may be excessive. For this reason, it is important to seek funding or grants from philanthropic entities that allow the petitioner to send key witnesses to the hearings. Another alternative is to turn to non-governmental organizations that may be interested in the case. Such organizations often have the resources available to support certain cases in which the organization has a special interest. Some of these organizations have their offices in Washington, D.C. or in San José, which may facilitate more consistent contact with the Secretariat of the Commission, although this is not required. In addition, as discussed below, it is possible to ask the Victims' Legal Assistance Fund for economic assistance. This fund was created in 2010.²⁶⁴

Hearings may also be used strategically with respect to public opinion. Publicizing hearings is often an efficient method of compelling the State to reach a friendly settlement or make progress on a case in order to avoid damage to public opinion. It is important that petitioners devise a press strategy before the hearing is held.²⁶⁵

2.4 Evidence

2.4.1 What evidence should be presented?

When filing a petition before the Inter-American Commission, or submitting petitions, arguments and evidence to the Court, a wide range of evidence may be presented, including testimonial evidence, expert evidence, documentary evidence, circumstantial evidence and presumptions. Any information that can assist the Commission or the Court in understanding the events that occurred should be submitted with the petition in order to be admitted promptly into evidence. Petitioners generally provide documents, experts' reports, videos, photographs, newspapers, etc. Unlike the presentation of evidence before a domestic court, it is not necessary to certify the documents before a notary public. Furthermore, neither the Commission nor the Court requires hard copies of the documents presented, though it is always advisable to provide them.

²⁶⁴ See *infra* Section 2.7 (Support and Protection).

²⁶⁵ Public hearings can be followed live on the Commission's website and on <http://vimeo.com/corteidh>.

It is important to note that if the petitioner argues that a domestic law is incompatible with a Convention provision, he or she must prove that the particular law or rule exists. Whereas in national legal systems the national law is presumed to be known, in international fora the laws are mere facts when arguing their incompatibility with international norms. The existence of a given domestic law or rule will generally be proven by presenting its text; merely citing to it will not suffice.

It is also important to note that the victims may face extreme difficulties in providing medical evidence proving the allegations of torture or ill-treatment, because of the negligence of the authorities in investigating the torture with the necessary timeliness. The Court has emphasized that a medical examination “should be undertaken regardless of the length of time since the torture.”²⁶⁶ Thus, the validity of a medical examination, above all if it meets the requirements set by the Istanbul Protocol, does not depend on the time elapsed between the torture and the medical examination²⁶⁷ although the less time that has passed makes it easier to unquestionably determine the existence of damage.²⁶⁸ It is also of fundamental importance to submit medical certificates and other expert examinations confirming the existence of physical, psychological or social scars as a result of the ill-treatment suffered.²⁶⁹

Indeed, considering that both the Commission and the Court conduct a comprehensive assessment of all the evidence as a whole, that is to say not only direct documentary, testimonial and expert evidence, but also indirect evidence or that which gives solidity, truthfulness and probability to the alleged facts, it is noteworthy that the latter, also called circumstantial evidence, is especially important when there is a shortage of direct evidence proving the existence of torture.²⁷⁰ Circumstance and presumptions are particularly relevant in cases of gross and systematic human rights violations perpetrated or condoned by the State, given the high probability of destruction of the means of proving the facts through direct evidence.²⁷¹

One valuable form of circumstantial evidence is that which provides contextual information to establish the framework within which the human rights violation

266 *Cabrera García*, *supra* note 243, para. 122.

267 See United Nations. Istanbul Protocol. Manual for the effective investigation and documentation of torture and other cruel, inhuman and degrading treatment, August 9, 1999, para. 104.

268 *Bueno Alves v. Argentina*, Judgment of May 11, 2007, IACtHR, (Series C) No. 164, paras. 111 and 112.

269 See, for example, *Gutiérrez Soler v. Colombia*, Judgment of September 12, 2005, IACtHR, (Series C) No. 132, para. 48.5; *Rosendo Cantú*, *infra* note 442, para. 28(8-9).

270 On circumstantial evidence, see Rodríguez Rescia, V. (in Spanish), *Las sentencias de la Corte Interamericana de Derechos Humanos: Guía modelo para su lectura y análisis*. San José: Instituto Interamericano de Derechos Humanos, 2009, pp. 22-23.

271 *Godínez Cruz*, *supra* note 214, para. 155.

subject to review occurred, as this can strengthen a value judgment determining acts such as torture or ill-treatment. Thus, precise and trustworthy information from reliable sources relating to the context, such as statistics from inter-governmental organizations such as the United Nations or NGOs with a reliable track record, may be crucial to establish that a person has been the victim of enforced disappearance, extrajudicial execution, sexual abuse or torture, for example when proving the existence of a systematic and general *de facto* framework of violence against women or torture.²⁷²

Thus, in the *Cotton Field* case, the expert evidence, which provided information on the context and circumstances of increasing violence against women in Ciudad Juárez, was very useful to supplement the weak forensic evidence. This circumstantial evidence shed light on the characteristic patterns of the violent context in Ciudad Juarez since 1993, which had been repeated in the case of the three women killed in the above mentioned case. Indeed the Court concluded that most of the victims were young women between 15 and 25 years old, from underprivileged backgrounds, and that a pattern of aggression existed, characterized by the disappearance of the victim and signs of sexual violence, torture and mutilation and that the widespread context of gender discrimination and impunity prevented clarification of the circumstances of the cases, the effective prosecution of the perpetrators and the prevention of repeat attacks.²⁷³

It is also possible to provide information from press sources which corroborate or supplement details on the arguments and facts you wish to show. The Court has stated that the press releases “that are complete, or that, at least, allow their source and date of publication to be established,” including those provided through electronic links (provided that there is easy and direct access to the document) will be assessed taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.²⁷⁴

*Textbox 2: Establishing the credibility of a medical examination*²⁷⁵

In the case of Ana, Beatriz and Celia González Pérez the Inter-American Commission followed the guidelines established in the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Istanbul Principles) from the former United Nations Commission on Human Rights (now the Human

272 Emoiti Carbonell, J. C., (in Spanish) *La Corte Interamericana de Derechos Humanos: estructura, funcionamiento y jurisprudencia*. Lima: IDEMSA, Segunda edición, 2004, p. 237.

273 *González et al* (“*Cotton Field*”), *supra* note 192, paras. 114-164.

274 *See*, among others, *García Lucero et al v. Chile*, *supra* note 209, paras. 48 and 49.

275 *Ana, Beatriz and Celia González Pérez v. Mexico*, Case 11.565, Report No. 53/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.11 Doc. 20 rev. (2000), paras. 39-40.

Rights Council), in determining the credibility of a medical examination, a crucial element in establishing rape. In this case the Commission said:

According to these principles, the conduct of doctors should, at all times, be in keeping with “the strictest ethical guidelines” and the consent of the person to be examined should be obtained. Examinations shall take place in accordance with medical practices, and “never in the presence of security agents or other government officials.” The “reliable report” to be prepared immediately by medical experts should include, at a minimum, the following information:

- I. Circumstances of the interview: name of the subject and name affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention center, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
- II. History: a detailed record of the subject’s story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- III. Physical and psychological examination: records of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, color photographs of all injuries;
- IV. Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should be given;
- V. Authorship: the report should clearly identify those carrying out the examination and should be signed.

The Commission also found that “the medical reports, the parameters of which are defined by the United Nations, must be confidential and must be delivered to the alleged victim or representative appointed by that person. It adds “the report should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment.”

2.4.2 Is it possible or necessary to produce witnesses?

The presentation of witnesses is possible and highly advisable as a powerful source of evidence, because it offers the same strategic advantages of a hearing. However, it is not compulsory. Both the Commission and the Court have broad discretion to accept and take into consideration almost any type of evidence. Therefore, it is always helpful to present witnesses whose testimony will support a case. The Commission may receive the testimony of witnesses or experts at the parties’ request or on its own initiative.²⁷⁶ In a hearing request, a party is entitled to request the testimony of witnesses. The Commission will determine whether to receive the witnesses’ testimony when deciding whether to hold the hearing.²⁷⁷ When a party offers witnesses, the Commission will inform the other party. However, “[i]n extraordinary circumstances and for the purpose of safeguarding

²⁷⁶ Commission Rules of Procedure, *supra* note 38, art. 65.

²⁷⁷ *Ibid.*, art. 65(4).

the evidence, the Commission may, at its discretion, receive testimony [without informing the other party].”²⁷⁸

Article 65(8) of the Commission Rules of Procedure establishes that an oath or a solemn promise to tell the truth shall be taken from the witnesses or experts testifying at the hearing. This same requirement applies to the witnesses testifying before the Inter-American Court.²⁷⁹ The 2009 modifications of the Court Rules of Procedure, adopting the customary practice of summoning victims as witnesses, state that the Court may summon the “alleged victims” to render statements during public hearings of contentious cases. Unlike witnesses and experts, the Rules establish that victims should not testify under oath.²⁸⁰ In this regard, the Court has noted that under the new Article 51, the statements of the alleged victims will be treated as such “and not as testimonies”²⁸¹

According to Article 50(1) of the Court Rules of Procedure, the Court shall determine which witnesses will testify, the object of the statement and the appropriateness of holding a hearing.²⁸² Any party may object to a witness before he or she testifies. Nonetheless, if the Court considers it necessary, it may hear for purposes of information a person who is not qualified to be heard as a witness.²⁸³

2.4.3 Burden and standard of proof

The Court has consistently ruled that the petitioner bears the initial burden of proving the facts underlying his or her claims.²⁸⁴ The Commission, when reviewing the merits of a case, will analyze the evidence and the arguments presented by the parties. During this process, any facts that the State does not rebut the Commission will presume to be true.²⁸⁵ The Court has also ruled that a State’s failure to reply to all the claims submitted in the petition to the Court gives rise to a presumption that the unchallenged facts are true, provided that inferences from the presumed facts are consistent with other evidence on record.²⁸⁶

278 *Ibid.*, art. 65(6).

279 Court Rules of Procedure, *supra* note 133, art. 51(3).

280 *Ibid.*, art. 51 (5).

281 “*Las Dos Erres*” *Massacre v. Guatemala*, Resolution of the President of the Court, (on evidence) May 18, 2009, para. 8 (*Considering*), 8. See also Galvis Patiño, María Clara (in Spanish), “Las reformas de 2009 al Reglamento de la Corte Interamericana de Derechos Humanos: una regulación de prácticas existentes y un ajuste del Reglamento de noviembre de 2000,” in *Derecho PUPC, Revista de la Facultad de Derecho*, No. 63 (2009), pp. 167-169.

282 *Ibid.*, art. 50(1).

283 *Ibid.*, art. 52(2).

284 *Velásquez-Rodríguez*, *supra* note 214, para. 123.

285 Commission Rules of Procedure, *supra* note 38, art. 39.

286 *Bámaca-Velásquez*, *supra* note 191, para. 100.

Regarding the weighing of evidence, the Court ruled in *Velásquez-Rodríguez* that “international jurisprudence has recognized the power of the courts to weigh the evidence freely, although it has always avoided a rigid rule regarding the amount of proof necessary to support the judgment.”²⁸⁷ On those grounds, the Court in practice conducts a flexible analysis of the evidence presented, “in accordance with the rules of logic and based on experience.”²⁸⁸

As a general rule, the Court has established that:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation ... the State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.²⁸⁹

The Court has further noted that:

Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim. Since the Court is an international tribunal, it has its own specialized procedures. All the elements of domestic legal procedures are therefore not automatically applicable.²⁹⁰

There are very few individual cases in which the Court or the Commission has had direct evidence of the perpetration of torture or other cruel, inhuman or degrading treatment. In the absence of such evidence, the Court has followed two approaches in attributing international responsibility to States for the perpetration of such acts. First, the Court in some cases has established that there existed in the State a practice of subjecting victims to torture or other mistreatment. Where the case under analysis was linked to that practice based on the *modus operandi* of the perpetrators, the Court attributed responsibility to the State without direct evidence of State agent involvement.²⁹¹ Likewise, the Commission has also followed this analysis to establish the violation of the right to humane treatment as protected by Article 5 of the American Convention.²⁹²

287 *Velásquez-Rodríguez*, *supra* note 214, para. 127; *see also Blake v. Guatemala*, Judgment of January 24, 1998, IACtHR, (Series C) No. 36, para. 49; *Suárez Rosero*, *supra* note 237, para. 33; *Gangaram-Panday v. Suriname*, Judgment of January 21, 1994, IACtHR, (Series C) No. 16, para. 49; *Fairén-Garbi*, *supra* note 214, para. 130; *Godínez-Cruz*, *supra* note 214, para. 133.

288 *Cantoral-Benavides*, *supra* note 191, para. 48; *see also Blake*, *supra* note 287, para. 50; *Castillo-Páez v. Peru*, Judgment of November 3, 1997, IACtHR, (Series C) No. 34, para. 39; *Loayza-Tamayo*, *supra* note 118, para. 42.

289 *Velásquez-Rodríguez*, *supra* note 214, paras. 135-136.

290 *Ibid.*, paras. 131-132.

291 *See Radilla Pacheco*, *supra* note 140, paras. 151-153; *Velásquez Rodríguez*, *supra* note 214, para. 126; *see also Street Children*, *supra* note 191, para. 167; *Fairén-Garbi*, *supra* note 214, para. 129; *Godínez-Cruz*, *supra* note 214, para. 132; *See also* Section 3.5.2 *infra*.

In other cases, the Court and the Commission have applied an alternative burden-shifting approach where a person under the absolute control of State agents claims that he or she was subjected to torture or other cruel, inhuman or degrading treatment. The burden shifts to the State to prove that the victim was not subject to prohibited treatment while in its custody. If the State cannot meet the burden, the Commission and the Court may find a violation of Article 5 of the American Convention.²⁹³ In *Juan Humberto Sánchez v. Honduras*, the Court found a violation of the right not to be tortured:

[A]s the conditions in which [the victim's] mortal remains were found authorize the inference that he suffered severe tortures at the hands of his captors. In this regard, the Court emphasizes that, on the night of July 11, 1992, before he was captured by the military, Juan Humberto Sánchez was in normal physical conditions, in view of which the State should reasonably explain what happened to him. At the time the instant Judgment is issued, the State has not yet provided a reasonable explanation of how and why the corpse of Juan Humberto Sánchez was in said conditions when it was found, and this therefore constitutes a violation of Article 5 of the American Convention.²⁹⁴

2.4.4 Presenting evidence and fact-finding

According to Articles 40 and 41 of the Court Rules of Procedure, the parties must indicate in their initial submissions (*see also* Section 1.3.1 *supra*) the evidence they will produce during the proceedings.²⁹⁵ It is extremely important to take into account this phase of the proceedings, due to the fact that, with the exception of *force majeure* or supervening events, any submission presented after the initial written submissions will be rejected by the Court.²⁹⁶

With respect to the submission of evidence, the Court has established that its proceedings are not subject to the same formalities as domestic proceedings. Therefore, “when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to

292 *Domingo Morales and Rafael Sánchez et al.*, Case 10.626, *Pedro Tau Cac*, Case 10.627, *José María Ixcaya Pixtay et al*, Case 11.198(A), *Catalino Chochoy et al*, Case 10.799, *Juan Galicia Hernández et al.*, Case 10.751, *Antulio Delgado v. Guatemala*, Case 10.901, Report 59/01, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 Rev (2000).

293 *Cabrera García*, *supra* note 243, para. 134; *Bulacio v. Argentina*, Judgment of September 18, 2003, IACtHR, (Ser. C) No. 100, para. 127; *Remigio Domingo Morales et al*, *supra* note 292, para. 136; *Joaquín Ortega et al. v. Guatemala*, Case 10.586, Report No. 39/00, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999), paras. 253-254.

294 *Juan Humberto Sánchez v. Honduras*, *supra* note 228, para. 100.

295 Court Rules of Procedure, *supra* note 133, art. 44.

296 *Ibid.* para. 57(2).

the limits imposed by respect for legal certainty and the procedural equality of the parties.”²⁹⁷

On the other hand, the Commission and the Court can make use of any resources deemed necessary for the consideration of the case. The Commission may initiate an on-site investigation of the alleged events in order to gather additional information. In practice, State consent for such a visit is very important. Furthermore, Article 58 of its Rules of Procedure gives the Court ample powers to gather any additional evidence that it considers necessary.²⁹⁸ Within those powers, the Court may hear witnesses, experts or victims; request from the parties, or from the Commission, the production of certain evidence; request a report or opinion from a third party; or commission its own Judges to take any necessary steps, including holding hearings at the seat of the Court or elsewhere.²⁹⁹ The Rules also provide the Court with powers to give judicial effect to evidence adequately gathered during the Commission’s proceedings.³⁰⁰

2.5 Amicus curiae

Following the last process of modification to the Court Rules of Procedure in 2009, the legal concept of *amicus curiae* (a Latin expression equivalent to *friend of the court*) appears defined and regulated in Articles 2(3) and 44. The first of these provisions defines the term as “the person or institution who is unrelated to the case and to the proceeding and submits to the Court reasoned arguments on the facts contained in the presentation of the case or legal considerations on the subject-matter of the proceeding by means of a document or an argument presented at a hearing.”

It is an established and repeated practice both in contentious proceedings³⁰¹ and under the framework of the advisory jurisdiction of the Court.³⁰² Prior to the 2009 regulations, the Court had been receiving this type of document at any time of the contentious proceedings without there being any formal provisions for the requirements or the appropriate time to present such a brief.

297 *Maritza Urrutia v. Guatemala*, Judgment of November 27, 2003, IACtHR, (Series C) 103, para. 48; see also *Gómez-Paquiayauri Brothers v. Peru*, Judgment of July 8, 2004, IACtHR, (Series C) No. 110, para. 41.

298 Court Rules of Procedure, *supra* note 133, art. 58.

299 *Ibid.*, art. 58.

300 *Ibid.*, art.57(1).

301 Already in the first contentious case before the Court (*Velásquez Rodríguez v. Honduras* (Merits), Judgment of July 29, 1988, IACtHR, (Series C) No. 4, para. 38), Amnesty International, Association of the Bar of the City of New York, Lawyers Committee for Human Rights and Minnesota Lawyers International Human Rights Committee, submitted briefs to the Court as *amici curiae*.

302 See Art. 73(3), Court Rules of Procedure, *supra* note 133, for the presentation of *amicus curiae* briefs in advisory opinions.

The new Article 44 of the Court Rules of Procedure establishes that a brief from the person or persons seeking to act as *amicus curiae* may be filed, together with its attachments, by any of the means set out in Article 28(1) for filing written submissions (Art. 44(1)). It must be presented in the working language of the case and must include the name of the author or authors and all of their signatures (Art. 44 (2)).

In contentious cases, the brief must be filed “at any time during contentious proceedings for up to 15 days following the public hearing.” In cases where no public hearing is held, “they must be submitted within 15 days following the Order setting deadlines for the submission of final arguments.”³⁰³ Once received, the regulation establishes that the *amicus curiae* brief shall be transmitted to the parties immediately, after consultation with the President of the Court. It is important to note that Article 44(4) outlines the possibility of submitting *amicus curiae* briefs during proceedings for monitoring compliance with judgments and provisional measures.

The possibility of intervening as an *amicus curiae* is wide-ranging. As described in the definition of the term in Article 2(3) of the Rules of Procedure, individuals, civil society organizations and public entities can be involved in this capacity, as has already been the case with Ombudsmen and Ministries.

It is important to take into account that those persons or entities involved in the process as *amicus curiae* will not under any circumstances acquire the status of “party” in the litigation process in question; however, this figure:

allows the intervention of individuals or NGOs in cases of public interest or social importance that goes beyond the particular characteristics of the case. The filing of an *amicus curiae* does not make those who present it parties to the case, and the opinions expressed in the *amicus* have no binding effect on the court. The teleological reason for this procedure is to assist the court by offering an informed opinion or providing relevant information about any legal issues that might escape its consideration and thereby successfully support the decision-making process in a complex case.³⁰⁴

2.6 Confidentiality and publication

2.6.1 Is the procedure confidential?

Commission sessions are confidential unless the Commission authorizes third parties to be present (with the consent of the parties, when the Commission session

303 Art. 44(3) Court Rule of Procedure.

304 Ricco, Victor Hugo, (in Spanish, our translation) *Exposición de motivos para la legislación de la figura del Amicus Curiae en la Jurisdicción Federal/Nacional en la República Arentina*, CEDHA (2003) p. 1; see also *El amicus curiae: qué es y para qué sirve? Jurisprudencia y labor de la Defensoría del Pueblo* in Serie Documentos Defensoriales, Documento N°8, Defensoría del Pueblo, Perú (October 2009) and Umaña, C. (in Spanish) “Amicus Curiae ante la Corte Interamericana,” en *Apuntes sobre el Sistema Interamericano No. 3*, colección Temas de Derecho Público, Universidad Externado de Colombia, Bogotá (2012).

is a hearing).³⁰⁵ Summary minutes are taken of each meeting by the Executive Secretariat of the Commission. These minutes shall state the date and time of the meeting, the names of the members present, the matters addressed, the decisions made and any statement by a member made especially for inclusion in the minutes. The minutes are internal working documents and, as such, are not public.

Otherwise, the parties are able to publicize the Commission's proceedings in a case through press releases, conferences or other methods.

The deliberative sessions of the Court are also held in private.³⁰⁶ The Court's hearings and deliberations are kept on audio recordings.³⁰⁷

2.6.2 Are the findings made public?

The reports by the Commission and the Court are made public and posted on the internet and in the OAS Annual Reports. Several decisions are made by the Commission and the Court in their proceedings. Admissibility decisions are published on the Commission's website (www.cidh.org) immediately after the Commission adopts them. Additionally, the Commission includes these reports and reports on friendly settlements, merit reports and archived reports, in its Annual Report to the General Assembly of the OAS. This Report also details the precautionary measures that have been granted and extended. For its part, the Court compiles in its Annual Report summarized information on judgments, as well as on decisions made on monitoring compliance with judgments, provisional measures granted and hearings held. The Annual Reports and their attachments with full texts of judgments and other decisions are available on its website (www.corteidh.org.cr) in the Publications Section.

2.7 Assistance and protection

2.7.1 Is it obligatory to have legal representation?

Legal representation is not required, although it is helpful for petitioners to be assisted by a lawyer or a non-governmental organization with experience in human rights.³⁰⁸ Due to a change in the political climate of the hemisphere and recent

305 Commission Rules of Procedure, *supra* note 38, art. 14(3).

306 Court Rules of Procedure, *supra* note 133, art. 15(2).

307 *Ibid.*, 15(4). At each hearing, the Secretariat will keep a record of the names of the Judges present; the names of those intervening at the hearing; the names and personal information of the declarants who have rendered statements. The Secretariat shall record the hearings and annex a copy of the recording to the case file. The Agents, Delegates, and victims or alleged victims, or their representatives, shall receive a copy of the recording of the public hearing as soon as possible (Court Rules of Procedure, art. 55).

308 *Ibid.*, art. 23 (establishing that "the petitioner may designate an attorney or other person to represent him or her before the Commission, either in the petition itself or in another writing").

reforms in the system, the proceedings before the Commission have become more similar to judicial proceedings than previously. Petitions lodged in the Commission involve sophisticated legal matters and for this reason the assistance of a lawyer increases the chances of success. One of the main contributions of the current Rules of Procedure of the Court is the creation of the Inter-American Defender, so that the Court may appoint a representative³⁰⁹ for victims who lack legal representation during their case proceedings before the Court.³¹⁰ This is an attempt to avoid circumstances in which, on the one hand, only people with financial resources will have access to a legal representative and, secondly, that the Commission plays a dual role as a representative of the victim and as an organ of the Inter-American System.

2.7.2 Is financial assistance available?

In June 2008 the OAS General Assembly adopted a resolution creating the Victims' Legal Assistance Fund.³¹¹ Its implementation was ensured when the regulations governing its operation in relation to the Court and the Commission entered into force on June 1, 2010 and March 1, 2011 respectively.³¹² The Fund has two separate accounts: one corresponding to the Commission and the other to the Court.³¹³

A petitioner who can “demonstrate that he or she lacks sufficient means to cover all or some of the expenses” may apply for the Fund to finance the production and submission of supporting documents, as well as expenses related to the attendance of the victim, witnesses or expert witnesses at the hearings and other expenses associated with the procedural activity and defense of the petitioners.³¹⁴

With regards to cases under consideration before the Commission, the petitioner may request access to the Legal Assistance Fund by written communication sent regarding a pending case, provided that the petition is declared admissible,

309 Chosen from proposed candidates by the Inter-American Association of Public Defenders (AIDEF), According to the agreement by which this association provides the Court with public defenders; see further information in IACtHR, Annual Report 2011, p. 90.

310 Court Rules of Procedure, *supra* note 133, art. 37.

311 OAS, “Establishment of the Legal Assistance Fund of the Inter-American Human Rights System,” Resolution AG/RES.2426 (XXXVIII-O/08), adopted during the IV Plenary Session held on June 3, 2008.

312 One of the first times that the Victims' Legal Assistance Fund was used was in the case of *González Medina et al v. Dominican Republic* (Resolution of the President of the Court of February 23, 2011).

313 In terms of financing the Inter-American System's Assistance Fund, this depends on “Voluntary capital contributions from the member states of the OAS, the permanent observer states, and other states and donors that may wish to collaborate” (Resolution adopted on November 11, 2009 by the Permanent Council of the OAS, “Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human rights System” CP / RES. 963 (1728 to 1709), arts. 2 and 3).

314 Rules of the Inter-American Commission on Human Rights on the Legal Assistance Fund of the Inter-American Human Rights System, art. 4.

or when the Commission has informed the parties of its decision to join the issue of admissibility to the merits. The request must indicate precisely which costs require the use of the Fund and their relation to the case.³¹⁵

When the request is made to the Court, the application must include the pleadings, motions and evidence. It should indicate precisely which elements of the defense require the use of the Fund.³¹⁶ After a preliminary examination by the Secretariat of the Court, the President shall determine whether the request is appropriate and indicate, within three months, which aspects of the petition may be financed by the Fund.³¹⁷

It is important to secure the necessary funding to be able to litigate the case adequately before the Commission and the Court. Costs incurred during litigation include, among others, bringing key witnesses to hearings and making oral pleadings before the Commission or the Court. In order to offset these costs, petitioners may also search for grants or seek the assistance of a non-governmental organization interested in taking a case where the subject matter adequately fits within its mandate.

It is important to bear in mind that the Inter-American Court, in the reparation phase, will consider payment for costs incurred by the petitioners when litigating the case both nationally and internationally.

2.7.3 Are protection measures provided for petitioners and witnesses?

Measures are available for the protection of petitioners and witnesses. When submitting the complaint, the petitioner shall state whether he or she wishes that his or her identity be withheld from the State.³¹⁸ If a party wants the identity of a witness to remain confidential, he or she must so state in the hearing request.³¹⁹ When necessary, the Commission will conceal the witness's identity for protection.³²⁰

Also, according to Article 63 of the Commission Rules of Procedure, the State in question shall grant the necessary guarantees to everyone who attends a hearing or who in the course of a hearing provides information, testimony or evidence

315 See Legal Assistance Fund: questions and answers, at: <http://www.oas.org/es/cidh/mandato/Basicos/fondo.asp>.

316 Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, art. 2.

317 *Ibid.*, art. 3.

318 Commission Rules of Procedure, *supra* note 38, art. 28(b).

319 *Ibid.*, art. 65(8).

320 *Ibid.*, arts. 64(3), 65(8).

of any type to the Commission. The State may not prosecute the witnesses or experts, or carry out reprisals against them or their families because of statements or expert opinions given before the Commission.

Regarding witnesses before the Inter-American Court, Article 53 of the Court Rules of Procedure explains that States shall abstain from instituting proceedings against alleged victims, witnesses, expert witnesses or their representatives or legal advisors, and from carrying out reprisals against them or their families on account of declarations or opinions delivered before the Court.

Additionally, both the Commission and the Court have the power to issue interim protection measures, which are discussed in next Section. These measures may be requested to protect petitioners, witnesses or the actual victim and his or her family.

2.8 Precautionary and provisional measures³²¹

Precautionary measures are those granted for the prevention of irreparable harm to persons or to the object of a petition or pending case. The Commission may request that a State adopt precautionary measures “in serious and urgent cases,” whenever necessary to prevent irreparable damage. The terms “serious situation,” “urgent situation” and “irreparable damage” are defined in Article 25(2) of the Commission’s Rules of Procedure. Examples of serious and urgent situations posing an imminent risk to life and safety include death threats, unlawful death sentences, the risk of torture, inhuman or degrading punishment or treatment and serious danger arising from conditions of detention. The Commission’s decision to recommend such measures and their subsequent adoption by the State do not reflect prejudgment on the merits of a case.³²²

With the reforms introduced in 2009 and 2013, the statutory regulation on precautionary measures has been significantly modified, although practices which have now been codified were already being carried out. Article 25(1) provides that the Commission may, on its own initiative or at the request of one of the parties, request that the State adopt precautionary measures without requiring any connection with a pending petition or case. It also establishes that precautionary measures may be of a collective nature to protect persons with a link to a “*determined or determinable*” organization, group, people or community of people (Art.25(3)).

321 Various terms are used in international instruments to designate these measures, including “provisional measures,” “interim measures,” “precautionary measures,” “conservatory measures” and “urgent measures.” The Inter-American instruments refer to interim measures adopted by the Commission as “precautionary measures” and interim measures adopted by the Court as “provisional measures.”

322 Court Rules of Procedure, *supra* note 133, art. 25(9).

Examples of cases where the Commission has granted protection measures for specific groups include certain indigenous communities in more or less extensive geographic locations,³²³ persons deprived of liberty in a particular detention centre,³²⁴ certain groups of displaced persons and refugees³²⁵ and members of civil society.³²⁶

The Rules of Procedure also establish the basic criteria that should govern the process of adoption of precautionary measures in Article 25(6). Regardless of the seriousness and urgency of the situation, the Commission will consider the context and will also consider whether the risk has been reported to the authorities or, where appropriate, the reasons for which it could not be reported, the individual identification of potential beneficiaries or the determination of the group to which they belong, and the express consent of the potential beneficiaries, except in those cases in which the absence of consent is justified.

Textbox 3: An example of precautionary measures

On October 14, 2004, the IACHR granted precautionary measures in favor of **Holmes Enrique Fernández, Jorge Salazar, and other members of the Cauca Association of Displaced Persons of Naya (Asociación Caucana de Desplazados del Naya--ASOCAIDENA)**, which, since December 2003, has brought together 70 families of displaced persons of African descent, indigenous people, and settlers who survived the massacre of April 12, 2001 in Alto Naya. Available information indicates that the members of ASOCAIDENA—now relocated in La Laguna, Timbío, Department of Cauca—had been the target of threats against their life and personal safety by members of paramilitary groups operating in the zone and that, on September 30, 2004, Holmes Enrique Fernández and Jorge Salazar were the targets of an ultimatum by paramilitary groups, indicating that the time had come to settle scores with the leaders of the association for their activity in the area. In view of the situation of the beneficiaries, the Commission requested that Colombian Government adopt the measures necessary to guarantee the lives and physical integrity of Holmes Enrique Fernández, Jorge Salazar, and other members of ASOCAIDENA and to report on the actions adopted to put an end to the incidents justifying the adoption of precautionary measures.³²⁷

323 See, for example, Resolution granting precautionary measures, IACHR, MC 61/11 – *Members of the Awá indigenous people of the departments of Nariño and Putumayo (Colombia)*; Resolution granting precautionary measures, IACHR, MC 121/11 - 14 - *Q'èchi Indigenous communities of the Municipality of Panzos (Guatemala)*.

324 Resolution granting precautionary measures, IACHR, MC 199/11 – *Persons deprived of liberty at Professor Anibal Bruno Prison (Brazil)*; Resolution granting precautionary measures, IACHR, MC 370/12 – 334 *Patients at the Federico Mora Hospital (Guatemala)*.

325 Resolution granting precautionary measures, IACHR, MC 340/10 – *Women and girls residing in 22 Camps for internally displaced persons in Port au Prince (Haiti)*.

326 Resolution granting precautionary measures, IACHR, MC 13/12 – *Members of the Human Rights Lawyers Group (Guatemala)*; Resolution granting precautionary measures, IACHR, MC 270/10 – *Nazareth Migrant House and Human Rights Center, Nuevo Laredo, (Mexico)*.

327 IACHR, Annual Report 2004, Chapter III.C.1., para. 23.

The Commission may adopt precautionary measures on its own initiative or at the petitioner's request.³²⁸ Section VI of the form for presenting a petition before the Commission³²⁹ asks for information from the petitioner regarding the need for precautionary measures:

Indicate whether there is a serious and urgent situation of risk of irreparable harm to persons or to the subject matter of the proceedings.

No Yes

If yes, please explain the reasons.

Precautionary measures may be requested along with the petition or at any stage of the process. When a petitioner seeks precautionary measures, the Commission registers the request and enters it in a database. In practice, within twenty-four to forty-eight hours a working group convenes to assess the situation and takes the initial decision on whether the measures are granted.

The Commission has developed important follow-up work regarding precautionary measures. This concern is reflected in Article 25(10) of the reform of the Rules of Procedure which came into force on August 1, 2013, which establishes that the Commission may request information from the parties on any matter relating to the "granting, observance and maintenance of precautionary measures" and clarifies that such measures may include "timetables for implementation, hearings, working meetings, and visits for follow-up and review." Likewise, the Commission has encountered a significant number of cases in which the State or the beneficiaries have not complied with its requests for follow-up information. For this reason, the subsequent paragraph of the new regulation states that substantial noncompliance with reporting requirements may result in lifting or review of the precautionary measures.³³⁰

Textbox 4: Request for precautionary measures

CENTER FOR CONSTITUTIONAL RIGHTS

FILE: PETITION TO INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON BEHALF OF THE GUANTANAMO DETAINEES

On February 25, 2002, the Center for Constitutional Rights, the Human Rights Clinic at Columbia Law School, and the Center for Justice and International Law requested that the Inter-American Commission on Human Rights (IAHCR) of the Organization of American States (OAS)

328 Commission Rules of Procedure, *supra* note 38, art. 25(1).

329 See Section 2.1.2, *supra*.

330 Commission Rules of Procedure, *supra* note 38, art. 25(1).

immediately intervene to protect the rights of approximately 300 Al-Qaeda and Taliban captives detained by the U.S. government at Guantanamo Bay, Cuba.

The petitioners requested that the following precautionary measures be taken: that the detainees be treated as Prisoners of War, and that their international human rights be honored. Furthermore detainees should not be subjected to arbitrary, incommunicado, and prolonged detention, unlawful interrogations, or trials by military commission in which they could be sentenced to death. These rights are outlined in the American Declaration on the Rights and Duties of Man and the Inter-American Commission is authorized to take immediate action when irreparable harm is threatened. The US has denied the detainees the international human rights protections they are owed claiming that the detainees are not prisoners of war, but are instead “unlawful combatants.”

On March 12, 2002, the Inter-American Commission on Human Rights ordered the United States to take “take the urgent measures necessary to have the legal status of the detainees at Guantanamo Bay determined by a competent tribunal.” CCR president and Cooperating Attorney Michael Ratner called the OAS’ decision “a victory for advocates of the rule of law and due process.” He explained that this is the first ruling by an international panel basically saying that the Geneva Convention applies and they must be tried by the competent tribunals before denying them their prisoners-of-war status. He urged the US to respond positively, stating that if the US failed to abide by the commission’s recommendations, it would be a lawless act and a violation of the US’s treaty obligations.

On April 15, 2002, the IACHR notified CCR that the U.S. had rejected the IACHR’s decision to adopt precautionary measures. The government argued that the IACHR had neither the jurisdiction to apply precautionary measures nor the right to interpret the Geneva Convention. CCR, on the other hand, believes that the US is bound by the Commission’s declaration. Although the US has failed to sign the OAS’s American Convention on Human Rights, it is a signatory of the OAS’s Charter and therefore is bound under the terms of the charter’s American Declaration of the Rights and Duties of Man. In the past, however, the US has ignored the Inter-American Court on Human Rights. For example, it rejected that Court’s determination that the death sentence for juveniles in the US was illegal.

On July 29, 2004, the Inter-American Commission on Human Rights sent out a letter suggesting that the United States had contradicted its previous statements that all measures would be taken to prevent the torture or other cruel, inhuman or degrading treatment of detainees at Guantanamo. The letter was sent in response to a June 28 submission made by attorneys at the New York based Center for Constitutional Rights (CCR) requesting expansion of the Precautionary Measures previously adopted by the Commission in relation to detainees in Guantanamo. In its submission, CCR provided the Commission with new evidence regarding the conditions and treatment of persons detained by the United States at Guantanamo Bay and elsewhere.

On October 28, 2005, the Commission issued measures requesting that the U.S. government ensure the detainees at Guantanamo were not transferred to countries where there are substantial grounds for believing they would be in danger of being subjected to torture or other mistreatment. The Commission also requested that the U.S. not permit any statement obtained under torture to be used in a legal proceeding, in accordance with international law. The Commission reiterated its request that the government investigate and prosecute instances of abuse and torture, which it clarified does not mean letting the Department of Defense continue to investigate itself. Finally, the Commission repeated its demand that the U.S. have the legal status of the Guantanamo detainees determined by a competent tribunal, emphasizing that the military tribunals and *habeas corpus* proceedings have not adequately addressed this request to date.

On June 12, 2006, the Commission requested that the U.S. provide information within 10 days concerning the recent suicides committed by three detainees being held at Guantanamo.³³¹

Through the adoption of Resolutions 02/06 and 02/11 the Commission established that a breach of these precautionary measures by the United States had caused irreparable harm to the detainees at Guantanamo Bay.

The Commission also held eight hearings on the situation of detainees at Guantanamo Bay between 2002 and 2010. In 2007 and 2011 it requested the consent of the State to conduct observation visits with unrestricted access to facilities and private interviews with detainees; at the time of writing this publication, the Commission had not made any visit due to the refusal of the United States government to allow the Commission to have access to the prisoners.

On July 23, 2013, the Commission decided, on its own initiative, to extend the precautionary measures in favor of Guantanamo detainees in light of the risk of permanent damage due to the persistence of situations of indefinite arbitrary detention, ill-treatment and the progressive worsening of the prisoners' situation, some of whom were on hunger strike.³³²

Precautionary measures have sufficient legal authority to compel a State to adopt the necessary measures to prevent irreparable harm to occur.³³³ Furthermore, if a State that has accepted the contentious jurisdiction of the Court fails to adopt the measures, the Commission may request that the Court grant provisional measures “in cases of extreme gravity and urgency, and when it becomes necessary to avoid irreparable damage to persons,” even in cases that have not yet been submitted to the Court for consideration.³³⁴

Thus, the Commission can ask the Court to adopt *provisional measures* in cases of extreme gravity and urgency in order to prevent irreparable damage. The Commission must take into account a number of assumptions to submit an application for interim measures: the lack of implementation of the precautionary measures granted previously, the ineffectiveness of these, as well as the connection of the precautionary measure with a case under the jurisdiction of the Court. The Commission may also request provisional measures from the Court when it considers this relevant “to the best effect of the relief sought” in this case it must justify its decision.³³⁵

In cases pending before the Court, it may order provisional measures at the request of victims or their representatives, or on its own motion, at any stage

331 Courtesy of the Center for Constitutional Rights (CCR). To read the CCR's request for precautionary measures, see website: www.omct.org.

332 IACHR, MC 259/02 – (Extension) Detainees in the US Military Base in Guantanamo.

333 The rationale supporting this notion is similar to that applicable to the obligatory character of the recommendations of the Commission (see Section 1.2.3 (c), *supra*).

334 Commission Rules of Procedure, *supra* note 38, art. 76(1). The Commission may not, however, transmit such a request to the Court in cases against States that have not ratified the American Convention and/or have not recognized the Court's contentious jurisdiction.

335 Commission Rules of Procedure, *supra* note 38, art. 76.

of the proceedings for the purpose of preventing irreparable damage to persons.³³⁶ Article 27(4) of the Court Rules of Procedure states:

The request may be made to the President, to any Judge of the Court, or to the Secretariat, by any means of communication. In every case, the recipient of the request shall immediately bring it to the President's attention.³³⁷

Frequently the Court asks for the participation of the beneficiaries in the process for the design and implementation of provisional measures.³³⁸ It is important to note the value of oversight of the implementation of the provisional measures granted by the Court. The State in question must report on the concrete measures taken to ensure the required protection, which is then subject to observations by the beneficiaries.³³⁹ In turn, the Commission presents observations on State reports and assessments made by the beneficiaries. Using all the available information, which may also include the opinions of experts and other witnesses,³⁴⁰ the Court assesses the need to summon the parties to a public or private hearing.³⁴¹

At the end of 2012, there were 31 active provisional measures under the supervision of the Court.³⁴² In the same year, the Court issued 28 resolutions monitoring provisional measures (it was the year in which most decisions were issued by the Court on this matter); moreover, the President, using the authority recognized in Article 27(6) of the Rules of Procedure, issued 9 emergency resolutions on this matter when the Court was out of session.³⁴³

336 Court Rules of Procedure, *supra* note 133, art. 27(1) and 27(3).

337 *Ibid.*, art. 27(4).

338 See, for example, *Adrián Meléndez Quijado et al* (El Salvador), Resolution of the IACtHR (provisional measures), May 12, 2007, resolution point 4. See also García Ramírez, Sergio, "Ombudsman and Tutela Interamericana de los Derechos Humanos", in Escobar Roca, Guillermo (coord), (in Spanish) *El Ombudsman en el Sistema Internacional de Derechos Humanos*, Madrid: Dykinson, 2008, p. 72.

339 *Ibid.*, art. 27(7).

340 *Ibid.*, art. 27(8).

341 *Ibid.*, art. 27(9)

342 IACtHR, Annual Report 2012, p. 22.

343 *Ibid.*

PART 3

TORTURE AND CRUEL,
INHUMAN OR DEGRADING
TREATMENT
OR PUNISHMENT

3.1 Introduction

The prohibition of torture and cruel, inhuman or degrading treatment or punishment is found in several Inter-American human rights treaties. First, the American Convention sets forth the right to humane treatment (in the Spanish version “personal integrity”) in Article 5. Article 5(1) ensures the right to physical, mental and moral integrity. The Inter-American Court has defined the scope of this right as one “that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation.”³⁴⁴ Article 5(2) prohibits torture and cruel, inhuman or degrading treatment and punishment and states that persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.³⁴⁵ Articles 5(3) through 5(6) provide for additional protections for persons – including minors – deprived of their liberty as a result of a pending criminal proceeding or a conviction.³⁴⁶

The Inter-American Convention to Prevent and Punish Torture (IACPPT) sets forth the obligation of States parties to prevent and punish torture.³⁴⁷ The Belém do Pará Convention reaffirms the right of women not to be subjected to torture or other treatment that does not respect their personal integrity and dignity.³⁴⁸

Additionally, any conduct that constitutes torture or other cruel, inhuman or degrading treatment or punishment is arguably prohibited by the American Declaration as well. Although this instrument does not contain a specific prohibition of torture, it guarantees to every human being the rights to life, liberty and personal security in Article I.³⁴⁹ The Inter-American Commission has consistently ruled that the right to personal security includes the right to humane treatment and personal integrity.³⁵⁰ The American Declaration also enshrines the right to humane treatment for any person held in State custody.³⁵¹ Moreover, it provides

344 *Loayza-Tamayo*, *supra* note 118, para. 57. The organs of the Inter-American System have examined possible violations of Art. 5(1) on numerous occasions and using different conceptual frameworks. See, as an example, *Afrodescendant Communities Displaced from the Cararica River Basin* (“Operation Genesis”), Judgment of November 20, 2013, IACtHR, (Series C) No. 270, paras. 320-324.

345 American Convention, *supra* note 16, art. 5(2).

346 *Ibid.*, arts. 5(3), (4), (5), (6).

347 Inter-American Convention to Prevent and Punish Torture, *supra* note 23, art. 1.

348 Belém do Pará Convention, *supra* note 25, arts. 4(b), (d), (e).

349 American Declaration, *supra* note 12, art. I.

350 See e.g. *Ovelario Tames v. Brazil*, Case 11.516, Report No. 60/99, IACHR, Annual Report 1998, OEA/Ser. L/V/II.102 Doc. 6 rev. (1998), para. 39.

351 American Declaration, *supra* note 12, art. XXV.

for the right not to receive a cruel, infamous or unusual punishment when tried for a crime.³⁵²

Article 27 of the American Convention, which governs the suspension of rights in times of war, public danger or other emergency that poses a threat to the independence or security of a State party, specifically provides that the right to humane treatment guaranteed in Article 5 is non-derogable.³⁵³ Article 5 of the IACPPT establishes that the existence of a state of war, threat of war, state of emergency, domestic disturbance or other type of emergency cannot be invoked to justify the perpetration of acts that may be characterized as torture.³⁵⁴ The language of the IACPPT appears to be more restrictive than that of the American Convention because it refers only to torture; however, the Court has clearly indicated that in the Inter-American System both the prohibition of torture and that of cruel, inhuman or degrading treatment and punishment are non-derogable.³⁵⁵ The Court has concluded that, independent of existing international treaties and declarations, the prohibition of torture and other cruel, inhuman or degrading treatment and punishment has become a peremptory norm of international law, also known as a *jus cogens* norm.³⁵⁶ In *Cantoral-Benavides*, the Court stated that regardless of whether certain acts constitute torture or cruel, inhuman and degrading treatment or both, “it must be clearly understood that, regardless of the nature of the acts referred to, they are strictly prohibited under international human rights law.”³⁵⁷

The Court has specified that this *jus cogens* prohibition subsists “even under the most difficult circumstances, such as war, threat of war, fight against terrorism and other crimes, curfew or state of emergency, domestic upheaval or conflict, suspension of constitutional guarantees, domestic political unrest or other public calamities or emergencies.”³⁵⁸ Indeed, the Court has also stated that “the fact that a State is confronted with terrorism [or a situation of internal upheaval] should not lead to restrictions on the protection of the physical integrity of the person.”³⁵⁹

352 *Ibid.*, art. XXVI.

353 American Convention, *supra* note 16, art. 27.

354 Inter-American Convention to Prevent and Punish Torture, *supra* note 23, art. 5.

355 *Lori Berenson-Mejía v. Peru*, Judgment of November 25, 2004, IACtHR, (Series C) No. 119, para. 100; *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005, IACtHR, (Series C) No. 123, para. 70.

356 *See, e.g. Caesar*, *supra* note 355, para. 100, *Bueno Alves v. Argentina*, *supra* note 268, para. 76; *Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, IACtHR, (Series C) No. 160, para. 271.

357 *Cantoral-Benavides*, *supra* note 191, para. 95.

358 *Ibid.*, para. 95 (citing *Case of Labita v. Italy*, ECHR, No. 26772/95, Judgment of April 6 2000, para. 119; *Case of Selmouni v. France*, ECHR, No. 25803/94, Judgment of July 28, 1999, para. 95; *Case of Chahbal v. United Kingdom*, ECHR, No. 22414/93, Judgment of November 15, 1996, reports 1996-V, paras. 79 and 80; *Case of Tomasi v. France*, ECHR No. 12850/87, Series A, Vol. 241-A, Judgment of August 27, 1992, para.115); *Buenos Alves*, *supra* note 268, para. 76, *Miguel Castro Castro Prison*, *supra* note 356, para. 271; *Baldeón García v. Peru*, Judgment of April 6, 2006, IACtHR, (Series C) No. 147, para. 117, and *García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005, IACtHR, Series C No. 137, para. 222.

In addition, Article 5 of the IACPPT states that “[n]either the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.”³⁶⁰

3.2 Scope of the right to personal integrity

Article 5(2) of the American Convention prohibits torture and cruel, inhuman, or degrading treatment and punishment. It further states that persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. This provision, however, does not contain a detailed definition of prohibited conduct. Article 2 of the IACPPT provides a definition of torture but does not distinguish it from other cruel, inhuman or degrading treatment or punishment. The following Sections analyze the Inter-American case law relevant to the scope of the prohibition of torture and other cruel, inhuman or degrading treatment and punishment.

3.2.1 Torture

As stated above, torture is clearly forbidden in Inter-American human rights instruments. Nonetheless, the only definition of torture is found in Article 2 of the IACPPT.³⁶¹ Thus, in establishing the scope of torture under the American Convention, the Court³⁶² and Commission³⁶³ have relied on the Article 2 definition, which states as follows:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

Given that the IACPPT constitutes part of the Inter-American *corpus iuris*, the Court has used it as a reference in interpreting the scope and content of Article 5(2) of

359 *Ibid.*, para. 96 (citing *Castillo-Petruzzi et al. v. Peru*, Judgment of May 30, 1999, IACtHR, (Series C) No. 52, para. 197 and *Loayza-Tamayo*, *supra* note 118, para. 57); see also *Bámaca-Velásquez*, *supra* note 191, para. 155.

360 Inter-American Torture Convention, *supra* note 23, art. 5.

361 *Ibid.*, *supra* note 23, art. 2.

362 *Tibi v. Ecuador*, Judgment of September 7, 2004, IACtHR, (Series C) No. 114, para. 145; *Gómez-Paquiyaury*, *supra* note 297, para. 105.

363 *Raquel Martín de Mejía v. Peru*, Case 10.970, Report No. 5/96, IACHR, Annual Report 1995, OEA/Ser.L/V/II.91 Doc. 7 rev. (1996), p. 185.

the American Convention.³⁶⁴ In defining this provision, the Court has also used the definitions contained in other international protection instruments,³⁶⁵ such as those contained within Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁶⁶ On that basis, in the case of *Bueno Alves* the Court set out for the first time the elements which must be present for an act to constitute torture under Article 5(2), as follows:³⁶⁷

1. a deliberate action or intentional act;³⁶⁸
2. severe³⁶⁹ physical or mental pain or anguish suffered by the victim;
3. committed with a given purpose or aim³⁷⁰

With regards to the requirement of a determined active subject or agent, in the *Bueno Alves* case, as in most cases examined by the Court, those who had inflicted torture on the victims were government officials. Probably for this reason, the Court did not rule explicitly and clearly whether the requirement for participation by a state agent in the act of torture is a constitutive element of the crime.³⁷¹ However, it appears that the Court, in the same way as the Commission,³⁷² has used the definition established in Article 3 of the IACPPT when determining who can be identified as an active subject to establish the existence of torture.³⁷³ Article 3 stipulates that:

The following shall be held guilty of the crime of torture:

- a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.

364 *Tibi*, *supra* note 362, para. 145.

365 *See Bueno Alves*, *supra* note 268, para. 78.

366 *Maritza Urrutia*, *supra* note 297, para. 90; *Bámaca-Velásquez*, *supra* note 191, para. 156; *Cantoral-Benavides*, *supra* note 191, para. 183.

367 *See, Bueno Alves*, *supra* note 268, para. 79; *see also Gómez-Paquiyaury*, *supra* note 297, para. 115-116; *Bámaca-Velásquez*, *supra* note 191, para. 156-158; *Cantoral-Benavides*, *supra* note 191, para. 97-98.

368 *See also Tibi v. Ecuador*, *supra* note 362, para. 149.

369 Unlike other international instruments that define torture, Article 2 of the Inter-American Convention to Prevent and Punish Torture does not require that suffering be “severe” or reach a certain level of intensity. However, subsequent Inter-American case law has held that to classify an act as torture, the pain or suffering inflicted must indeed be severe or intense. *See e.g. Caesar*, *supra* note 355, para. 50; *Luis Lizardo Cabrera v. Dominican Republic*, Case 10.832, Report No. 35/96, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), para. 85.

370 *Bueno Alves*, *supra* note 268, para. 77, *see also Gómez Paquiyaury*, *supra* note 297, para. 49; *Bámaca Velásquez*, *supra* note 191, para. 145; *Cantoral Benavides*, *supra* note 191, para. 59.

371 *See*, on this subject, Nash Rojas, Claudio, (in Spanish) “Alcance del concepto de tortura y otros tratos crueles, inhumanos y degradantes” en *Anuario de Derecho Constitucional Latinoamericano*, Año XV, 2009, pp. 585-601, p. 599.

372 *Raquel Martín de Mejía*, *supra* note 363, para. 185; *Fernández Ortega et al v. Mexico*, *Judgment of August 30, 2010*, IACtHR, (Series C) No. 215, para. 91.

373 *See arguments of the Court in Heliodoro Portugal v. Panama*, Resolution monitoring compliance with judgment, June 19, 2012, paras. 26-27.

- b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

Consequently, for torture to exist, it must have been perpetrated by a public official or employee or have been committed by a third person under order, incitement or inducement of the former. It should be added that Article 3 also relates to public employees, who, although they could prevent the commission of acts which may constitute torture, did not do so, as well as third persons, instigated by public employees to send or induce other people to commit such acts. It can therefore be argued that this standard includes different assumptions of participation or instigation, under which the drafters intended also to cover acts committed by third parties, provided there is involvement by state agents or negligence on their part to prevent these acts.

Torture is not limited to physical violence; it may also be perpetrated through the infliction of psychological suffering or moral anguish.³⁷⁴ In the *Urrutia* case, the Court stated that

according to the circumstances of each particular case, some acts of aggression inflicted on a person may be classified as mental torture, particularly acts that have been prepared and carried out deliberately against the victim to eliminate his mental resistance and force him to accuse himself of or confess to certain criminal conducts, or to subject him to other punishments, in addition to the deprivation of freedom itself.³⁷⁵

The concept of psychological torture has been developed extensively by the Court; it has declared that situations of great suffering and distress constitute treatment contrary to Article 5(1) and 5(2) in various circumstances, as discussed below. It has found acute psychological suffering for example in the case of people who witnessed the executions of third parties in the context of extrajudicial killings or mass enforced disappearances and who experienced the anguish of knowing that their life was in grave danger,³⁷⁶ people who await the application of capital punishment,³⁷⁷ or relatives searching for their disappeared family members.³⁷⁸

It is also important to highlight that Article 2 of the IACPTT establishes that “torture shall also be understood to be the use of methods upon a person intended

374 *Bámaca-Velásquez*, *supra* note 191, para. 150; *Cantoral-Benavides*, *supra* note 191, para. 100.

375 *Maritza Urrutia*, *supra* note 297, para. 93.

376 *Mapiripán Massacre*, *supra* note 245, para. 136; *La Cantuta v. Peru* (“La Cantuta Massacre”), Judgment of November 29, 2006, IACtHR. (Series C) No. 162, para. 113.

377 *Hilaire*, *supra* note 212, paras. 168 and 169.

378 See e.g. *Gudiel Álvarez et al v. Guatemala* (“Diario Militar”), Judgment of November 20, 2012, IACtHR, (Series C) No. 253, para. 301.

to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”³⁷⁹

The Court is in agreement with the view of the European Court of Human Rights (ECHR) view that the definition of torture is subject to ongoing reassessment in light of present-day conditions and the changing values of democratic societies. Therefore,

certain acts that were classified in the past as inhuman or degrading treatment, but not as torture, may be classified differently in the future, that is, as torture, since the growing demand for the protection of fundamental rights and freedoms must be accompanied by a more vigorous response in dealing with infractions of the basic values of democratic societies.³⁸⁰

3.2.2 Cruel, inhuman and degrading treatment or punishment

Neither Article 5(2) of the American Convention nor Article 2 of the IACPPT defines cruel, inhuman and degrading treatment and punishment. In *Caesar*, the Court cited the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia in *Celibici*, which defined cruel or inhuman treatment as “an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, that causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”³⁸¹ The Court has concluded in line with other international doctrinal and case law bodies such as the European Court of Human Rights (ECHR) that the essential criterion for distinguishing torture from other cruel, inhuman or degrading treatment or punishment is the intensity of the suffering.³⁸²

The American Convention and the IACPPT allow certain latitude to assess, in light of the seriousness or intensity of an act or practice, whether or not the act or practice constitutes torture or other cruel, inhuman and degrading treatment.³⁸³ The “intensity” of the suffering is relative and requires a case-by-case analysis that encompasses all the circumstances of the particular situation, including the duration of the treatment, the physical and mental consequences, the sex, the age, the health and vulnerability of the victim, among other factors.³⁸⁴ For example, the Court has consistently indicated that in the case of minors a higher standard of scrutiny must be applied when analyzing whether a particular act constitutes torture.³⁸⁵

379 Inter-American Convention to Prevent and Punish Torture, *supra* note 23, art. 2.

380 *Cantoral-Benavides*, *supra* note 191, para. 93 (referring to *Selmouni v. France*, *supra* note 358, para. 101).

381 *Caesar*, *supra* note 355, para. 68.

382 *Bueno Alves*, *supra* note 268, para. 79 and 83, *Caesar*, *supra* note 355, para. 50.

383 *Luis Lizardo Cabrera*, *supra* note 369, para. 82.

384 *Fleury et al v. Haiti*, Judgment of November 23, 2011, IACtHR, (Series C) No. 236, para. 73; *Gómez-Paquiyaury*, *supra* note 297, para. 113.

Similarly, the Commission in *Jailton Neri Da Fonseca v. Brazil* stated that “in the case of children the highest standard must be applied in determining the degree of suffering, taking into account factors such as age, sex, the effect of the tension and fear experienced, the status of the victim’s health, and his maturity, for instance.”³⁸⁶ The Commission has also applied strict criteria with regard to persons with mental disabilities, particularly those in psychiatric institutions, due to the “vulnerability inherent ... compounded by the high degree of intimacy which is typical of the treatment of psychiatric illnesses, which makes these persons more susceptible to mistreatment when they are hospitalized intrinsic vulnerability ... compounded by the high degree of intimacy that characterizes treatments psychiatric illnesses, which makes people more susceptible to such abusive treatment when subjected to internment.”³⁸⁷ Likewise, the Commission has pointed out, in general terms, that vulnerability is greater when *per se* vulnerable groups face greater suffering due to, among other factors, their race or ethnicity, and their status as migrants, refugees or displaced persons.³⁸⁸ Also socio-economically disadvantaged persons or those affected by armed conflict or imprisonment may require greater protection.³⁸⁹

The organs of the system have avoided a narrow definition outlining a catalogue of actions that can be categorized as cruel, inhuman or degrading treatment.³⁹⁰ The interpretation is made on a case by case basis and it should be noted that in the majority of cases the Court prefers to establish that the treatment in question was contrary to Article 5(2), refraining from specifying the exact mode of treatment that has infringed the prohibition in that provision.³⁹¹

With respect to degrading treatment, in *Loayza Tamayo*³⁹² the Court stated that “[t]he degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his

385 *Juvenile Reeducation Institute v. Paraguay*, Judgment of September 2, 2004, IACtHR, (Series C) No. 112, para. 135; *Gómez-Paquiyaury*, *supra* note 297, para. 117; *Bulacio*, *supra* note 293, para. 98.

386 *Jailton Neri Da Fonseca v. Brazil*, Case 11.634, Report No. 33/04, IACHR, Annual Report 2004, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004), para. 64.

387 *Ximenes López v. Brasil*, Judgment of July 4, 2006, IACtHR, (Series C) No. 149, para. 106; *Victor Rosario Congo v. Ecuador*, Case 11.427, Report 63/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 7 Rev. (1998), para. 58.

388 IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 131.

389 *Ibid.*

390 Huertas Díaz, Omar et al., (in Spanish) “La vulneración del derecho a la integridad personal: el peor flagelo que puede sufrir un ser humano” in *Elementos de Juicio. Revista de Temas Constitucionales*, Núm. 6-7 Julio-Diciembre 2007, p. 164.

391 See e.g. *Ximenes Lopes* case, *supra* note 387, para. 150.

392 *Loayza-Tamayo*, *supra* note 118, para 57.

physical and moral resistance.”³⁹³ The Commission reasoned similarly in the case of *Lizardo Cabrera*.³⁹⁴

With regards to the definition of “inhuman” treatment or acts, the Court has linked this to barbarous treatment involving a total absence of empathy and humanity towards the people subjected to this treatment. For example, in the case of the *Miguel Castro Castro Prison*, the Court concluded that the treatment received by inmates after May 9, 1992 and during transfers to other prisons and hospitals constituted “inhuman treatment”³⁹⁵ as inmates, many of them wounded, including pregnant women, were forced to remain lying face down on the floor of the prison yards for several days without medical attention.³⁹⁶ Also, it was proved that inmates injured during transport to hospitals were subjected to overcrowding and beatings.³⁹⁷ Moreover, during transfers or relocations in the same prison the majority of the male inmates were subjected to cruel methods of punishment.³⁹⁸

3.2.3 “[R]espect for the inherent dignity of the human person”

The second limb of Article 5(2) ensures the right of all persons deprived of their liberty to be treated “with respect for the inherent dignity of the human person.”³⁹⁹ Although in some cases the Court and the Commission have found violations of the right to respect for “personal dignity,” existing case law does not clearly define the scope of this right.⁴⁰⁰ The Commission, for example, has stated that

[a]mong the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms protected thereunder are derived from the attributes of the human personality. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect... [The guarantees of Article 5(1) and (2)] presuppose that persons protected under the Convention will be regarded and treated as individual human beings, particularly in circumstances in which a State Party proposes to limit or restrict the most basic rights and freedoms of an individual, such as the right to liberty.⁴⁰¹

393 *Ibid.*, para. 57.

394 *Luis Lizardo Cabrera*, *supra* note 369, para. 77.

395 *Castro Castro Prison*, *supra* note 356, para. 300.

396 *Ibid.*, paras. 294 and 298.

397 *Ibid.*, para. 296.

398 *Ibid.*, para. 297.

399 American Convention, *supra* note 16, art. 5(2).

400 *De la Cruz-Flores v. Peru*, Judgment of November 18, 2004, IACtHR, (Series C) No. 115, para. 131; *Tibi*, *supra* note 362, para. 152; *Victor Rosario Congo*, *supra* note 387, para. 59; *Loren Laroye Riebe Star et al. v. Mexico*, Case 11.610, Report No. 49/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998), para. 92; *Donnason Knights v. Grenada*, Case 12.028, Report No. 47/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), para. 117.

401 *Donnason Knights*, *supra* note 400, para. 81; *see also Leroy Lamey et al. v. Jamaica*, Cases 11.826, 11.843, 11.846, 11.847, Report No. 49/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), →

Consistent with this principle, Inter-American case law makes clear that the State, as the institution responsible for detention facilities, must guarantee respect for the rights of prisoners under its absolute control.⁴⁰² According to the Commission, “the act of imprisonment carries with it a specific and material commitment to protect the prisoner’s human dignity so long as the individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights.”⁴⁰³ The Court applied the same reasoning in the *Juvenile Reeducation* case in its consideration of State duties to minors deprived of their liberty⁴⁰⁴ and in *Ximenes Lopes* to persons with mental disabilities placed in institutions for psychiatric treatment.⁴⁰⁵ In *Vélez Lóor*, a case related to persons detained for their immigration status, the Court held that the State must adopt certain positive, specific measures, aimed not only at guaranteeing the enjoyment and exercise of those rights whose restriction is not a collateral effect of the situation of imprisonment, but also at ensuring that the deprivation of liberty does not entail a greater risk to the infringement of rights, the integrity and the personal and family welfare of migrants.⁴⁰⁶

In this context, the Court and the Commission have consistently found that prolonged isolation and forced incommunicado detention violate the right to respect for personal dignity.⁴⁰⁷ Persons detained illegally are especially vulnerable and therefore are more likely to experience a violation of this right.⁴⁰⁸ The Court has also found that any use of force that is not strictly required to restrain a prisoner infringes on his or her human dignity.⁴⁰⁹

para. 134; *Rudolph Baptiste v. Grenada*, Case 11.743, Report No. 38/00, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999), para. 89.

402 *Tibi*, *supra* note 362, para. 150; *Bulacio*, *supra* note 293, para. 126; *Cantoral-Benavides*, *supra* note 171, para. 87; *Durand and Ugarte v. Peru*, *supra* note 229, para. 69; *Minors in Detention v. Honduras*, Case 11.491, Report No. 41/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998), para. 134.

403 *Minors in Detention v. Honduras*, *supra* note 402, para. 135.

404 *Juvenile Reeducation Institute v. Paraguay*, *supra* note 385, para. 153.

405 *Ximenes Lopes*, *supra* note 387, para. 130. In the *Congo* case, the Commission also concluded that the solitary confinement of a detainee who suffers from a mental illness that makes it impossible for them to feed or bathe themselves or satisfy other basic needs is a violation of the inherent dignity of the human being (*Victor Rosario Congo*, *supra* note 387, para. 59).

406 *Vélez Lóor*, *supra* note 191, para. 209.

407 *Castillo-Petruzzi*, *supra* note 359, para. 194; *Velásquez-Rodríguez*, *supra* note 214, para. 156; *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment of November 21, 2007, IACtHR, (Series C) No. 170, para. 113; *Martin Javier Roca Casas v. Peru*, Case 11.233, Report No. 39/97, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), para. 89; *Camilo Alarcon Espinoza et al. v. Peru*, Cases 10.941, 10.942, 10.944, 10.945, Report No. 40/97, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), para. 83.

408 *Bulacio*, *supra* note 293, para. 127; *Bámaca-Velásquez*, *supra* note 191, para. 150; *Street Children*, *supra* note 191, para. 166.

409 *Castillo-Petruzzi*, *supra* note 359, para. 197; *Loayza-Tamayo*, *supra* note 118, para. 57.

With respect to conditions of detention, overcrowding, lack of medical attention and adequate hygiene conditions, food deficiency, or the absence of the minimum conditions to guarantee the provision of drinking water are all clear impediments to a dignified life.⁴¹⁰ In *Tibi*, for example, the Court found that the conditions endured by the victim failed to respect his personal dignity.⁴¹¹ Mr. Daniel Tibi was detained in a severely overcrowded penitentiary, without sufficient ventilation or light, without adequate food or place to sleep for 45 days.⁴¹² Another illustrative case is *Montero Aranguren*, in which the Court categorically stated in light of the proven fact that “certain inmates of the Detention Center of Catia not only had to defecate in the presence of their mates, but they also had to live amid excrements and even eat their food under such humiliating conditions”:

The Court considers that said detention conditions are absolutely unacceptable, they involve disdain for human dignity; cruel, inhuman and degrading treatment; high risk for health and life and a clear violation of Articles 5(1) and 5(2) of the American Convention.⁴¹³

In *Miguel Castro Castro Prison* wounded prisoners, after being transferred to the hospital, were forced to remain naked for several days or even weeks, while being constantly watched by armed officers. The Court concluded that “all inmates that were submitted to the mentioned nudity during said prolonged period of time were victims of a treatment that violated their personal dignity.”⁴¹⁴

Regarding the medical treatment of prisoners, the Court in *De la Cruz Flores* concluded that the lack of adequate medical attention violated the victim’s right to respect for her personal dignity under Article 5.⁴¹⁵ In two other cases, however, the Court reviewed the lack of adequate medical attention provided to the detained victims and found that the responsible authorities had failed to comply with the minimum standards required by the right to humane treatment, but did not specify whether they had also failed to respect the victims’ inherent human dignity.⁴¹⁶ In *Ximenes Lopes*, the Court took the opportunity to develop its case law regarding the duty to ensure effective medical treatment to persons with mental disabilities in order to respect their dignity and autonomy.⁴¹⁷

410 See, among others, *Vélez Loor*, *supra* note 191, para. 216; “*Juvenile Reeducation Institute*,” *supra* note 404, para. 152; *Montero Aranguren et al v. Venezuela* (“Detention Center of Catia”), Judgment of July 5, 2006, IACtHR, (Series C) No. 150, para. 87.

411 *Tibi*, *supra* note 362, para. 152.

412 *Ibid.*, para. 151.

413 *Montero Aranguren*, *supra* note 410, para. 99.

414 *Miguel Castro Castro Prison*, *supra* note 356, para. 305.

415 *De la Cruz-Flores*, *supra* note 400, para. 131.

416 *Tibi*, *supra* note 362, para. 157; *Bulacio*, *supra* note 293, para. 131; *Montero Aranguren*, *supra* note 410, para. 102; *García Asto*, *supra* note 358, para. 226.

417 *Ximenes Lopes*, *supra* note 387, para. 128.

The Court has also found that certain methods of arrest violate this right. In *Castillo-Paéz*, for example, the Court ruled that placing a detainee in the trunk of an official vehicle *per se* violates this right, even if no other physical or other maltreatment is involved.⁴¹⁸ The Court subsequently applied this ruling in *Street Children* and *Gómez-Paquiyaury*.⁴¹⁹

In various cases related to mandatory death sentences in certain Caribbean States, the Commission stated in each case that it

cannot reconcile the essential respect for the dignity of the individual that underlies Article 5(1) and (2) of the Convention, with a system that deprives an individual of the most fundamental of rights without considering whether this exceptional form of punishment is appropriate in the circumstances of the individual's case.⁴²⁰

On this basis the Commission found violations of the right to personal dignity protected in Article 5(2).⁴²¹

3.3 Specific acts and situations

Inter-American case law has classified certain acts and situations as torture or cruel, inhuman or degrading treatment on the basis of their nature and the suffering they inflict on victims. The following subsections provide a detailed analysis of these acts and situations, as reflected in the jurisprudence of the Inter-American Court and Commission.

3.3.1 Disciplinary and corporal punishments

As noted above, the Court has ruled in several cases that any use of force that is not strictly necessary to ensure a prisoner's proper behavior constitutes a violation of his or her right to personal dignity as protected by Article 5 of the American Convention.⁴²²

The Court concluded in *Caesar* that corporal punishment is *per se* incompatible with Article 5(1) and (2) of the American Convention because of its inherently cruel, inhuman and degrading nature.⁴²³ The victim had been convicted of attempted rape

418 *Castillo-Paéz*, *supra* note 288, para. 66.

419 *Street Children*, *supra* note 191, para. 164; *Gómez-Paquiyaury*, *supra* note 297, para. 109.

420 *Donnason Knights*, *supra* note 400, para. 82; *Leroy Lamey*, *supra* note 401, para. 135; *Rudolph Baptiste*, *supra* note 401, para. 90.

421 *Donnason Knights*, *supra* note 400, para. 89; *Leroy Lamey*, *supra* note 401, para. 143; *Rudolph Baptiste*, *supra* note 401, para. 97.

422 See Section 3.2.3, *supra*.

423 *Caesar*, *supra* note 355, para. 70. See also Resolution of the Inter-American Court of Human Rights of January 27, 2009 with regards to the request for Advisory Opinion from the Inter-American Commission on Human Rights: *Corporal Punishment to Children and Adolescents*, Considering 11 and 14.

under Trinidad and Tobago's Offenses against the Person Act and was sentenced to 20 years in a penitentiary with hard labor and 15 strokes of the "cat-o-nine tails,"⁴²⁴ which :

consists of a plaited rope instrument of nine knotted thongs of cotton cord, each of which is approximately 30 inches long and less than one quarter of an inch in diameter. The thongs are attached to a handle. The nine cotton thongs are lashed across the back of the subject, between the shoulders and the lower area of the spine.⁴²⁵

The Court found that this instrument is designed to inflict "severe physical and psychological suffering."⁴²⁶ In consequence, it therefore concluded that the practice of applying corporal punishment by means of flogging reflected the institutionalization of state violence and constituted a form of torture in violation of Articles 5(1) and (2) of the American Convention.⁴²⁷

The Court further found that the degree of suffering experienced by the victim was aggravated by the treatment he received before and after the flogging.⁴²⁸ In particular, over a period marked by undue delay, he suffered anguish, stress and fear while awaiting the punishment, and he was exposed to the suffering of other prisoners who had been flogged.⁴²⁹ He also experienced extreme humiliation due to the flogging itself.⁴³⁰

The Court has also examined in several cases the compatibility of collective punishment with Article 5 of the Convention, concluding that all such sanctions constitute cruel and inhuman treatment "absolutely prohibited" under Article 5. One illustrative case is *Castro Castro Prison*, in which the Court noted that there were several incidents where treatment, implemented as collective punishments, violated the physical integrity of prisoners. The methods included subjecting many of the male prisoners, to "Dark Alley," during transfer to other prisons, defined by the Court as "a method of punishment which is to force the detainee to walk through a double row of agents who beat them with blunt objects such as sticks and metal or rubber batons, and whoever falls to the ground receives more blows until he reaches the other end of the alley."⁴³¹ Also, the majority of the survivors were beaten on many parts of their body, including with metal rods on the soles of the feet, were subjected to *electric shocks* and were placed in punishment cells known as the "hole."⁴³²

424 *Caesar*, *supra* nota 355, para. 49(3).

425 *Ibid.*, para. 49(8).

426 *Ibid.*, para. 72.

427 *Ibid.*, para. 73.

428 *Ibid.*, para. 87.

429 *Ibid.*, para. 88.

430 *Ibid.*

431 *Miguel Castro Castro Prison*, *supra* note 356, para. 297.

432 This cell was made of metal, measuring approximately 1.70x2 m, with a 10x10 cm window, with sewage, rats, without light and with a foul stench. Inmates held in the cell had to →

The Court observed that “[t]he State recurred to force without there being determining reasons to do so and it applied cruel punishments that are absolutely prohibited pursuant to Article 5 of the American Convention and other international norms for the protection of human rights applicable to the subject.”⁴³³ Based on the treatment suffered by prisoners, it concluded that the totality of detention and treatment conditions to which the inmates were submitted in the criminal centers where they were transferred or relocated after the so-called “Operative Transfer 1,” constituted physical and psychological torture inflicted on all of them in violation of Articles 5(2) of the American Convention and 1, 6, and 8 of the IACPPT.⁴³⁴

In the *Juvenile Reeducation Institute* case, in light of the abundant testimonies describing beatings, abuse and use of isolation and solitary confinement as a form of punishment, the Court ruled that such operations were carried out with “as a means to impose discipline on the inmate population” and constituted a method of discipline “strictly prohibited by the American Convention.”⁴³⁵

3.3.2 Violence against women

Until recently, the Court had not examined violence against women⁴³⁶ and, in particular sexual violence, under Article 5 of the American Convention. Beyond the psychological and social factors, which hinder the visibility and reporting of such acts by the victims, another factor contributing to the scarcity of cases is related to the difficulties that victims face to prove that they have been submitted to acts of sexual violence. These acts do not necessarily leave physical marks and it should also be noted that it is not always easy to obtain documentary evidence, such as medical records. One case which illustrates this is *Loayza Tamayo*, in which the victim and the Commission argued that the former had been raped while detained by the Peruvian authorities.⁴³⁷ However, the Court found that there was insufficient evidence to confirm the rape allegations.⁴³⁸ Nevertheless, as shown in the following analysis, the Court and the Commission have built a body of case law that attempts to include and address the difficulties and particular features surrounding these cases.

remain standing day and night for lack of space. In that place they were personally tortured by the prison director, receiving blows with a stick in the testicles, legs and feet. Also, the alleged victims were fed from a dirty plastic bucket from which dogs ate in the kitchen.

433 *Ibid.*, para. 320.

434 *Ibid.*, para. 333.

435 *Juvenile Reeducation Institute*, *supra* note 385, para. 167.

436 The Convention of Belém do Pará (*supra* note 25) in Article 1 defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”

437 *Loayza Tamayo*, *supra* note 118, para. 58.

438 *Ibid.*

In those cases in which the Court has ruled on the responsibility of States for alleged violence against women, the provisions of the Convention of Belém do Pará, as well as of the UN Convention on the Elimination of All Forms of Discrimination against Women, have been used as an interpretive reference; the Court has stated that these instruments “complement the international *corpus juris* [in this area] of which the American Convention forms part.”⁴³⁹

The first time the Court had the opportunity to develop its case-law concerning the scope of Article 5 in relation to various specific aspects of discriminatory violence against women, including rape, was in the case of human rights violations which occurred in the above-mentioned “Operative Transfer I” in *Miguel Castro Castro Prison*.

The female inmates transferred to the hospital were forced to remain nude and were “continually watched over” by security guards, including while they performed their physiological needs. In light of these events, the Court defined sexual violence as the result of:

actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever

Moreover, the Court stated that the devastating consequences of sexual violence are aggravated in the case of women prisoners. As a consequence, the Court concluded that the inmates had suffered acts of sexual violence which constituted “cruel treatment” contrary to the women’s dignity, and therefore, contrary to Article 5(2) of the American Convention.⁴⁴⁰

In the same case, the Court examined the case of one injured female inmate who was transferred to the Police Sanity Hospital, and was subject to a finger vaginal “inspection,” carried out by several hooded people at the same time, “in a very abrupt manner, with the excuse of examining her.” To analyze the facts, the Court considered the definition of “torture” established in Article 2 of the IACPPT, and made the following reflection:

sexual rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. Sexual rape must also be understood as act of vaginal or anal penetration, without the victim’s consent, through the use of other parts of the aggressor’s body or objects, as well as oral penetration with the virile member.⁴⁴¹

439 *Miguel Castro Castro Prison*, supra note 356, para. 276; *Cotton Field*, supra note 192, para. 225.

440 *Miguel Castro Castro Prison*, supra note 356, para. 308.

441 *Ibid.*, para. 310.

The Court concluded that “the acts of sexual violence to which an inmate was submitted under an alleged finger vaginal “examination” constituted sexual rape that due to its effects constituted torture.”⁴⁴²

Since this case, the Court has considered that rape:

is an extremely traumatic experience that may have serious consequences and it causes great physical and psychological damage that leaves the victim “physically and emotionally humiliated,” situation difficult to overcome with time, contrary to what happens with other traumatic experiences.⁴⁴³

Even when there is no evidence of physical injury, the Court has affirmed the moral and psychological suffering caused by rape, as well as the serious repercussions it can have on the social and cultural environment of the victim. In the *Rosendo Cantú* and *Fernández Ortega* cases, the Court highlighted that “the after-effects of rape will not always be physical injuries or disease. Women victims of rape also experience complex consequences of a psychological and social nature.”⁴⁴⁴ With regards to social consequences, the Court took into account the rejection the indigenous women had suffered within their community as a consequence of the rape committed against them by members of the army.

In the *Río Negro Massacres* case, the Court found that the impact of rape on women from indigenous communities can also have a wider effect than on individuals since the relationship of the victim with her community is also affected. Indeed, the Court referred expressly to the witness statement which affirmed that “rape [for a Mayan woman] means dishonor, stigmatization, blame, and the disgrace it somehow causes within the family, [and ...] the neighborhood.”⁴⁴⁵

Other circumstances, such as the presence of family members and other subsequent aggressors during the events, can also aggravate the feeling of humiliation and trauma for women who suffer rape.⁴⁴⁶

As a consequence, taking into account the serious effects and irreparable damage caused, the Court has concluded on several occasions, depending on the specific circumstances of each case, that rape constitutes torture.⁴⁴⁷ In *Fernández Ortega*,

442 *Ibid.*, paras. 311-312. See also *Fernández Ortega*, *supra* note 372, para. 124; *Rosendo Cantú et al v. Mexico*, Judgment of August 31, 2010, IACtHR, (Series C) No. 216, para. 114; *Contreras et al v. El Salvador*, Judgment of August 31, 2011, IACtHR, (Series C) No. 232, para. 100.

443 See *Miguel Castro Castro Prison*, *supra* note 356, para. 311; *Rosendo Cantú*, *supra* note 442, para. 114; see also ECHR, No. 23178/94., *Case of Aydin v. Turkey*, Judgment of September 25, 1997, para. 83.

444 *Fernández Ortega*, *supra* note 372, para. 124; *Rosendo Cantú*, *supra* note 442, para. 114.

445 *Río Negro Massacres v. Guatemala*, Judgment of September 4, 2012, IACtHR, (Series C) No. 250, para. 134.

446 *Fernández Ortega*, *supra* note 372, para. 91.

447 *Miguel Castro Castro Prison*, *supra* note 356, para. 312, *Fernández Ortega*, *supra* note 372, para. 128, *Rosendo Cantú*, *supra* note 442, para. 118.

the Court made the following reflection before defining actions perpetrated against the victim as torture:

this Court finds that rape may constitute torture even when it is based in a single fact alone and takes place outside State facilities, such as in the victim's home. This is so because the objective and subjective elements that classify an act as torture do not refer either to the accumulation of facts or to the place where the act is committed, but to the intention, the severity of the suffering, and the purpose of the act, requisites that, in the present case, have been fulfilled. Based on the aforementioned, the Court concludes that the rape in the present case entailed a violation of the personal integrity of Mrs. Fernández Ortega, constituting an act of torture in the terms of Article 5(2) of the American Convention and Article 2 of the Inter-American Convention to Prevent and Punish Torture.⁴⁴⁸

In the *Cotton Field* case, the Court had to consider the responsibility of the State of Mexico in the disappearance, torture, sexual abuse and murder of three young women between the ages of 15 and 20, in Ciudad Juarez. In its analysis of the contextual framework, the Court observed that since 1993 there had been an increase in homicides against women in this city, some of which were crimes accompanied by high levels of violence, including sexual violence. The Court also found that “up until 2005, most of the crimes had not been resolved, and murders with characteristics of sexual violence present higher levels of impunity.”⁴⁴⁹ In the case in question, among other deficiencies, the officials allegedly responsible for serious irregularities in the prosecution of those responsible and in the handling of evidence had not been investigated.

The Court concluded that the authorities had violated the obligation to prevent violence against women, in accordance with Article 7(b) of the Convention of Belém do Pará, within a recognized context of violence against women:

This failure to comply with the obligation to guarantee is particularly serious owing to the context of which the State was aware – which placed women in a particularly vulnerable situation – and of the even greater obligations imposed in cases of violence against women by Article 7(b) of the Convention of Belém do Pará.⁴⁵⁰

In addition to the lack of attention to their duty of prevention, the authorities were inactive when it came to investigating the whereabouts of the victims and finding the perpetrators, and “made derogatory comments about the young women.”⁴⁵¹

As discussed in the Section on evidence (Section 2.4), in cases like this, given the lack of direct evidence, the analysis of the Court is of extreme importance. This analysis is based on investigations carried out by many different entities on the subject of violence against women.

448 *Fernández Ortega*, *supra* nota 372, para. 128.

449 *Cotton Field*, *supra* note 192, para. 164.

450 *Ibid.*, para. 284.

451 *Ibid.*, para. 419.

It should be added that the Court has also reflected on violence of this kind in the context of dictatorships, war and extreme militarization. In the case of *Contreras et al*, the Court examined the consequences of the systematic pattern of forced disappearances of children in El Salvador during the internal armed conflict, particularly between 1980 and 1984. In one of the cases brought to its attention, the Court ruled against the State for violations of Article 5(2) due to treatment and abuse, including sexual violence against the victim from age 4 to age 14 while in the custody of a member of the armed forces, who had abducted and illegally detained her during a counterinsurgency operation.⁴⁵²

In the same case, the Court referred to the jurisprudence of other international bodies to highlight the frequent use of sexual violence, particularly against young women and girls, as “a symbolic means of humiliating the opposing side.”

The Court has ruled as follows with regards to the situation during the armed conflict in Guatemala:⁴⁵³

during the armed conflict women, in particular, were selected as victims of rape. Thus, during and prior to the said massacres or “scorched earth operations,” members of the State security forces committed mass or indiscriminate and public rape, at times accompanied by the death of pregnant women or the induction of abortions. This practice was intended to destroy a woman’s dignity at the cultural, social, family and individual levels.⁴⁵⁴

3.3.3 Forced disappearances and extrajudicial executions

The Court has applied Article 2 of the Inter-American Convention on Forced Disappearance of Persons to define *forced disappearances* as:

the act of depriving a person or persons of his [sic] or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.⁴⁵⁵

The Court and the Commission consider forced disappearance to be a multiple and continuing violation of a number of rights protected by the Convention “in which the act of disappearance and its execution begin with the deprivation of liberty of the person and the subsequent lack of information as to their whereabouts,

452 *Contreras et al*, *supra* note 442, para. 102.

453 *Ibid.*, para. 101.

454 *Río Negro Massacres*, *supra* note 445, para. 59; *see also Plan de Sánchez Massacre v. Guatemala*. Judgment of November 19, 2004 (Reparations and costs). IACtHR, (Series C) No. 116, para. 49.19; *Las Dos Erres Massacre v. Guatemala*, Judgment of November 24, 2009, IACtHR, (Series C) No. 211, para. 139.

455 OAS, Inter-American Convention on Forced Disappearance of Persons, *supra* note 24; *see also Bámaca-Velásquez*, *supra* note 191, para. 126.

and continue until the whereabouts of the disappeared person become known or their remains can be identified with certainty.”⁴⁵⁶ This is due to the fact that forced disappearance not only produces an arbitrary deprivation of liberty,⁴⁵⁷ but also endangers the right to personal integrity, the recognition of juridical personality and the very life of the victim.⁴⁵⁸ Moreover, it places the victim in a state of complete defenselessness, resulting in other related crimes. This is not only because forced disappearance arbitrarily deprives the victim of liberty, but also because it endangers her or his personal integrity, safety and life. The victim is also completely defenseless, which favors the perpetration of further abuses.⁴⁵⁹ Forced disappearance according to the Court denotes “a disregard of the duty to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention.”⁴⁶⁰

Given the seriousness of the offense and the nature of the rights violated, the Court has stated that the prohibition of enforced disappearance has achieved the status of *jus cogens*.⁴⁶¹ The Court also concluded that the correlative obligation to investigate, prosecute and punish those responsible is also non-derogable and therefore of particular importance.⁴⁶²

Regarding forced disappearance as a systematic practice, in *Tiu Tojín*, referring to the pattern of disappearances in Guatemala by state security agents in the context of the internal armed conflict between 1962 and 1996, the Court established that, under Article 5 of the American Convention on Forced Disappearance and Article 13 of the International Convention for the Protection of all Persons from Enforced Disappearance, under no circumstances can forced disappearance be regarded as a political offense “to the effect of preventing the criminal persecution of this type of crimes or suppressing the effects of a conviction for purposes of preventing

456 See, among others, *Ibsen Cárdenas e Ibsen Peña*, para. 59; *Contreras y otros*, para. 83; *Bámaca-Velásquez*, supra note 191, para. 128; see also *Blake*, supra note 287, para. 65; *Fairén-Garbi*, supra note 214, para. 147; *Godínez-Cruz*, supra note 214, paras. 163, 166; *Velásquez-Rodríguez*, supra note 214, paras. 155, 158; *Luis Gustavo Marroquín v. Guatemala*, Case 8075, Report No. 54/96, IACHR, Annual Report 1996, OEA/Ser. L/V/II.95 Doc. 7 rev. (1996), para. 22; *Ileana del Rosario Solares Castillo et al. v. Guatemala*, Case 9111, Report No. 60/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), para. 31.

457 *Diario Militar*, supra note 378, *Bámaca Velásquez*, supra note 191, para. 179.

458 *Bámaca Velásquez*, supra note 191, para. 128.

459 *Ibid.*

460 *Ibid.*, para. 129; *Godínez Cruz*, supra note 214, para. 165; *Velásquez Rodríguez*, supra note 214, para. 158

461 *Goiburú et al v. Paraguay*, Judgment of September 22, 2006, IACtHR, (Series C) No. 153, para. 84; *Río Negro Massacres*, supra note 445, para. 114, *Diario Militar*, supra note 378, para. 192. See also preamble of the Inter-American Convention on the Forced Disappearance of Persons, para. 4 [“considering that the forced disappearance of persons of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights”].

462 *Tiu Tojín v. Guatemala*, Judgment of November 26, 2008, IACtHR, (Series C) No. 190, para. 91; *Goiburú*, supra note 461, paras. 128-131.

criminal prosecution of such crimes or suppress the effects of a conviction.”⁴⁶³ Because of the difficulties in obtaining evidence in such cases the Court has established the following:

if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence, or both, or by pertinent logical inference, then the specific disappearance may be considered to have been proven.⁴⁶⁴

In cases of forced disappearances, Inter-American jurisprudence has considered prolonged isolation and forced incommunicado detention to be *per se* cruel and inhuman treatment.⁴⁶⁵ Moreover, in *Velásquez-Rodríguez* and *Godínez-Cruz*, the Court ruled that in cases where a “disappeared person” is detained by authorities shown to practice torture or other cruel, inhuman or degrading treatment, even if there is no direct evidence that the victim suffered any mistreatment, a violation of Article 5 may be found.⁴⁶⁶ Such a finding is based on the State’s failure to ensure Article 5 rights, as required by Article 1(1) of American Convention.⁴⁶⁷

The Commission concluded in one of various cases of forced disappearance in Peru that:

[t]he circumstances in which the victims were detained, kept hidden, isolated, and in solitary confinement, and their defenselessness as a result of being denied and prevented from exercising any form of protection or safeguards of their rights make it perfectly feasible for the armed forces to have tortured the victims with a view to extracting information about subversive groups or units. Accordingly, the Commission concludes that the Peruvian State violated the rights guaranteed to the victims under Article 5 of the Convention.⁴⁶⁸

463 *Tiu Tojin*, *supra* note 462, para. 91. In the same paragraph the Court also affirms that the systematic practice of forced disappearance constitutes a crime against humanity. *See also Barrios Altos v. Perú*, Judgment of March 14, 2001, IACtHR, (Series C) No. 75, para. 41; *Almonacid Arellano*, *supra* note 205, para. 114.

464 *Bámaca-Velásquez*, *supra* note 191, para. 130 (footnotes omitted); *see also Street Children*, *supra* note 191, para. 69; *Castillo Petruzzi*, *supra* note 359, para. 62; *Paniagua-Morales et al*, *supra* note 191, para. 72; *Blake*, *supra* note 287, paras. 47, 49; *Gangaram Panday*, *supra* note 287, para. 49; *Fairén-Garbi and Solis Corrales*, *supra* note 214, paras. 129-133; *Godínez-Cruz*, *supra* note 214, paras. 132-137; *Velásquez-Rodríguez*, *supra* note 214, paras. 126-131.

465 *Bámaca-Velásquez*, *supra* note 191, para. 150; *Amparo Tordecilla Trujillo v. Colombia*, Case 10.337, Report No. 7/00, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999), para. 37; *see also Ileana del Rosario Solares Castillo et al. v. Guatemala*, *supra* note 456, para. 31; *Tarcisio Medina Charry v. Colombia*, Case 11.221, Report No. 3/98, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), paras. 67-68; *Martín Javier Roca*, *supra* note 407, para. 89; *Godínez-Cruz*, *supra* note 214, para. 163; *Velásquez-Rodríguez*, *supra* note 214, para. 156; *Radilla Pacheco*, *supra* note 140, para. 153.

466 *Godínez-Cruz*, *supra* note 214, para. 197; *Velásquez-Rodríguez*, *supra* note 214, para. 187; *Diario Militar*, *supra* note 378, para. 204.

467 *Godínez-Cruz*, *supra* note 214, para. 197; *Velásquez-Rodríguez*, *supra* note 214, para. 187; *Diario Militar*, *supra* note 378, para. 204.

468 *William Leon Laurente et al. v. Peru*, Cases 10.807, 10.808, 10.809, 10.810, 10.878, 11.307, Report No. 54/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.95 Doc. 7 rev. (1998), para. 112.

It is important to note that this and similar cases against Peru occurred between 1989 and 1993, a period during which the Commission found that there was a practice of forced disappearances carried out by State agents as part of a “fight against subversion.” The Court has arrived at similar conclusions in several cases in which it examined the systematic State pattern of forced disappearances during armed conflicts and, in particular, in the context of the “fight against subversion” in Peru,⁴⁶⁹ Chile,⁴⁷⁰ Guatemala,⁴⁷¹ El Salvador⁴⁷² and Honduras.⁴⁷³

Additionally, the Court and the Commission have presumed the veracity of allegations of torture or other cruel, inhuman or degrading treatment in extrajudicial execution cases where it is established that a victim was illegally detained by State agents and where the conditions in which his or her remains are found indicate severe mistreatment.⁴⁷⁴ The underlying logic is that once the victim is under the absolute control of State officials, the State bears the burden of proving that she or he was not subjected to prohibited treatment while in its custody. If the State cannot rebut that presumption, the Commission and the Court will likely find a violation of Article 5 of the American Convention.⁴⁷⁵ The basis for such a finding is even stronger if it is demonstrated that there is a pattern of torturing prisoners in the respondent State.⁴⁷⁶

Indeed, the Court and Commission have also found violations of the right not to be tortured or subjected to cruel, inhuman or degrading treatment in extrajudicial execution cases on the basis of the extreme suffering experienced by victims.⁴⁷⁷

469 *Cantoral Benavides*, *supra* note 191; *see also David Palomino Morales et al. v. Peru*, Cases 10.551, 10.803, 10.821, 10.906, 11.180, 11.322, Report No. 53/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.95 Doc. 7 rev. (1998), para.114; *Raúl Zevallos Loayza et al. v. Peru*, Cases 10.544, 10.745, 11.098, Report No. 52/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.95 Doc. 7 rev. (1998), para. 88; *Anetro Castillo et al. v. Peru*, Cases 10.471, 11.014, 11.067, Report No. 51/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.95 Doc. 7 rev. (1998), para. 112.

470 *Almonacid Arellano*, *supra* note 205, paras. 103-104, *García Lucero*, *supra* note 209, paras. 56-60.

471 *Río Negro Massacres*, *supra* note 445, *Tiu Tojín*, *supra* note 462, *Gudiel Álvarez et al* (“*Diario Militar*”), *supra* note 378, *Bámaca Velásquez*, *supra* note 191.

472 *Serrano-Cruz Sisters*, *supra* note 213; *Contreras et al*, *supra* nota 442.

473 *Juan Humberto Sánchez*, *supra* note 228; *Godínez Cruz*, *supra* note 214; *Velásquez Rodríguez*, *supra* note 214.

474 *Juan Humberto Sánchez*, *supra* note 228, paras. 99-100; *Remigio Domingo Morales and Rafael Sánchez*, *supra* note 322, paras. 133-135; *Joaquín Ortega*, *supra* note 293, paras. 250-252; *Street Children*, *supra* note 191, paras. 157-160, 166, 168.

475 *Juan Humberto Sánchez*, *supra* note 228, para. 100; *Joaquín Ortega*, *supra* note 293, paras. 253-254; *Street Children*, *supra* note 191, paras.169-170.

476 *Juan Humberto Sánchez*, *supra* note 228, para. 97; *Street Children*, *supra* note 191, paras. 167, 170. *See also Joaquín Ortega*, *supra* note 293, paras. 229-38, 254.

477 *Mapiripán Massacre*, *supra* note 245, para. 136; *La Cantuta*, *supra* note 376, para. 113; *Street Children*, *supra* note 191, paras. 162-163, 168; 19 *Merchants v. Colombia*, Judgment of July 5, 2004, IACtHR, (Series C) No 109, para. 150; IACHR, Annual Report 2000, OEA/Ser. L/V/II.111 Doc. 20 rev., para. 34; *Jailton Neri da Fonseca*, *supra* note 386, para 63.

These findings recognize that such victims, once detained, must live with uncertainty as to their fate or with the knowledge of their impending death.⁴⁷⁸

3.3.4 Suffering caused to family members in cases of torture or other cruel, inhuman or degrading treatment

The Court has consistently ruled that family members of victims of human rights violations such as torture, disappearance and extrajudicial executions may experience a violation of their right to physical and moral integrity because of the suffering and anguish caused to them as a direct consequence of the treatment of their loved ones.⁴⁷⁹ In *19 Merchants*, the Court restricted the definition of “family member” to those with a close relationship to the victim.⁴⁸⁰ Subsequently, in *Valle Jaramillo*, the Court decided to establish a presumption *uris tantum* with regard to mothers and fathers, daughters and sons, husbands and wives and permanent companions.⁴⁸¹ Thus, when it comes to direct next of kin, the State must disprove the presumption of damage to the right to mental and moral integrity. In the case of other family members, the Court must determine whether a violation of their mental integrity occurred, on the basis, among other things, of their bond with the victim, the degree of suffering they experienced, and their involvement in the search for justice.⁴⁸²

The Court has deemed the following to be causes of severe suffering and anguish leading to a form of cruel and inhuman treatment for victims’ families: the lack of information or concealment of the truth regarding the victims’ whereabouts, the obstruction of justice and the lack of appropriate investigation and punishment of the perpetrators.⁴⁸³ The Court has also ruled that State negligence in identifying the bodies, notifying the families, as well as the denial of the possibility to recover the victim’s mortal remains in order to bury them appropriately and according to customs, violates family members’ right to physical and mental integrity.⁴⁸⁴

478 *Street Children*, *supra* note 191, paras. 162-163; *19 Merchants v. Colombia*, *supra* note 477 para. 150; *Prada González y Bolaño Castro v. Colombia*, Case 11.710, Report No. 63/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), para. 34; *Jailton Neri da Fonseca*, *supra* note 386, para. 63.

479 *19 Merchants*, *supra* note 477, para. 218; *Juan Humberto Sánchez*, *supra* note 228, paras. 101-102; *Gómez Paquiyauri*, *supra* note 297, para. 118; *Medina* para. 270; *Radilla Pacheco*, *supra* note 140, para. 162; *Bámaca-Velásquez*, *supra* note 191, para. 129; *Blake*, *supra* note 287, paras. 113-114; *Street Children*, *supra* note 191, para. 174.

480 *19 Merchants*, *supra* note 477, para. 218.

481 *Valle Jaramillo et al v. Colombia*, Judgment of November 27, 2008, IACtHR, (Series C) No. 192, para. 119.

482 *Ibid.*, para. 119.

483 *Ibid*; *Bámaca-Velásquez*, *supra* note 191, paras. 165-66; *Blake*, *supra* note 287, paras. 113-115; *Radilla Pacheco*, *supra* note 140, para. 167; *Diario Militar*, *supra* note 378, para. 301; *Mapiripan Massacre*, *supra* note 245, paras. 145-146.

484 *Street Children*, *supra* note 191, para. 173; *Bámaca Velásquez*, *supra* note 191, para. 145.f and 161; *Moiwana Community v. Suriname*, Judgment of June 15, 2005, IACtHR, (Series C) No. 124, para. 103.

In *Mack*, the Court considered the threats and harassment suffered by the victim's family members to be a direct result of their efforts to obtain justice in the case, as well as the pattern of obstruction of criminal investigations, including the murder of a police investigator and threats to and harassment of witnesses.⁴⁸⁵ The Court found that all of these factors caused the family constant anguish, "feelings of frustration and powerlessness and a deep fear of suffering the same pattern of violence fostered by the State."⁴⁸⁶ On the foregoing basis the Court ruled that the State violated the family's right to physical and mental integrity under Article 5 of the American Convention.⁴⁸⁷

In *Rosendo Cantú*, the Court determined that the "uprooting" that the mother had faced as a consequence of rape, namely the drastic move from the countryside to the city, multiple subsequent moves and in general the distance from her community and indigenous culture, had affected the victim's daughter "in the formation of her identity" and could "in the future form emotional wounds."⁴⁸⁸ Based on these considerations, the Court concluded that the rape of Mrs. Rosendo Cantú, the consequences of said rape, as well as the impunity in the case, "provoked emotional harm [to the child], in contravention of the rights recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of said treaty."⁴⁸⁹

In *Cotton Field*, the Court concluded that the family members of the three disappeared young girls had suffered degrading treatment, contrary to Article 5, paragraphs 1 and 2, of the American Convention, considering that:

The irregular and deficient actions of the state authorities when trying to discover the whereabouts of the victims after their disappearance had been reported; the lack of diligence in determining the identity of the remains, the circumstances and causes of the deaths; the delay in the return of the bodies; the absence of information on the evolution of the investigations, and the treatment accorded the next of kin during the whole process of seeking the truth has caused them great suffering and anguish.⁴⁹⁰

With the exception of its decisions in *Tibi* and *De la Cruz Flores*,⁴⁹¹ the Court has generally not classified the suffering of family members of those illegally detained, or even those sentenced to death without due process, as a violation of Article 5

485 *Myrna Mack-Chang v. Guatemala*, Judgment of November 25, 2003, IACtHR, (Series C) No. 101, para. 232.

486 *Ibid.*

487 *Ibid.*, para. 233.

488 *Rosendo Cantú*, *supra* note 442, para. 138.

489 *Ibid.*, para. 139.

490 *Cotton Field*, *supra* note 192, para. 424.

491 *De la Cruz Flores*, *supra* note 400, para. 135-136; *Tibi*, *supra* note 362, paras. 161-162.

of the American Convention.⁴⁹² In *Urrutia* the Court recognized the suffering and anguish endured by the victims' families and stated that "therefore, it will take this circumstance into consideration when establishing reparations,"⁴⁹³ and the Court ruled similarly in *Cantoral-Benavides*.⁴⁹⁴ However, in these cases the Court did not find a violation of the right to humane treatment protected in Article 5 of the Convention.⁴⁹⁵

3.3.5 Threats

In keeping with the case law of the European Court, the Court and Commission have stated that the mere threat of conduct prohibited by Article 5 of the American Convention, when the threat is sufficiently real and imminent, may in itself constitute a violation of that provision.⁴⁹⁶ Indeed, the Court and the Commission have concluded that "creating a threatening situation or threatening an individual with torture may, at least in some circumstances, constitute inhuman treatment;"⁴⁹⁷ the threat or real risk of being subjected to physical mistreatment causes can cause in certain circumstances severe anguish amounting to psychological torture.⁴⁹⁸

In *Miguel Castro Castro Prison*, the Court concluded that "the inmates that survived the attack experienced psychological torture due to the constant threats and the real danger generated by the state's actions, which could result in their death and serious injuries to their physical integrity."⁴⁹⁹

In *Juvenile Reeducation Institute*, although it was not shown that all inmates at the Center experienced suffering caused by methods of punishment prohibited by Article 5 of the American Convention, the Court applied the particular circumstances to the body of case law available, in terms of the anguish that people may feel when in threatening situations or when threatened with torture "in the case *sub judice*, the threat of those punishments was real, creating a climate of relentless tension and violence that was inimical to the inmates' right to live with dignity."⁵⁰⁰

492 See *Fermin Ramírez v. Guatemala*, Judgment of June 20, 2005, IACtHR, (Series C) No. 126, para. 120; *Maritza Urrutia*, *supra* note 297, para. 97; *Cantoral-Benavides*, *supra* note 191, para. 105.

493 *Maritza Urrutia*, *supra* note 297, para. 97.

494 *Cantoral-Benavides*, *supra* note 191, para. 105.

495 *Maritza Urrutia*, *supra* note 297, para. 97; *Cantoral-Benavides*, *supra* note 191, para. 105.

496 *19 Merchants*, *supra* note 477, para. 149; *Cantoral-Benavides*, *supra* note 191, para. 102; *Street Children*, *supra* note 191, para. 165; *Carlos Manuel Prada González and Evelio Antonio Bolaño Castro*, *supra* note 229, para. 34; *Cantoral Benavides*, *supra* note 191, para. 102; *Street Children*, *supra* note 191, para. 165; *Miguel Castro Castro Prison*, *supra* note 356, para. 279; *Juvenile Reeducation Institute*, *supra* note 385, para. 167.

497 *Street Children*, *supra* note 191, para. 165; *19 Merchants*, *supra* note 477, para. 149. See also *Carlos Manuel Prada González and Evelio Antonio Bolaño Castro*, *supra* note 229, para. 34.

498 *Tibi*, *supra* note 362, para. 147; *Maritza Urrutia*, *supra* note 297, para. 92.

499 *Miguel Castro Castro Prison*, *supra* note 356, para. 288.

500 *Juvenile Reeducation Institute*, *supra* note 385, para. 167.

In *Caesar* the Court determined that the victim's suffering upon witnessing the flogging of other inmates and the fear of imminent physical abuse caused him severe anguish.⁵⁰¹

The Commission also concluded that victims of the practice of extrajudicial execution in Guatemala were brutally tortured before executed in order to instill extreme fear in members of their communities regarding potential involvement with subversive groups.⁵⁰² Moreover, in *Loren Laroye Riebe Star* the Commission found that the fear experienced by three priests when illegally detained by heavily armed State officials, compounded by the humiliating treatment they received while in custody, amounted to a violation of Article 5 of the American Convention.⁵⁰³

3.3.6 Conditions of detention

As stated above, under Article 5(2) any person deprived of his or her liberty has the right to be detained in conditions that are respectful of his or her personal dignity.⁵⁰⁴ This right is expressed as the obligation of the State to guarantee such conditions, a duty which is determined by what the Court has defined as the "unique relationship and interaction of subordination between an inmate and the State."⁵⁰⁵ Therefore, because it is "responsible for detention establishments, [the State] is the guarantor of the rights of detainees."⁵⁰⁶

Consequently, though deprivation of liberty entails legitimate restrictions of certain rights, as punishment relating to the perpetration of illicit conduct, the infliction of injury, unnecessary suffering or damage to health which results in the deterioration of physical, psychological or moral integrity may constitute cruel treatment in violation of Article 5(2) of the American Convention.⁵⁰⁷ Furthermore, the State, when exercising its duty to protect the well-being of prisoners, must take into account any special vulnerability of a detained person, for instance, that of minors or mentally disabled persons.⁵⁰⁸

501 *Caesar*, *supra* note 355, para. 78.

502 *Remigio Domingo Morales et al*, *supra* note 293, para. 134.

503 *Loren Laroye Riebe Star*, *supra* note 400, paras. 89-92.

504 See Section 3.2.3., *supra*.

505 *Juvenile Reeducation Institute*, *supra* note 385, paras. 153-159.

506 See *Hilaire, Constantine and Benjamin*, *supra* note 212, para. 165. See also *Cantoral-Benavides*, note 191, para. 87; *Neira Alegria, et al. v. Peru*, Judgment of January 19, 1995, IACtHR, (Series C) No. 20, para. 60; *Minors in Detention*, *supra* note 402, para. 135; *Pacheco Teruel v. Honduras*, Judgment of April 27, 2012, IACtHR, (Series C) No. 241, para. 63.

507 *Lori Berenson-Mejía*, *supra* note 355, para. 101. See also *García Asto*, *supra* note 358, para. 223; *Miguel Castro Castro Prison*, *supra* note 356, para. 314; *Juvenile Reeducation Institute*, *supra* note 385, para. 153 and *Pacheco Teruel*, *supra* note, 506, para. 64.

508 *Bulacio*, *supra* note 293, para. 126; *Víctor Rosario Congo*, *supra* note 387, paras. 53-54. See also Sections 3.2, 3.2.2, 3.2.3, *supra* (vulnerable groups, in the Section dedicated to cruel, inhuman and degrading treatment-inherent dignity of the human being).

The efforts of the Inter-American System to encourage the authorities of Member States to improve the conditions in internment or detention facilities to ensure the decent treatment of individuals deprived of liberty, has led to the adoption by the Inter-American Commission of the “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas”⁵⁰⁹ and the first report on human rights of persons deprived of liberty in the Americas.⁵¹⁰

In the report, the Commission identified as the most serious and widespread problems in the region:

- a. overcrowding and overpopulation;
- b. the deficient conditions of confinement, both physical conditions and the lack of basic services;
- c. the high incidence of prison violence and the lack of effective control by the authorities;
- d. the use of torture in the context of criminal investigations;
- e. the excessive use of force by those in charge of security at prisons;
- f. the excessive use of preventive detention, which has direct repercussions on overpopulation of the prisons;
- g. the lack of effective means for protecting vulnerable groups;
- h. the lack of labor and educational programs and the lack of transparency in the mechanisms of access to these programs; and
- i. corruption and the lack of transparency in prison management.

In general terms, the Court has determined throughout its jurisprudence that:

detention conditions where prison facilities are overcrowded,⁵¹¹ isolation in a small cell, with no ventilation or natural light, without beds for resting and without adequate hygiene, and suffering lack of communication or restrictions to visits, constitute a violation to humane treatment.⁵¹²

Circumstances which have been taken into account when determining whether prisoners have suffered cruel, inhuman or degrading treatment include:

509 The document was adopted during the 131st period of sessions, held between March 3 and 14, 2008, via Resolution 01/08, available at: <https://www.oas.org/en/iachr/mandate/Basics/20.Persons%20deprived%20of%20liberty.pdf>.

510 IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II. Doc. 64 (2011), available at: <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>.

511 The Court has highlighted that overcrowding itself constitutes a violation of the right to personal integrity. See *Tibi*, *supra* note 362, para. 150, and *Fleury et al v. Haiti. Merits and Reparations*, Judgment of November 23, 2011. IACtHR, (Series C) No. 236, para. 85.

512 *García Asto*, *supra* note 358, para. 221. See also *Tibi*, *supra* note 362, para. 150; *Caesar*, para. 96; *Juvenile Reeducation Institute*, para. 152; *Raxcacó Reyes*, *supra* note 345, para. 95; *Miguel Castro Castro Prison*, *supra* note 356, para. 315.

prolonged solitary confinement or detention incommunicado;⁵¹³ detention in small, overcrowded cells⁵¹⁴ with no natural light, or even artificial light;⁵¹⁵ inadequate ventilation; no bed to rest on;⁵¹⁶ buckets instead of toilets; bad or terrible hygiene conditions;⁵¹⁷ lack of sufficient food and restrictive visiting schedules; lack of warm clothing; and lack of access to physical exercise, education and religious services.⁵¹⁸ Additionally, the Court has ruled that a lack of appropriate and regular medical and psychological treatment equals a violation of the right to humane treatment.⁵¹⁹ In *Vera Vera et al*, the victim, who had been deprived of his liberty, died due to complications arising from inadequate treatment for a bullet wound. Invoking the United Nations Standard Minimum Rules for the Treatment of Prisoners,⁵²⁰ the Court highlighted the deterioration of his physical condition, culminating in his death, which “could have been avoided with appropriate and timely medical treatment” and concluded that, because of the medical negligence by the State authorities given the type of injury suffered by the prisoner, he had been the victim of “inhumane and degrading treatment.”⁵²¹ Equally, the Court has held that States should allow and facilitate medical treatment for detainees, preferably from a doctor of their choice and share with the judge, the detainee and his or her lawyer the results of any examinations conducted.⁵²² In *Miguel Castro Castro Prison*, the Court emphasized the importance of complying with the obligation to provide medical care and treatment for persons deprived of liberty who are injured on site because of the actions of security agents.⁵²³

513 *Juan Humberto Sánchez, Godínez Cruz*, *supra* note 214; *Velásquez Rodríguez*, *supra* note 214.

514 In *Montero Aranguren* (*supra* note 410, para. 91), the Court concluded that an approximate space of 30 sq. cm for each inmate was “absolutely unacceptable and involves *per se* cruel, inhuman and degrading treatment.” See also *López Álvarez v. Honduras*, Judgment of February 1, 2006, IACtHR, (Serie C) No. 141, paras. 207-210.

515 *García Asto*, *supra* note 358, para. 221.

516 *Ibid.*, para. 108; *Caesar*, *supra* note 355, para. 109.

517 *Montero Aranguren*, *supra* note 410, para. 99.

518 An emblematic case where most of the conditions against dignified treatment are demonstrated is the case of *Miguel Castro Castro Prison*, *supra* note 356, see para. 319. See also *Montero Aranguren*, *supra* note 410; *Juvenile Rehabilitation Institute*, *supra* note 385, paras. 165-167.

520 *Tibi*, *supra* note 362, para. 157; *Juvenile Rehabilitation Institute*, *supra* note 385, para. 165-171; *García Asto*, *supra* note 358, para. 228; *De la Cruz Flores*, *supra* note 400, para. 131; *Vélez Lóor*, *supra* note 191, para. 222 [“The Court notes that, despite the recurring problems of migraines and dizziness and the reason for which a CAT scan was ordered by the physicians who treated him, the scan was never performed and Mr. Vélez Lóor did not receive adequate and timely medical care for this ailment. This could have caused harmful consequences for his current health condition, and it is also contrary to required dignified treatment.”]

521 The Court, reiterating Principle 24, states 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 all necessary measures[.]” (*Vera Vera et al v. Ecuador*, Judgment of May 19, 2011, IACtHR, (Series C) No. 226, para. 50).

522 *Vera Vera*, *supra* note 520, para. 78.

523 *Tibi*, *supra* note 362, para. 156; *Bulacio*, *supra* note 293, para. 131.

In *Ximenes Lopes*, the victim, an inmate of a psychiatric center, died without receiving adequate medical attention after suffering ill-treatment. Just a few hours before his death, when his mother found him, “Mr. Damião Ximenes-Lopes was bleeding and had bruises all over his body, his clothes were torn, he was dirty and reeking of feces and urine, his hands were tied at the back, and he was breathing with difficulty, in the throes of death, screaming and asking for help to the police.”⁵²⁴ As a consequence of the inhumane conditions in the Casa de Reposo Guararapes, where Ximenes Lopes was interred, the Court judged that:

Due to their psychological and emotional condition, persons with mental illness are particularly vulnerable to any health treatment, and such vulnerability is greater when they are admitted to mental health institutions. This increased vulnerability is due to the imbalance of power between patients and the medical staff responsible for their treatment, as well as to the high degree of intimacy which is typical of the treatment of psychiatric illnesses.

The Court considers that any health treatment administered to persons with mental illness should aim at achieving the patient’s welfare and the respect for his or her dignity as a human person, which is translated into the duty to adopt the respect for the intimacy and autonomy of persons as guiding principles for administering psychiatric treatment.⁵²⁵

Both the Court and the Commission have incorporated into their jurisprudence the standard international principles regarding prison conditions, led by the United Nations Standard Minimum Rules for the Treatment of Prisoners⁵²⁶ in assessing whether detention conditions comply with Article 5 of the American Convention, specifically regarding accommodation, hygiene, exercise, medical treatment, religious services and library facilities for prisoners.⁵²⁷ In consequence, these standards

524 *Miguel Castro Castro Prison*, *supra* note 356, para. 302.

525 *Ximenes Lopes*, *supra* note 387, para. 121.

526 *Ibid.*, paras. 129-130.

527 U.N. Economic and Social Council (ECOSOC), First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, paras. 10-12, 15, 21, 24-25, 31, 40-42, Res. 663 (XXIV) (July 31, 1957), Res. 2076 (LXII) (May 13, 1977). The Court has also referred to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly on December 9, 1988, Resolution 43/173, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly of the UN on 14 December 1990, resolution 45/113. See also: UN General Comment No. 21 of the Human Rights Committee. HRI/GEN/1/Rev.9 (Vol. I) (1992), Replaces General Comment No. 9, Humane treatment of persons deprived of liberty (Art. 10).

528 *Pacheco Teruel*, *supra* note 506, para. 67; *Montero Aranguren*, *supra* note 410, para. 94; *Denton Aitken v. Jamaica*, Case 12.275, Report No. 58/02, IACHR, Annual Report 2002, OEA/Ser.L/V/II.117 Doc. 1 rev. 1 (2002), para. 135. See also *Leroy Lamey*, *supra* note 401; *Michael Edwards et al v. Bahamas*, Cases 12.067, 12.068, 12.086, Report No. 48/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), para. 195.

are to be upheld, irrespective of the nature of the offense that is the reason for the imprisonment⁵²⁸ and regardless of the State's economic and budgetary problems.⁵²⁹ The organs of the Inter-American System of Human Rights have also referred to the standards set by the United Nations Minimum Rules, to assess the need for and specify the content of provisional measures to protect inmates at a given center.⁵³⁰

Articles 5(4), (5) and (6) of the American Convention provide for additional State obligations regarding the treatment of persons deprived of liberty.⁵³¹ Article 5(4) mandates the separation of accused persons and convicted persons and requires that they receive treatment according to their status.⁵³² Article 5(5) demands that minors be held separately from adults and that they be treated in accordance with their status as minors.⁵³³ Article 5(6) states that "punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners."⁵³⁴

In *Tibi*, the Court found that the detention facility where the victim was detained did not separate accused and convicted persons, and this exposed Mr. Tibi to violent living conditions.⁵³⁵ On this basis, the Court found a violation of Article 5(4) of the American Convention.⁵³⁶

In *Juvenile Reeducation Institute*, the Court determined that many of the victims who were minors were transferred, for punishment or due to scarce resources, to adult prisons. These minors shared physical space with adult prisoners, and were thereby exposed to violence and sexual abuse.⁵³⁷ The Court ruled that this situation violated Article 5(5).⁵³⁸ Similarly, the Commission in *Minors in Detention* stated that the cohabitation of juvenile and adult inmates violated the minors' human dignity and led to abuses of their personal integrity.⁵³⁹

529 Joseph Thomas, Case 12. 182, Report No. 127/01, IACHR, Annual Report 2001, OEA/Ser. L/V/II.114 Doc. 5 rev. (2001), para. 132.

530 *Ibid.*; *Donnason Knights*, *supra* note 400, para. 315. *See also Leroy Lamey*, *supra* note 401, para. 203; *Montero Aranguren et al (Retén de Catia)*, *supra* note 410, para. 85; *Vélez Looz*, *supra* note 191, para. 198; *Pacheco Teruel*, *supra* note 506, para. 67(j).

531 IACtHR, *Mendoza Prisons*, Resolution of June 18, 2005, Provisional measures.

532 American Convention, *supra* note 16, arts. 5(4)-(6).

533 *Ibid.*, art. 5(4).

534 *Ibid.*, art. 5(5).

535 *Ibid.*, art. 5(6).

536 *Tibi*, *supra* note 362, para. 158.

537 *Ibid.*

538 *Juvenile Reeducation Institute*, *supra* note 385, para. 175.

539 *Ibid.*

540 *Minors in Detention*, *supra* note 402, paras. 125 to 130.

Finally, the Court in *Berenson-Mejía* found that the conditions of detention endured by the victim amounted to cruel, inhuman and degrading treatment, and it also found that the State failed to ensure that the essential aim of the victim's punishment was her "reform and social readaptation."⁵⁴⁰ Therefore, the Court concluded that the State party violated Article 5(6) of the American Convention.⁵⁴¹

3.3.7 Incommunicado detention and solitary confinement

Detainees held incommunicado are prevented from communicating with the outside world, including their lawyers, family members and consular officials.⁵⁴² Incommunicado detention in the case law of the Inter-American System generally refers to situations in which arrested persons are not brought before a judge or other official authorized by law to review the legality of their detention.⁵⁴³ Since *Velásquez Rodríguez*, the Court has established that:

prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.⁵⁴⁴

In this context, the Court has continually determined that incommunicado detention is permissible only as an exceptional measure given the "situation of extreme mental and moral suffering" that it can cause in the prisoner and, consequently, it should be strictly applied and only in exceptional circumstances.⁵⁴⁵ The Court has held on several occasions throughout its judicial activity that incommunicado detention of a victim is in itself a violation of Article 5(2) of the Convention. For example, in *Suárez Rosero*, the victim was held incommunicado for 36 days and deprived of all communication with the outside world, including interaction with his family and a lawyer. These circumstances led the Court to conclude that Mr. Suárez Rosero was subjected to cruel, inhuman and degrading treatment.

541 *Lori Berenson-Mejía*, *supra* note 355, para. 101.

542 *Ibid.*

543 *Suárez Rosero*, *supra* note 237, paras. 51, 91; *Bulacio*, *supra* note 293, para. 130. It is important to note that State failure to inform the consular authorities of a detainee's country of nationality constitutes a breach of Article 36 of the Vienna Convention on Consular Relations. 596 U.N.T.S. 262, April 1963. This is an independent violation of an international treaty – albeit not one specifically intended to protect human rights – which may or may not coincide with a situation of incommunicado detention.

544 *Suárez Rosero*, *supra* note 237, para. 51; *Maritza Urrutia*, *supra* note 297, para. 73.

545 *Velásquez Rodríguez*, *supra* note 214, para. 156.

546 *Cantoral Benavides*, *supra* note 191, para. 84. See also *Suárez Rosero*, *supra* note 237, para. 89; *Bulacio*, *supra* note 293, para. 127; *Castillo-Petruzzi*, *supra* note 359, para. 195. In some judgments, it would appear that the Court has a more restrictive approach, as it considers that incommunicado detention is "forbidden" in that it is *per se* a violation of personal integrity given the serious effects on the prisoner, who is placed in a situation of particular vulnerability that increases the risk of aggression and arbitrary treatment. See, among others, *Montero Aranguren*, *supra* note 410, para. 94).

In *Castillo Petruzzi*, similarly to other cases where the Court analyzed the application of the Peruvian anti-terrorism law against persons arrested and convicted for crimes of terrorism, the Court held that detention for between 36 and 37 days under the power of the administrative authority without being brought before a judge constituted *per se* a violation of Article 5(2) of the Convention.⁵⁴⁶

Regarding solitary confinement, the Court has ruled as follows:

The Court deems that solitary confinement cells must be used as disciplinary measures or for the protection of persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accommodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that the prisoner is fit to sustain it. The Court emphatically points out that confinement in a dark cell and incommunication are forbidden. To such end, the United Nations Committee against Torture has established that confinement cells measuring 60 x 80 centimeters where no light or ventilation exists, and where the prisoner can only be standing or crouched down, “are torture instruments.”⁵⁴⁷

In 1992, as part of its counterinsurgency strategy, Peru issued Decree – Law No. 25.475, which regulated the legal framework around terrorism offenses. The decree set out conditions and procedures which were incompatible with the American Convention⁵⁴⁸ including arrests and prison sentences which did not meet the minimum standards of decent treatment by establishing solitary and incommunicado confinement.⁵⁴⁹ In one of the cases examined by the Court, the victim, while detained at the Yanamayo Prison, which stood at 3,800 meters above sea level, was held for a year in continuous solitary confinement, without heating, ventilation or natural light.⁵⁵⁰ The prisoners in the *Petruzzi* case⁵⁵¹ and in the *Loayza Tamayo* case⁵⁵² also suffered punishment in similar conditions of isolation. The Court took a similar approach in other cases where this law had been applied, and the victims, at the time of arrest, had been held incommunicado for periods varying between eight days and one month.⁵⁵³

3.3.8 Unlawful detention

The Court has consistently held that a person unlawfully detained “is in a situation of heightened vulnerability in which there is a high risk of his or her rights

547 *Castillo Petruzzi*, *supra* note 359, para. 192. Similarly, *Cantoral Benavides*, *supra* note 191, para. 81; *De la Cruz Flores*, *supra* note 400, para. 130; *Miguel Castro Castro Prison*, *supra* note 356, para. 324-333.

548 *Montero Aranguren et al v. Venezuela*, *supra* note 410, para. 94.

549 *Loayza Tamayo*, Judgment of November 27, 1998 (Reparations and Costs), IACtHR, (Series C) No. 42, paras. 159-164.

550 Namely, Article 13 and Article 20 of the Decree.

551 *Lori Berenson Mejía*, *supra* note 355, para. 106.

552 *Castillo Petruzzi*, *supra* note 359, para. 295.

553 *Loayza Tamayo*, *supra* note 118, para. 58.

554 *Cantoral Benavides*, *supra* note 191, paras. 81-84, 104.

being violated, such as the right to physical integrity and to be treated with dignity.”⁵⁵⁴ In such cases, the Court has determined that the victims were deprived of their liberty by State agents in violation of the procedural and substantive rules contained in Article 7(2)⁵⁵⁵ of the American Convention.⁵⁵⁶ Unlawful detention usually coincides with incommunicado detention.⁵⁵⁷

In addition, in *Sánchez* the Court found that while it did not have sufficient evidence to establish precisely the days or hours of the victim’s detention, “due to the illegality of the detention, a brief period of detention is enough for it to constitute an infringement of his mental and moral integrity according to the standards of international human rights law.”⁵⁵⁸ The Court further ruled that the mere fact of unlawful detention allows the Court “to infer, even if there is no additional evidence in this regard, that treatment of the victim during his isolation was inhuman, degrading, and extremely aggressive.”⁵⁵⁹ The Court reiterated this holding in *Urrutia*⁵⁶⁰ and *Gómez-Paquiyaui*.⁵⁶¹

Article 7 of the Convention stipulates that any person deprived of liberty shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.⁵⁶² Although “promptly” is not defined in the Convention, the Court and the Commission have used domestic laws, especially constitutional provisions that regulate the deprivation of liberty, as governing rules for constructing the meaning of the term.⁵⁶³ In *Street Children*, the Court ruled that not bringing the victims before a judge within six hours after their arrest, as required by the Guatemalan Constitution, was a violation of Article 7 of the Convention.⁵⁶⁴

The Commission reviewed the issue of unlawful detention as cruel and inhuman treatment in *Lizardo Cabrera*.⁵⁶⁵ The petitioner, a national of the Dominican

555 *Cantoral-Benavides*, *supra* note 191, para. 90 and cases cited therein. *See also* *Bámaca-Velásquez*, *supra* note 191, para. 150.

556 Article 7(2) provides that “[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.” American Convention, *supra* note 16, art. 7(2).

557 *Bámaca-Velásquez*, *supra* note 191, para. 143; *Cantoral-Benavides*, *supra* note 191, paras. 73-77; *Street Children*, *supra* note 191, para. 132.

558 *Bámaca-Velásquez*, *supra* note 191, para. 143; *Cantoral-Benavides*, *supra* note 191, para. 81; *Street Children*, *supra* note 191, para. 164.

559 *Juan Humberto Sánchez*, *supra* note 228, para. 98.

560 *Ibid.*

561 *Maritza Urrutia*, *supra* note 297, para. 87.

562 *Gómez-Paquiyaui*, *supra* note 297, para. 108.

563 American Convention, *supra* note 16, art. 7(5).

564 *Street Children*, *supra* note 191, para. 133; *Dayra María Levoyer Jiménez v. Ecuador*, Case No. 11.992, Report No. 66/01, IACHR, Annual Report 2001, OEA/Ser./L/V/II.114 Doc. 5 rev. (2001), para. 39.

565 *Street Children*, *supra* note 191, para. 133-134, 136.

566 *Luis Lizardo Cabrera*, *supra* note 369, para. 1.

Republic, was accused of perpetrating a bomb attack, arrested by the National Police and confined and tortured for five days.⁵⁶⁶ Despite the judicial decisions ordering his release based on lack of evidence, the National Police failed to do so, claiming that he must remain in prison on the basis of “police regulations.”⁵⁶⁷ The Commission found that the detention of Mr. Cabrera was illegal.⁵⁶⁸

The Commission also concluded that the victim’s continued detention rose to the level of torture, and in finding a violation of Article 5 of the American Convention, it relied on the definition of torture provided in Article 2⁵⁶⁹ of the Inter-American Torture Convention.⁵⁷⁰ First, “the imprisonment [was] imposed as a deliberate act.”⁵⁷¹ Secondly,

the measure affecting Mr. Lizardo constitute[d] a severe attack on his mental and moral integrity. The severity [of the treatment] derive[d] from the constant uncertainty over Mr. Lizardo’s future, which ha[d] lasted six years.⁵⁷²

Third, the purpose of the detention was to inflict pain on the victim.⁵⁷³

Finally, the ill-treatment was committed by State agents.⁵⁷⁴ Although the Court has not yet judged the responsibility of the Mexican State in relation to the application of a type of preventive detention known as “arraigo,” the Commission has repeatedly expressed concern about these measures provided for in the Constitution of the Mexican States, which empower the judicial authority to order the detention of a person for a period of 40 days, extendable to 80, without formally charging them or offering them the same judicial guarantees as during criminal proceedings.⁵⁷⁵ This measure, which is restrictive to personal freedom, has also led to fears, proven in many cases, about possible violations of the physical and psychological integrity of persons detained under this legislation in order to obtain confessions.⁵⁷⁶

3.3.9 Excessive Use of Force

In *Loayza Tamayo* the Court stated that “[a]ny use of force that is not strictly necessary to ensure proper behavior on the part of the detainee constitutes an assault on

567 *Ibid.*, para. 2.

568 *Ibid.*, para. 8.

569 *Ibid.*, para. 63.

570 Art. 2, IACPT.

571 *Luis Lizardo Cabrera*, *supra* note 369, para. 63.

572 *Ibid.*, para. 85.

573 *Ibid.*

574 *Ibid.*, para. 81.

575 *Ibid.*, para. 85.

576 See for example, IACHR Press Release: http://www.oas.org/en/iachr/media_center/PReleases/2011/105.asp.

577 For further information, read (in Spanish), *La Figura del Arraigo en México*, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), available at: →

the dignity of the person... in violation of Article 5 of the American Convention.”⁵⁷⁷ The Court reiterated this standard in *Castillo-Petruzzi* and *Cantoral-Benavides*, among other cases.⁵⁷⁸ In *Miguel Castro Castro Prison*, within the framework of what the Court considered as “an attack carried out to threaten the life and integrity of the inmates that were located in pavilions 1A and 4B of the Miguel Castro Castro Prison,”⁵⁷⁹ it concluded the following:

the totality of the acts of aggression and the conditions in which the State deliberately put the inmates (those that died and those that survived) during the days of the attack, which caused all of them a serious psychological and emotional suffering, constituted a psychological torture carried out in offense of all the members of the group, with violation of Articles 5(1) and 5(2) of the American Convention, and 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.⁵⁸⁰

The Court considered that during “Operative Transfer 1,” the right to physical integrity of the inmates had been violated, contrary to the provisions established in Article 5, due to the arbitrary and totally disproportionate use of force by the State, with firearms, explosives and gases (white phosphorous gas bombs) against the inmates in pavilions 1A and 4B “with indiscriminate gunshots, in complete darkness, in a closed area and in overcrowded conditions.”⁵⁸¹ Moreover, throughout the days that the operative took place, their suffering was aggravated due to deprivation of food, water, light and medical attention.⁵⁸²

The Court has also granted a growing number of provisional measures to urge the State to guarantee the life and physical integrity of prisoners in light of the worrying violence that occurs in prisons in several countries, such as in the cases of the Mendoza Prisons in Argentina; the “*Dr. Sebastião Martins Silveria*” Prison and the “*Complexo do Tatuapé*” da Febem (Fundação Estadual do Bem-Estar do Menor) in Brazil; the Prison in the Judicial Capital El Rodeo I and El Rodeo II in the Central Western Region

<http://cmdpdh.org/wpcontent/uploads/2013/03/La+Figura+del+Arraigo+Penal+en+M%C3%A9xico+Libro.pdf>; Report presented before the Committee Against Torture, on the occasion of the review of the 5th and 6th Periodic Reports of Mexico, “Arraigo Made in Mexico: a violation to human rights,” OMCT and CMDPDH, October 2012, available at: <http://cmdpdh.org/english/?p=1439>.

578 *Loayza-Tamayo*, *supra* note 118, para. 57.

579 *Cantoral-Benavides*, *supra* note 191, para. 96; *Castillo-Petruzzi*, *supra* note 359, para. 197. Nevertheless, in *Alegria* and *Durand and Ugarte*, the Court rejected the argument that the excessive use of force to quell a riot in the prison, where the victims were killed, constituted a violation of Article 5 of the American Convention. The Court concluded that while deaths resulting from excessive use of force may result in a violation of the right to humane treatment, deaths resulting from the disproportionate use of force do not fall within the purpose and scope of Article 5 (*Durand and Ugarte*, *supra* note 229, paras 78-79; *Neira Alegria*, *supra* note 506, para 86.).

580 *Miguel Castro Castro Prison*, *supra* note 356, para. 215.

581 *Ibid.*, para. 293.

582 *Miguel Castro Castro Prison*, *supra* note 356, para. 284.

583 *Ibid.*, para. 285.

(Uribana Prison); the Capital Region Penitentiary Yare I and Yare II and Monagas Judicial Confinement Center (“La Pica”) in Venezuela.⁵⁸³

The Commission has ruled that under certain circumstances the State has the right and the responsibility to use force to enforce the law or maintain public order, even if it may result in death or bodily injury.⁵⁸⁴ However, when force is excessive, it may infringe upon the right not to be subjected to cruel, inhuman or degrading treatment. The use of force can be characterized as excessive if it is not “necessary and proportionate to the needs of the situation and the objective to be achieved.”⁵⁸⁵ In consequence, “[t]he legitimate use of force implies, among other factors, that it be both necessary and proportional to the situation,⁵⁸⁶ in other words, that it be exercised with moderation and in proportion to the legitimate objective pursued, and in an effort to reduce to a minimum any personal injury and loss of human lives.”⁵⁸⁷

In *Finca “La Exacta,”* for example, more than 200 agents of the Guatemalan National Police armed with teargas and firearms and supported by helicopters, invaded property occupied by a number of farmworkers and their families protesting working conditions.⁵⁸⁸ The Government argued that the use of force was necessary to execute arrest warrants.⁵⁸⁹ As a result of this action, three persons died and eleven were severely injured.⁵⁹⁰ The Commission found that the use of force in this case was not necessary to achieve the Government’s stated purpose.⁵⁹¹ The police had negotiated with the protesters for only a few hours before resorting to violence.⁵⁹² The police officers failed to wait the sufficient amount of time until it became clear that the persons they sought would not surrender or cooperate.⁵⁹³ In addition, the means employed in the attack demonstrated that the force exerted was not proportionate to the objective of arresting a few of the occupants.⁵⁹⁴ In fact, law enforcement personnel used a tractor, air support and heavy weapons to surround the occupants, then opened fire on them.⁵⁹⁵ The police tactics make clear that

584 See all the provisional measures related to the protection of persons deprived of liberty at: <http://oas.org/en/iachr/pdl/protection/provisional.asp>.

585 *Finca “La Exacta” v. Guatemala*, Case 11.382, Report No. 57/02, IACHR, Annual Report 2002, OEA/Ser.L/V/II.117 Doc. 1 rev. 1 (2002), para. 39.

586 *Ibid.*, para. 40.

587 See also *Second Report in the Situation of Human Rights Defenders in the Americas*, *supra* note 56, pp. 52-63.

588 *Corumbiara Massacre v. Brazil*, Case 11.556, Report No. 32/04, IACHR, Annual Report 2004, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004), para. 174.

589 *Finca “La Exacta,” supra* note 584, para. 35.

590 *Ibid.*, para. 37.

591 *Ibid.*, para. 68.

592 *Ibid.*, para. 55.

593 *Ibid.*, para. 54.

594 *Ibid.*

595 *Ibid.*, para. 55.

596 *Ibid.*

the attack was aimed at the forcible eviction of the occupants and not the arrest of the persons named in the warrants.⁵⁹⁶ Furthermore, the use of force involved in the police plan of attack lacked appropriate safeguards against the unrestrained use of force.⁵⁹⁷ Based on the foregoing, the Commission deemed the State action an excessive use of force, which violated the injured persons' rights to physical, mental and moral integrity under Article 5 of the American Convention.⁵⁹⁸

The Commission applied a similar analysis in *Corumbiara*, in which approximately 500 farm workers invaded a ranch and were evicted by military police, assisted by landowners and hired gunmen.⁵⁹⁹ In this case, the Commission concluded that the use of excessive force, which injured and killed a number of civilians, violated their right to humane treatment.⁶⁰⁰ The situation was aggravated by the State's failure to investigate the resulting death and injuries.⁶⁰¹

3.3.10 Death penalty

In *Hilaire*, the Court stated that even though the American Convention does not prohibit the death penalty in itself,⁶⁰² its related provisions on this issue "should be interpreted as "imposing restrictions designed to delimit strictly its application and scope, in order to reduce the application of the death penalty to bring about its gradual disappearance."⁶⁰³ Thus, the Court ruled that the mandatory imposition of the death penalty, i.e. in a "mechanical and generic" way for all those guilty of manslaughter, constituted a breach of the obligation to respect and guarantee the right to life under Article 4 of the Convention.⁶⁰⁴

597 *Ibid.*

598 *Ibid.*, para. 65.

599 *See Ibid.*, para. 68.

600 *See Corumbiara Massacre, supra* note 587.

601 *Ibid.*, para. 226.

602 *Ibid.*, para. 208.

603 On the basis of the recognition of the right to life and the restrictions on the death penalty laid down in Article 4 of the American Convention and considering the "tendency among the American States [...] to favour the abolition of the death penalty," in 1990 the OAS General Assembly adopted the Protocol to the American Convention on the Abolition of the Death Penalty (Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted on June 8, 1990, at the 20th Ordinary Session of the General Assembly, in Asunción, Paraguay). Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay and Venezuela have ratified the Protocol.

604 *Hilaire, Constantine and Benjamin et al, supra* note 212, para. 99 (citing *Restrictions to the Death Penalty (Arts. 4.2 and 4.4 American Convention on Human Rights)*, Advisory Opinion OC-3/83, September 8, 1983, IACtHR. (Ser. A) No. 3, paras. 55-57. For further information on the jurisprudence and recommendations from the two organs of the Inter-American System in relation to the death penalty, see IACHR, *The Death Penalty in the Inter-American System of Human Rights: from restrictions to abolition*, OEA/Ser.L/V/II. Doc. 68 (2011) available at: <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>.

605 *Hilaire, supra* note 212, para. 104. *See also Boyce et al v. Barbados*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 20, 2007, Series C no. 169, para. 61; *Dacosta Cadogan* →

The Commission, for its part, has found that there is a general consensus in international human rights case law that death penalty provisions in human rights treaties must be interpreted restrictively.⁶⁰⁵ A restrictive interpretation is necessary “to ensure that the law strictly controls and limits the circumstances in which a person may be deprived of his life by authorities of the State.”⁶⁰⁶ This interpretation also mandates strict compliance with due process standards.⁶⁰⁷ Furthermore, the Commission has noted that international and domestic institutions acknowledge that the death penalty is a form of punishment that differs in both substance and degree from other means of punishment.⁶⁰⁸ The Commission itself described the death penalty as “the absolute form of punishment that results in the forfeiture of the most valuable of rights, the right to life and, once implemented, is irrevocable and irreparable.”⁶⁰⁹ Therefore, Article 4 of the American Convention, which authorizes the death penalty in exceptional circumstances, must be interpreted as extremely limiting. Petitioners’ claims will be subject to “an enhanced level of scrutiny in order to ensure that any deprivation of life effected by a State Party pursuant to a death sentence complies strictly with the provisions of the Convention, including in particular Articles 4, 5 and 8 of the Convention.”⁶¹⁰

In the Inter-American System, two death penalty-related situations have been found to violate the right to humane treatment: detention on death row and mandatory death sentences. Though petitioners have advanced such arguments in several cases, neither the Court nor the Commission has ruled on the question whether a particular method of execution, such as hanging, constitutes cruel, inhuman or degrading treatment or punishment.⁶¹¹

The Court in *Hilaire* cited the European Court’s determination that the “death row phenomenon” is a form of cruel, inhuman and degrading treatment and is

v. Barbados, Judgment of September 24, 2009, Series C No. 204, para. 58. See also IACtHR, *Restrictions to the Death Penalty* (arts. 4.2 and 4.4 of the American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 55.

606 *Dave Sewell v. Jamaica*, Case 12.347, Report No. 76/02, IACHR, Annual Report 2002, OEA/Ser.L/V/II117 Doc. 1 rev. 1 (2002), para. 88; *Denton Aitken*, *supra* note 527, para. 100; *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, IACHR, Annual Report 2002, OEA/Ser.L/V/II117 Doc. 1 rev. 1 (2002), para. 60.

607 *Dave Sewell*, *supra* note 605, para. 88.

608 *Ibid.*; *Paul Lallion*, *supra* note 605, para. 54. See also *Denton Aitken*, *supra* note 527, para. 100.

609 See *Dave Sewell*, *supra* note 605, para. 89; *Denton Aitken*, *supra* note 527, para. 101; *Paul Lallion*, *supra* note 605, para. 61.

610 See *Dave Sewell*, *supra* note 605, para. 89; *Denton Aitken*, *supra* note 527, para. 101; *Paul Lallion*, *supra* note 605, para. 61.

611 *Dave Sewell*, *supra* note 605, para. 78; *Denton Aitken*, *supra* note 527, para. 90; *Benedict Jacob v. Grenada*, Case 12.158, Report No. 56/02, IACHR, Annual Report 2002, OEA/Ser.L/V/II117 Doc. 1 rev.1 (2002), para. 59; *Leroy Lamey*, *supra* note 401, para. 103.

612 *Boyce et al.*, para. 85; *Dave Sewell*, *supra* note 605, para. 118; *Benedict Jacob*, *supra* note 610, para. 98; *Joseph Thomas*, *supra* note 402, para. 136.

characterized by a prolonged period of detention while awaiting execution.⁶¹² In *Hilaire*, the Court found that the prisoners lived with the constant threat of being hanged, on the basis of laws that were incompatible with the American Convention.⁶¹³ The period preceding their executions terrified the victims, caused them to be depressed, deprived them of sleep and caused them other ill effects.⁶¹⁴ The Court therefore ruled that the conditions of the prisoners' death row detention constitute cruel, inhuman and degrading treatment in violation of Article 5.⁶¹⁵

Similarly, the Commission has concluded that prolonged solitary confinement combined with poor conditions while on death row failed to meet the minimum standards required by Article 5(1) and (2).⁶¹⁶ In *Andrews* the Commission found that the eighteen years spent by the victim on death row, among other factors, amounted to a violation of his right not to be subjected to cruel, infamous or unusual punishment pursuant to Article XXVI of the American Declaration.⁶¹⁷

With regard to mandatory death sentences for all murder convictions, the Commission has consistently ruled that this practice contravenes Article 5(1) because it fails to respect the victim's physical, mental and moral integrity.⁶¹⁸ In *Denton Aitken*, the Commission found that depriving the victim of his most fundamental right, the right to life, without taking into account his personal circumstances and the particular circumstances of the offense, failed to respect his integrity as an individual human being and subjected him to treatment of an inhuman or degrading nature.⁶¹⁹

In *Rudolph Baptiste*, the Commission explained its application of Article 5 to the death penalty, particularly 5(1) and 5(2), in the following terms:

Among the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms protected thereunder are derived from the attributes of their human personality. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect. Accordingly, Article 5(1) guarantees

613 See *Hilaire*, *supra* note 185, para. 212 (citing *Soering v. United Kingdom*, ECHR, No. 14038/88, July 7, 1989). The European Court in *Soering* held that prisoners sentenced to death suffer severe mental anxiety due to a variety of circumstances, including: the way in which the sentence was imposed, lack of consideration of the personal characteristics of the accused, the disproportionality between the punishment and the crime committed, detention conditions while awaiting execution and other factors.

614 *Ibid.*, paras. 168-169.

615 *Ibid.*, para. 168.

616 *Ibid.*, paras. 168-169.

617 *Leroy Lamey*, *supra* note 401, para. 203; *Donnason Knights*, *supra* note 400, para. 126.

618 *William Andrews v. United States*, Case 11.139, Report No. 57/96, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), para. 178.

619 *Denton Aitken*, *supra* note 527, para. 111; *Donnason Knights*, *supra* note 400; para. 82.

620 *Denton Aitken*, *supra* note 527, para 111.

to each person the right to have his or her physical, mental, and moral integrity respected, and Article 5(2) requires all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person. These guarantees presuppose that persons protected under the Convention will be regarded and treated as individual human beings, particularly in circumstances in which a State Party proposes to limit or restrict the most basic rights and freedoms of an individual, such as the right to liberty. In the Commission's view, consideration of respect for the inherent dignity and value of individuals is especially crucial in determining whether a person should be deprived of his or her life.⁶²⁰

The Commission reiterated in this case that it could not reconcile respect for the dignity of the individual as protected by Article 5(1) and (2) with a mandatory death sentence, because such a system deprives the individual of the most fundamental right without considering whether execution is the appropriate punishment in the individual's particular case.⁶²¹

3.4 Other prohibitions under international law related to torture and other cruel, inhuman or degrading treatment or punishment

International human rights law and the principles of international humanitarian law enunciate two additional prohibitions necessary for effective protection against torture and other cruel, inhuman or degrading treatment, namely: the principle of *non-refoulement* in the context of extradition or expulsion, and the exclusionary rule with respect to evidence obtained through torture. Below, we will explore the scope of these prohibitions in Inter-American law and jurisprudence.

3.4.1 Non-refoulement (or non-return)

Article 22(8) of the American Convention enshrines the right not to be deported or returned to a country where a person is in danger of being subjected to a violation of the right to life or personal freedom because of her or his race, nationality, religion, social status or political opinion.⁶²² Furthermore, Article 13 of the IACPPT requires that a person not be extradited or returned to a country "when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or *ad hoc* courts in the requesting State."⁶²³

621 Rudolph Baptiste, *supra* note 401, para. 89. See also Donnason Knights, *supra* note 400, para. 81.

622 Rudolph Baptiste, *supra* note 401, para. 90. See also Donnason Knights, *supra* note 400, para. 82.

623 American Convention, *supra* note 16, art. 22(8).

624 Inter-American Convention to Prevent and Punish Torture, *supra* note 23, art. 13. It is important to note that the American Convention provision only applies where the violation feared would occur because of certain enumerated grounds; however, the Inter-American Torture Convention →

The Inter-American Court has not decided any case addressing the principle of *non-refoulement*.⁶²⁴ The Commission, on the other hand, addressed this issue in the *Haitian Interdiction* case in 1997.⁶²⁵ Since the defendant State, the United States, had not ratified the Convention,⁶²⁶ the Commission applied only the American Declaration, in particular Article I, which protects the right to security.⁶²⁷ This right was defined by the Commission as “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.”⁶²⁸

In this case, the Commission found that Haitian asylum seekers were interdicted by the U.S and returned to Haiti pursuant to a cooperative agreement between the U.S. Government and the regime established in Haiti in 1981. Because these refugees were exposed to acts of brutality by the Haitian military and its supporters upon their return, the Commission found that their interdiction and repatriation to Haiti constituted a breach of their right to security in violation of the American Declaration.⁶²⁹ The Commission also concluded that the United States had violated their right to liberty and their right to seek and receive asylum under the American Declaration.⁶³⁰

3.4.2 Exclusionary Rule for evidence obtained under torture

Article 8(3) of the American Convention forbids the use of confessions in legal proceedings if it is established that the statement was obtained through coercion of any kind.⁶³¹ Article 10 of the Inter-American Torture Convention prohibits the use

imposes no such conditions. The Inter-American Torture Convention may therefore apply to a broader class of situations.

625 At the time of the writing of this Handbook, the case of the *Pacheco Tineo Family v. Bolivia*, Case 12.474, Report No. 136/11, IACHR, (October 31, 2011) is pending decision before the Court. Equally, the Commission had submitted to the Court Case No. 12.794, *Wong Ho Wing v. Peru*. The case involves violations of the rights of Mr. Wong Ho Wing, a national of the Peoples’ Republic of China, who at the time of writing was arrested in Peru awaiting execution of an extradition order to China for the alleged commission of crimes of smuggling, customs fraud and bribery. The Court will examine whether Peru would violate the right to life and physical integrity of Mr. Wong Ho Wing if he were returned to China, where he could be sentenced to life imprisonment or even the death penalty. As part of the same process, the Court has awarded provisional measures on several occasions (the first were ordered on 28 May 2010 at the request of the Commission) to suspend extradition in cases where there was a danger that the death penalty would be applied, and in cases where it was claimed that there were deficiencies relating to due process under the extradition process.

626 *Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Informe No.51/96, IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev. (1996).

627 The United States is not a party to the American Convention or the Inter-American Convention to Prevent and Punish Torture.

628 *Haitian Centre for Human Rights*, *supra* note 625, para. 150.

629 *Ibid.*, para. 170.

630 *Ibid.*, para. 171.

631 *Ibid.*, paras. 169, 163.

632 American Convention, *supra* note 16, art 8(3).

of any statement obtained through torture as evidence in a legal proceeding.⁶³² The only circumstance in which such a statement may be used as evidence is in the prosecution of the person accused of eliciting the information through torture.⁶³³ Recently, the Court has established that the exclusionary rule for evidence obtained under torture or through cruel or inhuman treatment “is absolute and irrevocable” in that it falls within the absolute or *jus cogens* nature of the prohibition of torture.⁶³⁴ This rule is also closely linked to the protection of judicial guarantees.⁶³⁵

Although the IACPPT appears to bar evidence obtained through torture only, the American Convention, through the use of the word “coercion,” leaves room for broader application, and may encompass confessions extracted under treatment that could be characterized as cruel, inhuman and degrading. In *Cabrera García and Montiel Flores*, the Court applied the extensive criteria outlined by the American Convention and ruled that it had been proven that the two prisoners had been forced to incriminate themselves after being subjected to cruel treatment, and, as a consequence, affirmed that, in line with Article 8(3) of the Convention, the exclusionary rule did not only apply in an alleged case of torture or cruel treatment, “but extends to any form of duress.”⁶³⁶ Moreover, the Court observed that accepting or granting evidentiary value to statements or confessions obtained by coercion violates the basic principle of the right to a fair trial, due to problems with the truthfulness of statements obtained in this way.⁶³⁷

In *Cantoral-Benavides* the Court found that the victim was tortured to “break down his psychological resistance and force him to incriminate himself or confess to certain illegal activities.”⁶³⁸ Thus the Court declared a violation of Article 8(3) of the Convention.⁶³⁹ The same approach has been followed by the Commission.⁶⁴⁰

3.5 General duties to respect and ensure

The general duties to respect and ensure enshrined in Article 1(1) of the American Convention are guiding principles regarding the attribution of State responsibility

633 IACPPT, *supra* note 23, art. 10.

634 *Ibid.*

635 *Cabrera García and Montiel Flores*, *supra* note 243, para. 165.

636 *Bayarri v. Argentina*, Judgment of October 30, 2008, IACtHR, (Series C) No. 187, para. 108. Indeed (see the same reference), the Court has sustained that the Court has held that the annulment of procedural acts involving torture or ill-treatment is an effective way to end the consequences of a violation of judicial guarantees.

637 *Cabrera García and Montiel Flores v. Mexico*, *supra* note 243, para. 166.

638 *Ibid.*, para. 167.

639 *Cantoral-Benavides*, *supra* note 191, para. 132. Also in *Bayarri*, *supra* note 635, para. 176.

640 *Ibid.*, para. 133.

641 *Manuel Manríquez v. Mexico*, Case 11.509, Report No. 2/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998).

under the American Convention.⁶⁴¹ They are also considered substantial obligations under the Convention and are violated whenever an infringement of a right protected by that treaty takes place.⁶⁴² In other words, States assume these general obligations in relation to each of the rights protected by the American Convention.⁶⁴³

The general duty to respect rights and freedoms entails a negative obligation not to violate the rights recognized in the Convention. Thus, “[w]henever a State organ, official or public entity violates one of the those rights, this constitutes a failure of the duty to respect...”⁶⁴⁴ The general duty to ensure involves a positive obligation to organize governmental structures, adopt appropriate measures and take action to guarantee the free and full exercise of rights.⁶⁴⁵ The duty to ensure is three-fold and obliges States “to prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”⁶⁴⁶ While the duty to respect is an obligation of result,⁶⁴⁷ the duty to ensure is one of means.⁶⁴⁸ Thus, the duty to ensure is not violated *per se* on each occasion the measures taken by the State do not produce a satisfactory result; it must be proven that the State failed to act with due diligence either to prevent or redress the alleged violation.⁶⁴⁹

With respect to the prohibition of torture and other cruel, inhuman and degrading treatment or punishment, the duties to prevent, to investigate and punish and to make reparations emerge not only from the American Convention, but also from specific obligations under the IACPPT.⁶⁵⁰ In the following Sections we will analyze the scope of these obligations in light of both conventions.

642 See Section 3.6, *infra*.

643 Velásquez-Rodríguez, *supra* note 214, para. 162.

644 *Ibid.*

645 *Ibid.*, para. 169.

646 *Ibid.*, para. 166.

647 Godínez-Cruz, *supra* note 214, para. 175. See also Velásquez-Rodríguez, *supra* note 214, para. 166.

648 An “obligation of result” requires States to achieve specific objectives to satisfy a substantive provision.

649 An “obligation of means” or “of conduct” requires States to take action reasonably calculated to realize a certain outcome.

650 See Godínez-Cruz, *supra* note 214, para. 182.

651 In particular, Articles 1, 6, 7, 8, 10 and 12 of the IACPPT, *supra* note 23.

3.5.1 Duty to prevent

The Court in *Velásquez-Rodríguez* explained the duty to prevent as follows:

The duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State Party. Of course, while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures.⁶⁵¹

The duty to prevent, therefore, is breached whenever it is established that the respondent State failed to act with due diligence to prevent an infringement of Convention rights. In the context of torture and other cruel, inhuman and degrading treatment, the Court in *Velásquez-Rodríguez* concluded that although it was not possible to prove that the victim was subjected to torture, “his kidnapping and imprisonment by governmental authorities, who have been shown to subject detainees to indignities, cruelty and torture, constitute a failure of Honduras to fulfill the duty imposed by Article 1(1) to ensure the rights under Article 5(1) and 5(2) of the Convention.”⁶⁵² Thus, the Court found that the State had violated the right not to be tortured as a result of the State’s failure to exercise due diligence to prevent the violations of Mr. Velásquez Rodríguez’s human rights.⁶⁵³

The Court has recently found that the duty to prevent an Article 5 violation with regard to persons deprived of their liberty entails a positive obligation to ensure detention conditions that respect minimum basic standards of human dignity.⁶⁵⁴ Applying this obligation, the Court held Paraguay responsible for a violation of Article 5 as read together with Article 1(1) of the American Convention, because the Government failed to ensure compliance with minimum basic standards in a juvenile detention center.⁶⁵⁵

It is important to note that the organs of the Inter-American Human Rights System have also addressed the duty of prevention regarding cases of violence against women. The legal framework used to determine the responsibility of States is the Convention of Belém do Pará, and in particular Article 7(b), which requires States parties to exercise due diligence to prevent, punish and eradicate such violence.

652 *Velásquez-Rodríguez*, *supra* note 214, para. 175.

653 *Ibid.*, para. 187.

654 *Ibid.*

655 *Juvenile Reeducation Institute*, *supra* note 385, para. 159.

656 *Ibid.* paras. 170-171.

In *Cotton Field*,⁵⁶⁵ the Court referred to general Recommendation 19 of the Committee for the Elimination of Discrimination against Women (CEDAW) which stipulates that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁵⁶⁷ In light of the proven risk situation for women in Ciudad Juárez, who found themselves in a position of vulnerability (especially young women with scarce economic resources), the state had a reinforced protection responsibility to those women. In determining that Mexico had not initiated the development of a policy in 1998 when the pattern of violence against women was first noted, the Court concluded that the State had failed to comply in general with its obligation of prevention.⁵⁶⁸

When the disappearance of the three young women was reported, the authorities, knowing that there was a real and immediate risk that the victims would be subjected to ill-treatment, sexually abused and killed, had, as highlighted by the Court, an “obligation of strict due diligence,”⁵⁶⁹ making it “essential that police authorities, prosecutors and judicial officials take prompt immediate action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been retained.”⁵⁶⁰ The lack of action and the absence of concrete measures by the authorities led the Court to conclude that the State had not acted with the required diligence to put an end to their deprivation of liberty and to prevent the death and aggressions suffered by the young women. The Court summed up with the following analysis:

(...) [t]his failure to comply with the obligation to guarantee is particularly serious owing to the context of which the State was aware - which placed women in a particularly vulnerable situation - and of the even greater obligations imposed in cases of violence against women by Article 7(b) of the Convention of Belém do Pará.

In addition, the Tribunal finds that the State did not prove that it had adopted norms or implemented the necessary measures, pursuant to Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, that would have allowed the authorities to provide an immediate and effective response to the reports of disappearance and to adequately prevent the violence against women. Furthermore, it did not prove that it had adopted norms or taken measures to ensure that the officials in charge of receiving the missing reports had the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.

657 *Cotton Field*, *supra* note 192, para. 254.

658 CEDAW, General Recommendation 19: Violence against Women, 11^o period of sessions, 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 9.

659 *Cotton Field*, *supra* note 192, para. 282.

660 *Ibid.*, para. 283.

661 *Ibid.*

Based on the foregoing, the Court finds that the State violated the rights to life, personal integrity and personal liberty recognized in Articles 4(1), 5(1), 5(2) and 7(1) of the American Convention, in relation to the general obligation to guarantee contained in Article 1(t) and the obligation to adopt domestic legal provisions contained in Article 2 thereof, as well as the obligations established in Article 7(b) and 7(c) of the Convention of Belém do Pará, to the detriment of Claudia Ivette González, Laura Berenice Ramos Monárrez and Esmeralda Herrera Monreal.⁶⁶¹

Similarly, the Commission has held that the existence of a practice of incommunicado detention by State authorities followed by torture or death, to which an individual victim can be linked, permits a finding of an Article 5 violation, based on the State's failure to create conditions that ensure every individual's right not to be tortured.⁶⁶² In another case, the Commission identified violations of the right not to be subjected to torture or cruel, inhuman or degrading treatment based on the State failure to adopt positive measures ensuring minimum basic prison conditions standards and implement a system to address emergency situations in correctional facilities.⁶⁶³

The Inter-American Torture Convention includes several provisions regarding the obligation of States parties to take measures to prevent torture.⁶⁶⁴ In particular, Article 1 articulates a general obligation to prevent torture.⁶⁶⁵ Article 6 mandates that States parties criminalize acts of torture and attempts to commit torture under their national criminal laws and punish torture with severe penalties that reflect the serious nature of the crime.⁶⁶⁶ Likewise, States must implement effective measures to prevent and punish other cruel, inhuman or degrading treatment or punishment within their respective jurisdictions.⁶⁶⁷ Article 7 obligates States to train police and other public officials responsible for the custody of detainees regarding the prohibition of torture and other cruel, inhuman and degrading treatment.⁶⁶⁸

On these bases, the Court has found violations of Articles 1 and 6 of the Inter-American Torture Convention whenever a State party has failed to exercise due diligence in preventing torture or other mistreatment in its jurisdiction.⁶⁶⁹ The same approach has been followed by the Commission.⁶⁷⁰

662 *Ibid.*, paras. 284-286.

663 *Victor Hernández Vásquez v. El Salvador*, Case 10.228, Report No. 65/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998), para. 55.

664 *Carandiru v. Brazil*, Case 11.291, Report No. 34/00, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999), para. 91.

665 See IACPPT, *supra* note 23, arts. 1, 6-7.

666 *Ibid.*, art. 1.

667 *Ibid.*, art. 6.

668 *Ibid.*

669 *Ibid.*, art. 7.

670 See *Tibi*, *supra* note 362, para. 159; *Gómez-Paquiyaury*, *supra* note 297, para. 114-117; *Bámaca-Velásquez*, *supra* note 191, paras. 220-223.

671 *González Pérez*, *supra* note 274, para. 90.

3.5.2 Duty to investigate and punish

As stated previously, the Court has found that the duty to ensure the free and full exercise of rights and freedoms imposed by Article 1(1) of the American Convention encompasses a State obligation to investigate and punish any violation of rights recognized by the Convention.⁶⁷¹ The Court in *Velásquez-Rodríguez* concluded that a State party is under a legal duty “to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”⁶⁷² Furthermore, the Court provided that

[i]f the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.⁶⁷³

The organs of the Inter-American System have declared that the duty to investigate and punish “requires punishment not only of material authors, but also of the intellectual authors of those acts.”⁶⁷⁴

As with the duty to prevent, the failure of the State to identify and punish the perpetrator does not constitute a violation of the obligation to investigate, as long as it has exercised due diligence in its investigation.⁶⁷⁵ However, this duty

must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.⁶⁷⁶

In Inter-American case law, the duty to investigate violations of core rights, such as the right to life and the right to be free from torture or cruel, inhuman or degrading treatment, is related to the Article 8 right to access to justice and due process and the Article 25 right to an effective remedy.⁶⁷⁷ The Court in *Velásquez-Rodríguez* held that

672 See Section 3.5, *supra*.

673 *Velásquez-Rodríguez*, *supra* note 214, para. 174. See also *Godínez-Cruz*, *supra* note 214, para. 184.

674 *Velásquez-Rodríguez*, *supra* note 214, para. 176.

675 *Gómez Paquiyauri*, *supra* note 297, para. 146; *Corumbiara Massacre*, *supra* note 587, para. 256.

676 *Velásquez-Rodríguez*, *supra* note 214, para. 177; *Godínez-Cruz*, *supra* note 214, para. 188.

677 *Godínez-Cruz*, *supra* note 214, para. 188.

678 *Street Children*, *supra* note 191, para. 225.

[u]nder the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 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 (Art. 1(1)).⁶⁷⁹

The obligation to investigate in cases where there is evidence of torture or cruel, inhuman or degrading treatment is reinforced by the victim's vulnerability and fear, which may inhibit them from reporting the facts, particularly when in custody, as in the case of *Cabrera García and Montiel Flores*. In this case, where the victims were tortured in order to obtain incriminating confessions, the Court stated that judicial authorities should order that appropriate evidence be obtained to prove alleged acts of torture and ensure the independence of the medical personnel who examine detainees.⁶⁷⁹ Closely related to this, in *Bueno Alves*, the Court noted that "in those cases where alleged torture or mistreatment have been claimed, the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of damage, specially when there are no witnesses other than the perpetrators and the victims themselves, and consequently, the evidence may be scarce."⁶⁸⁰

With regards to the standards which should guide investigations into allegations of torture and other cruel, inhuman or degrading treatment, in *García Lucero* the Court recently warned that "when investigating acts of torture, it is important that the competent authorities take into consideration the international standards for documenting and interpreting the elements of forensic evidence concerning the perpetration of acts of torture and, particularly, those defined in the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" [Protocol of Istanbul]."⁶⁸¹

The IACPPT also imposes specific obligations upon States to investigate fully and punish those responsible for torture and other cruel, inhuman or degrading treatment. Article 1 articulates the general obligation to prevent and punish torture,⁶⁸² which is explained in more detail in Article 6. Article 8 obliges States to ensure an impartial investigation into any person's claim of prohibited conduct under

679 *Velásquez-Rodríguez v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, IACtHR, (Ser. C) No. 1, para. 91.

680 *Cabrera García and Montiel Flores*, *supra* note 243, para. 135. See also *Bayarri*, *supra* note 633, para. 94.

681 *Bueno Alves*, *supra* note 268, para. 111.

682 *García Lucero*, *supra* note 209, para. 137; United Nations, Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment), New York and Geneva, 2001, available at: <http://www.ohchr.org/Documents/Publications/training8Revien.pdf>.

683 IACPPT, *supra* note 23, art. 1.

its jurisdiction.⁶⁸³ Where there is an allegation or a well-grounded reason to believe that torture has occurred in its jurisdiction, the State must immediately investigate the allegations and initiate criminal proceedings against the perpetrators, if appropriate.⁶⁸⁴ Finally, this provision ensures that victims who have exhausted domestic remedies can proceed to submit petitions to “the international fora whose competence has been recognized by that State.”⁶⁸⁵

In those cases where torture or other cruel, inhuman or degrading treatment has been alleged and the respondent State is a party to the IACPPT, both the Court and the Commission have found violations of Articles 1, 6 and 8, when it was proven that the State failed to conduct an effective investigation.⁶⁸⁶

In *Tibi*, in light of the injuries sustained by Mr. Tibi while detained and the lack of investigation, the Court identified the duty of States to initiate effective investigations to identify, try and punish those responsible when there is a “complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention” as a duty implicit in the general obligation of the States party to respect and ensure the rights of all persons under their jurisdiction, contained in Article 1(1).⁶⁸⁷ The Court also argued that this duty was complemented and reinforced by Articles 1, 6 and 8 of the Inter-American Torture Convention. Furthermore, the Court concluded that the absence of an effective investigation constituted a violation of Article 5 of the American Convention in combination with Article 1(1), “as well as non-compliance with the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention against Torture.”⁶⁸⁸

Since then, the Court has frequently ruled on the absence of a diligent investigation in alleged cases of torture and ill-treatment, identifying the combined violation of the provisions of both conventions.

In *Bayarri*, despite the easily-visible injuries to the face and ear of the victim when he gave his testimony, the judge did not order that an *ex officio* and immediate investigation be initiated, or a full medical examination to allow for the prompt

684 *Ibid.*, art. 8.

685 *Ibid.*

686 *Ibid.*

687 *Tibi*, *supra* note 362, para. 159; *Maritza Urrutia*, *supra* note 297, paras. 128-130; *Bámaca-Velásquez*, *supra* note 191, paras. 221-223; *Corumbiara Massacre*, *supra* note 587, para. 287.

688 *Tibi v. Ecuador*, *supra* note 362, para. 159.

689 The Court has used the same approach in *Gutiérrez Soler*, *supra* note 269, para. 54; *Vargas Areco v. Paraguay*, September 26, 2006, IACtHR, (Series C) No. 155, para. 79-81; *Miguel Castro Castro Prison*, *supra* note 356, para. 344; *Bayarri v. Argentina*, *supra* note 635, para. 94.

collection and preservation of evidence, in order to determine what had happened.⁶⁸⁹ In fact, the eventual medical examination was limited to his ears, even though the same victim had told the doctor carrying out the examination that he had been subjected to electric shocks. Consequently, in light of the apathy of the authorities who did not react to clear signs of ill-treatment, the Court stated that the relevant articles of the American Convention and the IACPPT had been violated.⁶⁹⁰

This was also the case in *Cabrera García and Montiel Flores*; the investigation began more than three months after the torture committed against the detainees was brought to the attention of the competent authorities. The investigation process was carried out as part of the criminal proceeding against the detainees. The Court found that the inability to conduct an independent investigation into the alleged perpetrators in the ordinary courts “prevented any attempt to dispel or clarify the allegations of torture.”⁶⁹¹ Accordingly, the Court declared the State responsible for the violation of the provisions of the American Convention and the CIPST.⁶⁹²

Also in this case, the Court noted that the diligence in investigating *ex officio* alleged acts of torture must be even higher “bearing in mind the prior context of the instant case, as regards the confessions and statements made under duress and the duty of strict due diligence that should apply in areas with a heavy military presence.”⁶⁹³

In cases where the petitioner claims to have made a confession or statement under duress, the Court has insisted that the authorities have an obligation to check the veracity of the complaint through investigation conducted with due diligence.⁶⁹⁴ Moreover, in these cases the State must prove that the confession was free and voluntary, even more so if the victim was subjected to conditions that would mean it was impossible to demonstrate this.⁶⁹⁵

As mentioned above, Article 6 obliges the States parties to criminalize and punish authors of acts of torture with adequate penalties. Article 4 of the IACPPT provides that having acted under the orders of a superior will not preclude a perpetrator’s criminal liability.⁶⁹⁶ Article 11 imposes a duty to extradite to a requesting State any person accused or convicted of committing torture.⁶⁹⁷ Article 13 states that torture

690 *Bayarri*, *supra* note 633, para. 90.

691 *Cabrera García and Montiel Flores*, *supra* note 243, paras. 92-94.

692 *Ibid.*, para. 131.

693 *Ibid.*, para. 137.

694 *Ibid.*, para. 102.

695 *Ibid.*, para. 136.

696 *Ibid.*

697 IACPPT, *supra* note 23, art. 4.

698 *Ibid.*, art. 11.

is deemed to be included as an extraditable offence in every extradition treaty entered into by a State party to this convention.⁶⁹⁸ Where a State receives a request for the extradition of an alleged torturer from a State with which there is no extradition treaty, the IACPPT may serve as the legal basis for such extradition, provided that other legal requirements of the requested State are respected.⁶⁹⁹

Article 12 provides that a State shall adopt the necessary measures to exercise jurisdiction over a crime of torture when it is committed within the State's jurisdiction, and also when the alleged perpetrator is a national of the State or when the victim is a national of the State.⁷⁰⁰ This provision also imposes on States parties the duty to "take the necessary measures to establish its jurisdiction over the crime [of torture] when the alleged criminal is within the area under its jurisdiction"; this wording provides legal bases for establishing universal jurisdiction⁷⁰¹ over torture perpetrators, when it is inappropriate to extradite that person to another State.⁷⁰² Article 14 enshrine the *aut dedere aut punire* principle, which entails that a State that decides not to extradite an alleged perpetrator will submit the case to its domestic authorities as if the crime had taken place within its jurisdiction.⁷⁰³ Neither the Court nor the Commission has ever applied Article 4, 11, 12 or 13 in the context of an individual case.

3.5.2.1 Military criminal jurisdiction

Indeed, the Court has repeatedly stated that only civilian courts have the jurisdiction to investigate, prosecute and, where appropriate, sanction members of the military when there is evidence or allegations of torture or maltreatment. Recently, the Court has heard a series of cases to determine the Mexican State's responsibility for violations of the right to physical integrity by members of the military.⁷⁰⁴

699 *Ibid.*, art. 13.

700 *Ibid.*

701 *Ibid.*, art. 12.

702 Universal jurisdiction refers to the power to prosecute and try the alleged author of an offence, irrespective of the place where it was committed and irrespective of the suspect's and the victim's nationality or country of residence.

703 IACPPT, *supra* note 23, art. 12.

704 *Ibid.*, art. 14. *Aut dedere aut punire* (literally, "either extradite or punish") refers to the obligation to exercise one of two alternative powers: either to extradite an alleged offender to the requesting State, if such a request has been extended, or to try and sentence the offender in the captor State's own domestic courts. The *aut dedere aut punire* obligation complements the universal jurisdiction principle. Together they prevent a situation in which a State that is unwilling or unable to extradite an individual also may not prosecute him or her because of citizenship or because the offense occurred on another State's territory.

705 See *Radilla Pacheco*, *supra* note 140; *Cabrera García and Montiel*, *supra* note 243; *Rosendo Cantú*, *supra* note 442; *Fernández Ortega*, *supra* note 372. See also *Castillo Petruzzi*, *supra* note 359; *Durand and Ugarte v. Perú*, *supra* note 229.

In all these cases, military criminal jurisdiction had led or intervened significantly in the investigations and legal proceedings to identify and prosecute those responsible for acts of torture and other human rights violations. In relation to this, the Court strongly reaffirmed its decision that “regarding situations that violate the human rights of civilians, military jurisdiction cannot operate under any circumstance.”⁷⁰⁵

Consequently, the military courts may only investigate and prosecute members of the military who have committed crimes against the special legal interests exclusively related to the functions that the law assigns to the military, in line with the exceptional and restrictive scope for the application of this jurisdiction.⁷⁰⁶

In all cases the Court concluded that the rights to judicial guarantees under Article 8(1) had been violated, given that “when the military courts assume jurisdiction over a matter that should be heard by the regular courts, the right to the competent judge is violated, as is, *a fortiori*, due process of law.”⁷⁰⁷

In summary, the jurisprudence of the Inter-American Court has constantly ruled that military criminal jurisdiction is not the competent jurisdiction to investigate, and where appropriate, prosecute and punish those responsible for alleged human rights violations, but rather that the prosecution of the responsible parties must fall under the jurisdiction of the civilian courts. This conclusion is applicable not only to cases of torture, forced disappearance and sexual violence, but also to all human rights violations.

3.5.3 Duty to provide reparation

Article 63(1) of the American Convention establishes that if the Court finds a violation of the rights protected by this treaty, the Court must provide, where appropriate, for adequate reparation to the victim.⁷⁰⁸ The Court in its Article 1(1) case law has ruled that the duty to ensure entails an obligation to make adequate reparations.⁷⁰⁹ Furthermore, the Court has established that the duty to provide reparation is linked to the existence of the necessary legal and institutional mechanisms, and in consequence, “to the right of the victims to have access to justice, which has its

706 In Mexico the Code of Military Justice is still applied in the investigation of crimes committed by the military where there are civilian casualties, in line with the provisions of Article 57, Section II, subSection a) of the aforementioned legislation.

707 *Cabrera García and Montiel Flores*, *supra* note 243, para. 199; *Fernández Ortega*, *supra* note 372, para. 177; and *Rosendo Cantú*, *supra* note 442, para. 161.

708 *Radilla Pacheco*, *supra* note 140, para. 273. See also *Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, IACtHR, (Series C) No. 74, para. 112; *19 Merchants*, *supra* note 477, para. 167; *Escué Zapata v. Colombia*, Judgment of July 4, 2007, IACtHR, (Series C) No. 165, para. 101.

709 American Convention, *supra* note 16, art. 63(1).

710 *Godínez-Cruz*, *supra* note 214, para. 175; *Velásquez-Rodríguez*, *supra* note 214, para. 166.

treaty-based foundation in the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention.”⁷¹⁰ Thus, the Court has highlighted that “the State has the obligation to make reparation, so that although the victims or their next of kin should have ample opportunity to seek just compensation, this obligation cannot rest exclusively on their procedural initiative or on the contribution of probative elements by private individuals.”⁷¹¹

Regarding torture, Article 9 of the Inter-American Torture Convention obliges States to incorporate into their domestic laws the duty to provide suitable compensation for torture victims.⁷¹² This provision, however, appears not to include an obligation to make reparations for other cruel, inhuman or degrading treatment or punishment. The Court has referred to the jurisprudence of the United Nations Committee against Torture, in relation to the interpretation of Article 14 of the United Nations Convention against Torture which establishes the duty to ensure reparative measures to determine the scope of the State’s obligation to compensate acts of torture. Specifically, General Comment No. 3 (2012) on the duty to provide redress states that. “(t)he comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations.”⁷¹³

The Court has consistently stated that it is a principle of international law, and “even a general concept of law,” that every violation of an international obligation that results in damage triggers a duty to make adequate reparation.⁷¹⁴ Each aspect of this obligation (scope, nature and determination of beneficiaries) is regulated by international law and therefore cannot be modified by a State’s domestic legislation.⁷¹⁵ The Court stated in its initial jurisprudence that compensation was the most common form of redress for human rights violations,⁷¹⁶ but in recent years,

711 *García Lucero*, *supra* note 209, para. 182.

712 *Pueblo Bello Massacre v. Colombia*, Judgment of January 31, 2006, IACtHR, (Series C) No. 140, para. 209. *See also* *Goiburú*, *supra* note 461, paras. 117 and 122; *Miguel Castro Castro Prison*, *supra* note 356, para. 400; *García Lucero*, *supra* note 209, para. 183.

713 Inter-American Torture Convention, *supra* note 23, art. 9.

714 United Nations, Committee against Torture. General Comment N° 3, CAT/C/CG/3 (2012), para. 2.

715 *Velásquez-Rodríguez v. Honduras*, Compensatory Damages (Art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, IACtHR, (Series C) No. 7, para. 25. *See also* *Moiwana Village*, *supra* note 484, para. 169; *Cesti-Hurtado v. Peru*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of May 31, 2001, IACtHR, (Series C) No. 78, para. 32.

716 *Aloeboetoe et al. v. Suriname*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 10, 1993, IACtHR, (Series C) No. 15, para. 44; *Trujillo Oroza v. Bolivia*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of February 27, 2002, IACtHR, (Series C) No. 92, para. 61.

717 *Velásquez-Rodríguez*, *supra* note 714, para. 25.

the Court has expanded the non-pecuniary measures awarded to victims of human rights violations.⁷¹⁷

In this context it should be noted that the Court has led, as one of the international judicial and quasi-judicial bodies that monitor respect by States for human rights, the adoption of a holistic approach focused on the victim, in order to respect the right of victims of unlawful acts to obtain reparation measures.⁷¹⁸ The Court itself has noted “[t]his illustrates a trend in the sphere of international law to recognize victims of unlawful acts as the holders of rights in this capacity, including with regard to measures of reparation...,”⁷¹⁹ evidence of which is found in the adoption of documents such as the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,”⁷²⁰ the “Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,”⁷²¹ and the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.”⁷²² Equally, the Court has referred to the above-mentioned General Comment No. 3, which confirms the victim-centered approach, stating:

[r]eparation must be adequate, effective and comprehensive. States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate in relation to gravity of the violations committed against them.⁷²³

The Court has determined that reparation for violations of international obligations must take the form, if possible, of full restitution (*restitutio in integrum*), which consists of the restoration of the situation prior to the violation,

718 See e.g. *Yakye Axa Indigenous Community v. Paraguay*, Judgment of June 17, 2005, IACtHR, (Series C) No. 125, paras. 210-227; *Plan de Sánchez Massacre v. Guatemala*, Reparations (Art. 63(i) American Convention on Human Rights), Judgment of November 19, 2004, IACtHR, (Series C) No. 116, paras. 93-111. See also *López Alvarez v. Honduras*, Judgment of February 1, 2006, IACtHR, (Series C) No. 141, paras. 207-210.

719 See e.g. Cassel Douglas, (in Spanish) *El alcance e impacto cada vez mayores de las reparaciones ordenadas por la Corte Interamericana de Derechos Humanos*, Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM (2006), p. 246, available at: <http://biblio.juridicas.unam.mx/libros/6/2895/10.pdf>.

720 *García Lucero*, *supra* note 209, para. 186.

721 United Nations General Assembly, “Declaration of basic principles of justice for victims of crimes and abuse of power,” adopted in Resolution 40/34, of November 29, A/RES/40/34.

722 United Nations Human Rights Commission, “Updated set of principles for the protection and promotion of human rights through action to combat impunity,” E/CN.4/2005/102/Add.1 (2005).

723 United Nations General Assembly, “Basic principles and guidelines on the right to a remedy or reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law,” Resolution 60/147, approved on December 16, 2005, A/RES/60/147.

724 General Comment N° 3, *supra* note 713, para. 6.

the reparation of the consequences of the violation and monetary compensation for material and nonmaterial damages, including emotional harm.⁷²⁴ Where full restitution is not possible “it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused.”⁷²⁵ The guiding principle is that reparation must seek to remove the effects of the violation(s).⁷²⁶ The nature and amount of compensation depend on the damage inflicted and therefore are directly related to the specific violations found by the Court.⁷²⁷

According to the practice of the Court, adequate reparation includes pecuniary and non-pecuniary damages as well legal costs and expenses. Pecuniary damages include the victim’s loss of or reduction in income (lost earnings) as well as expenses incurred by the victim or his or her family as a result of the human rights violation(s) (consequential damages).⁷²⁸ In recent decisions, the Court has included in its pecuniary damages orders the loss of family assets resulting from the human rights violation(s).⁷²⁹

Generally, the amount of pecuniary damages awarded is based on the victim’s particular profession or economic situation.⁷³⁰ The Court has decided cases in which the victims had no established profession because they were deprived of their liberty,⁷³¹ or were children.⁷³² The Court has also awarded material damages to internally displaced victims who lacked documentation of their assets or earnings.⁷³³ In all such cases, the Court assessed pecuniary damages on the basis of equity⁷³⁴ and, in some circumstances, on the basis of the minimum wage in the country.⁷³⁵

725 *Raxcacó-Reyes*, *supra* note 245, para. 115; *Plan de Sánchez*, *supra* note 717, para. 53.

726 *Myrna Mack-Chang*, *supra* note 485, para. 236. *See also* *Plan de Sánchez Massacre*, *supra* note 717, para. 59; *Gómez-Paquiyaúri*, *supra* note 297, para. 189.

727 *19 Merchants*, *supra* note 477, para. 233; *Mapiripán Massacre*, *supra* note 245, para. 245; *Pueblo Bello v. Colombia*, *supra* note 711, para. 229.

728 *19 Merchants*, *supra* note 477, para. 223; *Pueblo Bello*, *supra* note 711, para. 229; *Mapiripán Massacre*, *supra* note 245, para. 245.

729 *Mapiripán Massacre*, *supra* note 245, para. 250.

730 *See, e.g. Bulacio*, *supra* note 293, para. 88; *Gutiérrez-Soler v. Colombia*, *supra* note 269, paras. 77-78.

731 *See Loayza-Tamayo v. Peru*, *supra* note 548, para. 129.

732 *See, e.g. Neira-Alegria et al. v. Peru*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 19, 1996, IACtHR, (Series C) No. 29.

733 *See, e.g. “Street Children” v. Guatemala (Villagrán-Morales et al.)*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of May 26, 2001, IACtHR, (Series C) No. 77.

734 *Moiwana Village*, *supra* note 484, para. 187; *Pueblo Bello*, *supra* note 711, paras. 247-248.

735 *Neira-Alegria*, *supra* note 731, paras. 49-50; *Pueblo Bello*, *supra* note 711, para. 248. *See also* *Moiwana Village*, *supra* note 484, para. 187; *Plan de Sánchez Massacre*, *supra* note 717, para. 74; *Mapiripán Massacre*, *supra* note 245, para. 274.

736 *See, e.g. Street Children*, *supra* note 732, para. 79.

On the other hand, non-pecuniary damages include:

both the sufferings and affliction caused to the direct victims and their next of kin – the impairment of highly significant personal values – and also the changes of a non-pecuniary nature in the lives of the victim or his family. As it is not possible to assign a precise monetary equivalent to non-pecuniary damage, there are only two ways in which it can be compensated, in order to make integral reparation to the victims. First, by the payment of an amount of money or the delivery of goods or services of a significant financial value, which the Court determines by the reasonable application of legal discretion and fairness; and, second, by the execution of acts or civil works of a public nature or with public impact that have effects such as the recovery of the victims' memory, acknowledgment of their dignity, consolation of their next of kin, or dissemination of a message of official disapproval of the respective human rights violations and of commitment to efforts to ensure that they do not happen again.⁷³⁶

Furthermore, on several occasions the Court has considered the damages caused to a victim's life plan. In *Loayza Tamayo*, the Court determined that “[t]he so-called “life plan,” deals with the full self-actualization of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals.”⁷³⁷ The achievement of the personal and professional expectations of the victim has often been taken into account. To repair the damage to personal life projects, the Court has ordered measures for reparation and non-repetition of various kinds, appropriate to the particular case. However, particularly in cases of torture, the Court has also recognized the limited scope of reparative measures. For example, in the case of *Gutiérrez Soler*, in which the victim had to leave the country following the violation against him, and survive in unfavorable conditions away from his family, suffering the physical and psychological effects of torture to which he was subjected while in detention, the Court concluded that:

the violations of Mr. Wilson Gutiérrez-Soler's rights prevented him from achieving his personal and vocational development expectations, which under normal circumstances would have been feasible. Furthermore, they caused irreparable damage to his life, forcing him to sever family ties and go abroad, in solitude, in financial distress, physically and emotionally broken down (...)

Likewise, it is proven that the specific sort of torture the victim underwent not only left him physical scars, but has also permanently lowered his self-esteem, and his ability to have and enjoy intimate relations of affection.

Considering all of the foregoing, the Court finds that damage to Mr. Wilson Gutiérrez-Soler's “life project” has occurred as a result of the violation of his human rights. However, as in other cases, the Court decides not to compensate for said damage financially, since the Judgment awarding damages herein contributes to compensate

737 *Trujillo-Oroza v. Bolivia*, *supra* note 715, para. 77.

738 *Loayza Tamayo*, *supra* note 548, para. 147.

Mr. Wilson Gutiérrez-Soler for pecuniary and non pecuniary damages (*supra* paras. 76, 78, 84(a) and 85(a)). The complex and all-encompassing nature of damage to the “life project” calls for action securing satisfaction and guarantees of non-repetition (*infra* paras. 103, 104, 105, 107 and 110) that go beyond the financial sphere. *Notwithstanding the above, the Court considers that no form of redress could return Mr. Wilson Gutiérrez-Soler the personal fulfillment options of which he was unfairly deprived or provide him with fresh options.*⁷³⁸

In general, with regard to material or pecuniary damages, the Court awards monetary payment.⁷³⁹ In some cases, however, the Court has found that the decision recognizing the violation of the victim’s rights constitutes sufficient reparation.⁷⁴⁰

With regard to non-pecuniary damages, and damage to life plans, the Court has been expanding its arsenal of measures by taking into account in each case the proposals made by the victims and by the Commission, as well as comments made by the respondent States. In cases where it has found the existence of a violation of the right not to be tortured or subjected to cruel, inhuman or degrading treatment, the Court has ordered an effective investigation leading to the identification, prosecution and, if appropriate punishment of those responsible;⁷⁴¹ measures of satisfaction, rehabilitation and guarantees of non-repetition, including the duty to provide free medical and psychological care to victims;⁷⁴² the publication of the judgment in the Official Gazette and in newspapers with the widest circulation, or a public act acknowledging responsibility.⁷⁴³ Victims and their families should have full access to criminal proceedings and full participation in them, and the results of the investigation should be publicly available.⁷⁴⁴

Moreover, in its measures aimed at ensuring non-repetition, the Court has consolidated the tendency to enact measures with public scope or impact, according to the deficiencies detected in each case, to promote structural changes necessary to prevent the same violations from recurring in the future. In the *Cotton Field* case, in response to the enormous wave of violence against women in Ciudad Juárez over the past two decades, the Court concluded that “bearing in mind the context of structural discrimination in which the facts of this case occurred,

739 *Gutiérrez Soler, supra* note 269, paras. 88-89.

740 *Myrna Mack-Chang, supra* note 485, para. 267; *Trujillo-Oroza, supra* note 715, para. 79.

741 *Cantos v. Argentina*, Judgment of November 28, 2002, IACtHR, (Series C) No. 97, para. 71.

742 *Tibi, supra* note 362, para. 258; *Maritza Urrutia, supra* note 297, para. 177; *Juan Humberto Sánchez, supra* note 228, para. 186.

743 *See e.g. Cabrera García and Montiel Flores, supra* note 243, para. 218.

744 *Rosendo Cantú, supra* note 442, para. 226.

745 *Juan Humberto Sánchez, supra* note 228, para. 186.

which was acknowledged by the State, the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.”⁷⁴⁵ Thus, among other measures, the Court ordered the State to implement a “program of education for the general public of the State of Chihuahua,” and to submit an annual report indicating the activities it has implemented in order to overcome this discrimination.

In other cases, the Court has ordered the creation of a public register of detainees, or the improvement of the existing register, to strengthen control over the legality of detentions carried out by government agents more effectively, and to prevent violations of the right not to be tortured or subjected to other forms of cruel, inhuman or degrading treatment.⁷⁴⁶ In *Cabrera García and Montiel Flores*, the Court ordered the adoption of additional measures to ensure that the register is continuously updated and to ensure the interconnection of the database with other existing records in order to create a network that would easily identify the whereabouts of detainees.⁷⁴⁷

The Court has also ordered the adoption of legislative measures to bring domestic legislation up to international standards, in accordance with Article 2 of the Convention (duty to adopt domestic legislative measures). One of the most illustrative cases is found in the recent judgments of the Court in which Mexico was sentenced, among other reasons, for the incompetence of military jurisdiction to investigate and prosecute violations of human rights perpetrated against civilians. In all cases, the Mexican state upheld the current article 57.II.a of the Code of Military Justice, which provides for the application of military jurisdiction for crimes against common or federal law when committed by the military “when on duty or as a result of acts committed when on duty.” Declaring this provision incompatible with the American Convention, the Court has ordered the State to adopt, within a reasonable time frame, “the appropriate legislative reforms in order to make the mentioned provision compatible with the international standards of the field.”⁷⁴⁸

A similar approach was followed by the Court in *Bulacio*,⁷⁴⁹ and in this case the Court reiterated the importance of respecting basic due process rights, such as

746 *Cotton Field*, *supra* note 192, para. 450. On the scope of non-pecuniary reparations, see Burgorgue-Larsen, L. And Ubeda de Torres, A, *The Inter-American Court of Human Rights: Case law and Commentary*, Oxford University Press (2011), p. 232.

747 *Juan Humberto Sánchez*, *supra* note 228, para. 189.

748 *Cabrera García y Montiel Flores*, *supra* note 243, para. 243.

749 The first case was *Radilla Pacheco*, *supra* note 140, para. 342. Subsequently, *Fernández Ortega*, *supra* note 372, para. 239; *Rosendo Cantú*, *supra* note 442, para. 222; *Cabrera García and Montiel Flores*, *supra* note 243, para. 235.

750 *Bulacio*, *supra* note 293, para. 132.

notification of the detainee as to the reasons for the arrest, immediate judicial review and notification of a family member, lawyer or consular official, in the prevention of torture or other cruel, inhuman or degrading treatment.⁷⁵⁰ For that reason, the Court ordered the State to amend its domestic legislation to ensure respect for these rights in the future.⁷⁵¹ Furthermore, in other cases the Court has ordered the State to design protocols and training programs for the diligent investigation of acts of torture and acts of sexual violence, according to the United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment; the United Nations Manual on the Effective Investigation and documentation of Torture and other Cruel, Inhuman or degrading Punishment (“Istanbul Protocol”); and the Guidelines of the World Health Organization to prevent future acts of torture.⁷⁵²

With respect to legal costs and expenses, the Court has held that

it is for the Court to prudently assess [the] scope [of reimbursement], including expenses incurred before the authorities under domestic jurisdiction and those incurred in the course of the proceeding before the inter-American [sic] system, bearing in mind the circumstances of the specific case and the nature of international jurisdiction for the protection of human rights. This assessment can be based on the principle of fairness and take into account the expenses stated by the parties, insofar as their *quantum* is reasonable.⁷⁵³

The Commission, based on its findings of violations to the American Convention, recommends to the responsible State that it make appropriate reparations to redress these violations. However, the Commission does not specify in its public reports the scope or nature of those reparations.⁷⁵⁴

3.6 Establishing State responsibility

3.6.1 General

In monitoring State compliance with the American Convention and other Inter-American instruments, the Court and the Commission have jurisdiction over States, but not over individuals. They do not determine individual culpability

751 *Ibid.*, paras. 128-130.

752 *Ibid.*, para. 144.

753 *Gutiérrez Soler*, *supra* note 269, para. 110; *Rosendo Cantú*, *supra* note 442, para. 242; *Fernández Ortega*, *supra* note 372, para. 256; *Campo Algodonero*, *supra* note 192, para. 502.

754 *Myrna Mack-Chang*, *supra* note 485, para. 290.

755 *See e.g. Corumbiara Massacre*, *supra* note 587, para. 307; *Dayra María Levoyer Jiménez*, *supra* note 563, para. 123.

for human rights violations and do not impose punishments on individuals.⁷⁵⁵ The function of the Commission and the Court is to protect victims, determine whether their rights have been violated and order appropriate redress for the harm caused by such violations.⁷⁵⁶

The Inter-American Commission, however, may monitor the conduct of non-State actors under its power to examine the general situation of human rights in a particular State. Usually, the Commission includes its findings regarding non-State actors in its general reports on individual countries. For example, in its Third Report on Colombia, the Commission recognized that many actors contribute to the situation of violence in that country and the State was not internationally responsible for all of the harm caused to its citizens by non-State agents.⁷⁵⁷ In addition, the Commission devoted a Section of the report to violations of international humanitarian law perpetrated by non-State armed groups involved in the Colombian conflict.⁷⁵⁸

In its first contentious cases, the Court defined the rules governing the attribution of international responsibility to States when the American Convention has been violated. In *Velásquez-Rodríguez*, the Court held that

Article 1(i) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.⁷⁵⁹

The Commission has followed this approach and has cited extensively the Court's case law when deciding on attributing international responsibility to States.⁷⁶⁰

In *Maripipán Massacre* the Court went even further in delineating the rules governing the attribution of international responsibility. In essence, the Court held that although the American Convention refers to general rules of international

756 *Castillo-Petruzzi*, *supra* note 359, para. 90; *International Responsibility for the Promulgation and Enforcement of Laus in violation of the Convention (Arts. 1 and 2 of the American Convention)*, *supra* note 182, para. 56.

757 *See Hilaire*, *supra* note 212, para. 66; *Cantoral-Benavides*, *supra* note 191, para. 46; *Castillo-Petruzzi*, *supra* note 359, para. 90; *Panel Blanca*, *supra* note 27, para. 71; *Suárez Rosero*, *supra* note 237, para. 37.

758 IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter 1, paras. 1-6.

759 *Ibid.*, Chapter 4.

760 *Velásquez-Rodríguez*, *supra* note 214, para. 164. *See also Caballero-Delgado*, *supra* note 117, paras. 54-56; *Godínez-Cruz*, *supra* note 214, para. 173.

761 *See e.g. Coutinho Mendes*, *supra* note 232, para. 102; *Ignacio Ellacuría, S. J. et al. v. El Salvador*, Case 10.488, Report No. 136/99, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999), para. 157; *Hugo Bustios Saavedra v. Peru*, Case 10.548, Report No. 38/97, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), para. 83; *Marroquín v. Guatemala*, *supra* note 456, para. 37.

law regarding State responsibility, Articles 1(1) and 2 are *lex specialis*.⁷⁶¹ The special nature of the Convention as a human rights treaty, vis-à-vis general rules of international law, require that attribution of international responsibility, as well as the determination of its scope and effects, be established in light of the provisions of that treaty.⁷⁶²

The Court has found that human rights violations committed against members of a certain group, such as children,⁷⁶³ or committed under certain circumstances, as in the context of a pattern of violations, may warrant a finding of aggravated State responsibility.⁷⁶⁴ In *Plan de Sánchez*, the Court stated that the aggravated nature of the State's pattern of abuses against an indigenous community be considered in determining appropriate reparations.⁷⁶⁵

In Inter-American case law regarding the attribution of international responsibility for human rights violations, there are two grounds on which a State may be found responsible. First, international responsibility may be directly imputable to a State as a result of acts and omissions perpetrated by State agents or organs (duty to respect); second, a State may be found responsible for acts perpetrated by non-State actors when it fails to exercise due diligence in preventing, investigating and redressing the alleged violation (duty to ensure). These two grounds are explained in more detail in the following Sections.

3.6.2 Attribution of unlawful activity for acts and omissions

Inter-American case law reflects general rules of international law regarding the attribution of international responsibility for State acts or omissions. Any act or omission committed by a State organ or agent which violates a person's rights is a breach of the duty to respect under Article 1(1), and the responsibility therefore is imputable to the State.⁷⁶⁶ According to the Court, “[t]his conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or

762 Literally, “special law.” This term refers to a principle of international law according to which the more specific norms, or body of norms, regulating a given issue will prevail over more general rules (*lex generalis*).

763 *Mapiripán Massacre*, *supra* note 245, para. 107.

764 *Juvenile Reeducation Institute*, *supra* note 385, para. 251; *Gómez-Paquiyaury*, *supra* note 297, para. 76; *Molina-Theissen v. Guatemala*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of July 3, 2004, IACtHR, (Series C) No. 108, para. 41.

765 *Myrna Mack-Chang*, *supra* note 485, para. 139.

766 *Plan de Sánchez Massacre*, *supra* note 454, para. 81.

767 *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, IACtHR, (Series C) No. 79, para. 154; *Velásquez-Rodríguez*, *supra* note 214, para. 169.

violate internal law.”⁷⁶⁷ The State agent’s motivation in committing the violation is irrelevant for purposes of attributing international responsibility to the State. The Court has consistently held that a State may be found responsible even where the perpetrator of the violation cannot be identified.⁷⁶⁸

International responsibility may result from the acts or omissions of any State organ, whether executive, legislative or judicial.⁷⁶⁹ The Court has held, for example, that a State may breach its American Convention obligations by adopting measures that fail to respect the provisions of the Convention.⁷⁷⁰ The fact that measures have been adopted in conformity with a State’s domestic law is not relevant to the determination of international responsibility.⁷⁷¹ A State may also be found responsible for failing to adopt measures to ensure a full exercise of Convention rights, as required by Article 2.⁷⁷² In “*The Last Temptation of Christ*,” the Court examined a film censorship policy implemented by all three branches of the Chilean Government and provided for in the Chilean Constitution. The Court found Chile internationally responsible for the violation of the right to freedom of expression protected under Article 13 of the American Convention.⁷⁷³

The Commission’s case law conforms to the Court’s. In *Canuto de Oliveira*, for example, the Commission ruled that

international law assigns the State international responsibility for the behavior of its institutions and agents when they are operating in that capacity, even if outside the normal scope of their functions. This includes the higher organs of the State, such as the Executive, Legislative, and Judicial Branches, and acts and omissions of public officials or agents acting in their place.⁷⁷⁴

768 *Velásquez-Rodríguez*, *supra* note 214, para. 170. See also *Godínez-Cruz*, *supra* note 214, paras. 178-180; *Caballero-Delgado*, *supra* note 117, para. 56; *Neira Alegria*, *supra* note 506, para. 63; “*Five Pensioners*” *v. Peru*, Judgment of February 28, 2003, IACtHR, (Series C) No. 98, para. 163.

769 *Paniagua-Morales et al.*, *supra* note 191, para. 91; *Gangaram-Panday*, *supra* note 287, para. 62; *Godínez-Cruz*, *supra* note 214, para. 183; *Velásquez-Rodríguez*, *supra* note 214, para. 173.

770 “*The Last Temptation of Christ*” *v. Chile* (*Olmedo-Bustos et al.*), Judgment of February 5, 2001, IACtHR, (Series C) No. 73, para. 72.

771 *Certain Attributes of the Inter-American Commission On Human Rights* (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93, July 16, 1993, IACtHR, (Series A) No. 13, para. 26; *Barrios Altos v. Peru*, *supra* note 463, para. 42.

772 *Certain Attributes of the Inter-American Commission on Human Rights*, *supra* note 770, para. 26; *Hilaire*, *supra* note 212, para. 152.

773 *Certain Attributes of the Inter-American Commission on Human Rights*, *supra* note 770, para. 26; *International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention*, *supra* note 182, para. 37.

774 “*The Last Temptation of Christ*,” *supra* note 769, para. 72.

775 *João Canuto De Oliveira v. Brazil*, Case 11.287, Report No. 24/98, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997), para. 39. See also *e.g. Tarcisio Medina Charry*, *supra* note 465, paras. 104-105.

Furthermore, the federal clause contained in Article 28 of the American Convention has not prevented the Court and the Commission from attributing international responsibility to federal States for acts or omissions committed by agents or organs of their political subdivisions.⁷⁷⁵ In *Garrido and Baigorria*, the Court noted that “the case law, which has stood unchanged for more than a century, holds that a State cannot plead its federal structure to avoid complying with an international obligation.”⁷⁷⁶ The Commission in *Canuto de Oliveira* found the State of Brazil responsible for the murder of a union leader, perpetrated at the order of the Mayor of Rio Maria del Sur, a town in the Federal State of Pará.⁷⁷⁷

The Court and the Commission have found States responsible for their support and, tolerance of and acquiescence in human rights violations by private actors.⁷⁷⁸ Violations perpetrated by private individuals or groups acting as government proxies may also be attributed to the State.⁷⁷⁹ In *Blake*, the Court determined that members of the paramilitary group “Patrulla Civil” (*Civil Patrol*), who murdered the victim were agents of the State, because:

at the time the events in this case occurred, the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces’ functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision.⁷⁸⁰

In a number of cases against Colombia, the Court ruled on the relationship between the paramilitary and State agents. In *19 Merchants* the Court found that the extrajudicial execution of nineteen victims was carried out by paramilitary members with the cooperation and support of top commanders of the Colombian Army, with whom the paramilitary group held a close relationship.⁷⁸¹ The Court therefore ruled that Colombia was responsible for the violations of several rights protected by the Convention.⁷⁸² Similarly, in *Mapiripán Massacre*, it was established

776 American Convention, *supra* note 16. Article 28 establishes that:

1. When a State Party is a Federal State, the National Government of that State Party shall comply with all the provisions of this Convention related to the subjects over which it exercises legislative and judicial jurisdiction.

2. As regards provisions pertaining to matters that fall within the scope of the entities comprising the federation, the national Government must immediately take the pertinent steps pursuant to its constitution and laws, so that the competent authorities of said entities may adopt the necessary provisions to ensure compliance with this Convention.

777 *Garrido and Baigorria v. Argentina*, Judgment of February 2, 1996, IACtHR, (Ser. C) No. 26, para. 46.

778 *João Canuto de Oliveira*, *supra* note 774, paras. 41, 43-44.

779 *Panel Blanca*, *supra* note 191, para. 91; *Velásquez-Rodríguez*, *supra* note 214, para. 173; *María Mejía v. Guatemala*, Case 10.553, Report No. 32/96, IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc 7 rev. (1996), para. 57.

780 *See e.g. Third Report on the Human Rights Situation in Colombia*, *supra* note 757, Chapter IV, para. 234.

781 *Blake*, *supra* note 287, para. 76.

782 *19 Merchants*, *supra* note *supra* nota 477, para. 138.

783 *Ibid.*, para. 295.

that paramilitary members landed in two commercial planes at an airport controlled by the Armed Forces; they were later transported in military trucks to the place where the massacre occurred.⁷⁸³ The paramilitary members wore military attire, carried guns authorized for military use and communicated with radios.⁷⁸⁴ They took control of Mapiripán and tortured and murdered approximately 49 victims.⁷⁸⁵ The Court found Colombia internationally responsible for the arbitrary deprivation of the victims' lives and for other violations of the American Convention, precisely because the perpetrators acted with the cooperation and active support of the Colombian Army.⁷⁸⁶

The Commission in its Third Report on the Situation of Human Rights in Colombia stated that

in all cases where paramilitaries act as proxies of State agents or with the cooperation or acquiescence of those agents, the State becomes internationally responsible for the abuses which they commit. The international responsibility of the State for the human rights abuses committed is not diminished by the fact that the State has enunciated a general policy against the paramilitaries.⁷⁸⁷

The Commission applied this rule in *Riofrío Massacre*, in which the cooperation of paramilitary forces with State agents in the perpetration of human rights violations was clearly established.⁷⁸⁸

3.6.3 Attribution of unlawful activity for lack of due diligence

Inter-American case law falls in line with a well-established principle of International Law according to which the acts and omissions of private individuals are not directly attributable to States.⁷⁸⁹ In *Velásquez-Rodríguez*, however, the Court stated:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility

784 *Mapiripán Massacre*, *supra* note 245, paras. 96.30-96.32.

785 *Ibid.*, para. 96.34.

786 *Ibid.*, para. 96.39.

787 *Ibid.*, para. 123- See also *Ituango Massacres v. Colombia*, Judgment of July 1, 2006, IACtHR, (Series C) 148, para. 133.

788 *Third Report on the Human Rights Situation in Colombia*, *supra* note 757, Chapter IV, para. 249.

789 *Riofrío Massacre v. Colombia*, Case 11.654, Report No. 62/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), para. 51.

790 International Law Commission (ILC), Draft Articles on State Responsibility for Internationally Wrongful Acts with commentaries, Report of the ILC to the UN General Assembly, adopted at its 53rd Session, *Official Records of the General Assembly, Fifty-sixth session*, Suppl. No 10 (A/56/10), available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, Chapter II, pp. 83-84, paras. 2-3.

of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.⁷⁹⁰

The legal basis for the ultimate attribution of responsibility to a State for private acts relies on State failure to comply with the duty to ensure, found in Article 1(1) of the American Convention. The Court's case law reflects this principle by repeatedly holding States internationally responsible based on their lack of due diligence to prevent human rights violations, to investigate and sanction the perpetrators or to provide appropriate reparations to the victims or their families.⁷⁹¹

In the *Pueblo Bello Massacre* decision, however, the Court made clear that the duty to ensure does not imply the State's unlimited responsibility for any private action.⁷⁹² Instead, the State's duty to prevent and protect against private acts or omissions is limited to situations in which the State is aware of the existence of an actual and immediate risk to an individual or group and where the State has a reasonable opportunity to prevent or avoid that risk.⁷⁹³

In *Luna López v. Honduras*, the Court had to determine the international responsibility of the State in the murder of an environmentalist, who had denounced death threats by a timber businessman shortly before the events that led to his death. The Court noted that at the time of the incidents there was a situation of conflict and risk in Honduras, to the detriment of people working for environmental protection.⁷⁹⁴ In this context, and given the fact that the authorities knew about existence of a situation of real and immediate risk to the life of the victim, they did not adopt the necessary measures to ensure the environmentalist's right to life. The Court concluded that the State did not act with due diligence to counter the threat against Carlos Luna López, thereby failing to comply with its obligation to guarantee the right to life enshrined in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Carlos Luna López.⁷⁹⁵

791 *Velásquez-Rodríguez*, *supra* note 214, para. 172. *See also Godínez-Cruz*, *supra* note 214, paras. 181-182; *Caballero-Delgado*, *supra* note 117, para. 56.

792 *Juan Humberto Sánchez*, *supra* note 228, paras. 109-113; *Bámaca-Velásquez*, *supra* note 191, paras. 132-135; *Campo Algodonero*, *supra* note 192. For a different approach, *see Las Palmeras*, *supra* note 195, para. 42 (where the Court, after establishing that the act could not be linked to a State agent, held that Colombia had carried out a proper investigation into the alleged murder of one of the victims and that, therefore, it had discharged its duty to ensure the victim's right to life).

793 *Pueblo Bello*, *supra* note 711, para. 123.

794 *Ibid.* *See also Luna López v. Honduras*, Judgment of October 10, 2013, IACHR, (Series C) No. 269, para. 120.

795 Positive measures to prevent and protect are reinforced to the point of being of "cardinal importance" in the context of serious violations of human rights and systematic violence; *see also* obligations to ensure in a declared emergency area and in military operations in, among others, *Pueblo Bello Massacre*, *supra* note 711, para. 134.

796 *Luna López*, *supra* note 793, para. 139.

In the aforementioned *Cotton Field* case, the Court noted that since 1993 there had been a sharp increase in murders of women, however, it stated that “even though the State was aware of the situation of risk for women in Ciudad Juárez, it has not been established that it knew of a real and imminent danger for the victims in this case.” In a context where the State’s international obligations imposed upon it “a greater responsibility with regard to the protection of women in Ciudad Juárez, who are in a vulnerable situation, particularly young women from humble backgrounds,”⁷⁹⁶ the Court confirmed that such obligations do not impose “unlimited responsibility for any unlawful act against such women.”⁷⁹⁷ However, from the moment that the disappearances were reported, the State had an even stricter duty of due diligence, given the high level of danger to the victims. The deficiencies identified in the search operations, added to the careless attitude of the officials, who did not address the allegations with due urgency, led the Court to conclude with the following argument:

the State did not act with the required due diligence to prevent the death and abuse suffered by the victims adequately and did not act, as could reasonably be expected, in accordance with the circumstances of the case, to end their deprivation of liberty. This failure to comply with the obligation to guarantee is particularly serious owing to the context of which the State was aware – which placed women in a particularly vulnerable situation – and of the even greater obligations imposed in cases of violence against women by Article 7(b) of the Convention of Belém do Pará.

In addition, the Tribunal finds that the State did not prove that it had adopted norms or implemented the necessary measures, pursuant to Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, that would have allowed the authorities to provide an immediate and effective response to the reports of disappearance and to adequately prevent the violence against women. Furthermore, it did not prove that it had adopted norms or taken measures to ensure that the officials in charge of receiving the missing reports had the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.

Based on the foregoing, the Court finds that the State violated the rights to life, personal integrity and personal liberty recognized in Articles 4(1), 5(1), 5(2) and 7(1) of the American Convention, in relation to the general obligation to guarantee contained in Article 1(1) and the obligation to adopt domestic legal provisions contained in Article 2 thereof, as well as the obligations established in Article 7(b) and 7(c) of the Convention of Belém do Pará.⁷⁹⁸

The Commission shares the Court’s approach to the attribution of State responsibility for the acts and omissions of private individuals. In *Maria Da Penha*, for example, the Commission found that the State’s failure to exercise due diligence to prevent and investigate a domestic violence complaint warranted

797 *Cotton Field*, *supra* note 192, para. 282.

798 *Ibid.*

799 *Ibid.* paras. 284-286.

a finding of State responsibility under the American Convention and the Belém do Pará Convention.⁷⁹⁹ Similarly, in *Ortiz v. Guatemala*, the Commission found a pattern of repression in Guatemala against members of the Church who worked with the poor and indigenous people and the human rights violations perpetrated against Sister Ortiz were found to be linked to that practice. The existence of the practice evidenced the State's failure to prevent human rights violations and investigate and punish those who committed them.⁸⁰⁰ In *Víctor Manuel Oropeza*, the Commission did not find the State responsible for failure to prevent the violation of the victim's right to life, because the threats against Mr. Oropeza were never reported to the competent authorities.⁸⁰¹ The Commission did, however, find the State responsible for the lack of an appropriate investigation into the victim's assassination.⁸⁰²

800 *María da Penha v. Brazil*, Case 12.051, Report No. 54/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), paras. 43-44, 55-57.

801 *Diana Ortíz v. Guatemala*, Case 10.526, Report No. 31/96, IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev. (1996), paras. 80-84, 127.

802 *Víctor Manuel Oropeza v. Mexico*, Case 11.740, Report No. 130/99, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999), para. 26.

803 *Ibid.*, para. 44.

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- Carlos García Saccone v. Argentina*, Case 11.671, Report No. 8/98, IACHR, OEA/Ser.L/V/II.95 Doc. 7 rev. at 193 (1997)
- Carlos Manuel Prada González and Evelio Antonio Bolaño Castro v. Colombia*, Case 11.710, Report No. 84/98, IACommHR, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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- Castillo Petruzzzi and others v. Peru*, Judgement of May 30, 1999, IACtHR, (Series C) No. 52
- Certain Attributes of the Inter-American Commission On Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93, July 16, 1993, IACtHR, (Series A) No. 13
- Cesti Hurtado v. Peru*, Reparations (Art. 63(1) of the American Convention on Human Rights), Judgement of May 31, 2001, IACtHR, (Series C) No. 78,
- Chahal v. United Kingdom*, ECtHR, App. No. 22414/93, Judgement of November 15, 1996
- Chaparro Álvarez and Lapo Ñiquez v. Ecuador*, Judgement of November 21, 2007, IACtHR, (Series C) No. 170
- Cheryl Monica Joseph v. Canada*, Case 11.092, Report No. 27/93, IACHR, Annual Report 1993, OEA/Ser.L/V/85 Doc. 9 rev. (1994)
- Ciro Abdías Boderó Arellano v. Peru*, Case 12.161, Report No. 44/09, IACHR, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
- Contreras and others v. El Salvador*, Judgement of August 31, 2011, IACtHR, (Series C) No. 232
- Corumbiara Massacre v. Brazil*, Case 11.556, Report No. 32/04, IACHR, Annual Report 2004, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004)
- Dacosta Cadogan v. Barbados*, Judgement of September 24, 2009, (Series C) No. 204
- Dave Sewell v. Jamaica*, Case 12.347, Report No. 76/02, IACHR, Annual Report 2002, OEA.Ser. L/V/II.17 (2002), Doc. 1 rev.1 (2002)
- David Palomino Morales and others v. Peru*, Cases 10.551, 10.803, 10.821, 10.906, 11.180 and 11.322, Report No. 53/99, OEA/Ser.L/V/II/95 Doc.6 rev. (1998),
- Dayra María Levoyer Jiménez v. Ecuador*, Case 11.992, Report No. 66/01, IACHR, Annual Report 2001, OEA/Ser.L/V/II.114 Doc. 5 rev. (2001)
- De la Cruz Flores v. Peru*, Judgement of November 18, 2004, IACtHR, (Series C) No. 115
- de Jesús Pedraza v. Colombia*, Case 10.581, Report No. 33/92, IACHR, Annual Report 1992-1993, OEA/Ser.L/V/II.83 Doc. 14 corr.1 (1993)
- Decision of the Commission as to the admissibility [of Haitians to the United States]*, Case 10.675, Report No. 28/93, IACHR, Annual Report 1993, OEA/Ser.L/V.85 Doc. 9 rev. (1994)

Denton Aitken v. Jamaica, Case 12.275, Report No. 58/02, IACHR, Annual Report 2002, OEA/Ser.L/VII.117 Doc.1 rev.1 (2002)

Detainees in Guantanamo Bay, Cuba, Request for Precautionary Measures, IACHR (March 13, 2002)

Dianna Ortiz v. Guatemala, Case 10.526, Report No. 31/96, IACHR, Annual Report 2000, OEA/Ser.L/V/II.95 rev. (1996)

Domingo Morales and Rafael Sánchez et al., Case 10.626, *Pedro Tau Cac*, Case 10.627, *José María Ixcaya Pixtay and others*, Case 11.198(A), *Catalino Chochoy and others*, Case 10.799, *Juan Galicia Hernández et al.*, Case 10.751, *Antulio Delgado v. Guatemala*, Case 10.901, Report No. 59/01, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 Rev (2000)

Donnason Knights v. Grenada, Case 12.028, Report No. 47/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111, Doc. 20 rev. (2000)

Durand and Ugarte v. Peru, Judgement of August 16, 2000, IACtHR, (Series C) No. 68

Edgar Manuel de León Lemus v. Guatemala, Petition 1180/04, Report No. 23/12, IACHR, (20 March 2012)

Edson Damião Calixto and Roselândio Borges Serrano v. Brazil, Cases 11.285, 11.290, Report No. 18/98, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)

Egmez v. Cyprus, ECHR, App. No. 30873/96, Judgement of December 21, 2000

Emilio Tec Pop v. Guatemala, Case 11.312, Report No. 53/97, IACHR, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)

Escué Zapata v. Colombia, Judgement of July 4, 2007, IACtHR, (Series C) No. 165

Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, *American Convention on Human Rights*), Advisory Opinion OC-11/90, August 10, 1990, IACtHR, (Series A) No. 11

Fairén-Garbi and Solís-Corrales v. Honduras, Judgement of June 26, 1987, IACtHR, (Series C) No. 2

Fermin Ramírez v. Guatemala, Judgement of June 20, 2005, IACtHR, (Series C) No. 126

Fernández Ortega and others v. Mexico, Judgement of August 30, 2010, IACtHR, (Series C) No. 215

Finca “La Exacta” v. Guatemala, Case 11.382, Report No. 57/02, IACHR, Annual Report 2002, OEA/Ser.L/V/II.117 Doc. 1 rev. 1 (2002)

“*Five Pensioners*” *v. Peru*, Judgment of February 28, 2003, IACtHR, (Series C) No. 98

Fleury and others v. Haiti, Merits and Reparations, Judgement of November 23, 2011, IACtHR, (Series C) No. 236

Franklin Guillermo Aisalla Molina (Ecuador) v. Colombia, Inter-State Petition PI-02, Report No. 112/10, IACHR, (21 October 2010)

Gairrido and Baigoiria v. Argentina, Reparations (Art. 63(1) of the *American Convention on Human Rights*), Judgement of August 27, 1998, IACtHR, (Series C) No. 39

Gangaram Panday v. Suriname, Judgement of January 21, 1994, IACtHR, (Series C) No. 16

García Asto and Ramírez Rojas v. Peru, Judgement of November 25, 2005, IACtHR, (Series C) No. 137

García Lucero and others v. Chile, Judgement of August 28, 2013, IACtHR, (Series C) No. 267

Genie-Lacayo v. Nicaragua, Preliminary Objections, Judgement of January 27, 1995, IACtHR, (Series C) No. 21

Gilbert Bernard Little v. Costa Rica, Case 11.472, Report No. 85/98, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)

Godínez-Cruz v. Honduras, Judgement of January 20, 1989, IACtHR, (Series C) No. 5

Goiburú and others v. Paraguay, Judgement of September 22, 2006, IACtHR, (Series C) No. 153

Gómez-Palomino v. Peru, Judgement of November 22, 2005, IACtHR, (Series C) No. 136

Gómez Paquiyauri v. Peru, Judgement of July 8, 2004, IACtHR, (Series C) No. 110

González Medina and others v. Dominican Republic, (Resolution of the President of the Court 23 February 2011), Judgement of February 27, 2012, IACtHR, (Series C) No. 240

- González and others* (“*Campo Algodonero*”) *v. Mexico*, Judgement of November 16, 2009, IACtHR, (Series C) No. 205
- Gudiel Álvarez and others v. Guatemala* (“*Diario Militar*”), Judgement of November 20, 2012, IACtHR, (Series C) No. 253
- Gutiérrez Soler v. Colombia*, Judgement of September 12, 2005, IACtHR, (Series C) No. 132
- Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Informe No.51/96, IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev. (1996)
- Heliodoro Portugal v. Panama*, (Resolution on Monitoring Compliance with Judgement, 19 June 2012), IACtHR, Judgement of August 12, 2008, (Series C) No. 186
- Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Judgement of June 21, 2002, IACtHR, (Series C) No. 94
- Horacio Verbitsky et al. v. Argentina*, Case 12.128, Report No. 3/04, IACHR, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 106 (2004)
- Hugo Bustios Saavedra v. Peru*, Case 10.548, Report No. 38/97, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)
- Ignacio Ellacuría, S.J. and others v. El Salvador*, Case 10.488, Report No. 136/99, IACHR, Annual Report 1999, OEA/Ser.L/V/II.106 Doc. 6 rev. (1999)
- Ileana del Rosario Soleares Castillo et al. v. Guatemala*, Case 9111, Report No. 60/01, IACHR, Annual Report 2000, OEA/Ser. L/V/II.111 Doc. 20 rev. (2000)
- International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94, December 9, 1994, IACtHR., (Ser. A) No. 14
- Iucher Bronstein v. Peru*, Judgement of February 6, 2001, IACtHR, (Series C) No. 74
- Jailton Neri da Fonseca v. Brazil*, Case 11.634, Report No. 33/04, IACHR, Annual Report 2004, OEA/Ser/L/VII.122 Doc. 5 Rev. 1 (2004)
- Jesús Tranquilino Vélez Loor v. Panama*, Case 92-04, Report No. 95/06, IACHR, OEA/Ser.L/V/II. 127, doc. 4 rev. 1 (2006)
- João Canuto de Oliveira v. Brazil*, Case 11.287, Report No. 24/98, IACHR, Annual Report 1997, OEA/Ser.L/V/II.985 Doc. 6 rev. (1997)
- Joaquín Ortega v. Guatemala*, Case 10.586, Report No. 39/00, Annual Report 1999, IACHR, OEA/Ser.L/V/II.106 Doc. 6 Rev. (1999)
- Jorge Enrique Benavides v. Colombia*, Report No. 34/97, 3 October 1997, Petition, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)
- Joseph Thomas v. Jamaica*, Case 12.183, Report No. 127/01, IACHR, OEA/Ser.L/V/II.114 Doc.5 rev. (2001)
- Juan Humberto Sánchez v. Honduras*, Judgement June 7, 2003, IACtHR, (Series C) No. 99
- Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87, October 6, 1987, IACtHR, (Series A) No. 9
- Juvenile Reeducation Institute v. Paraguay*, Judgment of September 2, 2004, IACtHR, (Series C) No. 112
- Karina Montenegro and others v. Ecuador*, Petitions 261-03, 397-03 and 1377-04, Report No. 48/07, IACHR, OEA/Ser.L/V/II.130, doc. 22 rev. 1(2007)
- La Cantuta v. Peru* (“*La Cantuta Massacre*”), Judgement of November 29, 2006, IACtHR, (Series C) No. 162
- Labita v. Italy*, ECHR, App. No. 26772/95, Judgement of April 6, 2000
- “*Las Dos Erres*” *Massacre v. Guatemala*, Judgment of November 24, 2009, IACtHR, (Series C) No. 211
- “*Las Dos Erres*” *Massacre v. Guatemala*, Resolution of the President of the Court, May 18, 2009
- Las Palmeras v. Colombia*, Preliminary Objections, Judgement of February 4, 2000, IACtHR, (Series C) No. 67

Leroy Lamey and others v. Jamaica, Cases 11.826, 11.843, 11.846, and 11.847, Report No. 49/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20, rev. (2000)

Loayza Tamayo v. Peru, Judgement of September 17, 1997, IACtHR, (Series C) No. 33

Loayza Tamayo v. Peru, Judgement of November 27, 1998 (Reparations and Costs), IACtHR, (Series C) No. 42

López Álvarez v. Honduras, Judgement of February 1, 2006, IACtHR, (Series C) No. 141

Loren Laroye Riebe Star and others v. Mexico, Case 11.610, Report No. 49/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 Rev. (1998)

Lori Berenson Mejía v. Peru, Judgement of November 25, 2004, IACtHR, (Series C) No. 119

Luis Gustavo Marroquín v. Guatemala, Case 8075, Report No. 54/96, IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev. (1996)

Luis Lizardo Cabrera v. Dominican Republic, Case 10.832, Report No. 35/96, IACHR, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)

Luna López v. Honduras, Judgement of October 10, 2013, IACtHR, (Series C) No. 269

Manuel Manríquez v. México, Case 11.509, Report No. 2/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1996)

Manuel Stalin Bolaños Quiñones v. Ecuador, Case 10.580, Report No. 10/95, IACHR, Annual Report 1995, OEA/Ser.L/V/II.91 Doc. 7 (1996)

Mapiripán Massacre v. Colombia, Judgment of September 15, 2005, IACtHR, (Series C) No. 134

Maria da Penha v. Brazil, Case 12.051, Report No. 54/01, IACHR, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000)

María de Mejía v. Guatemala, Case 10.553, Report No. 32/96, IACHR, Annual Report 1996, OEA/Ser. L/V/II.95 Doc. 7 rev. (1996)

Mario Alberto Jara Oñate et al v. Chile, Case 12.195, Report No. 31/03, IACHR, OEA/Ser.L/V/II.118 Doc. 5 rev. 2 (2003)

Maritza Urrutia v. Guatemala, Judgement of November 27, 2003, IACtHR, (Series C) No. 103

Martin Javier Roca Casas v. Peru, Case 11.233, Report No. 39/97, IACHR, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)

Marzioni v. Argentina, Case 11.673, Report No. 39/96, IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev. (1996)

Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, IACtHR, (Series C) No. 79

Minors in Detention v. Honduras, Case 11.491, Report No. 41/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)

Michael Edwards et al. v. Bahamas, Cases 12.067, 12.068 y 12.086, Report Informe No. 48/01, IACHR, Annual Report 2000, OEA/Ser.L/VII.111 Doc.20 rev. (2000)

Moiwana Community v. Suriname, Judgment of June 15, 2005, IACtHR, (Series C) No. 124

Molina Theissen v. Guatemala, Reparations (Art. 63(1) of the American Convention on Human Rights), Judgement of July 3, 2004, IACtHR, (Series C) No. 108

Montion v. France, Eu. Comm. HR, App. No. 11192/84, (14 May 1987)

Morales de Sierra v. Guatemala, Case 11.625, Report No. 04/01, IACHR, OEA/Ser.L/V/II.111, doc. 20 rev. (2001)

Myrna Mack Chang v. Guatemala, Judgement of November 25, 2003, IACtHR, (Series C) No. 101

Neira Alegria et al. v. Peru, Judgement of January 19, 1995, IACtHR, (Series C) No. 20

Newton Coutinho Mendes v. Brazil, Case 11.405, Report No. 59/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)

Nicaragua v. Costa Rica, Inter-State Petition 01/06, Report No. 11/07, IACHR, (8 March 2007)

Nuru v. Gonzales, United States Court of Appeals, 9th Circuit, 404 F.3d 1207, 1222 (2005)

- Octavio Ruben Acosta v. Paraguay*, Case 12.358, Report No. 83/03, IACHR, OEA/Ser.L/V/II.118 Doc. 70 rev. 2 en 405 (2003)
- “*Other Treaties*” Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, IACtHR, (Series A) No. 1
- Ovelário Tames v. Brazil*, Case 11.516, Report No. 60/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)
- Pacheco Teruel v. Honduras*, Judgement of April 27, 2012, IACtHR, (Series C) No. 241
- Pacheco Tineo Family v. Bolivia*, Case 12.474, Report No. 136/11, IACHR, October 31, 2011
- Palamara-Iribarne v. Chile*, Judgement of November 22, 2005, IACtHR, (Series C) No. 135
- Paniagua-Morales et al. v. Guatemala* (“Panel Blanca”), Judgement of March 8, 1998, IACtHR, (Series C) No. 37
- Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, IACHR, Annual Report 2002, OEA.Ser. L/V/II.117 (2002)
- Miguel Castro Castro Prison v. Peru.*, Judgement of November 25, 2006, IACtHR, (Series C) No. 160
- Plan de Sanchez Massacre v. Guatemala*, Case 11.763, Report No. 31/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)
- Prosecutor v. Furundzija*, ICTY, Case No. IT-95-17/1-T10, 10 December 1998
- Pueblo Bello Massacre v. Colombia*, Judgment of January 31, 2006. IACtHR, (Series C) No. 140
- Radilla Pacheco v. Mexico*, Judgement of November 23, 2009, IACtHR, (Series C) No. 209
- Ramón Hernández Berrios and others v. Honduras*, Case 11.802, Report No. 15/02, IACHR, OEA/Ser.L/II.117, doc. 1 rev. 1 (2002)
- Ramon Mauricio García-Prieto Giral v. El Salvador*, Case 11.697, Report No. 27/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)
- Raúl Zevallos Loayza and others v. Peru*, Cases 10.544, 10.745 and 11.098, Report No. 52/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc.7 rev. (1998)
- Raquel Martín de Mejía v. Peru*, Case 10.970, Report No. 5/96, IACHR, Annual Report 1995, OEA/Ser. L/V/II.91 Doc.7 (1996)
- Raxcacó-Reyes v. Guatemala*, Judgement of September 15, 2005, IACtHR, (Series C) No. 133
- Resolución N° 17/87*, Case No. 9425, IACHR, Peru, 28 March 1987, OEA/Ser.L/V/II.71 doc.9 rev.1 (1987)
- Restrictions on the Death Penalty* (Arts. 4.2 and 4.4 American Convention on Human Rights), Advisory Opinion OC-3/83, September 8, 1983, IACtHR, (Series A) No. 3
- Riofrío Massacre v. Colombia*, Case 11.654, Report No. 62/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000)
- Río Negro Massacres v. Guatemala*, Judgment of September 4, 2012, IACtHR, (Series C) No. 250
- Rogelio Morales Martínez v. Mexico*, Petition 728/04, Report No. 67/12, IACHR, (17 July 2012)
- Rosendo Cantú and others v. Mexico*, Judgement of August 31, 2010, IACtHR, (Series C) No. 216
- Rudolph Baptiste v. Granada*, Case 11.743, Report No. 38/00, IACHR, Annual Report 1999, OEA/Ser.L/VII.106 Doc. 6 rev. (1999)
- Rumaldo Juan Pacheco Osco et al. v. Bolivia*, Case 301/02, Report No. 53/04, IACHR, Annual Report 2004, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004)
- Salas and others v. United States*, (U.S. military action in Panama), Case 10.573, Report No. 31/93, IACHR, Annual Report 1993, OEA/Ser.L/V.85 Doc. 9 rev. (1994)
- Salvador Jorge Blanco v. Dominican Republic*, Case 10.208, Report No. 15/89, IACHR, Annual Report 1988-1989, OEA/Ser.L/V/II.76, Doc.10 (1989)
- Selmouni v. France*, ECtHR, App. No. 25803/94, Judgement of July 28, 1999
- Serrano-Cruz Sisters v. El Salvador*, Judgement of 1 March 2005, IACtHR, (Series C) No. 120

Serrano-Cruz Sisters v. El Salvador, Request for an Interpretation of the Judgement on the Merits, Reparations and Costs (Art. 67 of the American Convention on Human Rights), Judgement of 8 September 2005, IACtHR, (Series C) No. 131

Soering v. United Kingdom, ECHR, App. No. 14038/88, Judgement of July 7, 1989

“*Street Children*” *v. Guatemala* (*Villagrán-Morales et al.*), Reparations (Art. 63(1) American Convention on Human Rights), Judgment of May 26, 2001, IACtHR, (Series C) No. 77

Suárez Rosero v. Ecuador, Judgement of November 12, 1997, IACtHR, (Series C) No. 35

Tarciso Medina Charry v. Colombia, Case 11.221, Report No. 3/98, Annual Report 1997, OEA/Ser.L/V/II.98 Doc.6 rev. (1997)

“*The Last Temptation of Christ*” *v. Chile* (*Olmedo-Bustos et al.*), Judgment of February 5, 2001, IACtHR, (Series C) No. 73

Tibi v. Ecuador, Judgement of September 7, 2004, IACtHR, (Series C) No. 114

Ticona Estrada and others v. Bolivia, Judgement of November 27, 2008, IACtHR, (Series C) No. 191

Tiu Tojin v. Guatemala, Judgement of November 26, 2008, IACtHR, (Series C) No. 190

Tomasi v. France, ECtHR, App. No. 12850/87, Judgement of August 27, 1992

Trujillo Oroza v. Bolivia, Reparations (Art. 63(1) American Convention on Human Rights), Judgement of February 27, 2002, IACtHR, (Series C) No. 92

Valentina Rosendo Cantú and others v. Mexico, Case 972-03, Report No. 93/06, IACHR, OEA/Ser.L/II.127, doc. 4 rev. 1 (2006)

Valle Jaramillo and others v. Colombia, Judgement of November 27, 2008, IACtHR, (Series C) No. 192

Vargas Areco v. Paraguay, Judgement of September 26, 2006, IACtHR, (Series C) No. 155

Velásquez-Rodríguez v. Honduras, Judgement of July 29, 1988, IACtHR, (Series C) No. 4

Vélez Loor v. Panama, Judgement of November 23, 2010, IACtHR, (Series C) No. 218

Vera Vera and others v. Ecuador, Judgement of May 19, 2011, IACtHR, (Series C) No. 226

Víctor Hernández Vásquez v. El Salvador, Case 10.228, Report No. 65/99, Annual Report 1998, IACHR, OEA/Ser.L/V/II.102 Doc. 6 rev. (1998)

Víctor Manuel Oropeza v. Mexico, Case 11.740, Report No. 130/99, IACHR, Annual Report 1996, OEA/Ser.L/V/II.106 Doc. 3 rev. (1999)

Víctor Rosario Congo v. Ecuador, Case 11.427, Report No. 63/99, IACHR, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 7 Rev. (1998)

William Andrews v. United States, Case 11.139, Report No. 57/96, Annual Report 1997, OEA/Ser.L/V/II.98 Doc. 6 rev. (1997)

William León Laurente and others c. Peru, Cases 10.807, 10.808, 10.809, 10.810, 10.878 and 11.307, Report No. 54/99, OEA/Ser.L/V/II.102 Doc.7 rev. (1998)

Wilma Rosa Posadas v. Argentina, Petition 0015/00, Report No. 122/01, IACHR, (10 October 2001)

Ximenes López v. Brazil, Judgement of July 4, 2006, IACtHR, (Series C) No. 149

Yakye Axa Indigenous Community v. Paraguay, Judgement of June 17, 2005, IACtHR, (Series C) No. 125

INDEX OF TERMS

A

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) 1.1

admissibility 2.2

- appeal of decisions 2.2
- criteria, *see* admissibility criteria
- consequences of inadmissibility 2.1.1, 2.2, 2.2.2(a)(iii)
- decisions of the Commission 1.2.3(a), 2.2, 2.5.2
- procedure 1.2.3(a), 2.2
- publication of decisions in Annual Reports 2.2, 2.5.2

admissibility criteria 2.2, 2.2.1, 2.2.2

- anonymous applications 2.2.1(a), 2.6.3
- duplication 1.2.3(a), 2.2.2(c)
- exhaustion, *see* exhaustion of domestic remedies
- fourth instance formula 2.2.1(c)(ii)
- jurisdiction, *see* jurisdiction of the Commission
- manifestly groundless or out of order 1.2.3(a), 2.2.2(d)
- timeliness 1.2.3(a), 2.2.2(b)

advisory opinions, *see* jurisdiction of the Court

American Convention on Human Rights 1.1, 1.2.1-1.2.2, 1.2.3(a), 1.2.3(c), 1.3, 2.1, 2.2.1-2.2.2, 2.4, 3.1-3.6

American Declaration of the Rights and Duties of Man 1.1, 1.2.2(a), 1.2.3, 2.7, 3.1, 3.3-11, 3.4.1

- communications under, *see* communications
- State responsibility, *see* State responsibility

amicus curiae 2.5

arrest and interrogation, *see* detention and humane treatment

B

burden of proof 2.2.2(a), 2.4.3, 3.3.3

- in the establishment of facts 2.4.3, 3.3.3
- in the exhaustion of domestic remedies 2.2.2(a)
- presumptions 2.4.3, 3.3.3

C

Charter, *see* Organization of American States

children 1.2.2(a), 3.2.2-3.2.3, 3.3.6, 3.5.3, 3.6.1

- aggravated State responsibility 3.6.1

detention with adults 3.3.6
dignity of 3.2.3
intensity of suffering of 3.2.2
reparation 3.5.3
reports on rights of 1.2.2(a)

Commission, *see* **Inter-American Commission on Human Rights**

communications to the Court 1.3ff, IIff

Court judgments 1.3.1
evidence, *see* evidence
hearings, *see* hearings before the Court
inter-State complaints 1.3.1
jurisdiction, *see* jurisdiction of the Court
provisional measures, *see* provisional measures
referral by Commission 1.2.3(a), 1.3.1
time limits II
who may file 1.3.1

compensation, *see* **reparation**

complaints, *see* **petitions**

Convention, *see* **American Convention on Human Rights**

Convention of Belém do Pará 1.1, 3.1, 3.6.3

corporal punishment 3.3.1

costs, *see* **reparation**

Court, *see* **Inter-American Court of Human Rights**

cruel treatment and punishment, *see* **humane treatment**

D

death penalty 1.1, 2.2.1(c)(i), 2.7, 3.2.3, 3.3.4, 3.3.11

decisions

Commission, *see* communications to the Commission
Court, *see* communications to the Court

Declaration, *see* **American Declaration of the Rights and Duties of Man**

degrading treatment and punishment, *see* **humane treatment**

deportation, *see* **expulsion**

detention 2.2.2(a)(iii), 3.3.11, 3.5.1, 3.5.3

conditions of 2.7, 3.2.3, 3.3.6, 3.3.11, 3.5.3
incommunicado 2.7, 3.2.3, 3.3.3, 3.3.7, 3.3.9
solitary confinement 3.3.8
unlawful 3.3.9

disappearances 1.1, 1.2.2(a), 2.2.1(c)(i), 2.2.1(e), 2.2.2(a), 2.4.3, 3.3.3-3.3.4, 3.3.8, 3.3.11

domestic remedies, *see* **exhaustion of domestic remedies**

due process, *see* **exhaustion of domestic remedies**

E

establishment of facts, *see* **evidence and burden of proof**

evidence 1.2.3(a), 1.3.1, II, 2.1.1, 2.2.2(d), 2.3-2.4, 3.3.2, 3.3.9
admissibility of 2.4.2, 2.4.4
circumstantial 2.4.3-2.4.4, 3.3.3, 3.3.9
Commission hearings, *see* hearings before the Commission
Court consideration of evidence adduced before the Commission 1.3.1
Court hearings, *see* hearings before the Court
Court's *motu proprio* gathering of additional evidence 2.4.4
documents recommended 2.4.1-2.4.2
documents required 2.2.2(d), 2.4.1
examination of 1.3.1, 2.4.3-2.4.4
failure to provide requested evidence 2.4.3
initial submission limitation 2.4.4
obtained through ill-treatment 3.4, 3.4.2
weight of evidence 1.3.1, 2.2.1(c)(i), 2.4.3
witnesses 2.4.2

Exclusionary Rule 3.4.2

exhaustion of domestic remedies 1.2.1, 1.2.3(a), 2.1.3, 2.2-2.2.2(b), 3.5.2
access to domestic remedies 2.2.2(a)(ii)
“adequate and effective” 2.2.2(a)
burden of proof 2.2.2(a)
due process 2.2.2(a)(i)
exceptions generally 2.2.2(a)
filing complaint before remedies exhausted 2.2.2(a)(iii)
rationale behind 2.2.2(a)
unwarranted delay 2.2.2(a)(iii)

expulsion, *see* **non-refoulement**

extradition, *see* **non-refoulement**

extrajudicial executions 1.2.2(a), 3.3.3-3.3.5, 3.3.8, 3.3.10, 3.6.2

F

family members 2.6.3, 3.3.2, 3.3.4, 3.3.7, 3.5.2-3.5.3

financial assistance 2.7.2

force, excessive use of 3.2.3, 3.3.1, 3.3.10

friendly settlement, *see* **petitions**

G, H

hearings before the Commission 1.2.3(b), 2.3, 2.4.2, 2.5.1, 2.6.3

hearings before the Court 1.3.1, 2.3, 2.4.2, 2.4.4, 2.6.3

humane treatment, right to 2.2.2(a), 2.4.3, 3.1-3.2, 3.3.2, 3.3.4-3.3.6, 3.3.10-3.3.11

absolute nature 3.1

cruel treatment and punishment 2.4.3, 2.7, 3.1-3.2, 3.2.2, 3.3.3-3.3.4, 3.3.6 3.3.11, 3.4-3.4.2, 3.5ff

degrading treatment and punishment 2.4.3, 2.7, 3.1-3.2.2, 3.3-3.3.1, 3.3.3-3.3.4, 3.3.6-3.3.11, 3.4-3.4.2, 3.5ff

inhuman treatment and punishment 2.4.3, 2.7, 3.1-3.2, 3.2.2-3.3.4, 3.3.6-3.3.11, 3.4-3.4.2, 3.5ff

intensity 3.2.2
other prohibitions 3.4ff
psychological suffering 3.1, 3.2.1, 3.3.1-3.3.7, 3.4.2
“respect for the inherent dignity of the human person” 3.1-3.2, 3.2.2-3.2.3, 3.3.1-3.3.2, 3.3.6, 3.3.9-3.3.11,
3.5.1, 3.5.3
specific acts or situations 3.3ff
suffering of family members 3.3.4, *see also* family
torture 1.2.2(a), 2.2.1(e), 2.4.3, 2.7, 3.1-3.2.2, 3.3-3.3.6, 3.3.8-3.3.9, 3.4ff, 3.5ff, 3.6.2
Torture Convention, *see* Inter-American Convention to Prevent and Punish Torture

I

inadmissibility, *see* **admissibility**

inherent dignity of the human person, *see* **humane treatment**

inhuman treatment and punishment, *see* **humane treatment**

Inter-American Commission on Human Rights 1.1, 1.2.1-1.2.3(c), 1.3.1-1.3.2, IIff, 3.1, 3.2.1-3.2.3, 3.3, 3.3.2-3.3.11, 3.4.1-3.4.2, 3.5ff, 3.6ff

communications to the Court, 1.3ff, IIff

composition 1.2.1

hearings, *see* hearings before the Court

jurisdiction, *see* jurisdiction of the Court

on-site visits 1.2.2(b)

powers and functions 1.1, 1.2.1-1.2.3, 1.3.1-1.3.2, 3.6.1

recommendations of 1.2.1-1.2.2(a), 1.2.3-1.2.3(c), II, 2.1.1, 2.3, 3.6.1

reports 1.2.1, 1.2.2(a)-1.2.2(b), 1.2.3(a)-1.2.3(b), II, 2.5.2

Rules of Procedure 1.2.1, 1.2.2(a)-1.2.2(b), 1.2.3(a)-1.2.3(b), 2.1.1-2.1.3, 2.2, 2.2.1(a), 2.2.2(a)-2.2.2(b), 2.2.2(d),
2.3, 2.4.2, 2.6.3, 2.7

Special Rapporteurs 1.2.2(b)-1.2.2(c)

Statute 1.1, 1.2.1, 1.2.2(a)-1.2.2(b), 1.2.3(a)

Inter-American Convention to Prevent and Punish Torture 1.1, 2.2.1(c)(i), 3.1-3.2.2, 3.3.2, 3.3.8-3.3.9,
3.4.1-3.4.2, 3.5ff

Inter-American Court of Human Rights 1.1, 1.2.1, 1.3ff, II, 2.2, 2.2.1(a), 2.2.1(c)(i), 2.2.1(d)-2.2.1(e), 2.2.2(a)
(iii), 2.2.2(d), 2.3, 2.4.1-2.4.4, 2.5.2, 2.6.2-2.7, 3.1, 3.2.1-3.2.3, 3.3ff, 3.4.1-3.4.2, 3.5ff, 3.6ff

advisory opinions, *see* jurisdiction of the Court

deliberations 2.3, 2.4.2-2.4.4

hearings, *see* hearings before the Court

judgments 1.3.1, 2.3, 2.5.2

judges and composition 1.3

jurisdiction, *see* jurisdiction of the Court

President of 2.7

referrals to 1.2.3-1.2.3(c), 1.3.1-1.3.2, 2.1.1, 2.2.1(a)-2.2.1(c)(i), 2.2.1(e), 2.5.2, 2.7

Rules of Procedure 2.3, 2.4.2, 2.4.4, 2.6.3, 2.7

Inter-American Public Defender 2.7.1

interim measures, *see* **precautionary measures and provisional measures**

J

judges, *see* **Inter-American Court of Human Rights**

jurisdiction of the Commission 1.2.1, 1.2.3, 1.2.3(b), 2.2-2.2.1(e), 2.2.2(a), 2.7, 3.6.1

communications under the American Convention 1.2.3, 1.2.3(b),

see also communications

communications under the American Declaration 1.2.3, 1.2.3(b),

see also communications

ratione loci 2.2, 2.2.1(d)

ratione materiae 2.2, 2.2.1(c)

ratione personae 2.2-2.2.1(b)

ratione temporis 2.2, 2.2.1(e)

jurisdiction of the Court 1.1, 1.2.3(b), 1.3, 2.2ff, 3.6.1

advisory 1.1, 1.3.2

contentious 1.1, 1.2.1, 1.2.3, 1.3.1, 2.1.1, 2.2ff

State acceptance of Court's contentious jurisdiction 1.12.1.1, 2.2.1(b), 2.2.1(e)

jurisprudence 2.2.2(a)(iii), 2.2.2(d), 2.4.3, 3.2, 3.2.3, 3.3ff, 3.4ff, 3.5ff

Commission 2.2.2(a)(iii), 2.2.2(d), 3.2.3, 3.3ff, 3.4.2, 3.5ff

Court 2.2.2(a)(iii), 2.2.2(d), 3.2.3, 3.3ff, 3.4.2, 3.5ff

other international human rights bodies 2.2.2(a)(iii), 2.4.3, 3.2.2, 3.3.2, 3.3.5

K, L

legal aid, *see* **financial assistance**

legal representation 1.3.1, 2.1.1, 2.1.3, 2.2.1(a), 2.6.1

M

military criminal jurisdiction 2.2.2(a), 3.5.2.1

N

non-refoulement 3.4-3.4.1

non-State actors, *see* **State responsibility**

note of referral 1.3.1

O

on-site visits, *see* **Inter-American Commission on Human Rights**

Organization of American States 1.1, 1.2.1, 1.2.2(b), 2.7

Charter and protocols 1.1, 1.2.3, 1.2.3(c), 2.7

General Assembly 1.1, 1.2.1-1.2.2(b), 1.2.3(b), 1.3, 2.2, 2.5.2

Organs 1.1, 1.2ff, 1.3ff, *see also* Inter-American Commission on Human Rights *and* Inter-American Court of Human Rights

Member States 1.1, 1.2.1-1.2.2(c), 1.2.3-1.2.3(a), 1.2.3(c), 1.3.2, 2.2.1(a)-2.2.1(b)

P

personal integrity 3.1

petitions to the Commission 1.2.3(a)-1.2.3(b), IIff

- admissibility, *see* admissibility
- anonymous filing, *see* admissibility criteria
- compliance with decisions 1.2.3(a)-1.2.3(c)
- confidentiality 2.2.1(a), 2.5.1-2.5.2, 2.6.3
- evidence, *see* evidence
- final report 1.2.3(a)-1.2.3(b), II, 2.5.2
- findings and recommendations 1.2.1-1.2.3(c), II, 2.1.1, 2.3, 3.6.1
- follow-up procedures 1.2.3(a)-1.2.3(b)
- friendly settlement 1.2.3(a)-1.2.3(b), II, 2.1.1, 2.3, 2.5.2, 2.6
- hearings, *see* hearings before the Commission
- inter-State complaints 1.2.1, 1.3.1, 2.2.1
- jurisdiction, *see* jurisdiction of the Commission
- merits 1.2.3(a), 2.1, 2.1.3, 2.2.1(c), 2.2.2(d), 2.3, 2.4-2.4.4, 2.5.2, 2.7, IIIff
- precautionary measures, *see* precautionary measures
- procedure IIff
- time frame II
- when to file 2.2.2(a)-2.2.2(b)
- where to file 2.1.1
- who may file 2.2.1(a)
- requests for information 1.1, 1.2.1, 1.2.3(a)-1.2.3(b), 2.1.1
- Secretariat and Executive Secretary decisions 1.2.3(a), 2.1.1, 2.2, 2.3, 2.7
- structure of communication 2.1.2
- submission by Commission to Court 1.2.3(a), 1.3.1
- time limits 1.2.3(a), II, 2.1.3, 2.2, 2.2.1(e), 2.2.2(b)
- under the American Convention 1.2.3-1.2.3(a), 1.2.1, 2.2.1(b)-2.2.1(c)
- under the American Declaration 1.2.3, 1.2.3(b), 1.2.1, 2.2.1(b)-2.2.1(c), 3.4.1
- power of attorney, *see* legal representation

precautionary measures 1.2.3(b), 2.5.2, 2.8

prison conditions, *see* detention

private (non-State) actors, *see* State responsibility

proceedings of the Commission, *see* Inter-American Commission on Human Rights

proceedings of the Court, *see* Inter-American Court of Human Rights

provisional measures 1.2.1, 1.2.3(c), 1.3.1, 2.8

punishment, *see* humane treatment and corporal punishment

Q, R

rape 3.3.1-3.3.2, 3.3.5

refoulement, *see* non-refoulement

reparation 1.3.1, 3.3.4, 3.5, 3.5.3, 3.6.1, 3.6.3

- costs and expenses 1.3.1
- non-pecuniary damages 3.5.3
- pecuniary damages 3.5.3
- phase 1.3.1, 2.6.2

reports, *see* **Inter-American Commission on Human Rights**

Rules of Procedure of the Commission, *see* **Inter-American Commission on Human Rights**

Rules of Procedure of the Court, *see* **Inter-American Court of Human Rights**

S

solitary confinement, *see* **detention**

Special Rapporteurs, *see* **Inter-American Commission on Human Rights**

standard of proof 2.2.1(c)(i), 2.2.2(d), 2.4.3, 3.2.2-3.2.3

State responsibility 2.2.1(b), 2.2.1(c)(ii), 2.2.2(a), 2.4.3, 3.2.3, 3.3.6, 3.5ff, 3.6ff

acts and omissions 2.4.3, 3.6.2

attribution of 3.6ff

due diligence 3.6.3

duty to investigate and punish 3.5.2

duty to prevent 3.2.3, 3.3.6, 3.5.1

duty to respect and ensure 3.5ff

non-State actors 3.5.2, 3.6.1, 3.6.2-3.6.3

T

Threats 2.7, 3.3.4-3.3.5, 3.3.10, 3.6.3

torture, *see* **humane treatment**

Torture Convention, *see* **Inter-American Convention to Prevent and Punish Torture and United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Treaties 1.1, 1.2.1, 1.3.2, II, 2.2.1(c)(i), 2.2.1(d)-2.2.1(e), 2.4.1, 3.1, 3.2.1, 3.3.11, 3.5-3, 3.6.1

U

United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 3.2.1

V, W, Y, Z

APPENDICES

AMERICAN CONVENTION ON HUMAN RIGHTS “PACT OF SAN JOSE, COSTA RICA”

PREAMBLE

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

PART I

STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER I

GENERAL OBLIGATIONS

Article 1. Obligation to Respect Rights

1. 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.
2. For the purposes of this Convention, “person” means every human being.

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

CHAPTER II

CIVIL AND POLITICAL RIGHTS

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this article, the following do not constitute forced or compulsory labor:
 - a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
 - b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service
 - c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
 - d. work or service that forms part of normal civic obligations.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support.

Article 8. Right to a Fair Trial

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.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
 - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
 - b. prior notification in detail to the accused of the charges against him;
 - c. adequate time and means for the preparation of his defense;
 - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
 - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
 - g. the right not to be compelled to be a witness against himself or to plead guilty; and
 - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9. Freedom from Ex Post Facto Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10. Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11. Right to Privacy

1. Everyone has the right to have his honor respected and his dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12. Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 14. Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17. Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18. Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20. Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Article 22. Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.
9. The collective expulsion of aliens is prohibited.

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to Judicial Protection

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.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

CHAPTER III

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

CHAPTER IV

SUSPENSION OF GUARANTEES, INTERPRETATION, AND APPLICATION

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are

not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Judicial Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28. Federal Clause

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.
3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30. Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31. Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

CHAPTER V

PERSONAL RESPONSIBILITIES

Article 32. Relationship between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

**PART II
MEANS OF PROTECTION**

**CHAPTER VI
COMPETENT ORGANS**

Article 33

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights, referred to as “The Commission;” and
- b. the Inter-American Court of Human Rights, referred to as “The Court.”

**CHAPTER VII
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

Section 1. Organization

Article 34

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

Article 35

The Commission shall represent all the member countries of the Organization of American States.

Article 36

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.
2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 37

1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.
2. No two nationals of the same state may be members of the Commission.

Article 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

Article 39

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

Article 40

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

Section 2. Functions**Article 41**

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- a. to develop an awareness of human rights among the peoples of America;
- b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- c. to prepare such studies or reports as it considers advisable in the performance of its duties;
- d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
 - g. to submit an annual report to the General Assembly of the Organization of American States.

Article 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

Section 3. Competence**Article 44**

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.
3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.
4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
 - a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
 - b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
 - c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and
 - d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.
2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
 - a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
 - b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

- a. any of the requirements indicated in Article 46 has not been met;
- b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
- c. the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or
- d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Section 4. Procedure

Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:
 - a. If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.
 - b. After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.
 - c. The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.
 - d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

APPENDICES

- e. The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.
 - f. The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.
2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.
2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.
3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.
2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.
3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

CHAPTER VIII

INTER-AMERICAN COURT OF HUMAN RIGHTS

Section 1. Organization

Article 52

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.
2. No two judges may be nationals of the same state.

Article 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.
2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 54

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.
2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.
3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Article 55

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an *ad hoc* judge.
3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an *ad hoc* judge.
4. An *ad hoc* judge shall possess the qualifications indicated in Article 52.
5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

Article 56

Five judges shall constitute a quorum for the transaction of business by the Court.

Article 57

The Commission shall appear in all cases before the Court.

Article 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any member state of the Organization of American States when a majority of the Court considers it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.
2. The Court shall appoint its own Secretary.
3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

Article 59

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respects not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

Article 60

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

Section 2. Jurisdiction and Functions

Article 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 and 50 shall have been completed.

Article 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Section 3. Procedure

Article 66

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

**CHAPTER IX
COMMON PROVISIONS**

Article 70

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

Article 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

Article 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

Article 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

**PART III
GENERAL AND TRANSITORY PROVISIONS**

**CHAPTER X
SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS, AND DENUNCIATION**

Article 74

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.
2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.
3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

Article 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

Article 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.
2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.
2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

CHAPTER XI

TRANSITORY PROVISIONS

Section 1. Inter-American Commission on Human Rights

Article 79

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member state of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

Article 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

Section 2. Inter-American Court of Human Rights

Article 81

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

Article 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

(Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948)

WHEREAS:

The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;

The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

The international protection of the rights of man should be the principal guide of an evolving American law;

The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable,

The Ninth International Conference of American States.

AGREES:

To adopt the following:

AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

Preamble

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

CHAPTER ONE

Rights

Article I. Every human being has the right to life, liberty and the security of his person.

Right to life, liberty and personal security.

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Right to equality before law.

APPENDICES

Article III. Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

Right to religious freedom and worship.

Article IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Right to freedom of investigation, opinion, expression and dissemination.

Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

Right to protection of honor, personal reputation, and private and family life.

Article VI. Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

Right to a family and to protection thereof.

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Right to protection for mothers and children.

Article VIII. Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

Right to residence and movement.

Article IX. Every person has the right to the inviolability of his home.

Right to inviolability of the home.

Article X. Every person has the right to the inviolability and transmission of his correspondence.

Right to the inviolability and transmission of correspondence.

Article XI. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Right to the preservation of health and to well-being.

Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Right to education.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

Article XIII. Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

Right to the benefits of culture.

Article XIII. Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

Right to work and to fair remuneration.

He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

Article XIV. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Right to leisure time and to the use thereof.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

Article XV. Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.

Right to social security.

Article XVI. Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

Right to recognition of juridical personality and civil rights.

Article XVII. Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

Right to a fair trial.

Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

Right to nationality.

Article XIX. Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

Right to vote and to participate in government.

APPENDICES

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| Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free. | Right of assembly. |
| Article XXI. Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature. | Right of association. |
| Article XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature. | Right to property. |
| Article XXIII. Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home. | Right of petition. |
| Article XXIV. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon. | Right of protection from arbitrary arrest. |
| Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. | Right to due process of law. |
| No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character. | |
| Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody. | |
| Article XXVI. Every accused person is presumed to be innocent until proved guilty. | |
| Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment. | |
| Article XXVII. Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements. | Right of asylum. |

Article XXVIII. The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

Scope of the rights of man.

CHAPTER TWO

Duties

Article XXIX. It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.

Duties to society.

Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.

Duties toward children and parents.

Article XXXI. It is the duty of every person to acquire at least an elementary education.

Duty to receive instruction.

Article XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Duty to vote.

Article XXXIII. It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.

Duty to obey the law.

Article XXXIV. It is the duty of every able-bodied person to render whatever civil and military service his country may require for its defense and preservation, and, in case of public disaster, to render such services as may be in his power.

Duty to serve the community and the nation.

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXV. It is the duty of every person to cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.

Duties with respect to social security and welfare.

Article XXXVI. It is the duty of every person to pay the taxes established by law for the support of public services.

Duty to pay taxes.

APPENDICES

Article XXXVII. It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.

Duties to society.

Duties toward children and parents.

Duty to receive instruction.

Duty to vote.

Duty to obey the law.

Duty to serve the community and the nation.

Duties with respect to social security and welfare.

Duty to pay taxes.

Duty to work.

Duty to work.

STATUTE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Approved by Resolution N° 447 taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, October 1979.

I. NATURE AND PURPOSES

Article 1

1. The Inter-American Commission on Human Rights is an organ of the Organization of the American States, created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter.
2. For the purposes of the present Statute, human rights are understood to be:
 - a. The rights set forth in the American Convention on Human Rights, in relation to the States Parties thereto;
 - b. The rights set forth in the American Declaration of the Rights and Duties of Man, in relation to the other member states.

II. MEMBERSHIP AND STRUCTURE

Article 2

1. The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.
2. The Commission shall represent all the member states of the Organization.

Article 3

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.
2. Each government may propose up to three candidates, who may be nationals of the state proposing them or of any other member state of the Organization. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the proposing state.

Article 4

1. At least six months prior to completion of the terms of office for which the members of the Commission were elected,⁽⁴⁾ the Secretary General shall request, in writing, each member state of the Organization to present its candidates within 90 days.
2. The Secretary General shall prepare a list in alphabetical order of the candidates nominated, and shall transmit it to the member states of the Organization at least thirty days prior to the next General Assembly.

Article 5

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 4.⁽⁴⁾ The candidates who obtain the largest number of votes and an absolute majority of the votes of the member states shall be declared elected. Should it become necessary to hold several ballots to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

Article 6

The members of the Commission shall be elected for a term of four years and may be reelected only once. Their terms of office shall begin on January 1 of the year following the year in which they are elected.

Article 7

No two nationals of the same state may be members of the Commission.

Article 8

1. Membership on the Inter-American Commission on Human Rights is incompatible with engaging in other functions that might affect the independence or impartiality of the member or the dignity or prestige of his post on the Commission.
2. The Commission shall consider any case that may arise regarding incompatibility in accordance with the provisions of the first paragraph of this Article, and in accordance with the procedures provided by its Regulations.

If the Commission decides, by an affirmative vote of a least five of its members, that a case of incompatibility exists, it will submit the case, with its background, to the General Assembly for decision.

3. A declaration of incompatibility by the General Assembly shall be adopted by a majority of two thirds of the member states of the Organization and shall occasion the immediate removal of the member of the Commission from his post, but it shall not invalidate any action in which he may have participated.

Article 9

The duties of the members of the Commission are:

1. Except when justifiably prevented, to attend the regular and special meetings the Commission holds at its permanent headquarters or in any other place to which it may have decided to move temporarily.
2. To serve, except when justifiably prevented, on the special committees which the Commission may form to conduct on-site observations, or to perform any other duties within their ambit.
3. To maintain absolute secrecy about all matters which the Commission deems confidential.
4. To conduct themselves in their public and private life as befits the high moral authority of the office and the importance of the mission entrusted to the Commission.

Article 10

1. If a member commits a serious violation of any of the duties referred to in Article 9, the Commission, on the affirmative vote of five of its members, shall submit the case to the General Assembly of the Organization, which shall decide whether he should be removed from office.
2. The Commission shall hear the member in question before taking its decision.

Article 11

1. When a vacancy occurs for reasons other than the normal completion of a member's term of office, the Chairman of the Commission shall immediately notify the Secretary General of the Organization, who shall in turn inform the member states of the Organization.
2. In order to fill vacancies, each government may propose a candidate within a period of 30 days from the date of receipt of the Secretary General's communication that a vacancy has occurred.
3. The Secretary General shall prepare an alphabetical list of the candidates and shall transmit it to the Permanent Council of the Organization, which shall fill the vacancy.
4. When the term of office is due to expire within six months following the date on which a vacancy occurs, the vacancy shall not be filled.

Article 12

1. In those member states of the Organization that are Parties to the American Convention on Human Rights, the members of the Commission shall enjoy, from the time of their election and throughout their term of office, such immunities as are granted to diplomatic agents under international law. While in office, they shall also enjoy the diplomatic privileges required for the performance of their duties.
2. In those member states of the Organization that are not Parties to the American Convention on Human Rights, the members of the Commission shall enjoy the privileges and immunities pertaining to their posts that are required for them to perform their duties with independence.
3. The system of privileges and immunities of the members of the Commission may be regulated or supplemented by multilateral or bilateral agreements between the Organization and the member states.

Article 13

The members of the Commission shall receive travel allowances and per diem and fees, as appropriate, for their participation in the meetings of the Commission or in other functions which the Commission, in accordance with its Regulations, entrusts to them, individually or collectively. Such travel and per diem allowances and fees shall be included in the budget of the Organization, and their amounts and conditions shall be determined by the General Assembly.

Article 14

1. The Commission shall have a Chairman, a First Vice Chairman and a Second Vice Chairman, who shall be elected by an absolute majority of its members for a period of one year; they may be reelected only once in each four year period.
2. The Chairman and the two Vice Chairmen shall be the officers of the Commission, and their functions shall be set forth in the Regulations.

Article 15

The Chairman of the Commission may go to the Commission's headquarters and remain there for such time as may be necessary for the performance of his duties.

III. HEADQUARTERS AND MEETINGS

Article 16

1. The headquarters of the Commission shall be in Washington, D.C.
2. The Commission may move to and meet in the territory of any American State when it so decides by an absolute majority of votes, and with the consent, or at the invitation of the government concerned.
3. The Commission shall meet in regular and special sessions, in conformity with the provisions of the Regulations.

Article 17

1. An absolute majority of the members of the Commission shall constitute a quorum.
2. In regard to those States that are Parties to the Convention, decisions shall be taken by an absolute majority vote of the members of the Commission in those cases established by the American Convention on Human Rights and the present Statute. In other cases, an absolute majority of the members present shall be required.
3. In regard to those States that are not Parties to the Convention, decisions shall be taken by an absolute majority vote of the members of the Commission, except in matters of procedure, in which case, the decisions shall be taken by simple majority.

IV. FUNCTIONS AND POWERS

Article 18

The Commission shall have the following powers with respect to the member states of the Organization of American States:

- a. to develop an awareness of human rights among the peoples of the Americas;
- b. to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights;
- c. to prepare such studies or reports as it considers advisable for the performance of its duties;
- d. to request that the governments of the states provide it with reports on measures they adopt in matters of human rights;
- e. to respond to inquiries made by any member state through the General Secretariat of the Organization on matters related to human rights in the state and, within its possibilities, to provide those states with the advisory services they request;

APPENDICES

- f. to submit an annual report to the General Assembly of the Organization, in which due account shall be taken of the legal regime applicable to those States Parties to the American Convention on Human Rights and of that system applicable to those that are not Parties;
- g. to conduct on-site observations in a state, with the consent or at the invitation of the government in question; and
- h. to submit the program budget of the Commission to the Secretary General, so that he may present it to the General Assembly.

Article 19

With respect to the States Parties to the American Convention on Human Rights, the Commission shall discharge its duties in conformity with the powers granted under the Convention and in the present Statute, and shall have the following powers in addition to those designated in Article 18:

- a. to act on petitions and other communications, pursuant to the provisions of Articles 44 to 51 of the Convention;
- b. to appear before the Inter-American Court of Human Rights in cases provided for in the Convention;
- c. to request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons;
- d. to consult the Court on the interpretation of the American Convention on Human Rights or of other treaties concerning the protection of human rights in the American states;
- e. to submit additional draft protocols to the American Convention on Human Rights to the General Assembly, in order to progressively include other rights and freedoms under the system of protection of the Convention, and
- f. to submit to the General Assembly, through the Secretary General, proposed amendments to the American Convention on Human Rights, for such action as the General Assembly deems appropriate.

Article 20

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18:

- a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;
- b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
- c. to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

V. SECRETARIAT

Article 21

- 1. 1. The Secretariat services of the Commission shall be provided by a specialized administrative unit under the direction of an Executive Secretary. This unit shall be provided with the resources and staff required to accomplish the tasks the Commission may assign to it.
- 2. 2. The Executive Secretary, who shall be a person of high moral character and recognized competence in the field of human rights, shall be responsible for the work of the Secretariat and shall assist the Commission in the performance of its duties in accordance with the Regulations.
- 3. 3. The Executive Secretary shall be appointed by the Secretary General of the Organization, in consultation with the Commission. Furthermore, for the Secretary General to be able to remove the Executive Secretary, he shall consult with the Commission and inform its members of the reasons for his decision.

VI. STATUTE AND REGULATIONS

ARTICLE 22

1. The present Statute may be amended by the General Assembly.
2. The Commission shall prepare and adopt its own Regulations, in accordance with the present Statute.

Article 23

1. In accordance with the provisions of Articles 44 to 51 of the American Convention on Human Rights, the Regulations of the Commission shall determine the procedure to be followed in cases of petitions or communications alleging violation of any of the rights guaranteed by the Convention, and imputing such violation to any State Party to the Convention.
2. If the friendly settlement referred to in Articles 44-51 of the Convention is not reached, the Commission shall draft, within 180 days, the report required by Article 50 of the Convention.

Article 24

1. The Regulations shall establish the procedure to be followed in cases of communications containing accusations or complaints of violations of human rights imputable to States that are not Parties to the American Convention on Human Rights.
2. The Regulations shall contain, for this purpose, the pertinent rules established in the Statute of the Commission approved by the Council of the Organization in resolutions adopted on May 25 and June 8, 1960, with the modifications and amendments introduced by Resolution XXII of the Second Special Inter-American Conference, and by the Council of the Organization at its meeting held on April 24, 1968, taking into account resolutions CP/RES. 253 (343/78), "Transition from the present Inter-American Commission on Human Rights to the Commission provided for in the American Convention on Human Rights," adopted by the Permanent Council of the Organization on September 20, 1979.

VII. TRANSITORY PROVISIONS

Article 25

Until the Commission adopts its new Regulations, the current Regulations (OEA/Ser.L/VII.17, doc. 26) shall apply to all the member states of the Organization.

Article 26

1. The present Statute shall enter into effect 30 days after its approval by the General Assembly.
 2. The Secretary General shall order immediate publication of the Statute, and shall give it the widest possible distribution.
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1. Modified by AG/RES. 1098 (XXI-o/90).

STATUTE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Adopted by the General Assembly of the OAS at its Ninth Regular Session, held in La Paz Bolivia, October 1979 (Resolution N° 448)

CHAPTER I

GENERAL PROVISIONS

Article 1. Nature and Legal Organization

The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. The Court exercises its functions in accordance with the provisions of the aforementioned Convention and the present Statute.

Article 2. Jurisdiction

The Court shall exercise adjudicatory and advisory jurisdiction:

1. Its adjudicatory jurisdiction shall be governed by the provisions of Articles 61, 62 and 63 of the Convention, and
2. Its advisory jurisdiction shall be governed by the provisions of Article 64 of the Convention.

Article 3. Seat

1. The seat of the Court shall be San José, Costa Rica; however, the Court may convene in any member state of the Organization of American States (OAS) when a majority of the Court considers it desirable, and with the prior consent of the State concerned.
2. The seat of the Court may be changed by a vote of two-thirds of the States Parties to the Convention, in the OAS General Assembly.

CHAPTER II

COMPOSITION OF THE COURT

Article 4. Composition

1. The Court shall consist of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.
2. No two judges may be nationals of the same State.

Article 5. Judicial Terms'

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. A judge elected to replace a judge whose term has not expired shall complete that term.
2. The terms of office of the judges shall run from January 1 of the year following that of their election to December 31 of the year in which their terms expire.
3. The judges shall serve until the end of their terms. Nevertheless, they shall continue to hear the cases they have begun to hear and that are still pending, and shall not be replaced by the newly elected judges in the handling of those cases.

Article 6. Election of the Judges Date

1. Election of judges shall take place, insofar as possible, during the session of the OAS General Assembly immediately prior to the expiration of the term of the outgoing judges.
2. Vacancies on the Court caused by death, permanent disability, resignation or dismissal of judges shall, insofar as possible, be filled at the next session of the OAS General Assembly. However, an election shall not be necessary when a vacancy occurs within six months of the expiration of a term.
3. If necessary in order to preserve a quorum of the Court, the States Parties to the Convention, at a meeting of the OAS Permanent Council, and at the request of the President of the Court, shall appoint one or more interim judges who shall serve until such time as they are replaced by elected judges.

Article 7. Candidates

1. Judges shall be elected by the States Parties to the Convention, at the OAS General Assembly, from a list of candidates nominated by those States.
2. Each State Party may nominate up to three candidates, nationals of the state that proposes them or of any other member state of the OAS.
3. When a slate of three is proposed, at least one of the candidates must be a national of a state other than the nominating state.

Article 8. Election Preliminary Procedures²

1. Six months prior to expiration of the terms to which the judges of the Court were elected, the Secretary General of the OAS shall address a written request to each State Party to the Convention that it nominate its candidates within the next ninety days.
2. The Secretary General of the OAS shall draw up an alphabetical list of the candidates nominated, and shall forward it to the States Parties, if possible, at least thirty days before the next session of the OAS General Assembly.
3. In the case of vacancies on the Court, as well as in cases of the death or permanent disability of a candidate, the aforementioned time periods shall be shortened to a period that the Secretary General of the OAS deems reasonable.

Article 9. Voting

1. The judges shall be elected by secret ballot and by an absolute majority of the States Parties to the Convention, from among the candidates referred to in Article 7 of the present Statute.
2. The candidates who obtain the largest number of votes and an absolute majority shall be declared elected. Should several ballots be necessary, those candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

Article 10. Ad Hoc Judges

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
2. If one of the judges called upon to hear a case is a national of one of the States Parties to the case, any other State Party to the case may appoint a person to serve on the Court as an ad hoc judge.
3. If among the judges called upon to hear a case, none is a national of the States Parties to the case, each of the latter may appoint an ad hoc judge. Should several States have the same interest in the case, they shall be regarded as a single party for purposes of the above provisions.
4. In case of doubt, the Court shall decide.
5. The right of any State to appoint an ad hoc judge shall be considered relinquished if the State should fail to do so within thirty days following the written request from the President of the Court.
6. The provisions of Articles 4, 11, 15, 16, 18, 19 and 20 of the present Statute shall apply to ad hoc judges.

Article 11. Oath

1. Upon assuming office, each judge shall take the following oath or make the following solemn declaration: "I swear" or "I solemnly declare" "that I shall exercise my functions as a judge honorably, independently and impartially and that I shall keep secret all deliberations."
2. The oath shall be administered by the President of the Court and, if possible, in the presence of the other judges.

CHAPTER III STRUCTURE OF THE COURT

Article 12. Presidency

1. The Court shall elect from among its members a President and Vice President who shall serve for a period of two years; they may be reelected.
2. The President shall direct the work of the Court, represent it, regulate the disposition of matters brought before the Court, and preside over its sessions.

APPENDICES

3. The Vice President shall take the place of the President in the latter's temporary absence, or if the office of the President becomes vacant. In the latter case, the Court shall elect a new Vice President to serve out the term of the previous Vice President.
4. In the absence of the President and the Vice President, their duties shall be assumed by other judges, following the order of precedence established in Article 13 of the present Statute.

Article 13. Precedence

1. Elected judges shall take precedence after the President and Vice President according to their seniority in office.
2. Judges having the same seniority in office shall take precedence according to age.
3. Ad hoc and interim judges shall take precedence after the elected judges, according to age. However, if an ad hoc or interim judge has previously served as an elected judge, he shall have precedence over any other ad hoc or interim judge.

Article 14. Secretariat

1. The Secretariat of the Court shall function under the immediate authority of the Secretary, in accordance with the administrative standards of the OAS General Secretariat, in all matters that are not incompatible with the independence of the Court.
2. The Secretary shall be appointed by the Court. He shall be a full-time employee serving in a position of trust to the Court, shall have his office at the seat of the Court and shall attend any meetings that the Court holds away from its seat.
3. There shall be an Assistant Secretary who shall assist the Secretary in his duties and shall replace him in his temporary absence.
4. The Staff of the Secretariat shall be appointed by the Secretary General of the OAS, in consultation with the Secretary of the Court.

CHAPTER IV

RIGHTS, DUTIES AND RESPONSIBILITIES

Article 15. Privileges and Immunities

1. The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents under international law. During the exercise of their functions, they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court be held liable for any decisions or opinions issued in the exercise of their functions.
3. The Court itself and its staff shall enjoy the privileges and immunities provided for in the Agreement on Privileges and Immunities of the Organization of American States, of May 15, 1949, *mutatis mutandis*, taking into account the importance and independence of the Court.
4. The provision of paragraphs 1, 2 and 3 of this article shall apply to the States Parties to the Convention. They shall also apply to such other member states of the OAS as expressly accept them, either in general or for specific cases.
5. The system of privileges and immunities of the judges of the Court and of its staff may be regulated or supplemented by multilateral or bilateral agreements between the Court, the OAS and its member states.

Article 16. Service

1. The judges shall remain at the disposal of the Court, and shall travel to the seat of the Court or to the place where the Court is holding its sessions as often and for as long a time as may be necessary, as established in the Regulations.
2. The President shall render his service on a permanent basis.

Article 17. Emoluments

1. The emoluments of the President and the judges of the Court shall be set in accordance with the obligations and incompatibilities imposed on them by Articles 16 and 18, and bearing in mind the importance and independence of their functions.

2. The ad hoc judges shall receive the emoluments established by Regulations, within the limits of the Court's budget.
3. The judges shall also receive per diem and travel allowances, when appropriate.

Article 18. Incompatibilities

1. The position of judge of the Inter-American Court of Human Rights is incompatible with the following positions and activities:
 - a. Members or high-ranking officials of the executive branch of government, except for those who hold positions that do not place them under the direct control of the executive branch and those of diplomatic agents who are not Chiefs of Missions to the OAS or to any of its member states;
 - b. Officials of international organizations;
 - c. Any others that might prevent the judges from discharging their duties, or that might affect their independence or impartiality, or the dignity and prestige of the office.
2. In case of doubt as to incompatibility, the Court shall decide. If the incompatibility is not resolved, the provisions of Article 73 of the Convention and Article 20.2 of the present Statute shall apply.
3. Incompatibilities may lead only to dismissal of the judge and the imposition of applicable liabilities, but shall not invalidate the acts and decisions in which the judge in question participated.

Article 19. Disqualification

1. Judges may not take part in matters in which, in the opinion of the Court, they or members of their family have a direct interest or in which they have previously taken part as agents, counsel or advocates, or as members of a national or international court or an investigatory committee, or in any other capacity.
2. If a judge is disqualified from hearing a case or for some other appropriate reason considers that he should not take part in a specific matter, he shall advise the President of his disqualification. Should the latter disagree, the Court shall decide.
3. If the President considers that a judge has cause for disqualification or for some other pertinent reason should not take part in a given matter, he shall advise him to that effect. Should the judge in question disagree, the Court shall decide.
4. When one or more judges are disqualified pursuant to this article, the President may request the States Parties to the Convention, in a meeting of the OAS Permanent Council, to appoint interim judges to replace them.

Article 20. Disciplinary Regime

1. In the performance of their duties and at all other times, the judges and staff of the Court shall conduct themselves in a manner that is in keeping with the office of those who perform an international judicial function. They shall be answerable to the Court for their conduct, as well as for any violation, act of negligence or omission committed in the exercise of their functions.
2. The OAS General Assembly shall have disciplinary authority over the judges, but may exercise that authority only at the request of the Court itself, composed for this purpose of the remaining judges. The Court shall inform the General Assembly of the reasons for its request.
3. Disciplinary authority over the Secretary shall lie with the Court, and over the rest of the staff, with the Secretary, who shall exercise that authority with the approval of the President.
4. The Court shall issue disciplinary rules, subject to the administrative regulations of the OAS General Secretariat insofar as they may be applicable in accordance with Article 59 of the Convention.

Article 21. Resignation Incapacity

1. Any resignation from the Court shall be submitted in writing to the President of the Court. The resignation shall not become effective until the Court has accepted it.
2. The Court shall decide whether a judge is incapable of performing his functions.
3. The President of the Court shall notify the Secretary General of the OAS of the acceptance of a resignation or a determination of incapacity, for appropriate action.

**CHAPTER V
THE WORKINGS OF THE COURT**

Article 22. Sessions

1. The Court shall hold regular and special sessions.
2. Regular sessions shall be held as determined by the Regulations of the Court.
3. Special sessions shall be convoked by the President or at the request of a majority of the judges.

Article 23. Quorum

1. The quorum for deliberations by the Court shall be five judges.
2. Decisions of the Court shall be taken by a majority vote of the judges present.
3. In the event of a tie, the President shall cast the deciding vote.

Article 24. Hearings, Deliberations, Decisions

1. The hearings shall be public, unless the Court, in exceptional circumstances, decides otherwise.
2. The Court shall deliberate in private. Its deliberations shall remain secret, unless the Court decides otherwise.
3. The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate.

Article 25. Rules and Regulations

1. The Court shall draw up its Rules of Procedure.
2. The Rules of Procedure may delegate to the President or to Committees of the Court authority to carry out certain parts of the legal proceedings, with the exception of issuing final rulings or advisory opinions. Rulings or decisions issued by the President or the Committees of the Court that are not purely procedural in nature may be appealed before the full Court.
3. The Court shall also draw up its own Regulations.

Article 26. Budget, Financial System

1. The Court shall draw up its own budget and shall submit it for approval to the General Assembly of the OAS, through the General Secretariat. The latter may not introduce any changes in it.
2. The Court shall administer its own budget.

**CHAPTER VI
RELATIONS WITH GOVERNMENTS AND ORGANIZATIONS**

Article 27. Relations with the Host Country, Governments and Organizations

1. The relations of the Court with the host country shall be governed through a headquarters agreement. The seat of the Court shall be international in nature.
2. The relations of the Court with governments, with the OAS and its organs, agencies and entities and with other international governmental organizations involved in promoting and defending human rights shall be governed through special agreements.

Article 28. Relations with the Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights shall appear as a party before the Court in all cases within the adjudicatory jurisdiction of the Court, pursuant to Article 2.1 of the present Statute.

Article 29. Agreements of Cooperation

1. The Court may enter into agreements of cooperation with such nonprofit institutions as law schools, bar associations, courts, academies and educational or research institutions dealing with related disciplines in order to obtain their cooperation and to strengthen and promote the juridical and institutional principles of the Convention in general and of the Court in particular.

2. The Court shall include an account of such agreements and their results in its Annual Report to the OAS General Assembly.

Article 30. Report to the OAS General Assembly

The Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the Inter-American system of human rights, insofar as they concern the work of the Court.

CHAPTER VII

FINAL PROVISIONS

Article 31. Amendments to the Statute

The present Statute may be amended by the OAS General Assembly, at the initiative of any member state or of the Court itself.

Article 32. Entry into Force

The present Statute shall enter into force on January 1, 1980.

1. Amended by Resolution 625 (XII/82) of the Twelfth Regular Session of the OAS General Assembly.
2. Modified by AG/RES. 1098 (XXI-91).

RULES OF PROCEDURE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS*

Approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013.

TITLE I

ORGANIZATION OF THE COMMISSION

CHAPTER I

NATURE AND COMPOSITION

Article 1. Nature and Composition

1. The Inter-American Commission on Human Rights is an autonomous organ of the Organization of American States whose principal functions are to promote the observance and defense of human rights and to serve as an advisory body to the Organization in this area.
2. The Commission represents all the Member States of the Organization.
3. The Commission is composed of seven members elected in their individual capacity by the General Assembly of the Organization. They shall be persons of high moral character and recognized competence in the field of human rights.

CHAPTER II

MEMBERSHIP

Article 2. Duration of the Term of Office

1. The members of the Commission shall be elected for four years and may be reelected only once.
2. In the event that new members of the Commission have not been elected to replace those completing their term of office, the latter shall continue to serve until the new members are elected.

Article 3. Precedence

The members of the Commission shall follow the President and Vice Presidents in order of precedence according to their seniority in office. When there are two or more members with equal seniority, precedence shall be determined according to age.

Article 4. Incompatibility

1. The position of member of the Inter-American Commission on Human Rights is incompatible with the exercise of activities which could affect the independence or impartiality of the member, or the dignity or prestige of the office. Upon taking office, members shall undertake not to represent victims or their relatives, or States, in precautionary measures, petitions and individual cases before the IACHR for a period of two years, counted from the date of the end of their term as members of the Commission.
2. The Commission, with the affirmative vote of at least five of its members, shall decide whether a situation of incompatibility exists.
3. The Commission, prior to taking a decision, shall hear the member whose activities are claimed to be incompatible.
4. The decision with respect to the incompatibility, together with all the background information, shall be sent to the General Assembly, through the Secretary General of the Organization, for the purposes set forth in Article 8.3 of the Commission's Statute.

Article 5. Resignation

The resignation of a member of the Commission shall be submitted to the President of the Commission in writing. The President shall immediately notify the Secretary General of the OAS for the appropriate purposes.

* Rules of Procedure are periodically amended. Please check the website of the Commission (www.oas.org/en/iachr/) for the latest document

CHAPTER III

BOARD OF OFFICERS OF THE COMMISSION

Article 6. Composition and Functions

The Commission shall have as its board of officers a President, a First Vice President and a Second Vice President, who shall perform the functions set forth in these Rules of Procedure.

Article 7. Elections

1. Only members present shall participate in the election of each of the officers referred to in the preceding article.
2. Elections shall be by secret ballot. However, with the unanimous consent of the members present, the Commission may decide on another procedure.
3. The affirmative vote of an absolute majority of the members of the Commission shall be required for election to any of the positions referred to in Article 6.
4. Should it be necessary to hold more than one ballot for election to any of these positions, the names receiving the lowest number of votes shall be eliminated successively.
5. Elections shall be held on the first day of the Commission's first session of the calendar year.

Article 8. Duration of Term of Officers

1. The term of office of the officers is one year. The term runs from the date of their election until the elections held the following year for the new board, pursuant to Article 7, paragraph 5. The members of the board of officers may be re-elected to their respective positions only once during each four-year period.
2. In the event that the term of office of a Commission member expires, and he or she is President or Vice-President, the provisions of Article 9, paragraphs 2 and 3 of these Rules of Procedure shall apply.

Article 9. Resignation, Vacancy and Replacements

1. If a member of the board of officers resigns from that position or ceases to be a member of the Commission, the Commission shall fill the position at the next period of sessions for the remainder of the term of office.
2. The First Vice-President shall serve as President until the Commission elects a new President under the provisions of paragraph 1 of this article.
3. In addition, the First Vice President shall replace the President if the latter is temporarily unable to perform his or her duties. In the event of the absence or disability of the First Vice President, or if that position is vacant, the Second Vice President shall serve as President. In the event of the absence or disability of the Second Vice-President, the member with the greatest seniority according to Article 3 shall serve as President.

Article 10. Powers of the President

1. The powers of the President shall be:
 - a. to represent the Commission before the other organs of the Organization and other institutions;
 - b. to convoke sessions of the Commission in accordance with the Statute and these Rules of Procedure;
 - c. to preside over sessions of the Commission and submit to it for consideration all matters appearing on the agenda of the work program approved for the corresponding session; to decide the points of order raised during the deliberations; and to submit matters to a vote in accordance with the applicable provisions of these Rules of Procedure;
 - d. to give the floor to the members in the order in which they have requested it;
 - e. to promote the work of the Commission and oversee compliance with its program budget;
 - f. to present a written report to the Commission at the beginning of its period of sessions on what he or she has done during its recesses to carry out the functions assigned to him or her by the Statute and these Rules of Procedure;
 - g. to seek compliance with the decisions of the Commission;
 - h. to attend the meetings of the General Assembly of the OAS and other activities related to the promotion and protection of human rights;

- i. to travel to the headquarters of the Commission and remain there for as long as he or she considers necessary to carry out his or her functions;
 - j. to designate special committees, ad hoc committees and subcommittees composed of several members to carry out any mandate within his or her area of competence; and
 - k. to perform any other functions that may be conferred upon him or her in these Rules of Procedure or other tasks entrusted to him or her by the Commission.
2. The President may delegate to one of the Vice Presidents or to another member of the Commission the powers specified in paragraphs a, h and k.

CHAPTER IV

EXECUTIVE SECRETARIAT

Article 1¹

The Executive Secretariat shall be composed of an Executive Secretary, and at least one Assistant Executive Secretary, as well as the professional, technical and administrative staff needed to carry out its activities.

1. The Executive Secretary shall be a person of independence and high moral standing, with experience and recognized expertise in the field of human rights.
2. The Executive Secretary is appointed by the Secretary-General of the Organization. The Commission shall undertake the following internal procedure to identify the best qualified candidate and forward his or her name to the Secretary General, proposing appointment for a four-year term that can be renewed once.
 - a. The Commission shall open a public competition to fill the vacancy, publicizing the criteria and qualifications for the office and description of the functions and duties to be fulfilled.
 - b. The Commission shall review the applications submitted and identify three to five finalists who shall then be interviewed for the post.
 - c. The curriculum vitae of each finalist shall be made public, including on the Commission's website, during one month prior to the final selection, in order to receive observations on the candidates.
 - d. The Commission shall determine the best qualified candidate, taking into account the observations, by an absolute majority of its members.
3. Prior to and during their period of appointment, the Executive Secretary and Assistant Executive Secretary shall disclose to the Commission any interest which may be considered to be in conflict with the exercise of his or her functions.

Article 12. Powers of the Executive Secretary

1. The powers of the Executive Secretary shall be:
 - a. to direct, plan, and coordinate the work of the Executive Secretariat and to coordinate the operational aspects of the tasks assigned to working groups and rapporteurships;
 - b. to prepare, in consultation with the President, the draft program-budget of the Commission, which shall be governed by the budgetary provisions in force for the OAS, and with respect to which he or she shall report to the Commission;
 - c. to prepare the draft work program for each session in consultation with the President;
 - d. advise the President and members of the Commission in the performance of their duties;
 - e. to present a written report to the Commission at the beginning of each period of sessions on the activities of the Secretariat since the preceding period of sessions, and on any general matters that may be of interest to the Commission; and
 - f. to implement the decisions entrusted to him or her by the Commission or its President.
2. The Assistant Executive Secretary shall replace the Executive Secretary in the event of his or her absence or disability. In the absence or disability of both, the Executive Secretary or the Assistant Executive Secretary, as the case may be, shall designate one of the specialists of the Executive Secretariat as a temporary replacement.

3. The Executive Secretary, Assistant Executive Secretary, and staff of the Executive Secretariat must observe the strictest discretion in all matters the Commission considers confidential. Upon taking office, the Executive Secretary shall undertake not to represent victims or their relatives, or States, in precautionary measures, individual petitions or cases before the IACHR for a period of two years, counted from the time he or she ceases to discharge the functions of Executive Secretary.

Article 13. Functions of the Executive Secretariat

The Executive Secretariat shall prepare the draft reports, resolutions, studies and any other work entrusted to it by the Commission or by the President. In addition, it shall receive and process the correspondence, petitions and communications addressed to the Commission. The Executive Secretariat may also request that interested parties provide any information it deems relevant, in accordance with the provisions of these Rules of Procedure.

CHAPTER V

FUNCTIONING OF THE COMMISSION

Article 14. Periods of Sessions

1. The Commission shall hold at least two regular periods of sessions per year for the duration previously determined by it and as many special sessions as it deems necessary. Prior to the conclusion of each period of sessions, the date and place of the next period shall be determined.
2. The sessions of the Commission shall be held at its headquarters. However, the Commission may decide to meet elsewhere, pursuant to the vote of an absolute majority of its members and with the consent or at the invitation of the State concerned.
3. Each period of sessions shall consist of the number of sessions necessary to carry out its activities. The sessions shall be confidential, unless the Commission determines otherwise.
4. Any member who because of illness or for any other serious reason is unable to attend all or part of any session of the Commission, or to fulfill any other function, shall notify the Executive Secretary to this effect as soon as possible. The Executive Secretary shall so inform the President and ensure that those reasons appear in the record.

Article 15. Rapporteurships and Working Groups

1. The Commission may assign specific tasks or mandates to either an individual member or group of members concerning the preparation of its periods of sessions or the execution of special programs, studies and projects.
2. The Commission may designate its members as country rapporteurs, in which case the Commission will ensure that each Member State of the OAS has a rapporteur. In the first session of the year, or whenever necessary, the IACHR will consider the functioning and work of the country rapporteurships, and decide on their designation. The country rapporteurs will also be responsible for carrying out the follow-up assigned by the Commission and will report to the plenary of the Commission at least once a year on the activities undertaken.
3. The Commission may create rapporteurships with mandates that are linked to the fulfillment of its functions of promotion and protection of human rights, and in accordance with the thematic areas deemed of special interest for achieving this purpose. The grounds for the decision will be expressed in a resolution adopted by the absolute majority of votes of the members of the Commission in which the following will be recorded:
 - a. the definition of the conferred mandate, including its functions and scope; and
 - b. the description of the activities to be carried out and the methods of planned financing to defray them.
 - c. The mandates will be evaluated periodically and will also be subject to review, renewal, or termination at least once every three years.
4. The rapporteurships mentioned in the previous paragraph may function as thematic rapporteurships, assigned to a member of the Commission, or as special rapporteurships, assigned to other persons designated by the Commission. The thematic rapporteurs will be designated by the Commission in the first session of the year or whenever necessary. The special rapporteurs will be designated by the Commission in accordance with the following parameters:

APPENDICES

- a. a public competition to fill the vacancy, which publicizes the criteria to be employed in the selection of candidates, the appropriate background for the position, and the applicable resolution by the IACHR establishing the procedures for the selection;
 - b. the election shall require the affirmative vote of an absolute majority of members of the Commission and an announcement publicizing the grounds of the decision.
 - c. Prior to the appointment process, and during the exercise of their functions, special rapporteurs must disclose to the Commission any interest which may be considered to be in conflict with the mandate of the rapporteurship. Special rapporteurs shall serve for a period of three years, renewable once, unless the mandate of the rapporteurship terminates earlier. The Commission, by an absolute majority of its members, may decide to replace a special rapporteur for reasonable cause.
5. Special rapporteurs shall perform their duties in coordination with the Executive Secretary, who may delegate to them the preparation of reports on petitions and cases.
 6. The thematic and special rapporteurs shall perform their activities in coordination with the country rapporteurs. Rapporteurs shall present their work plans to the plenary of the Commission for approval. They shall report in writing to the Commission, at least annually, on the work undertaken.
 7. The activities and functions provided for in the Rapporteurships' mandates shall be performed in accordance with the present Rules of Procedure and the guidelines, codes of conduct and manuals that the Commission might adopt.
 8. All rapporteurs shall advise the plenary with respect to issues they have become aware of that may be considered matters of controversy, grave concern or special interest for the Commission.

Article 16. Quorum for Sessions

The presence of an absolute majority of the members of the Commission shall be necessary to constitute a quorum.

Article 17. Discussion and Voting

1. The sessions shall conform primarily to the Rules of Procedure and secondarily to the pertinent provisions of the Rules of Procedure of the Permanent Council of the OAS.
2. Members of the Commission may not participate in the discussion, investigation, deliberation or decision of a matter submitted to the Commission in the following cases:
 - a. if they are nationals of the State which is the subject of the Commission's general or specific review, or if they were accredited or carrying out a special mission as diplomatic agents before that State; or
 - b. if they have previously participated in any capacity in a decision concerning the same facts on which the matter is based or have acted as an adviser to, or representative of, any of the parties interested in the decision.
3. If a member considers that he or she should abstain from participating in the study or decision of a matter, that member shall so inform the Commission, which shall decide if the disqualification is warranted.
4. Any member may raise the issue of the disqualification of another member on the basis of the grounds set forth in paragraph 2 of this article.
5. When the Commission is not meeting in regular or special session, the members may deliberate and decide on matters within their competence by the means they consider appropriate.

Article 18. Special Quorum to take Decisions

1. The Commission shall decide the following matters by an absolute majority vote of its members:
 - a. election of the board of officers of the Commission;
 - b. interpretation of the application of these Rules of Procedure;
 - c. adoption of a report on the situation of human rights in a specific State; and
 - d. for matters where such a majority is required under the provisions of the American Convention, the Statute or these Rules of Procedure.
2. In respect of other matters, the vote of the majority of the members present shall be sufficient.

Article 19. Explanation of Vote

1. Whether or not members agree with the decision of the majority, they shall be entitled to present a written explanation of their vote, which shall be included following the text of that decision.
2. If the decision concerns the approval of a report or preliminary report, the explanation of the vote shall be included following the text of that report or preliminary report.
3. When the decision does not appear in a separate document, the explanation of the vote shall be included in the minutes of the meeting, following the decision in question.
4. The explanation of vote shall be presented in writing to the Secretariat within the 30 days following the period of sessions in which that decision was adopted. In urgent cases, an absolute majority of the members may stipulate a shorter period. Once that deadline has elapsed, and no written explanation of the vote has been presented to the Secretariat, the member in question shall be deemed to have desisted from submitting an explanation of his or her vote, without prejudice to his or her dissent being recorded.

Article 20. Minutes of Sessions

1. Summary minutes shall be taken of each session. They shall state the day and time at which it was held, the names of the members present, the matters dealt with, the decisions taken, and any statement made by a member especially for inclusion in the minutes. These minutes are confidential internal working documents.
2. The Executive Secretariat shall distribute copies of the summary minutes of each session to the members of the Commission, who may present their observations to the Secretariat prior to the period of sessions at which those minutes are to be approved. If there has been no objection as of the beginning of that period of sessions, the minutes shall be considered approved.

Article 21. Compensation for Special Services

Pursuant to the approval of an absolute majority of its members, the Commission may entrust any member with the preparation of a special study or other specific work to be carried out individually outside the sessions. Such work shall be compensated in accordance with the funds available in the budget. The amount of the fees shall be set on the basis of the number of days required for the preparation and drafting of the work.

TITLE II

PROCEDURE

CHAPTER I

GENERAL PROVISIONS

Article 22. Official Languages

1. The official languages of the Commission shall be Spanish, French, English and Portuguese. The working languages shall be those decided by the Commission, in accordance with the languages spoken by its members.
2. Any member of the Commission may dispense with the interpretation of debates and preparation of documents in his or her language.

Article 23. Presentation of Petitions

Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights "Pact of San José, Costa Rica," the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará," in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The petitioner may designate an attorney or other person to represent him or her before the Commission, either in the petition itself or in a separate document.

Article 24. Consideration Motu Proprio

The Commission may also, motu proprio, initiate the processing of a petition which, in its view, meets the necessary requirements.

Article 25. Precautionary Measures²

1. In accordance with Articles 106 of the Charter of the Organization of American States, 41.b of the American Convention on Human Rights, 18.b of the Statute of the Commission and XIII of the American Convention on Forced Disappearance of Persons, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures. Such measures, whether related to a petition or not, shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system.
2. For the purpose of taking the decision referred to in paragraph 1, the Commission shall consider that:
 - a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
 - b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
 - c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.
3. Precautionary measures may protect persons or groups of persons, as long as the beneficiary or beneficiaries may be determined or determinable through their geographic location or membership in or association with a group, people, community or organization.
4. Requests for precautionary measures addressed to the Commission shall contain, inter alia:
 - a. identifying information for the persons proposed as beneficiaries or information that allows them to be determined;
 - b. a detailed and chronological description of the facts that motivate the request and any other available information; and
 - c. the description of the measures of protection requested.
5. Prior to the adoption of precautionary measures, the Commission shall request relevant information to the State concerned, except where the immediacy of the threatened harm admits of no delay. In that circumstance, the Commission shall review that decision as soon as possible, or at the latest during its next period of sessions, taking into account the information received from the parties.
6. In considering the request the Commission shall take into account its context and the following elements:
 - a. whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so;
 - b. the individual identification of the potential beneficiaries of the precautionary measures or the determination of the group to which they belong or are associated with; and
 - c. the consent of the potential beneficiaries when the request is presented by a third party unless the absence of consent is justified.
7. The decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions that include, among others, the following elements:
 - a. a description of the alleged situation and of the beneficiaries;
 - b. the information presented by the State, if available;
 - c. the considerations by the Commission concerning the requirements of seriousness, urgency, and irreparability;
 - d. if applicable, the time period for which the measures will be in effect; and
 - e. the votes of the members of the Commission.

8. The granting of such measures and their adoption by the State shall not constitute a prejudgment on the violation of any right protected by the American Convention on Human Rights or other applicable instruments.
9. The Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force. At any time, the State may file a duly grounded petition that the Commission lift the precautionary measures in force. Prior to taking a decision on such a request, the Commission shall request observations from the beneficiaries. The presentation of such a request shall not suspend the precautionary measures in force.
10. The Commission shall take appropriate follow-up measures, such as requesting relevant information from the interested parties on any matter related to the granting, observance and maintenance of precautionary measures. These measures may include, as appropriate, timetables for implementation, hearings, working meetings, and visits for follow-up and review.
11. In addition to the terms of subparagraph 9 above, the Commission may lift or review a precautionary measure when the beneficiaries or their representatives, without justification, fail to provide a satisfactory reply to the Commission on the requirements presented by the State for their implementation.
12. The Commission may present a request for provisional measures to the Inter-American Court in accordance with the conditions established in Article 76 of these Rules. Any precautionary measures issued with respect to the matter shall remain in effect until the Court notifies the parties of its resolution of the request.
13. In the case of a decision of the Inter-American Court dismissing an application for provisional measures, the Commission shall not consider a new request for precautionary measures unless there are new facts that justify it. In any case, the Commission may consider the use of other mechanisms to monitor the situation.

CHAPTER II

PETITIONS REFERRING TO THE AMERICAN CONVENTION ON HUMAN RIGHTS AND OTHER APPLICABLE INSTRUMENTS

Article 26. Initial Review

1. The Executive Secretariat of the Commission shall be responsible for the study and initial processing of petitions lodged before the Commission that fulfill all the requirements set forth in the Statute and in Article 28 of these Rules of Procedure.
2. If a petition or communication does not meet the requirements set forth in these Rules of Procedure, the Executive Secretariat may request the petitioner or his or her representative to fulfill them.
3. If the Executive Secretariat has any doubt as to whether the requirements referred to have been met, it shall consult the Commission.

Article 27. Condition for Considering the Petition

The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure.

Article 28. Requirements for the Consideration of Petitions³

Petitions addressed to the Commission shall contain the following information:

1. the name of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, its legal representative(s) and the Member State in which it is legally recognized;
2. whether the petitioner wishes that his or her identity be withheld from the State, and the respective reasons;
3. the e-mail address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and postal address;
4. an account of the fact or situation that is denounced, specifying the place and date of the alleged violations;
5. if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;
6. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;

APPENDICES

7. compliance with the time period provided for in Article 32 of these Rules of Procedure;
8. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure; and
9. an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of these Rules of Procedure.

Article 29. Initial Processing⁴

1. The Commission, acting initially through the Executive Secretariat, shall receive and carry out the initial processing of the petitions presented. Each petition shall be registered, the date of receipt shall be recorded on the petition itself and an acknowledgment of receipt shall be sent to the petitioner.
2. The petition shall be studied in the order it was received; however, the Commission may expedite the evaluation of a petition in situations such as the following:
 - a. when the passage of time would deprive the petition of its effectiveness, in particular:
 - i. when the alleged victim is an older person or a child;
 - ii. when the alleged victim is terminally ill;
 - iii. when it is alleged that the death penalty could be applied to the presumed victim; or
 - iv. when the object of the petition is connected to a precautionary or provisional measure in effect;
 - b. when the alleged victims are persons deprived of liberty;
 - c. when the State formally expresses its intention to enter into a friendly settlement process in the matter; or
 - d. when any of the following circumstances are present:
 - i. the decision could have the effect of repairing serious structural situations that would have an impact in the enjoyment of human rights; or
 - ii. the decision could promote changes in legislation or state practices and avoid the reception of multiple petitions on the same matter.
3. If the petition does not meet the requirements of these Rules of Procedure, the Commission may request that the petitioner or his or her representative complete them in accordance with Article 26.2 of these Rules.
4. If the petition sets forth distinct facts, or if it refers to more than one person or to alleged violations not interconnected in time and place, the Commission may divide it and process the files separately, so long as all the requirements of Article 28 of these Rules of Procedure are met.
5. If two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct, the Commission may join them and process them together in the same file.
6. In the situations provided for in subparagraphs 4 and 5, the Commission shall give written notification to petitioners.
7. In serious or urgent cases, the Executive Secretariat shall immediately notify the Commission.

Article 30. Admissibility Procedure⁵

1. The Commission, through its Executive Secretariat, shall process the petitions that meet the requirements set forth in Article 28 of these Rules of Procedure.
2. For this purpose, it shall forward the relevant parts of the petition to the State in question. The request for information made to the State shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition.
3. The State shall submit its response within three months from the date the request is transmitted. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed four months from the date of transmission of the first request for information sent to the State.
4. In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, the Commission shall request the promptest reply from the State, using for this purpose the means it considers most expeditious.

5. Prior to deciding upon the admissibility of the petition, the Commission may invite the parties to submit additional observations, either in writing or in a hearing, as provided for in Chapter VI of these Rules of Procedure.
6. The considerations on or challenges to the admissibility of the petition shall be submitted as from the time that the relevant parts of the petition are forwarded to the State and prior to the Commission's decision on admissibility.
7. In the cases referred to in paragraph 4, the Commission may request that the State presents its response and observations on the admissibility and the merits of the matter. The response and observations of the State shall be submitted within a reasonable period, to be determined by the Commission in accordance with the circumstances of each case.

Article 31. Exhaustion of Domestic Remedies

1. In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.
2. The provisions of the preceding paragraph shall not apply when:
 - a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
 - b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
3. When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

Article 32. Statute of Limitations for Petitions

1. The Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.
2. In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

Article 33. Duplication of Procedures

1. The Commission shall not consider a petition if its subject matter:
 - a. is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member; or
 - b. essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.
2. However, the Commission shall not refrain from considering petitions referred to in paragraph 1 when:
 - a. the procedure followed before the other organization is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or it will not lead to an effective settlement; or
 - b. the petitioner before the Commission or a family member is the alleged victim of the violation denounced and the petitioner before the other organization is a third party or a nongovernmental entity having no mandate from the former.

Article 34. Other Grounds for Inadmissibility

The Commission shall declare any petition or case inadmissible when:

- a. it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure;

- b. the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or
- c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

Article 35. Working Group on Admissibility

The Commission shall establish a working group of three or more of its members to study, between sessions, the admissibility of petitions and make recommendations to the plenary.

Article 36. Decision on Admissibility⁶

1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter. The reports on admissibility and inadmissibility shall be public and the Commission shall include them in its Annual Report to the General Assembly of the OAS.
2. When an admissibility report is adopted, the petition shall be registered as a case and the proceedings on the merits shall be initiated. The adoption of an admissibility report does not constitute a prejudgment as to the merits of the matter.
3. In exceptional circumstances, and after having requested information from the parties in accordance with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The decision shall be adopted by a reasoned resolution of the Commission, which will include an analysis of those exceptional circumstances. The exceptional circumstances that the Commission shall take into account will include the following:
 - a. when the consideration of the applicability of a possible exception to the requirement of exhaustion of domestic remedies would be inextricably tied to the merits of the matter;
 - b. in cases of seriousness and urgency, or when the Commission considers that the life or personal integrity of a person may be in imminent danger; or
 - c. when the passage of time may prevent the useful effect of the decision by the Commission.
4. When the Commission proceeds in accordance with Article 30.7 of these Rules of Procedure, it shall open a case and inform the parties in writing that it has deferred its treatment of admissibility until the debate and decision on the merits.

Article 37. Procedure on the Merits⁷

1. Upon opening the case, the Commission shall set a period of four months for the petitioners to submit additional observations on the merits. The pertinent parts of those observations shall be transmitted to the State in question so that it may submit its observations within four months.
2. The Executive Secretariat shall evaluate requests for an extension of the time periods established in the preceding subparagraph that are duly founded. However, it shall not grant extensions that exceed six months from the date the initial request for observations was sent to each party.
3. In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, and once the case has been opened, the Commission shall request that the parties forward their additional observations on the merits within a reasonable time period, established by the Commission taking into account the circumstances of each case.
4. Prior to making its decision on the merits of the case, the Commission shall set a time period for the parties to express whether they have an interest in initiating the friendly settlement procedure provided for in Article 40 of these Rules of Procedure. In the cases provided for in Article 30. 7 and in the preceding subparagraph, the Commission shall request the parties to respond in a more expeditious manner. The Commission may also invite the parties to submit additional observations in writing.
5. If it deems it necessary in order to advance in its consideration of the case, the Commission may convene the parties for a hearing, as provided for in Chapter VI of these Rules of Procedure.

Article 38. Presumption

The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

Article 39. On-site Investigation

1. If it deems it necessary and advisable, the Commission may carry out an on-site investigation, for the effective conduct of which it shall request and the State concerned shall furnish all pertinent facilities. In serious and urgent cases, and with the prior consent of the State in whose territory a violation has allegedly been committed, the sole presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an on-site investigation.
2. The Commission may delegate to one or more of its members the reception of testimony pursuant to the rules established in Sections 5, 6, 7 and 8 of Article 65.

Article 40. Friendly Settlement

1. On its own initiative or at the request of any of the parties, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition or case, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights, the American Declaration and other applicable instruments.
2. The friendly settlement procedure shall be initiated and continue on the basis of the consent of the parties.
3. When it deems it necessary, the Commission may entrust to one or more of its members the task of facilitating negotiations between the parties.
4. The Commission may terminate its intervention in the friendly settlement procedure if it finds that the matter is not susceptible to such a resolution or any of the parties does not consent to its application, decides not to continue it, or does not display the willingness to reach a friendly settlement based on the respect for human rights.
5. If a friendly settlement is reached, the Commission shall adopt a report with a brief statement of the facts and of the solution reached, shall transmit it to the parties concerned and shall publish it. Prior to adopting that report, the Commission shall verify whether the victim of the alleged violation or, as the case may be, his or her successors, have consented to the friendly settlement agreement. In all cases, the friendly settlement must be based on respect for the human rights recognized in the American Convention on Human Rights, the American Declaration and other applicable instruments.
6. If no friendly settlement is reached, the Commission shall continue to process the petition or case.

Article 41. Withdrawal

The petitioner may at any time desist from his or her petition or case, to which effect he or she must so notify it in writing to the Commission. The statement by the petitioner shall be analyzed by the Commission, which may archive the petition or case if it deems it appropriate, or continue to process it in the interest of protecting a particular right.

Article 42. Archiving of Petitions and Cases⁸

1. At any time during the proceedings, the Commission may decide to archive the file when it verifies that the grounds for the petition or case do not exist or subsist. The Commission may also decide to archive the case when:
 - a. the information necessary for the adoption of a decision is unavailable, despite attempts to secure such information; or
 - b. the unjustified procedural inactivity of the petitioner constitutes a serious indication of lack of interest in the processing of petition.
2. Before considering the archiving of a petition or case, it shall request that the petitioners submit the necessary information and notify the possibility of a decision to archive. Once the time limit specified for that purpose has expired, the Commission shall proceed to adopt the corresponding decision.
3. The decision to archive shall be final, except in the following cases:
 - a. material error;
 - b. supervening facts;
 - c. new information that would have affected the decision of the Commission; or
 - d. fraud.

Article 43. Decision on the Merits

1. The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.
2. The Commission shall deliberate in private, and all aspects of the discussions shall be confidential.
3. Any question put to a vote shall be formulated in precise terms in one of the official languages of the OAS. At the request of any member, the text shall be translated by the Secretariat into one of the other official languages and distributed prior to the vote.
4. The minutes referring to the Commission's deliberations shall restrict themselves to the subject of the debate and the decision approved, as well as any separate opinions and any statements made for inclusion in the minutes. If the report does not represent, in whole or in part, the unanimous opinion of the members of the Commission, any of them may add his or her opinion separately, following the procedure established in Article 19.4 of these Rules of Procedure.

Article 44. Report on the Merits⁹

After the deliberation and vote on the merits of the case, the Commission shall proceed as follows:

1. If it establishes that there was no violation in a given case, it shall so state in its report on the merits. The report shall be transmitted to the parties, and shall be published and included in the Commission's Annual Report to the OAS General Assembly.
2. If it establishes one or more violations, it shall prepare a preliminary report with the proposals and recommendations it deems pertinent and shall transmit it to the State in question. In so doing, it shall set a deadline by which the State in question must report on the measures adopted to comply with the recommendations. The State shall not be authorized to publish the report until the Commission adopts a decision in this respect.
3. It shall notify the petitioner of the adoption of the report and its transmittal to the State. In the case of States Parties to the American Convention that have accepted the contentious jurisdiction of the Inter-American Court, upon notifying the petitioner, the Commission shall give him or her one month to present his or her position as to whether the case should be submitted to the Court. When the petitioner is interested in the submission of the case, he or she should present the following:
 - a. the position of the victim or the victim's family members, if different from that of the petitioner;
 - b. the reasons he or she considers that the case should be referred to the Court; and
 - c. the claims concerning reparations and costs.

Article 45. Referral of the Case to the Court¹⁰

1. If the State in question has accepted the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention, and the Commission considers that the State has not complied with the recommendations of the report approved in accordance with Article 50 of the American Convention, it shall refer the case to the Court, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary.
2. The Commission shall give fundamental consideration to obtaining justice in the particular case, based, among others, on the following factors:
 - a. the position of the petitioner;
 - b. the nature and seriousness of the violation;
 - c. the need to develop or clarify the case-law of the system; and
 - d. the future effect of the decision within the legal systems of the Member States.

Article 46. Suspension of Time Limit to Refer the Case to the Court

1. The Commission may consider, at the request of the State concerned, the suspension of the time limit established in Article 51.1 of the American Convention for the referral of the case to the Court, pursuant to the following conditions:
 - a. that the State shows its willingness and ability to implement the recommendations included in the merits report through the adoption of concrete and adequate measures of compliance. To this end,

the Commission may take into account the existence of domestic legislation that establishes a mechanism for compliance with its recommendations; and

- b. that in its request the State expressly and irrevocably accepts the suspension of the time limit established in Article 51.1 of the American Convention for the submission of the case to the Court and consequently expressly waives the right to file preliminary objections regarding compliance with the aforementioned time limit in the event that the matter is later referred to the Court.
2. In establishing the period for the suspension of the time limit, the Commission may take into account the following factors:
 - a. The complexity of the matter and of the measures necessary to comply with the recommendations of the Commission, in particular, when it implies the involvement of different branches of the government or coordination between the central and regional governments, among others;
 - b. The measures toward compliance with the recommendations, which were adopted by the State prior to the extension request; and
 - c. The position of the petitioner.

Article 47. Publication of the Report

1. If within three months from the transmittal of the preliminary report to the State in question the matter has not been solved or, for those States that have accepted the jurisdiction of the Inter-American Court, has not been referred by the Commission or by the State to the Court for a decision, the Commission, by an absolute majority of votes, may issue a final report that contains its opinion and final conclusions and recommendations.
2. The final report shall be transmitted to the parties, who, within the time period set by the Commission, shall present information on compliance with the recommendations.
3. The Commission shall evaluate compliance with its recommendations based on the information available, and shall decide on the publication of the final report by the vote of an absolute majority of its members. The Commission shall also make a determination as to whether to include it in the Annual Report to the OAS General Assembly, and/or to publish it in any other manner deemed appropriate.

Article 48. Follow-Up

1. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations.
2. The Commission shall report on progress in complying with those agreements and recommendations as it deems appropriate.

Article 49. Certification of Reports

The originals of the reports signed by the Commissioners who participated in their adoption shall be deposited in the files of the Commission. The reports transmitted to the parties shall be certified by the Executive Secretariat.

Article 50. Interstate Communications

1. A communication presented by a State Party to the American Convention on Human Rights that has accepted the competence of the Commission to receive and examine such communications against other States Parties shall be transmitted to the State Party in question, whether or not it has accepted the Commission's competence in this respect. If that competence has not been accepted, the communication shall be transmitted in order that the State concerned may exercise its option under Article 45, paragraph 3 of the Convention, to recognize that competence in the specific case that is the subject of the communication.
2. If the State in question has accepted the Commission's competence to consider a communication from another State Party, the respective procedure shall be governed by the provisions of the present Chapter II, insofar as they apply.

CHAPTER III**PETITIONS CONCERNING STATES THAT ARE NOT PARTIES TO THE AMERICAN CONVENTION ON HUMAN RIGHTS****Article 51. Receipt of the Petition**

The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the Member States of the Organization that are not parties to the American Convention on Human Rights.

Article 52. Applicable Procedure

The procedure applicable to petitions concerning Member States of the OAS that are not parties to the American Convention shall be that provided for in the general provisions included in Chapter I of Title II; in Articles 28 to 44 and 47 to 49 of these Rules of Procedure.

CHAPTER IV**ON-SITE OBSERVATIONS****Article 53. Designation of the Special Commission**

On-site observations shall in each case be conducted by a Special Commission named for that purpose. The number of members of the Special Commission and the designation of its President shall be determined by the Commission. In cases of great urgency, such decisions may be made by the President subject to the approval of the Commission.

Article 54. Disqualification

A member of the Commission who is a national of or who resides in the territory of the State, in which the on-site observation is to be conducted, shall be disqualified from participating in it.

Article 55. Schedule of Activities

The Special Commission shall organize its own activities. To that end, it may assign any activity related to its mission to its own members and, in consultation with the Executive Secretary, to any staff members or necessary personnel of the Executive Secretariat.

Article 56. Necessary Facilities and Guarantees

In extending an invitation for an on-site observation or in giving its consent thereto, the State shall furnish to the Special Commission all necessary facilities for carrying out its mission. In particular, it shall commit itself not to take any reprisals of any kind against any persons or entities cooperating with or providing information or testimony to the Special Commission.

Article 57. Other Applicable Standards

Without prejudice to the provisions in the preceding article, any on-site observation agreed upon by the Commission shall be carried out in accordance with the following standards:

- a. the Special Commission or any of its members shall be able to interview any persons, groups, entities or institutions freely and in private;
- b. the State shall grant the necessary guarantees to those who provide the Special Commission with information, testimony or evidence of any kind;
- c. the members of the Special Commission shall be able to travel freely throughout the territory of the country, for which purpose the State shall extend all the corresponding facilities, including the necessary documentation;
- d. the State shall ensure the availability of local means of transportation;
- e. the members of the Special Commission shall have access to the jails and all other detention and interrogation sites and shall be able to interview in private those persons imprisoned or detained;
- f. the State shall provide the Special Commission with any document related to the observance of human rights that the latter may consider necessary for the presentation of its reports;

- g. the Special Commission shall be able to use any method appropriate for filming, photographing, collecting, documenting, recording, or reproducing the information it considers useful;
- h. the State shall adopt the security measures necessary to protect the Special Commission;
- i. the State shall ensure the availability of appropriate lodging for the members of the Special Commission;
- j. the same guarantees and facilities that are set forth in this article for the members of the Special Commission shall also be extended to the staff of the Executive Secretariat; and
- k. the expenses incurred by the Special Commission, each of its members and the staff of the Executive Secretariat shall be borne by the OAS, subject to the pertinent provisions.

CHAPTER V

ANNUAL REPORT AND OTHER REPORTS OF THE COMMISSION

Article 58. Preparation of Reports

The Commission shall submit an annual report to the General Assembly of the OAS. In addition, the Commission shall prepare the studies and reports it deems advisable for the performance of its functions and shall publish them as it sees fit. Once their publication is approved, the Commission shall transmit them, through the General Secretariat, to the Member States of the OAS and its pertinent organs.

Article 59. Annual Report¹

- 1. The Annual Report presented by the Commission to the General Assembly of the Organization shall be comprised of two volumes.
- 2. The first volume shall include the following:
 - a. An Introduction with the progress made in attaining the objectives set forth in the American Declaration, the American Convention and all other Inter-American human rights instruments, and the status of their ratification, an account of the origin, legal bases, structure and purposes of the Commission; the mandates conferred upon the Commission by inter-American human rights instruments, the General Assembly of the Organization and the other competent organs.
 - b. In Chapter I,
 - i. a list of the periods of sessions held during the time period covered by the report and of other activities carried out by the Commission to achieve its purposes, objectives and mandates; and
 - ii. a summary of the activities carried out by the Commission with the Court, other organs of the OAS and regional or universal organs of the same type, and the results achieved.
 - c. In Chapter II, a presentation of the status of the petition and case system, with the following information:
 - i. petitions under initial study;
 - ii. petitions declared admissible and inadmissible and the respective reports;
 - iii. merits reports issued;
 - iv. friendly settlements approved during the period;
 - v. archive reports adopted;
 - vi. precautionary measures granted; and
 - vii. status of compliance with recommendations in individual cases.
 - d. In Chapter III, an account of the activities of its Rapporteurships, Special Rapporteurships and Thematic Units, including reference to each report they produced, as well as other promotional activities.
 - e. In Chapter IV,
 - i. Section A) will include an annual overview of the human rights situation in the hemisphere, derived from its monitoring work, which shall identify the main tendencies, problems, challenges, progress and best practices of civil and political rights, and social, economic and cultural rights;
 - ii. Section B) will include the special reports that the Commission considers necessary regarding the situation of human rights in Member States, pursuant to the criteria, methodology and procedure provided for in the following subparagraphs.

APPENDICES

- f. In Chapter V, follow-up reports, highlighting the progress reached and the difficulties for the effective observance of human rights.
- g. In Chapter VI, an account of institutional development activities, which shall include information on financial resources and the execution of the Commission's budget.
3. In a second volume of the Annual Report, the Commission shall incorporate country, thematic or regional reports adopted or published during the year, including those prepared by Rapporteurships, Special Rapporteurships and Thematic Units.
4. The Commission will apply the rules established in subsections 5 to 9 of this Article in the preparation of Chapters IV and V of its Annual Report, in the exercise of its mandate to promote and protect human rights and, in particular, its duty to inform the OAS Member States about human rights situations that may require a response from the political organs and priority attention from the Commission.
5. The Commission will utilize reliable and credible information from:
 - a. official acts of all levels and branches of government, including constitutional amendments, legislation, decrees, judicial decisions, policy statements, official communications to the Commission and to other human rights organs, as well as any other statement or action attributable to the Government;
 - b. information available in cases, petitions and precautionary and provisional measures in the inter-American system, as well as information on compliance by the State with recommendations of the Commission and judgments of the Inter-American Court;
 - c. information gathered in the course of on-site visits by the Commission, its Rapporteurs and members of its staff;
 - d. information obtained during hearings held by the Commission as part of its sessions;
 - e. conclusions of other international human rights bodies, including UN treaty bodies, UN Rapporteurs and working groups, the Human Rights Council, and other UN specialized agencies;
 - f. human rights reports issued by governments and regional organs;
 - g. reports by civil society organizations, as well as information presented by such organizations and private persons; and
 - h. public information that is widely disseminated in the media.
6. The criteria for including a Member State in Chapter IVB of the Annual Report are the following:
 - a. a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including:
 - i. there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority;
 - ii. there has been an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order; or
 - iii. the democratically-constituted government has been overthrown by force or the existing government has otherwise come to power through means other than free and fair election, based on universal and secret ballot, pursuant to internationally accepted norms and principles reflected in the Inter-American Democratic Charter.
 - b. The free exercise of the rights guaranteed in the American Declaration or the American Convention has been unlawfully suspended, totally or partially, by virtue of the imposition of exceptional measures such as a declaration of a state of emergency, state of siege, suspension of constitutional guarantees, or exceptional security measures.
 - c. There State has committed or is committing massive, serious and widespread violations of human rights guaranteed in the American Declaration, the American Convention, or the other applicable human rights instruments.

- d. The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration, the American Convention or other applicable instruments. Factors to be considered shall include the following, among others:
 - i. serious institutional crises that infringe the enjoyment of human rights;
 - ii. systematic noncompliance of the State with its obligation to combat impunity, attributable to a manifest lack of will;
 - iii. serious omissions in the adoption of the necessary measures to make fundamental rights effective, or in complying with the decisions of the Commission and the Inter-American Court; and
 - iv. systematic violations of human rights attributable to the State in the framework of an internal armed conflict.
7. The decision on the specific countries to include in Chapter IV.B shall be adopted by the Commission each year, in accordance with the special quorum set forth in Article 18 of the present Rules of Procedure. The inclusion of a State in that chapter in a particular year does not create a presumption that it will be included in it the next year. When the Commission receives information from the concerned state that leads to the conclusion that the conditions that gave rise to its inclusion have been overcome, it will not include the country in that chapter unless new reasons demand it.
8. When a State included in Chapter IV.B of the Annual Report has been the subject of an on-site visit, it will not be included in that Chapter of the Annual Report for the year corresponding to the visit. The monitoring of the situation of human rights for that year in that State will be carried out by means of the country report prepared in relation to the on site visit. Once the country report has been published, the Commission will follow up on compliance with the respective recommendations by means of Chapter V of its Annual Report. Thereafter, the Commission shall decide, in accordance with the present Rules of Procedure, if the monitoring of the situation of human rights in the respective country should be included in any of the aforementioned chapters of the Annual Report.
9. By means of Chapter V of its Annual Report, the Commission shall follow-up on measures adopted to comply with the recommendations issued in its country reports, thematic reports, or in reports previously published in Chapter IV.B.
10. Prior to publication of Chapters IV.B and V of the Annual Report, the Commission will transmit a preliminary copy of the Report to the State concerned. That State may send a reply within a maximum timeframe of a month from the transmission of the Report. This reply will be made available through a link on the Commission's website, unless the State requests otherwise.
11. The Commission shall include in its Annual Report any other information, observation or recommendation that it considers pertinent to present to the General Assembly.

Article 60. Report on Human Rights in a State

The preparation of a general or special report on the status of human rights in a specific State shall be done according to the following rules:

- a. after the draft report has been approved by the Commission, it shall be transmitted to the government of the Member State in question so that it may make any observations it deems pertinent;
- b. the Commission shall indicate to that State the deadline within which it must present its observations;
- c. once the Commission has received the observations from the State, it shall study them and, in light thereof, may maintain or modify its report and decide how it is to be published;
- d. if no observation has been submitted by the State as of the expiration of the deadline, the Commission shall publish the report in the manner it deems appropriate;
- e. after its publication, the Commission shall transmit it through the General Secretariat to the Member States and General Assembly of the OAS.

CHAPTER VI

HEARINGS BEFORE THE COMMISSION

Article 61. Initiative

The Commission may decide to hold hearings on its own initiative or at the request of an interested party. The decision to convoke the hearings shall be made by the President of the Commission, at the proposal of the Executive Secretary.

Article 62. Purpose

The hearings may have the purpose of receiving information from the parties with respect to a petition or case being processed before the Commission, follow-up to recommendations, precautionary measures, or general or particular information related to human rights in one or more Members States of the OAS.

Article 63. Guarantees

The State in question shall grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission. That State may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission.

Article 64. Hearings on Petitions or Cases

1. Hearings on petitions or cases shall have as their purpose the receipt of oral or written presentations by the parties relative to new facts and information additional to that which has been produced during the proceeding. The information may refer to any of the following issues: admissibility; the initiation or development of the friendly settlement procedure; the verification of the facts; the merits of the matter; follow-up on recommendations; or any other matter pertinent to the processing of the petition or case.
2. Requests for hearings must be submitted in writing at least 50 days prior to the beginning of the respective session of the Commission. Requests for hearings shall indicate their purpose and the identity of the participants.
3. If the Commission accedes to the request or decides to hold a hearing on its own initiative, it shall convoke both parties. If one party, having been duly notified, does not appear, the Commission shall proceed with the hearing. The Commission shall adopt the necessary measures to maintain in confidence the identity of the experts and witnesses if it believes that they require such protection.
4. The Executive Secretariat shall inform the parties as to the date, place and time of the hearing at least one month in advance. However, in exceptional circumstances, that time period may be reduced.

Article 65. Presentation and Production of Evidence

1. During the hearing, the parties may present any document, testimony, expert report or item of evidence. At the request of a party or on its own initiative, the Commission may receive the testimony of witnesses or experts.
2. With respect to the documentary evidence submitted during the hearing, the Commission shall grant the parties a prudential time period for submitting their observations.
3. A party that proposes witnesses or experts for a hearing shall so state in its request. For this purpose, it shall identify the witness or expert and the purpose of his or her witness or expert testimony.
4. Upon deciding on the request for a hearing, the Commission shall also determine whether to receive the witness or expert testimony proposed.
5. When one party offers witness and expert testimony, the Commission shall notify the other party to that effect.
6. In extraordinary circumstances and for the purpose of safeguarding the evidence, the Commission may, at its discretion, receive testimony in hearings without satisfying the terms of the previous paragraph. In such circumstances, it shall take the measures necessary to guarantee the procedural balance between the parties in the matter submitted for its consideration.
7. The Commission shall hear one witness at a time; the other witnesses shall remain outside the hearing room. Witnesses may not read their presentations to the Commission.
8. Prior to giving their testimony, witnesses and experts shall identify themselves and take an oath or make a solemn promise to tell the truth. At the express request of the interested person, the Commission may maintain the identity of a witness or expert in confidence when necessary to protect him or her or other persons.

Article 66. Hearings of a General Nature

1. Persons who are interested in presenting testimony or information to the Commission on the human rights situation in one or more States, or on matters of general interest, shall direct a written request for a hearing to the Executive Secretariat at least 50 days prior to the beginning of the respective session of the Commission.

2. Persons making such a request shall indicate the purpose of their appearance, a summary of the information they will furnish, the approximate time required for that purpose, and the identity of the participants.
3. If the Commission accedes to a request for a hearing on the situation of human rights in a State, it shall convene the State concerned, unless the Commission decides to hold a private hearing pursuant to Article 68.
4. Should the Commission deem it appropriate, it may also request the participation of other interested parties in the hearings on the human rights situation in one or more States, or on matters of general interest.
5. The Executive Secretariat shall inform the party or parties as to the date, place, and time of the hearing at least one month in advance. However, under exceptional circumstances, that time period may be reduced.

Article 67. Participation of the Commission Members

The President of the Commission may form working groups to participate in the program of hearings.

Article 68. Public Nature of Hearings

Hearings shall be public. When warranted by exceptional circumstances, the Commission, at its own initiative or at the request of an interested party, may hold private hearings and shall decide who may attend them. This decision pertains exclusively to the Commission, which shall notify the parties in this regard prior to the beginning of the hearing, either orally or in writing. Even in these cases, the minutes shall be prepared in the terms set forth in Article 70 of these Rules of Procedure.

Article 69. Expenses

The party that proposes the production of evidence at a hearing shall cover all of the attendant expenses.

Article 70. Documents and Minutes of the Hearings

1. Minutes will be prepared for each hearing. Minutes of hearing shall record the day and time it was held, the names of the participants, the decisions adopted, and the commitments assumed by the parties. The documents submitted by the parties in the hearing shall be attached as annexes to the minutes.
2. The minutes of the hearings are internal working documents of the Commission. If a party so requests, the Commission shall provide a copy, unless, in the view of the Commission, its contents could entail some risk to persons.
3. The Commission shall make a tape of the testimony and shall make it available to the parties that so request.

TITLE III

RELATIONS WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS

CHAPTER I

DELEGATES, ADVISERS, WITNESSES AND EXPERTS

Article 71. Delegates and Advisors

1. The Commission shall entrust one or more of its members and its Executive Secretary to represent it and participate as delegates in the consideration of any matter before the Inter-American Court of Human Rights. That representation shall remain in effect as long as the delegate is a member of the Commission or serves as its Executive Secretary, although the Commission may, under exceptional circumstances, decide to extend the duration of that representation.
2. In appointing such delegates, the Commission shall issue any instructions it considers necessary to guide their actions before the Court.
3. When it designates more than one delegate, the Commission shall assign to one of them the responsibility of resolving situations that are not foreseen in the instructions, or of clarifying any doubts raised by a delegate.
4. The delegates may receive the assistance of any person designated by the Commission to be an advisor. In the exercise of their role, advisors shall follow the instructions issued by the delegates.

Article 72. Experts¹²

1. The Commission may request the Court to summon expert witnesses.
2. The presentation of such experts shall be done in accordance with the Rules of Procedure of the Court.

CHAPTER II

PROCEDURE BEFORE THE COURT

Article 73. Notification to the State and the Petitioner

If the Commission decides to refer a case to the Court, the Executive Secretary shall immediately give notice of that decision to the State, the petitioner and the victim. With that communication the Commission shall transmit to the petitioner all the elements necessary for the preparation and presentation of the application.

Article 74. Referral of the case to the Court

1. When, in accordance with Article 61 of the American Convention on Human Rights and Article 45 of these Rules, the Commission decides to bring a case before the Inter-American Court, it shall submit, through its Secretariat, a copy of the report adopted pursuant to Article 50 of the American Convention, accompanied by a copy of the file before the Commission, excluding any internal working documents, and including any other document deemed useful for the analysis of the case.
2. The Commission shall also submit a note of referral of the case to the Court which may include:
 - a. the available data of the injured party or his or her duly accredited representative, with the indication of whether the petitioner has requested that his or her identity be withheld;
 - b. an appraisal of the degree of compliance with the recommendations issued in the merits report;
 - c. the grounds for the referral of the case to the Court;
 - d. the names of its delegates; and
 - e. any other information deemed useful for the analysis of the case.
3. Once the case has been submitted to the jurisdiction of the Court, the Commission shall make public the report approved in accordance with Article 50 of the American Convention and the note of referral of the case to the Court.

Article 75. Transmittal of other Elements

The Commission shall transmit to the Court, at its request, any other petition, evidence, document or information concerning the case, with the exception of documents concerning futile attempts to reach a friendly settlement. The transmittal of documents shall in each case be subject to the decision of the Commission, which shall withhold the name and identity of the petitioner, if the latter has not authorized that this be revealed.

Article 76. Provisional Measures⁴³

1. The Commission may request that the Court adopt provisional measures in cases of extreme seriousness and urgency, when it becomes necessary to avoid irreparable damage to persons. In taking its decision, the Commission shall take into account the position of the beneficiaries and their representatives.
2. The Commission shall consider the following criteria to present a request for provisional measures:
 - a. when the State concerned has not implemented the precautionary measures granted by the Commission;
 - b. when the precautionary measures have not been effective;
 - c. when there is a precautionary measure connected to a case submitted to the jurisdiction of the Court; or
 - d. when the Commission considers it pertinent for the efficacy of the requested measures, to which end it shall provide its reasons.

TITLE IV

FINAL PROVISIONS

Article 77. Computing Time

All time periods set forth in the present Rules of Procedure -in numbers of days- will be understood to be counted as calendar days.

Article 78. Interpretation

Any doubt that might arise with respect to the interpretation of these Rules of Procedure shall be resolved by an absolute majority of the members of the Commission.

Article 79. Amendment of the Rules of Procedure⁴⁴

The Rules of Procedure may be amended, after a public consultation, by an absolute majority of the members of the Commission.

Article 80. Transitory Provision

These Rules of Procedure, the Spanish and English versions of which are equally authentic, shall enter into force on December 31, 2009.

1. Approved by the Commission on September 2, 2011.
2. Article 25 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
3. Article 28 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
4. Article 29 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
5. Article 30 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
6. Article 36 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
7. Article 37 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
8. Article 42 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
9. Article 44 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
10. Article 46 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
11. Article 59 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
12. Article 72 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
13. Article 76 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.
14. Article 79 was amended by the Inter-American Commission at its 147th Regular Period of Sessions, held from March 8-22, 2013.

RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS*

Approved by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009.

PRELIMINARY PROVISIONS

Article 1. Purpose

1. These Rules regulate the organization and procedure of the Inter-American Court of Human Rights.
2. The Court may adopt other Rules as may be necessary to carry out its functions.
3. In the absence of a provision in these Rules or in case of doubt as to their interpretation, the Court shall decide.

Article 2. Definitions

For the purposes of these Rules:

1. the term “**Agent**” refers to the person designated by a State to represent it before the Inter-American Court of Human Rights;
2. the expression “**Deputy Agent**” refers to the person designated by a State to assist the Agent in the discharge of his or her functions and to replace him or her during temporary absences;
3. the expression “**amicus curiae**” refers to the person or institution who is unrelated to the case and to the proceeding and submits to the Court reasoned arguments on the facts contained in the presentation of the case or legal considerations on the subject-matter of the proceeding by means of a document or an argument presented at a hearing;
4. the expression “**General Assembly**” refers to the General Assembly of the Organization of American States;
5. the term “**Commission**” refers to the Inter-American Commission on Human Rights;
6. the expression “**Permanent Commission**” refers to the Permanent Commission of the Inter-American Court of Human Rights;
7. the expression “**Permanent Council**” refers to the Permanent Council of the Organization of American States;
8. the term “**Convention**” refers to the American Convention on Human Rights (Pact of San José, Costa Rica);
9. the term “**Court**” refers to the Inter-American Court of Human Rights;
10. the term “**declarants**” refers to the alleged victims, witnesses, and expert witnesses that make declarations in a proceeding before the Court;
11. the expression “**Inter-American Defender**” refers to the person whom the Court designates to undertake the legal representation of an alleged victim that has not designated an advocate on his or her own accord;
12. the term “**Delegates**” refers to the persons designated by the Commission to represent it before the Court;
13. the term “**day**” shall be understood to be a natural day;
14. the expression “**States Parties**” refers to the States that have ratified or have adhered to the Convention;
15. the expression “**Member States**” refers to the States that are members of the Organization of American States;
16. the term “**Statute**” refers to the Statute of the Court adopted by the General Assembly of the Organization of American States on 31 October 1979 (AG/RES. 448 [IX-0/79]), as amended;
17. the term “**Judge**” refers to the Judges who compose the Court in each case;
18. the expression “**Titular Judge**” refers to any Judge selected pursuant to Articles 53 and 54 of the Convention;
19. the expression “**Interim Judge**” refers to any Judge appointed pursuant to Articles 6(3) and 19(4) of the Statute;
20. the expression “**Judge ad hoc**” refers to any Judge appointed pursuant to Article 55 of the Convention;
21. the term “**month**” shall be understood to be a calendar month;
22. the acronym “**OAS**” refers to the Organization of American States;

* Rules of Procedure are periodically amended. Please check the website of the Court (www.corteidh.or.cr/index.php/en) for the latest document

23. the term “**expert witness**” refers to the person whom, possessing particular scientific, artistic, technical, or practical knowledge or experience, informs the Court about issues in contention inasmuch as they relate to his or her special area of knowledge or experience;
24. the term “**Presidency**” refers to the President of the Court;
25. the expression “**alleged victim**” refers to the person whose rights under the Convention or another treaty of the Inter-American System have allegedly been violated;
26. the term “**representatives**” refers to the duly accredited legal representative or representatives of the alleged victim or victims;
27. the term “**Secretariat**” refers to the Secretariat of the Court;
28. the term “**Secretary**” refers to the Secretary of the Court;
29. the expression “**Deputy Secretary**” refers to the Deputy Secretary of the Court;
30. the expression “**Secretary General**” refers to the Secretary General of the OAS;
31. the term “**Tribunal**” refers to the Inter-American Court of Human Rights;
32. the term “**Vice-Presidency**” refers to the Vice-President of the Court;
33. the term “**victim**” refers to a person whose rights have been violated, according to a judgment emitted by the Court.

TITLE I

ORGANIZATION AND FUNCTIONING OF THE COURT

CHAPTER I

THE PRESIDENCY AND VICE-PRESIDENCY

Article 3. Election of the Presidency and the Vice-Presidency

1. The Presidency and the Vice-Presidency shall be elected by the Court for a period of two years and may be reelected. Their term shall begin on the first day of the year in question. The election shall take place during the last regular period of sessions held by the Court during the preceding year.
2. The elections referred to in this Article shall be carried out through a secret vote of the Titular Judges present, and the Judges who win four or more votes shall be elected. If no candidate receives the required number of votes, a new election shall take place between the two Judges who have received the most votes. In the event of a tie, the Judge having precedence in accordance with Article 13 of the Statute shall be deemed elected.

Article 4. Functions of the Presidency

1. The functions of the Presidency are to:
 - a. represent the Court;
 - b. preside over the sessions of the Court and submit the topics appearing on the agenda to its consideration;
 - c. direct and promote the work of the Court;
 - d. rule on the points of order that arise during the sessions of the Court. If any Judge so requests, a point of order shall be decided by a majority vote;
 - e. present a biannual report to the Court on the activities he or she has carried out as President during that period;
 - f. exercise such other functions as are conferred upon him or her by the Statute or these Rules, or entrusted to him or her by the Court.
2. In specific cases, the Presidency may delegate the representation referred to in paragraph 1(a) of this Article to the Vice-Presidency, to any of the Judges, or, if necessary, to the Secretary or Deputy Secretary.

Article 5. Functions of the Vice-Presidency

1. The Vice-Presidency shall replace the Presidency in the latter's temporary absence, and shall assume the Presidency when the absence is permanent. In the latter case, the Court shall elect a Vice-Presidency to serve out the rest of the term. The same procedure shall be followed if the absence of the Vice-Presidency is permanent.
2. In the absence of the Presidency and the Vice-Presidency, their functions shall be assumed by the other Judges in the order of precedence established in Article 13 of the Statute.

Article 6. Commissions

1. The Permanent Commission shall be composed of the Presidency, the Vice-Presidency, and any other Judges that the Presidency deems appropriate to appoint, according to the needs of the Court. The Permanent Commission shall assist the Presidency in the exercise of his or her functions.
2. The Court may appoint other Commissions for specific matters. In urgent cases, these Commissions may be appointed by the Presidency if the Court is not in session.
3. The Commissions shall be governed by the provisions of these Rules, as applicable.

CHAPTER II**THE SECRETARIAT****Article 7. Election of the Secretary**

1. The Court shall elect its Secretary, who must possess the legal knowledge required for the position, a command of the working languages of the Court, and the experience necessary for discharging his or her functions.
2. The Secretary shall be elected for a term of five years and may be re-elected. He or she may be removed at any time if the Court so decides. A majority of no fewer than four Judges, voting by secret ballot in the presence of a quorum, is required for the appointment or removal of the Secretary.

Article 8. Deputy Secretary

1. The Deputy Secretary shall be proposed by the Secretary and appointed in the manner prescribed in the Statute. He or she shall assist the Secretary in the exercise of his or her functions and replace him or her during temporary absences.
2. If the Secretary and the Deputy Secretary are both unable to perform their functions, the Presidency may appoint an Interim Secretary.
3. If the Secretary and the Deputy Secretary are both temporarily away from the seat of the Court, the Secretary may appoint one of the Secretariat's attorneys to take charge of the Secretariat in their absence.

Article 9. Oath

1. The Secretary and the Deputy Secretary shall take an oath or make a solemn declaration before the Presidency, undertaking to discharge their duties faithfully and to respect the confidential nature of the facts that come to their attention while exercising their functions.
2. The staff of the Secretariat, including any persons called upon to perform interim or temporary duties, shall, upon assuming their functions, take an oath or make a solemn declaration before the Presidency, undertaking to discharge their duties faithfully and to respect the confidential nature of the facts that come to their attention while exercising their functions. If the Presidency is not present at the seat of the Court, the Secretary or Deputy Secretary shall administer the oath.
3. All oaths shall be recorded in a document to be signed by the person being sworn in and by the person administering the oath.

Article 10. Functions of the Secretary

The functions of the Secretary shall be to:

- a. serve notice of the judgments, advisory opinions, orders, and other rulings of the Court;
- b. keep the minutes of the sessions of the Court;
- c. attend the meetings of the Court held at its seat or elsewhere;
- d. process the correspondence of the Court;
- e. certify the authenticity of documents;
- f. direct the administration of the Court, pursuant to the instructions of the Presidency;
- g. prepare drafts of the work schedules, rules and regulations, and budgets of the Court;
- h. plan, direct, and coordinate the work of the staff of the Court;
- i. carry out the tasks assigned to him or her by the Court or the Presidency;
- j. perform any other duties provided for in the Statute or in these Rules.

**CHAPTER III
FUNCTIONING OF THE COURT**

Article 11. Regular Sessions

The Court shall hold the regular periods of sessions necessary for the exercise of its functions on the dates decided by the Court during the previous regular session. In exceptional circumstances, the Presidency may, in consultation with the other Judges, change the dates of the sessions.

Article 12. Extraordinary Sessions

Extraordinary sessions may be convened by the Presidency on his or her own initiative or at the request of a majority of the Judges.

Article 13. Sessions held away from the seat of the Court

The Court may convene in any Member State when a majority of the Court considers it desirable, with the prior consent of the State concerned.

Article 14. Quorum

The quorum for the deliberations of the Court shall consist of five Judges.

Article 15. Hearings, deliberations, and decisions

1. The Court shall hold hearings when it deems it appropriate to do so. Hearings shall be public, unless the Tribunal deems it appropriate that they be private.
2. The Court shall deliberate in private, and its deliberations shall remain secret. Only the Judges shall take part in the deliberations; however, the Secretary and Deputy Secretary or their substitutes, as well as the necessary staff of Secretariat, may attend. No other persons may be admitted, except by special decision of the Court and after taking an oath or making a solemn declaration.
3. Any question that calls for a vote shall be formulated in precise terms in one of the working languages. At the request of any of the Judges, the Secretariat shall translate the text thereof into the other working languages and distribute it prior to the vote.
4. The hearings and deliberations of the Court shall be kept on audio-recordings.

Article 16. Decisions and voting

1. The Presidency shall present, point by point, the matters to be voted upon. Each Judge shall vote either in the affirmative or the negative; there shall be no abstentions.
2. The votes shall be cast in reverse order of precedence as established in Article 13 of the Statute.
3. The decisions of the Court shall be adopted by a majority of the Judges present at the time of the voting.
4. In the event of a tie, the Presidency shall have a casting vote.

Article 17. Continuation in Office of the Judges

1. Judges whose terms have expired shall continue to exercise their functions in cases that they have begun to hear and that are still pending. However, in the event of death, resignation, impediment, recusal, or disqualification, the Judge in question shall be replaced by the Judge who was elected to take his or her place, if applicable, or by the Judge who has precedence among the new Judges elected upon the expiration of the term of the Judge to be replaced.
2. All matters relating to reparations and costs, as well as to the monitoring of compliance with the judgments of the Court, shall be heard by the Judges comprising the Court at that stage of the proceedings, unless a public hearing has already been held. In the latter case, those matters shall be heard by the Judges who attended the hearing.
3. All matters relating to provisional measures shall be heard by the Court composed of Titular Judges.

Article 18. Interim Judges

Interim Judges shall have the same rights and functions as Titular Judges.

Article 19. National Judges

1. In the cases referred to in Article 44 of the Convention, a Judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case.
2. In the cases referred to in Article 45 of the Convention, national Judges will be able to participate in the hearing and deliberation of the case. If the President is a national of one of the parties to the case, he or she will cede the exercise of his or her functions.

Article 20. Judges *Ad Hoc* in Interstate Cases

1. In a case arising under Article 45 of the Convention, the Presidency, acting through the Secretariat, shall inform the States referred to in that Article of their right to appoint a Judge *ad hoc* within 30 days following the notification of the application.
2. When it appears that two or more States have a common interest, the Presidency shall inform them that they may jointly appoint one Judge *ad hoc*, pursuant to Article 10 of the Statute. If those States do not communicate their agreement to the Court within 30 days of the last notification of the application, each State may propose its candidate within the following 15 days. Subsequently, if more than one candidate has been nominated, the Presidency shall choose a common Judge *ad hoc* by lot, and shall communicate the result to the interested parties.
3. Should the interested States fail to exercise their right within the time limits established in the preceding paragraphs, they shall be deemed to have waived that right.
4. The Secretary shall communicate the appointment of Judges *ad hoc* to the Inter-American Commission, the representatives of the alleged victim, and the petitioning State or respondent State, as applicable.
5. The Judge *ad hoc* shall take an oath at the first session devoted to the consideration of the case for which he or she has been appointed.
6. Judges *ad hoc* shall receive honoraria on the same terms as Titular Judges.

Article 21. Impediments, recusals, and disqualification

1. Impediments, recusals, and the disqualification of Judges shall be governed by the provisions of Article 19 of the Statute and Article 19 of these Rules of Procedure.
2. Motions for recusal or allegations of impediment must be filed prior to the first hearing of the case. However, if the grounds therefor occur or become known after that hearing, such motions may be submitted to the Court at the first possible opportunity so that it can rule on the matter immediately.
3. When, for any reason, a Judge is not present at one of the hearings or at other stages of the proceedings, the Court may decide to disqualify him from continuing to hear the case, taking into account all the circumstances it deems relevant.

TITLE II**PROCEDURE****CHAPTER I****GENERAL RULES****Article 22. Official Languages**

1. The official languages of the Court shall be those of the OAS, to wit, Spanish, English, Portuguese, and French.
2. The working languages shall be those agreed upon by the Court each year. However, in a specific case, the language of the respondent State or, if applicable, the petitioning State may be adopted as the working language, provided it is one of the official languages.
3. The working languages for each case shall be determined at the beginning of the proceedings.
4. The Court may authorize any person appearing before it to use his or her own language if he or she does not have sufficient knowledge of the working languages. In those circumstances, the Court shall make the arrangements necessary to ensure that an interpreter is present to translate that statement into the working languages. The interpreter must take an oath or make a solemn declaration, undertaking to discharge his or her duties faithfully and to respect the confidential nature of the facts that come to his or her attention in the exercise of his or her functions.
5. When deemed necessary, the Court shall determine which text of an order is authentic.

Article 23. Representation of the States

1. States that are parties to a case shall be represented by Agents, who may be assisted by any persons of their choice.
2. Deputy Agents may be designated to assist Agents in the exercise of their functions and replace them during temporary absences.
3. If a State replaces its Agent or Agents, it shall so notify the Court; replacements shall take effect only upon said notification.

Article 24. Representation of the Commission

The Commission shall be represented by the Delegates it has designated for that purpose. Delegates may be assisted by any persons of their choice.

Article 25. Participation of the Alleged Victims or their Representatives

1. Once notice of the brief submitting a case before the Court has been served, in accordance with Article 39 of the Rules of Procedure, the alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings.
2. When there are several alleged victims or representatives, these shall designate a common intervener, who shall be the only person authorized to present pleadings, motions, and evidence during the proceedings, including the public hearings. Should there be no agreement as to the appointment of a common intervener in a case, the Court or its Presidency may, if appropriate, establish a deadline for the appointment of up to three representatives to act as common interveners. In the latter case, the Presidency shall establish the deadline for the submission of the respondent State's answer and the time allotted to the respondent State, the alleged victims or their representatives, and, if applicable, the petitioning State for their participation in the public hearings.
3. In case that there is disagreement among the alleged victims as to that indicated in the preceding paragraph, the Court shall make the appropriate ruling.

Article 26. Cooperation of the States

1. States that are parties to a case have the obligation to cooperate so as to ensure that all notices, communications, or summonses addressed to persons subject to their jurisdiction are duly executed. They must also facilitate compliance with summonses by persons who reside or are present in their territory.
2. The same rule shall apply to any proceeding that the Court decides to conduct or order in the territory of a State that is a party to a case.
3. When performance of any of the measures referred to in the preceding paragraphs requires the cooperation of any other State, the Presidency shall request that State to provide the assistance necessary.

Article 27. Provisional Measures

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.
2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.
3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.
4. The request may be submitted to the Presidency, to any Judge of the Court, or to the Secretariat, by any means of communication. In every case, the recipient of the request shall immediately bring it to the attention of the Presidency.
5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.
6. If the Court is not sitting, the Presidency, in consultation with the Permanent Commission and, if possible, with the other Judges, shall call upon the State concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court during its next period of sessions.

APPENDICES

7. The monitoring of urgent or provisional measures ordered shall be carried out through the submission of reports by the State and the filing of observations to those reports by the beneficiaries of the measures or their representatives. The Commission shall submit observations to the State's reports and to the observations of the beneficiaries of the measures or their representatives.
8. When the Court considers it appropriate, it may require from other sources of information any relevant data on the matter that would permit it to assess the gravity and urgency of the situation and the effectiveness of the measures. To that end, it may also require expert opinions and any other report that it considers appropriate.
9. The Court, or its Presidency if the Court is not sitting, may convene the Commission, the beneficiaries of the measures or their representatives, and the State to a public or private hearing on provisional measures.
10. In its Annual Report to the General Assembly, the Court shall include a statement concerning the provisional measures ordered during the period covered by the report. If those measures have not been duly implemented, the Court shall make such recommendations as it deems appropriate.

Article 28. Filing of Briefs

1. All briefs addressed to the Court may be presented in person or by courier, facsimile, post, or electronic mail, and must be signed in order to ensure their authenticity. If a brief is transmitted to the Court by electronic means and has not been subscribed, or in the case that a brief is not accompanied by its annexes, the original documents or missing annexes must be received by the Tribunal within a non-renewable term of 21 days from the expiration of the deadline established for the submission of that brief.
2. All briefs and annexes submitted to the Court through non-electronic means shall be accompanied by two identical copies, either on paper or in digital format, and received by the Tribunal within the term of 21 days described in the previous paragraph.
3. Annexes and copies thereof must be duly individualized and identified.
4. The Presidency may, in consultation with the Permanent Commission, reject any communication that he or she considers patently inadmissible, and shall order that it be returned to the relevant party without further action.

Article 29. Default Procedure

1. When the Commission; the victims, alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State fail to appear in or pursue a matter, the Court shall, on its own motion, take the measures necessary to conduct the proceedings to their completion.
2. When victims, alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State enter a case at a later stage in the proceedings, they shall participate in the proceedings at that stage.

Article 30. Joinder of Cases and Proceedings

1. The Court may, at any stage of the proceedings, order the joinder of related cases when there is commonality of parties, subject-matter, and applicable law.
2. The Court may also order that the written or oral proceedings of several cases, including the introduction of declarants, proceed jointly.
3. After consulting the Agents, Delegates, and alleged victims or their representatives, the Presidency may order that the proceedings of two or more cases be joined.
4. The Court may, when it deems it appropriate, order that provisional measures applications be joined when the subject-matter or the parties are identical. If such is the case, the other provisions of this Article shall be applicable.
5. The Court may join proceedings for the monitoring of compliance of two or more judgments issued with respect to a single State if it considers that the decisions set out in each judgment are closely related. In those circumstances, the victims in those cases or their representatives shall designate a common intervener in accordance with Article 25 of these Rules of Procedure.

Article 31. Decisions

1. Judgments and orders completing proceedings shall be rendered exclusively by the Court.
2. All other orders shall be rendered by the Court if it is sitting and by the Presidency if it is not, unless otherwise provided. Decisions of the Presidency that are not merely procedural may be appealed from to the Court.

3. Judgments and orders of the Court may not be contested in any way.

Article 32. Publication of Judgments and Other Decisions

1. The Court shall make public:
 - a. its judgments, orders, opinions, and other decisions, including separate opinions, dissenting or concurring, whenever they fulfill the requirements set forth in Article 65(2) of these Rules;
 - b. documents from the case file, except those considered unsuitable for publication;
 - c. the conduct of the hearings, except private hearings, through the appropriate means;
 - d. any other document that the Court considers suitable for publication.
2. Judgments shall be published in the working languages used in each case. All other documents shall be published in their original language.
3. Documents submitted to the Secretariat of the Court that relate to cases already adjudicated shall be made accessible to the public, unless the Court decides otherwise.

Article 33. Transmission of Briefs

The Court may transmit briefs, annexes, orders, judgments, advisory opinions, and other communications submitted to it by electronic means with adequate guarantees of security.

CHAPTER II

WRITTEN PROCEEDINGS

Article 34. Initiation of Proceedings

For a case to be referred to the Court under Article 61(1) of the Convention, a brief must be filed with the Secretariat in any of the working languages of the Tribunal. The submission of the case in only one working language shall not suspend the proceeding; however, a translation into the language of the respondent State must be submitted within the following 21 days, as long as that language is one of the working languages of the Court.

Article 35. Filing of the case by the Commission

1. The case shall be presented to the Court through the submission of the report to which article 50 of the Convention refers, which must establish all the facts that allegedly give rise to a violation and identify the alleged victims. In order for the case to be examined, the Court shall receive the following information:
 - a. the names of the Delegates;
 - b. the names, address, telephone number, electronic address, and facsimile number of the representatives of the alleged victims, if applicable;
 - c. the reasons leading the Commission to submit the case before the Court and its observations on the answer of the respondent State to the recommendations of the report to which Article 50 of the Convention refers;
 - d. a copy of the entire case file before the Commission, including all communications following the issue of the report to which Article 50 of the Convention refers;
 - e. the evidence received, including the audio and the transcription, with an indication of the alleged facts and arguments on which they bear. The Commission shall indicate whether the evidence was rendered in an adversarial proceeding;
 - f. when the Inter-American public order of human rights is affected in a significant manner, the possible appointment of expert witnesses, the object of their statements, and their *curricula vitae*;
 - g. the claims, including those relating to reparations.
2. When it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Tribunal shall decide whether to consider those individuals as victims.
3. The Commission shall indicate which facts contained in the report to which Article 50 of the Convention refers it is submitting to the consideration of the Court.

Article 36. Filing of the case by a State

1. A State Party may submit a case to the Court, in accordance with Article 61 of the Convention, through a reasoned brief containing the following information:
 - a. the names of the Agents and Alternate Agents, and the address where all relevant communications shall be deemed to have been officially received;
 - b. the names, address, telephone number, electronic address, and facsimile number of the duly accredited representatives of the alleged victims, if applicable;
 - c. the reasons leading the State to submit the case before the Court;
 - d. a copy of the entire case file before the Commission, including the report to which Article 50 of the Convention refers and all communications following the issue of that report;
 - e. the evidence offered, with an indication of the alleged facts and arguments on which they bear;
 - f. the identity of declarants and the object of their statements. Expert witnesses must also submit their *curricula vitae* and contact information.
2. Paragraphs 2 and 3 of the preceding Article are applicable in cases submitted by States before the Court.

Article 37. Inter-American Defender

In cases where alleged victims are acting without duly accredited legal representation, the Tribunal may, on its own motion, appoint an Inter-American defender to represent them during the processing of the case.

Article 38. Preliminary Review of the Presentation of the Case

When, during a preliminary review of the presentation of the case, the Presidency finds that the basic requirements have not been met, he or she shall request that its deficiencies be met within 20 days.

Article 39. Notification of the Case

1. The Secretary of the Court shall serve notice of the presentation of the case on:
 - a. the Presidency and the Judges;
 - b. the respondent State;
 - c. the Commission, when it has not presented the case;
 - d. the alleged victim, his or her representatives, or the Inter-American defender, if applicable.
2. The Secretary shall inform the other States Parties, the Permanent Council through its Presidency, and the Secretary General of the presentation of the case.
3. When giving notice, the Secretary shall request the respondent State to designate its Agent or Agents within 30 days. When appointing its Agents, the State in question shall indicate the address at which all relevant communications shall be deemed officially received.
4. Until Delegates are appointed, the Commission shall be deemed properly represented by its Presidency for all purposes of the case.
5. When giving notice, the Secretary shall request the representatives of the alleged victims to confirm, within 30 days, the address at which all relevant communications shall be deemed officially received.

Article 40. Brief containing Pleadings, Motions, and Evidence

1. Upon notice of the presentation of the case to the alleged victim or his or her representatives, these shall have a non-renewable term of two months as of receipt of that brief and its annexes to autonomously submit to the Court the brief containing pleadings, motions, and evidence.
2. The brief containing pleadings, motions, and evidence shall contain:
 - a. a description of the facts within the factual framework established in the presentation of the case by the Commission;
 - b. the evidence offered, properly organized, with an indication of the alleged facts and arguments that it relates to;

- c. the identities of declarants and the object of their statements. Expert witnesses must also submit their *curricula vitae* and contact information;
- d. all claims, including those relating to reparations and costs.

Article 41. The State's Answer

1. The respondent shall, in writing, state its position regarding the presentation of the case and, if applicable, answer the brief containing pleadings, motions, and evidence within a non-renewable term of two months from the receipt of the latter brief and its annexes, without prejudice to the term that the Presidency may establish in the circumstances mentioned in Article 24(2) of these Rules of Procedure. In its answer, the State shall indicate:
 - a. whether it accepts the facts and claims or whether it contradicts them;
 - b. the evidence tendered, properly organized, with an indication of the facts and arguments that it relates to;
 - c. the identity of the declarants offered and the object of their statements. Expert witnesses must also submit their *curricula vitae* and contact information;
 - d. its legal arguments, observations on the reparations and reimbursement of costs requested, and conclusions.
2. The answer shall be communicated by the Secretary to those persons mentioned in Article 39(1)(a), 39(1)(c), and 39(1)(d) of these Rules of Procedure and to the petitioning State in the cases to which Article 45 of the Convention refers.
3. The Court may consider those facts that have not been expressly denied and those claims that have not been expressly controverted as accepted.

Article 42. Preliminary Objections

1. Preliminary objections may only be filed in the brief indicated in the preceding Article.
2. The document setting out preliminary objections shall contain the facts on which the objections are based, legal arguments and conclusions, and supporting documents, as well as any evidence to be offered.
3. The presentation of preliminary objections shall not suspend the proceedings on the merits, nor their respective deadlines.
4. The Commission, alleged victims or their representatives, and, if applicable, the petitioning State may present their observations to the preliminary objections within 30 days as of their receipt.
5. When the Court considers it necessary, it may convene a special hearing on the preliminary objections presented, after which it shall rule thereon.
6. The Court may decide upon the preliminary objections, the merits, and the reparations and costs of the case in a single judgment.

Article 43. Other Steps in the Written Proceedings

After receipt of the brief presenting the case, the brief containing pleadings, motions, and evidence, and the brief containing the answer, and before the initiation of oral proceedings, the Commission, the alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State may seek the permission of the Presidency to enter additional written pleadings. In such a case, if deemed appropriate, the Presidency shall establish time limits for the presentation of the relevant documents.

Article 44. Arguments of *Amicus Curiae*

1. Any person or institution seeking to act as *amicus curiae* may submit a brief to the Tribunal, together with its annexes, by any of the means established in Article 28(1) of these Rules of Procedure, in the working language of the case and bearing the names and signatures of its authors.
2. If the *amicus curiae* brief is submitted by electronic means and is not signed, or if the brief is submitted without its annexes, the original and supporting documentation must be received by the Tribunal within 7 days

of its transmission. If the brief is submitted out of time or is submitted without the required documentation, it shall be archived without further processing.

3. *Amicus curiae* briefs may be submitted at any time during contentious proceedings for up to 15 days following the public hearing. If the Court does not hold a public hearing, *amicus* briefs must be submitted within 15 days following the Order setting deadlines for the submission of final arguments. Following consultation with the President, the *amicus curiae* brief and its annexes shall be immediately transmitted to the parties, for their information.
4. *Amicus curiae* briefs may be submitted during proceedings for monitoring compliance of judgments and those regarding provisional measures.

CHAPTER III

ORAL PROCEEDINGS

ARTICLE 45. OPENING

The Presidency shall announce the date on which oral proceedings will open and shall fix the necessary hearings.

Article 46. Definitive list of declarants

1. The Court will request the Commission, the alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State to submit definitive lists of declarants, in which they shall confirm or retract offers of evidence submitted within time in accordance with Articles 35(1)(f), 36(1)(f), 40(2)(c), and 41(1)(c) of these Rules of Procedure, in the form of statements of alleged victims, witnesses, or expert witnesses. Additionally, they must indicate to the Court their position as to which of the declarants offered should be summoned to the hearing, where applicable, and which declarants can render their statements through affidavits.
2. The Tribunal shall transmit the definitive list of declarants to the opposing party and shall establish a time limit in which to present, if necessary, observations, objections, or challenges.

Article 47. Objections to Witnesses

1. Any party may object to a witness within ten days of receiving the definitive list of declarants offered to the Court.
2. The Court or the Presidency, as applicable in each case, shall assess the value of statements rendered and objections thereto.

Article 48. Objections to Expert Witnesses

1. An expert witness may be disqualified based on the following grounds:
 - a. he or she is a relative by blood, affinity, or adoption, up to the fourth degree, of one of the alleged victims;
 - b. he or she is or has been a representative of one of the alleged victims in proceedings regarding the facts of the case before the Court, either at the domestic level or before the Inter-American System for the promotion and protection of human rights;
 - c. he or she currently has, or has had, close ties with the proposing party, or is, or has been, a subordinate of the proposing party, and the Court considers that his or her impartiality may be affected;
 - d. he or she is, or has been, an officer of the Inter-American Commission on Human Rights with knowledge of the contentious case in which his or her expert opinion is required;
 - e. he or she is or has been an Agent of the respondent State in the contentious case in which his or her expert opinion is required;
 - f. he or she has previously intervened, in any capacity and before any organ, whether national or international, in relation to the same case.
2. Objections shall be presented within 10 days of receipt of the definitive list of expert witnesses offered to the Court.
3. The Presidency shall communicate to the expert witness in question objections made against him or her and shall establish a time limit for the expert witness to present observations thereto. All of this shall be transmitted to those who form part of the proceedings. The Court or presiding judge shall subsequently decide on the matter.

Article 49. Substitution of Declarants Offered

Exceptionally, upon receiving a well-founded request from a party and after hearing the opinion of the opposing party, the Court may accept the replacement of a declarant, as long as his or her replacement is identified, and always respecting the object of the statement, testimony, or expert opinion originally offered.

Article 50. Offering, Convocation, and Appearance of Declarants

1. The Court or its Presidency shall issue an order deciding on the observations, objections, and challenges presented, as applicable; defining the object of the statement of each one of the declarants; requiring the submission of the affidavits deemed appropriate; and summoning all those the Court deems appropriate to a hearing, if necessary.
2. The party who has proposed a statement shall notify the declarant of the order mentioned in the preceding paragraph.
3. Statements shall be limited to the object defined by the Court in the order referred to in paragraph 1 of this Article. Exceptionally, upon receiving a well-founded request and after hearing the opinion of the opposing party, the Court may modify the object of the statement or admit a statement that has exceeded the object established.
4. The party who offers a declarant shall be responsible for his or her appearance before the Tribunal or the submission of his or her affidavit, as applicable.
5. The alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State may formulate questions in writing for the declarants offered by the opposing party and, if applicable, by the Commission who have been convened by the Court to render their statements through affidavits. The Presidency can determine the pertinence of the questions formulated and can excuse the person being questioned from responding, unless the Court determines otherwise. Leading questions and questions that do not refer to the timely-established object of the statement shall not be admitted.
6. Once an affidavit is received, it shall be transmitted to the opposing party and, if applicable, to the Commission so that observations thereto may be submitted within the time limit established by the Court or its Presidency.

Article 51. Hearing

1. First, the Commission will state the grounds of the report to which Article 50 of the Convention refers and of the presentation of the case before the Court, and set out any other matter that it considers relevant for its resolution.
2. Once the Commission has concluded the statement indicated in the preceding paragraph, the Presidency shall call those declarants who have been summoned in accordance with Article 50(1) of these Rules of Procedure so that they may be interrogated in conformity with the Article that follows. The interrogation of the declarant shall be initiated by the party that has proposed said declarant.
3. After his or her identity has been established, and before testifying, the witness shall take an oath or make a solemn declaration stating that he or she will speak the truth, the whole truth, and nothing but the truth.
4. After his or her identity has been established by the Court, and before performing his or her task, the expert witness shall take an oath or make a solemn declaration stating that he or she will discharge his or her duties honorably and conscientiously.
5. The identities of alleged victims shall be established; however, alleged victims shall not take an oath.
6. Those alleged victims and witnesses who have not rendered their statements before the Court may not be present while the statement of another alleged victim, witness, or expert witness is being delivered at the hearing.
7. Once the Court has heard the declarants summoned and the Judges have questioned them, the Presidency shall allow the victims or their representatives and the respondent State to present their oral arguments to the Tribunal. Subsequently, the Presidency shall allow the victims or their representatives and the State to present a rebuttal and surrebuttal, respectively.
8. Once the oral arguments have concluded, the Commission shall present its final observations.
9. Finally, the President shall call upon the Judges of the Tribunal, in reverse order according to the system of precedence established in Article 13 of the Statute, so that they may ask questions to the Commission, the victims or their representatives, and the State, if they so desire.

10. In cases that are not submitted to this Tribunal by the Commission, the Presidency shall conduct hearings, determine the order in which those who will intervene in the proceedings shall submit their statements to the Court, and determine the measures appropriate so that hearings are carried out in the best possible manner.
11. The Court may receive the statements of witnesses, expert witnesses, or alleged victims through the use of electronic audio-visual means.

Article 52. Questions during the debates

1. The Judges may formulate the questions they deem appropriate to all those who appear before the Court.
2. Alleged victims, witnesses, expert witnesses, and all other persons that the Court decides to hear may be interrogated by the alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State. Interrogations shall be moderated by the Presidency.
3. The Commission may interrogate the expert witnesses that it has proposed in accordance with Article 35(1) (f) of these Rules of Procedure. It may also interrogate expert witnesses proposed by the alleged victims, the respondent State and, if applicable, the petitioning State, if authorized by the Court upon receiving a well-grounded request therefor, when the Inter-American public order of human rights is affected in a significant manner and the statement in question regards a topic included in the statement of an expert witness offered by the Commission.
4. The Presidency shall have the faculty of deciding the pertinence of questions posed and of excusing the party being questioned from answering, unless the Court deems otherwise. Leading questions shall not be admitted.

Article 53. Protection of Alleged Victims, Witnesses, Expert Witnesses, Representatives, and Legal Advisers

States may not institute proceedings against witnesses, expert witnesses, or alleged victims, or their representatives or legal advisers, nor exert pressure on them or on their families on account of statements, opinions, or legal defenses presented to the Court.

Article 54. Failure to Appear or False Testimony

When a person summoned to appear or declare before the Court fails to appear or refuses to render a statement without legitimate cause, or when, in the opinion of the Court, he or she has violated his or her oath or solemn declaration, the Court shall inform the State with jurisdiction over that witness so that appropriate action may be taken under the relevant domestic legislation.

Article 55. Minutes of the Hearings

1. At each hearing, the Secretariat will keep a record of:
 - a. the names of the Judges present;
 - b. the names of those intervening at the hearing;
 - c. the names and personal information of the declarants who have rendered statements.
2. The Secretariat shall record the hearings and annex a copy of the recording to the case file.
3. The Agents, Delegates, and victims or alleged victims, or their representatives, shall receive a copy of the recording of the public hearing as soon as possible.

CHAPTER IV

FINAL WRITTEN PROCEEDINGS

Article 56. Final Written Arguments

1. The alleged victims or their representatives, the respondent State, and, if applicable, the petitioning State shall have the opportunity to present final written arguments within the term established by the Presidency.
2. The Commission may submit final written observations within the term established in the previous Section.

CHAPTER V

EVIDENCE

Article 57. Admission

1. Items of evidence tendered before the Commission will be incorporated into the case file as long as they have been received in adversarial proceedings, unless the Court considers it indispensable to duplicate them.
2. Exceptionally, and having heard the opinion of all those participating in the proceedings, the Court may admit evidence if the party that has offered it adequately explains that the evidence was not presented or offered at the procedural moments established in Articles 35(1), 36(1), 40(2), and 41(1) of these Rules of Procedure due to *force majeure* or serious impediment. Additionally, the Court may admit evidence that refers to an event which occurred after the procedural moments indicated.

Article 58. Procedure for Taking Evidence

The Court may, at any stage of the proceedings:

- a. Obtain, on its own motion, any evidence it considers helpful and necessary. In particular, it may hear, as an alleged victim, witness, expert witness, or in any other capacity, any person whose statement, testimony, or opinion it deems to be relevant.
- b. Request the Commission; the victims or alleged victims, or their representatives; the respondent State; and, if applicable, the petitioning State to submit any evidence that they may be able to provide or any explanation or statement that, in the Court's opinion, may be useful.
- c. Request any entity, office, organ, or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. Such documents may not be published without the authorization of the Court.
- d. Commission one or more of its members to take steps in the advancement of the proceedings, including hearings at the seat of the Court or at a different location.
- e. If it is impossible to proceed according to the terms established in the previous paragraph, the Judges may commission the Secretariat to take necessary steps in the advancement of the proceedings.

Article 59. Incomplete or Illegible evidence

Any item of evidence submitted to the Court must be complete and intelligible. Otherwise, the Court shall grant the party that has offered the item of evidence a deadline within which to correct its defects or to submit relevant clarifications. Failure to submit the requested clarifications or corrections will result in the Court considering the evidence as not tendered.

Article 60. Cost of Evidence

Whoever offers an item of evidence shall cover the costs generated by its production.

CHAPTER VI

DISCONTINUANCE, ACQUIESCENCE, AND FRIENDLY SETTLEMENT

Article 61. Discontinuance of a Case

When the entity that has presented the case notifies the Court of its intention not to proceed with it, the Court shall, after hearing the opinions of all those participating in the proceedings, decide on the matter and determine the juridical effects of that decision.

Article 62. Acquiescence

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

Article 63. Friendly Settlement

When the Commission; the victims or alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State in a case before the Court inform it of the existence of a friendly settlement,

compromise, or any other occurrence likely to lead to a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural time.

Article 64. Continuation of a Case

Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

**CHAPTER VII
JUDGMENTS**

Article 65. Contents of the Judgment

1. The judgment shall contain:
 - a. the names of the person who presides in the Court, the Judges who rendered the decision, the Secretary, and the Deputy Secretary;
 - b. the identity of those who participate in the proceedings and their representatives;
 - c. a description of the proceedings;
 - d. the facts of the case;
 - e. the submissions of the Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State;
 - f. the legal arguments;
 - g. the ruling on the case;
 - h. the decision on reparations and costs, if applicable;
 - i. the result of the voting;
 - j. a statement indicating which text of the judgment is authentic.
2. Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the Presidency so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment.

Article 66. Judgment on reparations and costs

1. When no specific ruling on reparations and costs has been made in the judgment on the merits, the Court shall set the date and determine the procedure for the deferred decision thereon.
2. If the Court is informed that the victims or their representatives, the respondent State, and, if applicable, the petitioning State have reached an agreement with respect to the execution of the judgment on the merits, it shall verify that the agreement accords with the Convention and rule accordingly.

Article 67. Delivery and Communication of the Judgment

1. When a case is ready for judgment, the Court shall deliberate in private and approve the judgment, which shall be notified by the Secretariat to the Commission; the victims or alleged victims, or their representatives; the respondent State; and, if applicable, the petitioning State.
2. Until notice of the judgment has been served, its text, legal arguments, and votes shall remain secret.
3. Judgments shall be signed by all of the Judges who participated in the voting and by the Secretary. However, a judgment signed by the majority of the Judges and the Secretary shall also be valid.
4. Separate opinions, concurring or dissenting, shall be signed by the Judges submitting them and by the Secretary.
5. The judgments shall conclude with an order, signed by the Presidency and the Secretary and sealed by the latter, providing for the communication and execution of the judgment.
6. The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall dispatch certified copies to the States Parties; the Commission; the victims or alleged victims, or their representatives;

the respondent State; the petitioning State, if applicable; the Permanent Council through its Presidency; the Secretary General of the OAS; and any other interested person who requests them.

Article 68. Request for Interpretation

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which interpretation is requested.
2. The Secretary shall transmit the request for interpretation to all those participating in the case and shall invite them to submit any written comments they deem relevant within the time limit established by the Presidency.
3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same Judges who delivered the judgment whose interpretation is being sought. However, in the event of death, resignation, impediment, recusal, or disqualification, the judge in question shall be replaced pursuant to Article 17 of these Rules.
4. A request for interpretation shall not suspend the effect of the judgment.
5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

Article 69. Procedure for Monitoring Compliance with Judgments and Other Decisions of the Court

1. The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations to those reports by the victims or their legal representatives. The Commission shall present observations to the State's reports and to the observations of the victims or their representatives.
2. The Court may require from other sources of information relevant data regarding the case in order to evaluate compliance therewith. To that end, the Tribunal may also request the expert opinions or reports that it considers appropriate.
3. When it deems it appropriate, the Tribunal may convene the State and the victims' representatives to a hearing in order to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing.
4. Once the Tribunal has obtained all relevant information, it shall determine the state of compliance with its decisions and issue the relevant orders.
5. These rules also apply to cases that have not been submitted by the Commission.

TITLE III

ADVISORY OPINIONS

Article 70. Interpretation of the Convention

1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought.
2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates.
3. If the advisory opinion is sought by an OAS organ other than the Commission, the request shall also specify how it relates to the sphere of competence of the organ in question, in addition to the information listed in the preceding paragraph.

Article 71. Interpretation of Other Treaties

1. If, as provided for in Article 64(1) of the Convention, the interpretation requested refers to other treaties concerning the protection of human rights in the American States, the request shall indicate the name of the treaty and parties thereto, the specific questions on which the opinion of the Court is being sought, and the considerations giving rise to the request.

2. If the request is submitted by an OAS organ, it shall indicate how the subject of the request falls within its sphere of competence.

Article 72. Interpretation of Domestic Laws

1. A request for an advisory opinion presented pursuant to Article 64(2) of the Convention shall indicate the following:
 - a. the provisions of domestic law and of the Convention or of other treaties concerning the protection of human rights to which the request relates;
 - b. the specific questions on which the opinion of the Court is being sought;
 - c. the name and address of the requesting party's Agent.
2. Copies of the domestic laws referred to in the request shall accompany the application.

Article 73. Procedure

1. Upon receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all of the Member States, the Commission, the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request.
2. The Presidency shall establish a time limit for the filing of written comments by the interested parties.
3. The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, the Presidency may do so after prior consultation with the Agent.
4. At the conclusion of the written proceedings, the Court shall decide whether oral proceedings should take place and shall establish the date for a hearing, unless it delegates the latter task to the Presidency. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention.

Article 74. Application by Analogy

The Court shall apply the provisions of Title II of these Rules to advisory proceedings to the extent that it deems them to be compatible.

Article 75. Delivery and Content of Advisory Opinions

1. The delivery of advisory opinions shall be governed by Article 67 of these Rules.
2. Advisory opinions shall contain:
 - a. the names of the person who presides in the Court, the Judges who rendered the opinion, the Secretary, and the Deputy Secretary;
 - b. the issues presented to the Court;
 - c. a description of the proceedings;
 - d. the legal arguments;
 - e. the opinion of the Court;
 - f. a statement indicating which text of the opinion is authentic.
3. Any judge who has taken part in the delivery of an advisory opinion is entitled to append a separate reasoned opinion, concurring or dissenting, to that of the Court. These opinions shall be submitted within a time limit to be fixed by the Presidency, so that the other Judges can take cognizance thereof before the advisory opinion is served. Advisory opinions shall be published in accordance with Article 32(1)(a) of these Rules.
4. Advisory opinions may be delivered in public.

TITLE IV

RECTIFICATION OF ERRORS

Article 76. Rectification of errors in judgments and other decisions

The Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified.

TITLE V

FINAL AND TEMPORARY PROVISIONS

Article 77. Amendments to the Rules of Procedure

These Rules of Procedure may be amended by the decision of an absolute majority of the Titular Judges of the Court. Upon their entry into force, earlier versions of the Rules of Procedure are repealed.

Article 78. Entering into force

These Rules of Procedure will enter into force on January 1, 2010.

Article 79. Application

1. Contentious cases which have been submitted for the consideration of the Court before January 1, 2010, will continue to be processed, until the issuance of a judgment, in accordance to the previous Rules of Procedure.
2. In cases in which the Commission has adopted a report under article 50 of the Convention before the these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. Statements shall be received with the aid of the Victim's Legal Assistance Fund, and the dispositions of these Rules of Procedure shall apply.

Done at the seat of the Inter-American Court of Human Rights in San José, Costa Rica, on this 24th day of November, 2009.

The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System

A HANDBOOK FOR VICTIMS AND THEIR ADVOCATES

This Handbook is intended to provide assistance to victims of torture and ill-treatment and to all those who help them with legal support, such as NGOs, human rights defenders and lawyers, in their endeavours to seek justice and redress through the mechanisms available within the Inter-American Human Rights system. As such, the Handbook offers a comprehensive and accessible guide to the key procedural and substantive issues surrounding the prohibition of torture and ill-treatment enshrined in Article 5 of the American Convention on Human Rights. Reference materials are included in the appendices as a further resource for litigants.

We hope that this publication will be of practical help to lawyers and human rights defenders and the members of the SOS-Torture Network of the OMCT across the Americas. We thereby encourage them to contribute to closing the implementation gap and bringing us closer to the legal obligation that indeed “nothing can justify torture under any circumstances”.

Gerald Staberock,
Secretary General of the OMCT

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