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COMPENDIUM

**Integral reparation
With a gender perspective in
transitional justice contexts**

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Compendium on **integral reparation** **with a gender perspective in** **transitional justice contexts**¹

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¹ Commissioner Edgar Stuardo Ralón expressed a reasoned partially dissenting vote of the Compendium. This reasoned vote is available at the end of the document.



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I. INTRODUCTION

I. INTRODUCTION

A. BACKGROUND AND PURPOSE

1. In compliance with its mandate under Article 41 of the American Convention on Human Rights (hereinafter "ACHR") and Article 106 of the OAS Charter to provide advice to States on human rights matters, the Inter-American Commission on Human Rights (hereinafter "IACHR" or "Commission") provides a technical cooperation tool aimed at contributing to the strengthening of the legislation, policies and practices of States in order to move towards the fullest protection of human rights. This document on the standards of the Inter-American Human Rights System (hereinafter "System" or "IAHRS") is also addressed to civil society, social movements, academia, and other users of the System.
2. On this occasion, and as a complement to the [*Compendium of the Commission on Truth, Justice and Reparation in Transitional Contexts*](#) -published in April 2021-, the IACHR presents this Compendium as a tool for promotion, dissemination and technical cooperation, which aims to systematize standards developed by the Commission for more than two decades, through its various mechanisms, on comprehensive reparation in transitional justice contexts² , with emphasis on the incorporation of a gender and intersectional approach.
3. Historically, the Inter-American Commission has closely followed the grave human rights violations that have occurred in the Americas, both in the context of armed conflict and in the context of military

² Transitional justice has been understood as "a variety of processes and mechanisms associated with a society's attempts to resolve the problems arising from a past of large-scale abuses - in order to hold those responsible accountable for their actions; to serve justice and achieve reconciliation". IACHR. Right to Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 48. citing: Cf. UN, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 9 August 2012, para. 20, citing Report of the UN Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, 3 August 2004.

dictatorships and other oppressive and authoritarian regimes of the past³. Through its various mechanisms, the IACHR has developed a series of applicable standards on truth, justice, memory, and reparation with recommendations for an integrated State response to transitional justice contexts⁴. In the framework of this follow-up, and as will be reflected throughout the Compendium, the IACHR has accompanied the various regional advances and challenges in this area. In this regard, one of the main challenges observed in the region consists of gaps and inadequacies in the incorporation and application of a gender perspective and differentiated and intersectional approaches with respect to women, LGBTI persons, and other groups at risk. This prevents the development of reparation policies that respond to the prevalence of discrimination and violence.

4. In order to have an adequate and comprehensive State response to the serious violations that have occurred in transitional contexts and in order to energize the respective peace processes, the IACHR has issued numerous recommendations to States to comprehensively remedy the consequences of these violations. Similarly, in recent years, the Commission has spoken out on the various forms of discrimination and violence faced by women, LGBTI persons, and other population groups in the context of armed conflicts and authoritarian regimes. In addition, the Commission has addressed the accentuated and exacerbated vulnerability that these populations face in the face of the convergence of various layers of discrimination.
5. The specific objectives of the Compendium are: (i) to make visible the historical work of the IACHR regarding the application of the gender perspective in transitional justice contexts, with a particular focus on reparations, based on the attention given to certain groups in situations of vulnerability from an intersectionality approach; (ii) to

³ In this sense, see IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121 April 12, 2021, para. 1.

⁴ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121 12 April 2021, para. 1.

reflect the importance of the design, implementation, and application of reparations with a transformative vocation that seeks to remedy the conditions of discrimination based on gender and other discriminatory factors that have been the cause of the violations⁵ , and (iii) to highlight the fundamental importance of transitional justice mechanisms -especially that of reparations- to address the consequences of serious human rights violations in the context of armed conflicts, dictatorships and authoritarian regimes.

6. Regarding the first point, this Compendium is the first instrument in which the IACHR addresses, in a comprehensive and historical manner within the Inter-American System, the gender and intersectional perspective adopted in reparations adopted in the framework of transitional justice processes and mechanisms. Therefore, the Commission considers that this document will allow for a better understanding of the scope of the State's obligations to provide reparations with differentiated and intersectional approaches, in light of the principle of equality and non-discrimination.
7. On the other hand, this Compendium emphasizes the transformative nature of reparations, which, by having a corrective approach -and not only a restitutive one- contributes to the goal of comprehensive reparations, as well as to eradicating and combating discriminatory, unequal, and exclusionary structures and practices that have maintained a situation of systematic inequity, and which initially allowed or facilitated the commission of serious violations.
8. Regarding reparations as a fundamental contribution to combating the structural impunity of past events and to consolidating a culture of human rights in order to strengthen the rule of law in the region, this systematization, like the one presented in the, seeks to highlight

⁵ IACHR. [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#). OEA/Ser.L/V/II, Doc. 233, 14 November 2019, paras. 140 and 144; IACHR. [Recognition of rights of LGBTI persons](#). OAS/Ser.L/V/II.170, Doc. 184, 7 December 2018, para. 40.

the fundamental importance of transitional justice mechanisms, especially those related to reparations, in addressing the serious human rights violations of the past. The standards of reparation in the framework of transitional justice mechanisms constitute one of the pillars for the reconstruction of the social fabric, the establishment of historical memory, and non-repetition.⁶

9. In response to what has been developed, the Commission seeks for this Compendium to constitute a dissemination tool that will facilitate the design, execution, implementation, and follow-up of reparations dictated in transitional justice contexts. This, in light of the IACHR's pronouncements aimed at guaranteeing comprehensive reparations for victims, based on a gender, differential, and intersectional perspective in all reparations processes and mechanisms, as well as the guiding principles of these mechanisms in transnational contexts -such as the representativeness and participation of women and other groups in the design and adoption of these measures.

B. METHODOLOGY

10. This document was prepared based on the review, identification, compilation, systematization, and analysis of the inter-American standards developed by the IACHR on transitional justice, in particular with regard to comprehensive reparations, with emphasis on a gender perspective, and differentiated and intersectional approaches. This compendium also includes the review, systematization, and analysis of standards and precedents applicable to reparations with a differentiated approach that may be applicable or relevant to transitional justice contexts. In order to present an updated, representative, and complete instrument, the Compendium included an exhaustive review of numerous IACHR pronouncements, published from 2000 to August 2023. Exceptionally, and because they are considered to be of special

⁶ In this sense, see IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121 April 12, 2021, para. 9.

relevance to particular issues, a limited number of pronouncements prior to 2000 are used.

11. In particular, the following were examined and analyzed: (i) cases referred to the Inter-American Court of Human Rights (hereinafter "IACtHR" or "Inter-American Court") - applications and merits reports subsequent to the 2009 reform of the Rules of Procedure of the IACtHR-, (ii) merits reports published by the IACHR; (iii) friendly settlement reports; (iii) country reports; (iv) thematic reports; (v) chapters of Annual Reports; (vi) resolutions; (vii) practical guides, guidelines, and other directives; (viii) resolutions on precautionary measures; and (ix) exceptionally, press releases were considered due to the uniqueness of the subject matter ⁷.
12. Based on the information compiled and analyzed, the Commission seeks to reflect the way in which it has understood, applied, and developed the standards related to the implementation of the gender and intersectional perspective in transitional contexts with emphasis on reparation measures for human rights violations in these situations. This Compendium also includes some relevant excerpts from decisions of the Inter-American Court and bodies of the universal system for the protection of human rights, which have been referred to by the IACHR.
13. Taking into account the technical cooperation purpose of the Compendium, the methodology used for the selection of the standards compiled responds to a greater extent to the comprehensive identification of the following criteria: (i) relevance in terms of substantive pertinence and recurrence of the approaches; (ii) most recent adoption; (iii) geographic representativeness; and (iv) balance between different mandates of the IACHR. The above also shows the complementarity in which the different mechanisms

⁷ The IACHR in its press releases identifies human rights standards; it bases its specific pronouncements on these standards, and expressly cites them in press releases to support its recognitions, appeals, exhortations and conclusions. However, press releases, as documents of this nature, refer to standards but do not imply their development or issuance.

of the Commission are combined. In addition, it is important to note that the standards are organized thematically and presented in chronological order, from the most recent to the oldest, in order to highlight the latest advances in the field.

14. Although the standards included in this Compendium are not exhaustively integrated, the respective parts of the analysis that precede the standards included are accompanied by numerous citations and references to other precedents that allow for the expansion of the information to be consulted. Finally, it should be noted that the legal nature of the compendium is to present and systematize the standards developed by the IACHR and the Inter-American System through its mechanisms, without including the development of new standards on the subject.

C. STRUCTURE

15. This Compendium is divided into five chapters. Chapter I contains the purpose, background, methodology, and structure. Second, Chapter II presents the Commission's standards related to the application of a gender perspective in general aspects of transitional justice contexts, specifically in relation to the mechanisms of memory, truth, and justice. The chapter is organized into two sections: the first focuses on specific aspects related to the gender perspective, while the second part details the Commission's standards related to the principle of equality and non-discrimination.
16. Chapter III contains some general considerations on reparations measures in transitional processes; it also systematizes the standards with respect to the different types of reparations. In a cross-cutting manner, and in light of differentiated and intersectional approaches, this chapter includes elements related to comprehensive and transformative reparations for groups at special risk.
17. Chapter IV includes an approach to reparations with a gender and intersectional approach in the context of transitional justice. In particular, a review is made of emblematic reparations and recommendations issued by the IACHR through its various mechanisms. Likewise, considering the

widespread use of sexual violence against women in transitional contexts, the aspects related to reparations in cases of sexual violence are highlighted. Considering the pronouncements made by the Commission to date, the analysis that presents the standards developed also includes some jurisprudential criteria of the Inter-American Court, and pronouncements of the United Nations Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence. Finally, in Chapter V, the IACHR presents its conclusions.



II. GENERAL CONSIDERATIONS ON GENDER IN TRANSITIONAL JUSTICE CONTEXTS

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18. It is a principle of international law, which jurisprudence has considered "even a general conception of law", that any breach of an international obligation which has caused damage entails a duty to make adequate reparation⁸. This principle was consolidated in the decision of the International Court of Justice in the Chorzów Factory case of 1928⁹, which specified that the obligation to make reparation arising from a wrongful act implies undoing the consequences of that act and re-establishing the situation that would have existed had it not been committed.
19. This premise was later integrated into the draft articles on the Responsibility of States for Internationally Wrongful Acts, which establish that the responsible State has the obligation to make full reparation for the damage caused by the wrongful act¹⁰. In this way, responsibility is configured as a legal institution that imposes on the State responsible for an unlawful act, according to international law, the obligation to make reparation to the State affected by said act¹¹.
20. For its part, the development of international human rights law has made it possible to incorporate a new conception of the international responsibility of the State. Here, responsibility is no longer defined by a relationship between States, so the object of protection and its basis find a different justification¹². State responsibility arises when a State violates the fundamental obligation to respect and ensure respect for internationally recognized human rights. In this regard, the Inter-American Court has stated:

⁸ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25. I/A Court H.R., para. 25. Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193.

⁹ Permanent Court of International Justice (PCIJ), Chorzów Factory Case, Judgment of July 27, 1927.

¹⁰ United Nations. Draft Articles on Responsibility of States for Internationally Wrongful Acts, United Nations General Assembly, Res. A/RES/56/83, 28 January 2002, Article 31.

¹¹ Verdross, A. "Derecho Internacional Público", 5th edition, Madrid, 1967, p. 297.

¹² Nash Rojas, Carlos, "Las Reparaciones ante la Corte Interamericana de Derechos Humanos (1988 - 2007)", First edition: September 2004. Chile.

"The Court must emphasize, however, that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type, concluded for the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the fundamental rights of human beings, regardless of their nationality, both vis-à-vis their own State and vis-à-vis the other contracting States. In adopting these human rights treaties, States submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards individuals under their jurisdiction..."¹³

21. In the field of international human rights law, different rights of individuals as victims of unlawful acts have been recognized, including those related to reparation measures¹⁴. In 2006, the General Assembly of the United Nations (UN) approved 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.
22. In addition, Article 63 of the American Convention on Human Rights establishes that when the Inter-American Court decides that there has been a violation of a right or freedom protected by the Convention, it shall order reparation for the consequences of the measure or situation that led to the violation of those rights and the payment of fair compensation to the injured party. This article reflects the maxim that any violation of an international obligation that has caused damage entails the duty to make adequate reparation for it.
23. For its part, the jurisprudence of the Inter-American System has established on several occasions that the victims of human rights

¹³ I/A Court H.R., CONSULTATIVE OPINION OC-2/82 OF SEPTEMBER 24, 1982 THE EFFECT OF RESERVATIONS ON THE ENTRY INTO FORCE OF THE AMERICAN CONVENTION ON HUMAN RIGHTS (ARTS. 74 AND 75).

¹⁴ I/A Court H.R., Case of García Lucero et al. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267. para. 183.

violations have the right to adequate reparation for the harm suffered, which must take the form of individual measures aimed at restitution, compensation, and rehabilitation of the victim, as well as general measures of satisfaction and guarantees of non-repetition¹⁵.

24. In this sense, States that are responsible for human rights violations attributed to them as a result of their acts or omissions are obliged to provide comprehensive reparation to the victims¹⁶. The full and adequate satisfaction of the right to integral reparation must guarantee that the reparation is proportional to the violation suffered, its gravity, and the damages suffered, that it contains individual measures aimed at restitution, compensation, and rehabilitation of the victim, as well as measures of satisfaction and guarantees of non-repetition¹⁷. The obligation to guarantee reparation must be proportional, adequate, and fair¹⁸.
25. The development of inter-American jurisprudence has been prolific in the area of reparations and transitional justice, addressing the complex history of the countries of the region, characterized by multiple and repeated ruptures of the democratic and institutional order. Since its inception, the Inter-American System has dealt with determination with serious human rights violations arising from

¹⁵ See, inter alia, IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser.L/V/II.131, Doc. 1, February 19, 2008; I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Case of Myrna Mack Chang v. Guatemala. Judgment of November 25, 2003. Series C No. 101, paras. 236-237; Case of Caracazo v. Venezuela. Reparations (art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, paras. 77-78; Case of Blake v. Guatemala. Reparations (art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, paras. 31-32. In IACHR, Report on the Right to Truth in the Americas, OEA/Ser.L/V/II.152 Doc. 2 13 August 2014 Original: Spanish para. 123.

¹⁶ I.A. Court H.R.. [Case of La Cantuta v. Peru](#). Judgment of November 29, 2006. Series C No. 162, paras. 199-200; IACHR. [Reparations for Violations of Freedom of Expression in the Inter-American System](#). OEA/Ser.L/V/II.IACHR/RELE/INF.5/12, December 30, 2011, para. 5.

¹⁷ IACHR. Main Guidelines for a Comprehensive Reparations Policy, February 19, 2008, OEA/Ser.L/V/II.131, doc. 1, para. 1.

¹⁸ IACHR. Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 133. citing: IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos; and Celina Mariceth Ramos, El Salvador, December 22, 1999, paras. 229, 230.

military dictatorships, armed conflicts, or other oppressive and authoritarian regimes of the past. In this regard, the Commission has been emphatic in highlighting and reminding States of the intrinsic relationship between truth, justice, reparation, and guarantees of non-repetition, and the way in which these components of the transitional process do not replace one another, but rather complement and feed on each other¹⁹ .

26. However, as noted by the doctrine, for the most part, reparations programs in transitional societies lack explicit consideration of the gender dimension within the context of transitional justice²⁰. In this regard, the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence has identified that "early reparations programs for victims of gross human rights violations did not address the specific forms of victimization experienced by women, nor did they seriously consider what aspects are critical to ensuring that reparations -whether material or symbolic, individual or collective- are not made turning a blind eye to the needs, interests or visions of women"²¹.
27. The Rapporteur recognizes that initially the "evolution was limited to expanding the catalog of violations deserving of reparations so that rape or sexual violence would not be systematically relegated"²² . However, as an achievement in this process of evolution, it is noteworthy that currently the explicit incorporation of a gender perspective in reparations programs is aimed at providing

¹⁹ [*IACHR Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts - OEA/Ser.L/V/II. Doc. 121 12 April 2021 Original: Spanish*](#), para. 4.

²⁰ Rubio-Marín, R. Gender and Collective Reparations in the Aftermath of Conflict and Political Repression. In R. Rubio-Marín, *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (pp. 338-402). Cambridge University Press, 2009.

²¹ Rubio-Marín, Ruth, "Mujer y reparación: apuntes para la reflexión," in Julie Guillerot, *Para no olvidarlas más. Mujeres y reparaciones en el Perú*, Lima, APRODEH-DEMUS-PCS, 2007, p. 14.

²² United Nations, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, "The gender perspective in transitional justice processes," A/75/174, July 17, 2020.

reparations for sexual crimes committed, and the identification of all those decisions on reparations that may have a differential impact between genders. This United Nations Special Rapporteur has identified the need to adopt similar perspectives in relation to lesbian, gay, bisexual, and transgender persons²³.

28. In this sense, the historical, doctrinal, and legal evolution has demanded an incipient incorporation of the gender perspective in a cross-cutting manner in the field of human rights, which implies a clear distance from any pretension of neutrality. This exercise requires the recognition of the particular circumstances faced by girls, adolescents, women and LGBTI persons as victims, considering the situation of structural discrimination they experience based on gender. This approach not only makes it possible to address the differentiated impacts that aggravate their initial vulnerability, specifically gender-based violence, but also facilitates the conceptualization of reparatory measures through an intersectional approach that allows for the comprehensive achievement of their objectives in transitional justice contexts.
29. In the Inter-American System, it should be noted that there have been important advances and developments in the jurisprudence in a progressive manner. Within this framework, it is worth noting that the Inter-American Court, in the “Campo Algodonero” case²⁴, established a relevant precedent by introducing the concept of transformative reparations in the case of human rights violations, with special attention to the gender component. The Inter-American Court stated that, in situations of structural discrimination, "reparations must have a transformative vocation, so that they have not only a restorative effect but also a corrective effect towards

²³ United Nations, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, "The gender perspective in transitional justice processes," A/75/174, July 17, 2020.

²⁴ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205,

structural changes that dismantle those stereotypes and practices that perpetuate discrimination"²⁵.

30. For its part, the doctrine has underscored the importance of adopting reparations with a gender perspective in order to guarantee a comprehensive and transformative response to human rights violations²⁶. In this sense, it has been emphasized that the reparations ordered in the "Campo Algodonero" judgment, whose approach transcends simple restitution, explore the complex interaction of gender violence and discrimination that resulted in rights violations. In addition, the role of transformative reparations in addressing power disparities and structural inequalities in societies has been emphasized²⁷. Thus, transformative justice in reparations seeks to redress exclusion and inequality in historically marginalized contexts, advocating for restorative effects.
31. Likewise, the jurisprudence of the Inter-American System has consistently established reparations with a transformative vocation regarding discriminatory treatment based on the use of stereotypes, preconceptions or prejudices regarding persons or groups of persons based on their attributes, characteristics, social condition, among other conditions, in such a way that they have not only a restitutive but also a corrective effect towards structural changes that dismantle those stereotypes and practices that perpetuate discrimination

²⁵ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450.

²⁶ Galland, Alejandro, Ofelia Bastida and Rebeca Lorea, "El derecho a la reparación integral en el Derecho Internacional de Derechos Humanos." Promsex, Center for the Promotion and Defense of Sexual and Reproductive Rights. Abortion in Latin America: Advocacy, Networking and Protection Standards. Lima, 2021. 75 - 88; Rubio-Marín, Ruth, The Gender of Reparations. Unsettling Sexual Hierarchies while Redressing Human Rights Violations. Cambridge University Press, 2009; Rubio-Marín, Ruth and Clara Sandoval. "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the "Cotton Field" Judgment." Human Rights Quarterly 33.4 (2011): 1062-1091.

²⁷ Uprimny, R., & Saffon, M. P. (2009). Transformative reparations, distributive justice and democratic deepening. In C. Díaz, N. C. Sánchez, & R. Uprimny, Reparar en Colombia: dilemmas in contexts of conflict, poverty and exclusion (pp. 31-70).

against persons or populations historically discriminated against or in a situation of vulnerability²⁸.

32. However, and despite emblematic cases, the issue of violence against girls, women and LGBTI persons and its differentiated impact requires a comprehensive approach in transitional contexts. In this sense, transitional justice faces the challenge of including a cross-cutting gender perspective in all processes and mechanisms of truth, justice, memory, reparation and non-repetition²⁹. This cannot be reduced to the merits of the cases, but must also be a fundamental presupposition in reparation measures.
33. In relation to the vast development regarding reparations in transitional contexts, this systematization seeks to make visible the importance of including the gender perspective in transitional justice mechanisms, providing access to justice and reparations in light of the principle of equality and non-discrimination according to the particular and unique impact that each group experienced. In addition, the development in this area at the time of writing this compendium is presented as a tool for cooperation.
34. To that end, this chapter, examines the main standards developed by the Commission regarding the application of a gender perspective in the field of transitional justice; and is divided into two sections. The first section, on gender in transitional justice contexts, showcases specific issues related to gender, presenting the Commission's standards on the intersectional approach, the differential impact of human rights violations, the use of gender stereotypes, and the role of the gender and diversity perspective in the definition of victims and family members. The second section, on gender and non-

²⁸ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233 14 November 2019, para. 140.

²⁹ IACHR, Press Release No. 154/22 "IACHR: Report of the Truth Commission of Colombia will contribute to the national reconciliation process" July 12, 2022. IACHR, Press Release No. 061/22 "States in the region should develop public policies on memory with the participation of victims and civil society", March 24, 2022.

discrimination, focuses on the standards corresponding to the principle of equality and non-discrimination, structural discrimination, indirect discrimination, and the interrelationship between violence, discrimination and access to justice.

35. The Commission has recognized the differentiated impact of gender-based human rights violations in these contexts, highlighting the aggravation of the situation of structural discrimination against women and LGBTI persons, advocating for intersectional responses with a transformative vocation. Likewise, the IACHR has played a systematic role in the protection of rights in contexts of transitional justice, considering it essential to promote and safeguard human rights in the region. Through its various mechanisms, the IACHR has established applicable standards on truth, justice, memory and reparation, offering recommendations to achieve a comprehensive State response to serious human rights violations. The Commission has made multiple recommendations to the States³⁰, urging them to adapt their domestic legislation, develop policies of recognition and redress, guarantee the non-repetition of past violations, and institutionally strengthen the systems of truth, justice and reparation for an effective response. In addition, the Commission has taken into account the differentiated impacts on particularly vulnerable or historically discriminated groups³¹.

A. THE GENDER PERSPECTIVE IN TRANSITIONAL JUSTICE CONTEXTS

36. Over the past few years, the Commission has developed and consolidated the notion of the gender perspective. In this sense, it has recognized that it is a key approach to combat discrimination and violence against women and people with diverse sexual

³⁰ In this section, the IACHR includes the review, systematization and analysis of standards and precedents applicable to reparations with a differentiated approach that may be applicable or relevant to transitional justice contexts, as indicated in the Methodology section above.

³¹ IACHR, [Compendium on truth, memory, justice and reparation in transitional contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021.

orientations and gender identities³². This approach seeks to reveal the differentiated social valuation of people by virtue of their assigned or assumed gender, and evidences the unequal power relations originating in these differences³³. In addition, the Commission has considered that the gender approach "reveals the presence of an asymmetrical power structure that assigns differential values, positions and habits to each of the sexes and, therefore, structures a system of power relations accordingly, which has become a pervasive cultural, social, economic and political logic in all spheres of social relations"³⁴.

37. This perspective seeks to make visible the position of inequality and structural subordination of women because of their gender, to eradicate the false premise that women are inferior to men and to make visible and address stereotypes and prejudices that facilitate discrimination on the grounds of sexual orientations and characteristics and diverse gender identities; the above, in the context of the hetero-cis-patriarchal system predominant in the region³⁵.
38. In this regard, the IACHR has reiterated that the gender perspective is a tool that seeks to: (i) make visible the position of inequality and structural subordination of women based on gender; (ii) eradicate the false premise that women are inferior to men; and (iii) make visible and address stereotypes and prejudices that contribute to

³² IACHR, [Practical Guide for the Elimination of Violence and Discrimination against Women, Girls and Adolescents](#), p.7.

³³ IACHR, [Impact of organized crime on women, girls and adolescents](#), OEA/Ser.L/V/II. Doc. 9/23 February 17, 2023, para.178. IACHR, [Situation of the human rights of indigenous and tribal peoples of Panamazonia](#), OAS/Ser.L/V/II. September 29, 2019, paras. 46 and 48.

³⁴ IACHR, [Situation of the human rights of indigenous and tribal peoples of Panamazonia](#), OAS/Ser.L/V/II, 29 September 2019, para. 46, citing Pautassi, Laura. Equality in waiting: the gender approach. Revista Lecciones y ensayos N° 89, 2011.

³⁵ IACHR, [Impact of organized crime on women, girls and adolescents](#), OEA/Ser.L/V/II. Doc. 9/23 February 17, 2023, para.178.

discrimination based on sexual orientations, gender identities and diverse sexual characteristics³⁶.

39. The creation of the Rapporteurship on the Rights of Women in 1994 was vital to incorporate a gender perspective in the different mechanisms of the Commission. Since that decade, standards have been developed on the international obligations of States in relation to the prevention, investigation, punishment and reparation of human rights violations and their gender-differentiated impacts. Like girls and women, LGBTI people have also suffered the rigors of armed conflicts and dictatorships in a differential manner. In this regard, since 1993, the IACHR has received information on violence against LGBTI persons in the context of the armed conflict³⁷.
40. The Commission has recognized that peace-building and the strengthening of the rule of law in transitional justice contexts are objectives of society as a whole, but for these processes to be true and stable, they must include the voice of the people who have been most severely affected. The history of war, armed conflict or repression must be told with greater awareness of the forms of discrimination that operate in these contexts, which disproportionately affect girls, adolescents, women and LGBTI people. In this sense, it is not possible to achieve a complete history without the voice of these groups and without addressing the conflict from a gender perspective.
41. The IACHR has emphasized that the gender perspective must permeate public policies, administrative decisions, judicial resolutions and regulatory frameworks³⁸, as it is essential to

³⁶ Inaugural presentation by Commissioner Julissa Mantilla of the IACHR on "Gender Perspective and Transitional Justice". International Summer/Fall Course 2022 of the University of Extremadura, Spain: Gender approach in the reparation of victims of gross human rights violations and its application to the victims of Franco's repression. July 13, 2022.

³⁷ IACHR, , [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 29.

³⁸ IACHR, Press Release No. 198/21 "[The IACHR calls on the States of the region to apply the gender approach as a tool to combat structural discrimination against women and LGBTI persons](#)," July 29, 2021.

combat the historical and structural inequality that affects women and LGBTI persons. However, despite emblematic cases in the Inter-American System³⁹, violence against these groups and its differentiated impact has not always been properly addressed in transitional justice contexts.

42. In this sense, transitional justice faces the challenge of mainstreaming a gender perspective in all processes and mechanisms of truth, justice, memory, reparation and non-repetition. In situations of dictatorship and armed conflict, structural factors of discrimination and violence, together with gender stereotypes, manifest themselves in various dynamics of victimization, exacerbating discrimination, violence and the vulnerability of women⁴⁰ and LGBTI persons⁴¹. Thus, the Commission has underscored the urgent need for investigations into human rights violations in these contexts to be conducted from a gender perspective and to be led by persons trained in the field. The Commission has also highlighted the importance of the active participation of women and LGBTI persons in transitional justice processes, ensuring that their voices are heard and considered in the formulation of policies and decisions.
43. The following is a series of illustrative paragraphs that give an account of the standards developed in the implementation of the gender perspective based on different publications:

³⁹ IACHR, [Report No. 54/01, Case 12,051, Maria da Penha Fernandes \(Brazil\)](#), April 16, 2001; [Report No. 80/11, Case 12,626, Jessica Lenahan \(Gonzales\) et al. \(United States\)](#) (2011), July 21, 2011; [Report No. 5/96, Case 10,970, Raquel Martín de Mejía \(Peru\)](#), March 1, 1996; [Report No. 53/01, Case 11,565, Ana, Beatriz and Cecilia González Pérez \(Mexico\)](#), April 2, 2001.

⁴⁰ IACHR, [Report Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233 14 November 2019.

⁴¹ IACHR, [Truth, Justice and Reparation. Report on the Situation of Human Rights in Colombia](#), OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013. Chapter 6. Groups Especially Affected by the Context of the Armed Conflict.

Merits reports

IACHR, [Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima et al. Colombia](#), December 7, 2018.

116. In addition, the criminal investigation must include a gender perspective and be carried out by officials trained in similar cases and in dealing with victims of discrimination and gender-based violence⁴². This investigation should be carried out in accordance with protocols specifically aimed at documenting evidence in cases of gender-based violence⁴³.

IACHR, [Report No. 13/15, Case 12.349, Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and family, Guatemala](#), March 23, 2015.

151. The Court has emphasized that the investigation of cases related to possible acts of violence against women must be conducted with a gender perspective⁴⁴. The Commission recalls what was indicated in its report on "Access to Justice for Women Victims of Violence" in the sense that:

[The influence of discriminatory sociocultural patterns can result in the disqualification of the victim's credibility during criminal proceedings in cases of violence and a tacit assumption of her responsibility for

⁴² I/A Court H.R., [Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of May 19, 2014. Series C No. 277, para. 188; and [Case of González et al \("Campo Algodonero"\) v. Mexico. Preliminary Objection, Merits, Reparations and Costs](#). Judgment of November 16, 2009. Series C No. 205, para. 455.

⁴³ I/A Court H.R., [Case of Espinoza Gonzales v. Peru. Case of Espinoza Gonzales v. Peru. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of November 20, 2014. Series C No. 289, para. 252.

⁴⁴ I/A Court H.R., [Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of May 19, 2014. Series C No. 277, para. 216.

the acts, whether because of the way she dresses, her occupation, sexual conduct, or her relationship or kinship with the aggressor, which translates into inaction on the part of prosecutors, police, and judges in response to reports of violent acts. This influence can also negatively affect the investigation of cases and the subsequent evaluation of evidence, which can be marked by stereotyped notions about how women should behave in their interpersonal relationships⁴⁵ .

Thematic reports

IACHR, [Right to self-determination of Indigenous and Tribal Peoples](#), OEA/Ser.L/V/II. Doc. 413, December 28, 2021

216. Along these lines, the IACHR has indicated that the gender approach, accompanied by the intercultural approach, makes it possible to recognize the special position of indigenous and tribal women, and to adopt culturally appropriate measures that guarantee the enjoyment of their rights and fundamental freedoms, and allow them to live a life free of discrimination and violence⁴⁶ . The Commission considers that, through these approaches, States must guarantee the protection of the rights of indigenous and tribal women and their access to justice and reparation for situations of human rights violations they face. They should also be applied to consultation and other participatory processes with indigenous and tribal peoples so that women can participate in internal decision-making processes, through means respectful of their customary

⁴⁵ IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

⁴⁶ IACHR, [Situación de los derechos humanos de los pueblos indígenas y tribales de la Panamazonía](#). OAS/Ser.L/V/II., September 29, 2019, para. 48.

law⁴⁷. It is therefore an approach that is also necessary in the exercise of self-determination and other rights and constituent elements of that right.

IACHR, [Towards a comprehensive policy for the protection of human rights defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017.

269. The Commission especially emphasizes that an analysis of the context must take into consideration the specific vulnerability of some groups of defenders and apply a gender, ethnic, racial and cultural perspective at this stage of the analysis. The defense of groups that have historically been subject to patterns of structural discrimination may entail additional risks and require the State to adopt a differentiated approach in the context analysis. This implies, for example, taking into consideration all forms of discrimination and stereotypes that women historically face, which accentuate the risk when carrying out their work as human rights defenders. For example, in the *Teresa Arce et al.* case, the Court established that there existed in Colombia, at that time, a situation of insecurity and violence perpetrated against women human rights defenders, due to the armed conflict and the prominent role they play in their community and as community leaders; all of which endangered their lives, personal integrity, families and their ability to carry out their work⁴⁸. In contexts such as these, the risk assessment carried out by the State must include historical gender discrimination and stereotypes and how these accentuate the risks of violence and harassment.

⁴⁷ IACHR, [Situación de los derechos humanos de los pueblos indígenas y tribales de la Panamazonía](#). OAS/Ser.L/V/II., September 29, 2019, para. 48.

⁴⁸ I/A Court H.R., [Case of Yarce et al. v. Colombia. Preliminary Objections, Merits, Reparations and Costs](#). Judgment of November 22, 2016. Series C No. 325, para. 91-99.

Annual Report Chapters

IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports", Colombia, 2021.](#)

259. [...] In terms of reparation, the IACHR positively values the update of the general guidelines of the National Plan for Attention and Comprehensive Reparation to Victims, approved in June 2021, which strengthens the implementation of the gender and differential approach in the measures of attention and reparation to women victims of the armed conflict⁴⁹.

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas," May 27, 2017, Principle VI.](#)

Public policies on memory should respect and promote the construction of the memories of communities, organizations and collectives, based on the recognition of the different cultural visions, conceptions of well-being and development of the various ethnic-cultural groups; as well as the gender approach, tending to the establishment of relations of equity and equality of opportunities and rights.

⁴⁹ National Council for Economic and Social Policy. CONPES Document 4031, June 11, 2021.

1. **Concept of intersectional approach and applicability to transitional contexts**

44. Throughout its decisions, the Commission has integrated and applied the intersectional approach in addressing human rights violations. Intersectionality focuses on the cross-cutting convergence of various factors of vulnerability and risk of discrimination⁵⁰, which the IACHR has identified as an overlapping layer of discrimination with differentiated gender-based impacts on women⁵¹ and LGBTI persons. This approach makes it possible to examine how the violation of rights affects each person differently, considering these factors, and highlights the need to implement specific or intersectional measures to prevent, correct or redress rights violations.
45. The IACHR has noted that the doctrinal evolution of this approach has been incorporated into the jurisprudence of the Inter-American Court⁵², which has shown that social inequalities arise from the intersection of various factors such as gender, national origin, sexual orientation, migratory status and socioeconomic status, triggering contexts of discrimination⁵³.
46. The inclusion of an intersectional approach coupled with a gender perspective in transitional justice contexts is based on the

⁵⁰ IACHR, [Indigenous women and their human rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, 17 April 2017.

⁵¹ IACHR, [Practical Guide for the Elimination of Violence and Discrimination against Women, Girls and Adolescents](#).

⁵² I/A Court H.R., Merits, Reparations and Costs. Case of Ramírez Escobar et al. v. Guatemala I/A Court H.R., Merits, Reparations and Costs, Judgment of March 9, 2018, Series C No. 351, paras. 276, 277 and 304; I/A Court H.R., Preliminary Objections, Merits, Reparations and Costs, Judgment of March 9, 2018, Series C No. 351, paras. 276, 277 and 304. Case of I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 30, 2016, Series C No. 329, paras. 318, and 321; Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs, Judgment of September 1, 2015. Series C No. 298, para. 290; See also I/A Court H.R., Judgment of September 1, 2015. Concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot to the Case of Gonzales Lluy et al. v. Ecuador (2015), paras. 5-12.

⁵³ IACHR, [Economic, Social, Cultural and Environmental Rights of People of African Descent Inter-American Standards for the Prevention, Combating and Eradication of Structural Racial Discrimination](#), OEA/Ser.L/V/II. Doc. 109, 16 March 2021.

differentiated impact of conflicts on historically discriminated groups. This includes particular forms of violence, specific methods of intimidation and threats that take place in the context of armed conflict to the detriment of women and LGBTI persons⁵⁴. The IACHR has urged States to adopt comprehensive protection measures from an intersectional approach, considering the contexts and conditions that amplify violence and discrimination against women⁵⁵ and LGBTI persons.

Merits reports

IACHR, [Report No. 53/01. Case 11.565, Ana, Beatriz and Celia González Pérez. Mexico. April 4, 2001.](#)

95. The four victims in this case are members of the Tzeltal ethnic group in Mexico. In reference to the general human rights situation in that country, the IACHR reminded the Mexican State of its obligation to respect indigenous cultures, and in particular referred to the impact suffered by such communities in the State of Chiapas⁵⁶. In the present case, the Inter-American Commission emphasizes that the pain and humiliation suffered by the women is aggravated by their indigenous condition. In the first place, due to the lack of knowledge of the language of their aggressors and of the other intervening authorities; and, in addition, as a result of

⁵⁴ IACHR, , [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015 2015, para. 296.

⁵⁵ IACHR, [Practical Guide for the Elimination of Violence and Discrimination against Women, Girls and Adolescents](#).

⁵⁶ In its report on Mexico, the Inter-American Commission expressed itself in the following terms: The IACHR observes that it is the obligation of the Mexican State, within its constitutional principles and those recognized internationally, to respect indigenous cultures, and their organizations, and to achieve their maximum development in accordance with their traditions, interests and priorities. The Commission considers that the Mexican State must carry out an analysis of the validity of human rights with respect to indigenous peoples and their organizations, based on Article 4 of the Constitution, which recognizes that "Mexico is a multicultural country based on its indigenous peoples", and on ILO Convention 169 on "Indigenous and Tribal Peoples" ratified by Mexico. IACHR, Report on the Situation of Human Rights in Mexico, para. 577. See in the same report, paras. 540 to 564.

the rejection by their own community due to the events established here.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 64/11. Case 12.573. Merits. Marino López et al. \(Operation Genesis\). Colombia. March 31, 2011.](#)

363. The CERD in its General Comment No. 32 has established that the principle of equal enjoyment of human rights is integral to the prohibition of discrimination in the Convention on Racial Discrimination on the basis of race, color, descent, and nationality or ethnic origin. It indicated that the grounds of discrimination are understood in practice by the notion of "intersectionality" whereby "the Committee refers to situations of double or multiple discrimination - such as discrimination on the basis of gender or religion - when discrimination appears to exist in combination with another ground or grounds listed in Article 1 of the Convention"⁵⁷ .

379. It should be noted that the group of victims in this case is composed of 446 Afro-descendant displaced victims of the armed conflict, of whom 117 are children, 195 are women, and a group of them are mothers who are heads of household. In this sense, the notion of intersectionality applies to this group of victims, in view of the fact that they suffer multiple forms of discrimination due to the combination of causes, among which are: their displaced status, their gender, ethnicity and status as children.

⁵⁷Annex 102. CEDR. General Recommendation No. 32, para. 7. At: http://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CERD/00_3_obs_grales_CERD.html.

IACHR, [Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín \(Case 10.686\) against the Republic of Guatemala](#). July 28, 2007

91. Finally, it is worth mentioning that the Convention of Belém do Pará identifies the victims affected in this case as belonging to groups particularly at risk of suffering acts of violence and discrimination based on several factors - being women, indigenous people, being deprived of their liberty and the context of internal armed conflict (Article 9)⁵⁸.

Thematic reports

IACHR, [Economic, Social, Cultural and Environmental Rights of Persons of African Descent, Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination](#), OEA/Ser.L/V/II. Doc. 109, 16 March 2021

131. The IACHR has noted persistent, multiple forms of discrimination and violence experienced by Afro-descendant women with diverse sexual orientations and gender identities and/or expressions, with different factors intersecting, such as gender, race and extreme poverty, constituting triple historical discrimination⁵⁹. The Commission has highlighted the existence of various forms of violence experienced by women of African descent with non-normative sexual orientations and gender identities. By way of example, in the United States, several different organizations have reported that Afro-descendant trans women, and in general, trans women, are frequently the

⁵⁸ See also in this regard IACHR, Report: [Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia](#), para. 140; and IACHR, Report: [Access to Justice for Women Victims of Violence in the Americas](#), para. 14.

⁵⁹ IACHR, [Recognition of rights of LGBTI persons](#), 2018, para. 185.

targets of violence⁶⁰ . Likewise, the IACHR has received information from Afro-Colombian lesbian women who have suffered violence because of their sexual orientation, including so-called "corrective rape", a situation that has been exacerbated in the context of the armed conflict⁶¹ .

139. In previous reports, the IACHR has stated that the intersectional discrimination persistently directed at Afro-descendant women in Colombia is not only due to reasons of race and gender; this group may face additional factors of discrimination and vulnerability in the specific context of the armed conflict. Taking into account the high level of vulnerability of this group to violence and poverty led the Commission to underscore the need for the Colombian State to adopt an intersectional approach to protect Afro-descendant women.

IACHR, [Report Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/III. Doc. 233 14 November 2019

92. In keeping with its mandate, the IACHR has affirmed the need to address the causes of gender-based violence against women and girls in all of its manifestations in order to confront the major issues currently plaguing the region, which lead to the violation of the exercise and enjoyment of their human rights. Likewise, the Commission has reaffirmed intersectionality as a basic concept for understanding the overlapping of various layers of discrimination, the impact it has on the enjoyment and exercise of human rights, and the

⁶⁰ Cf., Human Rights Campaign, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2020*, 2020.

⁶¹ IACHR, , *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, 2015, paras. 359, 360 and 362.

scope of States' obligations in adapting its responses to each particular instance⁶² .

IACHR, [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc.62, December 5, 2011

60. In particular, the CEDAW Committee has held that intersectionality is a core concept for understanding the scope of States' obligations, in that discrimination against women on the basis of sex and gender is indivisibly linked to other factors affecting women, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation, and gender identity.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. Doc. 49/13. 31 December 2013

648. The Commission notes with concern that multiple levels of discrimination affect Afro-descendant women, who continue to be overrepresented among the displaced population and are more vulnerable to situations of violence, especially sexual violence. The Commission urges the State to adopt an intersectional approach when analyzing the specific situation of Afro-descendant women that takes into account the components derived from their condition as women and Afro-descendants, in addition to the situation of poverty in which the majority of them live.

⁶² IACHR, [Indigenous Women and their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, para. 38.

Compendiums

IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II.Doc. 121, 12 April 2021.

17. (...)In this sense, the measures of truth, justice, reparation and guarantees of non-repetition in the context of transitional justice must take into account both the differentiated effects and observe the standards regarding the representativeness and participation of these groups and populations in the elaboration and adoption of these measures from an intersectional perspective, as observed in the Inter-American standards.

Practical Guides

IACHR, [Guide on Best Practices and Basic Guidelines to Implement Decisions Made by the Inter-American Commission on Human Rights, Transformations Series 01, 2021 \(available in Spanish\)](#).

The human rights approach in the investigation plans also implies that both the lines of investigation and the proceedings assume an intersectionality approach. That is, they must be able to identify the particular conditions of the type of violations committed -for example, acts of sexual violence, torture or forced disappearance- as well as of the victims who suffered them. This implies the need for research plans to develop strategies that consider the diverse needs and particularities of specific groups such as women, children and adolescents, indigenous people, missing persons, migrants, LGBTI people, persons deprived of liberty, among others.

2. The differential impact of human rights violations in transitional contexts: Violence and access to justice.

47. In the framework of transitional justice, the IACHR has recognized the differentiated and, in many cases, aggravated impact that conflicts have on the rights of victims, due to specific factors of vulnerability, structural or historical discrimination, as well as the intersection of these elements. In this sense, the Commission has established that the measures of truth, justice, reparation and guarantees of non-repetition in transitional justice contexts must consider the differentiated affectations and comply with the standards of representativeness and participation of these groups and populations. This must be approached from an intersectional perspective, as established by Inter-American standards.
48. The IACHR has noted that groups in vulnerable situations, such as women, indigenous people, displaced persons, human rights defenders and LGBTI persons, face differentiated and intersectional discrimination. In armed conflicts and authoritarian contexts, violence against girls, women and LGBTI persons intensifies and takes on particular forms. In this sense, sexual violence has been used as a form of planned and systematic repression to denigrate victims in dictatorial contexts and internal armed conflict in the Americas⁶³.
49. The IASHR has addressed various cases that show sexual violence, murders, forced pregnancies, theft of babies, disappearances, sexual torture, among other forms of gender-based violence in contexts of armed conflict. In these cases, the Commission has recognized the particular forms of violence and has emphasized that sexual and reproductive violence in these contexts does not occur in isolation, but is the result of the aggravation of violence that continues to be rooted in historical and structural discrimination. In this regard, the IACHR has emphasized the importance of addressing the obstacles to access to justice, proposing the adoption of uniform protocols and the training of state officials. It has also urged States to investigate, prosecute and punish sexual and reproductive

⁶³ United Nations, Report submitted by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences: Mission to Colombia (November 1-7, 2001), E/CN.4/2002/83/Add. 3, March 11, 2002, para. 42.

violence against women as a serious human rights violation, not only as a collateral fact⁶⁴.

IACHR Court Decisions

I/A Court H.R., [Case of the "Mapiripán Massacre" v. Colombia](#). Judgment of September 15, 2005. Series C No. 134

175. The reasons for and expressions of the acute vulnerability of displaced persons have been characterized from various perspectives. Said vulnerability is reinforced by their rural origin and, in general, it especially affects women -who are heads of households and constitute more than half the displaced population-, girls and boys, youths, and elderly persons. The internal displacement crisis, in turn, generates a security crisis, given that groups of internally displaced persons become a new focus or recruitment resource for paramilitary, drug trafficking and guerrilla groups⁶⁵.

I/A Court H.R., [Case of the Plan de Sánchez Massacre v. Guatemala. Reparations](#). Judgment of November 19, 2004. Series C No. 116.

49.19 The women who were subjected to sexual violence by State agents on the day of the massacre and who survived the massacre continue to suffer as a result of this aggression. The rape of women was a State practice, carried out in the context of the massacres, aimed at destroying women's dignity at the cultural, social, family and individual levels. These women consider themselves stigmatized in their communities and have suffered from the presence of

⁶⁴ IACHR, Press Release No. 49/2022, "[States of the Americas must act to combat impunity for sexual violence in contexts of conflict or dictatorship](#)," March 8, 2022.

⁶⁵ Cf. Economic and Social Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, E/CN.4/2005/48, 3 March 2005, para. 38.

the perpetrators in the common areas of the town. In addition, the continuing impunity of the events⁶⁶ remain has prevented women from participating in the justice process.

Merits reports

[IACHR, Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima et al. Colombia. December 7, 2018.](#)

68. The violence exercised in the armed conflict victimized women in a differential and aggravated manner. [...] Likewise, the armed conflict exacerbated and deepened the pre-existing discrimination, exclusion and gender violence in the country⁶⁷. In this context, sexual violence against women in Colombia has been a common, widespread, systematic and invisible practice in the country, committed by all the illegal armed groups and in isolated cases by agents of the security forces. Moreover, the most serious aspect of this type of violence, according to the Constitutional Court, is that there is official and unofficial invisibility, silence on the part of the victims and impunity for the perpetrators⁶⁸.

[IACHR. Report No. 157/18. Case 13.051. Merits. Vicky Hernández and Family. Honduras. 7 December 2018](#)

60. [...] the IACHR has already taken into account what has been noted in the international sphere regarding the fact that violence against LGBT persons constitutes a "form of gender-based violence, driven by the desire to punish those

⁶⁶ Cf. Opinion of Mrs. Nieves Gómez Dupuis rendered before the Inter-American Court during the public hearing held on April 24, 2004, and CEH report, supra note 238, volume III, page 13, para. 2351.

⁶⁷ Annex 53. Constitutional Court of Colombia. Auto 092 of 2008. MP: Manuel Jose Cepeda Espinosa. April 14, 2008. Annex 17 of the petitioners' brief received on May 29, 2015.

⁶⁸ Annex 53. Constitutional Court of Colombia. Auto 092 of 2008. MP: Manuel Jose Cepeda Espinosa. April 14, 2008. Annex 17 of the petitioners' brief received on May 29, 2015.

who are considered to defy gender norms⁶⁹. Additionally, the IACHR has noted that sexual violence can take on a particular meaning when perpetrated against LGBT persons, given that it can be used to punish and degrade the victims for who they are⁷⁰.

IACHR, [Report No. 13/15, Case 12.349, Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and family, Guatemala. March 23, 2015.](#)

132. [...] the Commission reiterates that, in the case of possible violations against women human rights defenders, States have a reinforced duty to pursue an investigation with all due diligence and without delay, taking into consideration the specific risks women defenders face in terms of violations to their human rights in the context of the facts⁷¹.

IACHR. [Report No. 86/13. Cases 12,595, 12,596 and 12,621. Ana Teresa Yarce and others \(Comuna 13\). Colombia. November 4, 2013.](#)

272. The IACHR has referred to forced displacement as one of the four main forms of violence that primarily affect women in the Colombian armed conflict⁷². It has identified as causes of internal displacement some of those that have affected the women defenders involved in the present case - such as threats, acts of violence, and abuses by armed

⁶⁹ United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence committed against persons because of their sexual orientation and gender identity, A/HRC/19/41, November 17, 2011, para. 20. Cited in: IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 27.

⁷⁰ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 166.

⁷¹ IACHR, [Report No. 86/13, Cases 12.595, 12.596 and 12.621, Merits, Ana Teresa Yarce et al. \(Comuna 13\)](#), Colombia, November 4, 2013, para. 347.

⁷² IACHR, [Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 4.

factions in order to control territories and dominate the population living there; military operations; and arbitrary detentions⁷³ . [...]

285. The IACHR has highlighted the special consequences that forced displacement has on women and heads of household, especially the radical, traumatic and sudden change in family structure and roles, geography, culture, community and socioeconomic status, and the increased exposure to threats, violence and discrimination based on their gender on the part of the actors in the conflict that caused the displacement, or the host populations⁷⁴ . They often face social and economic deprivation and hardship in the host community that prevent them from re-establishing their lives⁷⁵ . Both the IACHR and the UN Rapporteur on violence against women and girls have also documented how threats to the security and physical integrity of displaced women can reach the communities in which they seek refuge⁷⁶ .

IACHR. [Report No. 64/11. Case 12.573. Merits. Marino López et al. \(Operation Genesis\). Colombia, March 31, 2011.](#)

371. Finally, with respect to the group of Afro-descendant women victims of displacement, and within this group, the women heads of household living in Turbo, the Commission takes into consideration the disproportionate impact of the

⁷³ IACHR, [Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 72.

⁷⁴ IACHR, [Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 70.

⁷⁵ IACHR, [Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 80.

⁷⁶ See United Nations, Report submitted by Ms. Rhadika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences: Mission to Colombia (November 1-7, 2001), March 11, 2002, para. 63.

change in their roles and family structure. In this regard, the Commission has established that among the most palpable consequences for these women are: (i) the change in the family dynamics and conjugal roles and responsibilities derived from the death or loss of the husband or partner, (ii) the physical and psychological trauma produced by acts of violence and the threats suffered, (iii) the need to adapt socially and economically to a new community and the possible rejection of it; changes that are generally associated with the need to guarantee basic family needs and the opportunities that these women find to achieve this⁷⁷.

IACHR, [Report No. 86/10. Case 12.649. Merits. Río Negro Community of the Mayan Indigenous People and its Members \(Río Negro Massacres\). Guatemala. June 14, 2010.](#)

288. The sexual assault against the women of the Río Negro community constitutes an additional element for the destruction and annihilation of the Mayan population. In this regard, the CEH documented the following in relation to sexual violence against indigenous women: [...] In the case of Mayan women, it was added to armed violence, gender violence and ethnic discrimination. [...] Rape was a widespread and systematic practice carried out by State agents as part of the counterinsurgency strategy, becoming a real weapon of terror [...]⁷⁸.

⁷⁷ Annex 105. IACHR. Las Mujeres Frente a la Violencia y la Discriminación Derivadas del Conflicto Armado en Colombia, OEA/Ser.L/V/II.Doc. 67, October 18, 2006, para. 76. Citing: UN Development Fund for Women, Report on the Situation of Women in Colombia, September 2005, p. 22 and Las Mujeres Colombianas en Busca de la Paz: Una Aproximación a sus Iniciativas y Propuestas, 2004, pp. 23-24. At: <http://www.cidh.org/countryrep/ColombiaMujeres06spl/indicemujeres06sp.htm>.

⁷⁸ CEH. Memory of Silence. Chapter II: Volume 3 SEXUAL VIOLENCE AGAINST WOMEN, paras. 1 to 4.

IACHR, [Report No. 53/01. Case 11.565, Ana, Beatriz and Celia González Pérez. Mexico](#). April 4, 2001.

45. Rape committed by members of the security forces of a State against members of the civilian population constitutes in all cases a grave violation of the human rights protected in Articles 5 and 11 of the American Convention, as well as of the norms of international humanitarian law. [...]

Cases submitted to the I/A Court H.R

IACHR. Report No. 265/21. Case No. 13.713. Merits. Colleen Leite. Brazil. [Remittance Note](#), May 17, 2022 (available in Spanish).

The Commission also established that Denise Peres Crispim was also a victim of arbitrary detention and torture. Furthermore, taking into account that the victim was pregnant, the Commission analyzed the facts in light of the international standards applicable to the rights of pregnant women deprived of their liberty. In this regard, it emphasized that her pregnancy constituted a condition of particular vulnerability, so that the arbitrary deprivation of liberty and torture generated an even more disproportionate affectation, as well as the affectation of other rights.

IACHR, [Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruetagoiena de Gelman and María Macarena Gelman García Iruetagoiena \(Case 12.607\) against the Oriental Republic of Uruguay](#), January 21, 2010 (available in Spanish).

99. [...]As for the allegation of an act of torture, the act of abduction and detention of a woman in an advanced state of pregnancy in a clandestine detention center, the murder of her husband, her transportation to another country, her

detention in a second clandestine center, and then the abduction of her newborn daughter, all constitute cruel and inhuman treatment amounting to torture.

IACHR, [Application before the Inter-American Court of Human Rights. Dos Erres Massacre \(Case 11.681\) against the Republic of Guatemala](#). July 30, 2008

292. In addition, considering that the facts of the massacre, especially those relating to physical integrity and sexual liberties taken, had a particularly grave and intense impact on the women and girls of the Parcelamiento de Las Dos Erres with particular gravity and intensity, in application of Article 29.b of the American Convention, the provisions of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém Do Pará"⁷⁹, ratified by the State of Guatemala in 2002, must be borne in mind, which requires due diligence when investigating and punishing acts of violence against women. [...]

IACHR, [Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín \(Case 10.686\) against the Republic of Guatemala](#). July 28, 2007 (available in Spanish).

146. On the other hand, the Court has recognized the specific risk to the impairment of their human rights faced by women "detained or arrested" in the context of an internal armed conflict⁸⁰ emphasizing the control exercised over

⁷⁹ The Belém Do Pará Convention was ratified by Guatemala on August 8, 2002.

⁸⁰ I/A Court H.R., [Case of Miguel Castro Castro Prison. Judgment of November 25, 2006](#). Judgment of November 25, 2006. Series C No. 160, para. 303.

them by state agents, leaving them "absolutely defenseless" and victimized by the same state agents⁸¹.

Thematic reports

IACHR, [Right to Self-Determination of Indigenous and Tribal Peoples](#), OEA/Ser.L/V/II. Doc. 413, December 28, 2021

362. [...] Situations of armed conflict, or in other cases its aftermath, continue to be sources of serious risk and threat to the physical and cultural survival of these peoples in various countries of the continent, which hinders the enjoyment of their rights to their lands, territories, spirituality, cultural practices and freedom from discrimination. This is particularly serious when situations of violence, threats and death affect leaders and other persons of leadership in the social, cultural and spiritual life of their peoples or communities. Of equal concern is the stigmatization and criminalization of authorities and members of the peoples in the context of the defense of their territories, which has a differentiated impact on the women of these peoples.

IACHR, [Report on Trans and Gender-Diverse Persons and their Economic, Social, Cultural and Environmental Rights](#), OEA/Ser.L/V/II. Doc. 239, August 7, 2020.

112. [...] With regard to Colombia, the Commission took note of the disruptive impact of the armed conflict on the lives of LGBTI persons in the Caribbean region of Colombia, which is inhabited mostly by Afro-descendants from the lower socioeconomic sectors, who, according to the information

⁸¹ I/A Court H.R., [Case of Miguel Castro Castro Prison. Judgment of November 25, 2006](#). Judgment of November 25, 2006. Series C No. 160, para. 303.

received, are specific targets of armed groups, in particular by criminal gangs⁸² . [...]

IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019.

68. In the context of violence against women human rights defenders in Colombia, women defenders and leaders face differentiated risks and disproportionate gender-based effects, which in turn are exacerbated according to the rights or causes they defend, their sexual orientation or gender identity, their ethnic origin, and their territorial location.

74. In addition to the violation of the right to defend human rights, the violence committed against women defenders in Colombia brings with it other types of consequences that affect them differently. For example, as a result of these acts of violence, women defenders have been forced to leave their families, communities and their leadership and political activism⁸³.

IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019. [ANNEX 1: Main Standards and Recommendations on Violence and Discrimination against Women, Girls and Adolescents](#).

4. [...] the IACHR has established that certain situations increase women's risk of having their rights violated [...] in processes of memory, truth and justice, the Commission has

⁸² IACHR, Press Release No. 131A/14: "[Report on the 153rd Period of Sessions of the IACHR](#)," December 29, 2014.

⁸³ Information received from Corporación Sisma Mujer in November 2018, on file with the IACHR.

recognized that women have been victims of aggravated and differentiated violence and discrimination in the context of internal conflicts in the region⁸⁴. The Commission has affirmed that, in these cases, physical, psychological and sexual violence against women has been characterized by its systematicity and by the dimension of the phenomenon, by the use of sexual violence as a strategy of war⁸⁵ and by high rates of impunity surrounding these cases⁸⁶.

IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017.

88. The IACHR reiterates that armed conflict increases the vulnerability of marginalized individuals, peoples and groups to human rights violations, and creates situations in which indigenous women are disproportionately targeted by State and non-State armed actors. The Inter-American Commission has observed that, in the context of armed conflict, "all of the characteristics that have historically exposed women to discrimination and inferior treatment" are exacerbated and "they are exploited and abused by the actors in the armed conflict in their struggle to control territory and economic resources"⁸⁷.

95. The consequences of acts of violence committed in the context of the armed conflict place indigenous communities at grave risk. In light of the strategic objective to intimidate and disrupt indigenous communities and the unique role that

⁸⁴ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II. doc. 49, 2013, para. 360.

⁸⁵ IACHR, [Las mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia](#). OEA/Ser.L/V/II. Doc. 67, 2006, para. 17-39.

⁸⁶ IACHR, [Access to Justice for Women Victims of Sexual Violence: Education and Health](#). OEA/Ser.L/V/II. Doc. 65, 2011, para. 67.

⁸⁷ IACHR, [Access to justice for women victims of sexual violence: education and health](#), OEA/Ser.L/V/II, Doc. 65, December 28, 2011, para. 69.

indigenous women play in their community, the Inter-American Commission has observed that sexual violence, killings and forced disappearances in Colombia's armed conflict have created the "risk of physical and cultural extermination" of numerous indigenous peoples⁸⁸. The IACHR considers that the targeting of women in attacks against these communities "further aggravates the already threatened cultural, spiritual and physical balance" due to the unique role of indigenous women⁸⁹.

IACHR, [Violence and Discrimination Against Women in The Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

48. Based on field observations and testimonies received, the Rapporteur has identified four main manifestations of violence that particularly affect women in the armed conflict. First, the actors in the armed conflict use different forms of physical, psychological and sexual violence to "harm the enemy", either by dehumanizing the victim, violating her nuclear family and/or inflicting terror on her community, in order to gain control of territories and resources. In this type of violence, women may be direct targets or collateral victims, as a result of their affective relationships as daughters, mothers, wives, partners, or sisters. Secondly, violence aimed at causing forced displacement from the territory and the consequent uprooting from their homes, daily lives, communities and families. Third, sexual violence that may accompany the forced recruitment of women for the purpose of making them provide sexual services to members of guerrilla or paramilitary forces. Fourth, violence

⁸⁸ IACHR, [Truth, Justice and Reparation: Fourth Report on the Situation of \[the\] Human Rights in Colombia](#), OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 754.

⁸⁹ IACHR, [Truth, Justice and Reparation: Fourth Report on the Situation of \[the\] Human Rights in Colombia](#), OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 813; ECLAC, *Indigenous Peoples in Latin America: Progress in the Last Decade and Pending Challenges for the Guarantee of their Rights*, November 2014, p. 254.

aimed at making them the constant object of social control patterns imposed by illegal armed groups in populations or territories under their control. [...]

107. The IACHR has been able to corroborate that the situation of Afro-Colombian women living in the Pacific coast area is particularly precarious and worrisome. Both State authorities and non-State sources confirmed that the Afro-Colombian population suffers from a history of discrimination, exclusion, invisibility and social disadvantage, both economically and geographically. The armed conflict has aggravated this situation as armed actors take advantage of these disadvantages in their struggle to control territories and resources. In the particular case of Afro-Colombian women, their condition as women adds another factor of discrimination and vulnerability to their lives and exposes them to greater abuses by the actors in the conflict:

We women have been run over in our territory and in any place by the different groups and legal and illegal armed actors, who kidnap, kill, rape, humiliate leaving as a consequence with these acts the deterioration of the social fabric of our environment. For all of the above, there is no doubt that the armed conflict has damaged the sensitivity of black women, their ancestral legitimacy, their formative and life-generating creativity, their cultural identity and love for their territory⁹⁰ .

148. [...] the IACHR considers that the serious effects of the armed conflict on the lives of Colombian women and men take on a special dimension for indigenous women. Indeed, the pressure exerted by armed groups on indigenous territories, whether for reasons of military strategy or for

⁹⁰ Testimony given to the IACHR Rapporteur during her on-site visit to Colombia by the Foro Interétnico de Solidaridad Chocó.

economic reasons, has a particularly serious impact on the lives of indigenous women, since they perceive their ancestral territories as essential places for their existence, culture, and family. The main demand of indigenous women is that their territories be respected. As long as indigenous territories continue to be subject to military or economic interests, the lives of indigenous women will be in danger and, consequently, the cultural integrity and very existence of the peoples to which they belong.

Country reports

IACHR, [Situation of Human Rights in Guatemala](#) OEA/Ser.L/V/II. Doc. 208/17, 31 December 2017

362. The Commission has noted that the end of the armed conflict did not mean the end of violence, especially for women, who do not enjoy their right to live a life free of violence. The Commission has been observing a scenario of violence in Guatemala, where most crimes are attributed to violence generated by criminal organizations, such as drug cartels and gangs or "maras". In this context, women are at heightened risk: maras tend to be male-dominated criminal structures, with macho hierarchies and practices of extreme violence. Women hardly occupy positions hierarchically superior to those of male members, and reproducing gender stereotypes, many women (mothers, sisters, partners) are considered "property" of the man and his gang. The submission and humiliation of women is part of the strategies of control and confrontation between gangs, which makes women particularly vulnerable to acts of extortion, threats, sexual violence, torture and murder.

IACHR, [Report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II. Doc. 49/13, 31 December 2013 2013

73. The IACHR notes that lesbians, gays, trans, bisexual and intersex persons have historically been subjected to discrimination and violence based on their sexual orientation and gender identity in Colombia; a situation exacerbated by the armed conflict, manifested mainly in two aspects: acts of violence (murders, attacks and threats) by armed groups, who make these persons a military target, and forced displacement. This situation of discrimination and violence is aggravated by a social and political context in which the recognition of certain rights of LGBTI persons is being disputed in a process of high political contention. On the other hand, the IACHR observes that, although there has been progress in terms of state measures to prevent and punish violence against these people, they have not been effective. Thus, it is observed that the situation of violence is generalized throughout the country and is concentrated on gay men, trans women, lesbian women, as well as LGBTI human rights activists and defenders. [...]

IACHR, [Honduras: Human Rights and the Coup d'État](#), OEA/Ser.L/V/II. Doc. 55, 30 December 2009

198. The IACHR has received information revealing that, since the coup d'état, situations of discrimination have worsened with respect to certain social groups that have historically been excluded and discriminated against in Honduras. In particular, there has been a worsening of the situation of foreigners, mainly of Nicaraguan origin, Garifunas and members of the gay community.

518. The IACHR received numerous testimonies revealing that, both during the repression of demonstrations and in the

context of illegal detentions, women were subjected to verbal aggression and sexual violence. In this regard, the Inter-American Court has held that acts of violence directed specifically at women and sexual violence are often used as "a symbolic means to humiliate the opposing party"⁹¹. Likewise, the Commission has repeatedly established that rape committed by agents of the State constitutes torture.

3. Use of gender stereotypes

50. The IASHR has a long history of work in making visible the multiple factors that perpetuate gender discrimination. Among these factors, the IACHR has identified machismo, patriarchy and the prevalence of sexist stereotypes, as well as historical discrimination connected to the social fabric, coupled with social tolerance of violence against women in all its dimensions: physical, psychological, sexual, economic and others. Both the Commission and the Court have found that the subordination of women is linked to practices rooted in socially dominant and socially persistent gender stereotypes. These discriminatory patterns are influenced by sociocultural values and ingrained notions that appeal to the supposed inferiority of women in relation to men based on their biological differences and their reproductive capacity and function⁹².
51. The IACHR has conceptualized gender stereotypes as preconceptions related to specific attributes or roles that men and women should fulfill respectively⁹³. These socially entrenched stereotypes are not only manifestations of discrimination, but also

⁹¹ I/A Court H.R., Case of the Castro Castro Prison v. Peru, cit., para. 223. In the same sense, UN, Committee on the Elimination of Discrimination against Women, 11th session. General Recommendation 19 "Violence against women". Doc. HRI/GEN/1/Rev. 1at84 (1994), para. 16; UN, Commission on Human Rights, 57th session 2001, Report of Ms. Radica Coomaraswamy, Special Rapporteur on violence against women, including its causes and consequences, submitted pursuant to Commission on Human Rights resolution 2000/45, "Violence against women perpetrated and/or condoned by the State in times of armed conflict (1997- 2000)," E/CN.4/2001/73, para. 44.

⁹² IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, 14 November 2019.

⁹³ IACHR, Report No. 153/18, Case 13,069. Manuela and Family. El Salvador. December 7, 2018.

causes and consequences of violence directed against women⁹⁴ and LGBTI persons. The IACHR has indicated that gender-based discrimination includes "any difference in treatment based on sex that, intentionally or in practice, places women at a disadvantage, and prevents the full recognition of their human rights in the public and private spheres."⁹⁵

52. Binding instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention of Belém do Pará, along with the work developed by the IACHR and the Inter-American Court, have recognized that the prevalence of discrimination, stereotypes and social and cultural practices is one of the causes and consequences of gender-based violence⁹⁶. In contexts of dictatorship and armed conflict, these factors are reflected in different dynamics of victimization, exacerbating gender-based discrimination, violence and defenselessness of women and LGBTI persons. In this regard, the Commission has underscored the importance of addressing stereotypes in the investigation of violence against women and discrimination against LGBTI persons. The IACHR understands that the consideration of these stereotypes implies that the obligations under the Convention of Belém do Pará benefit both cisgender and transgender women.

IACHR. Report No. 33/16. Case 12.797. Linda Loaiza López Soto and family members. Venezuela. July 29, 2016, para. 269; IACHR. Access to information on reproductive matters from a human rights perspective. OEA/Ser.L/V/II. Doc. 61. 22 November 2011, para. 56 IACHR, Compendium on Equality and Non-Discrimination. Inter-American Standards OEA/Ser.L/V/II.171 Doc. 31 12 February 2019 Original: Spanish para. 45.

⁹⁴ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63.9 December 2011, para. 155.

⁹⁵ IACHR, [Women Journalists and Freedom of Expression Discrimination and gender-based violence against women journalists for the exercise of their profession](#), Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, 2018, para. 15.

⁹⁶ [IACHR, Violence and discrimination against women in the armed conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67. 2006, para. 43; IACHR, [Report on Poverty and Human Rights in the Americas](#), OEA/Ser.L/V/II.164. Doc. 147. 2017, para. 187; I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 401.

I/A Court H.R. Decisions

I/A Court H.R., [Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.](#) Judgment of August 24, 2017. Series C No. 339

169. In this regard, the Court reiterates that gender stereotyping refers to a pre-conception of attributes, behaviors or characteristics possessed or roles that are or should be performed by men and women respectively, and that it is possible to associate the subordination of women to practices based on socially dominant and persistent gender stereotypes. In this sense, their creation and use becomes one of the causes and consequences of gender violence against women, conditions that are aggravated when they are reflected, implicitly or explicitly, in policies and practices, particularly in the reasoning and language of state authorities.

Merits reports

IACHR, [Report No. 157/18. Case 13.051. Merits. Vicky Hernández and Family. Honduras.](#) 7 December 2018

88. In this regard, the IACHR emphasizes that, in addition to opening lines of investigation that, from the beginning of the investigations in which there is relevant evidence, take into account the possibility that the motivation may have been based on prejudice, and to conduct investigations free of stereotypes related to diverse sexual orientations, identities, and gender expressions, States must take into consideration the general context of stereotypes, prejudice, and violence against LGBT persons in their countries, which may be more entrenched in places within the countries or outside the main cities. In addition, in

conducting investigations, State authorities should rely on expert testimony from experts capable of identifying discrimination and prejudice against LGBT persons, which are entrenched in the societies of the region⁹⁷.

IACHR, [Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima et al. Colombia](#). December 7, 2018.

127. The IACHR emphasizes that discriminatory sociocultural patterns also have an impact on the investigation, prosecution, and punishment of cases of violence against women. In particular, the IACHR has explained that, by virtue of prevailing gender stereotypes, judicial operators tend to consider cases of violence as not a priority and do not carry out tests that are key to the investigation and punishment of the perpetrators. In addition, they give little credibility to the assertions of the victims; they disqualify them; they assign them responsibility for the facts reported "because of the way they dress, their occupation, sexual conduct, relationship or kinship with the aggressor"⁹⁸, and give them inadequate treatment when they try to collaborate in the investigation of the facts⁹⁹. In this sense, the Inter-American Court has made it clear that "the opening of lines of investigation into the prior social or sexual behavior of the victims in cases of gender violence is nothing more than the manifestation of policies or attitudes based on gender stereotypes"¹⁰⁰ about the socially acceptable roles and behaviors of women in

⁹⁷ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 28.

⁹⁸ IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), January 20, 2007, para. 155.

⁹⁹ IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), January 20, 2007, para. 8.

¹⁰⁰ I/A Court H.R., Case of Gutiérrez Hernández et al. Case of Gutiérrez Hernández et al. v. Guatemala (Preliminary Objections, Merits, Reparations and Costs). Judgment of August 24, 2017. Series C No. 339. para. 147. I/A Court H.R., Case of Veliz Franco et al. Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Para. 209.

their interpersonal relationships. This is particularly relevant in the case of women journalists, where the perception persists that journalism is not an appropriate profession for women and there is a trivialization of the threats and risks they experience.

IACHR, [Report No. 13/15, Case 12.349, Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and family, Guatemala, March 23, 2015.](#)

152. Regarding the concept of gender stereotype, the Inter-American Court has indicated that it is a preconception of attributes or characteristics possessed or roles that are or should be performed by men and women respectively¹⁰¹. The Court has pointed out that the creation and use of stereotypes becomes one of the causes and consequences of gender violence against women¹⁰². The Court has considered that the duty of non-discrimination is breached in cases where officials in charge of an investigation related to the disappearance or violence of a woman, make statements that denote the existence of prejudices and stereotypes about the social role of women¹⁰³.

¹⁰¹ I/A Court H.R., Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. para. 401.

¹⁰² I/A Court H.R., Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 400 and 401, and IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

¹⁰³ I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 212.

Thematic reports

IACHR, [*The Right of Women in Haiti to be Free from Violence and Discrimination*](#). OEA/Ser.L/V/III. Doc. 64, March 10, 2009

59. The Commission notes with concern the increasing number of reports of gang rapes which, in some cases, have been used as instruments of punishment or repression by armed groups, especially against girls, who are perceived as more susceptible targets, or against women who are seen as socially perverted, promiscuous, rebellious, or who refuse to consent to sex¹⁰⁴.

IACHR, [*Violence and Discrimination against Women in the Armed Conflict in Colombia*](#). OEA/Ser.L/V/III. Doc. 67, October 18, 2006

Moreover, binding instruments such as CEDAW and the Convention of Belém do Pará have established that violence against women is based on and caused by elements of discrimination, stereotypes, social and cultural practices, based on the concept that women are inferior¹⁰⁵. Discrimination against women and gender stereotypes promote, validate, increase and aggravate violence against women. The two Conventions oblige States Parties and their agents to take affirmative measures to eliminate socio-cultural patterns and stereotypes that promote discrimination

¹⁰⁴ Wiza Loutis, "Evaluation de la situation des femmes dans le cadre de la violence armée en Haïti", June 2006, Bureau des Questions de Genre, MINUSTAH and DDR Section of MINUSTAH/UNDP, current section of the Réduction de la Violence Communautaire (RVC), (cited in MINUSTAH, note 41): "brigades de vigilance, brigades de quartier, groupes de bandits, Organisations Politiques, les vagabonds (...). Children and women are the main victims of these groups to the extent that individual or collective rape as well as the racket of the marchers function as means of control of the community".

¹⁰⁵ See preambles of the CEDAW and the Convention of Belém do Pará.

against women in all its forms, and its most serious consequences such as violence against women¹⁰⁶.

Country reports

IACHR, [Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

186. The IACHR has warned that women defenders are continually confronted by individuals or groups who, in addition to reproaching their participation in public life and their leadership in the defense of human rights, their territories and their traditions, make use of sexist stereotypes to delegitimize their work¹⁰⁷. In addition, women who defend issues that in themselves challenge established sociocultural patterns are also at an increased risk of facing specific acts of violence against them. Thus, women defenders engaged in the area of women's rights and, in particular, in the area of sexual and reproductive rights and the rights of lesbian, bisexual, trans, gender diverse and intersex (LBTI) women are especially delegitimized, attacked and assaulted both because they are women and because of the very rights they defend¹⁰⁸.

¹⁰⁶ See preamble and article 5, CEDAW; see preamble and article 6 of the Convention of Belém do Pará.

¹⁰⁷ IACHR. MC 939/18 and 1067/18 - Yerling Marina Aguilera Espinoza and others (seventeen women human rights defenders). Nicaragua. September 17, 2018, para.65; I.A. Court H.R.. Case of Women victims of sexual torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para.216.

¹⁰⁸ IACHR, [Comprehensive Policies for the Protection of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17. 2017, para.43; IACHR. Preliminary observations of in loco visit to Honduras. 2018; IACHR. Press Release No. 066/19. Brazil must ensure justice for rights defender Marielle Franco, murdered a year ago, say UN and IACHR experts. March 14, 2019; Equality Bahamas. Equality Bahamas Supports Erin Greene. January 20, 2019; Tribune242. I have been discriminated against my sexuality. June 12, 2013.

IACHR, [Situation of human rights in Guatemala](#) OEA/Ser.L/V/II. Doc. 208/17,31 December 2017

161. The IACHR observes that stigmatization and delegitimization have a differentiated impact on women human rights defenders, derived from traditional gender relations, which often intersect with the racial discrimination suffered by defenders of indigenous or Afro-descendant origin. Defamation against women defenders has a differentiated condition insofar as a significant number of these acts injure and violate their gender condition¹⁰⁹. In addition to the discrimination to which they are subjected due to their historical role and the stereotypical conceptions of gender that have been attributed to them, their situation is aggravated when they face their work in risky conditions due to the specific causes they promote. The IACHR has received numerous complaints about the violence that affects women in communities marked by a historical patriarchal conception, where they are subject to degrading social stereotypes of their sexual life, or are accused of attacking moral values or social institutions such as the family¹¹⁰.

Precautionary Measures

IACHR, [Resolution 80/21, MC 491-21 - S.G.R.Q. and her family, Colombia](#), October 4, 2021.

In addition, the Commission notes that the proposed beneficiary, being a human rights defender and community leader, faces a situation of heightened risk due to gender stereotypes, historical discrimination and prejudices related to how women should dress, act or the roles they should play in

¹⁰⁹ UDEFEGUA, Report on the Situation of Human Rights Defenders, January 2017, p. 18.

¹¹⁰ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66 December 31, 2011, para. 283.

society¹¹¹ . Thus, the Commission has observed that women human rights defenders are particularly exposed to violations of their rights to life and personal integrity, including various forms of violence against their families in retaliation for their work, and that deep-rooted gender stereotypes are repeatedly used against them to delegitimize their work¹¹² .

4. The role of the gender and diversity perspective in the definition of victim and family members

53. The Commission has recognized the tireless commitment of victims, family members, human rights defenders and organizations in the search for truth, justice and reparations in cases of human rights violations. Its fundamental role has gone beyond supporting investigations to include the promotion of essential legal and policy reforms to overcome obstacles to access to justice and truth¹¹³.

54. In this context, the IACHR has stated that the suffering inflicted on the victims' family members may constitute an additional violation of the right to humane treatment¹¹⁴ . In addition, the IACHR has also considered that family members can be considered victims in and of themselves, especially when fundamental rights such as life and personal integrity are violated. Factors such as the proximity of family ties, participation in the search, and the State's response to the efforts made are considered to determine this concept of victim. Likewise, the absence of effective judicial remedies constitutes an additional source of suffering for family members.

¹¹¹ IACHR, [Towards a Comprehensive Policy for the Protection of Human Rights Defenders](#), OEA/Ser.L/V/II., Doc. 207/17, 29 December 2017, paras. 43 & 146; IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II., Doc. 66, 31 December 2011, para. 283.

¹¹² IACHR, [Towards a comprehensive policy for the protection of human rights defenders](#), OEA/Ser.L/V/II., Doc. 207/17, 29 December 2017, para. 303; IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II., Doc. 233, 14 November 2019; IACHR, [Report on the situation of women human rights defenders and social leaders in Colombia](#), OEA/Ser.L/V/II., Doc. 262, 6 December 2019, paras. 68-69.

¹¹³ IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 36.

¹¹⁴ IACHR. [Report No. 53/01. Case 11.565. Ana, Beatriz and Celia González Pérez. Mexico](#). April 4, 2001.

55. Regarding the gender and diversity perspective, the IACHR has addressed the specific victimization of women, highlighting particular situations such as those of women human rights defenders, indigenous women, journalists and trans women. The Commission has emphasized the importance of the active participation of women and LGBTI persons in transitional justice processes, recognizing their crucial role in the construction of truth, reconciliation and the reconstruction of the social fabric.
56. For its part, the Commission has recognized and highlighted the leadership of women as family members in the search for and defense of human rights in situations of forced and involuntary disappearance of persons. In this section, exceptionally, standards outlined in IACHR press releases are incorporated, where the specific situation of women searchers is addressed¹¹⁵ and the necessary measures to guarantee their protection are highlighted¹¹⁶.

Merits Reports

IACHR. [Report No. 329/20](#). Case 12.774. Merits. Patricia Emilie Cuéllar et al. El Salvador. December 29, 2020 (available in Spanish).

86. The Commission considers it necessary to refer to the special impact of the disappearance in the case of Patricia Emilie Cuellar Sandoval and Julia Orbelina Pérez. In this regard, the Commission recalls that when the victims of forced disappearance are women, then, as explained above, the danger of affecting their rights, including the possibility of being victims of sexual violence, is especially heightened, especially in a context of armed conflict. In cases of

¹¹⁵ In relation to the development of standards referring to women seekers in the ISHR, it is suggested to consult: I/A Court H.R., [Case of Tabares Toro et al. v. Colombia. Merits, Reparations and Costs](#). Judgment of May 23, 2023 (available in Spanish).

¹¹⁶ IACHR, Press Release No. 38/2023 "[States must protect the rights of women searching for missing persons.](#)" March 8, 2023.

enforced disappearances, women may suffer particular affectations such as being forced to be naked, subjected to ill-treatment during detention, or suffer sexual violence. As noted by the United Nations Working Group on Enforced or Involuntary Disappearances, "women victims of enforced disappearance are disproportionately subjected to sexual violence and exposed to suffering and humiliation¹¹⁷. Moreover, in contexts of conflict, "women are in a situation of particular vulnerability [...], when many of them are deliberately targeted and are victims of enforced disappearance or other forms of gender-based violence¹¹⁸. The Commission reiterates the importance of the State conducting a comprehensive and complete investigation that takes into account the fact that two of the victims were women and therefore may have suffered other types of violence in addition to that already proven.

IACHR, [Report No. 157/18. Case 13.051. Merits. Vicky Hernández and Family. Honduras. 7 December 2018](#)

99. The Commission and the Inter-American Court have indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.¹¹⁹ In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their

¹¹⁷ Working Group on Enforced or Involuntary Disappearances. General observation on women affected by enforced disappearances, 2012, A-HRC-WGEID-98-2. Para. 8.

¹¹⁸ Working Group on Enforced or Involuntary Disappearances. General Comment on women affected by enforced disappearances, 2012, A-HRC-WGEID-98-2. Para. 7.

¹¹⁹ IACHR. Report No. 11/10. Case 12.488. Merits. Members of the Barrios Family. Venezuela. March 16, 2010. Para. 91. IACHR. Report on Terrorism and Human Rights. Para. 227; I/A Court H.R. Case Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 112; and Case Bueno Alves v. Argentina. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C. No. 164. Para. 102.

loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts¹²⁰ .

100. [...] that the loss of a loved one, the gravity of the acts that occurred in light of the analysis contained in this report, and the absence of clarification and an adequate and timely judicial response have produced consequences that have extended beyond the immediate victim and impacted the members of her family identified in this report. Consequently, the Commission finds that the State has also violated the right of those individuals to have their mental and moral integrity respected, as established in Article 5(1) of the American Convention, taken in conjunction with the obligations set out in Article 1(1) of the same instrument.

IACHR, [Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima et al. Colombia](#), December 7, 2018.

135. The Inter-American Court has repeatedly held that the relatives of the victims of certain human rights violations can, in turn, be victims¹²¹. Specifically, the Court has said that the mental and emotional integrity of victims' relatives can be affected as a consequence of the particular situations experienced by their loved ones, and of the subsequent acts or omissions of national authorities vis-à-vis such events¹²². The Inter-American Court has also

¹²⁰ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155. para. 96.

¹²¹ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; I/A Court H.R., Case of Bueno Alves v. Argentina. Case of Bueno Alves v. Argentina. Judgment of May 11, 2007. Series C. No. 164. para. 102.

¹²² I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; I/A Court H.R., Case of Vargas Areco v. Peru. Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155. para. 96.

established that “the obligation to investigate human rights violations is among the positive measures that the State must adopt to guarantee the rights established in the Convention. Additionally, the State must, if possible, try to reestablish a right that has been violated and, if applicable, repair the damage produced by human rights violations”¹²³. Accordingly, the Inter-American Court has held that the absence of effective remedies is a source of additional suffering and distress for victims’ relatives.

IACHR, [Report No. 13/15, Case 12.349, Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and family, Guatemala, March 23, 2015.](#)

173. Based on the foregoing, the Commission considers that the disappearance of a loved one and the lack of a thorough and effective investigation which in turn causes pain if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of Mayra Angelina Gutiérrez's family. The IACHR also notes that Ms. Gutiérrez's family have said that they are also afraid that something similar might happen to them. It is clear to the Commission that the anguish that the victim's family have endured in the quest to obtain justice and uncover the truth about what happened, the lack of effective protection, and the profound suffering and radical change wrought on their lives have harmed their wellbeing.

¹²³ I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192. para. 98; I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988, Series C No. 4, para. 166; I/A Court H.R., Case of Heliodoro Portugal v. Honduras. Case of Heliodoro Portugal v. Panama. Judgment of August 12, 2008. Series C No. 186. para. 142; I/A Court HR. Case of García Prieto et al. v. El Salvador. Judgment of November 20, 2007, Series C No. 168. para. 99.

IACHR. [Report No. 86/13. Cases 12,595, 12,596 and 12,621. Ana Teresa Yarce and others \(Comuna 13\). Colombia, November 4, 2013.](#)

362. The IACHR has pronounced in relation to the extension of the risk faced by women human rights defenders in Colombia to their family nucleus, whose members are often the targets of acts of systematic intimidation, persecution, kidnapping, torture and sexual abuse, among other crimes¹²⁴.

IACHR. [Report No. 67/11, CASE 11.157, Admissibility and Merits. Gladys Carol Espinoza Gonzáles. Peru, March 31, 2011](#)

194. In another case involving rape at the hands of members of the security forces during Peru's internal armed conflict, the IACHR described such actions as a form of psychological torture because its objective, in many cases, is not just to humiliate the victim but also her family or community:

Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them¹²⁵.

231. [...] Based on international human rights case law, under certain circumstances, the anguish and suffering

¹²⁴ IACHR, [Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 225.

¹²⁵ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martin Mejía, March 1, 1996.

imposed on the close relatives of the victims of serious human rights violations also constitute a violation of the right of those persons to humane treatment. Among the elements to be considered are the existence of close family ties, the particular circumstances of the bond with the victim, the way in which the family witnessed the violations or was involved in the quest for justice, in light of the subsequent actions or omissions of the state authorities in connection with the facts¹²⁶.

IACHR. [Report No. 53/01. Case 11.565, Ana, Beatriz and Celia González Pérez. Mexico. April 4, 2001.](#)

53. Based on international human rights case law, under certain circumstances, the anguish and suffering imposed on the close relatives of the victims of serious human rights violations also constitute a violation of the right of these persons to humane treatment¹²⁷. In this case, the IACHR holds the view that the treatment extended to Delia Pérez de González, who had to stand by helplessly and witness the abuse of her three daughters by members of the Mexican Armed Forces and then to experience, along with them, ostracism by her community, constitutes a form of humiliation and degradation that is a violation of the right to humane treatment guaranteed by the American Convention.

¹²⁶ I/A Court H.R., Case of the Miguel Castro Castro Prison. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 335; Case of Servellón García and others. Merits, Reparations, and Costs. Judgment of September 21, 2006. Series C No. 152, para. 128; and Case of Bámaca Velásquez. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 163.

¹²⁷ The Inter-American Court established in the case of the "street children" of Guatemala that the victims had been kidnapped, tortured and killed by State agents, who also abandoned the abused bodies in the open. The court therefore determined that "the treatment given to the remains of the victims, which were sacred to their relatives and, in particular, to their mothers, constituted cruel and inhuman treatment for them. The Inter-American Court cites in the decision its own precedent of the Blake Case (Judgment of January 24, 1998, para. 115) and other decisions of the European Court of Human Rights and the United Nations Human Rights Committee.

Cases submitted to the I/A Court H.R.

IACHR, [Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín \(Case 10.686\) against the Republic of Guatemala, July 28, 2007 \(available in Spanish\)](#).

149. In relation to the victims' family members, the Inter-American Court has established that the persons closest to the victim may also be considered victims in cases in which fundamental rights such as life and personal integrity are violated. Among the elements that must be taken into account to determine the concept of victim, the Court relates the proximity of the family relationship, the particular circumstances of the relationship with the victim, the degree to which the relative witnessed the events related to the disappearance, the degree of participation of the relative in the search for the disappeared person and the response of the State to the efforts made¹²⁸.

Thematic reports

IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019.

70. The Commission notes that many of the acts of violence committed against women human rights defenders have an undeniable gender dimension. The violence against them has been exacerbated not only in terms of the number of violent acts but also in the qualitative sense, due to the double implication of such acts; the attackers intend to make them examples both because they are women and because they carry out activities to promote or defend human

¹²⁸ I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, paras. 162 and 163.

rights¹²⁹ . Civil society organizations have identified two patterns of differentiated attacks. In the case of attacks on men, the objective seems to have them disappear, and so men are more often victims of homicide and forced disappearance. In the case of attacks on women, on the other hand, the objective seems to be to punish them, and so there is more use of torture and sexual violence and more attacks directed against their families¹³⁰ .

IACHR, [Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia](#), OEA/Ser.L/V/III Doc. 49/13, December 31, 2013.

Ensure that women directly affected by the conflict and its consequences are incorporated into decision-making bodies aimed at resolving the causes and consequences of the conflict.

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/III. Doc. 67, October 18, 2006

241. The IACHR wishes to especially recognize the extraordinary efforts by Colombian women to cope with the adversity of the internal armed conflict. It also highlights their work against the discrimination, exclusion and violence and to achieve full enjoyment of all their human rights. This capacity to associate and make an impact has achieved major legal developments and promoted the adoption of progressive policies and institutions for women in Colombia. Colombian women are not only victims of structural discrimination and violence, which is exacerbated by the

¹²⁹ Constitutional Court, Auto 92/2008, April 14, 2008, Sec. II.2.

¹³⁰ CODHES, Informe Especial sobre la Violación masiva del derecho a la Vida y la Integridad de Líderes y Líderesas que desde sus comunidades y procesos promueven y defienden los derechos humanos, November 2018, p. 12.

internal armed conflict, they are also the bearers of initiatives of inclusion, democratization and authentic peacemaking for the Colombian State and society.

B. GENDER AND NON-DISCRIMINATION

57. This second section addresses the standards developed by the Commission in order to account for the interrelationship between this principle and the gender perspective, considering the particular situation of women and LGBTI persons. In transitional justice contexts, the principle of equality and non-discrimination acquires crucial importance, as its scope reflects the indivisible and interdependent nature of human rights, thus constituting one of the fundamental pillars of any democratic system.
58. The IACHR has recognized that the structural nature of gender-based discrimination, underlying all forms of violence against women and LGBTI persons, requires the cross-cutting incorporation of a gender perspective in its analysis and approach¹³¹ , which necessarily entails its application in transitional justice contexts, taking into account the particular forms of victimization that result from structural and historical discrimination.
59. In this same context, the IACHR has stressed that States have the right and responsibility to promote policies and implement programs that promote the reconciliation of their peoples¹³² . However, in designing such frameworks, the Commission has pointed out that in order for States to comply with their international obligations, they must consider and incorporate differentiated perspectives such as gender and diversity, based on the principle of equality and non-discrimination.

¹³¹ IACHR, Press Release No. 198/21 "[The IACHR calls on the States of the region to apply the gender approach as a tool to combat structural discrimination against women and LGBTI persons](#)", July 29, 2021.

¹³² IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 83.

1. The principle of equality and nondiscrimination and the indivisible and interdependent nature of human rights

60. The principle of equality is one of the guiding principles of international human rights law. The right to be treated with equal consideration and respect, to be free from discriminatory treatment and to have the State promote the conditions for equality to be real and effective, occupies a central place in the entire international corpus iuris since it is a necessary presupposition for the effective and universal enjoyment of the other human rights¹³³. This principle has a dual nature: it is a guiding principle and a fundamental right.
61. In the context of the IAHRs, Article 1.1 of the Convention¹³⁴ is considered a general rule whose scope covers all the provisions of the treaty. This article establishes the obligation of the States Parties to respect and guarantee the full and free exercise of the rights and freedoms recognized in the Convention without discrimination of any kind. Article 24 establishes the principle of equal protection of the law and prohibits discrimination, and is applicable to the entire legal system of the States Parties.
62. The IAHRs has recognized that discrimination is a serious human rights problem with negative repercussions for women and the community around them, and constitutes an impediment to the recognition and enjoyment of all their human rights. It also recognizes the existence of a close link between the problem of discrimination against women and the problem of violence that affects them. In this context, the IACHR has asserted the State's responsibility to act with due diligence to prevent the undermining of women's human rights in times of peace and conflict¹³⁵. The Commission has also urged States to adopt legal frameworks that

¹³³ IACHR, *Report No. 48/16. Case 12.799. Miguel Ángel Millar Silva et al. (Radio Estrella del Mar Melinka)*, Chile. November 29, 2016, para. 59.

¹³⁴ *American Convention on Human Rights (Pact of San José)*.

¹³⁵ IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II. Doc. 65, 28 December 2011.

protect people from discrimination based on sexual orientation, gender identity and bodily diversity. In this regard, it should be noted that both the Commission and the I/A Court H.R. have interpreted sexual orientation and gender identity as protected by the phrase "other status" in Article 1(1) of the American Convention¹³⁶ .

63. When addressing the gender perspective in transitional justice, it is crucial to recognize that guaranteeing formal and material equality implies confronting structural and historical inequalities. Material equality becomes important when considering affirmative measures to counteract the specific vulnerabilities of women and LGBTI persons, contributing to a transitional justice that addresses intersectional impacts through mechanisms of memory, truth, justice, reparation, and guarantees of non-repetition.

Merits reports

IACHR, [Report No. 157/18. Case 13.051. Merits. Vicky Hernández and Family. Honduras. 7 December 2018](#)

56. The Commission has reiterated the link between discrimination and violence against LGBT persons, referring to the concept of prejudice based on sexual orientation, gender identity, or gender expression as a means of understanding violence against LGBT persons, as it makes it possible to identify the social context in which such violence manifests itself¹³⁷ .

¹³⁶ IACHR, , [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#) OAS/Ser.L/V/II.rev.2 Doc. 36, 12 November 2015, para. 19.

¹³⁷ IACHR, , [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 43.

IACHR. [Report No. 86/13. Cases 12,595, 12,596 and 12,621. Ana Teresa Yarce and others \(Comuna 13\). Colombia. November 4, 2013.](#)

220. Accordingly, the inherent link between discrimination and violence against women is relevant to the scope of the duty of protection of a State with respect to the activities of women human rights defenders, and entails special obligations of prevention for the same. When a State does not adopt reasonable measures to prevent acts of violence against women human rights defenders, or remedy a known context of discrimination that promotes the repetition of these acts, not only does it violate the right to humane treatment, but also its obligation not to discriminate against women, contained in Article 1(1) of the American Convention¹³⁸.

Thematic reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

614. The IACHR has established that the principle of non-discrimination is one of the pillars of any democratic system and a fundamental principle of the system created by the OAS to protect human rights.¹³⁹ Even so, as this report illustrates, Colombia's internal armed conflict provoked and perpetuates certain problems for specific groups that are particularly vulnerable and/or suffer discrimination on multiple levels[...].

¹³⁸ IACHR, [Merits Report No. 80/11, Case 12.626, Jessica Lenahan \(Gonzales\) and Others, United States](#), July 21, 2011, para. 120.

¹³⁹ See, inter alia, IACHR. Considerations on the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination, Annual Report of the Inter-American Commission on Human Rights, 1999, Chapter VI; IACHR, The situation of people of African descent in the Americas, OEA/Ser.L/V/II., Doc. 62, 5 December 2011.

982. In this respect, the IACHR notes the importance of the right to freedom of expression and to the diversity of opinions so as to guarantee a pluralist debate, which is necessary in a democratic society.¹⁴⁰ Nonetheless, the IACHR considers it important to take into account the State's obligation to prevent and respond to discrimination, as well as the context of discrimination and violence in Colombia in relation to LGBTI persons. Accordingly, the violence and discrimination against LGBTI persons in Colombia – exacerbated by the internal armed conflict – are aggravated by such pronouncements that endorse, in the public discourse and in the social mindset, the denial of the right to equality and non-discrimination based on the sexual orientation and gender identity of LGBTI persons. The IACHR reminds the Colombian State that it has the duty to respect and ensure the human rights of persons without any discrimination whatsoever based on sexual orientation or gender identity, categories that are protected by the American Convention on Human Rights in Article 1(1)¹⁴¹.

IACHR, [The Right of Women in Haiti to be Free from Violence and Discrimination](#). OEA/Ser.L/V/II. Doc. 64, March 10, 2009

85. In general, the Inter-American System recognizes that violence against women and its root cause -discrimination- is a serious human rights problem, with negative repercussions for women and the community around them, which directly impedes the recognition and enjoyment of all women's human rights, including respect for their lives and their physical, psychological and moral integrity.

¹⁴⁰ IACHR, [Office of the Special Rapporteur for Freedom of Expression, Inter-American Legal Framework on the Right to Freedom of Expression](#), OEA/Ser.L/V/II, IACHR/RELE/INF. 2/09, December 30, 2009.

¹⁴¹ I/A Court H.R., [Case of Karen Atala Riffo and daughters v. Chile. Merits, Reparations and Costs](#). Judgment of February 24, 2012. Series C No. 239, para. 91.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. Honduras](#), 2011

390. In its report Honduras: Human Rights and Coup d'Etat, the Commission noted the deepening discrimination against lesbians, gays, and trans, bisexual and intersex persons, and expressed deep concern about the degree of violence, discrimination and exclusion against these persons and urged the elimination of impunity for the acts perpetrated against them.

2. Structural discrimination

64. Structural discrimination responds to the set of norms, rules, routines, patterns, attitudes and patterns of behavior, both de jure and de facto, that give way to a situation of inferiority and exclusion against a group of people in a generalized manner, which are perpetuated over time and even for generations, that is, it is not isolated, sporadic or episodic cases, but rather discrimination that arises as a result of a historical, socioeconomic and cultural context¹⁴². In this sense, structural discrimination in the jurisprudence of the IACHR has allowed for a disaggregated and broad analysis of the historical, temporal and geographical context in cases where patterns of discrimination are present.¹⁴³
65. Historical and structural discrimination against women and LGBTI persons is materialized in regulatory frameworks, public policies and social practices that reproduce gender roles and stereotypes. In this sense, the IACHR has recognized that the gender perspective is a key tool for combating discrimination and violence against women and LGBTI persons, as it seeks to make visible the position of

¹⁴² IACHR, [Report on Poverty and Human Rights in the Americas](#), OEA/Ser.L/V/II.164 Doc. 147. 7 September 2017, para. 393.

¹⁴³ IACHR, [Compendium on Equality and Non-Discrimination. Inter-American Standards](#), OEA/Ser.L/V/II.171 Doc. 31 12 February 2019 Original: Spanish, para. 39.

inequality and structural subordination of women because of their gender in the context of the hetero-cis-patriarchal system predominant in the region.¹⁴⁴

66. When identifying the existence of a situation of structural discrimination, the Commission has understood that the State must adopt appropriate measures to reduce and eliminate the situation of disadvantage or exclusion experienced by a person or group of persons¹⁴⁵. In this context, the IACHR has highlighted the intimate relationship between gender-based structural discrimination and violence against women, urging States to adopt practical, effective and comprehensive actions to modify the discriminatory socio-cultural patterns that underlie gender-based violence against women and to redouble efforts to combat the impunity that surrounds these cases¹⁴⁶. In the case of transitional justice contexts, the IACHR has emphasized the situation of structural discrimination against women human rights defenders, journalists, indigenous women, Afro-descendant and trans women.

Merits reports

IACHR. [Report No. 157/18. Case 13.051. Merits. Vicky Hernández and Family. Honduras. 7 December 2018](#)

86. At the same time, the high levels of impunity and the prevalence of violence based on prejudice require that crimes against LGBT persons receive full and unbiased

¹⁴⁴ IACHR, Press Release No. 198/21, "[IACHR calls on the States of the region to apply the gender approach as a tool to combat structural discrimination against women and LGBTI persons.](#)" 2021 ; IACHR, [Advances and Challenges towards the recognition of the rights of LGBTI persons in the Americas](#), OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, para. 63.

¹⁴⁵ IACHR, [Compendium on Equality and Non-Discrimination. Inter-American Standards](#), OEA/Ser.L/V/II.171 Doc. 31 12 February 2019 Original: Spanish, para. 40.

¹⁴⁶ IACHR, Press Release No. 263/22, "[IACHR: States must combat discrimination to eradicate gender-based violence against women.](#)", November 25, 2022.

investigation¹⁴⁷. States have a reinforced duty to combat generalized violence and impunity. In light of that, the IACHR considers that in such cases the duty of due diligence should be especially rigorously applied, given the historical and entrenched discrimination that this group has suffered¹⁴⁸, and which is also closely connected with the violence that affects them in particular¹⁴⁹.

IACHR, [Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima et al. Colombia](#), December 7, 2018.

98. The Commission finds that the sexual violence suffered by Jineth Bedoya is part of the widespread context of sexual violence against women that characterized the Colombian armed conflict and exemplifies the special risks of sexual violence and discrimination to which women journalists are exposed in the practice of their profession because of their gender. The IACHR considers that the State failed in its duty, insofar as the national authorities failed to act to protect the journalist from this type of violence, which constitutes a violation of Articles 5.1, 5.2, 11, and 24 of the American Convention, in relation to the obligations contained in Article 1.1 thereof, Article 7b of the Convention of Belém do Pará, and Articles 1 and 6 of the IACPPT.

¹⁴⁷ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 489.

¹⁴⁸ See: I/A Court H.R., [Case of Atala Riffo and Girls v. Chile. Merits, Reparations and Costs](#). Judgment of February 24, 2012. Series C No. 239, para. 92.

¹⁴⁹ See: IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 426.

IACHR, [Report No. 86/13. Cases 12,595, 12,596 and 12,621. Ana Teresa Yarce and others \(Comuna 13\). Colombia, November 4, 2013.](#)

219. In this sense, the State's duty to prevent and protect takes on special meaning in the case of women human rights defenders. In addition to the risk inherent to the work of human rights defense is the history of discrimination that women have suffered based on their sex, stemming from stereotyped concepts and sociocultural patterns of behavior that have promoted their treatment as inferiors¹⁵⁰. This history of discrimination has increasingly exposed them, in certain contexts, to acts of violence, threats, harassment, and other types of violations of their human rights¹⁵¹. The IACHR has established how women human rights defenders continue in several countries of the hemisphere, including Colombia, being exposed to a special situation of risk of suffering human rights violations compared to other groups of defenders¹⁵².

¹⁵⁰ IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 283.

¹⁵¹ See generally, IACHR, Merits Report No. 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al, United States, July 21, 2011, para. 110; IACHR, Merits Report No. 28/07, Cases 12.496-12.498, Claudia Ivette González et al, (Mexico), March 9, 2007; IACHR, Report No. 54/01, Case 12.051, Maria Da Penha Maia Fernandes (Brazil), IACHR Annual Report 2001; IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II, Doc. 68 (Jan. 20, 2007); I.D.H. Court, Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

¹⁵² IACHR, [Report on the Situation of Human Rights Defenders and Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 283.

Thematic reports

IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019.

77. In Colombia, LGBTI human rights defenders have constantly been victims of violence and structural discrimination in the context of the armed conflict. During its visit, the Commission was informed about the heightened risk faced by LGBTI human rights defenders, with a significant increase in the number of killings and threats. Civil society organizations noted that this is due to the double risk they face, based both on their efforts to defend people who have historically been discriminated against and on prejudice against their sexual orientation or gender identity, as well as the lack of differentiated prevention and protection measures and guarantees to defend the rights of this population¹⁵³.

IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017.

7. This political, social, and economic marginalization of indigenous women contributes to a continuous situation of structural discrimination and makes them particularly susceptible to a variety of acts of violence prohibited by the Inter-American Convention on the Prevention, Eradication and Punishment of Violence against Women (hereinafter, "Convention of Belém do Pará") and other Inter-American instruments. This marginalization and vulnerability of indigenous women is enhanced when States fail to produce comprehensive and disaggregated statistics, and do not properly document the differentiated forms of violence that

¹⁵³ IACHR, Press Release No. 08/19, "[IACHR culminates working visit to Colombia on the alarming situation of murders of social leaders and human rights defenders.](#)" January 15, 2019.

affect indigenous women¹⁵⁴. Indigenous women are more likely to suffer acts of physical, psychological, and sexual violence within specific contexts. Violence against indigenous women is a fixture during armed conflicts, during the execution of major development, investment, and extractive projects, the militarization of indigenous lands, and in the context of their work as human rights defenders. Most of these acts are met by no response or a deficient response by State authorities, enabling the path for impunity. Indigenous women also face specific obstacles in attempting to obtain safe, adequate, effective, and culturally appropriate access to justice when their human rights are violated¹⁵⁵. Most justice systems throughout the hemisphere still lack a gender and ethno-racial perspective in their processing of individual cases, reflected in the scarcity of interpreters, translators, and legal personnel trained and sensitive to the culture and worldview of indigenous peoples.

IACHR, [Violence and Discrimination Against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/III. Doc. 67, October 18, 2006

102. The IACHR has been able to corroborate that the situation of indigenous and Afro-Colombian women is particularly critical as they are victims of multiple forms of discrimination because of their race, ethnicity and the fact that they are women, a situation that is aggravated in the context of the armed conflict. They face two layers of

¹⁵⁴ UN Women Brazil, Relatora Especial da ONU sobre os Direitos dos Povos Indígenas recomenda maior documentação dos problemas enfrentados pelas mulheres indígenas do Brasil, March 18, 2016; Cristina Coc, Keynote Address Dignified Rebellion, Speaking at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism", March 31, 2017; Melanie Newton, Colonialism, History, and the Contemporary, Speaking at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism", St. Augustine University, St. Augustine, Trinidad and Tobago. Augustine University, Trinidad and Tobago, March 31, 2017; Roberta Clarke, Opening Remarks, Indigenous Women in the Caribbean: Voice, Participation and Influence for Sustainable Development, Conference held on 9-10 October, 2008, Guyana.

¹⁵⁵ IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), January 20, 2007, para. 199.

discrimination from birth: the first because they belong to their racial and ethnic group and the second because of their gender. Being historically exposed to two forms of discrimination, they are doubly vulnerable to being abused and victimized by armed groups in their struggle to control resources and territories.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

23. The IACHR recognizes that many of the human rights issues in the country are structural and have remained unsolved since the armed conflict, namely: the levels of violence that affect the Salvadoran society; the impact of hard-handed citizen security policies on the human rights of the population; access to justice, truth and memory of the victims of the armed conflict; the precarious situation of the population deprived of liberty; the relationship between high levels of internal displacement and international migration and structural situations of poverty, inequality and violence; the prevalence of misogynist, sexist and discriminatory social and cultural patterns that impact the right of women and LGBTI people to live free from violence and discrimination [...].

Compendiums

IACHR, [Compendium on Equality and Non-Discrimination. Inter-American Standards](#), OEA/Ser.L/V/II.171, Doc. 31 12 February 2019.

39. The concept of structural discrimination has been highlighted by the IACHR with particular emphasis on the need to undertake a broad appraisal of the historical,

temporal, and geographic context in cases where patterns of discrimination appear.

40. In this regard, when verifying whether or not there is a situation of structural discrimination, the Commission understands that the State must take suitable measures to reduce and eliminate the situation of inferiority or exclusion against a given person or group of persons [...].

3. Indirect discrimination

67. The IACHR has established that the review of norms and policies on the basis of the principle of effective equality and non-discrimination also covers the possible discriminatory impact of these measures, even when they appear neutral in their formulation, or are measures of a general and undifferentiated scope¹⁵⁶.
68. In this regard, it should be noted that the Convention of Belém do Pará imposes on States the obligation to adopt all appropriate measures, including legislative measures, to modify or abolish existing laws and regulations or to modify legal or customary practices that support the persistence or tolerance of discrimination and violence against women. The Commission has established that States have the duty to review norms, practices, and public policies that discriminate or whose effect may be discriminatory to the detriment of women, which should be extended to LGBTI persons.

¹⁵⁶ The Inter-American Convention against All Forms of Discrimination and Intolerance, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, both define in their respective articles 1.2. [IACHR, Compendium on Equality and Non-Discrimination, Inter-American Standards](#). OEA/Ser.L/V/II.171 Doc. 31 12 February 2019 Original: Spanish para. 41.

I/A Court H.R.

I/A Court H.R., Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005. Series C No. 134

177. In view of the complexity of the phenomenon of internal displacement and of the broad range of human rights affected or endangered by it, and bearing in mind said circumstances of special weakness, vulnerability, and defenselessness in which the displaced population generally finds itself, as subjects of human rights, their situation can be understood as an individual de facto situation of lack of protection with regard to the rest of those who are in similar situations. This condition of vulnerability has a social dimension, in the specific historical context of the domestic armed conflict in Colombia, and it leads to the establishment of differences in access of displaced persons to public resources managed by the State. Said condition is reproduced by cultural prejudices that hinder the integration of the displaced population in society and that can lead to impunity regarding the human rights violations against them.

178. With regard to this situation of inequality, it is pertinent to recall that there is an unbreakable tie between the erga omnes obligations to respect and guarantee human rights and the principle of equality and non-discrimination, which has the nature of jus cogens and is crucial to safeguard human rights both under international law and under domestic venue, and which impregnates all actions by State power, in all its expressions. To comply with said obligations, States must abstain from carrying out actions that in any way, directly or indirectly, create situations of de jure or de facto discrimination, and they must also take positive steps to revert or change existing discriminatory situations in their societies, to the detriment of a given group of persons. This entails the special duty of protection that the State must

provide in connection with actions and practices of third parties who, under its tolerance or acquiescence, create, maintain or foster discriminatory situations¹⁵⁷ .

Merits Reports

IACHR. [Report No. 64/11. Case 12.573. Merits. Marino López et al. \(Operation Genesis\). Colombia. March 31, 2011.](#)

370. With respect to displaced persons, the Inter-American Court has established that to comply with the obligation of non-discrimination, the States must refrain from taking action that in any way is designed directly or indirectly to create situations of discrimination de jure or de facto, as well as to adopt positive measures to reverse or change current discriminatory situations in their countries. This implies a special duty of protection on the part of the State with respect to the actions and practices of third parties which, through tolerance or acquiescence, create, perpetuate or favor discriminatory situations¹⁵⁸ , and that the differentiated situation the displaced persons are in requires the States to grant special treatment in their favor and to adopt measures of a positive character to reverse the effects of their said condition of weakness, vulnerability and defenselessness, including vis-à-vis the actions and practices of individual third parties.

¹⁵⁷ Cf. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC 18/03, supra note 190, paras. 86-105.

¹⁵⁸ Cf. I.D.H. Court, Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC 18/03, and Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005. Series C No. 134, para. 178.

4. Violence, discrimination and access to justice

69. The IASHR is based on the premise that access to appropriate and effective judicial remedies is the first line of defense of basic rights, including the rights of women in cases of violence. In the Americas, the binding principles of equality and non-discrimination represent the backbone of the inter-American human rights system and are reflected in binding instruments such as the American Convention, the American Declaration and the Convention of Belém do Pará. These instruments affirm the right of women to have access to a simple and effective judicial remedy with due guarantees when they report acts of violence, as well as the obligation of States to act with due diligence to prevent, investigate, punish and redress these acts¹⁵⁹.
70. The Commission has recognized the duty of States to act with due diligence in the face of human rights violations. In cases of gender-based violence, the Convention of Belém do Pará highlights the special connotation of the obligation to act with due diligence due to the seriousness of violence against women in the region, as well as the need for comprehensive strategies to prevent, punish and eradicate it. It is worth mentioning that the I/A Court H.R. has extended the protection of the Convention of Belém do Pará to trans persons, considering that violence against them, based on their gender identity or expression, is also based on gender as a social construction of the identities, functions and attributes socially assigned to women and men¹⁶⁰.
71. In this context, the IACHR has urged States to implement measures that comply with the duty to act with due diligence to prevent, punish and eradicate violence and discrimination against women and LGBTI persons, recognizing the link between gender discrimination

¹⁵⁹ IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 23.

¹⁶⁰ I/A Court H.R., [Case of Vicky Hernández et al. v. Honduras](#), Judgment of March 26, 2021.

and violence. In substantive reports, the IACHR has analyzed specific cases, such as the Rio Negro and El Mozote massacres, highlighting the importance of investigating acts of sexual violence and applying a gender perspective in judicial proceedings. In addition, the Commission has insisted on the need for a comprehensive response in cases of gender-based violence, including protection measures, timely trial and effective access to legal proceedings.

I/A Court H.R. decisions

I/A Court H.R. [Case of Vicky Hernández et al. v. Honduras. Merits, Reparations and Costs](#). Judgment of March 26, 2021. Series C No. 422

133. Based on the above and on an evolutive interpretation¹⁶¹, the Court considers that, in the sphere of application of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, there is also a reference to situations of genderbased violence against trans women, as in this case.

134. In addition, the Court recalls that, when applying the said treaty, it has developed the notion of enhanced due diligence¹⁶². This signifies applying a gender perspective in the investigation and prosecution of cases of violence against women, including violence against trans women, as well as avoiding chronic impunity that sends a message of tolerance and permits a repetition of the facts. The purpose of the treaty is to achieve the eradication of this phenomenon which is structurally rooted in our societies.

¹⁶¹ The right to information on consular assistance within the framework of the guarantees of due process of law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114.

¹⁶² Cf. Case of López Soto et al. v. Venezuela, *supra*, paras. 131, 136 and 141.

Merits reports

IACHR, [Report No. Case 12.774, Merits. Patricia Cuéllar Sandoval, Mauricio Cuéllar Cuéllar and Julia Orbelina Pérez. El Salvador. December 29, 2020 \(available in Spanish\).](#)

66. [...] the Commission has affirmed that an armed conflict reproduces and increases discrimination, and "although men are frequently victims of summary executions and massacres, violence against women, particularly violence perpetrated by armed groups, has become habitual in the midst of a conflict [...]"¹⁶³. In this sense, in the present case, dealing with the disappearance of Patricia Emilie Cuéllar and Julia Orbelina Pérez, the IACHR considers that taking into account that the disappearance in this context has a differentiated impact given the particular risk of being a victim of sexual violence, the State has a reinforced duty of due diligence, due to the particular situation of vulnerability that women face in this type of practice. As noted, the authorities have not carried out any investigation to ascertain the truth of the facts or their possible differential impact on the women victims, and the possibility that they were framed in the context of particular affectations of women in the Salvadoran armed conflict. To this end, the Commission notes the importance of the State investigating a possible context that describes the possible violence to which women may have been subjected in the context of the armed conflict and adopting a gender perspective in the investigation of the facts that have yet to be addressed. The Commission highlights what was expressed by El Salvador. Working Group on Enforced or Involuntary Disappearances which points out that "the adoption of a gender perspective

¹⁶³ IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), October 18, 2006, para. 6.

in relation to the right to the truth should make it possible to discover how enforced and involuntary disappearances have affected women at the individual and collective levels"¹⁶⁴ .

IACHR, [Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima et al. Colombia](#), December 7, 2018.

111. Once they become aware of acts of gender-based sexual violence against women journalists, States must investigate these acts, identify, prosecute, and punish the perpetrators, and provide comprehensive reparation to the victims. This obligation arises from Articles 5, 13, 8, and 25 of the ACHR, within the framework of the general obligation to guarantee rights established in Article 1.1 thereof. This obligation to investigate complaints of sexual violence is provided for in Articles 1, 6, and 8 of the InterAmerican Convention against Torture, which require the State “to take effective measures to prevent and punish torture within their jurisdiction,” and also “to prevent and punish other cruel, inhuman, or degrading treatment or punishment.”¹⁶⁵ . It is further reinforced by Article 7 of the Convention of Belém do Pará, which obligates the State to exercise due diligence and enact the necessary regulatory framework to investigate and punish violence against women.¹⁶⁶ . Article 7(b) of the Convention specifically requires States parties to act with due diligence to prevent, punish, and eradicate violence against women. This duty is activated from the moment the

¹⁶⁴ Working Group on Enforced or Involuntary Disappearances. General Comment on women affected by enforced disappearances, 2012, A-HRC-WGEID-98-2. Para. 22.

¹⁶⁵ I/A Court H.R., [Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs](#), Judgment of November 27, 2013. Series C No. 275, para. 341.

¹⁶⁶ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. para. 287; I/A Court H.R., Case of Gutiérrez Hernández et al. v. Guatemala (Preliminary Objections, Merits, Reparations and Costs). Judgment of August 24, 2017. Series C No. 339. para. 147.

State becomes aware of the existence of an alleged act, such as rape¹⁶⁷ .

113. In this context, the Commission has pointed out that States must have an adequate legal framework of protection, effective means for its implementation, and prevention policies and practices that allow them to respond effectively to complaints of sexual violence¹⁶⁸ . The Inter-American Court emphasized that, in cases of sexual violence, the investigation should try, whenever possible, to avoid re-victimization or the reliving of the profound traumatic experience each time the victim remembers or testifies about what happened¹⁶⁹ .

117. Impunity for such crimes sends the message that violence against women is tolerated, which encourages its perpetuation and social acceptance, fosters a sense and feeling of insecurity in women, and contributes to their continued distrust of the justice system¹⁷⁰ .

IACHR, [Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family, Honduras, 7 December 2018](#)

58. The Commission has stated that when someone who is lesbian, gay, bisexual or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the

¹⁶⁷ I/A Court H.R., [Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs](#). Judgment of August 31, 2010 Series C No. 216, para. 103.

¹⁶⁸ IACHR, [Report 170/11, Case 12.578, Merits, María Isabel Véliz Franco et al, Guatemala](#), November 3, 2011, para. 84.

¹⁶⁹ I/A Court H.R., [Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs](#). Judgment of August 31, 2010 Series C No. 216, para. 180.

¹⁷⁰ IACHR. The Situation of Women's Rights in Ciudad Juarez, Mexico. The Right to be Free from Violence and Discrimination. Para. 165; I/A Court H.R.. Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 400.

real or perceived sexual orientation or gender identity of the victim or victims¹⁷¹ . Determining whether or not violence against LGBT persons is based on prejudice requires an exhaustive investigation of the reasons for the violence, carried out under the principle of due diligence¹⁷² .

IACHR. [Report No. 67/11, CASE 11.157, Admissibility and Merits. Gladys Carol Espinoza Gonzáles. Peru. March 31, 2011, para. 225.](#)

225. [...] The IACHR has stated that judicial ineffectiveness in cases of violence against women creates a climate of impunity that is conducive to violence “since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.¹⁷³” The IACHR has further noted that the obstacles such women face in securing access to suitable and effective judicial remedies to redress the violations they suffer can be even more daunting in that they suffer from a combination of various forms of discrimination: as women, because of their ethnic or racial origin, and/or by virtue of their socio-economic status¹⁷⁴.

IACHR, [Report No. 177/10, Case 10,720. Merits. Massacres of "El Mozote" and neighboring locales, El Salvador, November 3, 2010.](#)

258. The Commission notes the difficulties in obtaining evidence in a case such as the present one. In addition, the

¹⁷¹ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 46.

¹⁷² IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015, para. 45.

¹⁷³ IACHR, [Merits Report, No. 54/01, Maria Da Penha Fernandes \(Brazil\)](#), April 16, 2001, para. 56.

¹⁷⁴ IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 195.

rapes were perpetrated precisely in the only hamlet in which only one person managed to survive the massacre. In addition, it took many years after the massacres for an investigation to begin - approximately 12 years - and when it did begin, there were no adequate and sustainable methods for exhuming the remains of the victims and conducting forensic examinations on these issues. Against this backdrop, the Commission considers that, in these circumstances, the statements collected by the Legal Guardianship Office of the Archbishopric constitute evidence, uncontested by the State through serious and diligent investigations, that an undetermined group of women were sexually violated in the El Mozote hamlet on December 11, 1981, prior to their extrajudicial execution.

IACHR, [Report No. 86/10. Case 12.649. Merits. Río Negro Community of the Mayan Indigenous People and its Members \(Río Negro Massacres\). Guatemala. June 14, 2010.](#)

293. Based on the development of international and regional standards, the Commission considers, as it has done in other cases¹⁷⁵ that rape perpetrated by a state agent will always result in intimidation, humiliation and/or coercion of the victim, among other prohibited aims and purposes identified under international standards relating to torture¹⁷⁶. [...]

295. Finally, the Commission observes that, despite the fact that various testimonies in the framework of the criminal investigation into the Río Negro and Agua Fría massacres refer to sexual violations - a fact also documented by the

¹⁷⁵ IACHR, [Complaint in Case 12.579 Valentina Rosendo Cantú v. Mexico](#) and IACHR, Complaint in Case 12.580 Inés Fernández Ortega v. Mexico.

¹⁷⁶ IACHR, [Complaint in Case 12.579 Valentina Rosendo Cantú v. Mexico](#).

CEH - the domestic court did not conduct an investigation to inquire into the responsibilities related to said violations.

Friendly Settlement Reports

IACHR, [Report No. 92/18. Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.](#)

23. The State recognizes its responsibility [...] for not investigating with due diligence the acts of sexual violence perpetrated against her when she was a minor, taking into account her special state of vulnerability as a girl, Afrodescendent and displaced person in the context of the armed conflict, and therefore causing a state of impunity that affected her and her family with feelings of impotence, fear and insecurity, due to existing stereotypes of discrimination and violence against women during the judicial process; for not preventing the sexual violence perpetrated against her when she was an adult, taking into account the heightened risk due to her role as a female leader and women's rights defender and due to the lack of timely investigation of previous threats.

Thematic reports

IACHR, [Indigenous Women and Their Human Rights in the Americas, OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017.](#)

7. [...] This marginalization and vulnerability of indigenous women is enhanced when States fail to produce comprehensive and disaggregated statistics, and do not properly document the differentiated forms of violence that

affect indigenous women¹⁷⁷. Indigenous women are more likely to suffer acts of physical, psychological, and sexual violence within specific contexts. Violence against indigenous women is a fixture during armed conflicts, during the execution of major development, investment, and extractive projects, the militarization of indigenous lands, and in the context of their work as human rights defenders. Most of these acts are met by no response or a deficient response by State authorities, enabling the path for impunity. Indigenous women also face specific obstacles in attempting to obtain safe, adequate, effective, and culturally appropriate access to justice when their human rights are violated. Most justice systems throughout the hemisphere still lack a gender and ethno-racial perspective in their processing of individual cases, reflected in the scarcity of interpreters, translators, and legal personnel trained and sensitive to the culture and worldview of indigenous peoples.

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

1027. The IACHR observes that lesbian, gay, bisexual, trans and intersex persons have historically been subject to discrimination and violence based on their sexual orientation and gender identity in Colombia; this situation was exacerbated by the armed conflict, as manifested primarily in two aspects: acts of violence (assassinations, attacks, and threats) by armed groups, who turn them into military

¹⁷⁷ UN Women Brazil, UN Special Rapporteur on the Rights of Indigenous Peoples recommends greater documentation of the problems faced by indigenous women in Brazil, March 18, 2016; Cristina Coc, Keynote Address "Dignified Rebellion," Speaking at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism," March 31, 2017; Melanie Newton, Colonialism, History, and the Contemporary, Speaking at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism," St. Augustine University, Trinidad and Tobago, March 31, 2017; Roberta Clarke, Opening Remarks, Indigenous Women in the Caribbean: Voice, Participation and Influence for Sustainable Development, Conference held on October 9-10, 2008, Guyana.

targets, and forced displacement. This situation of discrimination and violence is aggravated by a social and political context in which there is a highly politicized dispute over the recognition of certain rights of LGBTI persons. In addition, the IACHR observes that while there have been gains in state measures to prevent and punish violence against these persons, they have not been effective. Accordingly, one observes that the situation of violence is generalized throughout the country and focused on gay men, trans women, lesbian women, as well as activists and defenders of the human rights of LGBTI persons.

1030. Based on the considerations in this chapter, the IACHR makes the following recommendations to the Colombian State: 1. Adopt the necessary measures to ensure that the rights of LGBTI persons to equality and non-discrimination are respected by the various State authorities and offices. 2. Design and adopt the measures necessary to prevent acts of violence and discrimination against lesbian, gay, bisexual, trans, and intersex persons, to protect them from these abuses, and to act with due diligence when responding to these acts, whether committed by state agents, third persons, or armed groups, throughout the national territory. 3. Adopt the state measures necessary to ensure that effective investigations are undertaken in cases of assassinations and acts of violence against LGBTI persons, including the lines of investigation that make it possible to consider whether they were committed based on the real or perceived sexual orientation, gender identity, or gender expression of the victims. To strengthen the capacity of authorities in charge of investigating and responding to cases of discrimination and violence against LGBTI persons.

IACHR, [Access to Justice for Women Victims of Sexual Violence: Education and Health](#), OEA/Ser.L/V/II. Doc. 65, December 28, 2011

67. The IACHR has pronounced over the state's responsibility to act with due diligence to prevent violations of women's human rights during times of peace and times of conflict. It has noted numerous obstacles of a legislative, institutional, cultural, and geographical nature that impede access to effective justice¹⁷⁸. They include: Deficiencies in the investigation, judgment and sanction of acts of violence and discrimination, which result in a mistrust of the administration of justice; gaps in systems to gather statistics; and the dearth of human and financial resources to address the persisting problems. Furthermore, it is necessary to establish sustainable capacity- building programs for justice officials and to begin programs to sensitize the population and to promote an increase in the submission of complaints. Lastly, the report recognizes weaknesses of the administration of justice in the zones occupied by the armed actors, and the implementation of principles and practices within the penal procedures applicable to violence against women that can challenge women's access to effective judicial protections and guarantee¹⁷⁹.

¹⁷⁸ IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/II.Doc. 67, October 18, 2006, para. 19.

¹⁷⁹ IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, 18 October 2006 para. 19.

IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63 9 December 2011

91. Thus, in its judgment in the Case of the Dos Erres Massacre v. Guatemala¹⁸⁰, the Court held that the failure to investigate serious violations of personal integrity, such as torture and sexual violence committed in the context of armed conflicts and/or as systematic patterns, are a breach of the State's obligations with respect to serious human rights violations.

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, Recommendation No. 3.

Implement and strengthen measures to comply with the duty to act with due diligence to prevent, punish and eradicate violence and discrimination against women, exacerbated by the armed conflict, including concrete efforts to comply with its four obligations: prevention, investigation, punishment and reparation of violations of women's human rights.

Compendiums

IACHR, [Compendium on truth, memory, justice and reparation in transitional contexts](#), OEA/Ser.L/V/II. Doc. 121 12 April 2012

71. When dealing with serious human rights violations, an essential component of due diligence is the contextual investigation, as this makes it possible to establish patterns, modus operandi and patterns of macro-criminality with

¹⁸⁰ I/A Court H.R., [Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs](#), Judgment of November 24, 2009. Series C No. 211, para. 140 and 141.

multiple actors involved. In addition, through the proper conduct of contextual investigations and the implementation of suitable mechanisms of articulation between the different entities involved, it is possible to mainstream gender, ethnic, racial, or other similar approaches, as appropriate [...].

Press Releases

IACHR, Press Release No. 191/2022, [IACHR, CED, and WGEID: States Must Prevent the Adverse Effects Faced by Relatives of Missing Persons and Respond to These from a Gender Perspective](#), August 30, 2022.

Indeed, the search, investigation process and the arduous journey that family members and relatives, especially women, must embark on to defend their rights expose them to a series of adverse social and economic effects, as well as the risk of violence, including sexual violence, forced displacement, disappearance, persecution, and reprisals as a result of their efforts to locate their loved ones. Some of these threats and violence are enacted with the aim of silencing the voices of family members and interrupting the search and investigation. They also function as retaliation for having confronted the perpetrators by defending the victims' rights. These circumstances are compounded by discriminatory practices around access to truth, justice, and reparation such as those experienced by women and LGBTIQ+ persons, who face barriers when filing complaints of enforced disappearance and experience practices that entail revictimization on the part of State institutions. Groups of family members searching for their missing loved ones and civil society organizations have also spoken out against the lack of information and communication with families who wish to take part in search and investigation processes and the fact that they are often not permitted do so.



III. COMPREHENSIVE REPARATION IN TRANSITIONAL JUSTICE CONTEXTS

III. COMPREHENSIVE REPARATION IN TRANSITIONAL JUSTICE CONTEXTS

72. This chapter addresses the main standards developed by the IACHR on reparations in transitional justice contexts, in which societies seek ways to respond to the legacy of gross and systematic human rights violations that occurred in the context of internal armed conflicts, dictatorships, and oppressive and authoritarian regimes of the past. First, some general considerations are made regarding the evolution of the concept of reparation in International Human Rights Law (hereinafter "IHRL"), and some particularities of reparation measures in transitional processes are highlighted. Subsequently, the standards developed by the IACHR in this area in the framework of its different mandates are systematized, following for methodological purposes the following classification: (i) restitution measures; (ii) satisfaction measures; (iii) rehabilitation measures; (iv) justice measures; and (vi) measures of non-repetition. As noted in the previous chapter, this systematization is not exhaustive, but rather seeks to reflect those aspects that the IACHR has highlighted the most, trying as far as possible to maintain a balance between the different mandates and countries.

A. GENERAL CONSIDERATIONS

73. The notion of reparation in IHRL arises from a basic principle of public international law. In the existence of international responsibility of a State generated by its action or omission, two international obligations arise: to make the violation cease, and to make reparation for the damage caused. This notion of reparation has been the result of an evolutionary process in public international law and then in international human rights law that culminated in the recognition of the principle of reparation as an obligation of States,

the purpose of which is to remedy the damage caused to individuals by the violation of their human rights¹⁸¹.

74. The first precedent of reparation in public international law dates back to the Chorzow Factory case decided by the Permanent Court of Justice in 1928. In this case, Poland was ordered to pay compensation to Germany for damages caused to two joint stock companies, resulting from the expropriation of a factory¹⁸². This principle of reparation was later incorporated into the field of IHRL on the understanding that individuals are rights holders and are therefore affected by the breach of international norms of respect and guarantee of human rights, for which reason they must be compensated¹⁸³.
75. The adoption and development of legal principles and rules on reparations for human rights violations has been one of the main contemporary advances of IHRL. In particular, the decisions adopted by the IASHR have played a fundamental role in this process. In this regard, through its various mechanisms, the IACHR has developed guidelines applicable to comprehensive reparation in order to fully guarantee the right of victims to have the damages suffered as a result of human rights violations remedied.
76. According to Inter-American jurisprudence, reparation of the damage caused by the breach of an international obligation requires - whenever possible - full restitution (*restitutio in integrum*), which consists of the reestablishment of the previous situation. In cases where this is not possible, which is the most frequent, a series of measures must be determined to repair the consequences of the

¹⁸¹ IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 122; I.A. Court H.R., [Case of Loayza Tamayo v. Peru](#), Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, para. 84.

¹⁸² Permanent Court of Arbitration. Chorzow Factory Case (Ger. V. Pol.), (1928) P.C.I.J., Mr. A. No.17.

¹⁸³ I/A Court H.R., [Case of La Cantuta v. Peru](#). Judgment of November 29, 2006. Series C No. 162, paras. 199-200.

violation and to establish the payment of economic reparation as compensation for the damage caused¹⁸⁴.

77. In contexts of transitional justice -through which societies seek ways to respond to the legacy of gross and systematic human rights violations- comprehensive reparation also becomes a fundamental pillar in the transitional process, together with the pillars of memory, truth, justice and non-repetition¹⁸⁵. This pillar, in turn, dialogues especially with the different components of comprehensive reparation, in particular with the measures of satisfaction, justice and guarantees of non-repetition.

1. Reparations in transitional contexts

78. The IACHR has reiterated on several occasions that reparations are a fundamental element in transitional justice processes. In particular, it has developed the scope that such reparations should have, pointing out some particular characteristics such as: (i) the obligation to make reparations arises not only with respect to breaches of international criminal law but also with respect to any serious violation of human rights¹⁸⁶; (ii) reparations take place with respect to violations by action or omission of State agents as well as with respect to damages caused by illegal armed groups¹⁸⁷; (iii) reparation must take the form of individual measures, measures of general scope and guarantees of

¹⁸⁴ I/A Court H.R.. [Case of Godínez Cruz v. Honduras](#). Interpretation of the Judgment on Reparations and Costs. Judgment of August 17, 1990. Series C No. 10, para. 27; and [Case of the "White Panel" \(Paniagua Morales et al.\) v. Guatemala](#). Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 76 (available in Spanish).

¹⁸⁵ In this regard, see IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, Oct. 14, 2021, para. 98; IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, Aug. 13, 2014, para. 76, and IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131. Doc. 1, Feb. 19, 2008, para. 12.

¹⁸⁶ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 98.

¹⁸⁷ IACHR, [Annual Report, Chapter IV, Colombia](#), 2009, para. 57.

non-repetition¹⁸⁸; (iv) reparation cannot be confused with humanitarian aid¹⁸⁹; and (v) access to reparations must be guaranteed through an effective judicial remedy for the victims and their family members, expressly offered by the State¹⁹⁰.

79. Similarly, the IACHR has referred to certain specificities in the design and implementation of reparation measures in transitional contexts. In particular, such design and implementation must be differential, preferential, comprehensive and through specialized institutions and personnel¹⁹¹. It should also take into consideration the expectations and participation of the victims and their families¹⁹², as well as other relevant actors -such as civil society¹⁹³. Such participation does not imply, however, that the search for just compensation rests exclusively on the procedural initiative or private contribution of evidence by the victims¹⁹⁴. It is the State that should have a central role and primary

¹⁸⁸ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021, para. 167.

¹⁸⁹ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021, para. 169.

¹⁹⁰ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021, para. 165.

¹⁹¹ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121, 12 April 2021, para. 169, and IACHR. Truth, Justice and Reparation. Fourth Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013, para. 463.

¹⁹² IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports." Brazil](#), 2022, para. 422; IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, Oct. 14, 2021, para. 342, recommendation 11; IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121, 12 April 2021, para. 169, and IACHR. Truth, Justice and Reparation. Fourth Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013, para. 463.

¹⁹³ IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 4.

¹⁹⁴ IACHR. [Principal Guidelines for a Comprehensive Reparations Policy](#). OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 1, and IACHR, [Truth, Justice and Reparations: Fourth Report on the Situation of Human Rights in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 462.

responsibility in guaranteeing victims effective access, under equal conditions, to reparation measures¹⁹⁵.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

98. [...] The IACHR recalls that, in addition to having obligations with respect to violations of international criminal law, the State also has a reinforced duty to guarantee the rights to truth, justice and reparation when serious violations occur, adopting measures of non-repetition¹⁹⁶. [...]

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

530. The Commission is aware of the magnitude of the economic resources needed to deal with comprehensive reparations for victims of human rights violations in Colombia. However, once again, this is a consequence of the State's responsibility for those violations, against the backdrop of an armed conflict that is still ongoing after five decades. The Commission recalls that the State cannot

¹⁹⁵ IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 2.

¹⁹⁶ IACHR, Report 'Right to the Truth in the Americas', August 13, 2014, para. 76.

argue that it does not have the resources to make good on its human rights obligations¹⁹⁷.

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IACHR, [Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in the report entitled Truth, Justice, and Reparation: Sixth Report on the Human Rights Situation in Colombia"](#), 2020.

85. [...] Comprehensive reparation for the victims constitutes a fundamental element in the framework of a process of transitional justice, reconciliation and guarantees of non-repetition. [...].

IACHR, [Annual Report, Chapter IV, Colombia](#), 2009.

57. In its document on Main Guidelines for a Comprehensive Reparations Policy, made public in February 2008¹⁹⁸ the IACHR states, inter alia, that the reparations policy should ensure the right of victims to comprehensive reparations for the harm caused both by illegal armed groups and by the action or omission of State agents, based on measures of restitution, compensation, rehabilitation and satisfaction.

¹⁹⁷ The Inter-American Court has repeatedly indicated that States cannot invoke economic limitations to justify detention conditions that do not comply with the minimum international standards in this area and do not respect the dignity of the human being. See, I/A Court H.R., Case of Montero Aranguren. Case of Montero Aranguren et al (Catia Detention Center) v. Venezuela. Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 85 and 87; Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 88, and I/A Court H.R., Case of Vélez Loor v. Barbados. Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010, Series C No. 218, para. 198.

¹⁹⁸ IACHR [Main Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008

IACHR, [Annual Report, Chapter IV, Colombia, 2008.](#)

53. [...] The IACHR, through its Rapporteur for Colombia, expressed its concern to the authorities regarding the difference in treatment between the victims of illegal acts perpetrated by illegal groups outside the law and those perpetrated by State agents, a difference that could be discriminatory.

Compendiums

IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021.

165. International human rights law has recognized different rights of individuals as victims of unlawful acts, including those related to reparation measures¹⁹⁹. In this sense, States must recognize the right of victims to obtain appropriate reparation for such violations and expressly offer victims of human rights violations an effective judicial remedy to access it [...]. Likewise, the State has the unavoidable duty to make reparations for those human rights violations for which it is responsible²⁰⁰. In this regard, the organs of the Inter-American System have historically pointed out that, by virtue of the provisions of Article 63(1) of the ACHR, any violation of an international obligation that has caused damages entails the duty to make adequate reparation to each victim.

¹⁹⁹ I/A Court H.R. Case of García Lucero and others v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267. Para. 183.

²⁰⁰ I.A. Court H.R.. Case of the La Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 198.

167. Specifically in transitional contexts, the jurisprudence of the Inter-American System has established on several occasions that the victims of serious human rights violations have the right to adequate reparation for the harm suffered, which must take the form of individual measures aimed at restitution, compensation, and rehabilitation of the victim or his or her family members, as well as measures of satisfaction of particular or general scope and guarantees of non-repetition [...] ²⁰¹.

169. Likewise, the Commission has held that the principle that should guide the implementation of reparations for human rights violations is that of effectiveness, both in the sense of achieving full compliance with the measure, as well as taking due account of the needs of the beneficiaries. The Commission considers that the design and execution of reparation measures must be differential, preferential, comprehensive, through specialized institutions and personnel, and taking into consideration the expectations and participation of the victims in their implementation. Likewise, the IACHR has indicated that serious human rights violations and breaches of IHL entitle victims to reparation, and that this cannot be confused with humanitarian aid or the satisfaction of other needs.

²⁰¹ IACHR. Truth, Justice and Reparation. Fourth report on the situation of human rights in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 462. Citing: See, inter alia, IACHR, Main guidelines for a comprehensive reparations policy, OEA/Ser.L/V/II.131, Doc. 1, February 19, 2008; I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Judgment of November 25, 2003. Series C No. 101, paras. 236- 237; Case of Caracazo v. Venezuela. Reparations (art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, paras. 77-78; Case of Blake v. Guatemala. Reparations (art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, paras. 31-32.

Practical Guides, Guidelines and other Directives

IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

1. The IACHR [...] has reiterated that the jurisprudence of the Inter-American System has established on various occasions that the victims of serious violations perpetrated during the armed conflict have the right to adequate reparation for the harm suffered, which must be made concrete through individual measures aimed at restitution, compensation and rehabilitation of the victim, as well as general measures of satisfaction and guarantees of non-repetition²⁰². The Inter-American Court of Human Rights has established that "in cases of human rights violations, the duty to make reparations is the State's own, and therefore, although the victims or their family members must have ample opportunities to seek just compensation under domestic law, this duty cannot rest exclusively on their procedural initiative or on the private provision of evidence"²⁰³. Reparations must consist of measures aimed at eliminating the effects of the violations committed, and their nature and amount will depend on the material and

²⁰² See I/A Court H.R., Judgment of November 25, 2003, paras. 236-237, Myrna Mack Chang Case, Judgment of November 25, 2003, paras. 236-237; Caracazo Case, Reparations (Article 63(1) American Convention on Human Rights), Judgment of August 29, 2002, Series C N° 95, paras. 77-78; Blake Case, Reparations (Article 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C N° 48, paras. 31-32; Suárez Rosero Case, Reparations (Article 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C N° 48, paras. 31-32; Suárez Rosero Case, Reparations (Article 63.1 American Convention on Human Rights), Judgment of 20 January 1999, Series C No. 44, para. 41; Castillo Páez Case, Reparations (Article 63(1) American Convention on Human Rights), Judgment of 27 November 1998, Series C No. 43, para. 53. See also IACHR, Pronouncement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in the Republic of Colombia. OEA/Ser. L/V/II 125 Doc. 15, August 1, 2006, para. 48.

²⁰³ IACHR. Report on the implementation of the Justice and Peace Law: initial stages of the demobilization process of the AUC and first judicial proceedings. OEA/Ser. L/V/II 129 Doc. 6, October 2, 2007, para. 97. See also I/A Court H.R., Case of the Rochela Massacre, Judgment on the Merits and Reparations, May 11, 2007. Series C No. 163, para. 220.

non-material damage caused. Reparations cannot imply either enrichment or impoverishment for the victim or his or her successors²⁰⁴.

2. The IACHR understands that beyond the established legal system, the State has a central role and a primary responsibility in guaranteeing victims of gross violations of international human rights law and serious violations of international humanitarian law²⁰⁵ an effective and equal access to reparation measures, in accordance with the standards of international human rights law. In no way can the victims' access to reparation be subject exclusively to the determination of criminal responsibility of the perpetrators, nor to the prior execution of their personal assets, legal or illegal²⁰⁶.

2. Right to integral reparation and strengthening of peace

80. One of the aspects that transitional processes often face is the alleged tension between peace and justice. In this regard, the Commission has considered that what exists between the two is an interdependence and not a clash of values. In this sense, it has pointed out on several occasions that the durability of peace is linked to the non-repetition of serious human rights violations and therefore

²⁰⁴ IACHR. Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia. OEA/Ser. L/V/II 125 Doc. 15, August 1, 2006, para. 48.

²⁰⁵ In light of 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. Resolution 60/147, adopted by the United Nations General Assembly on 16 December 2005. E/CN.4/Sub.2/1996/17.

²⁰⁶ IACHR. Report on the implementation of the Justice and Peace Law: initial stages of the demobilization process of the AUC and first judicial proceedings. OEA/Ser. L/V/II 129 Doc. 6, October 2, 2007, para. 98.

to the reparation of the consequences of violence²⁰⁷. Far from hindering peace, such reparations are a basic pillar of its strength, since peacebuilding is inextricably linked to the investigation, prosecution and reparation of human rights violations²⁰⁸. Thus, for the IACHR, overcoming impunity is an indispensable element for achieving justice and avoiding the repetition of the events that gave rise to the violations²⁰⁹. Likewise, in cases of internal armed conflicts, the Commission has emphasized the need to employ effective negotiation mechanisms to deactivate the actors in the conflict and put an end to the violence²¹⁰.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

1204. [...] As long ago as 1990, the Commission said that forging peace was indissolubly linked to investigating, judging, and making reparations for human rights violations, especially those committed by state agents or by those relying on their support or acquiescence. The search for an authentic peace should be grounded in the observance of human rights. The rule of law should provide the formulas for making a determination as to the truth, to try those who

²⁰⁷ IACHR, Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia, OEA/Ser/L/V/II.12, August 1, 2006, and IACHR, [Annual Report, Chapter IV, Colombia](#), 2006, para. 47.

²⁰⁸ IACHR, [Annual Report, Chapter IV, Colombia](#), 2009, para. 114.

²⁰⁹ IACHR, Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia," 2014, para. 13.

²¹⁰ IACHR, Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia, OEA/Ser/L/V/II.12, August 1, 2006.

violate the laws in force and make reparation to the victims [...].

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IACHR, [Annual Report, Chapter IV, Colombia, 2009.](#)

114. [...] The IACHR has stated that "the establishment of the truth of what happened, the serious search for a measure of justice by determining the responsibility of the perpetrators vis-à-vis the victims, and reparations for the damage caused, far from hindering agreements that may contribute to pacification, constitute basic pillars of its strength"²¹¹ .

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia", 2014.](#)

13. In this framework ("Legal Framework for Peace"), the Commission reiterated, first, that overcoming impunity is an indispensable element for achieving justice and avoiding the repetition of human rights violations. Secondly, in any transitional justice framework, a component for the establishment of a lasting peace is that it be applied as a system of useful incentives for truth, justice and reparations for victims, and that in the design of normative mechanisms, the international obligations of the State to guarantee these components must be fully observed in their application and scope. Third, the Commission reiterated to the State that it is

²¹¹ IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser.L/V/II.120, Doc. 60, Dec. 13, 2004, pp. 10-20; IACHR Statement on the Approval of the Justice and Peace Law in Colombia, Press Release, No. 26/05, July 15, 2005. Preliminary Observations of the Inter-American Commission on Human Rights following the visit of the Rapporteur on the Rights of Afro-descendants and against Racial Discrimination to the Republic of Colombia, March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, para. 101.

essential that the peace agreements and the transitional justice provisions that pave the way for the transition of Colombian society towards a stable and lasting peace be developed in harmony with these obligations and offer real possibilities for compliance.

IACHR, [Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in Colombia](#), OEA/Ser/L/V/II.12, August 1, 2006.

1. The Inter-American Commission on Human Rights (IACHR) has on numerous occasions emphasized the need to employ effective negotiation mechanisms in order to deactivate the actors in the armed conflict and put an end to the violence that has affected the inhabitants of the Republic of Colombia for the past four decades. The Commission has also pointed out that the durability of peace is linked to the non-repetition of crimes under international law, human rights violations and serious breaches of international humanitarian law and, therefore, to the clarification and reparation of the consequences of the violence through mechanisms capable of establishing the truth of what happened, administering justice and making reparations to the victims of the conflict.

3. Transformative vocation and differentiated, intersectional approaches

81. In situations of discrimination and structural violence, the IACHR has pointed out that reparation measures that are only restitutive in nature are considered insufficient, given that they would be restoring the victims and affected communities to the situation that gave rise to the human rights violations of which they were victims. In order to correct the situation of discrimination and marginalization, corrective measures must be adopted that have a

transformative vocation²¹². In this sense, the IACHR has indicated that "a merely restorative approach to reparations does not address structural factors and, therefore, does not guarantee that human rights violations will not recur²¹³".

82. In contexts of transitional justice, the IACHR considers that in order for there to be an effective transition to a democratic regime and the rule of law, States must adopt a public policy of reparation with particular emphasis on measures of a transformative nature that correct the root causes of the conflict, as well as the situation of discrimination and exclusion that caused certain groups to suffer differentiated and disproportionate impacts under dictatorships and oppressive and authoritarian regimes. In such contexts, the Commission has pronounced in particular on the transformative vocation of reparation, and has referred that it is inadmissible that a reparation seeks "a restitution to the same structural situation of violence and discrimination²¹⁴".

83. As will be presented below -through its various mechanisms- the IACHR has reiterated the differentiated and disproportionate impact that armed conflicts and other contexts of serious violations have on certain groups that have historically suffered structural discrimination and exclusion. This places these populations in situations of greater violence and causes them greater difficulties in exercising and enjoying their rights. In these contexts, the IACHR has analyzed the situation of, among others, women, LGBTI persons, children and

²¹² IACHR, [National Mechanisms for the Implementation of Human Rights Recommendations](#), OEA/Ser.L/V/II. Doc. 8/23, Feb. 26, 2023, para. 75 (available in Spanish); IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 167, and IACHR, [Compendium on Equality and Non-Discrimination. Inter-American Standards](#), OEA/Ser.L/V/II.171 Doc. 31, February 12, 2019, para. 45. The concept of "transformative reparation" was first addressed in the *Campo Algodonero v. Mexico* case. See: I/A Court H.R. Case of Gonzales et al. ("Campo Algodonero") v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009, Series C No. 205, para. 450.

²¹³ IACHR, *Indigenous Women and Their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 167.

²¹⁴ IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 462.

adolescents, indigenous peoples, Afro-descendants, human rights defenders, the elderly and persons with disabilities.

84. Likewise, the already existing situation of discrimination and violence against these populations is aggravated and deepened in the face of additional factors of discrimination²¹⁵. Among other situations, the Commission has addressed: (i) the special risk faced by these populations in cases of forced displacement²¹⁶ ; (ii) the greater vulnerability of Afro-descendant or indigenous children and adolescents in contexts of violence as victims of other indirect consequences of the conflict²¹⁷ ; (iii) the special violence against Afro-descendant LGBT persons²¹⁸ , and (iv) the additional forms of discrimination and greater exposure to violence faced by defenders who represent an indigenous or Afro-descendant leadership²¹⁹ .
85. In this regard, the IACHR has emphasized the obligation of States to take into account differentiated and intersectional reparation criteria with respect to these groups. According to the IACHR, a

²¹⁵ Regarding the situation of poverty and extreme poverty faced by these populations in contexts of armed conflict, see: IACHR, Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 296; IACHR, Economic, Social, Cultural and Environmental Rights of People of African Descent Inter-American Standards for the Prevention, Combating and Eradication of Structural Racial Discrimination, OEA/Ser.L/V/II. Doc. 109, 16 March 2021, para. 91, and IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, 31 December 2013, para. 713.

²¹⁶ See, e.g., IACHR, Internal Displacement in the Northern Triangle of Central America: Guidelines for the Formulation of Public Policies, OEA/Ser.L/V/II. Doc. 101, July 27, 2018, paras. 87-88; IACHR, Indigenous Women and Their Human Rights in the Americas, OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 88; IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, paras. 585 and 1011, and IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, para. 29.

²¹⁷ See, for example: IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, paras. 670 and 713.

²¹⁸ IACHR, Report Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas', OAS/Ser.L/V/II.rev.2 Doc. 36, 12 November 2015, para. 279.

²¹⁹ IACHR, [Resolution 111/21, MC 1113-21 - Abencio Caicedo Caicedo and Edinson Valencia García](#), Colombia, December 31, 2021; IACHR, [Resolution 80/21, MC 491-21 - S.G.R.Q. and his nuclear family](#), Colombia, October 4, 2021; and IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 57.

differentiated approach implies considering the particular conditions of vulnerability and the factors that may increase the risk of acts of violence and discrimination in certain contexts, such as race, ethnicity, age, sexual orientation, gender identity and expression, and disability. Likewise, the IACHR has highlighted the importance of taking into account the frequent intersectionality of these factors, which, as indicated above, can accentuate this situation of risk²²⁰. In transitional justice contexts, the IACHR has also called for the application of differentiated and intersectional treatment²²¹.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

462. [...] In addition, in a context of structural discrimination, “reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable”²²².

532. Based on the observations in this section, the Commission is recommending that the Colombian State:

²²⁰ IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II.163 Doc. 105, July 3, 2017, para. 215.

²²¹ IACHR, Right to Truth in the Americas, OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 126; IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 532, and IACHR, Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser.L/V/II. Doc. 67, 18 October 2006, para. 236.

²²² I.A. Court H.R.. Case of González et al. (“Campo Algodonero”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450.

[...] 3. Guarantee, in practice, the implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afrodescendant persons, lesbian, gay, trans, bisexual and intersex persons, defenders of human rights, among others.

580. Through the use of its various mechanisms and during the visit, the Commission has been able to verify that the internal displacement has had a disproportionate impact on women, especially women heads of household, pregnant women and women who have been victims of various forms of violence; children and adolescents; older people; peasant farmers; ethnic groups such as indigenous peoples; black, Afro-Colombian, raizales and palenqueros communities; persons with disabilities and LGBTI persons²²³. The Commission observes that because of the particular characteristics of these groups and the historical discrimination and exclusion they have suffered, forced displacement leaves these groups in a particularly vulnerable situation.

1011. In addition to the threats, situations of violence, and assassinations by armed groups directed against LGBTI persons in the context of the armed conflict, another aspect of the intersection of armed conflict and non-normative sexual orientations and gender identities is the forced displacement of LGBTI persons [...].

²²³ See, among others, Consultancy for Human Rights and Displacement, *Growing Displacement and Invisibilized Humanitarian Situation*,¹¹ Bulletin 79 (March, 2012), p. 2; Colombian Commission of Jurists, *Colombia: Still Waiting for the Hour of Human Rights Report on the Situation of Human Rights and Humanitarian Law 2010-2012*, p. 25; IACHR, *Women in the Face of Violence and Discrimination Arising from the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 18 October 2006, para. 70.

Thematic reports

IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

126. Specifically, the Court has ordered the following measures: [leading to the fulfillment of the right to truth as a reparation measure]:

[...]

(xiv) “take differentiated impacts into account”

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006

236 [...] In this context, it is indispensable that the State respects the rights of women, as well as those of other vulnerable groups in the clarification and sanction of acts of violence and discrimination that have occurred, as well as the adequate reparation of the harm done, through individual measures of restitution, indemnity and rehabilitation.

Practical Guides, Guidelines and other Directives

IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser.L/V/II.131, Doc. 1, February 19, 2008.

13. The IACHR has indicated that it is essential that the State respect the rights of groups at greater risk of human rights violations -such as women, children, indigenous peoples, Afro-Colombian communities, social leaders and

human rights defenders²²⁴ in the clarification and punishment of the acts of violence and discrimination that have occurred, as well as the right to adequate reparation for the harm caused, through individual measures of restitution, compensation and rehabilitation²²⁵ [...].

15. Regarding the reparation of victims of other groups exposed to greater risk of human rights violations, such as indigenous peoples and Afro-descendant communities, the State should also take into account differentiated reparation criteria that include recognition and respect for their identity and culture, recognition and respect for their territories, and the participation of their authorities in all decisions that affect them²²⁶. In this sense, the importance of including their traditional authorities in the consultation process is reiterated.

17. Likewise, the IACHR considers that it is important that the administrative reparations program take into account reparation criteria for victims displaced as a result of the violent actions of illegal armed groups²²⁷. In this regard, the Inter-American Court of Human Rights has established that due to the complexity of the phenomenon of internal

²²⁴ The IACHR has identified women, children, indigenous peoples, and Afro-Colombian communities, as well as social leaders and organizations that defend their rights, as groups most at risk of human rights violations. IACHR, *Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia* OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 1.

²²⁵ IACHR. *Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia* OEA/Ser.L/V/II. Doc. 67 October 18, 2006. para. 236.

²²⁶ I/A Court H.R., *Plan de Sánchez Massacre Case. Reparations*. Judgment of November 19, 2004. Series C No. 116, paras. 60-111. I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paras. 168 to 218. I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001 Series C No. 79, paras. 162-172. I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, paras. 179 to 227. I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, paras. 195 to 247. I/A Court H.R., *Case of the Saramaka People*. Judgment of November 28, 2007. Series C No. 172, paras. 186 to 202.

²²⁷ In the light of Principle 29 of the United Nations Guiding Principles on Internal Displacement of 11 February 1998. E/CN.4/1998/53/Add.2.

displacement and the wide range of human rights it affects or puts at risk, and in view of the circumstances of special vulnerability and defenselessness in which displaced persons generally find themselves, their situation can be understood as a de facto condition of unprotection. Under the terms of the American Convention, this situation obliges States to grant preferential treatment in their favor and to adopt positive measures to reverse the effects of their condition of weakness, vulnerability and defenselessness²²⁸.

4. Participation of victims, family members and society in general

86. On numerous occasions, the IACHR has reiterated the need for the State, in transitional contexts, to provide opportunities for victims to participate in decisions regarding the design and implementation of reparation mechanisms and policies²²⁹. Among other aspects, this participation: (i) allows the needs of the affected persons and communities to be known, (ii) constitutes a prerequisite for the legitimacy of the measures adopted, (iii) guarantees their effectiveness, and (iv) recovers the confidence of the citizenry in State institutions, one of the main objectives of transitional justice mechanisms²³⁰. The IACHR has also stressed that the implementation of reparations must be accompanied by a commitment to social solidarity with the victims²³¹.

²²⁸ I/A Court H.R., Case of the Ituango Massacres. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 210.

²²⁹ See, for example, IACHR, Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, Oct. 14, 2021, para. 342, recommendation 11; IACHR, Truth, Justice and Reparations: Fourth Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II Doc. 49/13, Dec. 31, 2013, para. 506; IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser.L/V/II.131.Doc. 1, February 19, 2008, para. 13; and IACHR, Annual Report, Chapter IV, Colombia, 2006, para. 20.

²³⁰ IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 506.

²³¹ IACHR, Annual Report, Chapter IV, Colombia, 2009, para. 63.

87. On the other hand, the IACHR has indicated what such participation should look like. The IACHR has reiterated the need to ensure that the voice, concerns and priorities of women are integrated into the public agenda in order to achieve the development and maintenance of an institutional and political environment that makes it possible to assess the general and specific risks of the various forms of gender-based violence and contribute to reducing them. In this regard, it has emphasized that it is not enough to create mechanisms for consultation and deliberation, but that participation must be effective, for which purpose the contributions emanating from these mechanisms must be incorporated into the public reparations policies adopted²³². In addition, reparations must be the result of an open and transparent process of dialogue and prior consultation with civil society, which allows for legitimizing and guaranteeing the continuity, irreversibility, and institutionalization of public reparations policies²³³. In other words, opportunities must be provided for full and active participation in the elaboration, planning, and execution of initiatives, programs, laws, and policies that are aimed at or have an impact on the prevention, investigation, punishment, and reparation of acts of violence and discrimination perpetrated against the affected persons and communities.

²³² IACHR, Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports," Colombia, 2021, para. 146.

²³³ IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 4.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 342.

Recommendation 11. Create spaces to hear the victims of the internal armed conflict, allowing them to express their needs with regard to different state services on the matters of truth, memory, justice, and reparation for serious human rights violations.

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

506. Thirdly, the Commission must underscore the fact that the victims' participation is not only a guarantee of the legitimacy of the reparation measures adopted by the State, but also an essential element to ensure their efficacy and regain the confidence of the citizenry, one of the main goals of transitional justice mechanisms.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV, Colombia](#), 2009.

63. [...] Likewise, the implementation of a reparations program established by law must be accompanied by a commitment of social solidarity on the part of Colombian society with the victims of the conflict, which would be facilitated by mechanisms for consultation, follow-up, and evaluation that would provide stability and sustained validity over time. [...]

IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports", Colombia, 2021.](#)

146. The Commission [...] emphasizes the notion of effective participation, which goes beyond the creation of mechanisms for consultation and deliberation, and includes the incorporation of the contributions that emanate from these mechanisms in the decision-making process of the different public policy cycles. In this sense, the IACHR considers it important to continue to follow up on this recommendation [...].

Practical Guides, Guidelines and other Directives

IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

4. The administrative reparations program to be implemented by the State must necessarily reflect the result of an open and transparent process of dialogue and prior consultation with civil society and the State institutions involved, which legitimizes and guarantees the continuity, irreversibility and institutionality of said policy. In this sense, the IACHR understands that it is necessary for the comprehensive reparations program to function as a State policy that gives it stability and sustained validity over time. The implementation of a comprehensive reparations program such as the one proposed requires a commitment of social solidarity on the part of Colombian society with the victims of the conflict, which would be facilitated by a broad and thorough prior consultation process.

13. [...]The IACHR has also noted that the State must provide opportunities for victims to participate in decisions regarding the implementation of reparation mechanisms and policies²³⁴. In this sense, the suggested consultation process could serve as a propitious environment for victims and their representatives to present their points of view and inform the State of their specific needs. This will contribute to provide greater relevance and rationality to reparation policies, and will avoid actions that may be discriminatory.

IACHR, [Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia](#), OEA/Ser/L/V/II.12, August 1, 2006.

35. [...] The IACHR observes that the participation of the victims in the different procedural stages is a guarantee of the right to truth and justice, forms part of the complex structure of weights and counterweights of the criminal process, and favors citizen oversight of the actions of the State.

B. TYPES OF REPAIRS

88. For methodological purposes, and in accordance with the categories of reparations usually used in the Inter-American System, this section addresses six types of reparations: (i) restitution measures; (ii) compensation measures; (iii) rehabilitation measures; (iii) satisfaction measures; (iv) justice measures; and (vi) measures of non-repetition. Each section begins with a brief description of the measure and an analysis of the specific aspects applicable to transitional justice contexts. Subsequently, a series of standards and pronouncements issued by the IACHR in the framework of its different mandates in transitional contexts are systematized.

²³⁴ IACHR, Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia OEA/Ser.L/V/II. Doc. 67, October 18, 2006, recommendation 63.

1. Restitution measures

89. Restitution measures, as classic forms of reparation, are intended to reestablish the condition or situation in which the victims were before the violations of their rights were perpetrated. Depending on the nature of the violations, the adoption of restitution measures in the exercise of rights may be manifested through the termination or cessation of the activity or conduct violating the rights of the victims, and/or through other actions aimed at returning things to the state they were in before the events occurred²³⁵.

90. According to the IACHR, restitution measures apply²³⁶ :

[...] when the nature of the facts that gave rise to the violation makes it materially feasible and to the greatest extent possible. However, the adoption of these measures is especially limited in situations of an irreversible nature, such as in cases of extrajudicial execution, torture or sexual violence²³⁷ . According to the guidelines established within the IASHR, in cases where it is not possible to adopt restitution measures, other forms of reparation are particularly important, such as compensation or structural reparation measures, in accordance with the nature of the human rights violations and the harm caused to the victims²³⁸.

²³⁵ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 21.

²³⁶ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121 12 April 2021, para. 167.

²³⁷ IACHR. General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights. OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 21.

²³⁸ I.A. Court H.R.. Case of Blake v. Guatemala. Reparations and Costs. Judgment of January 22, 1999. Series C No. 48, para. 42.

91. Likewise, in accordance with the notion of integral reparation, the adoption of these types of measures must be complementary to other actions tending to remedy the damages caused²³⁹. There are cases in which restitution measures, although possible and necessary, are insufficient to achieve full reparation of the harm caused. For example, in cases of deprivation of liberty in which the victims have suffered cruel, inhuman or degrading treatment during their incarceration, the restitution of their liberty -although necessary- is not sufficient to make full reparation, so States must adopt additional and alternative measures aimed at remedying all the harm caused²⁴⁰.
92. In transitional contexts, some examples of restitution measures recommended by the IACHR are: (i) the restoration of the liberty of persons illegally or arbitrarily deprived of their liberty, which is equivalent to their immediate release²⁴¹; (ii) the review, annulment or cessation of effects of judicial sentences emanating from irregular processes²⁴²; (iii) the return to their place of origin of persons forcibly displaced as a consequence of acts or situations of violence²⁴³; (iv) the return, titling and demarcation of lands to protect communal property on ancestral territories²⁴⁴; (v) the restitution of identity in cases in which the victim was disappeared

²³⁹ I/A Court H.R., Case of Loayza Tamayo v. Peru. Reparations and Costs. [Judgment of November 27 1998](#). Series C No. 42, para. 123 and 124.

²⁴⁰ I/A Court H.R., Case of Loayza Tamayo v. Peru. Case of Loayza Tamayo v. Peru. Compliance with Judgment. Judgment of November 17, 1999. Series C No. 60, paras. 123 and 124.

²⁴¹ *Application before the Inter-American Court of Human Rights against the Republic of Peru*. [Case 11.337](#) (Luis Alberto Cantoral Benavides). August 8, 1996 (available in Spanish).

²⁴² *Application before the Inter-American Court of Human Rights in the case of María Teresa de la Cruz Flores* ([Case 12.138](#)) against the Republic of Peru. June 11, 2003 (available in Spanish).

²⁴³ IACHR. [Report No. 170/17](#) Case 11.227 Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017 (available in Spanish).

²⁴⁴ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/III Doc. 49/13, December 31, 2013.

and his or her identity supplanted as a child²⁴⁵ ; and (vi) the restitution of employment and benefit rights²⁴⁶.

93. The restitution measures that the IACHR has mentioned most frequently in reports and cases related to transitional justice contexts are grouped into three categories.

1.1. Return of displaced persons or refugees and land restitution

94. One of the situations faced by countries with transitional contexts is the existence of populations that had to be internally displaced or take refuge in other countries as a result of violence. Faced with this reality, States must take measures to generate the necessary conditions to allow these individuals and communities to return to their place of origin and recover their properties and lands -both individual and collective. Likewise, the IACHR has indicated that the victims of forced intra-urban displacement must be taken into account as affected persons, whose rights must also be restored²⁴⁷ .

95. In this regard, the standards developed by the IACHR on how such return and/or restitution should be carried out consist of the following: (i) it must be carried out in a safe manner, so States must ensure that adequate security conditions exist for the return²⁴⁸ ; (ii) it must be equipped with agile and effective mechanisms to ensure

²⁴⁵ Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay. January 21, 2010 (available in Spanish).

²⁴⁶ Application before the Inter-American Court of Human Rights in the case of María Teresa de la Cruz Flores ([Case 12.138](#)) against the Republic of Peru. June 11, 2003 (available in Spanish).

²⁴⁷ IACHR, Annual Report, [Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia,"](#) 2014, para. 134.

²⁴⁸ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia,](#) OEA/Ser.LV/II Doc. 49/13, December 31, 2013, para. 579.

the restitution of lands²⁴⁹; (iii) it must have monitoring and accompaniment schemes or mechanisms after the restitution²⁵⁰ ; and (iv) they must establish effective indicators to evaluate the implementation of the returns²⁵¹ . Among other issues, the IACHR has also established obligations regarding access to education, health, water, infrastructure, as well as the duty to ensure that persons who so require can obtain identity documents²⁵².

96. From an intersectional perspective, the IACHR has also ruled on displaced indigenous peoples returning to their ancestral territories in transitional contexts. In this regard, it has established the need to apply a differentiated approach in policies for the prevention and protection of displacement²⁵³ . In addition, the Commission has called for respect for their traditional forms of participation and organization upon return, and to ensure the effective restitution of the traditional use and exploitation of the territory²⁵⁴ . Similarly, the IACHR has urged States to address the impact and specific needs of LGBTI persons in the adoption of measures aimed at assisting this population in a situation of displacement²⁵⁵ .

²⁴⁹ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 471.

²⁵⁰ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 579.

²⁵¹ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 579.

²⁵² IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev., April 6, 2001, paras. 3 and 42, recommendations 1, 7, 8 and 9.

²⁵³ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 589, recommendation 2.

²⁵⁴ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 859, recommendation 18.

²⁵⁵ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 1030, recommendation 7.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 170/17](#) Case 11.227. Merits. *Members and Militants of the Patriotic Union. Colombia. December 6, 2017* (available in Spanish).

1605. Based on the above conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE COLOMBIAN STATE,

1.3 [...]If appropriate, the State shall ensure conditions for victims who wish to return to the places from which they were displaced or exiled to do so safely.

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IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

471. [...] The IACHR also pointed out that a bill of this type [draft law "whereby measures for the protection of victims of violence are enacted]" should contemplate the effects of the conflict on the ownership and possession of individual and collective territories, and aim at the creation of agile and effective mechanisms to ensure the restitution of land to the victims of dispossession.

579. [...] The Commission observes that the land claimants and the leaders of the restitution processes are in a special situation of risk, for which reason the State must adequately evaluate each specific situation, provide the most appropriate security measures and generate monitoring and accompaniment mechanisms after the restitution, as well as establish effective indicators to evaluate the implementation

of the returns [...]. The Commission considers it important for the State to recognize the role of verification processes aimed at verifying that adequate security conditions exist in these cases. In this sense, it considers that the State should continue to deepen its efforts and the measures adopted to address the risk situation faced by the displaced population in the return process.

589. By virtue of what has been indicated in this section, the Commission recommends to the State of Colombia that:

2. Implement appropriate measures to guarantee the protection and security of persons returning to the territories from which they were displaced, including the demining of the territories. Likewise, apply the differential approach in policies for the prevention and protection of displaced persons.

859. [...] in order to contribute to the protection and effective enjoyment of the individual and collective rights of the indigenous peoples in Colombia, the IACHR recommends to the Colombian State:

18. Implement decisive actions for the return of displaced indigenous peoples, communities and families, through a process that ensures respect for traditional forms of participation and organization; the security and especially the protection of traditional authorities, indigenous leaders; and the legal and material tenure of the territory so as to allow the effective restitution of the traditional use and exploitation of the territory and its management by the indigenous authorities.

IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

42. Based on the foregoing analysis and conclusions, the Commission offers the following recommendations to assist in this process; specifically, that the State:

Allocate to the public institutions responsible for implementing aspects of the Resettlement Agreement the human and material resources necessary for the effective fulfillment of their mandates, and, in particular, strengthen the Technical Commission created to coordinate and facilitate the provisions of the Agreement.

7. Pay special attention to expanding the coverage and improving the content of education and health services for this population, continue to prioritize the need for primary education and health care, and the need for bilingual education in indigenous communities.

8. Provide additional resources for the creation of basic infrastructure, so that all communities have access, at a minimum, to potable water and sanitation facilities sufficient for health protection, and to improve housing assistance, as well as the construction of access roads, electricity and communications infrastructure.

9. Adopt the necessary legislative and other measures to extend the validity of the Special Temporary Law on Personal Documentation, and intensify the efforts being made within the framework of the National Plan for Personal Documentation, in order to ensure that all members of the population uprooted by the conflict can obtain identity documents.

Chapters of IACHR Annual Reports

IACHR, Annual Report, [Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia"](#), 2014.

134. [...] the State must build lasting solutions aimed at the restitution of the rights of the victims, as well as at supporting the reconstruction of their life project. The Commission considers that the victims of forced intra-urban displacement must be taken into account within the peace process, in order to have coherent agreements regarding comprehensive reparations for all victims of the internal armed conflict

1.2. Restitution of identity

97. Within the framework of armed conflicts and clandestine repressive operations during the dictatorships, children were abducted and appropriated after their parents were disappeared or executed. In the case of the Southern Cone dictatorships, this practice also acquired a transnational dimension, involving two or more countries in the framework of repressive coordination²⁵⁶.
98. Although the right to identity is not expressly contemplated in the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration") or in the American Convention on Human Rights (hereinafter "Convention" or "ACHR"), it has been developed in inter-American jurisprudence based, among others, on the rights

²⁵⁶ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019; and Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) v. Oriental Republic of Uruguay. January 21, 2010 (available in Spanish).

to nationality, to a name and to a family²⁵⁷. Thus, this right has been conceptualized as "the set of attributes and characteristics that allow the individualization of the person in society and, in this sense, includes several other rights depending on the subject of rights in question and the circumstances of the case".²⁵⁸

99. As a measure to restore the right to identity and also as a guarantee of non-repetition, the IACHR has recommended that States restore the identity of children who disappeared during the dictatorships²⁵⁹ and make the necessary efforts to ensure family reunification²⁶⁰. Likewise, taking into account the transnational dimension of this phenomenon, the IACHR has referred to reciprocal assistance between States in the identification, location and return of these children²⁶¹.

²⁵⁷ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019, para. 137; and I.A. Court H.R.. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 122.

²⁵⁸ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019, para. 137; and I.A. Court H.R.. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 137.

²⁵⁹ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 119; IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas Family. Argentina. May 4, 2019, para. 137; and I.A. Court H.R.. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 204, recommendation 5, and Application before the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 261 (available in Spanish).

²⁶⁰ Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras et al. ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 261 (available in Spanish).

²⁶¹ Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay. January 21, 2010, para. 116 (available in Spanish).

Cases submitted to the I/A Court H.R.

IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF ARGENTINA,

5. To adopt necessary measures of non-repetition to prevent similar incidents from taking place in the future. The measures of non-repetition in the instant case [...] should also include measures to continue to make the necessary efforts to ensure that investigations into crimes against humanity committed during the dictatorship move forward as quickly as possible and in accordance with the State's international obligations, and to re-establish the identity of children who disappeared during the dictatorship.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others ([Case 12.517](#)) against the Republic of El Salvador. June 28, 2010 (available in Spanish).

Articles 18 and 19 of the American Convention incorporate a right to identity and, in this sense, the total or partial suppression or modification of a child's right to preserve his or her identity and the elements that comprise it may engage the responsibility of the State. Likewise, in accordance with the obligations of Article 1(1) of the Convention, once the identity has been suppressed or modified, it is the duty of the State to seek its reestablishment and to carry out a complete, impartial and effective investigation to identify and, if necessary, punish those responsible.

261. Due to the nature of the instant case, the Commission requests the Court to order the State of El Salvador to conduct an impartial, diligent and effective investigation into the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera. In case they are found, to order the reestablishment of their right to identity and to make the necessary efforts to ensure family reunification. In the event that it is established that some of them are not alive, take the necessary measures to deliver their remains to their family members.

Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay. January 21, 2010 (available in Spanish).

116. Article XII of the Inter-American Convention on Forced Disappearance of Persons provides that States shall assist each other in seeking the identification, location and return of children removed to another State as a result of the forced disappearance of their parents. The fact that this practice has been so widespread that it has resulted in the mistaken identity of hundreds of children motivated the adoption of this provision in the Inter-American Convention on Forced Disappearance.

117. The appropriation of María Macarena by the Uruguayan security forces prevented her from knowing her real family, her real mother, her real name, identity, nationality and assuming her true legal personality when she reached the age of majority - all the attributes of her identity. [...]

119. In this case, the Uruguayan State also failed to provide María Macarena Gelman with the special protection measures required by children [...].

135. It is also evident the harm caused to María Macarena Gelman by her own kidnapping, the suppression of her identity for 23 years of her life, and the impunity that exists in relation to these facts and in general with the violations committed against her, which include the impossibility of assuming her true legal personality, the violation of her right to privacy, to the protection of her family, to a name, to nationality, and to protection measures while she was a child.

Friendly Settlements Reports

IACHR, [Report No. 160/10](#), Petition P-242-03. Friendly Settlement. Inocencia Luca de Pegoraro et al. Argentina. Non-pecuniary reparation measures, November 1, 2010.

2.1. On the Right to Identity

a. The National Executive Power of the Argentine Republic undertakes to send to the Honorable Congress of the Nation a bill to establish a procedure for obtaining DNA samples that protects the rights of those involved and is effective for the investigation and prosecution of the appropriation of children during the military dictatorship.

About the Working Group

a. The National Executive Power of the Argentine Republic undertakes to establish specific mechanisms to facilitate the correction of the documentation and public and private records, both national, provincial and municipal, of any person whose identity was substituted during the military dictatorship, in order to favor the process of identity restitution.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

119.[...] Furthermore, in the event that [missing persons] are found alive, the State should take all appropriate and necessary measures for the restitution of the identity of the victims and facilitate family reunification or, if necessary, ensure proper identification of the mortal remains, followed by the return of the remains to their relatives²⁶².

1.3. Restitution of other rights

100. As indicated above, among the rights that must be restored in transitional processes are: (i) the restoration of the liberty of persons illegally or arbitrarily deprived of their liberty²⁶³; (ii) the review, annulment or cessation of effects of judicial sentences emanating from irregular processes, and consequently, the annulment of judicial, administrative, criminal or police records and cancellation of the corresponding records²⁶⁴; and (iii) the restitution of employment and benefit rights when the victim was arbitrarily separated from his or her job²⁶⁵.

²⁶² I/A Court H.R., Case of Rochac Hernández et al. v. El Salvador. Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 196-199.

²⁶³ Application before the Inter-American Court of Human Rights in the case of María Teresa de la Cruz Flores ([Case 12.138](#)) against the Republic of Peru. June 11, 2003 (available in Spanish).

²⁶⁴ I.A. Court H.R.. [Case of Loayza Tamayo v. Peru.](#) Reparations and Costs. Judgment of November 27, 1998. Series C No. 42.

²⁶⁵ Application before the Inter-American Court of Human Rights in the case of María Teresa de la Cruz Flores ([Case 12.138](#)) against the Republic of Peru. June 11, 2003 (available in Spanish).

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of María Teresa de la Cruz Flores ([Case 12.138](#)) against the Republic of Peru. June 11, 2003 (available in Spanish).

179. In this regard, the Commission requests the Honorable Court to order the Peruvian State, in accordance with the provisions of its domestic law, to immediately adopt all necessary measures to put an end to the violations of the human rights of Mrs. María Teresa De La Cruz Flores specified in the present application [violation of the right to liberty with the new interpretations of the Constitutional Court and the provisions of the legislative decrees and removal from her job], and specifically, to guarantee Mrs. De La Cruz Flores the enjoyment of her violated human rights.

182. The Commission considers that María Teresa De La Cruz Flores, as part of the material reparation in her favor, should be reinstated in her job as a physician at least in the grade and responsibility she held when she was detained and with the recognition of her corresponding social security rights.

Application before the Inter-American Court of Human Rights against the Republic of Peru. [Case 11.337](#) (Luis Alberto Cantoral Benavides). August 8, 1996 (available in Spanish).

VIII. PETITION

In accordance with the reasoning set forth in this application, the Commission requests the Honorable Court to [...] issue a judgment declaring:

That the Peruvian State, by arbitrarily and illegally arresting and prosecuting Luis Alberto Cantoral Benavides in the Military Prison Courts, has violated, to his detriment, the right to personal liberty guaranteed by Article 7 [paragraphs 1 to 6] of the American Convention.

7. That, in consequence of what has been expressed in this Petition, order the Peruvian State that:

i. Order the definitive and unconditional release of Luis Alberto Cantoral Benavides.

Application before the Inter-American Court of Human Rights against the Republic of Peru. [Case 11.154](#) (María Elena Loayza Tamayo). January 18, 1995 (available in Spanish).

2. That, as a consequence of what is expressed in point 1 of this Petition, order the Peruvian State that:

i. Order the definitive and unconditional release of María Elena Loayza Tamayo.

2. Compensation measures

101. Compensation measures constitute an alternative mechanism in favor of the victims when restitution measures are not feasible and are complementary to the other types of reparation²⁶⁶. Compensation is generally monetary, that is, it implies the delivery of an amount of money that has the purpose of compensating the damages caused to the victims and their relatives for the violation of their human rights. In some cases, the compensation may be in kind²⁶⁷. This requires the delivery of a material good of the same characteristics and in the same conditions of which the victims were deprived by the violation of their human rights.
102. In the following, we will analyze general aspects related to compensation measures in particular, in light of various pronouncements on reparations to victims who -directly and indirectly- have been affected by violations that occurred in transitional justice contexts.

2.1. Indemnification

103. According to the criteria established by the organs of the Inter-American System, compensation is merely compensatory in nature and is granted to the extent and measure sufficient to compensate both the material and non-material damages²⁶⁸ caused to the victims and their family members. In this sense, compensation may not imply enrichment or impoverishment for the victim or his or her

²⁶⁶ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 7, para. 27.

²⁶⁷ Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) v. Republic of Bolivia. May 12, 2009, para. 341 (available in Spanish); and IACHR. [Report No. 19/00](#). Case 11.435. Friendly Settlement. José Sucunú Panjoj. Guatemala. February 24, 2000.

²⁶⁸ Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras et al. ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 265.

successors²⁶⁹ . Likewise, the States may, if applicable, deduct the amounts paid for reparations at the domestic level²⁷⁰ . In this regard, the I.A. Court H.R. has established that "if there are national mechanisms to determine forms of reparation, these procedures and their results must be evaluated²⁷¹ , provided that they meet criteria of objectivity, reasonableness and effectiveness to adequately redress the violations of rights declared by the Court²⁷² "273.

104. Unlike the I/A Court H.R. when recommending the payment of economic compensation in individual cases or when requesting it from the Court, the IACHR does not usually establish a specific amount. The amount is established by mutual agreement between the parties, taking into consideration the Inter-American and national criteria that are deemed appropriate²⁷⁴.

²⁶⁹ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 462.

²⁷⁰ IACHR, [Report No. 21/20](#). Case 13.728. Friendly Settlement. Amira Guzmán de Alonso. Colombia. April 13, 2020, para. 13, Fourth: Financial Compensation.

²⁷¹ Cf. Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 246, and Case of Almeida v. Argentina, *supra*, para. 48.

²⁷² Cf. Case of Cepeda Vargas v. Colombia, *supra*, para. 246, and Case of Vereda La Esperanza v. Colombia, *supra*, para. 303.

²⁷³ I.A. Court H.R.. Case of the Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2021. Series C No. 437, para. 301.

²⁷⁴ IACHR, [Report No. 214/20](#), Case 10.441 A. Friendly Settlement. Silvia Maria Azurdia Utrera et al. Guatemala. August 14, 2020, para. 15, VII. Reparations, a).

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others (Case 12.517) against the Republic of El Salvador. June 28, 2010(available in Spanish).

265. The Court has established the essential criteria that should guide fair compensation intended to compensate economically, in an adequate and effective manner, the damages suffered as a result of human rights violations. Likewise, the Court has established that compensation is merely compensatory in nature, and that it shall be granted to an extent and measure sufficient to compensate both the material and non-material damages caused²⁷⁵ .

266. The Court in its jurisprudence on reparations has been consistent in establishing that material damages include consequential damages and lost profits, as well as non-material or moral damages for both the victims and their families in certain cases²⁷⁶.

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña (Case 12.529) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

²⁷⁵ 184 I/A Court H.R.I.. Case of La Cantuta. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, para. 210; I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 204; I/A Court H.R., Garrido and Baigorria Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, para. 41.

²⁷⁶ 185 Court I.D.H.. Case of La Cantuta. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, paras. 213 and 214; I/A Court H.R., Case of the Miguel Castro Castro Prison. Case of the Miguel Castro Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 423.

336. The Commission considers that in the exercise of the criteria of equity that have always informed its decisions on reparations, and in accordance with its previous jurisprudence, the Court must establish the compensation that corresponds to the various victims in this case.

Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín ([Case 10.686](#)) against the Republic of Guatemala. July 28, 2007 (available in Spanish).

Likewise, even if the individual perpetrator of the violation has not been determined, it is incumbent upon the State to compensate the victim, or his family members, if the violation was committed by a State agent [...].

Merits Reports

IACHR, [Report No. 35/17](#), Case 12.713, Merits (Publication), José Rusbel Lara et al, Colombia, March 21, 2017.

266. The Commission adopted Merits Report No. 2/13 on March 19, 2013 and transmitted it to the State on April 5, 2013. In said report, the Commission recommended:

1. Make full reparations for the human rights violations declared in this report, both materially and morally, suffered by the victims of the case, which include the children of Mr. Jose Rusbel Lara, as well as the other family members referred to in the report who assumed the care of his children after his death.

Friendly Settlement Reports

IACHR, [Report No. 214/20](#), Case 10.441 A. Friendly Settlement. Silvia Maria Azurdia Utrera et al. Guatemala. August 14, 2020

VII. REPAIRS

- (a) The State recognizes that the acceptance of its international responsibility for the violations of the human rights of the Victims implies the responsibility to pay fair compensation to the Petitioners under the parameters defined by mutual agreement between the parties, taking into consideration the criteria of the Inter-American System and those of a national nature that are deemed convenient to apply in the negotiation.

- (b) The State undertakes to reach agreements, which will define the amount and term of payment of economic compensation, with each of the victim families separately, before the end of the first quarter of 2005.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/III Doc. 49/13, December 31, 2013.

462. [...] Reparations must consist of measures aimed at eliminating the effects of the violations committed, and their nature and amount will depend on the material and non-material damage caused. Reparations may not imply either

enrichment or impoverishment for the victim or his successors²⁷⁷.

IACHR. [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001.

33. The Inter-American Commission considers it essential that the Paraguayan State [...] also comply with its obligation, which it expressly recognized when it enacted Law 838/96, and which, as explained above, has not been applied in practice due to the failure to appoint the Ombudsman, to compensate the victims of such violations, or their family members. As has been pointed out, it must be taken into account that as the years go by, the health situation of those who suffered long years of confinement and cruel torture is worsening, and many of them are dying in abandonment and destitution.²⁷⁸

39. The Inter-American Commission considers it important that in order to establish the amount of compensation and to try to repair in some way the grave human rights violations committed during the dictatorship, Paraguay take into account the "Basic Principles and Guidelines on the Right to Reparation for Victims of Human Rights Violations and International Humanitarian Law", prepared by the UN Special Rapporteur Theo Van Boven, which states the following:

[...]

²⁷⁷ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450.

²⁷⁸ Gauto, Dinosio / Comisión Nacional de Derechos Humanos y Nunca Más al Terrorismo de Estado, Indemnización, article published in "Derechos Humanos en Paraguay 1999", Coordinadora de Derechos Humanos del Paraguay, p. 158.

13. Compensation shall be awarded for any harm resulting from a violation of human rights or international humanitarian law that is economically assessable. Such as:

- a) physical or mental harm, including pain, suffering and emotional distress;
- b) loss of opportunities, including those related to education;
- c) property damage and loss of income, including loss of profits;
- d) damage to reputation or dignity;
- e) e) expenses incurred in order to obtain legal or expert assistance, medicines and medical services.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region."](#) Paraguay, 2019.

482. [...] Regarding the reparations established in the law on compensation, the IACHR recalled in the press release it issued following its visit that the obligation to provide compensation derives from the status of the victims of grave human rights violations suffered at the hands of the State, and the State should therefore take all measures to adequately guarantee this aspect of reparations.

2.2. Material damage

105. Material damages refer to those impacts of a patrimonial or pecuniary nature that the victims have had to face as a consequence of the violation of their human rights and that can be determined in concrete monetary amounts, if there is evidence that allows it²⁷⁹. In some cases, especially in contexts of serious human rights violations and/or when there is a long denial of justice, the I/A Court H.R. tends to be more flexible and order amounts in equity²⁸⁰.
106. Material damages include consequential damages and loss of profits. Emerging damage refers to the pecuniary damage derived immediately and directly from the facts²⁸¹. The notion of consequential damages includes, among others, health expenses, expenses of an extrajudicial investigation with the purpose of clarifying the actions perpetrated against the victims or the fate of the missing or dead persons, or expenses for another concept. This, provided that such expenses have a causal link with the facts constituting human rights violations²⁸².
107. On the other hand, loss of earnings constitutes all income lost by the victims as a direct and immediate consequence of the violation of their rights²⁸³. This, taking into account that the compensation

²⁷⁹IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 21.

²⁸⁰ I/A Court H.R., Case of Servellón García et al. Case of Servellón García et al. v. Honduras. Judgment of September 21, 2006. Series C No. 152, para. 177.

²⁸¹ Application to the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) ([Case 11.995](#)) v. Republic of Colombia. March 10, 2006, para. 178 (available in Spanish).

²⁸²IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 21.

²⁸³IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 21.

measures for material damages reflect the harmful effect on the conditions that - objectively - the victims enjoyed, as well as the reasonable probability that such conditions would have continued or progressed. In this sense, the quantification must take into account, among other notions, the life expectancy in cases of persons who died as a result of the respective violation²⁸⁴. Thus, for example, in cases of forced disappearances or extrajudicial executions, the loss of earnings consists of the income lost since the person disappeared or lost his or her life²⁸⁵. Likewise, in addition to the age of the person at the time of the events, the person's profession or level of education is taken into account, which is related to the income that could have been earned during the remaining working life²⁸⁶.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

339. On the other hand, loss of profits is understood as the loss of economic income or benefits that have ceased to be obtained on the occasion of a specific event and that

²⁸⁴ IACHR. [Police violence against Afro-descendants in the United States](#). OEA/Ser.L/V/II, Doc. 156, 26 November 2018, para. 297; IACHR. [General guidelines for follow-up on recommendations and decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, pp. 21-22; IACHR. [Impacts of cases of discrimination and violence against women, girls and adolescents](#) (Annex 2 of Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean). OEA/Ser.L/V/II, Doc. 233, para. 76.

²⁸⁵ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 135 (available in Spanish).

²⁸⁶ I/A Court H.R., Case of Gelman v. Uruguay. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 292.

can be quantified on the basis of certain measurable and objective indicators²⁸⁷.

Application before the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) (Case 11.995) against the Republic of Colombia. March 10, 2006 (available in Spanish).

178. Emerging damage has been understood as the direct and immediate pecuniary consequence of the facts. This concept considers the pecuniary damage derived immediately and directly from the facts in relation to the expenses incurred by Bernabé Baldeón's family members to try to obtain justice²⁸⁸.

Application before the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen (Case 12.101) against the Republic of Guatemala, July 4, 2003 (available in Spanish).

135. [...] With regard to loss of earnings, it is requested that the income that the family could have received if Marco Antonio Malina had not been deprived of his life be taken into account. This takes into account that he was 14 years old on the date of his disappearance, in a country with a life expectancy of 56.0 years, and that in two years he would have graduated from high school and would have begun a career in engineering.

²⁸⁷ See, for example, I/A Court H.R., Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 105 et seq; I/A Court H.R., De la Cruz Flores Case. Judgment of November 18, 2004. Series C No. 115, paras. 151 and 152.

²⁸⁸ I/A Court H.R., Loayza Tamayo Case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 147; and I/A Court H.R., Case of Aloeboetoe et al. Reparations (art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 50.

136. Regarding consequential damages, it is requested that the expenses incurred by the victim's family as a direct consequence of the facts be considered. These expenses are related to the steps taken to establish the whereabouts of Marco Antonio Malina, namely: transfers to police centers, courts, detention centers; paid field publications in local newspapers; stationery and photocopies related to the case and the hiring of a lawyer.

137. Given that the family has been receiving psychological medical treatment from the time the events occurred, it is considered that such expenses related to care, as well as the payment of professionals should also be taken into account. Likewise, the expenses incurred to leave the country and settle in exile; as well as the expenses related to the processing of the complaint at the international level.

138. On the other hand, the family actively participated in the search for Marco Antonio Malina, taking countless steps. At the time of the disappearance, in October 1981, the victim's family had a stable economic situation. As a consequence of the disappearance of Marco Antonio Malina, the lives of his immediate family changed radically. This change had a considerable impact on the family's assets, which should be compensated in fairness.

Friendly Settlement Reports

IACHR, [Report No. 102/19](#), Case 13,017 A. *Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019*

Material damage

Loss of profits recognized as the economic loss suffered as a direct consequence of the violation suffered, i.e., lost profits or future reduction of assets.

IACHR, [Report No. 3/20](#), Case 12.095. *Friendly Settlement. Mariela Barreto Riofano. Peru. February 24, 2020, Fourth: Compensation*

Financial compensation

b. Material damage.

The sum of US\$ 5,000.00 (FIVE THOUSAND AND 00/100 AMERICAN DOLLARS) shall be established for all expenses incurred by the beneficiaries as a consequence of the death of Mariela Lucy Barreto Riofano and all procedural expenses or expenses of any nature incurred in the processing of any process followed for the investigation of the facts that are the subject matter of this case.

2.3. Non-pecuniary damage

108. Non-pecuniary or moral damages refer to the suffering and affliction caused to the direct victims and/or their family members, the impairment of life or cultural values, and alterations of a non-pecuniary or pecuniary nature, in the conditions of existence of the

victims and/or their family members²⁸⁹ . It implies, therefore, compensating for the disruption of the victim's life project caused by the international responsibility of the State²⁹⁰ . Since such damages are not economically quantifiable, they are assessed on the basis of the application of the criterion of equity in representative monetary amounts or even by means of the delivery of goods or services that can be valued in money²⁹¹ . Likewise, as will be seen below, the compensation of these damages can also be carried out by means of satisfaction measures.

109. The determination of the compensation measures to be adopted to repair non-pecuniary damages must take into special consideration the particular conditions of the victims or their relatives. This, in order to determine the relevance and value that can be assigned to the affliction or pain, to the alteration of the conditions of existence or to the impairment of intangible assets that have been damaged by the violations of rights²⁹² . They must also consider the effect that the human rights violations had on the victims' life project²⁹³.
110. In cases of serious human rights violations, the moral harm suffered by the victims is presumed, and therefore does not require proof²⁹⁴ . According to the IACHR, such harm is a necessary consequence of

²⁸⁹ Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009, para. 341 (available in Spanish).

²⁹⁰ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 147 (available in Spanish).

²⁹¹ IACHR. [Report No. 19/00](#). Case 11.435. Friendly Settlement. José Sucunú Panjoj. Guatemala. February 24, 2000, para. 15.

²⁹² Application to the Inter-American Court of Human Rights in the case of Renato Ticona Estrada and Others ([Case 12.527](#)) v. Republic of Bolivia. August 8, 2007, paras. 238-241.

²⁹³ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 147 (available in Spanish).

²⁹⁴ I/A Court H.R., Case of the "Mapiripán Massacre" v. Colombia. [Judgment of September 15, 2005](#). Series C No. 134, para. 283; IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22.

the nature of the violations and its existence is evident given that it is inherent to human nature that every person subjected to serious violations experiences moral suffering²⁹⁵. Likewise, in the case of human rights violations that are particularly serious, it is presumed that the direct family members of the victims suffer moral damage, such as mothers, fathers, spouses or partners, as well as sons and daughters of the direct victims²⁹⁶.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña (Case 12.529) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

341. Regarding non-pecuniary damage, the Court has established that:

[...] Non-pecuniary damage may include both the suffering and affliction caused to the direct victims and their family members, the impairment of values that are very significant for the persons, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his family. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be compensated for the purposes of full reparation to the victims, and this can be done in two ways.

Firstly, through the payment of a sum of money or the delivery of goods or services appreciable in money, as

²⁹⁵ Application to the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) (Case 11.995) v. Republic of Colombia. March 10, 2006, para. 162 (available in Spanish).

²⁹⁶ I/A Court H.R., Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. [Judgment of February 22, 2002](#). Series C No. 91, para. 63.

determined by the Court in reasonable application of judicial discretion and in terms of equity. And, secondly, by carrying out acts or works of public scope or repercussion that have effects such as the recovery of the memory of the victims, the recognition of their dignity, the consolation of their bereaved or the transmission of a message of official reprobation of the human rights violations in question and of commitment to the efforts tending to prevent their recurrence²⁹⁷.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

239. Likewise, the Court has developed important jurisprudence establishing the existence of a presumption regarding the non-pecuniary damage suffered by the victims' family members²⁹⁸. As the Court has established, the fact that the authorities have not been able to discover the truth of human rights violations of this gravity can generate intense suffering and anguish for the family members, as well as feelings of insecurity, frustration and impotence²⁹⁹, which has indeed occurred in the present case and, in addition, has been aggravated by the lack of access to information regarding what happened.

²⁹⁷ I.D.H. Court. La Cantuta Case. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, para. 216; I/A Court H.R., Case of Miguel Castro Castro Prison. Case of the Miguel Castro Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 430; I/A Court H.R., Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 383; I/A Court H.R., Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 254.

²⁹⁸ I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 217; I/A Court H.R., Case of "19 Merchants". Judgment of July 5, 2004. Series C No. 109, para. 248.

²⁹⁹ See, I.D.H., Case "19 Comerciantes". Judgment of July 5, 2004. Series C No. 109; par. 250.b); cf. Case of Bámaca Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 160.

Application before the Inter-American Court of Human Rights in the case of Renato Ticona Estrada and Others (Case 12.527) against the Republic of Bolivia. August 8, 2007 (available in Spanish).

242. In accordance with the foregoing and in view of the serious circumstances of the instant case, the intensity of the suffering that the respective facts caused to the victim and his family members, the alterations in the living conditions of Renato Ticona Estrada's family members, and the other non-pecuniary consequences, or those of an economic or patrimonial nature, that were caused to these family members, the Commission requests the Court to order the payment of compensation for non-pecuniary damages, and the other non-pecuniary consequences, or those of an economic or patrimonial nature, that were caused to these family members, the Commission requests the Court to order the payment of compensation for non-pecuniary damages, in accordance with equity and in consideration of the characteristics that accompany the circumstances of the victim's forced disappearance.

Application before the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) (Case 11.995) against the Republic of Colombia. March 10, 2006 (available in Spanish).

162. The existence of moral damages in these cases is a necessary consequence of the nature of the violations that were perpetrated. This is a case in which "[t]he moral damage inflicted on the victims, [...] is evident since it is in human nature that every person subjected to the aforementioned

aggressions and humiliations experiences moral suffering [and] no evidence is required to reach this conclusion”³⁰⁰.

Complaint in the cases of Agustín Goiburú, Carlos José Mancuello, Rodolfo Feliciano Ramírez Villalba and Benjamín De Jesús Ramírez Villalba ([Cases 11.560, 11.665 and 11.667](#)) against the Republic of Paraguay. June 8, 2005 (available in Spanish).

188. In the instant case, the suffering experienced by the victims' family members as a consequence of the lack of a diligent investigation of the facts and the consequent punishment of those responsible, among other grievances, justifies the Commission's request to the Court, taking into account the nature of the case, to set the amount of compensation for non-pecuniary damages in equity.

Application before the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) against the Republic of Guatemala, July 4, 2003 (available in Spanish).

147. Marco Antonio, like any other person, had the right to a life plan, which was taken away from him from the moment of his abduction. Therefore, the Honorable Court is requested not only to recognize the rupture of the life project of the child Molina, but also to fix, in accordance with equity,

³⁰⁰ I/A Court H.R., Case of Aloeboetoe et al. Reparations (art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 52; I/A Court H.R., Case of Neira Alegria et al. Reparations (art. 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 57; I/A Court H.R., Garrido and Baigorria Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 49; I/A Court H.R., Castillo-Páez Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 86; I/A Court H.R., Blake Case, Reparations, Judgment of January 22, 1999, Series C No. 48, para. 57; and I/A Court H.R., Cantoral Benavides Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, para. 60.a.

a sum to be paid by the State to the Molina family, in recognition of the violation perpetrated.

Friendly Settlement Reports

IACHR, [Report No. 3/20](#), Case 12.095. Friendly Settlement. Mariela Barreto Riofano. Peru. February 24, 2020

c. Moral damages.

EIGHTH: Orphan's Pension

The Peruvian State undertakes to grant an orphan's pension for the daughters of the victim, Nataly Milagros Martín Barreto and Karolina Stefhany Valdiviezo Barreto, through the Ministry of Defense, in the corresponding agency, for an amount not less than the minimum legal monthly income, maintaining in force the amount established in any case if a pension had been granted prior to the signing of this Agreement. Said pension shall be granted until the victim's daughters reach the age of majority established by law.

IACHR, [Report No. 102/19](#), Case 13.017 A. Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019

2. Non-pecuniary damage

In the case of the victims of death and forced disappearance, it is presumed that the victims suffered profound anguish before being executed by members of the Military Dictatorship, and in the case of the members of COFADEPA.HG, the disappearance and death of their relatives still caused the families anguish, uncertainty, desperation, impotence and frustration. In addition, after 50 years, some of those responsible for the death and

disappearance have been found, brought to trial and sentenced, but there are still people accused, but currently fugitives from justice for crimes against humanity, increasing the suffering of the victim's family.

There are other aspects that have affected the relatives, on the one hand, not being able to mourn the possible death of their disappeared, which has caused, even after years, instability and pain for the victims' relatives, and, on the other hand, the lack of a resting place for the remains of the victims keeps the families uncertain about their whereabouts.

2.4. Administrative repair programs

111. In transitional justice contexts, in which States must provide reparations to a massive number of victims that may far exceed the capacities and possibilities of domestic courts, administrative reparations programs constitute one of the legitimate ways of satisfying the right to reparation³⁰¹. The IACHR has established a series of requirements that these programs must meet. For example, it has indicated that they must be accessible, flexible, transparent, public, agile and inexpensive³⁰²; that they must be designed in a participatory and transparent process with the victims, civil society and State institutions involved; and that their stability and sustained validity over time must be guaranteed³⁰³. Therefore, reparation programs should be part of a State policy on the matter³⁰⁴.

³⁰¹ See in this regard, IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

³⁰² IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 3.

³⁰³ IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 4.

³⁰⁴ IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 4.

112. On the other hand, the IACHR has been clear in determining that these programs should not exclude victims' access to judicial remedies³⁰⁵. They are, therefore, complementary actions and the State always has the power to compensate in a judicial process what has been paid to a victim under an administrative reparations program³⁰⁶. In addition, it has established certain criteria that these processes must follow. In particular, it has indicated that they must guarantee minimum standards of respect for the right to due administrative process, and that a comprehensive evidentiary system must be sought, in which the State has an active role in the production and collection of relevant information to verify the veracity of the facts denounced. Likewise, the State must provide a free legal assistance service to guarantee access to justice for the victims³⁰⁷.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

523. The IACHR therefore understands that reparations through administrative channels should not be subject to the requirement that the victim withdraw from the judicial proceeding. The IACHR considers that both actions should be complementary and that the State would always retain the power to compensate in a judicial proceeding what was paid to a victim under the administrative reparations program. Thus, it is considered that there is no cost of double reparation to be borne by the State. It is also possible that the

³⁰⁵ IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, paras. 523 and 524; IACHR, Annual Report, Chapter IV, Colombia, 2008, para. 46;

³⁰⁶ IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, para. 6.

³⁰⁷ IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131. Doc. 1, February 19, 2008, paras. 9 -11.

implementation of the administrative program will also have the effect of reducing litigation in reparations matters³⁰⁸.

Compendiums

IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121 12 April 2021.

173. Similarly, the Commission has ruled on the existence of different avenues for reparations to victims in situations of serious human rights violations. In this regard, the IACHR has indicated that "it understands that the adoption of a program of administrative reparations should not exclude access to judicial remedies for the victims, thus allowing them to choose the route they consider most appropriate to ultimately ensure that reparations are obtained. The IACHR considers that the State could have and implement adequate institutional mechanisms to respect this right of the victims to resort to various differentiated avenues of reparation, without risk to the public treasury"³⁰⁹.

174. Thus, on this issue, the Commission has concluded that "both bodies of the Inter-American System have understood that the administrative and judicial remedies are complementary and not exclusive, and that it is possible for both to converge and to allow the judicial remedy to deduct or compensate for what has already been paid in the administrative remedy. It also indicated that although there is an administrative reparations program, "in accordance with Articles 8(1) and 25(1) of the

³⁰⁸ IACHR, Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, para. 6.

³⁰⁹ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 99. Citing: IACHR. Main Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, para. 5.

American Convention, the victims of serious human rights violations must have access to justice to request a judicial declaration of State responsibility; for an individual determination of the harm in the specific case; or to question the sufficiency of the reparations previously received". The IACHR was explicit in stating that "this right should not be limited by the fact of having participated in an administrative reparations program"³¹⁰.

Practical Guides, Guidelines and other Directives

IACHR, [Principal Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

3. The State, when defining a public reparation policy, should aim to repair the damages caused by paramilitary violence, and based on the standards of international human rights law, making available administrative, agile and low-cost ways to access economic reparation programs. This is without prejudice to other forms of non-material reparations, collective reparations and social programs and services that could be established for the population affected during the conflict³¹¹ [...].

³¹⁰ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para.102.

³¹¹ IACHR. Report on the implementation of the Justice and Peace Law: initial stages of the demobilization process of the AUC and first judicial proceedings. OEA/Ser. L/V/II 129 Doc. 6, October 2, 2007, para. 99. Special social benefits with a sense of reparation such as those granted in the Chilean case, such as reparatory pensions, educational benefits for the children of the disappeared, health services through the Program for Reparation and Integral Attention in Health and Human Rights (PRAIS). ICTJ. The Handbook of Reparations. The Reparations Policy for Human Rights Violations in Chile by Elizabeth Lira, Chapter II, 2006, pp. 60-64.

6. [...] The subsistence of the right to demand reparation from the victimizer is not related to the collection of administrative reparation from the Colombian State, since these are different claims, with different objects and different parties liable. The IACHR understands then that the administrative reparation should not be subject to the requirement of withdrawal of the legal action by the victim. The IACHR considers that both actions should be complementary and that the State would always retain the power to compensate in a judicial proceeding what was paid to a victim under the administrative reparations program. Thus, it is considered that there is no cost of double reparation to be borne by the State. It is also possible that the implementation of the administrative program will also have the effect of reducing litigation in the area of reparations.

7. [...] The IACHR understands that the concept of reparations is rooted in a principle of obligation, in contrast to an *ex gratia* payment. Therefore, we understand that the administrative reparations procedure should not imply a waiver of the contentious-administrative judicial action that seeks precisely to determine the legal responsibility of the State, nor a waiver of the reparations incident. In this sense, the victims should maintain their right of judicial action in the contentious-administrative sphere, in order to determine the possible State responsibility for serious violations committed by paramilitaries, as has been established in precedents of the Council of State. Likewise, the State could always compensate what it grants through the administrative reparations program for what it may be obliged to compensate in an administrative litigation process.

9. With respect to the procedures to be implemented in the framework of the comprehensive reparations program, the IACHR considers that they must respect the rights and guarantees established in Articles 8 and 25 of the American

Convention. These procedures must guarantee minimum standards of respect for the right to due process. [...] ³¹².

11. The IACHR considers that these procedures should be accessible, flexible, transparent and public, except for information that could put the victims at risk. In view of the nature of these administrative procedures, the characteristics of the facts being redressed, and the condition of numerous victims of the Colombian conflict, the IACHR considers that a comprehensive evidentiary system should be sought in which the State plays an active role in the production and collection of relevant information to verify the veracity of the facts denounced. In this sense, the IACHR considers that the possibility of using circumstantial evidence, the testimony of the victims themselves and their relatives, the accompaniment of individual facts with information on the social context and the patterns of violations and facts accredited in cases processed before the Colombian courts, the IACHR and the Inter-American Court should be contemplated. Likewise, the IACHR has established that the State has the obligation to guarantee access to justice for the victims. In this regard, the IACHR considers it appropriate for the State to provide an accessible and comprehensive service of free legal assistance.

3. Rehabilitation measures

113. Rehabilitation measures are aimed at the physical, psychological and social rehabilitation of victims. These measures must be distinguished from the social services provided to the general population ³¹³. In this sense, these measures must be strictly

³¹² For further reference see IACHR, Report on Access to Justice as a Guarantee of Economic, Social and Cultural Rights. Study of the Standards Set by the Inter-American Human Rights System. OEA/Ser.L/V/II.129. Doc. 4, September 7, 2007, para. 104.

³¹³ I/A Court H.R., Case of Gonzalez et al. Case of González et al. ("Campo Algodonero") v. Mexico, Judgment of November 16, 2009. Series C No. 205, para. 529.

conditioned by the particularities and specific needs of each victim. Likewise, their provision must consider the needs expressed by the victims, based on factors such as their gender, sexual orientation, gender identity and expression, age, ethnic or racial status, or situation of poverty or extreme poverty³¹⁴.

114. Next, we will analyze, on the one hand, physical, psychological and psychiatric rehabilitation measures and, on the other hand, social rehabilitation measures, focused on cases related to transitional justice contexts.

3.1. Physical, psychological and psychiatric rehabilitation

115. Physical and/or psychological rehabilitation measures are aimed at counteracting the effects that human rights violations have had on the physical and mental health of the victims and/or their family members. Therefore, they may be of a medical, psychological and/or psychiatric nature.
116. The IACHR has detailed the manner in which this care should be provided. In this regard, it has emphasized that: (i) it must be adequate, timely and a priority³¹⁵ ; (ii) free and immediate³¹⁶ ; (iii) provided by public health institutions³¹⁷ ; (iv) personalized, that is, adapted to the particular circumstances and needs of each

³¹⁴ In this regard, see: IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22; IACHR. [Impacts of cases of discrimination and violence against women, girls and adolescents](#) (Annex 2 of Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean). OEA/Ser.L/V/II, Doc. 233, para. 76.

³¹⁵ IACHR, [Report No. 286/22](#), Case 13.226. Friendly Settlement. Dora Inés Meneses Gómez et al. Colombia. November 8, 2022. Part Six: Health and Rehabilitation Measures.

³¹⁶ IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021, para. 402.

³¹⁷ IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021, para. 402.

person³¹⁸ ; (v) specialized, of quality, and with all the specialties that are necessary according to medical criteria³¹⁹ , (vi) for as long as necessary³²⁰ ; and (vii) it must have comprehensive coverage, which implies that it must guarantee access to the necessary medicines and treatments³²¹.

117. On the other hand, the IACHR has referred to the differentiated approach that physical, psychological and psychiatric medical assistance should have. Some examples include: (i) the need to address differential guidelines and orientations in the case of children and adolescents³²² ; and (ii) the cultural adaptation and removal of obstacles that prevent real access to services in the case of indigenous peoples³²³.

³¹⁸ IACHR, [Report No. 286/22](#), Case 13.226. Friendly Settlement. Dora Inés Meneses Gómez et al. Colombia. November 8, 2022. Part Six: Health and Rehabilitation Measures.

³¹⁹ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018. Part Five: Reparation measures agreed between the parties.

³²⁰ IACHR, [Report No. 286/22](#), Case 13.226. Friendly Settlement. Dora Inés Meneses Gómez et al. Colombia. November 8, 2022. Part Six: Health and Rehabilitation Measures.

³²¹ IACHR, [Report No. 286/22](#), Case 13.226. Friendly Settlement. Dora Inés Meneses Gómez et al. Colombia. November 8, 2022. Part Six: Health and Rehabilitation Measures.

³²² IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018. Part Five: Reparation measures agreed between the parties.

³²³ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.LV/II Doc. 49/13, December 31, 2013, para. 859.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña (Case 12.529) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

334. In addition, the Commission requests the Court to order the State of Bolivia to adopt rehabilitation measures for the victims' family members. Such measures should include psychological rehabilitation measures.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

- b. Grant reparations to the relatives of the disappeared victims and of the executed person, including physical and psychological treatment [...];

Application before the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen (Case 12.101) against the Republic of Guatemala (available in Spanish).

145. [...] Psychological support should not be provided exclusively to the mother and her sisters, but also to the family members, since it is undeniable that they also need it.

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IACHR, [Report No. 286/22](#), Case 13.226. *Friendly Settlement. Dora Inés Meneses Gómez et al. Colombia. November 8, 2022*

Part Six: Health and Rehabilitation Measures

[...]Adequate, timely and priority treatment shall be guaranteed to those persons who require it, after expressing their will, and for as long as necessary.

In providing psychological treatment and psychosocial care, the particular circumstances and needs of each person should be considered, so that family and individual treatment is provided, as agreed with each person and after an individual assessment.

For access to comprehensive health care, the beneficiaries of the measures are guaranteed timely and quality access to the medicines and treatments required (including physical and mental health), in accordance with the provisions governing the SGSSS, while they will have priority and differential attention by virtue of their status as victims.

IACHR, [Report No. 92/18](#). Case 12.941. *Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.*

Part Five: Remedies agreed between the parties

After an initial diagnosis by the treating physician and through the links provided by the respective EPS, it will be guaranteed that the physical and mental rehabilitation needs of Nicolasa and her family will be addressed with adequate, timely, specialized, permanent, continuous, differential

treatment³²⁴ , with prior expression of her will, and for as long as necessary, taking into account the effects generated by the armed conflict, as well as the autonomy of health professionals. In any case, Nicolasa and her family will be able to choose the gender of the professional of their preference to provide care, taking into account the human resources available in the EPS and its network of providers.

Psychosocial care will be provided within the framework of the modalities foreseen in the PAPSIVI guidelines; in the case of family care, it will be guaranteed that Nicolasa and the other beneficiary members of the measure will have the autonomy to identify the members of the family nucleus whose relationship is essential for their emotional rehabilitation. In the event that the care is provided for the benefit of children and adolescents, the guidelines and differential orientations provided by the Ministry will be implemented. Both the EPS and the psychosocial teams of the Program shall articulate to agree on common and complementary objectives between the two components of the Program, i.e. mental health care and psychosocial care.

IACHR, [Report No. 82/15](#), Petition 577-06. Friendly Settlement. Gloria González and Family. Colombia. October 28, 2015.

Special attention will be provided to the girl D, who in addition to the psychological damage, suffered physical injuries at the time of her mother's death, which is why she will have full coverage by the EPS of the regime in which she is affiliated and she will receive a periodic change of the prosthesis, as well as the delivery of the necessary

³²⁴ Specialized treatment shall be understood as the provision of health services and technologies that shall be focused on the beneficiaries of the agreement, which shall be appropriate from the medical and technical point of view and shall respond to quality standards accepted by the scientific communities. Comprehensive health services will be provided with all those specialties that are necessary according to medical criteria.

elements of daily consumption and hygiene and medicines for the lubrication of the prosthesis.

IACHR. [Report No. 19/00](#). Case 11.435. Friendly Settlement. José Sucunú Panjoj. Guatemala. February 24, 2000.

In relation to item C, the State hereby delivers to Mrs. Marta Macario Riquiac and her children the following:

- The amount of Q 681.00 for the purchase of medicines for Mrs. Marta Macario Riquiac.

Country reports

IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021.

402. [...] In this sense, the IACHR reinforces the importance of offering free, immediate, adequate and effective physical and psychological rehabilitation measures, through specialized public health institutions, to the victims of human rights violations and their family members³²⁵ [...].

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

859. [...] in order to contribute to the protection and effective enjoyment of the individual and collective rights of the indigenous peoples in Colombia, the IACHR recommends to the Colombian State:

³²⁵ I/A Court H.R., Case of Gomes Lund et al. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Judgment of November 24, 2010. Series C No. 219, para. 267.

23. Carry out actions to ensure total health coverage of the indigenous population, overcoming obstacles that prevent real access to services, and the cultural adaptation of these services.

3.2. Social rehabilitation

118. Social rehabilitation measures are aimed at repairing the victims and/or their families through the recognition and implementation of actions that have a favorable impact on their social conditions. These measures may be aimed at restoring social conditions that were seriously affected by the human rights violations, or, if applicable, at transforming those that motivated or promoted the respective violations. These measures have a transformative vocation because they not only contribute to the change and social promotion of the victims and their families, but are also aimed at the community³²⁶. As in the case of other rehabilitation measures, their design and implementation must include the participation of the victims and/or family members to whom they are addressed.
119. Among the most common social rehabilitation measures are educational measures. These are generally implemented through financial assistance to cover tuition and, in some cases, living expenses³²⁷. They may also take other forms, depending on what the parties agree. Depending on the circumstances of each case, such measures may be aimed at supporting basic or advanced studies, professional or technical³²⁸, in public or private institutions. Social rehabilitation measures may also be aimed at supporting labor reinsertion or providing the necessary inputs for the family to

³²⁶ In this regard, see: IACHR, [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#), OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, p. 24.

³²⁷ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

³²⁸ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

have a source of income, for example in cases where the breadwinner of the family lost his or her life due to the responsibility of the State³²⁹ .

Friendly Settlement Reports

IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

Part Five: Remedies agreed between the parties

To grant a financial aid of \$50,000,000 (FIFTY MILLION PESOS M C/TE) to Nicolasa, for the purpose of financing her studies in any of the professional technical, technological or university levels, in the academic program and in the institution of higher education that is authorized within the national territory, that the beneficiary chooses. This grant will be used to pay her tuition and living expenses.

IACHR, [Report No. 82/15](#), Petition 577-06. Friendly Settlement. Gloria González and Family. Colombia. October 28, 2015.

IV. Amicable solution

3) The State will manage an allowance of \$50,000,000 (FIFTY MILLION PESOS M C/TE) for minor D, with the objective of financing technical or technological education and to cover living expenses. The value of the grant will be increased to \$70.000.000 (SEVENTY MILLION PESOS MC/TE) if the beneficiary chooses a professional career. The beneficiary of the measure must carry out the pertinent procedures to be admitted to the respective study center and

³²⁹ IACHR. [Report No. 19/00](#). Case 11.435. Friendly Settlement. José Sucunú Panjoj. Guatemala. February 24, 2000.

will follow the programs offered by the university institution to guarantee her adequate academic performance.

IACHR. [Report No. 19/00](#). Case 11.435. Friendly Settlement. José Sucunú Panjoj. Guatemala. February 24, 2000.

In relation to item C, the State hereby delivers to Mrs. Marta Macario Riquiac and her children the following:

- The sum of Q 22,285.00 for the purchase and installation of a loom.
- The amount of Q 681.00 for the purchase of medicines for Mrs. Marta Macario Riquiac.
- During the month of January of the year 2000, the State will deliver to Mrs. Macario Riquiac the sum of Q 2,048.25 as seed capital for raising and fattening pigs.
- The State will grant scholarships to the three minor daughters of Mr. José Sucunú Panjoj, with the commitment to keep them in effect until they reach the age of majority.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia"](#), 2020.

218. [...] Likewise, the State reported on actions to guarantee the right to health of persons with disabilities³³⁰, psycho-emotional care and social inclusion of persons with disabilities who are victims of the armed conflict³³¹. The Commission underscores the importance of the Community Based Rehabilitation Strategy and supports the State in the development of a support system so that persons with disabilities can live in the community.

4. Satisfaction measures

120. The measures of satisfaction consist of actions of a symbolic, moral or non-pecuniary nature that seek to restore the dignity, honor and historical memory of the victims. These measures have a transcendental significance in the recovery of the dignity and reputation of the victims, in addition to constituting important elements to reinforce the State's commitment not to repeat similar violations in the future³³². In this sense, the IACHR has stated that the fundamental value of the recovery of the historical memory of serious human rights violations constitutes, in addition to a means of satisfaction for the victims, a mechanism of prevention and non-

³³⁰ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report "Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia". October 30, 2020, p. 88-100.

³³¹ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report "Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia". October 30, 2020, p. 74-86.

³³² IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22.

repetition³³³. It is for this reason that measures of satisfaction can share the purpose of guarantees of non-repetition, particularly when they are aimed at the dissemination, recovery or preservation of historical memory.

121. In transitional justice contexts, the gravity and nature of human rights violations require that the State adopt measures aimed at dignifying the memory of the victims³³⁴. A fundamental requirement for the satisfaction measures to fulfill their purpose is that they be agreed upon with the victims and/or their relatives. This requirement also addresses the principle of participation of the victims in the design and adoption of reparation measures.
122. Below are grouped into two broad categories those measures of satisfaction that the IACHR has most frequently recommended in reports and cases related to transitional justice contexts. This is not an exhaustive list since, as the IACHR has indicated, "the catalog of measures of satisfaction may be as broad as the diversity of the non-pecuniary damages suffered by the victims of human rights violations³³⁵".

4.1. Publication of judgments and other decisions

123. A standard measure of satisfaction in judgments adopted by the I.A. Court H.R. is the publication of the judgment, an aspect that is also often included in friendly settlement agreements before the IACHR. The I.A. Court H.R. generally requests States to publish "in a legible and appropriate font size": (i) the official summary of the judgment in a newspaper of national circulation; and (ii) the full judgment on the website of the Ministry of

³³³ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22.

³³⁴ Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009, para. 330.

³³⁵ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22.

Foreign Affairs and websites of other authorities involved in the case, for a certain period of time³³⁶.

124. The IACHR has also required States to publish internal decisions or proceedings as individual measures of satisfaction and general measures so that society, as a whole, may know the truth of the events that occurred³³⁷. Likewise, taking into account the differentiated and intercultural approach that reparation measures should have, the IACHR has recommended as a measure of satisfaction the dissemination of the I.A. Court H.R.'s judgment on community radio stations in the language of the affected indigenous communities³³⁸.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others ([Case 12.517](#)) against the Republic of El Salvador. June 28, 2010 (available in Spanish).

269. In addition, the Commission requests the Court to order the State to take measures of satisfaction that include, at least, a public acknowledgement of international responsibility and the publication of the relevant parts of the judgment that the Court may eventually issue.

³³⁶ I/A Court H.R., Case of Guzmán Medina et al. v. Colombia. Case of Guzmán Medina et al. v. Colombia. Merits, Reparations and Costs. Judgment of August 23, 2023. Series C No. 495, para. 135.

³³⁷ Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009, para. 332 (available in Spanish).

³³⁸ Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín ([Case 10.686](#)) against the Republic of Guatemala. July 28, 2007, para. 246 (available in Spanish).

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

332. [...] the Commission requests the Court to order additional measures of satisfaction, among which are:

- Public disclosure of the results of the internal investigation and sanction process, in order to contribute to the right to truth of the victims' families and of Bolivian society as a whole;
- The publication in a medium of national circulation of the sentence eventually pronounced by the Court;

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

251. First, the Court has repeatedly pointed out that each individual and society as a whole have the right to know the truth and to be informed of what happened in relation to human rights violations³³⁹. In this regard, the Commission requests the Court to order the publication in a national newspaper of the judgment eventually handed down by the Court.

³³⁹ I/A Court H.R., Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 128; I/A Court H.R., Plan de Sánchez Massacre Case. Judgment of November 19, 2004. Series C No. 116, para. 96; I/A Court H.R., Case of "19 Merchants". Judgment of July 5, 2004. Series C No. 109, para. 81.

Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín ([Case 10.686](#)) against the Republic of Guatemala. July 28, 2007 (available in Spanish).

246. On the other hand, the Commission considers necessary, as a measure of satisfaction, the broadcasting through the community radio stations of the Department of Quiché, in the Mayan language and in Spanish, of the sentence eventually pronounced by the Court.

Friendly Settlement Reports

IACHR, [Report No. 212/20](#), Case 12,891. Adán Guillermo López Lone and Others Honduras. August 17, 2020

A. Satisfaction Measures

Likewise, a list of the violations and the acknowledgement of the international responsibility of the State of Honduras for the facts of the case sub judice must be published in a newspaper of national circulation and on the websites of the competent Secretariats and the Attorney General's Office of the Republic.

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas,"](#) May 27, 2017.

Principle IX

Design and implementation of memory initiatives

States must design and implement initiatives aimed at acknowledging and apologizing for the facts related to serious human rights violations, vindicating the memory and dignity of the victims, and establishing and disseminating the historical truth of such facts. Such initiatives may include public acts, educational, cultural or other measures, respectful of interculturality and diversity, and with a human rights and gender perspective, exemplified by the following:

[...]

d. Publication and official dissemination of court rulings on serious human rights violations that have occurred;

4.2. Acts of acknowledgment of responsibility and public apologies

125. The purpose of these acts is for the State to expressly acknowledge its international responsibility for the human rights violations declared by the IACHR or the I/A Court H.R. in an individual case, in addition to apologizing to the victims and their families. This measure seeks to restore the dignity of the victims, recover their public image and promote a break with the events that gave rise to the human rights violations³⁴⁰.

³⁴⁰ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22.

126. In general, they are public events and broadcast in the media, unless otherwise decided by the parties. It is essential that the States include the victims and/or their family members in the planning of the event and, in this regard, that they jointly agree on aspects such as the date, place and modality of the event³⁴¹. Although the parties are the ones who agree on the details of the modality of the act, sometimes the organs of the System establish some guidelines, such as that the acknowledgment of responsibility and apology be made by high authorities of the State³⁴². On the other hand, such acts must be respectful of interculturality and diversity, in addition to having a human rights and gender perspective³⁴³.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others (Case 12.517) against the Republic of El Salvador. June 28, 2010 (available in Spanish).

269. In addition, the Commission requests the Court to order the State to take measures of satisfaction that include, at least, a public acknowledgement of international responsibility and the publication of the relevant parts of the judgment that the Court may eventually issue.

³⁴¹ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 22; IACHR. [Resolution 3/19 - Principles on Public Policies on Memory in the Americas](#), 9 November 2019, Principle IX: Design and implementation of memory initiatives.

³⁴² IACHR, [Report No. 24/13](#). Case 12.358. Friendly Settlement. Octavio Rubén González Acosta. Paraguay. March 20, 2013. Second: Public Act of Recognition.

³⁴³ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017, Principle IX.

Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay. January 21, 2010 (available in Spanish).

138. In this regard, the IACHR considers that among the measures of reparation, the Uruguayan State should take the necessary steps to acknowledge its international responsibility for the facts denounced in the case by carrying out a public act of atonement for the victim and his family members, in consultation with them and aimed at recovering the historical memory [...].

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

8. As a consequence of the foregoing, the Inter-American Commission requests the Court to order the State:

E. Grant reparations to the relatives of the disappeared victims and of the executed person, including [...] recognition of the State's responsibility for the disappearance of the victims and the suffering of their relatives;

Friendly Settlement Reports

IACHR, [Report No. 212/20](#), Case 12,891. Adán Guillermo López Lone and Others Honduras. August 17, 2020

Satisfaction measures

The Inter-American Court of Human Rights has considered that one way to repair the damage caused to the victim and

their families, to restore their dignity and to prevent the repetition of human rights violations is to acknowledge responsibility and apologize to the offended parties.

IACHR, [Report No. 183/22](#). Petition 1376-19. Friendly Settlement. Silvia Angélica Flores Mosquera. Uruguay. August 15, 2022

Satisfaction measures

The Uruguayan State undertakes to carry out the following satisfaction measures:

1. Acts of Acknowledgment of Responsibility: The Uruguayan State shall carry out a Private Act of Signature and Acknowledgment of Responsibility, which shall be carried out in person with the virtual participation and monitoring of the IACHR. The act will be carried out in accordance with the acknowledgment of responsibility indicated in this Agreement. The Ministry of Foreign Affairs shall be in charge of this measure.

IACHR, [Report No. 102/19](#), Case 13.017 A. Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019

4. Measures of satisfaction and guarantees of non-repetition

The State will make a public statement of Forgiveness and Acknowledgement of International Responsibility to accept and take responsibility as a State for the events that occurred. In this act, the relatives of COFADEPA.HG will be asked for public forgiveness for the facts denounced before the Inter-American Commission on Human Rights.

IACHR, [Report No. 24/13](#). Case 12.358. Friendly Settlement. Octavio Rubén González Acosta. Paraguay. March 20, 2013.

Second: Public Recognition Ceremony

The Paraguayan State undertakes to carry out a public act of recognition of responsibility for the forced disappearance of Mr. Octavio Rubén González Acosta and to make a public apology to his family members. This act shall be carried out in the presence of the victim's relatives and high State authorities in the course of 2011.

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017, Principle IX "Design and implementation of memory initiatives."

States must design and implement initiatives aimed at acknowledging and apologizing for the facts related to serious human rights violations, vindicating the memory and dignity of the victims, and establishing and disseminating the historical truth of such facts. Such initiatives may include public acts, educational, cultural or other measures, respectful of interculturality and diversity, and with a human rights and gender perspective, exemplified by the following:

[...]

a. Carrying out public acts of recognition of the State's responsibility with a request for forgiveness by the authorities agreed with the victims or their representatives and disseminated through the media;

4.3. Tributes in honor of the victims

127. This type of satisfaction measures seek to vindicate the memory of the victims and preserve the memory of the serious human rights violations they faced. They can be implemented through a wide range of measures to commemorate their life and legacy, depending on the nature of the case and the will of the victims and/or their relatives. Some examples of these measures are commemorative plaques³⁴⁴; the construction of monuments³⁴⁵ ; documentaries on the life and work of the victim³⁴⁶; the naming of public places³⁴⁷ ; explanatory brochures³⁴⁸; the designation of a national day related to the facts of the case³⁴⁹, and ceremonies and commemorations of various kinds³⁵⁰.
128. The implementation of these measures of satisfaction must take into account the importance of using cultural and artistic means to achieve the purposes of reparations for victims of human rights violations. Likewise, by promoting structural impacts, the symbolic nature of satisfaction measures is fully in line with the transformative vocation of reparations³⁵¹.

³⁴⁴ IACHR, [Report No. 21/20](#). Case 13.728. Friendly Settlement. Amira Guzmán de Alonso. Colombia. April 13, 2020, Measures of Satisfaction.

³⁴⁵ IACHR, [Report No. 67/03](#). Petition 11.766. Friendly Settlement. Irma Flaquer. Guatemala. October 10, 2003.

³⁴⁶ IACHR, [Report No. 67/03](#). Petition 11.766. Friendly Settlement. Irma Flaquer. Guatemala. October 10, 2003.

³⁴⁷ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 142 (available in Spanish).

³⁴⁸ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 142 (available in Spanish).

³⁴⁹ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 144 (available in Spanish).

³⁵⁰ IACHR, [Report No. 82/15](#), Petition 577-06. Friendly Settlement. Gloria González and Family. Colombia. October 28, 2015, and IACHR, [Report No. 24/13](#). Case 12.358. Friendly Settlement. Octavio Rubén González Acosta. Paraguay. March 20, 2013.

³⁵¹ Symbolic Reparations Research Project. [Guidelines for the Use of Art in Symbolic Reparations](#), November 2017, pp. 4-5 (Definition 7. Art).

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) against the Republic of Guatemala, July 4, 2003 (available in Spanish).

142. As reparatory measures of satisfaction, it is considered that the memory of the child Marco Antonio Malina Theissen must be duly vindicated, on behalf of the hundreds of children, adolescents and young people who were victims of the dark period of the armed conflict in Guatemala. In this sense, the Honorable Court is requested to designate a room under the name of "Hall of the Rights of the Child: Marco Antonio Malina Theissen" in which an exhibition of photos of him and other children who have suffered similar situations, explanatory brochures in honor of the memory of children victims of violence in all its senses during the time of the armed conflict will be kept.

As another way to ensure that society and the authorities do not forget what happened and honor the memory of child victims of war-related disappearances, the designation of a national day for children who disappeared as victims of the internal armed conflict in Guatemala is requested. This day would imply the remembrance and mourning for all children and their families and as a sign of hope and reflection, in adults and children about the horrible consequences of a war. Likewise, the publication of the decision of the H. Court in the Official Gazette of Guatemala and in other newspapers of circulation in the country.

Friendly Settlement Reports

IACHR, [Report No. 68/16](#), Case 11.007. Friendly Settlement. Trujillo Massacre. Colombia. November 30, 2016.

The State undertakes to carry out the following commemorative measures:

1. A commemoration ceremony led by a senior State official, with the participation of public authorities, the families of the victims and their representatives in the Municipality of Trujillo-Valle in April 2016. This measure will be in charge of the Unit for the Attention and Integral Reparation of Victims.

IACHR, [Report No. 82/15](#), Petition 577-06. Friendly Settlement. Gloria González and Family. Colombia. October 28, 2015.

- 1) Carry out an act of dignification, accompanied by a private ceremony in which, in accordance with the wishes expressed by the relatives of the victims, the ashes of the mortal remains of Mrs. Gloria Gonzalez will be thrown into the sea. This symbolic act will have a psychosocial accompaniment by the Unit for the Attention and Integral Reparation to the Victims, who will be in charge of the execution of this measure.

IACHR, [Report No. 24/13](#). Case 12.358. Friendly Settlement. Octavio Rubén González Acosta. Paraguay. March 20, 2013.

The Paraguayan State assumes the responsibility to make a historical recognition of the validity of the Paraguayan Communist Party, prior to the coup d'état of February 2 and 3, 1989, in which the memory of the direct victim and of the citizen members of this group is contemplated.

IACHR, [Report No. 67/03](#). Petition 11.766. Friendly Settlement. Irma Flaquer. Guatemala. October 10, 2003.

c. Erect a monument to the journalist sacrificed for the right to free expression, symbolized by the personality of Irma Marina Flaquer Azurdia.

d. Naming a room in a public library that incorporates all materials related to the work of that journalist.

e. Designate the name of a public road.

j. To make a documentary film.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), El Salvador, 2022

394. [...] the IACHR emphasized that initiatives for the recognition and memory of the victims must be developed with their participation and that of society as a whole, seeking to build an inclusive peace.

Resolutions

[IACHR, Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017, Principle IX "Design and implementation of memory initiatives."

States must design and implement initiatives aimed at acknowledging and apologizing for the facts related to serious human rights violations, vindicating the memory and dignity of the victims, and establishing and disseminating the historical truth of such facts. Such initiatives may include public acts, educational, cultural or other measures,

respectful of interculturality and diversity, and with a human rights and gender perspective, exemplified by the following:

[...]

c. Creation of a national commemorative day to remember the serious human rights violations that have occurred;

[...]

e. Installation of monuments, signage in public spaces, memorials, and museums in recognition of the victims, and removal or contextualized amendment of monuments, memorials, museums, shields, insignia, and plaques that praise the memory of perpetrators;

f. Development of commemorations and tributes to the victims that evoke their lives and stories;

g. Placement of plaques in different places where the victims left their footprints;

5. Measures in the area of justice

129. In cases of serious human rights violations that occur as part of a systematic pattern, the organs of the System have indicated that justice measures take on particular intensity and importance given the seriousness of the crimes committed and the nature of the rights violated³⁵². This, given that the imperative need to prevent the repetition of such acts depends, to a large extent, on avoiding impunity and satisfying the expectations of the victims and society as a whole to have access to the truth about what happened³⁵³.

³⁵² IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019, para. 150.

³⁵³ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019, para. 150.

5.1. Investigation and sanction

130. States have the obligation to investigate, prosecute and punish those responsible for human rights violations and, in this sense, they are obliged to guarantee the victims and society the right to know the truth. This obligation acquires a special and strict connotation in cases of serious rights violations. In addition to constituting forms of administering justice, these measures are designed to maximize knowledge of the truth of what happened³⁵⁴.
131. The following is a systematization of some IACHR standards and criteria applicable to cases in transitional justice contexts, such as: (i) general aspects on how the investigation should be carried out in these contexts; (ii) due diligence in the investigation and punishment of serious human rights violations; (iii) obstacles in the investigation of these violations; (iv) sentence reduction, alternative measures to deprivation of liberty and prison benefits; (v) denial and obstruction of justice; and (vi) adoption of differentiated and intersectional approaches.

5.1.1. General Aspects

132. In the framework of its various mandates, the IACHR has referred to various aspects of the investigation and punishment of serious human rights violations, which are applicable to transitional contexts. Among them, it has reiterated that these investigations must be promoted by the State³⁵⁵, that they cannot be carried out under military criminal jurisdiction³⁵⁶, and that States must provide victims

³⁵⁴ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 25.

³⁵⁵ IACHR, [Report No. 102/19](#), Case 13.017 A. Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019

³⁵⁶ Application to the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) ([Case 11.995](#)) v. Republic of Colombia. March 10, 2006, para. 140 (available in Spanish).

with access to adequate and effective remedies³⁵⁷. In this regard, the Commission has also indicated that the family members must have full access and capacity to act in all stages and instances of the investigation³⁵⁸.

133. On the other hand, the Commission has been clear in pointing out that the existence of Truth Commissions, administrative reparations programs and payment of economic compensation does not exempt States from the obligation to investigate and punish³⁵⁹. It has also stressed that impunity contributes to the perpetuation of violence.³⁶⁰

Cases submitted to the I/A Court H.R.

IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019

150. The Court has also established that the obligation to investigate acquires a particular and decisive intensity and importance in view of the seriousness of the crimes committed and the nature of the rights harmed, as in cases of serious human rights violations that occurred as part of a systematic pattern or practice applied or tolerated by the State, since the imperative need to prevent the repetition of such acts depends, to a large extent, on avoiding impunity and satisfying the expectations of the victims and society as

³⁵⁷ IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, para. 41.

³⁵⁸ Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009, para. 327 (available in Spanish).

³⁵⁹ IACHR, [Annual Report, Chapter IV. Honduras](#)2012; IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021; Application to the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

³⁶⁰ IACHR, [Annual Report, Chapter IV. Colombia](#), 2001, para. 12.

a whole to have access to knowledge of the truth of what happened. The elimination of impunity, by all available legal means, is a fundamental element for the eradication of extrajudicial executions, torture and other serious human rights violations.³⁶¹

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña (Case 12.529) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

327. It should be noted that the victims' family members must have full access and capacity to act in all stages and instances of such investigations and proceedings, in accordance with domestic law and the standards of the American Convention.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

175. Likewise, the Commission has affirmed the same in relation to the amnesty laws of Uruguay³⁶² and Chile³⁶³. With respect to this decision regarding Chile, the IACHR considers it pertinent to the present case, taking into account the arguments of the parties, to reiterate what was affirmed in 1996, in the following terms:

³⁶¹ Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 244.

³⁶² 5 See IACHR. Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 (Uruguay). Report No. 29/92, October 2, 1992.

³⁶³ See IACHR. Case 10.843 (Chile). Report No. 36/96, October 15, 1996, paras. 58, 61, 67, 72, 78 and 93. In the same sense, IACHR. Cases 11.505 and others (Chile). Report 25/98, April 7, 1998, paras. 50, 53, 59, 65, 71 and 84.

The acknowledgement of responsibility made by the Government, the partial investigation of the facts, and the subsequent payment of compensation are not, by themselves, sufficient to comply with the obligations under the Convention. According to Article 1(1) of the Convention, the State has the obligation to investigate violations committed within its jurisdiction, to identify those responsible, to impose appropriate sanctions and to ensure adequate reparation to the victim³⁶⁴.

Application before the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) (Case 11.995) against the Republic of Colombia. March 10, 2006 (available in Spanish).

The Inter-American Court has established that in a democratic State under the rule of law, military criminal jurisdiction must have a restrictive and exceptional scope and be aimed at the protection of special legal interests, linked to the functions assigned by law to the military forces. Therefore, it should only be used to try military personnel for the commission of crimes or misdemeanors that, by their very nature, infringe upon legal interests specific to the military order³⁶⁵. Likewise, the Inter-American Court has pointed out that "when the military justice system assumes jurisdiction over a matter that should be heard by the ordinary justice system, the right to a natural judge is affected and, a fortiori, due process", which, in turn, is

³⁶⁴ 7 IACHR. Case 10.843 (Chile). Report No. 36/96, October 15, 1996, para. 77.

³⁶⁵ I/A Court H.R., Las Palmeras Case, Judgment of December 6, 2001, para. 51; Cantoral Benavides Case, Judgment of August 18, 2000, para. 113; and Durand and Ugarte Case, Judgment of August 16, 2002, para. 117.

closely linked to the right of access to justice³⁶⁶ . As a guarantee of due process, the judge in charge of hearing a case must be competent, independent and impartial³⁶⁷ .

Friendly Settlement Reports

IACHR, [Report No. 3/20](#), Case 12.095. Friendly Settlement. Mariela Barreto Riofano. Peru. February 24, 2020

Third: Investigation and sanction

The Executive Branch undertakes to guarantee access to the remedies of the domestic jurisdiction to the victim's family members or their representative and/or attorneys to enforce their right to truth, justice and reparation and to act diligently before the competent authorities so that these, in an autonomous and independent manner, proceed to the investigation and punishment of all those responsible for the alleged facts provided for in this Agreement.

IACHR, [Report No. 102/19](#), Case 13.017 A. Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019

The State undertakes to effectively promote the criminal proceedings that are underway to determine the corresponding responsibilities for the facts, until their legal conclusion, ensuring respect for the Constitution and the Laws of the Republic, the protection of Fundamental Rights and Freedoms. This implies the elimination of the obstacles

³⁶⁶ I/A Court H.R., Las Palmeras Case, Judgment of December 6, 2001, para. 52; Cantoral Benavides Case, Judgment of August 18, 2000, para. 112; and Castillo Petrucci et al Case, Judgment of May 30, 1999, para. 128.

³⁶⁷ I/A Court H.R., Las Palmeras Case, Judgment of December 6, 2001, para. 53; Ivcher Bronstein Case, Judgment of February 6, 2001, para. 112; and Castillo Petrucci et al Case, Judgment of May 30, 1999, para. 130.

and mechanisms of fact and law that impede the fulfillment of these obligations, so that the measures within the scope established by domestic law are used.

Likewise, the State undertakes, at the request of the Attorney General's Office, to coordinate with the Prosecutor's Offices of the different Judicial Districts, to attend with the utmost responsibility and speed, all proceedings arising from the cases of the military dictatorship.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

199. By virtue of what has been indicated in this section, the Commission recommends to the State of Colombia that:

2. Adopt the pertinent measures so that members of the security forces who are allegedly involved in cases of human rights violations and/or IHL are suspended from active service until a final decision is issued in the disciplinary or criminal proceedings that are being processed.

511. [...] the Commission reiterates that overcoming the situation of impunity with respect to human rights violations and strengthening the mechanisms of access to justice, judicial guarantees, and judicial protection are indispensable to guarantee the sustainability and success of the implementation of some reparation policies, such as land restitution. The deactivation of the factors of violence and the protection of victims and claimant leaders are closely linked to the progress of investigations in this regard.

1201.[...] the State must exhaust all available means to clarify, investigate, and punish all those responsible for the commission of human rights violations³⁶⁸ . Likewise, all actions and measures undertaken in this sense must focus on the centrality of the expectations and needs of the victims, in order to achieve a restorative effect.

1204. [...] In order to respond legitimately and effectively to violations of fundamental rights, the administration of justice requires rules that are adapted to the needs of society, and that conform to general principles such as the right of access to justice, the impartiality of the judge, the procedural equality of the parties, and the enforceability and effectiveness of court decisions³⁶⁹ .

IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004.

41. States should adopt the necessary measures to facilitate victims' access to adequate and effective remedies both to denounce the commission of these crimes [crimes under international law] and to obtain reparations for the harm suffered and thus contribute to preventing their repetition. The "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and International Humanitarian Law" establish that States should: (a) publicize, through official and private mechanisms, all

³⁶⁸ The Commission establishes that in its observations to the Draft Report, the State reiterated that there is no "peaceful jurisprudence" in relation to the obligation to investigate, prosecute and punish human rights violations in contexts of transition from armed conflict to peace (Observations of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GA/ID-13-048140, December 2, 2013, para. 632). This is in accordance with the arguments that were analyzed in Chapter III of this report and with respect to which the IACHR has already addressed the respective considerations on the duty that remains to investigate such violations, in accordance with the State's international obligations.

³⁶⁹ IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc.9 rev. 1, February 26, 1999, conclusions.

available remedies against violations of international human rights law and international humanitarian law; (b) take, during judicial, administrative or other proceedings affecting the interests of victims, measures to protect their privacy, as appropriate, and to ensure their safety, as well as that of their relatives and witnesses, against any acts of intimidation or reprisal; (c) use all available means of redress and remedies against violations of international human rights law and international humanitarian law; (d) take all appropriate measures to protect victims' privacy, as appropriate, and to ensure their safety, as well as that of their relatives and witnesses, against any acts of intimidation or reprisal; and (c) use all appropriate diplomatic and legal means to enable victims to exercise their right to seek remedies and redress for violations of international human rights law or international humanitarian law.³⁷⁰

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia", 2014.](#)

77. [...] the IACHR reminds the State that the strategy of prioritization of cases as a strategy for the investigation of serious violations in the conflict cannot imply a lack of action by the State with respect to cases that are not prioritized. Likewise, the Commission reiterates the importance that in the implementation and definition of the elements applicable

³⁷⁰ See United Nations, Economic and Social Council, Final Report of the Special Rapporteur Cherif Biassiouni pursuant to Commission on Human Rights Resolution 1999/33 on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" and "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and International Humanitarian Law", annexes to the report, *E/CN.4/2000/62 18 January 2000*, page 9.

to the prioritization strategy, spaces for adequate participation of the victims be guaranteed.

IACHR, [Annual Report, Chapter IV. Honduras](#), 2012

The IACHR appreciates the work done by the Truth Commission, but considers it important to reiterate that the presentation of its Report and the important findings indicated therein do not exempt the State from its international obligation to investigate, prosecute and punish through judicial channels State agents who have committed human rights violations³⁷¹.

IACHR, [Annual Report, Chapter IV. Haiti](#), 2005

The Commission considers it important to emphasize the responsibility of the State to investigate and prosecute human rights abuses in accordance with these [international] standards, whoever is responsible and whatever the abuses committed, including violations perpetrated during the military dictatorship of the early 1990s or in the course of previous and current governments. The state must also take the necessary measures to ensure that no person implicated in such crimes is incorporated into the State security forces.

³⁷¹ In a note sent on December 22, 2011, by the Secretary of State in the Offices of Justice and Human Rights, Ana Pineda H., pointed out that the Truth and National Reconciliation Commission issued 84 recommendations, contained in the Report "So that the facts are not repeated", which are not limited to overcoming the causes and effects of June 28, 2009, "but point to the structural problems of the State of Honduras". For this reason, he added, on November 8, 2011, the President of the Republic, Porfirio Lobo Sosa, created the Unit for the Follow-up of the Recommendations of the Truth and Reconciliation Commission, attached to the Secretariat of State in the Offices of Justice and Human Rights. In observations of the Secretariat of State in the Offices of Justice and Human Rights to the "Draft General Report on the Situation of Human Rights in Honduras, approved by the IACHR, dated December 21, 2011, p. 3.

IACHR, [Annual Report, Chapter V. "Follow-up Report on Compliance with the Recommendations of the IACHR in the Third Report on the Situation of Human Rights in Paraguay"](#), 2001.

27. It is of the utmost importance, therefore, that all the judicial cases brought against Alfredo Stroessner, his collaborators and members of the repressive apparatus be concluded, imposing the criminal sanctions corresponding to the gravity of the facts and the degree of responsibility. For its part, the Commission insists that all necessary actions be taken to obtain the extradition of Alfredo Stroessner for his trial in the cases pending before the Paraguayan justice system.

28. In the Commission's opinion, the investigation and punishment of those most responsible for the violations committed during the dictatorship is one of the best guarantees to ensure the non-repetition of such acts.

Compendiums

IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121, 12 April 2021

170. The Commission has recognized that, in serious, systematic and prolonged situations of human rights violations, States can create administrative reparation programs that allow affected persons to have recourse to expeditious and effective mechanisms. However, the Commission has emphasized that the reparation mechanisms offered by the State must be comprehensive in the sense of taking into account all the components of reparation in accordance with the State's international obligations. In particular, the Commission has considered that the determination of reparation, whether determined

administratively or judicially, does not exempt the State from its obligations related to the component of justice for the violations caused, which obliges the State to guarantee the victims the investigation and punishment of those responsible for those violations, in accordance with the provisions of international law³⁷².

5.1.2. Due diligence in the investigation and punishment of serious human rights violations

134. In cases of serious human rights violations, there is a reinforced duty of the State to promote the development of the investigation³⁷³. Among the aspects that should govern this reinforced obligation within the framework of the investigations are: (i) ex officio initiation by the State³⁷⁴; (ii) reasonable time frame³⁷⁵; (iii) impartial and exhaustive investigation that seeks to prosecute and punish all persons responsible, at the material and intellectual level³⁷⁶, as well as the structure that favored or encouraged the commission of violations³⁷⁷; (iv) exhaustion of all logical lines of investigation³⁷⁸; (v) access by the authorities to relevant documentation and

³⁷² IACHR, Truth, Justice and Reparation. Fourth report on the situation of human rights in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 467

³⁷³ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019, para. 155.

³⁷⁴ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019, para. 155.

³⁷⁵ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

³⁷⁶ Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009, para. 325 (available in Spanish).

³⁷⁷ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 144.

³⁷⁸ IACHR, [Report No. 96/19](#). Case 11.726. Merits (Publication). Norberto Javier Restrepo. Colombia, June 14, 2019, para. 132.

information; and (vi) consideration of the systematic pattern of human rights violations³⁷⁹.

Cases submitted to the I/A Court H.R.

IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019

155. It follows from inter-American jurisprudence that under Articles 8 and 25 of the Convention, when the authorities have knowledge of a possible case of enforced disappearance or torture, they have a reinforced duty in the promotion and development of the investigation, which includes, as relevant to the present case: (i) initiating the investigation ex officio whenever there is a complaint or well-founded reason to suspect that such crimes occurred; (ii) ordering and practicing the relevant evidence in accordance with the duty of due diligence; (iii) guaranteeing independence and impartiality in the investigation; and (iv) removing the obstacles that threaten the proper development of the investigation, among others.

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

325. In accordance with the Court's jurisprudence, and given the particular gravity of the human rights violations that occurred in the instant case, full reparation requires that the Bolivian State investigate with due diligence, in a serious, impartial and exhaustive manner, the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña, with the purpose of clarifying the historical truth of the facts and

³⁷⁹ IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 126.

prosecuting and punishing all those responsible, not only materially but also intellectually. To this end, it shall adopt all the necessary judicial and administrative measures in order to complete the investigation, locate, try and punish all those who participated in the events, and report on the results. [...]

Merits Reports

IACHR. [Report No. 96/19](#). Case 11.726. Merits (Publication). Norberto Javier Restrepo. Colombia, June 14, 2019

132. [...] the Commission recommended:

2. To carry out an impartial and exhaustive investigation in order to judge and punish those materially and intellectually responsible for the death of Norberto Javier Restrepo and to establish the truth of what happened. These investigations should be carried out in such a way as to explore and exhaust the logical lines of investigation derived from the various indications taken into account in this report.

Friendly Settlement Reports

IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

Part Five: Remedies agreed between the parties

The State must take decisive measures to advance substantively and within a reasonable period of time in the investigation being carried out into the crime of forced displacement of which Nicolasa and her family were victims, clarify the facts, identify those responsible as far as possible, and make the information on the case available, within the framework of legal confidentiality. In compliance with this obligation, the State must remove all obstacles, de facto and

de jure, that have impeded the effective progress of the investigation, for which the reassignment of the investigation must be processed in order to guarantee not only its momentum, but also the conditions of access to justice for the family.

Thematic reports

IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

125. [...] Consequently, the Court has established in detail the elements that lead to the fulfillment of the right to the truth as a measure of reparation.

126. In particular, the Court has ordered the following measures:

(i) "initiate, promote, reopen, direct, continue and conclude, as appropriate, with the utmost diligence, the relevant investigations and proceedings within a reasonable time, in order to establish the full truth of the facts and determine any criminal liability that may exist, and remove all de facto and de jure obstacles that maintain total impunity";

[...]

(iii) "take into account the systematic pattern of human rights violations [...] so that the relevant processes and investigations are conducted in consideration of the complexity of these facts and the context in which they occurred [...]";

(iv) "identify and individualize all material and intellectual authors [...]";

(v) "ensure that the competent authorities carry out the corresponding investigations ex officio and that to this end they have within their reach and use all the logistical and scientific resources necessary to gather and process the evidence and, in particular, have the powers to access the relevant documentation and information to investigate the facts denounced and promptly carry out those actions and inquiries essential to clarify what happened in the present case";

(vi) "ensure that the investigations [...] remain, at all times, under the cognizance of the ordinary jurisdiction";

[...]

(xv) "to execute outstanding arrest warrants for the alleged perpetrators and to issue the relevant warrants in order to prosecute all those responsible;"

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

144. The Commission reiterates that the State must initiate, develop and complete, in the ordinary criminal jurisdiction, in accordance with the standards of due diligence and within a reasonable period of time, the relevant investigations to clarify the cases of extrajudicial executions and punish those responsible. In this sense, the investigation should not only be aimed at identifying those directly responsible, but also

the structure that favored or encouraged the commission of these acts.

5.1.3. Obstacles to the investigation and punishment of serious human rights violations

135. 1. Since the adoption of the judgment of the I/A Court H.R. in the case of *Barrios Altos v. Peru*, the organs of the System have been clear in pointing out that:

amnesty provisions, statutes of limitation and the establishment of exclusions of liability that seek to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, summary, illegal or arbitrary executions and forced disappearances, all of which are prohibited because they contravene non-derogable rights recognized by international human rights law, are inadmissible³⁸⁰.

136. Prior to this landmark decision, the IACHR had already ruled on the incompatibility of amnesty laws relating to serious human rights violations in decisions on the merits regarding El Salvador, Argentina and Uruguay in 1992³⁸¹. Previously, in its 1985 Annual Report, the IACHR had expressed its opposition to so-called self-amnesties³⁸².

³⁸⁰ I.A. Court H.R.. Case of *Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, para. 41.

³⁸¹ IACHR. Report No. 26/92, Case 10.287, *Las Hojas Massacre*, El Salvador, September 24, 1992, cons. 11; and IACHR; IACHR, Report No.28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992./92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992; and IACHR, Report No. 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Uruguay, October 2, 1992.

³⁸² IACHR, Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, Chapter V.

137. In the context of the supervision of compliance with the sentences in the Barrios Altos³⁸³ and La Cantuta³⁸⁴ cases, the IACHR ruled on the humanitarian pardon granted to Alberto Fujimori, establishing a series of standards regarding the application of pardons in the case of persons convicted of serious human rights violations in transitional contexts. In this regard, it emphasized that: (i) in case of serious human rights violations, not only amnesties but also pardons or reprieves are incompatible with international human rights law; (ii) such figures impede the satisfaction of the victims' right to justice since they have a disproportionate impact on the right to justice and the dignity of the victims and their relatives; (iii) their application is even more serious and reprehensible in the case of crimes against humanity; and (iv) although persons deprived of their liberty have the right to be treated with dignity and to receive adequate medical care, to achieve this end it is not necessary to use the figure of pardon, which implies the extinction of the sentence, but rather there are multiple means that are less harmful to the rights of the victims³⁸⁵.
138. The jurisprudence on the incompatibility of amnesty laws or other similar provisions with the obligations of States to investigate and, where appropriate, punish those responsible for serious human rights violations has been constant to date³⁸⁶.

³⁸³ I.A. Court H.R.. Case of Barrios Altos v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75.

³⁸⁴ I.A. Court H.R.. Case of La Cantuta v. Peru. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162.

³⁸⁵ I.A. Court H.R.. Barrios Altos Case and La Cantuta Case v. Peru. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of May 30, 2018, para. 17.

³⁸⁶ I/A Court H.R., Case of Maidanik et al. Case of Maidanik et al. v. Uruguay. Merits and Reparations. Judgment of November 15, 2021. Series C No. 444, para. 147.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

185. Consequently, even though Brazil has not ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the obligation to investigate and criminally prosecute crimes against humanity arises as a norm of jus cogens, which is not born with that Convention but is recognized in it. Therefore, applying the statute of limitations to crimes against humanity is a violation of this mandatory rule that the Brazilian State must comply with³⁸⁷.

186. The Commission emphasizes that the Brazilian authorities, particularly the judicial authorities, have the duty not to apply amnesty, statutes of limitation, or any other rule excluding responsibility for serious human rights violations that constitute crimes against humanity - such as the forced disappearances in the instant case - by virtue of the fact that such crimes are non-amnestible and imprescriptible, regardless of the date on which they were committed.

8. As a consequence of the foregoing, the Inter-American Commission requests the Court to order the State:

a. Adopt all necessary measures to ensure that Law No. 6.683/79 (Amnesty Law) no longer represents an obstacle to the criminal prosecution of serious human rights violations that constitute crimes against humanity;

³⁸⁷ See, mutatis mutandi, I/A Court H.R., Almonacid Arellano Case, Judgment of September 26, 2006. Almonacid Arellano Case, Judgment of September 26, 2006. Series C No. 154, para. 153.

Application before the Inter-American Court of Human Rights in the case of Barrios Altos ([Case 11.528](#)) against the Republic of Peru, June 8, 2000 (available in Spanish).

141. In the case of Barrios Altos, the amnesty laws limited the investigation, criminal prosecution and punishment of those responsible in violation of the obligations of the Peruvian State not only under the American Convention, but also under other international human rights and humanitarian law treaties and international custom, which strictly prohibit extrajudicial executions.³⁸⁸ Extrajudicial executions constitute a crime against humanity for which there is an unrenounceable obligation to punish those responsible for such a crime³⁸⁹.

142. In other words, the Amnesty Laws curtailed the access of the victims' relatives and survivors to truth, justice, and adequate reparations.

³⁸⁸ The right not to be arbitrarily deprived of life is considered a peremptory norm of international law (*ius cogens*). Cf. Common Article 3 of the Geneva Conventions; Article 53 of the Vienna Convention on the Law of Treaties.

³⁸⁹ In this regard, the International Committee of the Red Cross (ICRC) has made it clear that Article 6(5) of Additional Protocol II to the Geneva Conventions, which calls for the granting of "the broadest possible amnesty" after the cessation of internal armed conflicts, cannot be interpreted as supporting amnesty for violations of humanitarian law. Thus the ICRC held as follows: "The travaux préparatoires of Article 6(5) indicate that this provision is intended to encourage amnesty, ... as a kind of release at the end of hostilities for those who were detained or punished merely because of their participation in hostilities. It is not intended as an amnesty for those who have violated international humanitarian law. See Letter of April 15, 1997, addressed by Dr. Pfanner, Head of the Legal Division, International Committee of the Red Cross, Douglas Casseli, Lessons from the Americas, op. cit, (supra n. 110) pp. 306-7 (1996).

Merits Reports

IACHR, [Report No. 37/00](#), Case 11.481, *Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000*.

162. The Commission considers it appropriate to recall what has been expressed here with respect to its position on peace, [\[161\]](#) and to add that it should not impede justice, which includes the investigation and punishment of human rights violations.

1. Conduct a complete, impartial and effective judicial investigation, in an expeditious manner, in order to identify, try and punish all the material and intellectual authors of the violations established in this report, without prejudice to the amnesty decreed.

Country reports

IACHR, [Situation of Human Rights in Chile](#), OEA/Ser.L/V/II. Doc. 1/22, January 24, 2022 (available in Spanish).

71. Therefore, the IACHR urges the State to move forward with the investigations of the facts related to serious human rights violations or crimes against humanity, identifying, prosecuting and, where appropriate, punishing those responsible; removing and refraining from resorting to figures such as amnesty, pardon, or gradual statutes of limitations and the establishment of exclusions of responsibility, as well as measures that seek to prevent criminal prosecution or suppress the effects of a conviction.

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

96. [...] It has also expressed repeated concern regarding the processing of different versions of the preliminary draft [the Amnesty Law] that would contain provisions that would hinder the clarification, investigation, and prosecution of acts that constitute serious human rights violations or crimes against international law - such as genocide, crimes against humanity, and war crimes, as well as the punishment of those responsible for them. [...]

IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021.

414. [...] The Commission underscores the interpretation of the Inter-American Court that the provisions of the Brazilian Amnesty Law lack legal effect insofar as they represent an obstacle to the investigation and punishment of such crimes and reiterates that the State must adapt its domestic law to the commitments assumed with the ratification of the American Convention³⁹⁰. In addition, the IACHR warns that the jurisdictional authorities, as well as other public authorities, are obliged to exercise due control of conventionality and ensure compliance with international judgments issued to the Brazilian State.

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

273. [...] the State's duty to investigate, in harmony with the norms of IHL and international human rights law, the serious

³⁹⁰ I/A Court H.R., Case of Gomes Lund et al. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Judgment of November 24, 2010. Series C No. 219, para. 174.

human rights violations committed during the armed conflict remains. The waiver of this obligation, whether through the application of amnesty laws or any other type of domestic provision, is incompatible with the American Convention.

IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001.

22. [...] The Inter-American Commission has indicated that:

In other cases, the enactment of amnesty laws or the granting of benefits such as pardons, private amnesty, or others, to persons responsible for, investigated or punished for crimes against human rights, has made possible what could be called impunity by law³⁹¹.

Thematic reports

IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/III.152. Doc. 2, August 13, 2014. Recommendation 3

39. By virtue of what has been indicated in this report, the IACHR recommends to the States that:

3. Remove all legal and de facto obstacles that prevent the initiation and/or pursuit of judicial proceedings in relation to human rights violations, including the adoption and maintenance of amnesty laws.

³⁹¹ IACHR, Second Report on the Situation of Human Rights in Peru, 2000, Chapter II, paras. 206 and 207.

Annual Report Chapters

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), Uruguay, 2020.

728. With regard to memory, truth, and justice, the Commission expressed its concern³⁹² over the presentation of a bill before the Senate of the Republic, which proposes to limit the prosecution and punishment of those allegedly responsible for serious human rights violations committed during the civil-military dictatorship³⁹³. The Commission notes with deep concern that the approval of this initiative would result in the reinstatement of the "Law on the Expiration of the Punitive Claims of the State," as well as the application of the statute of limitations to the aforementioned crimes. In this regard, the Commission reiterated to the Uruguayan State its obligation to guarantee that the Expiry Law does not impede or hinder the investigation and eventual punishment of those responsible for serious human rights violations and called on the State to refrain from approving the bill in question³⁹⁴.

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), Uruguay, 2019.

601. [...] The IACHR has also expressed its concern about the persistence of judicial interpretations that deny the imprescriptibility of the serious human rights violations of the period of the Uruguayan dictatorship³⁹⁵. In this regard, the Commission took note of the decision of the Supreme Court

³⁹² IACHR, Tweet, August 5, 2020.

³⁹³ Parliament of Uruguay, Ficha Asunto 147369, 2020; El País, Cámara de Senadores ya tiene el proyecto de Manini Ríos para reinstalar la ley de Caducidad, August 5, 2020.

³⁹⁴ I/A Court H.R., Case of Gelman v. Uruguay, February 24, 2011, P. 85, para. 11.

³⁹⁵ IACHR, 'IACHR culminates visit to Uruguay', May 31, 2019.

of Justice that limited the application of the statute of limitations in a case of this context, however, it reinforced the importance of the State to eliminate the obstacles that impede the investigation and prosecution of cases of this nature³⁹⁶ [...].

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), 2014

106. The Commission is also aware of obstacles to access to justice in Chile where the United Nations Human Rights Committee has noted that, despite progress in the investigation, prosecution and punishment of cases of serious human rights violations committed in the past in Chile, the application of the “gradual statutes of limitation” or “semi statutes of limitation” provided for in Article 103 of the Criminal Code is an obstacle to accountability, since it determines the reduction or mitigation of the applicable penalties³⁹⁷ [...].

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia"](#), 2014.

71. [...] the Commission established that the organs of the Inter-American System have consistently referred to the unrenounceable nature of the State's duty to investigate serious human rights violations and the incompatibility of figures such as amnesty laws or any other provision that hinders compliance with that obligation. As the Commission

³⁹⁶ IACHR, 'IACHR takes note of judicial decision in Uruguay limiting the application of the statute of limitations in crime committed during the civil-military dictatorship', 24 June 2019.

³⁹⁷ See United Nations, Human Rights Committee, "[Concluding observations on the sixth periodic report of Chile](#)," CCPR/C/CHL/CO/6, August 13, 2014, para. 8.

pointed out, the unrenounceable nature of this obligation has been recognized in situations that arise in various social processes faced by different countries in the region, without distinguishing between processes of transition from dictatorships to democracy or processes of search for and consolidation of peace.

IACHR, [Annual Report, Chapter V. "Follow-up Report on Compliance with the Recommendations of the IACHR in the Third Report on the Situation of Human Rights in Peru \(2000\)", 2001.](#)

25. [...] The Commission has also learned that in specific cases the Peruvian Judiciary has decided not to apply the amnesty laws. The Commission considers such actions to be positive, but insists that amnesty laws should be repealed in general, and not left to the discretion of judicial bodies in specific cases.

5.1.4. Reduction of sentences, alternative measures to imprisonment and prison benefits

139. In addition to the scenarios of impunity due to the existence of figures that prevent the investigation and punishment of serious human rights violations, countries in transitional contexts have faced situations in which, although there was an investigation and even - in some cases - punishment, it is not proportional to the seriousness of the crimes or the persons responsible do not serve an effective prison sentence.

140. The IACHR has ruled on such situations in the framework of its various mandates. In this regard, it has concluded that the so-called half statute of limitations or gradual prescription is incompatible with the obligation to adequately punish those who committed serious

human rights violations³⁹⁸. Although the Commission considers that certain circumstances may lead to a reduction of the sentence, this requires a more demanding analysis and requirements in terms of the legal right affected, the seriousness of the facts, and the obligation of States to investigate, prosecute and punish serious human rights violations³⁹⁹.

141. On the other hand, the IACHR has emphasized that the execution of the prison sentence in this type of case is an important aspect of the obligation to investigate and punish, so that States must take into account the seriousness of the crimes when granting prison benefits⁴⁰⁰. In this regard, the IACHR has expressed concern regarding the granting of benefits such as house arrest or parole in cases of persons convicted of serious human rights violations in the context of the Southern Cone dictatorships⁴⁰¹.

Cases presented before the I.A. Court H.R.

IACHR, [Report No. 72/21](#), Case 13,054. Arturo Benito Vega González et al. Chile, April 16, 2021 (available in Spanish).

273. In this regard, the Commission observes that the idea of a progressive decrease in criminal punishment for crimes against humanity simply because of the passage of time and for alleged reasons of legal certainty is largely incompatible with the obligations to adequately punish those responsible for serious human rights violations. In effect, the

³⁹⁸ IACHR, [Report No. 72/21](#), Case 13,054. Arturo Benito Vega González et al. Chile, para. 273 (available in Spanish).

³⁹⁹ IACHR, [Situation of Human Rights in Chile](#), OEA/Ser.L/V/II. Doc. 1/22, January 24, 2022, para. 68 (available in Spanish).

⁴⁰⁰ IACHR, [Situation of Human Rights in Chile](#), OEA/Ser.L/V/II. Doc. 1/22, January 24, 2022, para. 69 (available in Spanish).

⁴⁰¹ IACHR, Annual Report, Chapter IV.A, "Human Rights Development in the Region," Uruguay, 2022, para. 781; and IACHR, Annual Report, Chapter IV.A, "Human Rights Development in the Region," Chile, 2018, para. 133.

figure of the half statute of limitations is not suitable to guarantee legal certainty; it does not take into account the gravity of the crimes against humanity, their multiple effects and the need to avoid their repetition; it does not contribute in any way to the truth and clarification of what happened, much less does it take into account the disproportionate effect that such a reduction has on the rights of the victims and their family members⁴⁰². In this sense, the IACHR held that, in cases of serious human rights violations, "the State must maintain in time the punitive power of the State over conduct whose gravity makes its repression necessary to prevent its recurrence"⁴⁰³.

Country reports

IACHR, [*Situation of Human Rights in Chile*](#), OEA/Ser.L/V/II. Doc. 1/22, January 24, 2022 (available in Spanish).

68. [...] the passage of time cannot be taken as a circumstance that reduces the sentence or its execution for this type of crime [crimes committed during the dictatorship], and the State must guarantee that the rights of the 66 victims are not affected by the failure of its duty to investigate and identify the persons responsible in a more expeditious manner⁴⁰⁴. It also reaffirms that, although certain circumstances may lead to a reduction of the sentence, for its application they require a more demanding analysis and requirements based on the legal right affected, the gravity of the facts, and the obligation of the States to investigate,

⁴⁰² IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 130.

⁴⁰³ I/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment of November 29, 2018. Series C No. 372. para.77.

⁴⁰⁴ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 111. Citing: I.A. Court H.R.. Judgment compliance resolution. Loayza Tamayo Case. July 1, 2011. Para. 40.

prosecute and punish the persons responsible for crimes against humanity.

69. Similarly, the Commission emphasizes that it is the duty of the State to take into account the gravity of such crimes [crimes against humanity] when granting prison benefits to persons who have been convicted of them, highlighting the execution of the sentence as an important aspect of its international obligation to punish the perpetrators.

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/III. Doc. 278, October 14, 2021.

100. [...] The Commission emphasizes that crimes against humanity have a series of characteristics that are different from other crimes, and States therefore have an international obligation not to leave these crimes unpunished and to ensure the proportionality of the punishment⁴⁰⁵. Although international law admits that certain circumstances may lead to a reduction of the sentence even in cases of serious human rights violations, such circumstances require a more demanding analysis and requirements in terms of the legal right affected, the gravity of the facts, and the obligation of States to investigate, prosecute and punish those responsible for these crimes⁴⁰⁶.

⁴⁰⁵ IACHR, Communiqué 60/17 - IACHR expresses concern over decision of the Supreme Court of Justice of Argentina, May 15, 2017.

⁴⁰⁶ IACHR, Communiqué 185/2018 - IACHR expresses concern about granting parole to persons convicted of serious human rights violations in Chile, August 17, 2018.

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

251. In this regard, the Commission considers it pertinent to indicate that in any transitional justice framework, one component for the establishment of a lasting peace is that it be applied as a system of useful incentives for the truth, the individualization and punishment of those responsible, and the reparation of the victims. The IACHR has emphasized that in the application of a transitional justice law, the satisfaction of the truth and reparation components must be rigorously examined as an essential condition for the imposition, for example, of a mitigated sanction⁴⁰⁷. [...]

255. In this sense, although the Inter-American jurisprudence has established the unrenounceability of the obligation to investigate serious human rights violations committed in the conflict, such as extrajudicial executions, torture, forced disappearances or forced displacements, it has recognized, for example, the possibility of proposing the morigeration of the punitive power of the State, specifically through the imposition of attenuated sanctions⁴⁰⁸.

⁴⁰⁷ IACHR, [Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia](#), OEA/Ser/L/V/II. 125 Doc. 15, August 1, 2006, para. 38.

⁴⁰⁸ IACHR, Pronouncement of the Inter-American Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia, 2006, para. 41.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), Argentina, 2017

172. The Commission also notes with concern the slowness of the proceedings in Argentina⁴⁰⁹. In this regard, the IACHR expressed its dismay at the jurisprudential changes contrary to Inter-American standards regarding the sanctions applicable to crimes against humanity. The IACHR expressed its concern over the interpretation made by the Supreme Court of Justice that did not take into account the differentiated characteristics and particularities of crimes against humanity, causing a huge setback in the fight against impunity and justice for the victims.⁴¹⁰ [...]

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia"](#), 2017.

124. Regarding the sanctions provided for by the Amnesty Law, it should be noted that the IACHR has recognized the possibility of imposing mitigated sanctions in the context of transitional justice processes, such as in the Justice and Peace processes⁴¹¹. In this regard, the IACHR has emphasized that the mitigated punishment must be applied

⁴⁰⁹ IACHR, Right to Memory, Truth and Justice for Crimes against Humanity in Argentina. Thematic hearing, 165th Period of Sessions, October 24, 2017.

⁴¹⁰ IACHR, Press Release No. 060/17, IACHR expresses concern over decision of the Supreme Court of Justice of Argentina, May 15, 2017.

⁴¹¹ IACHR, IACHR Pronouncement on the Application and Scope of the Justice and Peace Law in the Republic of Colombia (2006), para. 41 and IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 254. 2016 Annual Report, Chap. V Colombia, para. 137.

as part of a system of incentives useful to the truth, to the individualization and punishment of those responsible, and to the reparation of the victims, and that the mitigated sanction must also be proportional to the legal right affected⁴¹² [...].

5.1.5. Denial and obstruction of justice

142. The obligation of States to investigate is not limited to the persons directly and indirectly responsible for the facts, but extends to the State authorities that denied access to justice or obstructed in any way the judicial processes⁴¹³. In this sense, the obligation to investigate also extends to omissions in the duty to respond to a complaint or those actions carried out to obstruct the proceedings⁴¹⁴. Such actions or omissions may entail administrative, disciplinary or criminal liability, and the State is obliged to take measures to investigate such acts..

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others ([Case 12.517](#)) against the Republic of El Salvador. June 28, 2010 (available in Spanish).

249. The Commission recalls that according to the jurisprudence of the Court, a diligent investigation also includes avoiding obstruction of the proceedings by public officials or private individuals. In this regard, the Court has

⁴¹² IACHR, IACHR Pronouncement on the Application and Scope of the Justice and Peace Law in the Republic of Colombia (2006), para. 38 and I/A Court H.R., Case of the Rochela Massacre v. Colombia, May 11, 2007, Series C No.163, para. 196. 2016 Annual Report, Ch. V Colombia, para. 137.

⁴¹³ Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras et al. ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 249 (available in Spanish).

⁴¹⁴ IACHR. [Report No. 96/19](#). Case 11.726. Merits (Publication). Norberto Javier Restrepo. Colombia, June 14, 2019, para. 132.

established that those who unduly divert or delay investigations aimed at clarifying the truth of the facts must be punished, applying the provisions of domestic legislation with the utmost rigor⁴¹⁵.

Merits Reports

IACHR. [Report No. 96/19](#). Case 11.726. Merits (Publication). Norberto Javier Restrepo. Colombia, June 14, 2019

132. [...] In that report the Commission recommended:

3. To order the corresponding administrative, disciplinary or criminal measures against the actions or omissions of state officials who contributed to the denial of justice and impunity in which the facts of the case are found, who failed in their duties to respond to the situation denounced or who participated in measures to hinder the processes aimed at identifying and punishing those responsible.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

115. [...] Additionally, as determined by the Inter-American Court in the case of the Massacre of El Mozote and nearby places⁴¹⁶, the Commission urges the State to investigate, through the competent public institutions, the conduct of officials who obstruct investigations, prosecution and punishment for crimes of this nature and, after due process,

⁴¹⁵ I/A Court H.R., Case of the Caracazo. Reparations (art. 63.1 American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 119.

⁴¹⁶ I.A. Court H.R.. Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, p. 148.

to apply, if appropriate, the corresponding administrative, disciplinary or criminal sanctions.

Thematic reports

IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

125. [...] Consequently, the Court has established in detail the elements that lead to the fulfillment of the right to the truth as a measure of reparation.

126. In particular, the Court has ordered the following measures:

(xvi) "initiate disciplinary, administrative or criminal actions, in accordance with its domestic legislation, against the possible State authorities that have hindered and impeded the due investigation of the facts, as well as those responsible for the various procedural irregularities"⁴¹⁷ .

5.1.6. Adoption of differentiated and intersectional approaches

143. In cases in which the victims belong to groups at special risk, the IACHR has made differentiated pronouncements taking into account the particular circumstances of these persons and the greater impact they face in the context of serious violations and transitional justice.

⁴¹⁷ See, inter alia, I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Case of Myrna Mack Chang v. Guatemala. Judgment of November 25, 2003. Series C No. 101, para. 277; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010 Series C No. 217, para. 237; Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 216; Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012 Series C No. 252, para. 319-321; Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, paras. 186, 212; Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 233.b.; Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 257.

For example, the IACHR has emphasized the importance of investigating and punishing all persons responsible for massacres committed against indigenous communities during armed conflicts⁴¹⁸; as well as the aggressions committed against justice operators and defenders who have acted in processes related to grave violations during dictatorships⁴¹⁹. It has also referred to the importance of prioritizing the investigation of serious violations committed against children and adolescents⁴²⁰, considering that the violations against them take on greater dimensions⁴²¹.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

460. By virtue of what has been indicated in this section, the Commission recommends to the State of Colombia that:

9. Adopt the corresponding measures so that serious human rights violations and breaches of IHL, such as forced disappearances, torture, sexual violence and recruitment of children and adolescents are prioritized by the Prioritization Committee or other measures to ensure the application of due diligence to investigate, clarify, prosecute and punish them.

⁴¹⁸ IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 Doc. 21 rev.

⁴¹⁹ IACHR, Annual Report, Chapter IV. A "Human Rights Development in the Region", Uruguay, 2019.

⁴²⁰ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 430.

⁴²¹ IACHR, [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#), OEA/Ser.L/V/II.118 Doc. 5, December 29, 2003, para. 381.

IACHR, [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#), OEA/Ser.L/V/II.118 Doc. 5, December 29, 2003.

381. The forced disappearance of persons violates the fundamental rights of the victims by denying them their legal personality, who are left without legal protection. In the case of children, the fact acquires greater dimensions. Children, unaware of the causes and reasons for their disappearance, are subjected to serious traumas that affect their personal development. The Commission urges the State to comply with its obligations in light of international treaties and the commitments assumed in the Peace Accords, in the sense of investigating the human rights violations committed during the armed conflict, as well as punishing those responsible and compensating the victims.

IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

3. Based on the abundant documentation and existing evidence, investigate, prosecute and punish all those responsible for the massacres and violations of life, integrity and other human rights of indigenous individuals and communities that occurred during the armed conflict.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), Uruguay, 2019

601. In the area of memory, truth and justice, the IACHR has urged the State to investigate the death threats perpetrated against authorities, justice operators and human rights defenders who acted in the process of judicial cases related

to serious violations that occurred during the dictatorship in Uruguay⁴²². [...]

IACHR, [Annual Report, Chapter IV, Colombia, 2010](#).

194. The Commission has repeatedly expressed its concern over the lack of judicial clarification of most of the acts of violence that have affected Afro-descendant communities and caused their displacement in the context of the armed conflict⁴²³. In this regard, the IACHR has stated that "the establishment of the truth of what happened, the serious search for a measure of justice by determining the responsibility of the perpetrators vis-à-vis the victims, and the reparation of the damage caused, far from hindering agreements that could contribute to pacification, constitute basic pillars of its strength"⁴²⁴. The Commission reiterates its concern and will continue to follow up on the situation of the Afro-descendant communities.

5.2. Search for persons and identification and delivery of mortal remains

144. In cases related to the disappearance of persons in the context of internal armed conflicts, dictatorships and authoritarian regimes, States have the obligation to take all necessary steps to investigate what happened and, in so doing, to determine the circumstances and fate of the victims, establish the identity of the persons

⁴²² IACHR, 'Press Release No 45/19 - IACHR expresses concern over lack of investigation into threats against justice operators involved in cases on grave human rights violations during the dictatorship in Uruguay', 27 February 2019; IACHR, 'Press Release No 135/19 - IACHR culminates visit to Uruguay', 31 May 2019.

⁴²³ See Chapter IV of the Annual Reports of the IACHR for the years 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2004, 2005, 2006, 2007, 2008 and 2009.

⁴²⁴ IACHR. Preliminary Observations of the Inter-American Commission on Human Rights following the visit of the Rapporteur on the Rights of Afro-descendants and against Racial Discrimination to the Republic of Colombia, March 27, 2009, para. 101. [Report on the Demobilization Process in Colombia](#), December 13, 2004, pp. 10-20.

responsible, and impose the respective punishment in accordance with international standards on the matter⁴²⁵. These obligations subsist in the face of uncertainty about the facts and the final fate of the victim, as well as in the absence of identification and punishment of all persons responsible⁴²⁶.

145. In particular, the IACHR has indicated that the investigation must be initiated *ex officio*, without delay and in a serious, impartial, diligent and effective manner⁴²⁷, and in a way that does not depend on the procedural initiative of the victim, family members or private contribution of evidence⁴²⁸. Likewise, States must guarantee the broad participation of the victims' family members in all stages of the process⁴²⁹.

146. Upon determining that the victim or victims lost their lives, States must identify and recover their remains, in addition to handing them

⁴²⁵ In this regard, see: IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 119; IACHR, [Annual Report, Chapter V. Follow-up to the recommendations made by the IACHR in country reports, "Follow-up Report - Access to Justice and Social Inclusion: the Road to Strengthening Democracy in Bolivia."](#) 2009, recommendation 11, and IACHR, [Report No. 60/01](#). Case 9.111. Ileana del Rosario Solares Castillo, María Ana López Rodríguez. Luz Leticia Hernández. Guatemala. April 4, 2001.

⁴²⁶ In this regard, see: IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021, para. 407; IACHR, [Access to Justice and Social Inclusion: The Road to Strengthening Democracy in Bolivia](#), OEA/Ser.L/V/II. Doc. 34, June 28, 2007.

⁴²⁷ In this regard, see: IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021, para. 407; Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras et al. ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 261 (available in Spanish); and IACHR, [Report No. 60/01](#). Case 9.111. Ileana del Rosario Solares Castillo, María Ana López Rodríguez. Luz Leticia Hernández. Guatemala. April 4, 2001.

⁴²⁸ IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021, para. 407. In this regard, see also: IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 121.

⁴²⁹ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 121.

over to their family members⁴³⁰. This delivery must be made "in accordance with their wishes, as well as with appropriate mechanisms to ensure their participation in the process⁴³¹". Additionally, in light of a differentiated approach, the IACHR has addressed the obligations of States in terms of identification that are respectful of the worldviews of ethnic groups⁴³².

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 329/20](#). Case 12.774 Merits. Patricia Emilie Cuéllar et al. El Salvador. December 29, 2020 (available in Spanish).

The Commission also requests the Court to establish the following measures of reparation:

2. Investigate the fate or whereabouts of Patricia Emilie Cuellar Sandoval, Mauricio Cuellar Cuellar and Julia Orbelina Pérez and, if applicable, take the necessary measures to identify and deliver the mortal remains to their families. To this end, a search plan for the victims must be carried out, which must be previously agreed upon with the family members. In addition, activate the mechanisms created by the National Commission for the Search of

⁴³⁰ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 119; IACHR, [Report No. 102/19](#), Case 13.017 A. Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019, 5. Measures of Justice, p. 9; IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 239, recommendation 2; IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 199; and Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 261 (available in Spanish).

⁴³¹ IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 239, recommendation 2.

⁴³² IACHR, [Annual Report, Chapter V. "Follow-up to the recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia,"](#) 2020, para. 108.

Disappeared Adults in the Context of the Armed Conflict in El Salvador for the search of the victims.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others ([Case 12.517](#)) against the Republic of El Salvador. June 28, 2010 (available in Spanish).

261. [...] the Commission requests the Court to order the State of El Salvador to conduct an impartial, diligent and effective investigation into the fate or whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera. In case they are found, to order the reestablishment of their right to identity and to make the necessary efforts to ensure family reunification. In the event that it is established that some of them are not alive, take the necessary measures to deliver their remains to their relatives.

Application before the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña ([Case 12.529](#)) against the Republic of Bolivia. May 12, 2009 (available in Spanish).

326. Likewise, the State must initiate an exhaustive search for the whereabouts of José Luís Ibsen Peña, followed by the identification of his remains and the delivery to his family members, if applicable. As long as these measures are not carried out, the forced disappearance of the victim and its effects will continue to be prolonged over time.

Complaint in the cases of Agustín Goiburú, Carlos José Mancuello, Rodolfo Feliciano Ramírez Villalba and Benjamín De Jesús Ramírez Villalba ([Cases 11.560, 11.665 and 11.667](#)) against the Republic of Paraguay. June 8, 2005 (available in Spanish).

191. The Court has recognized the right of the victims' family members to know what happened to them and, if applicable, where their mortal remains are located⁴³³ , which constitutes a measure of reparation and therefore an expectation that the State must satisfy for the victims' family members and society as a whole⁴³⁴ . In effect, the delivery of mortal remains in cases of detainees-disappeared is an act of justice and reparation in itself. It is an act of justice to know the whereabouts of the disappeared, and it is a form of reparation because it allows dignifying the victims, since the mortal remains of a person deserve to be treated with respect for their relatives so that they can give them a proper burial.⁴³⁵

Country reports

IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021.

407. The IACHR notes with concern the alterations made and recalls that, in cases of forced disappearance, the duty to investigate requires the State to take all necessary actions to determine the fate or whereabouts of the disappeared person and that this obligation subsists as long as there is

⁴³³ I/A Court H.R. I/A Court H.R. Castillo-Páez Case, *supra*, para. 90; Caballero Delgado and Santana Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997, para. 58; and Case of Neira Alegría et al. Reparations, Judgment of September 19, 1996, para. 69.

⁴³⁴ I/A Court H.R., Castillo-Páez Case, *supra*, para. 90.

⁴³⁵ I/A Court H.R. Trujillo Oroza Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002, para. 115.

uncertainty as to the final fate of the victim⁴³⁶. In addition, the IACHR emphasizes the obligation to investigate the case ex officio, without delay, and in a serious, impartial and effective manner, in such a way that it does not depend on the procedural initiative of the victim or his family members or on the private contribution of evidence⁴³⁷ [...].

IACHR, [Access to Justice and Social Inclusion: The Road to Strengthening Democracy in Bolivia](#), OEA/Ser.L/V/II. Doc. 34, June 28, 2007.

157. The Commission took note of the recent criminalization of the crime of forced disappearance by law published on January 21, 2006. With respect to the text of said criminalization, the Commission reminds the Bolivian State that forced disappearance constitutes a multiple and continuous violation of human rights⁴³⁸ and that the lack of information on the whereabouts of the remains of the victims, the lack of knowledge about the circumstances in which the disappearance took place, as well as the absence of identification and punishment of all those responsible, perpetuate the violation and make it current and extensive to the victims' family members. In this sense, impunity constitutes a source of international responsibility of the State within the framework of the conventional obligations to guarantee human rights by investigating and punishing them.

⁴³⁶ I/A Court H.R., Case of Ticona Estrada et al. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008, par. 80; I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988, para. 181.

⁴³⁷ I/A Court H.R., Case of Tenorio Roca et al. Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016, para. 168.

⁴³⁸ Court. I.D.H. *Case 19 Merchants*. Judgment of July 5, 2004. Series C No. 109; *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, paras. 128 and 129; *Blake Case*. Judgment of January 24, 1998. Series C No. 36, para. 65.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia"](#), 2014.

32. [...] Similarly, the IACHR reiterates that with regard to the recovery of bodies, the State must also address with urgency, seriousness and due diligence the bodies in cases in which the victims were thrown into rivers or the sea, or were incinerated in crematoria ovens to leave no trace, as well as take into account the negative impact of the construction of dams in the midst of the conflict and in areas where bodies of disappeared and murdered persons are buried; and mass graves.

6. Non-repetition measures

147. The IACHR has highlighted the intrinsic relationship between truth, justice, reparation, and guarantees of non-repetition, and the way in which these components of the transitional process do not replace one another, but rather complement and feed into each other. In particular, guarantees of non-repetition in this type of context are directly related to the adequate and effective adoption and implementation of the other components of comprehensive reparation⁴³⁹. In this sense, it is the comprehensive satisfaction of the standards of truth, justice and reparation that contributes decisively to the non-repetition of serious human rights violations⁴⁴⁰.

⁴³⁹ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121 12 April 2021, para. 4.

⁴⁴⁰ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.L/V/II. Doc. 121 12 April 2021, para. 168.

148. Therefore, measures of non-repetition transcend the victims and have a transformative vocation. Their purpose is to prevent the commission of future human rights violations and to modify the structural situation that served as a context and fostered the violations in the specific case⁴⁴¹.

149. This section groups the measures to guarantee the non-repetition of the facts into four categories: (i) measures aimed at the adoption, adaptation or repeal of legislation or other regulations; (ii) public policies; (iii) measures regarding the right to the truth; and (iv) training and awareness-raising.

6.1. Measures tending to the adoption, adaptation or repeal of legislation or other regulations

150. The jurisprudence of the IASHR has repeatedly ruled on the duty of States to guarantee the non-repetition of human rights violations through the adoption, adaptation or repeal of legislation or norms. The legal basis for this obligation is found in Article 2 of the American Convention, which establishes the duty of States to adopt such legislative or other measures as may be necessary to give effect to the rights and freedoms recognized in the ACHR⁴⁴².

151. The type of action required on the part of States - whether to adopt, adapt or repeal - will depend on each country's existing legal framework. These measures do not focus exclusively on laws, but encompass everything from regulations to constitutional provisions, as well as guidelines, directives and protocols. Moreover, in addition to the normative aspects, these guarantees of non-repetition are also aimed at the practice and implementation of these norms by the different State authorities, which includes, among others, the adoption of jurisprudence.

⁴⁴¹ IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.LV/II.173, Doc. 177, 30 September 2019, p. 26.

⁴⁴² IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#), OEA/Ser.LV/II.173, Doc. 177, 30 September 2019, p. 27.

152. The following is a systematization of measures corresponding to each of the aforementioned categories, i.e.: adoption, adaptation and repeal of legislation or other regulations.

6.1.1. Adoption of legislation or other regulations

153. These measures seek to create regulations to adapt the domestic framework to the American Convention, to other inter-American instruments, and to the standards developed by inter-American jurisprudence. These include: (i) the criminalization of certain crimes as forced disappearance⁴⁴³; (ii) the adoption of domestic mechanisms, particularly in the area of search⁴⁴⁴, and (iii) the adoption of international or inter-American instruments⁴⁴⁵.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

- a) Criminalize in its domestic legislation the crime of enforced disappearance, in accordance with the constituent elements thereof established in the respective international instruments.

⁴⁴³ Application to the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009, para. 259 (available in Spanish).

⁴⁴⁴ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 120; and

⁴⁴⁵ IACHR, [Report No. 101/01](#). Case 10.247 et al. Extrajudicial executions and forced disappearances of persons. Peru. October 11, 2001.

Merits Reports

IACHR, [Report No. 101/01](#), Case 10.247 et al. *Extrajudicial executions and forced disappearances of persons. Peru.* October 11, 2001.

4. To adhere to the Inter-American Convention on Forced Disappearance of Persons.

Friendly Settlement Reports

IACHR, [Report No. 102/19](#), Case 13.017 A. *Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama.* July 13, 2019

4. Measures of satisfaction and guarantees of non-repetition

In compliance with the above, the State, through the Electoral Tribunal, will take steps to regulate the creation of the category of "Disappeared" only for the victims of the military dictatorship (1968-1989) registered in the Admissibility Report No. 68/15 of October 27, 2015, Report No. 34/06 of March 14, 2006 and the judgment of August 12, 2008 issued by the Inter-American Court of Human Rights, so that their death can be registered and the cause of death is forced disappearance.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

120. The IACHR notes that both search commissions are created by executive decrees. However, in order to ensure greater legal certainty and sustainability of these policies

over time, the IACHR calls on the State to pass a law regulating the search for missing persons⁴⁴⁶ . [...]

IACHR, [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#), OEA/Ser.L/V/II.118 Doc. 5, December 29, 2003.

378. [...] In particular, the IACHR urges the State to adopt appropriate legislation to facilitate the search for children who disappeared during the internal armed conflict [...].

6.1.2. Adaptation of legislation or other regulations

154. These types of measures are aimed at bringing the domestic legal framework into line with the American Convention, other inter-American instruments, and with the standards developed by the jurisprudence of the System. Some examples of these measures are: (i) guaranteeing that judicial decisions comply with the principle of imprescriptibility of grave human rights violations⁴⁴⁷ ; (ii) adjusting jurisprudential practices regarding the imprescriptibility of crimes against humanity⁴⁴⁸ , and (iii) ensuring the continuity of judicial proceedings in this area⁴⁴⁹ .

⁴⁴⁶ PDDH, Situación de los Derechos Humanos en El Salvador, Informe presentado a la Comisión Interamericana de Derechos Humanos en su visita in loco Diciembre 2019, December 2019, December 2019, p. 18; Asociación Pro-búsqueda de niñas y niños desaparecidos. Report presented to the Inter-American Commission on Human Rights on its IN LOCO visit to El Salvador between December 2-6, 2019. December 18, 2019, IACHR Archive, p. 22; CONABÚSQUEDA, La Desaparición Forzada en el Contexto del Conflicto Armado de El Salvador, August 2020, p.

⁴⁴⁷ IACHR, [Report No. 169/19](#). Case 12.889. Merits. Diana Maidanik et al. Uruguay. November 9, 2019.

⁴⁴⁸ IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019.

⁴⁴⁹ IACHR, [Report No. 35/17](#), Case 12.713, Merits (Publication), Jose Rusbel Lara et al, Colombia, March 21, 2017.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 169/19](#). Case 12.889. Merits. Diana Maidanik et al. Uruguay. November 9, 2019.

4. Adopt the legislative and other measures necessary to ensure that in practice and through judicial decisions the imprescriptibility of serious human rights violations is guaranteed, in accordance with Inter-American standards. The State must guarantee that the Law on the Expiration of the Punitive Claims of the State no longer represents any obstacle to the investigation of the facts of the case.

IACHR, [Report No. 56/19](#). Case 13.392. Admissibility and merits. Julien - Grisonas family. Argentina. May 4, 2019

5. [...] The measures of non-repetition in the instant case should include a legislative adjustment and change of practice in national jurisprudence so that civil actions relating to crimes against humanity are not declared time-barred, regardless of whether the actions were initiated prior to the entry into force of the current legislation that establishes the non-applicability of statutes of limitations to such actions. They should also include measures to continue making the necessary efforts to ensure that the investigations of crimes against humanity committed during the dictatorship move forward as quickly as possible and in accordance with the State's international obligations, and to restore the identity of children who disappeared during the dictatorship.

Merits Reports

IACHR, [Report No. 35/17](#), Case 12.713, Merits (Publication), José Rusbel Lara et al, Colombia, March 21, 2017.

[...] In that report, the Commission recommended:

2. Develop and complete an impartial, complete and effective judicial investigation [...] As part of this recommendation, the State should adopt legislative, institutional and judicial measures aimed at ensuring the continuity of the processes governed by the Justice and Peace Law with respect to those demobilized persons who have been extradited.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), 2017

173. [...] The Commission highlights the need for progress in the process of declassification and promotion of access to archives on serious human rights violations, as has been initiated in the case of Bolivia, and urges the States of the region to promote legislative and institutional changes to that end.

6.1.3. Repeal of legislation or other regulations

155. The purpose of these measures is to annul norms that are incompatible with the American Convention, other inter-American instruments, or with the standards developed by inter-American jurisprudence. Special mention should be made of measures aimed at annulling amnesty laws or other provisions that impede the investigation and punishment of serious human rights violations in transitional justice contexts.

156. In this context, the IACHR was the first international body to declare such laws incompatible with human rights and, in particular, with the right to justice of the victims and their family members. As already mentioned, in 1992 the Commission ruled on the matter in decisions

on the merits concerning El Salvador, Argentina and Uruguay in 1992⁴⁵⁰. Years later, these decisions gave rise to the emblematic decision of the I.A. Court H.R. in the *case of Barrios Altos v. Peru*⁴⁵¹. Likewise, the IACHR requested the Court to repeal or cease the effects of amnesty laws or similar provisions in the cases of Peru⁴⁵², Chile⁴⁵³, Brazil⁴⁵⁴, El Salvador⁴⁵⁵ and Uruguay⁴⁵⁶.

Cases submitted to the I/A Court H.R.

IACHR, [Report No 177/10](#), Case 10.720, Massacre of El Mozote and surrounding areas, El Salvador, November 3, 2010.

3. To annul the General Amnesty Law for the Consolidation of Peace insofar as it impedes the investigation, prosecution and punishment of those responsible for human rights violations and the rights of victims to truth, justice and reparation. Likewise, other de jure or de facto obstacles must be eliminated, such as practices of judicial or investigative authorities.

⁴⁵⁰ See: IACHR. Report No. 26/92, Case 10.287, Las Hojas Massacre, El Salvador, September 24, 1992, cons. 11; and IACHR; IACHR, Report No.28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992; and IACHR./92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992; and IACHR, Report No. 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Uruguay, October 2, 1992.

⁴⁵¹ I.A. Court H.R.. Case of Barrios Altos v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75.

⁴⁵² Application to the Inter-American Court of Human Rights in the case of Barrios Altos ([Case 11.528](#)) against the Republic of Peru, June 8, 2000 (available in Spanish).

⁴⁵³ IACHR, [Report No 177/10](#), Case 10.720, Massacre of El Mozote and surrounding areas, El Salvador, November 3, 2010.

⁴⁵⁴ Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) against the Federative Republic of Brazil. March 26, 2009 (available in Spanish).

⁴⁵⁵ IACHR, [Report No 177/10](#), Case 10.720, Massacre of El Mozote and surrounding areas, El Salvador, November 3, 2010.

⁴⁵⁶ Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay (available in Spanish).

Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena (Case 12.607) against the Oriental Republic of Uruguay. January 21, 2010 (available in Spanish).

144. In view of the conclusions of this case, the Inter-American Commission requests the Court to order the Uruguayan State:

- b. Adopt the legislative and other measures necessary so that, in accordance with its constitutional processes and the provisions of the American Convention, Law No. 15.848 or the Ley de Caducidad (Expiration Law) is repealed.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

259. As a consequence of the foregoing, the Inter-American Commission requests the Court to order the State:

- a. Adopt all necessary measures to ensure that Law No. 6.683/79 (Amnesty Law) no longer represents an obstacle to the criminal prosecution of serious violations.

Application before the Inter-American Court of Human Rights in the case of Barrios Altos (Case 11.528) against the Republic of Peru, June 8, 2000 (available in Spanish).

- c. To repeal or leave without effect Law No. 26479, called General Amnesty Law for military and civilian personnel in various cases and Law No. 26492, called Interpretation and Scope of the Amnesty Law;

Merits Reports

IACHR. [Report No. 101/01](#). Case 10.247 et al. Extrajudicial executions and forced disappearances of persons. Peru. October 11, 2001.

1. Annul any judicial decision, domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution and punishment of those responsible for the summary executions and disappearance of the victims listed in paragraph 259. By virtue of this, the State must also annul Laws No. 26479 and 26492.

IACHR, [Report No. 37/00](#), Case 11.481, Monseñor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000.

162. The Commission considers it appropriate to recall what has been expressed here with respect to its position on peace, [\[161\]](#) and to add that it should not impede justice, which includes the investigation and punishment of human rights violations.

3. Bring its domestic legislation into line with the American Convention, in order to repeal the General Amnesty Law.

6.2. Public policies

157. With respect to public policy with a human rights approach, the IACHR has understood that:

is the set of decisions and actions that the State designs, implements, monitors and evaluates - based on a permanent process of inclusion, deliberation and effective social participation - with the objective of protecting, promoting, respecting and guaranteeing the human rights of all persons, groups and collectivities that make up society, under the

principles of equality and non-discrimination, universality, access to justice, accountability, transparency, transversality and intersectoriality⁴⁵⁷ .

158. With regard to citizen participation in the area of public policies, the IACHR has indicated that such policies allow the definition of problems, the design of the policy, its implementation and evaluation to incorporate the experiences, perspectives and points of view of the persons and groups that are holders of the rights it seeks to safeguard⁴⁵⁸.
159. In particular, and with the aim of achieving substantive equality, the Commission has highlighted the need to design mechanisms and tools under a differentiated approach that address the particular conditions of certain persons, groups or populations in situations of historical discrimination⁴⁵⁹ . Therefore, and based on this notion of equality, the active participation of these persons in the design of public policies that concern them is required⁴⁶⁰.
160. Although public policies can take various forms and are a cross-cutting component of all structural measures, in transitional contexts, there are some that tend to acquire special relevance as a guarantee of non-repetition. In this regard, and in view of their fundamental role in such contexts, the IACHR has addressed the following: (i) public policies for memory; (ii) public policies for institutional strengthening, particularly aimed at search mechanisms, the justice sector and the security forces; and (iii) public policies for the protection of human rights defenders.

⁴⁵⁷ IACHR. [Public policies with a human rights approach](#). OEA/Ser.L/V/II, Doc. 191, 15 September 2018, para. 231.

⁴⁵⁸ IACHR, Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 125.

⁴⁵⁹ IACHR. [Public policies with a human rights approach](#). OEA/Ser.L/V/II, Doc. 191, 15 September 2018, para. 48.

⁴⁶⁰ IACHR. [Public policies with a human rights approach](#). OEA/Ser.L/V/II, Doc. 191, 15 September 2018, para. 48.

6.2.1. Public policies on memory

161. The Commission has emphasized the duty of States to develop memory policies as a basis for addressing gross human rights violations past and present⁴⁶¹. These measures must be implemented in coordination with processes of justice and accountability, including the search for truth, the establishment of reparations and the non-repetition of serious human rights violations. In this context, these policies are based on a comprehensive approach that includes the obligation of States to ensure the representation and participation of victims and society, and to adopt differentiated approaches, such as a gender perspective and an intercultural approach⁴⁶².

Country reports

IACHR, [Situation of Human Rights in Chile](#), OEA/Ser.L/V/II. Doc. 1/22, January 24, 2022 (available in Spanish).

72. In addition, it calls on the State to strengthen public policies on memory aimed at the non-repetition of past human rights violations as a way to move forward with a change in social culture. In this regard, the IACHR finds that memory sites play a central role in this direction⁴⁶³.

⁴⁶¹ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017.

⁴⁶² IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017.

⁴⁶³ IACHR, Resolution 3/2019 'Principles on Public policies on memory in the Americas', 9 November 2019, p. 4.

IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021.

402. [...] The Commission also emphasizes that public policies of memory are part of the State's obligations to provide truth, justice, reparation, and measures of non-repetition of serious human rights violations⁴⁶⁴. In this sense, the IACHR urges the Brazilian State to continue with public policies that vindicate and preserve the memory and dignity of the victims, disseminate and preserve historical memory and promote a culture of human rights and democracy.

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017.

Principle I "Comprehensive approach to memory".

States must ensure a "comprehensive approach to memory," understood as the obligation to adopt public policies on memory coordinated with processes of justice and accountability, including the search for truth, the establishment of reparations, and the non-repetition of serious human rights violations. This approach includes the state's duty to develop memory policies as a basis for addressing gross human rights violations of the past and present; and considers human rights in their universality, indivisibility and interdependence. The "integral approach to memory" includes the obligation of States to ensure the representation and participation of victims and society.

⁴⁶⁴ IACHR, Resolution 3/2019 'Principles on Public Policies on Memory in the Americas', November 9, 2019.

Principle III "Involvement of civil society".

[...] It is essential to adopt decentralized and differentiated measures to overcome geographical, economic, linguistic and gender barriers, among others, in order to encourage the participation of the entire community, particularly groups in vulnerable situations and subject to historical discrimination.

Principle VI "Intercultural and gender approach".

Public policies on memory should respect and promote the construction of the memories of communities, organizations and collectives, based on the recognition of the different cultural visions, conceptions of well-being and development of the various ethnic-cultural groups; as well as the gender approach, tending to the establishment of relations of equity and equality of opportunities and rights.

Principle IX "Design and implementation of memory initiatives".

States must design and implement initiatives aimed at acknowledging and apologizing for the facts related to serious human rights violations, vindicating the memory and dignity of the victims, and establishing and disseminating the historical truth of such facts. Such initiatives may include public acts, educational, cultural or other measures, respectful of interculturality and diversity, and with a human rights and gender perspective, exemplified by the following:

- e. Installation of monuments, signage in public spaces, memorials and museums in recognition of victims, and removal or contextualized amendment of monuments, memorials, museums, shields, insignia and plaques that praise the memory of perpetrators;

[...]

h. Removal or contextualized amendment of street names, national currency and public buildings that praise the memory of perpetrators of gross human rights violations;

i. Elimination of patriotic dates and prohibition of official events that celebrate the memory of perpetrators of grave human rights violations;

[...]

m. Carrying out campaigns to donate objects and obtain information related to the perpetration of the serious human rights violations that have occurred;

Principle X "Regulatory framework".

In order to guarantee the legal security of sites of memory, States must provide a precise and adequate regulatory framework that regulates their identification, marking, creation or recovery, preservation and sustainable management, ensuring the participation of victims at all stages and in harmony with international standards on the subject.

Such a normative framework may take the form of specific legislation on sites of memory or, subsidiarily, through the declaration of sites of memory as cultural, historical or similar heritage [...].

6.2.2 Public policies for institutional strengthening

162. Institutional strengthening measures are intended to strengthen the State's operational capacity to comply with its human rights obligations. Since its first judgment, the Inter-American Court has pointed out that States have the duty to organize all their governmental institutions and, in general, all the structures through which the exercise of public power is manifested. This, with the objective that they are capable of ensuring legally and in practice the free and full exercise of human rights⁴⁶⁵. According to the IACHR, institutional strengthening in human rights is key to the respect and implementation of inter-American human rights standards⁴⁶⁶.
163. As will be developed, policies in the context of transitional justice tend to address mainly the mechanisms and institutions linked to the search for missing persons, the administration of justice, and order and security.

a) Institutional strengthening in the area of search

164. In transitional contexts where disappearances have occurred frequently or on a massive scale, search efforts should be part of a comprehensive policy on disappearances⁴⁶⁷. As a measure of non-repetition in these scenarios, the Commission has called on States to strengthen the mechanisms and capacities for search, identification, and, if necessary, delivery of mortal remains.

⁴⁶⁵ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988, para. 166.

⁴⁶⁶ IACHR. [General Guidelines for Follow-up on Recommendations and Decisions of the Inter-American Commission on Human Rights](#). OEA/Ser.L/V/II.173, Doc. 177, 30 September 2019, Annex 1 - Types of measures recommended by the IACHR, p. 27.

⁴⁶⁷ In this regard, see: United Nations Committee on Enforced Disappearances, Guiding Principles for the Search for Missing Persons, 2019. Cited in: IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021, para. 407.

165. To this end, the IACHR has indicated that the States must carry out actions such as: (i) strengthening of human resources⁴⁶⁸ , as well as financial and logistical⁴⁶⁹ , and scientific and forensic resources⁴⁷⁰ ; (ii) coordination of these tasks with the families⁴⁷¹ ; (iii) creation of a genetic information system⁴⁷² ; (iv) design of a search web page⁴⁷³ , and (v) establishment of inter-institutional cooperation articulated with all authorities involved in this task⁴⁷⁴ . Within the framework of this last action, the IACHR has

⁴⁶⁸ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 122; IACHR, [Report No. 102/19](#), Case 13.017 A. Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019, 5. Measures of Justice, p. 9, and IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparations report,"](#) 2018, para. 77.

⁴⁶⁹ IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports," Brazil](#), 2022, para. 430; IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, Oct. 14, 2021, para. 122; and IACHR Application to the Inter-American Court of Human Rights in the Case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil (available in Spanish). March 26, 2009, para. 259, and IACHR, [Annual Report, Chapter V. Follow-up to the recommendations made by the IACHR in country reports, "Follow-up Report - Access to Justice and Social Inclusion: The Road to Strengthening Democracy in Bolivia,"](#) 2009, para. 93.

⁴⁷⁰ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 122; IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparations report,"](#) 2019, para. 91.

⁴⁷¹ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 122.

⁴⁷² IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, Oct. 14, 2021, para. 122; Application to the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras et al ([Case 12.517](#)) v. Republic of El Salvador. June 28, 2010, para. 271 (available in Spanish).

⁴⁷³ IACHR, Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. June 28, 2010, para. 271.

⁴⁷⁴ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 122; IACHR, [Annual Report, Chapter V. Follow-up on recommendations formulated by the IACHR in its country or thematic reports, "Follow-up on recommendations formulated by the IACHR in the Truth, Justice and Reparations report,"](#) 2019, para. 91; and IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparations report,"](#) 2018, para. 48.

recommended "to urgently advance in the elaboration of a national plan for the search of persons⁴⁷⁵".

166. Likewise, the Commission has referred to the importance of having a single registry of missing persons⁴⁷⁶, which should be: public, updated, unified and purged⁴⁷⁷. This will allow the identification of aspects such as: the different groups of victims, the causes and dynamics of enforced disappearances and the patterns of behavior⁴⁷⁸. Similarly, the IACHR has urged that this registry have disaggregated information, among other elements, by age, gender and ethnicity⁴⁷⁹.
167. Finally, based on a differentiated approach, the IACHR has requested the I.A. Court H.R. to "set up a national commission to search for young people who disappeared as children during the armed conflict⁴⁸⁰".

⁴⁷⁵ IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparations report,"](#) 2018, para. 77.

⁴⁷⁶ In this regard, see: IACHR, [Annual Report, Chapter V. "Follow-up on recommendations formulated by the IACHR in its country or thematic reports," Colombia](#), 2021, para. 72, and IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia,"](#) 2017, para. 62.

⁴⁷⁷ IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia,"](#) 2017, para. 62.

⁴⁷⁸ IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports," Colombia](#), 2021, para. 72.

⁴⁷⁹ IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in the Truth, Justice, and Reparation: Sixth Report on the Situation of Human Rights in Colombia,"](#) 2020, para. 171; and IACHR, [Annual Report, Chapter V. Follow-up on Recommendations Made by the IACHR in its Country or Thematic Reports, "Follow-up on Recommendations Made by the IACHR in the Truth, Justice and Reparation: Fifth Report on the Situation of Human Rights in Colombia Report,"](#) 2019, para. 84.

⁴⁸⁰ IACHR, Application to the Inter-American Court of Human Rights in the Case of Gregoria Herminia Contreras et al. June 28, 2010, para. 271.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others ([Case 12.517](#)) against the Republic of El Salvador. June 28, 2010 (available in Spanish).

271. Finally, the Commission requests the Court, in line with the case of the Serrano Cruz Sisters, and in view of the failure to comply with most of the measures of reparation ordered in that case, to reiterate to the Salvadoran State the obligation to effectively implement a national commission to search for young people who disappeared as children during the armed conflict; to create a search web page; and to create a genetic information system.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

122. In this regard, the IACHR urges the State to strengthen the capacities of the entities in charge of the search and identification activities, ensuring that they have the necessary human, economic, logistical, scientific and other resources, in order to achieve the most efficient investigations to determine the whereabouts of the victims, within the framework of a coordinated action with the families⁴⁸¹. To this end, it is also important to strengthen the inter-institutional cooperation of the different entities involved in this task, as well as the full collaboration of the institutions that may have information relevant to the clarification of the facts. Finally, the IACHR reiterates its recommendation to the

⁴⁸¹ I/A Court H.R., Case of Rochac Hernández et al. Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 198.

State regarding the creation of a genetic information system that operates to clarify the truth and achieve justice in cases of children, adolescents and adults who were forcibly disappeared during the internal armed conflict.

IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

384. In accordance with the foregoing analysis and conclusions, the Commission recommends to the Guatemalan State:

10. Support the management of the National Commission for the Search for Children Disappeared during the Armed Conflict, adopt appropriate legislation for the implementation of its mandate and facilitate the technical and scientific means necessary for the documentation and search for children who have disappeared, been illegally adopted or illegally separated from their families.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports](#), "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparation: Fifth Report on the Human Rights Situation in Colombia," 2019, para. 84.

84. The IACHR urges the State to redouble its efforts to identify the number of missing persons in accordance with the stipulated conditions and standards, recalling the importance of having a single registry of victims that is publicly accessible, updated, unified and purged with disaggregated information not only in terms of age and

gender, but also in terms of ethnicity, people, among other relevant demographic elements [...].

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth report on the human rights situation in Colombia"](#), 2017.

62. [...] the IACHR has referred to the State's obligation to adopt the pertinent measures to guarantee the effectiveness of the Urgent Search Mechanism or any other mechanism that allows for the immediate recovery of disappeared persons and to have a publicly accessible, updated, unified and purged registry of forcibly disappeared persons.

b) Institutional strengthening of the justice system

167. In contexts of transitional justice, justice systems are faced with the great challenge of responding to serious and often massive human rights violations. In order to respond adequately to this demand, the IACHR has recommended various measures aimed at strengthening the response capacity of the justice system. These include the adoption of the following: (i) measures that seek sufficient human and material resources to adequately perform their tasks⁴⁸² ; (ii) mechanisms for the appointment of judges that strengthen independence and impartiality⁴⁸³ , and (iii) structures for better coordination between different judicial bodies⁴⁸⁴ .

⁴⁸² IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 106.

⁴⁸³ IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015, para. 280.

⁴⁸⁴ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 280.

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

106. The IACHR urges the Salvadoran State to ensure that the various bodies of the justice system responsible for the investigation, prosecution and punishment of persons involved in serious human rights violations or international crimes have the necessary human and material resources to carry out their tasks in an adequate, independent and impartial manner, as ordered by the Inter-American Court of Human Rights⁴⁸⁵.

IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015.

280. The Inter-American Commission has established that among the guarantees necessary to ensure the adequate and independent fulfillment of judicial functions are the mechanisms for the appointment of judges, stability in their position, and adequate professional training. Likewise, it is required that the courts be autonomous from other branches of government, that is, that they be free from influences, threats or interferences of any origin⁴⁸⁶. These guarantees do not mean that judges will not exercise their functions in accordance with the law and proper accountability, but rather that challenges to their work cannot be motivated by other interests and that the applicable processes must respect due process guarantees [...].

⁴⁸⁵ I.A. Court H.R.. Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 319.D; I/A Court H.R., para. 319. Case of the Massacre of Las Dos Erres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 233.

⁴⁸⁶ IACHR, Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc. 54, December 30, 2009, para. 185. Available at: <http://www.cidh.org/countryrep/Venezuela2009sp/VE09.indice.sp.htm>.

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

460. By virtue of what has been indicated in this section, the Commission recommends to the State of Colombia that:

4. Promote the articulation, coordination and reciprocal feedback of the different judicial instances in charge of investigating cases of serious human rights violations and breaches of IHL.

IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

85. [...] To this end, the Commission recommends that the State:

1. Further strengthen the resources and support provided to public entities responsible for protecting and promoting human rights and investigating human rights abuses [committed during the armed conflict], particularly the Human Rights Ombudsman's Office, and institutions responsible for the administration of justice.

Thematic reports

IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

126. In particular, the Court has ordered the following measures:

(xi) "to articulate coordination mechanisms between the different state bodies and institutions with investigative powers, as well as to follow up on the cases being processed";

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia"](#), 2020.

110. [...] In this framework, and recognizing the substantial progress achieved in "Point 5" of the Agreement, the IACHR calls on the State to strengthen the budgetary resources for the operation of the System [Integral System of Truth, Justice, Reparation and Non-Repetition] as a whole, in order to ensure full guarantees in terms of effective access to the rights to truth and justice of ethnic groups.

IACHR, [Annual Report, Chapter V. "Follow-up report on compliance by the State of Guatemala with the recommendations made by the IACHR in the fifth report on the human rights situation in Guatemala \(2001\)"](#), 2002.

10. [...] The Commission considers that the success of the measures aimed at overcoming impunity in the area of human rights depends on the strength of the investigation mechanisms. For this reason, the Commission appreciates the creation of the Special Prosecutor's Offices for Human Rights, Journalists and Trade Unionists, as well as the efforts of the Attorney General to obtain adequate resources to carry out a comprehensive restructuring of the Public

Prosecutor's Office, and urges the State to provide it with the necessary resources for this purpose.

c) Institutional strengthening of security forces

168. One of the challenges facing countries transitioning to democracy is the legacy of serious human rights violations, which - to a large extent - are committed by the security forces. To address this reality, the bodies of the System have issued measures aimed at changing the structure of these institutions in order to reincorporate them into democratic life. These measures include, for example, the restructuring of the security forces and the separation of those responsible for serious violations, as well as the promotion of clear mechanisms for promotion and dismissal⁴⁸⁷. In addition, as will be developed below⁴⁸⁸, States have been called upon to implement training programs aimed at the forces of law and order.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) ([Case 11.995](#)) against the Republic of Colombia. March 10, 2006 (available in Spanish).

166. To remedy the situation of the victims and/or their family members, the State must comply with the following obligations: [...] obligation to remove from the security forces those known to have committed, ordered and tolerated these abuses (creation of security forces worthy of a democratic State). [...].

⁴⁸⁷ Application to the Inter-American Court of Human Rights in the case of Mariela Morales Caro and Others (La Rochela Massacre) ([Case 11.995](#)) against the Republic of Colombia. March 10, 2006, para. 166 (available in Spanish).

⁴⁸⁸ See Section 6.4 of this chapter, "Training and Awareness Raising".

Country reports

IACHR, [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#), OEA/Ser.L/V/II.118 Doc. 5, December 29, 2003.

124. The Commission notes that many people accused of having committed human rights violations during the armed conflict, in violation of the Peace Accords, are still part of the Armed Forces. In fact, the reduction of personnel that took place affected mainly the rank and file and specialists, and not the hierarchical personnel.⁴⁸⁹ Therefore, the Commission urges the State to take the necessary measures to restructure the Armed Forces in order to remove from their ranks those responsible for serious human rights violations and to promote clear mechanisms for promotion and dismissal from military positions.

IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001.

36. [...] The Commission wishes to point out in this regard that the effective observance of human rights requires a system in which all its members are trained in the principles of a participatory and informed democracy. In this sense, a profound reform of the police and military systems in Paraguay is necessary, including in the training of police and military personnel principles related to democracy and the observance of human rights. At the same time, a profound change is needed in these institutions, which until now have maintained an intricate structure based on chains of command, which often makes it difficult to determine individual responsibility in cases of abuses by its members.

⁴⁸⁹ "Informe de Verificación: Situación de los Compromisos relativos al Ejército en los Acuerdos de Paz", MINUGUA, May 2002.

6.2.3. Public policies for the protection of human rights defenders

169. For decades, the IACHR has observed that groups of human rights defenders and social leaders⁴⁹⁰ -whose work has been linked to the denunciation of serious violations related to armed conflict and peace-building- have been exposed to high levels of violence⁴⁹¹ - In this regard, the IACHR has also noted that this situation is aggravated by additional factors of discrimination, such as race, ethnicity, sexual orientation, and gender identity and expression⁴⁹².
170. Considering the primordial role that defenders and social leaders play in the processes of justice for victims of serious human rights violations, and in the processes of seeking and consolidating peace⁴⁹³ , the discrimination and violence they face has been of

⁴⁹⁰ On the particular risk faced by union leaders, see: IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 88, and IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 1157.

⁴⁹¹ IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in the report on the Situation of Human Rights Defenders and Social Leaders in Colombia,"](#) 2020, para. 13; IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, paras. 41, 119 and 184; IACHR, [Justice and Social Inclusion: the Challenges of Democracy in Guatemala](#), OEA/Ser.L/V/II.118 Doc. 5, December 29, 2003, paras. 178 and 180.

⁴⁹² IACHR, [Resolution 111/21, MC 1113-21 - Abencio Caicedo and Edinson Valencia García](#), Colombia, December 31, 2021, para. 21; IACHR, [Resolution 80/21, MC 491-21 - S.G.R.Q. and her nuclear family](#), Colombia, October 4, 2021, para. 39. In particular, regarding the aggravated risk faced by LGTBI persons, see: IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 223.

⁴⁹³ In this regard, see IACHR, [Basic Guidelines for the Investigation of Crimes against Human Rights Defenders in the Northern Triangle](#), OEA/Ser.L/V/II. Doc. 110, June 1, 2021, para. 2; IACHR, [Annual Report, Chapter V. "Follow-up on Recommendations Made by the IACHR in the Report on the Situation of Human Rights Defenders and Social Leaders in Colombia,"](#) 2020, para. 60; IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 41. ; IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II, December 31, 2013, para. 75.

particular concern to the IACHR⁴⁹⁴. It is also noted that family members of victims often assume the role of defenders, acting on their specific cases but with an impact on more structural issues related to human rights. Furthermore, according to the Commission, the acts of aggression committed against those who seek justice in cases of serious human rights violations have shown that the attacks are aimed at ensuring impunity for these violations⁴⁹⁵.

171. In this context, the IACHR has called for efforts aimed at the prevention of violence and protection of these groups, through the development and strengthening of "comprehensive and effective public policies for the protection of human rights defenders in situations of risk⁴⁹⁶". Among other issues, these policies should involve the participation of human rights defenders or their organizations, be promoted at all institutional levels⁴⁹⁷, and pay special attention to those who are in "special conditions of vulnerability⁴⁹⁸".

⁴⁹⁴ In fact, the IACHR has issued several resolutions of precautionary measures, urging the State to protect their work, life and integrity. In this regard, see: IACHR, Resolution 33/23, MC 903-22 - David Mayorga Osorio and José Luis Moreno Álvarez, Colombia, June 12, 2023; IACHR, Resolution 111/21, MC 1113-21 - Abencio Caicedo Caicedo and Edinson Valencia García, Colombia, December 31, 2021; IACHR, Resolution 80/21, MC 491-21 - S.G.R.Q. and his family, Colombia, October 4, 2021, para. 39; IACHR, Resolution 53/21, MC 552-21 - Yiner Hernán Quigüantar Cortés, Colombia, July 15, 2021; IACHR, Resolution 47/2017, MC 261-16 - Daniel Ernesto Prado Albarracín regarding Colombia, November 20, 2017; -IACHR, Resolution 20/17, MC 402-17 - Jair Krischke regarding Uruguay, June 21, 2017; IACHR, Resolution 49/2017, MC 661-16 - Case Ramón Cadena Rámila and family regarding Guatemala, October 20, 2016.

⁴⁹⁵ IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5, December 29, 2003, paras. 178 and 180.

⁴⁹⁶ IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, paras. 1141 and 1200, Recommendation 5. In this regard, see IACHR, *Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*, OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 202.

⁴⁹⁷ IACHR, *Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*, OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, paras. 177 and 204.

⁴⁹⁸ IACHR, *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, OEA/Ser.L/V/II, December 31, 2013, para. 1200, Recommendation 3. In this regard, see: IACHR, *Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*, OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 249, and.

172. Faced with scenarios of increased violence, as part of these policies, and in order to have expeditious institutional response measures, the Commission has called on States to develop institutional protection mechanisms and schemes⁴⁹⁹. Among other requirements, the IACHR has indicated that these mechanisms must be temporary and⁵⁰⁰ suitable⁵⁰¹. In addition, the IACHR has called to ensure that their design and implementation are respectful of ethnically and culturally appropriate and relevant approaches⁵⁰², as well as sexual orientation, and gender identity and expression⁵⁰³.

Merits reports

IACHR, [Report No. 45/17](#), Case 10.455, Merits (Publication), Valentín Baso Calderón, Colombia, May 25, 2017.

193. [...] In that report the Commission recommended:

⁴⁹⁹ IACHR, [Report No. 45/17](#), Case 10,455, Merits (Publication), Valentín Baso Calderón, Colombia, May 25, 2017, para. 193, recommendation 5.3, and Case 12,713, Merits (Publication), Jose Rusbel Lara et al, Colombia, March 21, 2017, recommendation 4.2.

⁵⁰⁰ IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 206, and IACHR, Annual Report, [Chapter IV Honduras, 2011](#), para. 381.

⁵⁰¹ In order for the measures to be suitable, they must be personalized according to the needs of the protected person's work and must be able to adjust to the different intensity of the danger. In this sense, see IACHR, [Resolution 4/23, MC 931-22 - Guillermo Andrés Mosquera Miranda et al](#), Colombia, February 6, 2023:

⁵⁰² IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 222, and recommendations 5 and 8; IACHR, [Comprehensive Policies for the Protection of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, para. 311. Likewise, through precautionary measures, the Commission has also called for the incorporation of this type of approach: IACHR, [Resolution 53/21, MC 552-21 - Yiner Hernán Quiguanter Cortés](#), Colombia, July 15, 2021; IACHR, [Resolution 53/18, MC 395-18 - Authorities and members of the Gonzaya \(Buenavista\) and Po Piyuya \(Santa Cruz de Piñuña Blanco\) Resguardos of the Siona Indigenous People \(ZioBain\)](#), Colombia, July 14, 2018.

⁵⁰³ IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 223.

5. Adopt legislative, institutional and judicial measures aimed at reducing the exposure to risk of human rights defenders who are at risk. In this regard, the State should:

5.1 Strengthen institutional capacity to combat the pattern of impunity in cases of threats and deaths of human rights defenders, through the development of investigation protocols that, taking into account the risks inherent to the work of defending human rights, allow for an exhaustive development of the investigation under this hypothesis.

5.2 Strengthen mechanisms to effectively protect persons whose statements have a relevant impact on investigations and who are at risk as a result of their involvement in the investigation.

5.3 Develop adequate and expeditious institutional response measures that allow for the effective protection of human rights defenders in situations of risk.

Thematic reports

IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 177.

177. The Inter-American Court has established that a public policy for the protection of human rights defenders should include the promotion of a culture of legitimization and protection of the work of human rights defenders⁵⁰⁴. This culture must be promoted at all institutional levels, including state officials and authorities from territorial districts, local

⁵⁰⁴ I.A. Court H.R.. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 243. IACHR, Criminalization of human rights defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, p 156.

governments to high authorities, as a State policy of respect and support for human rights defenders and their work in a joint effort to build peace. This obligation implies implementing policies, programs, and interventions aimed at generating safe conditions for the activity of human rights defenders, especially in areas where the impact of the conflict is greater and therefore require more attention.

222. Likewise, the ethnic approach must be ensured⁵⁰⁵. In the protection schemes for Afro-descendant communities and indigenous peoples, the State must take into account the geographic location, particular needs and special situation that these communities have faced in the context of the armed conflict. For remote communities without access to electricity or satellite signal, it is important to recognize that measures such as panic buttons or cell phones are not useful, and that the simple visit of a state representative in the region or the installation of electric lighting may be more effective in deterring violence. Comprehensive strategies for the implementation of collective protection measures should also be designed⁵⁰⁶.

223. Protection schemes must ensure the inclusion of a differentiated perspective that takes into account the specific vulnerability to violence faced by LGBTI human rights defenders in the process of designing and adopting

⁵⁰⁵ Colombia has a specific protocol for risk assessment in cases of indigenous populations and for cases in which a differential gender approach is required. Colombia has reported on the strengthening of indigenous guards, such as the acquisition of rubber boots, identification vests, command sticks, camping tents; for Afro-Colombian communities living in territories far from the urban area, protection measures have been implemented such as boats with outboard motors so that they can easily react to an emergency, and vehicles specially adapted for unpaved terrain, IACHR, Annual Report 2016 Ch. V Follow-up on recommendations, Colombia, para. 84.

⁵⁰⁶ IACHR, Towards a comprehensive policy for the protection of human rights defenders, OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, para. 311.

protection measures⁵⁰⁷ and an approach that takes into consideration the gender expression, gender identity, and sexual orientation of people who turn to the State for protection must be contemplated⁵⁰⁸.

Country reports

IACHR, [*Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*](#), OEA/Ser.L/V/III Doc. 49/13, December 31, 2013.

1141. [...] The IACHR considers it imperative that the State strengthen its public policies for the protection of human rights defenders at risk, as well as the adoption of measures aimed at consolidating and legitimizing the role of human rights defenders in society in a definitive manner.

1200. By virtue of what has been indicated in this section, the Commission recommends to the State of Colombia that:

3. Continue to develop comprehensive and effective public policies for the protection of defenders at risk, with special attention to those groups of defenders who may be in special conditions of vulnerability. As part of this policy, the Commission considers that, in addition to material protection measures, the State should effectively investigate the sources of risk to defenders in order to deactivate them.

5. Develop a public policy aimed at combating impunity for violations of the rights of human rights

⁵⁰⁷ IACHR, [*Violence against LGBTI persons*](#), OAS/Ser.L/V/II.rev.2. Doc. 36, 12 November 2015, p. 305.

⁵⁰⁸ IACHR, [*Towards a comprehensive policy for the protection of human rights defenders*](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, para. 316.

defenders, through exhaustive and independent investigations that allow for the punishment of both the perpetrators and masterminds. The Commission recommends that as part of this policy, the State establish specialized protocols for coordination between prosecutors' offices and, where appropriate, unification of investigations of crimes committed against the same civil society organizations or against the same defenders in order to promote the progress of investigations and the possible identification of patterns of attacks, aggressions or harassment.

Chapters of IACHR Annual Reports

IACHR, Annual Report, [Chapter IV. Honduras, 2011](#)

381. [...] The IACHR reiterates [that] the State must grant appropriate funds and political support to the protection institutions and programs in order to guarantee the functioning of the program⁵⁰⁹ [mechanism for the implementation of protection measures for human rights defenders with special emphasis after the coup d'état in 2009]; likewise, the State must ensure the effectiveness of the measures during the entire period in which the risk for the beneficiaries of the special protection measures persists⁵¹⁰.

IACHR, Annual Report, [Chapter IV. Colombia, 2021](#)

329. In addition, the Commission has learned of acts of violence against victims, representatives of groups of victims of the internal armed conflict, and workers and collaborators

⁵⁰⁹ IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006. recommendation 5.

⁵¹⁰ The Commission has indicated on the duration of precautionary and provisional measures that they should remain in effect as long as the Commission or the Court, respectively, so requires. IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), May 7, 2006. Recommendation 8.

of the institutions responsible for promoting truth, justice, and reparations⁵¹¹. The Commission repudiates such episodes and urges the State to carry out a prompt, diligent and effective investigation, in which its work in the defense of human rights and the search for truth, justice and reparation for the facts of the internal armed conflict is considered as a central hypothesis of the facts. It also recalls that the State has a special obligation to adopt the necessary measures to guarantee that judicial officials, prosecutors, investigators and other justice operators have an adequate security and protection system, taking into account the circumstances of the cases in their charge and the place where they are working, that allows them to carry out their functions with due diligence, as well as the protection of witnesses, victims and family members⁵¹². (...)

Precautionary measures

IACHR, [Resolution 53/18, MC 395-18 - Authorities and members of the Gonzaya \(Buenavista\) and Po Piyuya \(Santa Cruz de Piñuña Blanco\) Resguardos of the Siona Indigenous People \(ZioBain\)](#), Colombia, July 14, 2018.

36. The Commission requests the State of Colombia to:

- b) Adopt culturally appropriate protection measures so that the identified Siona authorities and families of the Siona Gonzaya and Po Piyuya Resguardos can live safely in their territory, free from violence, threats and harassment. Such measures, in addition to the

⁵¹¹ El Espectador, *Unidad de Restitución de Tierras confirma asesinato de comisión desaparecida*, July 9, 2021; UBPD, *Comunicado a la Opinión Pública*, September 1, 2021; JEP, *Comunicado 080 de 2021, JEP rechaza atentado contra Ricardo Rojas, miembro de la Federación Colombiana de Víctimas de las FARC (FEVCOL)*, July 21, 2021; El tiempo, *Condenan asesinato de líder social en Caquetá, Willington Hernández*, November 10, 2021.

⁵¹² I/A Court H.R., *Case of Contreras et al. v. El Salvador*, Judgment of August 31, 2011, Merits, Reparations and Costs, Series C No. 232, para. 186, d.

security forces deepening their efforts or adopting more comprehensive and coordinated measures, could, for example, include measures to enable their safe movement to carry out their cultural and livelihood activities; remove existing explosive material in their territories or rule out the presence of such materials; prevent and avoid the recruitment of young people; and strengthen the means of communication to respond to emergencies;

Press Releases

IACHR, Press Release No. 191/2022, [IACHR, CED, and WGEID: States Must Prevent the Adverse Effects Faced by Relatives of Missing Persons and Respond to These from a Gender Perspective](#), August 30, 2022.

(...) The IACHR, the CED and the WGEID emphasize the special gravity of the consequences that women relatives face in their lives when they suddenly have to assume a leading role in the searches and investigations. [In this context, the three international organizations call on States to adopt a comprehensive policy on enforced disappearances aimed at realizing the rights to truth, justice and reparation. Such a comprehensive policy should include an analysis of the multiple adverse effects of this unacceptable crime on family members and relatives. It should be designed and implemented with a differential approach that takes into account the specific needs of the victims, regardless of their gender or sexual orientation, and should consider the economic and psychosocial impact of the disappearance and the search on the families, particularly women. In this regard, the CED Guiding Principles for the Search for Missing Persons (Guiding Principles) refer to the duty of States to take into account and provide the necessary support in the framework of the search process, and require that the search

has a differential approach and is carried out with a gender perspective and with adequately trained personnel.

IACHR, Press Release No. 38/23, [States must protect the rights of women searching for missing persons](#), March 8, 2023.

Given pre-existing gender inequalities, and in some cases, the absence of the State, women have taken on the search for missing family members, both in contexts of armed conflict, dictatorships or authoritarian regimes, as well as organized crime. In addition, they experience the economic, social and emotional consequences of the disappearance of their relatives in different ways, and, in addition, they search for the disappeared person in precarious and risky conditions. [...]

In this process, many have become activists, community leaders and human rights defenders, and also dedicate their efforts to accompany and guide other families, participate in social protests, and advocate for legislation, among others. In carrying out these tasks, they face gender-based violence, harassment, intimidation, threats and even murder.

In addition, when the breadwinner is missing, women are suddenly forced to assume the economic support of the family, and to allocate time and resources to the search for their loved one. In addition, the domestic and caregiving tasks traditionally assigned to women further limit the time available to invest in paid activities, for which they are forced to accept low-paid, informal or insecure jobs without social benefits. This results in a serious deterioration of the family's economic situation.

6.3. Right to Truth Measures

173. In the area of reparations, the truth component is often analyzed together with justice measures. However, given that the right to truth is one of the pillars of transitional justice mechanisms, it is useful to consider it separately. This is without losing sight of its relationship with the other pillars, particularly those of justice and measures of satisfaction.
174. In transitional contexts, as will be developed below, the key aspects of the right to truth consist of: (i) the establishment of Truth Commissions, (ii) the dissemination of historical truth and (iii) access to information.

6.3.1. General Aspects

175. On several occasions, the IACHR has referred to the dual dimension of the right to the truth; that is, individual and collective. Regarding the individual dimension, all victims of serious human rights violations and their family members have the right to know the truth of what happened⁵¹³. This dimension derives from the right of the victim and his family members to have ample opportunity to be heard and to act in the judicial proceedings⁵¹⁴. For its part, with respect to the collective dimension, the IACHR has indicated that "society has the inalienable right to know the truth of what happened, as well as the reasons and circumstances in which aberrant crimes were committed, in order to prevent such events from occurring again in the future⁵¹⁵". Therefore, according to the

⁵¹³ Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín ([Case 10.686](#)) against the Republic of Guatemala. July 28, 2007, para. 197 (available in Spanish).

⁵¹⁴ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021, para. 105.

⁵¹⁵ Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay. January 21, 2010, para. 71 (available in Spanish).

IACHR, the victims of serious human rights violations, as well as their families and society as a whole, have the right to "know the truth about such violations as fully as possible, in particular the identity of the perpetrators and the causes, facts and circumstances in which they occurred"⁵¹⁶ .

176. Likewise, the IACHR has called for strengthening the intersectionality of approaches in establishing the historical truth, taking into account the differentiated and disproportionate impacts on certain populations at special risk⁵¹⁷.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena ([Case 12.607](#)) against the Oriental Republic of Uruguay. January 21, 2010 (available in Spanish).

71. [...] The Commission, recognizing that the amnesty law eliminated any judicial possibility of a serious and impartial investigation to establish the alleged crimes and identify perpetrators, accomplices and accessories, invoked its general position on the matter, stating:

One of the few issues on which the Commission does not wish to refrain from expressing an opinion on this matter is the need to shed light on human rights violations perpetrated prior to the establishment of the democratic regime [...] Every society has the inalienable right to know the truth

⁵¹⁶ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2019.

⁵¹⁷ IACHR, [Annual Report, Chapter V. "Follow-up to the recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia,"](#) 2020, para. 111.

about what happened, as well as the reasons and circumstances in which aberrant crimes were committed, in order to prevent such events from occurring again in the future. In addition, the victims' relatives have the right to information about what happened to their relatives. [...] ⁵¹⁸.

Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín (Case 10.686) against the Republic of Guatemala. July 28, 2007 (available in Spanish).

197. The Court has reiterated on several occasions that everyone, including the family members of victims of serious human rights violations, has the right to the truth. Consequently, the victims' family members and society as a whole must be informed of everything that has happened in relation to such violations ⁵¹⁹.

Country reports

IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021.

417. The IACHR urges the State to maintain unrestricted institutional support for the mechanisms of historical reparation related to the periods of the civil-military dictatorship in order to guarantee the right to memory and truth of the victims of violations, as well as their family members. The Commission emphasizes that the jurisprudence

⁵¹⁸ IACHR, Report 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 (Uruguay), October 2, 1992, para. 37. See also: IACHR, Annual Report 1985-1986, p. 205.

⁵¹⁹ I/A Court H.R., Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117; para. 128; I/A Court H.R., Plan de Sánchez Massacre Case. Judgment of November 19, 2004. Series C No. 116, para. 97; I/A Court H.R., Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 257.

of the system has reiterated that all persons, including the family members of the victims of serious human rights violations, have the right to the truth. Consequently, the members of their families, as well as society in general, must be informed of everything that has happened in relation to these violations.

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

105. [...] The Commission understands that, although the effective search for the truth is the responsibility of the State, and cannot be made to depend on the procedural initiative of the victim, his or her family members or the private contribution of evidence, the victims must have ample opportunity to be heard and to act in the respective proceedings, which implies that they can make statements, receive information, provide evidence, and make allegations⁵²⁰.

IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII. 110 doc. 52, March 9, 2001.

23. [...] The right to the truth and its corollary, "the duty to remember," are part of a collective right that applies both to the individual and to the society of which he or she is a part, and the aim is to prevent the recurrence of violations in the future. The right to justice entails the obligation of the State to prosecute and punish those responsible for the violations. These obligations derive primarily from the provisions of Articles 1(1), 8, 13 and 25 of the Convention.⁵²¹

⁵²⁰ IACHR. Report *Right to the Truth in the Americas*, August 13, 2014, para. 80; I/A Court H.R., Case of Gelman v. Uruguay. Judgment of February 24, 2011 (Merits and Reparations). Para. 187.

⁵²¹ IACHR, Report No. 1/99, Case 10.480 (El Salvador), para. 147. On the issue of the right to truth, see also the following recent reports of the Inter-American Commission: IACHR, *Annual Report 1999*, Report No. 136/99 - Ignacio Ellacuría, S.J. et al, Case 10.488 (El Salvador); and IACHR, *Annual Report 1999*, Report No. 37/00 - Monsignor Oscar Romero, Case 11.481 (El Salvador).

Thematic reports

IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

124. The Commission has already established that: part of the right to reparation for human rights violations, in its modality of satisfaction and guarantees of non-repetition, is the right of every person and society to know the full, complete and public truth about the events that occurred, their specific circumstances and who participated in them. The right of a society to know its past in full is not only a means of reparation and clarification of the events that occurred, but also has the purpose of preventing future violations.⁵²²

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia"](#), 2020.

111. Similarly, the IACHR calls for strengthening the intersectionality of approaches in the establishment of the historical truth, taking into account that women, the elderly, girls and boys have differentiated and disproportionate impacts, making necessary a holistic and multidimensional approach to the conflict that analyzes variables such as forced displacement, recruitment, selective murder and sexual violence, among others, in relation to the aforementioned populations.

⁵²² IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 148.

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas," May 27, 2017.](#)

CONSIDERING the right of the victims of serious human rights violations, as well as their families and society as a whole, to know the truth about such violations as completely as possible, in particular the identity of the perpetrators and the causes, facts and circumstances in which they occurred.

6.3.2. Truth Commissions

177. The IACHR has pointed out that truth commissions make it possible to advance in the collective construction of the truth about human rights violations in a complementary manner to judicial processes, considering the historical, social and political context⁵²³. Although these mechanisms do not replace justice measures, they can be a fundamental source of information for judicial processes. In this regard, the IACHR has indicated that in scenarios of impunity, these commissions could function as "a catalyst for judicial action and obtaining justice⁵²⁴". Likewise, such mechanisms can be useful for the elaboration of public policy, in addition to constituting a form of recognition and dignification of the victims⁵²⁵. It is, therefore, a mechanism that dialogues with guarantees of non-repetition and measures of satisfaction.

⁵²³ IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports," Brazil,](#) 2022, para. 416.

⁵²⁴ IACHR, Annual Report, [Chapter IV. Honduras](#) 2010, para. 594.

⁵²⁵ IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports," Brazil,](#) 2022, para. 416.

Friendly Settlement Reports

IACHR, [Report No. 102/19](#), Case 13.017 A. *Friendly Settlement. Relatives of victims of the military dictatorship, October 1968 to December 1989. Panama. July 13, 2019*

The State undertakes, as far as possible, to edit, print and launch the booklet "Truth Commission, Synthesis of the Final Report", and to incorporate in the curriculum of the tenth grade - Ethics, eleventh grade - History of Panama and twelfth grade - Civics III courses, the events of the military dictatorship in Panama and the context of Latin America and the world.

Thematic reports

IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

239. [...] By virtue of what has been indicated in this report, the IACHR recommends to the States that:

Recommendation 6

Provide the necessary political, budgetary and institutional support to official extrajudicial truth-determination initiatives, such as Truth Commissions. In particular, States should guarantee adequate conditions for the creation and functioning of Truth Commissions, and should adopt the relevant measures to effectively implement the recommendations formulated by such Commissions, within a reasonable period of time.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in its country or thematic reports", Brazil, 2022.](#)

416. The Commission recalls that truth commissions make it possible to advance in the collective construction of the truth about human rights violations in a complementary manner to the judicial processes and consider the historical, social, and political context⁵²⁶. In addition, their work, based on documentary and testimonial evidence, is a form of recognition and dignification of the victims and constitutes a fundamental source of information for judicial proceedings and for the development of public policy and appropriate reparation mechanisms [...].

IACHR, [Annual Report, Chapter IV, Honduras, 2012](#)

298. The IACHR has supported the Truth Commissions in the different countries of the hemisphere where they have been created insofar as they represent an adequate mechanism to ensure the right to the truth. In this sense, the IACHR has affirmed that:

The right to reparation for human rights violations, in the form of satisfaction and guarantees of non-repetition, includes the right of every person and society to know the full, complete and public truth about the events that occurred, their specific circumstances and those who participated in them. The right of a society to know the full truth about its past is not only a means of reparation and

⁵²⁶ IACHR, Right to Truth in the Americas Report, OEA/Ser.L/V/II.15, Doc. 2, 13 August 2014, para. 176.

clarification of the events that occurred, but also has the purpose of preventing future violations⁵²⁷.

IACHR, Annual Report, [Chapter IV. Honduras](#), 2010

594. It is essential that the TRC [Truth and Reconciliation Commission] have sufficient resources, personnel and independence to carry out its work effectively. Likewise, it is necessary that in the definition of its regulations, work plan and methodology, the investigation of the allegations of human rights violations that occurred in the context of the coup d'état be incorporated as a central axis of its work. The Commission considers that, given the climate of impunity currently prevailing in the State of Honduras, the effective work of the TRC in this regard is of fundamental importance, since it could act as a catalyst for judicial action and the attainment of justice.

6.3.3. Dissemination of the truth

178. In various pronouncements, the IACHR has referred to the manner of dissemination of the historical truth, which can take various forms. Thus, the Commission has requested that the results of judicial proceedings on grave violations be publicly disclosed so that society may know the truth⁵²⁸. On other occasions, it has called for the creation of radio programs so that family members can recount their experiences to society⁵²⁹. Additionally, the IACHR has referred to the use of other spaces to disseminate the historical truth, such as

⁵²⁷ IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea et al (El Salvador), January 27, 1999, para. 154.

⁵²⁸ Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín ([Case 10.686](#)) v. Republic of Guatemala. July 28, 2007, para. 245 (available in Spanish).

⁵²⁹ Application to the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen ([Case 12.101](#)) v. Republic of Guatemala, July 4, 2003, para. 143 (available in Spanish).

audiovisual programs, documentaries, and websites⁵³⁰. On the other hand, in communities with indigenous populations, the Commission has requested that the information be disseminated in their respective languages, both in writing and by radio or other culturally appropriate means⁵³¹.

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of María Tiu Tojín and Josefa Tiu Tojín (Case 10.686) against the Republic of Guatemala. July 28, 2007 (available in Spanish).

245. [...] The result of the process should be publicly disclosed, so that Guatemalan society knows the truth⁵³².

Application before the Inter-American Court of Human Rights in the case of Marco Antonio Molina Theissen (Case 12.101) against the Republic of Guatemala, July 4, 2003 (available in Spanish).

143. It is also requested that a radio program be created on the Guatemala radio station (Radio TGW) with the objective of discussing issues related to the human rights of children; in addition, family members whose children suffered the horrors of the war could relate their testimonies about the situation of violence they experienced. This will make it possible for a global audience to learn about the real

⁵³⁰ See, for example: IACHR, [Annual Report, Chapter IV.A "Human Rights Development in the Region,"](#) Uruguay, 2021, para. 951.

⁵³¹ IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

⁵³² I/A Court H.R. Huilca Tecse Case. Judgment of March 3, 2005. Series C No. 121, para. 107; I/A Court H.R. I/A Court H.R. Serrano Cruz Sisters Case. Judgment of March 01, 2005. Series C No. 120, para. 175; I/A Court H.R., Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 128; I/A Court H.R., Plan de Sánchez Massacre Case. Judgment of November 19, 2004. Series C No. 116, para. 98.

circumstances of the episodes being narrated so that the atrocities and violations that the different parties to the conflict inflicted on the country's most vulnerable population will remain in the collective memory. Likewise, the victims or their families could request or disclose clues or evidence that could help them find their children.

Friendly Settlement Reports

IACHR, [Report No. 68/16](#), Case 11.007. Friendly Settlement. Trujillo Massacre. Colombia. November 30, 2016 (Dissemination)

The State undertakes to carry out the following commemorative measures:

2. An audiovisual documentary on the efforts made by the victims' families in the search for truth and justice over the years. Additionally, this documentary must vindicate the memory of the victims and their families. The documentary will have a duration of 45 minutes and its realization includes the production, presentation, and projection on a national public channel. This measure will be in charge of the Presidential Council for Human Rights.

Country reports

IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OAS/Ser.L/V/II.111 Doc. 21 rev. April 6, 2001

85. [...] Expand ongoing initiatives for the dissemination of peace agreements, including in the respective indigenous languages, both in writing and through radio and other appropriate means.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), Uruguay, 2021.

951. The IACHR also notes that the INDDHH created a web page to disseminate and provide documentation of historical value on the serious human rights violations that occurred in the former Defense Information Service (SID). This new virtual space seeks to preserve the memory and pay tribute to the victims of the events that took place in the house at 1532 Bulevar Artigas, which is currently the headquarters of the INDDHH. The new website develops a museographic account of the Site of Memory and presents documents, videos and photographs⁵³³.

6.3.4. Access to information and access to archives

179. The IACHR has been emphatic in pointing out that States have the obligation to order, systematize and make available to victims, judicial authorities and society as a whole, all useful and relevant information for the investigation of serious human rights violations, which applies to transitional contexts⁵³⁴.

180. In this regard, the Commission has stressed that the process aimed at establishing the truth requires the free exercise of the right to seek and receive information, as well as the adoption of the necessary measures to enable the Judiciary to undertake and complete investigations into these violations⁵³⁵.

⁵³³ National Human Rights Institute and Ombudsman's Office, "New website of the Memory Site of the former Defense Information Service (SID)," August 13, 2021.

⁵³⁴ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017. Principle XV "Accessibility of state archives".

⁵³⁵ IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, para. 30 (available in Spanish).

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009 (available in Spanish).

- a. Carry out all necessary actions and legal modifications in order to systematize and make public all documents related to the military operations against the Guerrilha do Araguaia;

Country reports

IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II. Doc. 278, October 14, 2021.

115. In view of this, the Commission reiterates its call to the State of El Salvador to take urgent and decisive steps to order, systematize and make available to the victims, the judicial authorities and society as a whole all documentation, including that of an operational, administrative, financial, health, public relations and any other nature. The public availability of the documentation must be carried out with the treatment of the protection of sensitive aspects [...].

IACHR, [Situation of Human Rights in Brazil](#), OEA/Ser.L/V/II. Doc. 9, February 12, 2021.

416. [...] In this sense, the Commission calls on the Brazilian State to guarantee, both to justice operators and to the public, technical and systematized access to such information [investigations of the serious violations committed during the civil-military dictatorship], ensuring the inalienable right of the victims, their families and

society as a whole to know the truth about the serious human rights violations⁵³⁶.

IACHR, [Report on the Demobilization Process in Colombia](#), OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004 (available in Spanish).

30. Given this reality, the right to the truth should not be restricted through legislative or other measures. The IACHR has established that the existence of factual or legal impediments -such as the issuance of amnesty laws- to access to information on the facts and circumstances surrounding the violation of a fundamental right, and which prevent the implementation of judicial remedies under domestic jurisdiction, are incompatible with the right to judicial protection provided for in Article 25 of the American Convention.⁵³⁷ The process aimed at establishing the truth requires the free exercise of the right to seek and receive information, as well as the formation of investigative commissions⁵³⁸ and the adoption of the necessary measures to enable the judiciary to undertake and complete the corresponding investigations.⁵³⁹

⁵³⁶ IACHR. Report "Right to the Truth in the Americas," August 13, 2014, par. 71, 125; IACHR, I/A Court H.R.. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Judgment of November 24, 2010. Series C No. 219, paras. 178-180.

⁵³⁷ IACHR, Report No. 25/98, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.585, 11.595, 11.652, 11.657, 11.675 and 11.705 (Chile) in *Annual Report of the Inter-American Commission on Human Rights 1998*.

⁵³⁸ Undertakings of this nature have worked with significant results in terms of the right to truth in some countries in the region, such as Argentina, Chile, El Salvador, Guatemala and Peru.

⁵³⁹ See IACHR, Chapter V "Areas in which measures should be taken to give greater effect to human rights in accordance with the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights" *Annual Report 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev. 1*, page 205.

IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001.

37. The Inter-American Commission considers it essential that the so-called "archives of terror," made up of the police archives of the dictatorship, found in 1992 by Dr. Martín Almada, with a court order, be protected and used.⁵⁴⁰ These archives not only contain information about human rights violations in Paraguay during the dictatorship but it has also been pointed out that these:

detail the fate of hundreds, perhaps thousands, of Latin Americans secretly kidnapped, tortured and murdered by the right-wing regimes of the 1970s. They also provide a paper trail confirming the existence of a slippery and bloody conspiracy between the services of Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay to track down and eliminate political adversaries regardless of national borders. It is now possible to complete the outline of "Operation Condor", as this illicit network was known.⁵⁴¹

⁵⁴⁰ In its observations on the present report, the State noted the following: "It should also be noted that Paraguay has anticipated the recommendation of the IACHR issued on December 9, 1998 at its 101st regular session with respect to access to archives and documents held by the State, particularly in cases of investigations aimed at establishing responsibility for international crimes and serious violations of human rights. As the IACHR is aware, in 1992, in a judicial proceeding requested by Dr. Martin Almada, the "Archive of Terror" was discovered, consisting of a voluminous amount of declassified documents containing information on the violation of human rights in Paraguay between 1954 and 1989 and its connection with Operation Condor, especially during the seventies and eighties. These documents are currently housed in the Information and Archive Center for the Defense of Human Rights under the Supreme Court of Justice and declared universal heritage by UNESCO, an organization that signed an agreement with the Judiciary to preserve and protect the archive, which was included in the Memory of the World Register".

⁵⁴¹ See, among others, Calloni, Stella, *Los Archivos del Horror del Operativo Condor*, article published on the website: www.derechos.org/nizkor.

Thematic reports

IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

126. In particular, the Court has ordered the following measures:

(x) "to guarantee justice operators, as well as society, public, technical and systematized access to archives containing useful and relevant information for the investigation of cases of human rights violations";

239. [...] Recommendations:

5. Adopt the necessary measures to ensure the collaboration of all state institutions in relation to the declassification of documentation and provision of information in judicial or extrajudicial investigative processes underway or to be initiated in the future. In the case of serious human rights violations and breaches of IHL in transnational or regional contexts, States should make every effort to cooperate in the provision of official information to States seeking to investigate, prosecute, and punish such violations.

9. Adopt the necessary measures to classify, systematize, preserve and make available historical archives related to serious human rights violations and breaches of IHL.

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas," May 27, 2017.](#)

Principle XV "Accessibility of state archives".

States should ensure public, technical and systematized access to archives containing information useful and relevant to the investigation of serious human rights violations. In particular, courts, extrajudicial commissions of inquiry and investigators should be able to freely consult the archives.

[...]

Principle XVI "Restrictions on access to information from state archives".

The handling of information must be carried out under the principle of maximum transparency and good faith. Any limitation to freedom of expression must be previously, expressly, specifically, precisely and clearly established in a law.

Victims of gross human rights violations and their families, as well as society as a whole, have the right to know the truth about past atrocities. Therefore, in no case may a state agency deny authorities investigating human rights violations state information that may help to shed light on such violations.

Especially when it comes to the investigation and prosecution of crimes attributable to the State security forces, the Public Authorities cannot use mechanisms such as State secrecy or national security exceptions to avoid providing the information required by the judicial or

administrative authorities in charge of the investigation of pending proceedings.

It should be emphasized that the legislation of the region and the Inter-American System have established the principle that, in cases of investigations into serious human rights violations, exceptions related to national security or international relations are not open to appeal, even when they involve legitimate interests that the State can protect in other contexts.

Likewise, States must have a simple, rapid and effective judicial remedy that, in cases where an authority denies information, determines whether there has been a violation of the applicant's right to information and, if so, orders the body to ensure proper access.

6.4. Training and sensitization

181. In cases and situations related to transitional justice contexts, the IACHR has called on States to design and implement training as a measure of non-repetition of serious human rights violations. In particular, these trainings have been related to general topics of human rights and international humanitarian law⁵⁴²; gross human rights violations⁵⁴³, reparation measures⁵⁴⁴, and treatment of

⁵⁴² IACHR, [Report No. 38/15](#), Petition 108-00. Friendly Settlement. Segovia Massacre. Colombia. July 24, 2015, IV. Friendly settlement, p. 4.

⁵⁴³ IACHR, [Right to Truth in the Americas](#), OEA/Ser.LV/II.152. Doc. 2, Aug. 13, 2014, paras. 125 and 126, and IACHR, Application to the Inter-American Court of Human Rights in the Case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009, para. 259 (available in Spanish).

⁵⁴⁴ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.LV/II Doc. 49/13, December 31, 2013, para. 503.

victims⁵⁴⁵. Awareness programs have been directed, among other authorities, to the armed forces⁵⁴⁶ and security forces⁵⁴⁷, to justice operators⁵⁴⁸, and to authorities of the penitentiary system⁵⁴⁹.

182. Likewise, the Commission has urged the States to implement these programs within "a reasonable time frame⁵⁵⁰"; and the States have committed to include the particular facts of the individual case as a "subject of study and analysis⁵⁵¹" in their curricula. Finally, the IACHR has called on States to include differentiated approaches to treatment in the design of formalization and training programs. Thus, the Commission has established that States must train officials on

⁵⁴⁵ IACHR, [Report No. 160/10](#), Petition P-242-03. Friendly Settlement. Inocencia Luca de Pegoraro et al. Argentina. On the training of judicial actors, p. 7; IACHR, [Report No. 160/10](#), Petition P-242-03. Friendly Settlement. Inocencia Luca de Pegoraro et al. Argentina. November 1, 2010, 2. Non-pecuniary reparation measures, 2.3. On the training of judicial actors, p. 7.

⁵⁴⁶ Application to the Inter-American Court of Human Rights in the Case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009, para. 259 (available in Spanish); IACHR, [Report No. 38/15](#), Petition 108-00. Friendly Settlement. Segovia Massacre. Colombia. July 24, 2015, IV. Friendly Settlement, p. 4; IACHR, [Report No. 10-15](#), Case 12.756. Friendly Settlement. Estadero El Aracatazzo Massacre. Colombia. January 30, 2015, IV. Friendly settlement, p. 5.

⁵⁴⁷ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas,"](#) May 27, 2017, principle IX "Design and implementation of memory initiatives."

⁵⁴⁸ IACHR, [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.LV/II. Doc. 278, October 14, 2021, para. 102; IACHR, [Report No. 160/10](#), Petition P-242-03. Friendly Settlement. Inocencia Luca de Pegoraro et al. Argentina. November 1, 2010, 2. Non-pecuniary reparation measures, 2.3. On the training of judicial actors, p. 7; IACHR, [Report No. 160/10](#), Petition P-242-03. Friendly Settlement. Inocencia Luca de Pegoraro et al. Argentina. November 1, 2010, 2. Non-pecuniary reparation measures, 2.3. On the training of judicial actors, p. 7, and IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas,"](#) May 27, 2017, principle IX "Design and implementation of memory initiatives."

⁵⁴⁹ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas,"](#) May 27, 2017, principle IX "Design and implementation of memory initiatives."

⁵⁵⁰ Application to the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) ([Case 11.552](#)) v. Federative Republic of Brazil. March 26, 2009, para. 258 (available in Spanish).

⁵⁵¹ IACHR, [Report No. 38/15](#), Petition 108-00. Friendly Settlement. Segovia Massacre. Colombia. July 24, 2015, IV. Friendly settlement, p. 4; and IACHR, [Report No. 10-15](#), Case 12.756. Friendly Settlement. Estadero El Aracatazzo Massacre. Colombia. January 30, 2015, IV. Friendly settlement, p. 5.

issues of displacement of LGBT persons⁵⁵², as well as security forces on violence due to prejudice against this population⁵⁵³.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 157/18](#). Case 13.051. Merits. Vicky Hernández and Family. Honduras. December 7, 2018, recommendation 4.

4. Provide mechanisms of non-repetition that include: [...] ii) designing training, sensitization and capacity-building programs for State security forces in the area of bias-based violence against LGBT persons; [...]

Application to the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) v. Federative Republic of Brazil. March 26, 2009, para. 258 (available in Spanish).

f. Implement, within a reasonable period of time, permanent human rights education programs within the Brazilian Armed Forces, at all hierarchical levels, and include special mention in the curriculum of such training programs of the present case and of international human rights instruments, specifically those related to the forced disappearance of persons and torture;

⁵⁵² IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 1030, recommendation 7.

⁵⁵³ IACHR. [Report No. 157/18](#). Case 13.051. Merits. Vicky Hernández and Family. Honduras. 7 December 2018.

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IACHR, [Right to Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014.

126. In particular, the Court has ordered the following measures:

(xii) "[...] train officials involved in the investigation of serious human rights violations";

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IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 1030, recommendation 7.

7. Design and implement effective measures to provide adequate attention to LGBTI persons in situations of displacement, adopting a differential approach to the impact of the armed conflict specifically on LGBTI persons. Based on these measures, carry out training and awareness campaigns for officials who serve the population in situations of forced displacement on the needs and rights of LGBTI people.



**IV. COMPREHENSIVE
REPARATION WITH A
GENDER PERSPECTIVE
IN TRANSITIONAL
JUSTICE CONTEXTS**

IV. COMPREHENSIVE REPARATION WITH A GENDER PERSPECTIVE IN TRANSITIONAL JUSTICE CONTEXTS

183. This chapter addresses the standards developed by the Inter-American Commission on reparations with a gender perspective in contexts of transitional justice. The first part develops some general aspects related to the scope of the strengthened obligations of States in this area, considering the exacerbation of violence and discrimination against women in contexts of armed conflict, dictatorships, and authoritarian and repressive regimes. It also addresses the transformative vocation that reparations must have in this type of situation and details some specific standards applicable to situations of sexual violence. Subsequently, IACHR standards are systematized, and in some cases the I/A Court H.R., which use a gender perspective in reparations in transitional justice contexts. This is based on the classification of reparations measures used in Chapter III.

A. GENERAL CONSIDERATIONS

184. The organs of the Inter-American System have been clear in establishing that States have the duty to act with due diligence in cases of discrimination and violence against women, which entails four specific obligations: to prevent, investigate, punish and redress⁵⁵⁴. This obligation applies to acts committed both by State agents and by third parties under the tolerance or acquiescence of

⁵⁵⁴ IACHR, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OEA/Ser.L/V/II. Doc. 233, Nov. 14, 2019 ANNEX 1: *Main standards and recommendations on violence and discrimination against women, girls and adolescents*, para. 61; IACHR, *Access to justice for women victims of sexual violence: education and health*, OEA/Ser.L/V/II. Doc. 65, Dec. 28, 2011, para. 68; and IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*. OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 24.

the State, and for which the State is directly responsible⁵⁵⁵. Likewise, the Inter-American Commission has underscored the link between discrimination and violence against women⁵⁵⁶, as well as against LGBTI persons, recognizing the importance of comprehensively and specifically addressing the different forms of gender-based violence in the contexts of armed conflict, military dictatorships or other oppressive and authoritarian regimes⁵⁵⁷.

185. On the other hand, it has highlighted the "comprehensive nature" of the State's responsibility to act with due diligence to prevent the violation of women's human rights in periods of peace and conflict⁵⁵⁸. In this regard, the IACHR has recommended that States implement and strengthen measures to comply with the duty of due diligence in contexts of armed conflict, taking into account the exacerbation of violence and discrimination against women in such contexts⁵⁵⁹. This

⁵⁵⁵ IACHR. Missing indigenous women in Canada. OEA/Ser.L/V/II. Doc. 30/14, 2014, para. 158; IACHR. Access to justice for women victims of sexual violence in Mesoamerica. OEA Ser.L/V/II. Doc.63, 2011, para. 42; IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. 2011, para. 126; and IACHR. Women's Right to a Life Free of Violence and Discrimination in Haiti. OEA/Ser.L/V/II. Doc. 64, 2009, para. 86. Cited in: IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019 ANNEX 1: [Main standards and recommendations on violence and discrimination against women, girls and adolescents](#), para. 61.

⁵⁵⁶ IACHR, [Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application](#), OEA/Ser.L/V/II. Doc. 60, November 3, 2011, para. 22.

⁵⁵⁷ IACHR, [Advances and Challenges Toward the Recognition of the Rights of LGBTI Persons in the Americas](#), OAS/Ser.L/V/II.170 Doc. 184, 7 December 2018; IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.2. Doc. 36. 12 November 2015; IACHR, Press Release NoO. 131A, "[Report on the 153rd Session of the IACHR](#)," 29 December 2014.

⁵⁵⁸ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, Nov. 14, 2019 ANNEX 1: [Main standards and recommendations on violence and discrimination against women, girls and adolescents](#), para. 61; and IACHR, [Access to justice for women victims of sexual violence: education and health](#), OEA/Ser.L/V/II. Doc. 65, December 28, 2011, para. 68.

⁵⁵⁹ IACHR, [Access to Justice for Women Victims of Sexual Violence: Education and Health](#), OEA/Ser.L/V/II. Doc. 65, December 28, 2011, para. 70.

differentiated impact requires, on the other hand, reinforced prevention and protection actions on the part of the States⁵⁶⁰.

186. Given the situation of structural discrimination faced by women and LGBTI persons, reparations must have a transformative vocation. That is, they should not only have a restitutive effect "but also a corrective effect toward structural changes that dismantle those stereotypes and practices that perpetuate discrimination⁵⁶¹". This emphasis on transformative reparations-that is, reparations aimed at changing or transforming common practices and discriminatory beliefs-reflects the Inter-American System's attention to the impact of gender notions, stereotypes, and historical discrimination on the perpetuation of violence against women⁵⁶².

187. In cases of human rights violations involving violence and discrimination against women, LGBTI persons, girls and adolescents, it is essential that States carry out an analysis aimed at determining to what extent gender determined, on the one hand, the perpetration of human rights violations and, on the other hand, the differentiated nature of the harm caused to them. According to this analysis, States must implement reparation measures that, under no circumstances, exclude, marginalize or revictimize women, LGBTI

⁵⁶⁰ IACHR, [Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application](#), OEA/Ser.L/V/II. Doc. 60, Nov. 3, 2011, para. 158.

⁵⁶¹ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, para. 140, *citing*: IACHR. Press Release No.144/18. IACHR expresses concern about the prevalence of murders and other forms of extreme violence against women in Peru. July 2, 2018; I.A. Court H.R.. Case of Atala Riffo and Girls v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012; I/A Court H.R., Judgment of February 24, 2012; I/A Court H.R., Case of González et al. Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205; MESECVI and UN Women. Analysis of legislation on femicide/feminicide in Latin America and the Caribbean and inputs for a model law. 2018.

⁵⁶² IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 168, *citing*: IACHR, Legal standards linked to gender equality and women's rights in the inter-American human rights system: development and application. Update from 2011 to 2014. See Ruth Rubio Marín and Clara Sandoval, Engendering the Reparations Jurisprudence in the Inter-American Court of Human Rights: The Promise of the Cotton Fields Sentence, Human Rights Quarterly, Vol. 33, 2011, p. 1068.

persons, girls and adolescents. Likewise, the application of these measures must understand that the violations of their human rights affect them differently than men. Likewise, it is essential that the application of this approach takes into account that not all women, girls and adolescents are the same. In this regard, the Commission has pointed out that "discrimination against women on the basis of sex and gender is indivisibly linked to other factors⁵⁶³". In this sense, States have the duty to consider the different factors of discrimination that they may face, such as their age, race, ethnic origin or economic situation⁵⁶⁴.

1. Gender perspective and intersectionality

188. The Inter-American Human Rights System has emphasized that gender-based violence "is a manifestation of historically unequal power relations between women and men" that is perpetuated by the persistence of discriminatory attitudes and practices against women⁵⁶⁵. As mentioned in Chapter II, the gender perspective is a key tool for combating such discrimination and violence.

189. In contexts of violence, States must "incorporate a gender perspective in the design and implementation of reparations for the benefit of women, girls and adolescents⁵⁶⁶". In this regard, the United Nations Special Rapporteur on torture has stated that

⁵⁶³ IACHR - Office of the Special Rapporteur for Freedom of Expression. [Women Journalists and Freedom of Expression](#). OAS/SER.L/V/II. IACHR/RELE/INF.20/18, 31 October 2018, para. 12.

⁵⁶⁴ IACHR. [Impacts of cases of discrimination and violence against women, girls and adolescents](#) (Annex 2 of Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean). OEA/Ser.L/V/II, Doc. 233, paras. 64 and 65.

⁵⁶⁵ IACHR, [Practical Guide for the Elimination of Violence and Discrimination against Women, Girls and Adolescents](#), p.7.

⁵⁶⁶ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, para. 140, citing: I/A Court H.R. Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 230; I/A Court HR. Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010, para. 213.

"reparations must be determined on the basis of a full understanding of the gender component and the consequences of the harm suffered, and must take into account existing gender inequalities so that they are not themselves discriminatory⁵⁶⁷".

190. On the other hand, when determining the scope and content of reparation, States must take into account cultural differences, breaking with prejudices and stereotypes, especially those that are directed against indigenous peoples and Afro-descendant communities⁵⁶⁸. Hence the importance of consulting the victims on their own concept of reparation, their needs, and the impact that the events have had according to their worldview⁵⁶⁹. Likewise, States should take into account other factors of discrimination that accentuate their situation of risk, so that reparations respond to their particular needs; in addition to ensuring that these women are involved in the design and implementation of reparations⁵⁷⁰.
191. The following is a systematization of a series of standards developed by the IACHR in the framework of its various mandates regarding the application of a gender and intersectional perspective in transitional justice contexts.

⁵⁶⁷ Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/31/57. January 5, 2016, para. 66.

⁵⁶⁸ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 111.

⁵⁶⁹ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 111.

⁵⁷⁰ In this regard, see: IACHR, Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 314, recommendation 13; IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 13, and IACHR. Report No. 64/11. Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011, para. 12.

I/A Court H.R. Decisions

I/A Court H.R., [Case of Movilla Galarcio et al. v. Colombia. Merits, Reparations and Costs](#), Judgment of June 22, 2022

181. The States Parties to the American Convention on Human Rights have the obligation to carry out actions to recognize and guarantee the work of women searchers in the prevention and investigation of forced disappearance. They must also guarantee that this work is carried out without obstacles, intimidation, or threats, ensuring the personal integrity of the women searchers and their rights to political participation recognized in the Convention, addressing the historical and cultural obstacles that limit the search, and guaranteeing the permanence of their life project in dignified conditions for the women and their dependents⁵⁷¹. This should be extended to reparations, which should be dictated in a way that does not reproduce gender stereotypes, but rather reflects the ways in which women searchers wish to be represented.

Merits Reports

IACHR. [Report No. 64/11](#). Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011.

7. Adopt procedures to recognize the vulnerability and differences of groups of displacement victims at greater risk of human rights violations such as Afro-descendants,

⁵⁷¹ According to the Working Group, "Women relatives of victims, in particular those who become heads of households as a result of enforced disappearance, have specific material, financial, psychological and legal needs. Relevant governmental institutions should provide them with adequate counselling, rehabilitation and support services, assistance and information." Working Group on Enforced or Involuntary Disappearances, General Comment on women affected by enforced disappearances, adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October-9 November 2012)/14 February 2013.

children, women and women heads of household so that the State's response is geared towards addressing their special needs and adopt the necessary measures to guarantee their full and equal participation in public affairs, to have real equality of access to public services and to receive rehabilitation assistance.

11. Adequately compensate displaced women from the Afro-descendant communities of Cacarica associated with CAVIDA and women heads of household living in Turbo based on the principle of non-discrimination and gender criteria that include their special needs and the specific needs of mothers who are heads of household.

12. To repair the children of the Afro-descendant communities of Cacarica associated with CAVIDA and children of women heads of household living in Turbo through measures in which the best interests of the child, respect for their dignity, the principle of non-discrimination, the right to participation of children and respect for their opinions in the process of design and implementation of reparation measures prevail. Reparatory measures should be oriented to ensure the necessary conditions for these children to enjoy education and an adequate standard of living that will allow them to achieve their full development as human beings.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

532. By virtue of what has been indicated in this section, the Commission recommends to the State of Colombia that:

3. Guarantee, in practice, the implementation of the differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendants, lesbian, gay, bisexual, trans and intersex persons, and human rights defenders, among others.

923. Based on the information and considerations set forth in this report, the Commission recommends to the State of Colombia:

6. Incorporate the voices and specific needs of women affected by the armed conflict, as well as the organizations that represent them, in the design of legislation and public policies aimed at ameliorating the impact of the consequences of the armed conflict on them.

13. Design and adopt policies, with the participation of indigenous and Afro-Colombian women, that consider respect for their culture in order to lessen the effects of the armed conflict. In particular, develop actions aimed at reducing the negative effects of the armed conflict on health, education and justice.

16. Ensure that women directly affected by the conflict and its consequences are incorporated into decision-making bodies aimed at resolving the causes and consequences of the conflict.

1014. Trans women who have had to forcibly leave their places of origin for reasons related to the armed conflict do not always identify themselves as victims of forced displacement, which means that they do not have access to state assistance and reparation measures provided for the general population. In the cases of trans women who do identify themselves as

victims of displacement, they also do not seek these measures due to lack of information and in some cases they rule out this possibility from the outset, indicating that these policies do not incorporate differential perspectives that respond to their needs⁵⁷².

1174. On the other hand, in relation to LGBTI defenders, the IACHR has noted that the attacks are framed in a context of violence and structural discrimination that has been aggravated by the armed conflict [...].

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

233. In the case of Colombian women, it is vital that any process aimed at pacification contemplate the clarification and reparation of acts of violence and discrimination that they have experienced as part of the armed conflict [...] Similarly, the Convention of Belém do Pará urges States to establish the necessary judicial and administrative mechanisms to ensure that women victims of violence have effective access to redress, reparation of damages or other just and effective means of compensation.

236 [...] In this context, it is essential that the State respect the rights of women, as well as those of other vulnerable groups in the clarification and punishment of the acts of violence and discrimination that have occurred, as well as the adequate reparation of the damage caused, through individual measures of restitution, compensation and rehabilitation.

⁵⁷² Secretaría General de la Alcaldía Mayor de Bogotá D.C., National University of Colombia, Susana Herrera Galvis et al. *Relatos de Mujeres Trans Desplazadas Forzosamente hacia Bogotá*, April 2012, p. 193.

IACHR, [Fifth Report on the Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

42. Based on the foregoing analysis and conclusions, the Commission offers the following recommendations to assist in this process; specifically, that the State:

6. In connection with the above recommendation, adopt concrete measures and procedures to implement the commitment in the Resettlement Agreement that uprooted groups will participate in decision-making and in the formulation, implementation and monitoring of policies and projects that affect them, at the local, regional and national levels. In this regard, effective participation necessarily requires the dissemination of appropriate information to be used for decision-making.

53. In light of the foregoing analysis and conclusions, the Commission recommends that the State:

10. Ensure that the impact and consequences of acts of violence committed against women during the armed conflict are adequately addressed in the design and implementation of the national reparations plan and other reparations and rehabilitation measures.

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IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019.

314. In light of the above observations, the IACHR [...] adds some additional recommendations:

13. Adopt differential approaches to gender, ethnicity and LGBTI population, both in the construction of guarantee programs, as well as in research;

IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019.

140. [...] Along these lines, the Inter-American System has interpreted that in the context of structural discrimination faced by women on the basis of their gender, reparations must have "a transformative vocation of this situation, so that they have not only a restorative effect but also a corrective effect toward structural changes that dismantle those stereotypes and practices that perpetuate discrimination"⁵⁷³. Thus, States must incorporate a gender perspective in the design and implementation of reparations for the benefit of

⁵⁷³ IACHR. Press Release No.144/18. IACHR expresses concern about the prevalence of murders and other forms of extreme violence against women in Peru. July 2, 2018; I.A. Court H.R.. Case of Atala Rifo and Girls v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012; I/A Court H.R., Judgment of February 24, 2012; I/A Court H.R., Case of González et al. Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205; MESECVI and UN Women. Analysis of legislation on femicide/femicide in Latin America and the Caribbean and inputs for a model law. 2018.

women, girls and adolescent victims of violence⁵⁷⁴, in consideration of their circumstances of special vulnerability⁵⁷⁵.

IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017.

29. In its report *Violence and Discrimination against Women in the Armed Conflict in Colombia* (2006), the IACHR highlighted the particularly critical situation experienced by indigenous women in Colombia due to the serious effects of the armed conflict, together with the history of discrimination and exclusion that affects them, including the problem of displacement⁵⁷⁶. The report *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*⁵⁷⁷ once again examines the different forms of discrimination and violence affecting indigenous women in Colombia as a result of the armed conflict and expresses particular concern about the use of sexual violence as a tactic of war with particularly severe effects on indigenous women.

⁵⁷⁴ I.A. Court H.R.. Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 230; I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico. Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010, para. 213.

⁵⁷⁵ The United Nations Special Rapporteur on torture has stated that "reparations must be determined on the basis of a full understanding of the gender component and the consequences of the harm suffered, and must take into account existing gender inequalities so that they are not themselves discriminatory [...] by addressing the underlying causes and consequences of violations, and provide continued protection for and respectful engagement with victims". Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/31/57. January 5, 2016, para. 66.

⁵⁷⁶ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.LV/II. Doc. 67, October 18, 2006, paras. 122-148.

⁵⁷⁷ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, paras. 122-148.

40. [...] Due to the multidimensional nature of indigenous women's identity, it is necessary to understand the intersection of structural forms of discrimination that have historically affected and continue to affect indigenous women as a result of the combination of their ethnicity, race, gender, and poverty. To these more frequent factors of discrimination can also be added others, such as age, disability, pregnancy⁵⁷⁸ , having the status of displaced person, deprivation of liberty, or living in areas affected by armed conflict⁵⁷⁹ , sexual orientation or gender identity⁵⁸⁰ .

91. The majority of rape victims during the armed conflict in Guatemala were Mayan women⁵⁸¹ . These acts of violence were perpetrated in the context of a larger campaign to destroy the culture and identity of the Mayan people, with the destruction of sacred sites, cultural symbols and ceremonial centers, the repression of indigenous language, culture and dress, and the brutal killing of elders in order to disrupt their social order and way of life⁵⁸² . [...]

94. The IACHR has observed that in Colombia, indigenous women are subjected to sexual slavery, forced pregnancy, gang rape, sexual mutilation, and murder at the hands of

⁵⁷⁸ IACHR, Precautionary Measure No.51/15 - Pregnant and lactating women of the Wayúu indigenous community, Colombia, January 26, 2017.

⁵⁷⁹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Para", Article 9.

⁵⁸⁰ IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, OEA/Ser.L/V/II. Doc.36/15 Rev.2, para. 264.

⁵⁸¹ Commission for Historical Clarification, Guatemala, Memory of Silence, Report of the Truth and Reconciliation Commission, prologue, paras. 85-88, 91.

⁵⁸² Commission for Historical Clarification, Guatemala, Memory of Silence, Report of the Truth and Reconciliation Commission, prologue, paras. 85-88, 91.

various participants in the armed conflict⁵⁸³ . [...] Likewise, indigenous women and their leaders are often the target of assassinations and disappearances in the context of armed conflict. [...]

127. In the Americas, an increasing number of indigenous women are forced, by economic necessity or as a consequence of armed conflict and the denial of their land ownership rights, to leave their communities of origin in rural areas for urban centers⁵⁸⁴ . [...]

IACHR, [Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application](#), OEA/Ser.L/V/II. Doc. 60, Nov. 3, 2011

98. The IACHR has repeatedly spoken out about the serious impact of forced displacement on women, who make up approximately half of the displaced population in Colombia. It has expressed its concern about the special consequences that displacement has on women, especially the "radical, traumatic and sudden change in family structure and roles, geography, culture, community and socioeconomic status, and exposure to threats, violence and discrimination based on their gender on the part of the actors in the conflict that caused the displacement or of the receiving populations"⁵⁸⁵ .

⁵⁸³ United Nations Department of Economic and Social Affairs, *The State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 226; IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of [the] Human Rights in Colombia*, OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 781.

⁵⁸⁴ United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 60.

⁵⁸⁵ IACHR, *Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 70; IACHR, *Chapter V, Annual Report 2009, Follow-up Report - Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia*, para. 27.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports", Colombia, 2021.](#)

262. The Commission appreciates the State's efforts to address gender-based violence against women. However, it notes the urgency of addressing the structural causes of violence, from a gender, ethnic-racial and intersectional perspective, through transformative measures aimed at eradicating behaviors and sociocultural practices that permit and legitimize violence against women. [...]

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia", 2017.](#)

273. The Commission welcomes the efforts made to integrate, through eight thematic axes⁵⁸⁶, the gender perspective in the Peace Agreement and the participation of women's organizations in the process⁵⁸⁷. Similarly, the Commission recognizes the work carried out to integrate a

⁵⁸⁶ 1 In the Peace Agreement, eight thematic axes integrate the gender approach: in access to and formalization of rural property on equal terms with men; in guaranteeing the economic, social and cultural rights of women and people with diverse sexual orientation and gender identity in the rural sector; in promoting women's participation in spaces of representation and decision-making and conflict resolution; and in the balanced participation of women in decision-making bodies created in the agreements; in terms of prevention and protection measures that address the specific risks faced by women; in terms of access to truth, justice, reparation and guarantees of non-repetition, highlighting the differential ways in which the conflict affected women; in public recognition, non-stigmatization and dissemination of the work done by women as political subjects; in institutional management for the strengthening of women's organizations for their political and social participation; and in the implementation of disaggregated information systems. Humanas, Five Keys for a Differential Treatment of Sexual Violence in the Agreements on Transitional Justice in the Peace Process, September 2016.

⁵⁸⁷ El País, Colombia, a peace process with a gender perspective, September 21, 2016.

differentiated approach in the SJP⁵⁸⁸ , with a view to applying it to all phases and procedures of the system, especially with respect to all women who have suffered or participated in the conflict⁵⁸⁹ . Likewise, the Commission reiterates that it recognizes Colombia's efforts to promote the participation of women in the formation of the Chambers of Justice and the Tribunal for Peace and in the bodies related to the SJP and the Integral System [...] .⁵⁹⁰

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas," May 27, 2017.](#)

Principle IX: Design and implementation of memory initiatives

States must design and implement initiatives aimed at acknowledging and apologizing for the facts related to serious human rights violations, vindicating the memory and dignity of the victims, and establishing and disseminating the historical truth of such facts. Such initiatives may include public acts, educational, cultural or other measures, respectful of interculturality and diversity, and with a human rights and gender perspective [...].

⁵⁸⁸ Congress of the Republic, Legislative Act 01 of 2017: "Of the norms for the Termination of the Armed Conflict and the Construction of a Stable and Lasting Peace", April 4, 2017.

⁵⁸⁹ Alianza Cinco Claves (Red Nacional de Mujeres, Corporación Humanas and Corporación Sisma Mujer), Situación de los Derechos de las Mujeres en el marco del Proceso de Paz de Colombia, request for a hearing in the framework of the 165th Period of Sessions of the IACHR, August 2, 2017.

⁵⁹⁰ UNDP Colombia, UNDP celebrates the selection process of members of the Integral System of Truth, Justice, Reparation and Non-Repetition, September 26, 2017.

Practical Guides, Guidelines and other Directives

IACHR, [Practical Guide for the Elimination of Violence and Discrimination against Women, Girls and Adolescents](#), 2022 (available in Spanish).

Good practices identified

Participation in the formulation of initiatives that have an impact on the investigation, punishment and reparation of acts of violence and discrimination.

Women's participation in the Peace Agreement, Colombia. The inclusion and consultation of women in the negotiations that integrated the Peace Agreement signed in 2016 to put an end to more than fifty years of armed conflict with the Revolutionary Armed Forces of Colombia (FARC), as well as the specific vindication of the rights of women and the LGBTI population in this process, constitutes a good practice worldwide in terms of inclusion of women's rights and gender perspective in a negotiation process of this type.

IACHR, [Main Guidelines for a Comprehensive Reparations Policy](#), OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

Recommendation 63. The State should create spaces where victims can have an active participation and influence on how their rights to truth, justice and reparation are fulfilled and protected by the State and that they are granted from their perspective, specific needs and in a non-discriminatory manner.

Recommendation 65. Ensure that women directly affected by the conflict and its consequences are incorporated into decision-making bodies aimed at resolving the causes and consequences of the conflict.

2. Reparations in cases of sexual violence with a gender and intersectional perspective

192. In the particular context of human rights violations involving any form of sexual violence, States have a duty to understand and remedy the obstacles that victims of any gender, sexual orientation, gender identity and expression or bodily diversity face in accessing means of redress. In this regard, in order to address such obstacles, States must apply a sensitive approach to the specific harms and differentiated impacts that these victims face due to the stigma that is often associated with these types of violations⁵⁹¹.
193. In order to redress victims of sexual violence, States must adopt measures with a transformative vocation, aimed at reforming the context of discrimination that reproduces the problem of sexual violence. This implies the organization of the state structure not only with a view to punishing acts of sexual violence, but also to prevent these acts and duly address the causes and social consequences of the problem⁵⁹². In this regard, the Commission has highlighted the complexity of making reparations to victims of sexual violence in societies where discriminatory sociocultural patterns are still prevalent and in which the profound damage caused -which involves physical, psychological, sexual and patrimonial aspects- is not visualized in judicial practice⁵⁹³.
194. The IACHR has developed specific standards that States must comply with when repairing the harm caused to victims of sexual violence. This, taking into account the specific needs that result from

⁵⁹¹ IACHR, *Impacts of cases of discrimination and violence against women, girls and adolescents* (Annex 2 of Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean), OEA/Ser.L/V/II, Doc. 233, para. 65.

⁵⁹² IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II, Doc. 63, December 9, 2011, recommendation 27.

⁵⁹³ IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II, Doc. 63, December 9, 2011, para. 288.

the type of violence, and other needs that should guide the reparation process, such as: (i) the social response, focused on the fact that the process itself should be restorative, not revictimizing and aimed at doing justice, and (ii) the recognition of the harm, that is, that the victim should feel that the social system recognizes the harm that was caused to her and that she is not responsible for what happened⁵⁹⁴.

195. In transitional contexts, the IACHR has emphasized that States have the obligation to ensure that the impact and consequences of acts of violence committed against women are adequately contemplated in the design and implementation of reparation measures⁵⁹⁵.

2.1. General aspects

196. The IACHR has recognized, through its various mandates, the widespread use of sexual violence by state agents as a weapon of war⁵⁹⁶. In this regard, it has referred to the severity of sexual violence against women in transitional contexts, particularly with respect to at-risk populations such as indigenous women, who are the most exposed to this type of violence due to the multiple forms of discrimination they face and the vulnerability of their territory⁵⁹⁷. In cases of forced disappearances of women in transitional contexts, the

⁵⁹⁴ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 289.

⁵⁹⁵ IACHR, [Annual Report, Chapter V. "Informe de seguimiento sobre el cumplimiento por el Estado de Guatemala de las recomendaciones efectuadas por la CIDH en el quinto informe sobre la situación de Derechos Humanos en Guatemala \(2001\)"](#), 2002, para. 316.

⁵⁹⁶ IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 96.

⁵⁹⁷ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 815; and IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017, para. 94.

IACHR has highlighted the differentiated impact of the disappearance due to the particular risk of being victims of sexual violence⁵⁹⁸.

197. Likewise, in cases of sexual violence against women in contexts of armed conflict, the Commission has underscored the need to guide collective reparations with a gender focus, which implies a special and differentiated methodology for the participation of the victims of such violence⁵⁹⁹. Likewise, the Commission has underscored the obligation of States to provide enhanced protection for women victims of sexual violence in access to justice, given the context of discrimination and exclusion they face⁶⁰⁰.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 329/20](#). Case 12.774. Merits. Patricia Emilie Cuéllar et al. El Salvador. December 29, 2020 (available in Spanish)

66. Finally, the Commission recalls that the Inter-American Court in its jurisprudence has referred to the particular violence faced by women in contexts of armed conflict and systematic practice of human rights violations, including a greater risk of being selected not only as fatal victims, but also as victims of sexual violence. Similarly, the Commission has stated that armed conflict reproduces and increases discrimination, and "although men are frequently victims of summary executions and massacres, violence against women, in particular violence perpetrated by armed groups, has become commonplace in the midst of conflict [...]".

⁵⁹⁸ IACHR. Report No. 329/20. Case No. 12.774. Merits. Patricia Emilie Cuéllar Sandoval, Mauricio Cuéllar Cuéllar Cuéllar and Julia Orbelina Pérez. El Salvador, December 29, 2020.

⁵⁹⁹ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, para. 68.

⁶⁰⁰ IACHR, [Access to Justice for Women Victims of Sexual Violence: Education and Health](#), OEA/Ser.L/V/II. Doc. 65, December 28, 2011, para. 16.

IACHR. [Report No. 86/10](#). Case No. 12.649. Merits. Community of Río Negro of the Mayan Indigenous People and its Members. Guatemala. July 14, 2010

83. The CEH concluded that women represent approximately a quarter of the direct victims of the human rights violations of the conflict. The reports of the Interdiocesan Project for the Recovery of Historical Memory and the Historical Clarification Commission document the ways in which women were insulted and dehumanized, terrorized and tortured, raped, disappeared and massacred by State agents, almost always soldiers and civilian patrol members. Sexual violence against women was a widespread and systematic practice within the Army's counterinsurgency strategy and one of the most specific manifestations of gender-based violence carried out during Guatemala's internal armed conflict.

[...]

88. Thus, the collective and public rape of women was part of the pattern of the massacres, in which, before killing them, they were raped.

Friendly Settlement Reports

IACHR. [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018

The State undertakes to broadcast on television, in the spaces provided for that purpose by the National Television Authority (ANTV), an audiovisual piece with a duration of 45 seconds, containing an institutional message regarding the

duty to prevent, investigate and prosecute cases of sexual violence. The coordination of the execution of this measure will be in charge of the Presidential Counselor's Office for Human Rights.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/III Doc. 49/13, December 31, 2013

815. The IACHR reiterates that sexual violence constitutes one of the most serious manifestations of the impact of the armed conflict on indigenous women, committed by all the armed actors involved. Rape, sexual harassment, forced prostitution, sexual slavery, and "falling in love" as a tactic of war have a particularly severe impact on indigenous women, who are particularly exposed to the crimes of armed actors due to the multiple forms of discrimination they endure⁶⁰¹.

IACHR, [Honduras: Human Rights and Coup d'Etat](#), OEA/Ser.L/V/III. Doc. 55, December 30, 2009

516. Likewise, this Court [Inter-American Court] held that in cases of internal and international armed conflicts, the warring parties use sexual violence against women as a means of punishment and repression. The use of state power to violate the rights of women in an internal conflict, in addition to affecting them directly, may have the objective of having an effect on society through these violations and of sending a message or lesson⁶⁰².

⁶⁰¹ IACHR. Women in the face of violence and discrimination arising from the armed conflict in Colombia. OEA/Ser.L/V/II, Doc. 67, October 18, 2006, paras. 102-147.

⁶⁰² I/A Court H.R., *Case of the Castro Castro Prison v. Peru*, *cit.*

Thematic reports

IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019

68. The Commission notes that, bearing in mind the transformative nature that reparation must have in cases of gender-based violence, in particular for crimes of sexual violence committed in the context of the armed conflict, the [Constitutional Court] has developed the imperative of guiding collective reparation with a differential and gender-based approach, which entails taking into account the voice of women and a special and differentiated methodology for the participation of victims of sexual violence, for the identification of the damage and collective effects and for the identification of collective reparation measures⁶⁰³.

IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017

29. [...] The report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia⁶⁰⁴ once again examines the different forms of discrimination and violence that affect indigenous women in Colombia as a result of the armed conflict and expresses particular concern about the use of sexual violence as a tactic of war with particularly serious effects on indigenous women.

⁶⁰³ Republic of Colombia. Judgment T-6.118.808. Tutela action filed by Gloria, Amparo, Alejandra, Luisa and Lina against the Unit for the Attention and Integral Reparation of Victims. December 11, 2017, paras. 204, 206 and 229.

⁶⁰⁴ IACHR, Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, paras. 122-148.

94. The IACHR has observed that in Colombia, indigenous women are subjected to sexual slavery, forced pregnancy, gang rape, sexual mutilation, and murder at the hands of various participants in the armed conflict⁶⁰⁵. Armed actors use rape and sexual violence against indigenous women as a weapon of war⁶⁰⁶ to forcibly displace communities or erode their capacity to resist⁶⁰⁷. The Inter-American Commission recognizes that indigenous women are the most exposed to these acts of sexual violence due to the multiple forms of discrimination they face and the vulnerability of their territory⁶⁰⁸ [...].

96. [In this context [armed conflict in Peru], the Inter-American Commission and the Court have heard cases related to the widespread use of sexual violence by State agents as a weapon of war and the problem of impunity. [...]

97. In Peru, an internal armed conflict also took place between the government and illegal armed groups such as the Shining Path and the Tupac Amaru Revolutionary Movement, which had terrible consequences for women, particularly indigenous women. In this context, the Inter-American Commission and the Court have heard cases related to the widespread use of

⁶⁰⁵ United Nations Department of Economic and Social Affairs, *The State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 226; IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of [the] Human Rights in Colombia*, OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 781.

⁶⁰⁶ United Nations Department of Economic and Social Affairs, *The State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 226.3.

⁶⁰⁷ International Indigenous Women's Forum, *Mairin Iwanka Raya: Indigenous Women Confront Violence*, Supplementary Report to the UN Secretary-General's Study on Violence Against Women, 2007, para. 36.

⁶⁰⁸ IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of [the] Human Rights in Colombia*, OEA/Ser.L/V/II, Doc. 49/13, December 31, 2013, para. 815.

sexual violence by State agents as a weapon of war and the problem of impunity⁶⁰⁹ [...].

98. Numerous types of violence have been committed against indigenous women in the context of armed conflicts in the Americas, including acts of sexual violence, sexual slavery, murders, and disappearances. These acts of violence not only constitute violations of the rights to life and physical integrity of Indigenous women, but also endanger their physical and cultural survival⁶¹⁰ [...].

109. [...] In this context [militarization of indigenous territories resulting from armed conflict], the IACHR has been informed that indigenous women have faced sexual violence, trafficking and types of violence typical of militarization, such as landmines and forced recruitment.

IACHR, [Access to Justice for Women Victims of Sexual Violence: Education and Health](#), OEA/Ser.L/V/III. Doc. 65, December 28, 2011

16. The IACHR reiterates that these challenges [access to justice in cases of sexual violence by doctors and health professionals] are even more challenging in the case of sectors of women at particular risk of violations of their human rights due to factors combined with their sex, such as age, race, ethnicity, disability, and economic disadvantage. The IACHR is concerned about the particularly serious situation of girls, indigenous women, and women who access these institutions in contexts of armed conflict. It highlights the

⁶⁰⁹ I.A. Court H.R.. Case J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 27, 2013; IACHR, Report No. 67/11, Case 11.157, Admissibility and Merits, Gladys Carol Espinoza Gonzáles (Peru), March 31, 2011, para. 235; IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín de Mejía (Peru), March 1, 1996.

⁶¹⁰ Commission for Historical Clarification, Guatemala, Memory of Silence, Report of the Truth and Reconciliation Commission, para. 29.

obligation of reinforced protection and vigilance towards these groups of women due to their unique history of discrimination and exclusion. Compliance with this obligation is vital not only for the guarantee of their rights to live free from discrimination and violence, but also for the basic exercise of their economic, social and cultural rights.

[IACHR, Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

Recommendation 45. Design and implement policies for the promotion and protection of the human rights of indigenous women, including special directives to the military forces and the National Police, in order to ensure respect for their right to live free from sexual violence and other forms of discrimination.

Chapters of IACHR Annual Reports

[IACHR, Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia"](#), 2020

328. In particular, the IACHR reiterates the importance of the adoption of its Strategic Plan 2016-2020, which establishes the prioritization of cases of sexual and domestic violence, femicides, and gender-based violence in the context of the armed conflict⁶¹¹. In this regard, the IACHR highlights the importance of collecting updated and disaggregated data, based on quantifiable indicators, in order to monitor its effectiveness throughout its implementation. [...]

⁶¹¹ Report of the Colombian State in follow-up to IACHR recommendations issued in the Country Report "Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia". October 30, 2020. Pp. 23 and 25.

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia", 2018](#)

243. In this regard, the Commission recalls that part of the commitments of the Peace Agreement is the recognition of the perpetrators of all acts of sexual violence and their submission to the justice process, both by former members of the FARC-EP and by members of the security forces, and reiterates to the State the importance of making this type of violence visible, establishing specific spaces with privacy and security for the holding of hearings in cases of sexual violence and creating protection mechanisms for the victims.⁶¹²

Compendiums

IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121 12 April 2021

165. [...] With respect to women and girls who are victims of any form of sexual violence in transitional justice contexts, States have the duty to understand and remedy the obstacles that victims face in accessing means of redress, and to ensure redress measures that, under no circumstances, exclude, marginalize or revictimize women, girls and adolescents.

⁶¹² Human Rights Institute of Catalonia, Sexual violence in Colombia, women victims and peace builders, January 2018.

2.2. Investigation and punishment in cases of sexual violence

198. In the framework of its various mandates, the IACHR has reiterated the specific and reinforced obligations of States to investigate, punish and prosecute acts of sexual violence against women, LGBTI persons, girls and adolescents. Among others, the Commission has highlighted the following duties: (i) to promote the investigation; (ii) to immediately, seriously and impartially investigate the facts; (iii) to apply strict due diligence; (iv) to incorporate a gender perspective and specific protocols, and (v) to have authorities in charge who are trained in gender issues⁶¹³. Such investigations should not only aim to determine the responsibilities of all the material and intellectual authors of the facts, but also the responsibilities of those who have denied or obstructed access to justice.⁶¹⁴
199. In this regard, the Commission has welcomed the efforts of States to investigate and punish acts of sexual violence committed during dictatorships and armed conflicts, particularly when such violence is

⁶¹³ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018, para. 23. Likewise, regarding the lack of investigation of sexual violations committed by State security agents, the NHRI Court has considered that whenever there are indications of sexual violence in the context of an internal armed conflict, this should not be treated as a collateral crime, but rather its investigation should be part of each stage of the overall strategy for investigating possible torture, crimes against humanity, war crimes or acts of genocide that may have been committed. On the other hand, possible links between those directly responsible for the sexual violence and their hierarchical superiors should be investigated, as well as the existence of components that would demonstrate discriminatory intent and/or the intent to commit genocide. I/A Court H.R., [Case of Members of the Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala](#). Judgment of November 30, 2016.

⁶¹⁴ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018; and IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzáles. Peru. March 31, 2011, para. 236.

recognized in a specific and differentiated manner⁶¹⁵. The IACHR has described these judicial rulings as a transcendental achievement in the search for justice for women victims of sexual violence and in the eradication of impunity⁶¹⁶. In addition, it has emphasized additional standards to be taken into account in the investigation and prosecution of sexual violence cases that are relevant from an evidentiary perspective and from the perspective of non-revictimization.

200. Likewise, in cases of forced disappearances of women, the IACHR has underscored the duty of States to conduct enhanced due diligence given the situation of vulnerability faced by women and the differentiated impact of the particular risk of being a victim of sexual violence⁶¹⁷. Particularly in transitional contexts and contexts of serious human rights violations, in addition to adopting a gender perspective, the investigation must address a possible context that describes the probable violence to which women may have been subjected. The

⁶¹⁵ In this regard see: IACHR, [Annual Report, Chapter IV.A "Human Rights Developments in the Region."](#) 2021, para. 40 ("The Commission welcomes the efforts of the Argentine State to clarify the facts, identify and punish those responsible for serious human rights violations during the era of the military dictatorship^[3]. [It also highlights the first judgment for crimes against sexual integrity committed at the Escuela de Mecánica de la Armada (ESMA), which considered the facts to be crimes against humanity independent of the torture suffered by the victims"); IACHR, [Annual Report, Chapter IV.A "Human Rights Developments in the Region."](#) 2020, para. 216 ("[...] On the other hand, the IACHR appreciates that, in the context of the conviction of 4 former DINA agents for kidnapping and torture [who had been convicted in the first instance for the kidnapping and execution of 16 persons between June 17, 1974 and January 6, 1975] that included sexual violence against 6 female prisoners of the so-called "Sexy Bandage", the violence used against women by means of sexual violence has been specifically recognized"); IACHR, [Annual Report, Chapter IV.A "Human Rights Developments in the Region."](#) 2020, para. 260 ("On women's rights, the Commission welcomes the Constitutional Court's judicial ruling recognizing the rights of former FARC women combatants who were victims of sexual and reproductive violence during the armed conflict."); and IACHR, [Annual Report, Chapter IV.A "Panorama de la situación de derechos humanos derivado de la labor de monitoreo de las relatorías temáticas."](#) 2016, para. 36 ("36. On the other hand, the IACHR welcomes the judgment of the Highest Risk Court A of Guatemala City convicting former members of the Army responsible for crimes against humanity during the internal armed conflict, in the case better known as "Sepur Zarco" as perpetrators of crimes of murder, forced disappearance and sexual slavery. This Commission values the judgment, the first to convict crimes of sexual slavery in an armed conflict in the country where the facts were committed [...]).

⁶¹⁶ IACHR, [Annual Report, Chapter IV.A "Panorama de la situación de derechos humanos derivado de la labor de monitoreo de las relatorías temáticas."](#) 2016, para. 36.

⁶¹⁷ IACHR. Report No. 329/20. Case No. 12.774. Merits. Patricia Emilie Cuéllar Sandoval, Mauricio Cuéllar Cuéllar Cuéllar and Julia Orbelina Pérez. El Salvador, December 29, 2020.

IACHR has also emphasized that impunity in cases of forced disappearances of women is a source of particular suffering and anguish for family members, especially for sons and daughters⁶¹⁸.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 329/20](#). Case 12.774 Merits. Patricia Emilie Cuéllar et al. El Salvador. December 29, 2020 (available in Spanish)

66. [...]In this regard, in the instant case, concerning the disappearance of Patricia Emilie Cuéllar and Julia Orbelina Pérez, the IACHR considers that taking into account that the disappearance in this context has a differentiated impact given the particular risk of being a victim of sexual violence, the State has a reinforced duty of due diligence, due to the particular situation of vulnerability that women face in this type of practice. As noted, the authorities have not carried out any investigation to ascertain the truth of the facts or their possible differential impact on the women victims, and the possibility that they were framed in the context of particular affectations of women in the Salvadoran armed conflict. To this end, the Commission notes the importance of the State investigating a possible context that describes the possible violence to which women may have been subjected in the context of the armed conflict and adopting a gender perspective in the investigation of the facts that have yet to be addressed. The Commission highlights the statement of the Working Group on Enforced or Involuntary Disappearances that "the adoption of a gender perspective in relation to the right to the truth should make it possible to discover how enforced and involuntary disappearances have affected women at the individual and collective levels".

⁶¹⁸ IACHR. Report No. 329/20. Case No. 12.774. Merits. Patricia Emilie Cuéllar Sandoval, Mauricio Cuéllar Cuéllar Cuéllar and Julia Orbelina Pérez. El Salvador, December 29, 2020.

91. The Commission also stresses the importance of analyzing the impact of the forced disappearance of women on their families, especially on their children. The IACHR emphasizes that the disappearance of women and girls is a form of violence against them. As the Committee of Experts of the MESECVI has also pointed out, this violence "transcends their family because it is considered that it does not allow any cycle to be closed, since the rights violated go beyond the right to a life free of violence, also affecting all the fundamental rights contained in the Convention, including the basic right to life, when the perpetrator or perpetrators take the life of the disappeared woman". In the instant case, the Commission notes that Patricia Emilie Cuéllar left her children at the day care center and did not go to pick them up because she was disappeared. In the case of Julia Orbelina Cuéllar, it is noted that she visited her daughter before her disappearance, went to work and was unable to see her again. Therefore, the Commission observes that the disappearance of the two women had a particular impact on their children.

93. By virtue of the foregoing conclusions, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF EL SALVADOR

4. Continue the criminal investigation for forced disappearance diligently, effectively and within a reasonable time in order to clarify the facts completely, identify all possible responsibilities and impose the corresponding sanctions with respect to the human rights violations declared in this report. This investigation should include the line of investigation related to the participation of state agents in the facts and the persecution of the organization Socorro Jurídico Cristiano in the armed conflict. Likewise, the

investigation should address a possible context that describes the possible violence to which women may have been subjected in the context of the armed conflict and adopt a gender perspective in the investigation of the facts regarding Patricia Emilie Cuéllar and Julia Orbelina Pérez.

IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzáles. Peru. March 31, 2011

236. Based on the analysis and conclusions of the present case, the Inter-American Commission on Human Rights recommends to the Peruvian State:

1. Immediately, seriously and impartially investigate the acts of torture and rape committed against Gladys Carol Espinoza and established in this report, with a gender perspective.

Friendly Settlement Reports

IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018

23. [...] The Commission urges the State to take all necessary measures to promote the various investigations, as committed to in the friendly settlement agreement and in accordance with the duty to guarantee the rights of displaced victims⁶¹⁹ and victims of sexual violence⁶²⁰. In particular, the investigation should be conducted with a gender perspective and in accordance with protocols specifically aimed at documenting evidence in cases of

⁶¹⁹ I.A. Court H.R.. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 149.

⁶²⁰ Article 7.b of the Convention of Belém do Pará establishes the obligation to act with due diligence to prevent, investigate and punish violence against women.

gender-based violence;⁶²¹ and should be carried out by officials trained in similar cases and in dealing with victims of discrimination and gender-based violence⁶²².

Part five: Remedies agreed between the parties

The National Agency for the Legal Defense of the State will send an official letter to the Attorney General's Office and the Prosecutor General's Office, so that these entities, in accordance with their legal competencies, determine the feasibility of initiating disciplinary or criminal actions aimed at determining possible responsibilities in connection with the irregularities presented in the process carried out for the sexual violence suffered by Nicolasa, while she was a minor, and which apparently contributed to the case remaining in impunity.

Thematic reports

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

United Nations Security Council Resolution 1325 underlines "the responsibility of all States to end impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes especially related to sexual and other violence against women and girls, and in this regard

⁶²¹ I/A Court H.R., Case of Espinoza Gonzales v. Peru. Case of Espinoza Gonzales v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 252.

⁶²² I/A Court H.R., Case of Veliz Franco et al. v. Guatemala. Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 188; and Case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 455.

stresses the need to exclude these crimes, where feasible, from amnesty provisions"⁶²³ .[...]

IACHR. [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#). OEA/Ser.L/V/II. Doc. 63 December 9, 2011. Executive summary

15. The IACHR has established that the investigation stage in cases of sexual violence is of fundamental importance. Failures at this stage become a potentially insurmountable impediment to the subsequent identification, prosecution, and punishment of those responsible for these acts. Several components of the investigation process are fundamental to comply with the duty of States to act with the required due diligence and to guarantee access to justice for the victims. These include the duty to collect and preserve the corresponding evidentiary material in order to support the criminal investigation necessary to find those responsible; identify possible witnesses and obtain their statements; determine the cause, manner, place and time of the act under investigation; protect and thoroughly investigate the crime scene; and guarantee the right of the victim or his or her family members to collaborate in the investigative process; among other indispensable actions for the eventual punishment of those responsible. It is also necessary for the authorities to collect and consider a set of evidence and the context in which a rape occurs, not only focusing on direct evidence of physical resistance on the part of the victim.

⁶²³ See United Nations Security Council Resolution 1325, S/RES/1325/2000.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up on recommendations made by the IACHR in its country or thematic reports", Colombia, 2021.](#)

In this regard, the Commission recalls that impunity in cases of violence against women sends the message that such violence is tolerated and favors its perpetuation; in this regard, the Commission reminds the State of its duty to act with strict due diligence to prevent, punish, and eradicate all forms of violence against women, and to adopt procedures, judicial mechanisms, and specific legislation to avoid impunity, as established in the Convention of Belém Do Pará. In this line, the Commission urges the State to guarantee access to effective judicial mechanisms, as well as to investigate, prosecute, punish, and provide reparations for acts of sexual violence committed in the context of the armed conflict, observing the duty of strict due diligence and under a gender focus.

261. [...] Nevertheless, the Commission takes note of the allegations of civil society that point to the presence of stereotypes and the lack of a gender perspective in the assessment of the facts and testimonies of the victims, as well as the naturalization and minimization of sexual violence in Order 019 of 2021 issued by the SJP, in the framework of macro case 01, in which members of the former secretariat of the extinct FARC-EP were charged with responsibility for crimes against humanity and war crimes⁶²⁴. In this sense, the IACHR echoes the repeated call of Organized Civil Society and the Ombudsman's Office

⁶²⁴ JEP. Chamber of Acknowledgment, Truth, Responsibility and Determination of Facts and Conduct. Auto No 19 of 2021, January 26, 2021; Corporación Sisma-Mujer, Corporación Humanas-Colombia, Women's Link Worldwide, Colombia Diversa, Red Nacional de Mujeres. Annex to request for thematic hearing for Period of Sessions no. 180, Record 163607, Annex 2, April 21, 2021. On file with the IACHR.

to the SJP to open a national case of sexual violence that allows for the investigation and central analysis of this violence, and not as isolated or collateral facts⁶²⁵.

IACHR, [Annual Report, Chapter IV. A "Overview of the Human Rights Situation Derived from the Monitoring Work of the Thematic Rapporteurships."](#), 2016

36. In addition, the IACHR welcomes the judgment of the Highest Risk Court A of Guatemala City convicting former members of the Army responsible for crimes against humanity during the internal armed conflict, in the case better known as "Sepur Zarco" as perpetrators of the crimes of murder, forced disappearance, and sexual slavery. This Commission values the sentence, the first to convict crimes of sexual slavery in an armed conflict in the country where the acts were committed, as a transcendental achievement in the search for justice for women victims of sexual violence in armed conflicts and in the eradication of impunity⁶²⁶. [...]

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Informe de seguimiento de recomendaciones formuladas por la CIDH en el informe sobre situación de derechos humanos en Guatemala"](#), 2018.

92. [...] Likewise, the IACHR welcomed the historic decision of the Highest Risk Court C convicting four high-ranking members of the military for the crimes of duties against humanity and rape, to the detriment of Emma Molina

⁶²⁵ Human Colombia. Peace with women. Boletín diciembre 2021; Corporación Sisma-Mujer, Corporación Humanas-Colombia, Women's Link Worldwide, Colombia Diversa, Red Nacional de Mujeres. Annex to request for thematic hearing for Period of Sessions no. 180, Record 163607, Annex 2, April 21, 2021. On file with the IACHR; Ombudsman's Office Colombia. Ombudsman's Office reiterates call for the SJP to open a macro-case on sexual violence, August 27, 2021.

⁶²⁶ IACHR, Press Release No. 031/16, IACHR welcomes progress and urges States to create favorable conditions for the exercise of women's rights, March 8, 2016.

Theissen. For the Commission, this decision constitutes a major step forward in the fight against impunity for crimes that occurred during the internal armed conflict in the country and specifically recognizes the central value of the victim's testimony in cases of rape⁶²⁷.

[IACHR, Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Second follow-up report on recommendations made by the IACHR in the report on the situation of human rights in Guatemala", 2019](#)

110. The IACHR has recognized the historic judgment in the Sepur Zarco case⁶²⁸ [judgment of the Highest Risk Court "A" of Guatemala in favor of the 11 Q'eqchi' women survivors of various forms of sexual violence in Sepur Zarco] as well as the convictions handed down for crimes against the duties of humanity, sexual violence, humiliating and degrading treatment of women, murder and forced disappearance, as it is a final conviction for crimes against the duties of humanity for sexual violence, and for being the first time that sexual slavery has been established as a war crime in Guatemala. In particular, the Commission notes the incomplete implementation of the 16 reparation measures⁶²⁹ . [...].

⁶²⁷ IACHR, Press Release No.142/2018, IACHR hails landmark decision in the fight against impunity for crimes committed during the internal armed conflict in Guatemala, July 2, 2018.

⁶²⁸ Republic of Guatemala, Public Prosecutor's Office, "Caso Sepur Zarco: sala de apelaciones confirma sentencia condenatoria obtenida por la Fiscalía de Derechos Humanos," July 19, 2017. IACHR, Report on the Situation of Human Rights in Guatemala 2017, December 31, 2017, para. 132.

⁶²⁹ PDH, Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala 2017, October 2019, p. 23.

Press Releases

IACHR, Press Release No. 049/22, [The States of the Americas Must Act to Combat Impunity Around Sexual Violence in Contexts of Conflict or Dictatorship](#), March 8, 2022

The Inter-American Commission on Human Rights (IACHR) urges States to guarantee access to justice for survivors of sexual and reproductive violence committed during periods of internal armed conflict or dictatorships. This should be done in accordance with a gender perspective and strict due diligence, with the aim of reducing impunity, preventing the recurrence of violence and advancing in the consolidation of more democratic and egalitarian societies.

Sexual and reproductive violence, in these contexts, does not occur in an isolated or extraordinary manner; it is the result of the aggravation of a continuum of violence that derives from historical and structural discrimination, rooted in the patriarchal and machista culture, which subordinates them under stereotypical notions of inferiority. The same is potentiated when other intersectional factors of vulnerability are present, and manifests itself in various forms, such as rape, sexual torture, forced prostitution, forced pregnancies or abortions, forced sterilizations, forced unions and sexual and/or domestic slavery. [...]

Given the complexity of transitional contexts, the duty of due diligence requires taking into account the framework of systematic and generalized violence in which sexual violence occurs. This should make it possible to unravel the structures that facilitated the violations, not only to punish the immediate perpetrators. [...]

On this occasion, the Inter-American Commission urges States to investigate, prosecute and punish sexual and

reproductive violence against women in contexts of conflict or dictatorship as a serious human rights violation, not only as a collateral or secondary fact. The priority, proactive and specific investigation of sexual violence, in addition to making visible the magnitude and systematicity of these acts, allows exposing the discriminatory cultural patterns that give rise to them, as well as the collective reflection necessary to achieve structural transformations. Thus, guaranteeing access to justice and reparation with a transformative vocation are key elements to avoid the repetition of gender-based violence against women and to move towards democratic and egalitarian societies.

2.3. Rehabilitation in cases of sexual violence

201. In cases of sexual violence, rehabilitation measures are a fundamental component of comprehensive reparation. Such measures acquire special relevance as they are a tool that allows the victim to reestablish her trust in society and in state institutions⁶³⁰.

Thematic reports

IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63, 9 December 2011

29. The States must guarantee the victims of sexual violence mechanisms for physical and psychological reparation for the harm caused, through the services provided by health and other institutions that guarantee comprehensive reparation for the woman victim. To this end, States should consolidate these institutions so that they can provide quality care to the victim.

⁶³⁰ IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63, December 9, 2011, para. 292.

292. The objective of reparation in cases of sexual violence should be not only to accredit the act denounced and criminally punish the perpetrator, but also to oblige the aggressor to make reparations to the victim, but more importantly, the State should help the victim to face the consequences of the violence experienced; for which it will be necessary to provide tools to recover her dignity as a person, rebuild her self-esteem and restructure her personality. Only in this way will it be possible to restore their trust in society and State institutions. [...]

B. TYPES OF REPAIRS

202. In transitional justice contexts, States must implement reparations measures that actively make visible the gravity and remedy, to the greatest extent possible, human rights violations based on the gender, sexual orientation, gender identity and expression, and bodily diversity of the victims. Likewise, in accordance with the transformative vocation of reparations, the reparations measures implemented with this perspective should be aimed at remedying the conditions of discrimination based on these factors, when they have been the cause of the violations⁶³¹.

203. Given the categories of reparations measures used in the previous chapter, this section will address those measures in which the IACHR has applied a gender perspective in transitional contexts. Each section begins with a brief analysis of the specific aspects pointed out by the IACHR regarding the gender approach, followed

⁶³¹ IACHR. *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*. OEA/Ser.L/V/II, Doc. 233, 14 November 2019, paras. 140 and 144; and IACHR. *Recognition of rights of LGTBI persons*. OAS/Ser.L/V/II.170, Doc. 184, 7 December 2018, para. 40.

by a systematization of the main standards related to the specific reparation measure⁶³².

1. Restitution measures with a gender and intersectional perspective

203. The IACHR has referred to the disproportionate impact that internal displacement has on women, especially women heads of household, pregnant women and women who have been victims of various forms of violence⁶³³. Based on this, it has requested States to adopt restitution measures with a differentiated approach to return to the place of origin and land restitution in the case of female victims.

Merits Reports

IACHR. [Report No. 64/11](#). Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011.

5. Adopt the necessary measures to guarantee the members of CAVIDA and women heads of household living in Turbo the right to free movement and residence; the effective enjoyment and enjoyment of their lands and the natural resources found therein without being threatened by indiscriminate logging; and to guarantee the free and voluntary return of non-returned displaced persons to their place of origin under safe conditions.

⁶³² For the general definition and scope of each remedial measure, see previous chapter.

⁶³³ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.LV/II Doc. 49/13, December 31, 2013, para. 580.

Country reports

IACHR, [*Fifth Report on the Situation of Human Rights in Guatemala*](#), OEA/Ser.L/V/II.111 Doc. 21 rev.

42. Based on the foregoing analysis and conclusions, the Commission offers the following recommendations to assist in this process; specifically, that the State:

[...]

4. Take additional measures--in accordance with the commitment of the Resettlement Agreement to pay special attention to female-headed households, and the provisions of the Social Fund Law to support the right of women to own land, and to be co-owners with their husbands or partners, including measures to train officials working in this area, and to promote awareness of and respect for this right among local populations. For this right to be effectively exercised, the State must strengthen its efforts to provide women with access to credit and development projects.

2. Compensation measures with a gender and intersectional perspective

204. In cases involving female victims, when determining compensation measures, the bodies of the System have taken into account the specific economic needs, particularly when the victim is a female head of household. For his part, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has pointed out that it must be ensured that the standards and parameters used in the identification and quantification of this type of reparations "do not rest on sexist

preconceptions and that the secondary effects are duly assessed in [these] measures [...]”⁶³⁴”

Cases submitted to the I/A Court H.R.

Application before the Inter-American Court of Human Rights in the case of Maritza Urrutia García ([Case 11.043](#)) against the Republic of Guatemala, January 9, 2002 (available in Spanish)

110. Regarding the loss of income at the time of the facts, in addition to her political activities, as a primary school teacher, she performed some lucrative work such as giving private classes. As the victim will be able to explain directly to the Court, being forced to leave her country to protect her life and to seek protection as a refugee in another country, she had to change her plans and life project. Since she was unable to find work as a teacher in Mexico, the economic needs, typical of a woman head of household, forced her to perform cleaning tasks and finally to work as a receptionist for an engineering firm. In this regard, without prejudice to the specific claims that the representatives of the victim may submit to the Court, the Court requests that this aspect of the compensation for material damages be assessed in equity.

3. Satisfaction measures with a gender and intersectional perspective

205. The IACHR has referred, in general terms, to the need to adopt a gender perspective in the implementation of measures of

⁶³⁴ Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Fabián Salvioli. [Report "La perspectiva de género en los procesos de justicia transicional"](#), Resolution A/75/174, July 17, 2020, para. 5. para. 32.

satisfaction for the benefit of women, adolescents and girls who are victims of violence and discrimination⁶³⁵.

Country reports

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

The Commission urges the States to comply fully with the recommendations that involve measures of satisfaction for the benefit of victims of discrimination and violence against women, adolescents, and girls and to encourage their participation in the process of determining such measures. The IACHR recalls that these measures must be adopted with a gender perspective, taking into account the individual and cultural circumstances of the victim⁶³⁶.

4. Rehabilitation measures with a gender and intersectional perspective

206. The IACHR has developed specific standards on rehabilitation measures for women victims of gender-based violence. The Commission's experience shows that the design and implementation of rehabilitation measures depends to a large extent on the nature of the facts denounced and the recipients of the measures⁶³⁷. In this regard, through friendly settlement agreements, States have committed to provide psychotherapeutic care to persons

⁶³⁵ IACHR, [Violence and discrimination against women in the armed conflict](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 100.

⁶³⁶ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations and Costs), Series C No. 205, para. 451.

⁶³⁷ IACHR, [Impact of the friendly settlement procedure \(Second Edition\)](#) OEA/Ser.L/V/II.167 Doc. 31. 1 March 2018, para. 103.

whose cases involve torture and rape⁶³⁸. These standards also apply to transitional contexts. In this regard, reference has been made to the positive impact of rehabilitation measures on the empowerment and autonomy of women, and to their transformative nature⁶³⁹. The IACHR has also highlighted the need for this type of program to recognize the harm suffered and the specific needs of women, taking into account the different intersectionalities⁶⁴⁰.

207. On the other hand, in transitional contexts, the IACHR has referred to the needs of those populations of women who are particularly affected, such as displaced women and Afro-descendants. In this regard, it has recommended that States adopt actions for comprehensive and multidisciplinary care that adequately addresses their short and long-term needs, both in terms of health

⁶³⁸ On March 9, 2007, through Friendly Settlement Report No. 21/07, the Commission approved a friendly settlement agreement in the Case of Paulina del Carmen Ramírez Jacinto. In summary, the petitioners alleged that on July 31, 1999, when Paulina del Carmen Ramírez Jacinto was fourteen years old, she was the victim of a rape perpetrated in her home. The incident was immediately reported to the Office of the Public Prosecutor Specializing in Sexual Crimes and Domestic Violence. The petitioners alleged that the Public Prosecutor's Office did not inform Paulina del Carmen Ramírez Jacinto or her mother about the existence of emergency oral contraception, and the rape resulted in a pregnancy. They also denounced that the authorities allegedly put up various administrative and psychological barriers to prevent Paulina del Carmen Ramírez Jacinto from deciding to have an abortion, since rape is one of the exceptions in which abortion is not penalized. The friendly settlement agreement established the State's commitment to provide psychological care to Paulina del Carmen Ramírez Jacinto and her son by specialists from the Mental Health Center of the Baja California State Health Secretariat. See, IACHR, Report No. 21/07, (friendly settlement), Petition 161-02, Paulina del Carmen Ramírez Jacinto, Mexico, March 9, 2007. This friendly settlement agreement was fully complied with by the Mexican State. See IACHR, Annual Report 2012, Chapter III, Section D: Status of Compliance with IACHR Recommendations, paras. 833-844. Also, as a result of a friendly settlement agreement signed with the State of Colombia, Ms. "X", who had been a victim of sexual assault by members of the Colombian army, receives psychological care twice a week through CERFAMI's Shelter Homes Program. IACHR, Report No. 82/08, (friendly settlement), P-477-05, X and family members, Colombia, October 30, 2008. This friendly settlement agreement was fully complied with by the Colombian State. See IACHR, Annual Report 2010, Chapter III, Section D: Status of Compliance with IACHR Recommendations, paras. 339-344.

⁶³⁹ IACHR, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OEA/Ser.L/V/II. Doc. 233, November 14, 2019. [ANNEX 2: Impact of cases of discrimination and violence against women, girls and adolescents](#), para. 86.

⁶⁴⁰ IACHR, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OEA/Ser.L/V/II. Doc. 233, November 14, 2019. [ANNEX 2: Impact of cases of discrimination and violence against women, girls and adolescents](#), para. 87.

and education and economic aspect⁶⁴¹. Likewise, in cases of forced disappearance of women, the IACHR has considered the special impact of such disappearance on the children when establishing rehabilitation measures⁶⁴².

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 329/20](#). Case 12.774 Merits. Patricia Emilie Cuéllar et al. El Salvador. December 29, 2020 (available in Spanish)

91. The Commission also stresses the importance of analyzing the impact of the forced disappearance of women on their families, especially on their children. The IACHR emphasizes that the disappearance of women and girls is a form of violence against them. As the Committee of Experts of the MESECVI has also pointed out, this violence "transcends their family because it is considered that it does not allow any cycle to be closed, since the rights violated go beyond the right to a life free of violence, also affecting all the fundamental rights contained in the Convention, including the basic right to life, when the perpetrator or perpetrators take the life of the disappeared woman". In the instant case, the Commission notes that Patricia Emilie Cuéllar left her children at the day care center and did not go to pick them up because she was disappeared. In the case of Julia Orbelina Cuéllar, it is noted that she visited her daughter before her disappearance, went to work and was unable to see her again. Therefore, the Commission observes that the disappearance of the two women had a particular impact on their children.

⁶⁴¹ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 923.

⁶⁴² IACHR. Report No. 329/20. Case 12.774. Merits. Patricia Emilie Cuéllar Sandoval, Mauricio Cuéllar Cuéllar Cuéllar and Julia Orbelina Pérez. El Salvador, December 29, 2020.

[...]

93. By virtue of the foregoing conclusions, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF EL SALVADOR

[...]

3. To provide the physical and mental health care measures necessary for the rehabilitation of the relatives of the victims of forced disappearance in this case, if it is their will and in a concerted manner. In particular, such care measures shall be agreed upon with the sons and daughters of the victims, taking into account the special impact of their disappearance.

Friendly Settlement Reports

IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018.

Part Five: Remedies agreed between the parties

Finally, according to the interest and willingness of the beneficiaries, the linkage to Promotion and Prevention Programs focused on Sexual and Reproductive Health will be offered.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

923. Based on the information and considerations set forth in this report, the Commission recommends to the State of Colombia:

11. Design and implement a policy with positive actions to recognize and enforce women's rights in terms of comprehensive and multidisciplinary care and support in health, justice, education and economic matters for displaced women, which adequately addresses their needs in the short and long term.

Thematic reports

[IACHR, Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean, OEA/Ser.L/V/II. Doc. 233, November 14, 2019. Annex 2: Impact of cases of discrimination and violence against women, girls and adolescents.](#)

86. [...]. When the beneficiaries of rehabilitation measures are women severely affected by human rights violations perpetrated against them because of their gender, rehabilitation measures are very effective in empowering them, increasing their autonomy and changing the situation of discrimination that led to those violations⁶⁴³ , always prioritizing the particular needs and wishes of the victims⁶⁴⁴ . These measures depend on the situation of each victim and are aimed at redressing the intersection of the different forms of discrimination that victims might face due to their age, race, ethnicity and economic situation, among other

⁶⁴³ United Nations. Analytical study focusing on sexual and gender-based violence in relation to transitional justice. Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/27/21, 30 June 2014, para. 55.

⁶⁴⁴ IACHR. The Situation of People of African Descent in the Americas, OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 60. See also IACHR. Case of women victims of sexual torture in *Atenco v. Mexico*. Judgment of November 28, 2018 (Preliminary Objection, Merits, Reparations and Costs), Series 371, para. 351.

factors⁶⁴⁵. In addition, the beneficiaries of rehabilitation measures could be indirect victims who have been affected by human rights violations perpetrated against women, girls and adolescents, such as their family members, which reaffirms that the serious effects of human rights violations are not limited to the direct victims, but have repercussions on their family and society as a whole.⁶⁴⁶

87. When granting rehabilitation measures, States should consider the greater duty to protect women, girls and adolescents and the importance of granting measures in accordance with the particularities of this group⁶⁴⁷. Rehabilitation programs should take into account that human rights violations have differentiated effects on women, girls and adolescents, so that these measures should recognize the damages suffered and the specific needs, according to their race, ethnic origin, religion or beliefs, health, social status, age, class, caste, sexual orientation and gender identity⁶⁴⁸ [...].

⁶⁴⁵ Article 9, Convention of Belém do Pará; IACHR. Indigenous Women, OEA/Ser.L/V/II., Doc. 44/17, April 17, 2017, para. 24; IACHR. Legal standards linked to gender equality and women's rights in the inter-American human rights system: development and application, OEA/Ser.L/V/II.143, Doc. 60, Nov. 3, 2011, paras. 28-31.

⁶⁴⁶ IACHR. Press Release No. 20/04. La Relatoría Especial de la CIDH evalúa la vigencia del derecho de la mujer guatemalteca a vivir libre de la violencia y discriminación, September 18, 2004.

⁶⁴⁷ I.A. Court H.R.. I/A Court H.R., V.R.P., V.P.C. et al. vs. Case of V.R.P., V.P.C. et al. v. Nicaragua. Judgment of March 8, 2018 (Preliminary Objections, Merits, Reparations and Costs). Series C No. 350, para. 155.

⁶⁴⁸ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations and Costs), Series C No. 205, para. 243; United Nations. Guidance Note of the Secretary General. Reparations for Conflict-Related Sexual Violence, June 2014, p. 19.

IACHR, [Access to Justice for Women Victims of Sexual Violence in Mesoamerica](#), OEA/Ser.L/V/II. Doc. 63, 9 December 2011

292. The objective of reparation in cases of sexual violence should be not only to accredit the act denounced and criminally punish the perpetrator, but also to oblige the aggressor to make reparations to the victim, but more importantly, the State should help the victim to face the consequences of the violence experienced; for which it will be necessary to provide tools to recover her dignity as a person, rebuild her self-esteem and restructure her personality. Only in this way will it be possible to restore their trust in society and State institutions. [...]

B. Repairs

Reparations for victims of sexual violence

29. The States must guarantee the victims of sexual violence mechanisms for physical and psychological reparation for the harm caused, through the services provided by health and other institutions that guarantee comprehensive reparation for the woman victim. To this end, States should consolidate these institutions so that they can provide quality care to the victim.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth report on the human rights situation in Colombia", 2017.](#)

280. [...] the Commission calls on the State to ensure that women have access, free of charge and without discrimination, to specialized physical and mental health services that take into account the differentiated impacts of the armed conflict on women's lives and bodies, especially in regions traditionally dominated by armed actors, as a form of reparation and rehabilitation of their fundamental rights.

IACHR, [Annual Report, Chapter V. "Follow-up report on compliance by the State of Guatemala with the recommendations made by the IACHR in the fifth report on the situation of human rights in Guatemala \(2001\)", 2002.](#)

316. With regard to the tenth recommendation aimed at guaranteeing that the impact and consequences of the acts of violence committed against women during the armed conflict are adequately contemplated in the design and execution of the national reparation plan and other reparation and rehabilitation measures, the Commission notes as a positive step that the National Reparations Program (PNR) contemplates special attention to victims of sexual violence who request it and according to their particular needs. Likewise, it will be coordinated with other governmental and civil society agencies to promote policies aimed at providing permanent attention to victims of sexual violence.

Practical Guides, Guidelines and other Directives

IACHR, [Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application](#), OEA/Ser.L/V/II. Doc. 60, Nov. 3, 2011

101. The IACHR has emphasized that for women, this decision is of utmost importance since the Court expressly establishes "the importance of consulting the opinion of women in the definition of humanitarian assistance programs, the need to overcome the welfarist vision that reinforces or reproduces discriminatory practices against women [...]".

5. Measures in the area of justice with a gender and intersectional perspective

208. This section will present those justice measures in which the IACHR has made considerations with a gender perspective. First, the measures related to the obligation to punish are detailed, with special emphasis on the duty of enhanced due diligence and, secondly, those related to the search for persons.

5.1. Investigation and sanction

209. As indicated at the beginning of this chapter, the organs of the Inter-American System have been clear in establishing that States have the duty to act with due diligence in cases of discrimination and violence against women, which entails, among others, the obligation to investigate and punish⁶⁴⁹. Such investigation must be carried out

⁶⁴⁹ IACHR, [Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean](#), OEA/Ser.L/V/II. Doc. 233, Nov. 14, 2019 ANNEX 1: [Main standards and recommendations on violence and discrimination against women, girls and adolescents](#), para. 61; IACHR, [Access to justice for women victims of sexual violence: education and health](#), OEA/Ser.L/V/II. Doc. 65, Dec. 28, 2011, para. 68; and IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 24.

immediately, seriously and impartially, with strict due diligence and applying a gender and intersectional perspective⁶⁵⁰.

210. The following is a systematization of some standards and criteria related to the application of a gender perspective in the investigation and punishment of transitional contexts. These standards are structured in three points: (i) general aspects; (ii) due diligence and gender perspective; and (iii) search for persons.

5.1.1. General Aspects

211. Among the standards developed in this area, the importance that the IACHR has given to the need to consider intersectional aspects when investigating the facts stands out. In this regard, the IACHR has referred, among others, to the particular situation of displaced women, Afro-descendants, pregnant women, and heads of household⁶⁵¹. Regarding the obligation to punish, the IACHR has referred to the importance that investigations into serious violations of women's human rights result in the effective punishment of those responsible and in comprehensive reparations for the victims⁶⁵².

⁶⁵⁰ IACHR, [Report No. 92/18](#). Case 12.941. Friendly Settlement. Nicolasa and family members. Colombia. August 23, 2018, para. 23.

⁶⁵¹ IACHR. Report No. 265/21. Case No. 13.713. Merits. Collen Leite. Brazil. xx of xx of 2021; IACHR. [Report No. 64/11](#). Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011.

⁶⁵² IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia."](#) 2017, para. 265.

Cases submitted to the I/A Court H.R.

IACHR. Report No. 265/21. Case No. 13.713. Merits. Collen Leite. Brazil. [Remittance Note](#), May 17, 2022.

The Commission also established that Denise Peres Crispim was also a victim of arbitrary detention and torture. Furthermore, taking into account that the victim was pregnant, the Commission analyzed the facts in light of the international standards applicable to the rights of pregnant women deprived of their liberty. In this regard, it emphasized that her pregnancy constituted a condition of particular vulnerability, so that the arbitrary deprivation of liberty and torture generated an even more disproportionate affectation, as well as the affectation of other rights.

[...]

Consequently, the Commission requests the Inter-American Court to establish the following measures of reparation:

3. Investigate in a serious, diligent and effective manner and within a reasonable period of time the facts related to the arbitrary detention, torture and murder of Eduardo Collen Leite; as well as the arbitrary detention and torture of Denise Peres Crispim, in order to identify those responsible for such violations and punish them criminally. In particular: [...]

(f) it shall conduct the investigation into the events that occurred to Mrs. Denise Peres Crispim with a gender perspective and taking into account that what occurred against her constituted a form of violence against women, especially aggravated in view of the fact that she was pregnant at the time of the events.

IACHR. [Report No. 64/11](#). Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011.

Recommendations:

1. Conduct a complete, impartial, effective and prompt investigation of the facts in order to establish and punish the intellectual and material responsibility of all persons who participated in the events that caused the forced displacement of the Afro-descendant communities of Cacarica associated with CAVIDA, of the women heads of household living in Turbo and to determine responsibility for the lack of effective investigation that has resulted in the impunity of the facts. This investigation should be carried out from the perspective of the affected group and take into consideration the form of discrimination they suffer.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

921. The situation of risk, threats, harassment and violence faced by women defenders of women's rights in Colombia and their families has been extensively documented by the IACHR in its 2006 report - Women Facing Violence and Discrimination Derived from the Armed Conflict in Colombia - and the follow-up report published as part of Chapter V of the 2009 annual report. The Commission reiterates the need for the State to duly investigate and punish threats and attacks against women defenders of women's rights to ensure that these abuses do not culminate in impunity.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter IV. A "Human Rights Development in the Region"](#), 2022

52. With regard to Memory, Truth and Justice (MVJ), the State reported that, since 2006, 637 cases for crimes against humanity committed during the last civil-military dictatorship have been processed, of which 286 have been sentenced, with 1,088 persons convicted and 166 acquitted⁶⁵³. In this context, the IACHR takes note of the prosecution in a case that, for the first time, considered the systematic attack against transvestites and transgender persons as part of the actions of State terrorism⁶⁵⁴. [...]

IACHR, [Annual Report, Chapter IV. A "Human Rights Developments in the Region,"](#) 2018

36. [...] Likewise, the IACHR welcomes the sentences handed down in the Ford case, which for the first time determined civil responsibility for human rights violations committed during the dictatorship⁶⁵⁵, as well as the court's decision sentencing a former commander of Military Institutes to 45 years in prison for the kidnappings and torture suffered by 11 pregnant women, as well as for the theft of more than 11 babies during the dictatorship.

⁶⁵³ Argentine Republic. Aportes para el Informe Anual 2022 de la CIDH, pp. 8-10.

⁶⁵⁴ Página 12, Secuestros, torturas y abusos contra el colectivo travesti y trans durante la dictadura, April 19, 2022.

⁶⁵⁵ Espacio Memoria y Derechos Humanos, Causa Ford: La complicidad empresaria, September 21, 2018; CELS, Causa Ford: sentences of 10, 12 and 15 years, December 11, 2018.

IACHR, [*Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth report on the human rights situation in Colombia"*](#), 2017

265. At the same time, given the persistence of these challenges to justice and the high rates of impunity, the IACHR reiterates its recommendations and calls on the State to take the necessary measures to effectively comply with these orders and to continue its efforts to ensure access to justice for women victims of human rights violations in the context of the armed conflict. The Commission also reiterates the State's duty to investigate, clarify, prosecute, try and punish serious violations of women's human rights and the importance of redoubling efforts in the fight against impunity in relation to the progress of investigations that result in the effective punishment of those responsible and comprehensive reparation for the victims.

5.1.2. Due diligence and gender and intersectional perspective

212. The organs of the Inter-American System have reiterated the reinforced duty implied in the investigation of serious human rights violations committed against women, particularly in transitional contexts, and the need to apply a gender focus⁶⁵⁶. In this regard, the IACHR has emphasized that such an investigative approach cannot depend on the intention of the perpetrator⁶⁵⁷.

213. In addition to the application of a gender perspective, due diligence implies that the investigation be exhaustive, impartial, and effective, that it be carried out within a reasonable time, and that the

⁶⁵⁶ I/A Court H.R., [*Case of Maidanik et al. v. Uruguay*](#). Merits and Reparations. Judgment of November 15, 2021. Series C No. 444.

⁶⁵⁷ I/A Court H.R., [*Case of Maidanik et al. v. Uruguay*](#). Merits and Reparations. Judgment of November 15, 2021. Series C No. 444, para. 128.

specificity of the violence suffered be considered in the case of intersectionalities⁶⁵⁸. In the case of women journalists, the bodies of the System have emphasized the double dimension of strict scrutiny in the investigation: because they are women victims of gender-based violence and because of the obligation to protect journalists who, due to the exercise of their profession, are at special risk⁶⁵⁹.

Judgments of the I/A Court H.R.

I/A Court H.R., [Case of Maidanik et al. v. Uruguay](#). Merits and Reparations. Judgment of November 15, 2021. Series C No. 444.

B.2.2.2 Regarding the determination of criminal liability

128. [...] At the public hearing [the IACHR] affirmed that the investigation of extrajudicial executions did not "take into account a gender focus and the reinforced duty implied by the investigation of this type of violence"⁶⁶⁰.

156. The Court has indicated that Article 7(b) of the Convention of Belém do Pará specifically obliges States Parties to use due diligence to prevent, punish and eradicate

⁶⁵⁸ IACHR. [Report No. 86/13](#). Cases 12,595, 12,596 and 12,621. Ana Teresa Yarce and others (Comuna 13). Colombia. November 4, 2013.

⁶⁵⁹ I.A. Court H.R.. [Case of Bedoya Lima et al. v. Colombia](#). Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431, para. 126.

⁶⁶⁰ In this regard, the Commission recalled that "Silvia Reyes [...] was in the third trimester of her pregnancy", that "the wounds on the bodies of the victims showed special training with multiple bullet wounds" and that "there is evidence that at least one of them was naked". It considered that the extrajudicial executions of the three women were carried out with "particular cruelty". The Commission understood that it was not an obstacle to the duty to adopt a gender perspective to assume, as a hypothesis regarding the facts to be investigated, that the executions took place without the perpetrators being aware of the persons they were shooting at, or whether or not they were women, since they would have acted against anyone who was inside the house, without seeing which persons they were attacking. In this regard, it stated that "[the] gender focus of the investigation does not depend on the intention of the perpetrator".

violence against women⁶⁶¹. When faced with an act of violence against a woman, "it is particularly important that the authorities in charge of the investigation carry it out with determination and effectiveness, taking into account society's duty to reject violence against women and the State's obligations to eradicate it and to provide victims with confidence in State institutions for their protection"⁶⁶²

157. The Court notes what was stated by the Specialized Prosecutor in his oral testimony at the public hearing (*supra* paras. 8 and 27), who explained that the gender perspective "was not analyzed" because "what took place in this case was simply an execution of the persons who were inside the house without the perpetrators being aware that they were women or not. Despite the foregoing, there are statements that point to the possibility that the soldiers could have noticed that there was a pregnant woman in the house, and that the three women were shouting to please not kill them, which suggests that the perpetrators could have imagined that they would attack women (*supra* para. 56 and footnote 46). There were also allegations that the body of one of them was found naked (*supra* para. 58), with no record of any inquiry into the circumstances of why she was found that way.

158. Given the foregoing, the Court understands that it cannot be ruled out a priori that acts of gender violence may have occurred in the case, and that this should have been specifically investigated. From the assertions of the Specialized Prosecutor it is clear that no investigation has been carried out in this regard. This constitutes a negligent

⁶⁶¹ Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 193, and Case of Barbosa de Souza et al. v. Brazil, para. 129.

⁶⁶² Case of Fernández Ortega et al. v. Mexico, para. 193, and Case of Barbosa de Souza et al. v. Brazil, para. 129.

omissive conduct contrary to the duty to punish acts of violence against women. Therefore, the State failed to comply with Article 7.b of the Convention of Belém do Pará.

I/A Court H.R., [Case of Bedoya Lima et al. v. Colombia](#). Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431.

126. The Court further considers that, in cases of investigation of acts of violence directed against women journalists, the duty of due diligence must be subjected to strict scrutiny for two reasons. First, because States have a positive obligation to guarantee freedom of expression and to protect persons who, because of their profession, find themselves in a special situation of risk when exercising this right⁶⁶³. Second, because to this duty should be added the standard of enhanced due diligence with respect to the prevention and protection of women against gender-based violence⁶⁶⁴. This must be taken into account from the beginning of an investigation of violent acts directed against them in the context of their journalistic work and entails the obligation to identify and investigate with due diligence the special and differentiated risks faced by women journalists due to their profession and gender⁶⁶⁵, as well as the factors that increase

⁶⁶³ The Court has emphasized that freedom of expression, particularly in matters of public interest, "is a cornerstone in the very existence of a democratic society," such that, "without an effective guarantee of freedom of expression, the democratic system is weakened and pluralism and tolerance are undermined; the mechanisms of citizen control and denunciation may become inoperative and, ultimately, a fertile ground for authoritarian systems to take root. Cf. Advisory Opinion OC-5/85, para. 70, and Case of Carvajal Carvajal et al. v. Colombia, supra, para. 174.

⁶⁶⁴ Cf. Case of González et al. ("Campo Algodonero") v. Mexico, supra, para. 358, and Case of López Soto et al. v. Venezuela, supra, para. 209.

⁶⁶⁵ Cf. Expert opinion of Daniela Kravetz rendered at the public hearing held on March 15, 22 and 23, 2021 in the framework of the 140th Regular Session, and Report of the United Nations Special Rapporteur on violence against women, its causes and consequences, Eradication of violence against women journalists, A/HRC/44/52 of May 6, 2020, para. 84.

the possibility of them being victims of violence⁶⁶⁶. To the foregoing is added the obligatory presumption, from the beginning of the investigations, that the acts of violence could have a link to their journalistic work⁶⁶⁷. In sum, the Court considers it essential to emphasize that, when investigating acts of violence directed against women journalists, States have the obligation to adopt all measures necessary to approach the investigation from an intersectional perspective that takes into account these different axes of vulnerability that affect the person in question, which, in turn, motivate or enhance the enhanced diligence.

134. The Court recalls that, in cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are complemented and reinforced for those States that are Parties, by the obligations derived from the specific inter-American treaty, the Convention of Belém do Pará. Article 7.b of the Convention specifically obliges States Parties to use due diligence to prevent, punish and eradicate violence against women. Thus, when faced with an act of violence against a woman, whether committed by a State agent or by a private individual, it is especially important that the authorities in charge of the investigation carry it out with determination and effectiveness, bearing in mind society's duty to reject violence against women and the State's obligations to

⁶⁶⁶ The United Nations Special Rapporteur on Violence against Women, its causes and consequences, in her report "Eradicating Violence against Women Journalists" A/HRC/44/52 of May 6, 2020, concluded and recommended that States "Address the factors that increase the likelihood that women journalists will experience violence and harassment in the world of work, such as discrimination, abuse of power relations and the existence of cultural and social norms that support violence and harassment, and create internal mechanisms against sexual harassment in the workplace." See also: United Nations. Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30 of November 1, 2013, para. 17.

⁶⁶⁷ Cf. Expert opinion of Daniela Kravetz rendered at the public hearing held on March 15, 22 and 23, 2021 in the framework of the 140th Regular Session and submitted in writing (merits file, folio 1100). See also: ECtHR, Case Mazepa and Others v Russia, No. 15086/07, Judgment of 17 July 2018, para. 73.

eradicate it and to provide victims with confidence in State institutions for their protection⁶⁶⁸.

135. Likewise, the Court has indicated in its reiterated jurisprudence that criminal investigations must include a gender perspective and be carried out by officials trained in similar cases and in dealing with victims of gender-based discrimination and violence⁶⁶⁹. The Court recalls that judicial ineffectiveness in individual cases of violence against women fosters an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women can be tolerated and accepted, which favors its perpetuation and social acceptance of the phenomenon, the feeling and sensation of insecurity of women, as well as their persistent distrust in the system of administration of justice⁶⁷⁰. Such inefficiency or indifference in itself constitutes discrimination against women in access to justice. Therefore, when there are concrete indications or suspicions of gender-based violence, the failure of the authorities to investigate the possible discriminatory motives behind an act of violence against women may in itself constitute a form of gender-based discrimination⁶⁷¹.

⁶⁶⁸ Cf. Case of Fernández Ortega et al. v. Mexico, supra, para. 193, and Case of V.R.P., V.P.C. et al. v. Nicaragua, supra, para. 152.

⁶⁶⁹ Cf. Case of González et al. ("Campo Algodonero") v. Mexico, supra, para. 455, and Case of Guzmán Albarracín et al. v. Ecuador, supra, para. 177.

⁶⁷⁰ Cf. Case of González et al. ("Campo Algodonero") v. Mexico, supra, paras. 388 and 400, and Case of López Soto et al. v. Venezuela, supra, para. 223.

⁶⁷¹ Cf. Case of Veliz Franco et al. v. Guatemala, supra, para. 208, and Case of López Soto et al. v. Venezuela, supra, para. 223.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 86/13](#). Cases 12,595, 12,596 and 12,621. Ana Teresa Yarce and others (Comuna 13). Colombia. November 4, 2013

1. Complete prompt, thorough, impartial, and effective investigations of the violations described in this report. These investigations should be carried out within a reasonable period of time and without delay by the judicial authorities, with a view to clarifying the truth and punishing those responsible. These measures should also be implemented considering the specificity of the violence suffered by the women defenders affected, the discrimination that affects them based on their dual status as leaders and women, and the known context of risk in which they work. These investigations should in turn be aimed at identifying all actors possibly implicated in the violations established here, including members of paramilitary groups, state agents, and all material and intellectual authors of these acts.

IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011.

6. Design protocols to facilitate and promote the effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, taking into account the international standards established in the Istanbul Protocol and other international parameters on the subject.

IACHR. [Report No. 64/11](#). Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011.

1. Conduct a complete, impartial, effective and prompt investigation of the facts in order to establish and punish the intellectual and material responsibility of all persons who participated in the events that caused the forced displacement of the Afro-descendant communities of Cacarica associated with CAVIDA, of the women heads of household living in Turbo and to determine responsibility for the lack of effective investigation that has resulted in the impunity of the facts. This investigation should be carried out from the perspective of the affected group and take into consideration the form of discrimination they suffer.

Thematic reports

IACHR. [Violence and discrimination against women in the armed conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

221. In the past, the IACHR has recommended to the Colombian State that it act with due diligence to ensure that all cases of gender-based violence and discrimination are subject to timely, complete and impartial investigative measures, as well as adequate punishment of those responsible and reparations for the victims⁶⁷² [...].

5.2. Search for persons with a gender and intersectional perspective

214. Regarding the search for persons in transitional contexts, the general standards already systematized in Chapter III apply. Additionally, the Inter-American System has developed specific

⁶⁷² IACHR, Third Report on the Situation of Human Rights in Colombia (1999), Chapter XII: Women's Rights, Recommendations 6 and 7.

standards regarding the search for missing women, in which case there is an **obligation of strict due diligence due to** the greater risk that, due to their gender, they may be victims of different types of violence, including sexual violence. In this regard, the Inter-American Court has pointed out that in a generalized context of violence and discrimination against women:

[...] a duty of strict due diligence arises in the case of reports of missing women, with respect to the search for them during the first hours and days. This obligation of means, being stricter, requires exhaustive search activities to be carried out. In particular, it is essential that the police, prosecutorial and judicial authorities act promptly and immediately, ordering timely and necessary measures aimed at determining the whereabouts of the victims or the place where they may be deprived of their liberty. There must be adequate procedures for complaints and these must involve an effective investigation from the first hours. The authorities should presume that the missing person is deprived of liberty and is still alive until the uncertainty as to his or her fate is resolved⁶⁷³.

215. Recently, the I.A. Court H.R. has expressed its opinion on the work of women searchers and the protection of their rights in this role⁶⁷⁴ :

In addition, it is worth recalling what this Court has stated in the sense that the States Parties to the American Convention on Human Rights have the obligation to carry out actions to recognize and guarantee the work of women searchers in the prevention and investigation of forced disappearance. They must also guarantee that such work is carried out without obstacles, intimidation or threats, ensuring the personal integrity of the women searchers and their rights to political participation recognized in the Convention, addressing the historical and cultural obstacles that limit the search,

⁶⁷³ I.A. Court H.R.. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

⁶⁷⁴ I/A Court H.R., [Case of Tabares Toro et al. v. Colombia. Merits, Reparations and Costs](#). Judgment of May 23, 2023, para. 110.

and guaranteeing the permanence of their life project in dignified conditions for the women and their dependents⁶⁷⁵. This should be extended to reparations, which should be dictated in a way that does not reproduce gender stereotypes, but rather reflects those ways in which women searchers wish to be represented⁶⁷⁶.

216. In order to adequately prevent gender-based violence, the obligation to search for missing women and girls is more rigorous and requires an immediate and effective response from the authorities receiving the report⁶⁷⁷. This includes a thorough search, and requires that the authorities in charge of receiving complaints have the capacity and sensitivity to understand the phenomenon of violence against women, as well as the will to act immediately⁶⁷⁸. Likewise, taking into account the structural nature of gender-based discrimination that underlies all forms of violence against women, it is essential to incorporate the gender perspective in a cross-cutting manner in the analysis and approach to the phenomenon of missing women, in

⁶⁷⁵ According to the Working Group on Enforced or Involuntary Disappearances, "Women relatives of victims, in particular those who become heads of households due to enforced disappearance, have specific material, financial, psychological and legal needs. Relevant governmental institutions should provide them with adequate counselling, rehabilitation and support services, assistance and information." Working Group on Enforced or Involuntary Disappearances, General Comment on women affected by enforced disappearances, adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October-9 November 2012) A/HRC/WGEID/98/2 of 14 February 2013, and Case of Movilla Galarcio et al. v. Colombia, supra, para. 181.

⁶⁷⁶ Cf. Case of Movilla Galarcio et al. v. Colombia, supra, para. 181.

⁶⁷⁷ I.A. Court H.R.. [Case of González et al. \("Campo Algodonero"\) v. Mexico](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285; and IACHR. [Disappeared and Murdered Indigenous Women in British Columbia, Canada](#). OEA/Ser.L/V/II. Doc. 30/14 Dec. 21, 2014, para. 176.

⁶⁷⁸ I.A. Court H.R.. [Case of González et al. \("Campo Algodonero"\) v. Mexico](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285; and IACHR. [Disappeared and Murdered Indigenous Women in British Columbia, Canada](#). OEA/Ser.L/V/II. Doc. 30/14 Dec. 21, 2014, para. 176.

terms of causes, dynamics and consequences⁶⁷⁹. In addition, the IACHR has highlighted efforts to consolidate unified registries of missing persons with information disaggregated by gender and has urged States to continue these efforts⁶⁸⁰.

217. The aforementioned standards also apply to transitional justice contexts. Recently, the IACHR has begun to highlight the role of women searching for disappeared persons. On International Women's Day, the Commission recognized and highlighted the leadership of women in the search for and defense of human rights in situations of forced and involuntary disappearance of persons, and called on States to comprehensively protect and guarantee the exercise of their rights, as well as their work in the search for and defense of human rights, with a focus on gender and intersectionality. In this regard, the Commission stated⁶⁸¹:

Given pre-existing gender inequalities, and in some cases, the absence of the State, women have taken on the search for missing family members, both in contexts of armed conflict, dictatorships or authoritarian regimes, as well as organized crime. In addition, they experience the economic, social and emotional consequences of the disappearance of their relatives in different ways, and, in addition, they search for the missing person in precarious and risky conditions.

218. The women carry out searches in hospitals, detention centers, rehabilitation clinics, etc., as well as in the field and in clandestine

⁶⁷⁹ International Seminar "The State's obligation to search for missing persons: progress, challenges and perspectives" organized by the Unit for the Search for Missing Persons of Colombia, with the participation of Commissioner Julissa Mantilla of the IACHR. Panel 3: Fundamental elements in the formulation of the comprehensive policy on enforced disappearance and other forms of disappearance and incorporation of differential approaches, including the gender approach, from International Human Rights Law. September 5 and 6, 2022.

⁶⁸⁰ IACHR, *Annual Report, Chapter V. "Follow-up to the recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia,"* 2020, para. 171.

⁶⁸¹ IACHR. Press Release No. 038/23. *States must protect the rights of women searching for missing persons.* March 8, 2023.

graves. In this process, many have become activists, community leaders and human rights defenders, and also dedicate efforts to accompany and guide other families, participate in social protests, and advocate for legislation, among others. In carrying out these tasks, they face gender-based violence, harassment, intimidation, threats and even murder.

219. In addition, when the person responsible for household maintenance is missing, women are suddenly forced to assume the economic support of the family, and to allocate time and resources to the search for their loved one. In addition, the domestic and caregiving tasks traditionally assigned to women further limit the time available to invest in paid activities, for which they are forced to accept low-paid, informal or insecure jobs without social benefits. This results in a serious deterioration of the family's economic situation.
220. Likewise, women's participation and leadership in search efforts and judicial processes entails high physical and emotional overloads that put their health at risk. Time constraints also make self-care difficult, particularly food, rest and recreation, as well as access to medical care. They are more likely to experience constant feelings of frustration and despair during the search, as well as suffering and pain due to the lack of justice. They also face rejection and stigmatization from their family or community, and their own feelings of worry and guilt, as they feel that they are neglecting their children or other persons under their care because they are engaged in the search.
221. The Commission recognizes that women's actions in the search for truth and justice are key in the discovery of missing persons, in the advancement of investigations, and in the adoption of public policies and structural reforms in this area.
222. The IACHR urges the States to adopt comprehensive protection measures that take into account the particular needs and specific risks faced by women in the search for and defense of human rights. It also reiterates the call to adopt and implement a comprehensive

policy on enforced disappearances that addresses the differential impact on the rights of women relatives of disappeared persons; and to ensure that they have a leading role in the design of the policy. The above, through the issuance of a regulatory framework that includes, in particular, the access of women searchers to health services, social security and psychosocial support with a gender perspective and intersectionality.

223. On the other hand, in the public hearing held on October 12, 2023 in the Case of Leite de Souza et al. v. Brazil before the Inter-American Court, the IACHR in its concluding observations referred to the important work of the searching mothers⁶⁸². In this regard, it recognized and highlighted the leadership that women have assumed in the search for their sons and daughters and other family members who are victims of forced disappearance. She also stressed the high physical and emotional overload of this work, which they often carry out in precarious and risky conditions, being threatened and assaulted. It also indicated how these women have experienced the economic, social and emotional consequences of the forced disappearance in different ways. In relation to the reparations requested from the I.A. Court H.R., the Commission emphasized, among the measures of non-repetition, the need for the State of Brazil to adopt a law on women searchers to guarantee the factual conditions in which they can carry out their search work and mentioned the example of the bill currently pending in Colombia⁶⁸³.

⁶⁸² Concluding remarks of IACHR Commissioner Julissa Mantilla at the hearing held before the Inter-American Court of Human Rights on October 12, 2023 in the Case of Collen Leite et al. v. Brazil.

⁶⁸³ In this regard, the IACHR recently welcomed the approval by the Colombian House of Representatives of the "bill for the comprehensive protection of the work and rights of women and persons searching for victims of enforced disappearance"[1]. In its pronouncement, it highlighted "the importance of protecting relatives of disappeared persons, especially women, who by participating and leading processes of search, investigation and defense of human rights, are affected by particular risks and impacts". IACHR [@CIDH] (Aug. 17, 2023). #Colombia: #IACHR welcomes the approval by the @CamaraColombia of the bill for the comprehensive protection of the work and rights of women and searchers [Tweet]. Twitter. <https://twitter.com/CIDH/status/1692169448470229274>

6. Non-repetition measures with a gender and intersectional perspective

219. As indicated in the previous chapter, measures of non-repetition transcend the victims and have the vocation of transforming the conditions that fostered the human rights violations. In the case of gender-based violence in transitional contexts, these measures seek to reverse the situation of discrimination, violence and exclusion in which women live. This section groups together those measures focused on reversing this situation, following the categories used in the previous chapter: (i) measures aimed at the adoption, adaptation or repeal of legislation or other regulations, with a gender or intersectional perspective; (ii) public policies with a gender perspective; (iii) measures regarding the right to truth with a gender perspective; and (iv) training and awareness-raising.

6.1. Measures aimed at the adoption, adaptation or repeal of legislation or other regulations, with a gender and intersectional perspective

220. In situations of gender-based violence in transitional contexts, the IACHR has recommended the adoption of this type of measures to, among other things, ensure that the facts are investigated and that the legal framework addresses the specific needs of women⁶⁸⁴.

⁶⁸⁴ IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzáles. Peru. March 31, 2011; IACHR, [Women in the face of violence and discrimination arising from the armed conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006, Recommendation 64.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011.

5. Adopt legislative, administrative or other measures necessary to ensure that complaints of torture and sexual violence against security agents are investigated ex officio and in a diligent manner. Implement training programs for public officials responsible for the application of these measures.

6. Design protocols to facilitate and promote the effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, taking into account the international standards established in the Istanbul Protocol and other international parameters on the subject.

Thematic reports

IACHR, [Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights](#), OEA/Ser.L/V/II. Doc. 239, August 7, 2020

41. [...] In 2018, the Commission also welcomed the progress made towards the recognition of gender identity in Uruguay following the enactment of the Comprehensive Law for Trans Persons⁶⁸⁵ and has highlighted the important perspective of comprehensive protection of human rights that is the object of the Uruguayan law, which in addition to the recognition of gender identity, complements the 2009 law with the integration of data on gender identity in the national census, as well as reparations to victims of state persecution based on gender identity, real or perceived, during the period of the

⁶⁸⁵ IACHR, Press Release 275/18: "IACHR hails advances towards the recognition of gender identity in the Region," December 21, 2018.

dictatorship. The comprehensive law also guarantees access to education and culture, work and health free of discrimination⁶⁸⁶ . [...].

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#) OEA/Ser.L/V/II. Doc. 67, October 18, 2006

Recommendation 62. Adopt, within the legal framework governing negotiations with illegal armed groups, measures to guarantee the rights of women victims of violence and discrimination to truth, justice and reparation. The State should take into account in particular the measures contemplated in the Convention of Belém do Pará, Resolution 1325 of the United Nations Security Council and the Rome Statute.

Recommendation 64. Ensure that the legal framework and demobilization programs are consistent with international principles and standards on victims' rights to truth, justice and reparation and therefore address the specific needs of women.

6.2. Public policies with a gender and intersectional perspective

221. The IACHR has highlighted the importance of "applying a gender perspective in public policies to achieve equality and a transformative approach in order to address the structural causes of these human rights violations⁶⁸⁷". The Commission has also recalled the importance of using a gender perspective when adopting institutional strengthening measures. It has also referred to the

⁶⁸⁶ IACHR, *Advances and Challenges Toward the Recognition of the Rights of LGBTI Persons in the Americas*, December 7, 2018, para. 99.

⁶⁸⁷ IACHR, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OEA/Ser.L/V/II. Doc. 233, November 14, 2019. [ANNEX 2: Impact of cases of discrimination and violence against women, girls and adolescents](#), para. 124.

importance of strengthening the State's operational capacity to prevent discrimination and violence against women, girls and adolescents and to respect and protect their human rights⁶⁸⁸. In this regard, the IACHR has positively valued when States have public policies on risk prevention and protection of women's rights in contexts of armed conflict⁶⁸⁹. It has also recognized as a positive development the issuance of judgments that set standards regarding the situation of women in contexts of armed conflict, particularly with respect to those belonging to groups in a particularly vulnerable situation such as displaced women⁶⁹⁰.

222. The following is a systematization of some standards related to various general aspects of public policies with a gender perspective in transitional contexts, as well as other more specific ones related to public policies on memory and protection with a gender perspective.

6.2.1. General Aspects

223. In the framework of public reparation policies in transitional contexts, the IACHR has referred to the participation of women in their design and implementation, to the need for both individual and collective reparation and to the adoption of differentiated criteria for certain populations, such as displaced women, Afro-descendants and women heads of household⁶⁹¹.

⁶⁸⁸ IACHR, *Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean*, OEA/Ser.L/V/II. Doc. 233, November 14, 2019. [ANNEX 2: Impact of cases of discrimination and violence against women, girls and adolescents](#), para. 132.

⁶⁸⁹ IACHR, *Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports. "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia."* 2018, para. 213.

⁶⁹⁰ IACHR, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, OEA/Ser.L/V/II. Doc. 60, Nov. 3, 2011, para. 99.

⁶⁹¹ IACHR. *Report No. 64/11*. Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011, para. 9.

224. Likewise, for the design of such policies, the IACHR has highlighted the importance of having statistical information systems and records on violence and discrimination against women, as well as taking into account the particular needs of certain populations of women, such as indigenous and Afro-descendant women⁶⁹².

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 64/11](#). Case 12.573. Merits. Marino López et al. (*Operation Genesis*). Colombia. March 31, 2011.

9. Make comprehensive reparations at both the individual and community level through specific mechanisms for the victims of the Afro-descendant communities of Cacarica associated with CAVIDA and women heads of household living in Turbo, based on the principle of non-discrimination, the participation of the victims in the design and implementation of reparation measures and differentiated reparation criteria for displaced Afro-descendants, which should include: their special needs, recognition and respect for their identity, culture, territories and the participation of their authorities in the decisions that affect them.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

923. Based on the information and considerations set forth in this report, the Commission recommends to the State of Colombia:

⁶⁹² IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.LV/II Doc. 49/13, December 31, 2013, para. 923.

5. Adequately implement existing national legislation and public policies aimed at protecting women against acts of violence and discrimination and their consequences in civil, political, economic, social and health matters and allocate sufficient resources for their effective implementation at the national and local levels.

9. To create and improve systems and records of statistical and qualitative information on incidents of violence and discrimination against women.

11. Design and implement a policy with positive actions to recognize and enforce women's rights in terms of comprehensive and multidisciplinary care and support in health, justice, education and economic issues for displaced women, which adequately addresses their needs in the short and long term.

12. Design and adopt policies that take into account the specific needs of indigenous and Afro-Colombian women within the armed conflict in health, education, justice and economic issues. National policies aimed at advancing the rights of all women must take into account the specific needs of Afro-Colombian and indigenous women and have a comprehensive vision of how to address important aspects such as health, education, and justice. Likewise, national policies aimed at improving the situation of indigenous and Afro-Colombian peoples must include the specific needs of women.

13. Design and adopt policies, with the participation of indigenous and Afro-Colombian women, that consider respect for their culture in order to lessen the effects of the armed conflict. In particular, develop actions aimed at

reducing the negative effects of the armed conflict on health, education and justice.

Thematic reports

IACHR, [Access to Justice for Women Victims of Sexual Violence: Education and Health](#), OEA/Ser.L/V/II. Doc. 65, December 28, 2011

70. In this regard, the IACHR has included as general recommendations to the States the adoption of a comprehensive State policy to address the specific impact of the armed conflict on women in the areas of justice, health and education, among others; policies that should be guided by the logic of the protection of women's rights and should motivate the guarantee of their autonomy⁶⁹³.

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

Recommendation 49. Strengthen the institutional capacity to address the pattern of impunity in cases of violence against women through effective criminal investigations, with consistent judicial follow-up, thus guaranteeing adequate punishment and reparations.

⁶⁹³ IACHR, Las Mujeres Frente a la Violencia y la Discriminación Derivadas del Conflicto Armado en Colombia, Recomendaciones Generales.

6.2.2. Public policies on memory with a gender and intersectional perspective

225. In the area of public policies on memory, the IACHR has emphasized the need to respect and promote a gender focus⁶⁹⁴. It has also referred to the importance of adopting differentiated measures to overcome gender barriers and encourage the participation of the entire community⁶⁹⁵.
226. For his part, the United Nations Rapporteur on the subject has established that the design of memorialization policies should include a gender perspective, in relation to the rights of women and LGBT populations, applying intersectionality⁶⁹⁶. It has also indicated that these policies "should avoid as a result a stereotyped vision of historical memory⁶⁹⁷".

Resolutions

IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017.

Principle III "Involvement of civil society".

[It is essential to adopt decentralized and differentiated measures to overcome geographical, economic, linguistic and gender barriers, among others, in order to encourage the

⁶⁹⁴ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017, Principle VI.

⁶⁹⁵ IACHR, [Resolution 3/2019 "Principles on Public Policies on Memory in the Americas"](#), May 27, 2017, Principle III.

⁶⁹⁶ Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Fabián Salvioli. [Report "La perspectiva de género en los procesos de justicia transicional"](#), Resolution A/75/174, July 17, 2020, para. 5. para. 112.

⁶⁹⁷ Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Fabián Salvioli. [Report "La perspectiva de género en los procesos de justicia transicional"](#), Resolution A/75/174, July 17, 2020, para. 5. para. 113.

participation of the entire community, particularly groups in vulnerable situations and subject to historical discrimination.

Principle VI "Intercultural and gender approach".

Public policies on memory should respect and promote the construction of the memories of communities, organizations and collectives, based on the recognition of the different cultural visions, conceptions of well-being and development of the various ethnic-cultural groups; as well as the gender approach, tending to the establishment of relations of equity and equality of opportunities and rights.

6.2.3. Public protection policies with a gender and intersectional perspective

227. This section will address public policies specifically aimed at the protection of victims of gender-based violence. This, taking into account the differentiated and disproportionate impact of the armed conflict, dictatorship or authoritarian regime on certain groups of women, particularly women defenders, social leaders, and journalists. This impact, in turn, generates a reinforced duty of protection on the part of the States which, among other issues, results in the obligation to establish special protection mechanisms.

a) Special risk situation of women defenders, social leaders and journalists

228. The bodies of the Inter-American System have referred to the additional risk factors for women defenders and leaders belonging to certain groups in a situation of greater vulnerability, such as indigenous women, Afro-descendants and displaced women⁶⁹⁸. In

⁶⁹⁸ IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev., March 7, 2006, para. 231; IACHR, Resolution 80/21, MC 491-21 - S.G.R.Q. y su núcleo familiar, Colombia, October 4, 2021, para. 37.

such situations, States have the duty to address the situation from a perspective that adjusts to the differentiated impact on these women of the risk factors they face⁶⁹⁹.

229. On the other hand, the Court has addressed the particular risk faced by women journalists and the need for States to adopt a strong differential approach when implementing protection measures with respect to this group, which includes a reinforced duty of prevention⁷⁰⁰. In this regard, in addition to the general Inter-American standards on gender-based violence and non-discrimination, States must investigate the special risks faced by women journalists and the factors that increase those risks⁷⁰¹.

Judgments of the I/A Court H.R.

I/A Court H.R., [Case of Bedoya Lima et al. v. Colombia](#). Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431

91. The Court highlights that, in connection with the particular risk faced by women journalists, international and regional organizations have considered that, when adopting protection measures for journalists, States must apply a strong differential approach that takes into account gender considerations⁷⁰², carry out a risk analysis and implement protection measures that consider the risk faced by women

⁶⁹⁹ IACHR, Resolution 80/21, MC 491-21 - S.G.R.Q. and her family members, Colombia, October 4, 2021, para. 37.

⁷⁰⁰ I.A. Court H.R.. [Case of Bedoya Lima et al. v. Colombia](#). Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431, para. 91.

⁷⁰¹ I.A. Court H.R.. [Case of Bedoya Lima et al. v. Colombia](#). Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431, para. 91.

⁷⁰² Cf. United Nations Human Rights Council, Resolution adopted by the Human Rights Council on 27 September 2018, A/HRC/RES/39/6 and United Nations General Assembly, Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/157.

journalists as a result of gender-based violence⁷⁰³ . In particular, States must observe not only the standards of gender-based violence and non-discrimination already developed by this Court, but also positive obligations such as the following: a) identify and investigate with due diligence the special risks faced by⁷⁰⁴ in a differential manner due to the fact that they are women journalists⁷⁰⁵ , as well as the factors that increase the possibility that they are victims of violence⁷⁰⁶ , as well as b) adopt a gender approach when adopting measures to guarantee the safety of women journalists⁷⁰⁷ , which include those of a preventive nature, when requested⁷⁰⁸ , as well as those aimed at protecting them against reprisals⁷⁰⁹ . The Court considers

⁷⁰³ Cf. IACHR, *Women Journalists and Freedom of Expression, Discrimination and gender-based violence against women journalists in the exercise of their profession*, para. 169.

⁷⁰⁴ Cf. United Nations. Report of the Special Rapporteur on violence against women, its causes and consequences, *Eradication of violence against women journalists*, A/HRC/44/52 of 6 May 2020, para. 84.

⁷⁰⁵ Cf. United Nations. Report of the Special Rapporteur on the situation of human rights defenders, *A/74/159* of 16 July 2019, paras. 105-111.

⁷⁰⁶ The UN Special Rapporteur on Violence against Women, its causes and consequences, in her report "Eradicating Violence against Women Journalists" A/HRC/44/52 of May 6, 2020, concluded and recommended that States "Address the factors that increase the likelihood that women journalists will experience violence and harassment in the world of work, such as discrimination, abuse of power relations and the existence of cultural and social norms that support violence and harassment, and create internal mechanisms against sexual harassment in the workplace." See also, United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, November 1, 2013, para. 17.

⁷⁰⁷ Cf. United Nations General Assembly, Resolution 72/175, "The safety of journalists and the question of impunity," of 29 January 2018, A/RES/72/175. See also, United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, of 1 November 2013, para. 17.

⁷⁰⁸ Cf. United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, *Eradicating violence against women journalists*, A/HRC/44/52, of 6 May 2020, paras 80-82, and Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2016)4, of 13 April 2016, para. 9.

⁷⁰⁹ Cf. United Nations, Committee against Torture, Concluding observations on the second periodic report of Afghanistan, CAT/C/AFG/CO/2 of 12 June 2017, paras. 43 and 44, and United Nations, Committee against Torture, Concluding observations on the initial report of Pakistan, CAT/C/PAK/CO/1 of 1 June 2017, paras. 22 and 23.

that, given the particular circumstances of the instant case, the State's duty of prevention required enhanced diligence. Indeed, in view of the factual background, together with the context existing at the time the events occurred, the Court notes, from an intersectional perspective, that Mrs. Bedoya was in a doubly vulnerable situation, because of her work as a journalist and because she was a woman⁷¹⁰.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013

1173. With regard to women human rights defenders, the IACHR notes that the situation of discrimination to which they are subjected due to their historical role and stereotypical conceptions of gender is aggravated when they have to face their work in conditions of risk derived from the armed conflict and in coexistence with actors of armed groups. [...]

Thematic reports

IACHR, [Report on the Situation of Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019.

In the case of women human rights defenders, the State's duty to protect and respond is of a reinforced nature given their particular situation of risk due to the historical

⁷¹⁰ An example of this is what Mrs. Bedoya stated during the hearing held before this Court, when she indicated that "If when this happened to me on May 25, it had not been Jineth Bedoya, but Pedro Pérez, they would have sent a hitman to Pedro Pérez and would have killed him, they tortured and raped Jineth Bedoya. Cf. Statement of Jineth Bedoya Lima given at the public hearing held on March 15, 22 and 23, 2021, in the framework of the 140th Regular Period of Sessions.

discrimination they have suffered by virtue of their sex and the causes they pursue⁷¹¹. The State has, based on Article 7.b) of the Convention of Belém do Pará, a specific duty to protect when it has knowledge of a context of violence against women and women human rights defenders⁷¹².

IACHR, [Indigenous Women and Their Human Rights in the Americas](#), OEA/Ser.L/V/II. Doc. 44/17, April 17, 2017

124. Women human rights defenders face additional forms of discrimination⁷¹³. The IACHR has received information on the particularly serious risk for women human rights defenders in the context of the armed conflict, as they are often the target of harassment, threats, and attacks by armed groups seeking to exercise "social control" of territories. Likewise, indigenous women human rights defenders are exposed to disrespect and harassment by state authorities and armed actors when they work to promote and defend women's rights, which exacerbates the double discrimination they already face on the basis of gender and race. [...]. In Colombia, women human rights defenders and indigenous leaders working to protect displaced persons or calling for land restitution in the framework of the peace process have been the

⁷¹¹ IACHR, Report No. 86/13, Cases 12.595, 12.596, and 12.621, Merits, [Ana Teresa Yarce and Others \(Comuna 13\), Colombia](#), November 4, 2013, para. 230.

⁷¹² I.A. Court H.R.. [Case of Yarce et al. v. Colombia](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 194.

⁷¹³ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 283.

target of threats and acts of violence directed specifically against them⁷¹⁴ [...].

IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124 Doc. 5 rev. 1

In some countries where situations of armed conflict persist, the combatant groups tend to impose social control over the living conditions of women, dictating guidelines for their daily behavior, intervening in family and community conflicts, and applying punishments that go as far as murder, torture and cruel and degrading treatment in the event that they do not conform to the codes of conduct imposed by force. In these cases, the armed actors consider that the leadership exercised by women's organizations constitutes an obstacle that hinders the advancement of their social and territorial control and, consequently, national and regional women's organizations operating in zones of armed conflict are subject to harassment and threats that seriously affect the community work they carry out⁷¹⁵.

231. [...] The Commission has learned that women defenders of the rights of indigenous and Afro-descendant women, in addition to the other forms of discrimination already mentioned, are regular victims of acts of racism, ridicule and stigmatization by the majority communities and, in some cases, by public authorities and within their own communities.

⁷¹⁴ IACHR, Press Release 11/17, IACHR condemns killings of human rights defenders in the region, February 7, 2017; IACHR, Press Release 160/16, IACHR condemns increase in killings against human rights defenders in Colombia, November 2, 2016; IACHR, Press Release 21/16, IACHR condemns killings and threats against human rights defenders in Colombia, February 25, 2016; IACHR, Press Release 070/15, IACHR Condemns Murder of Human Rights Defenders in Colombia, June 12, 2015; IACHR, Press Release 059/11, IACHR Condemns Murder of Human Rights Defender and Expresses Concern over New Threats to Human Rights Defenders in Colombia, June 20, 2011.

⁷¹⁵ IACHR, Communiqué No. 27/05, "The armed conflict aggravates discrimination and violence against women".

Precautionary measures

IACHR, [Resolution 80/21, MC 491-21 - S.G.R.Q. and her family](#), Colombia, October 4, 2021.

37. [...] Furthermore, in the present case, the situation of particular vulnerability of the proposed beneficiary is accentuated by the fact that she is a woman of African descent and an elderly person, in a situation of forced displacement, and consequently the specific risks she faces due to the intersection of these factors. This implies, therefore, addressing the situation of the proposed beneficiary from a perspective that is adjusted to her condition, as well as in view of the differentiated impact that the risk factors faced would have on her, an assessment that the Commission has in fact already made in the context of other situations that require a differentiated analysis in view of the circumstances⁷¹⁶.

39. [...] Additionally, the Commission has pointed out that Afro-descendant women leaders and defenders who work with displaced persons in the country are among the group of defenders in a special situation of risk⁷¹⁷.

b) Institutional protection mechanisms for women human rights defenders, social leaders and journalists

⁷¹⁶ By way of example, the Commission has considered the differentiated risk faced by pregnant women, women in labor or postpartum, as well as children and adolescents in the framework of their best interests as such, the migrant or displaced population, and persons with disabilities. See in this regard: IACHR. Resolution 13/2019. Precautionary Measure No. 150-19. Concepción Palacios Maternity Hospital with respect to Venezuela. March 18, 2019.

⁷¹⁷ IACHR. Report on the Situation of Human Rights Defenders and Social Leaders in Colombia. OEA/Ser.L/V/II., Doc. 262, 6 December 2019, paras. 47-65; IACHR. Observations and recommendations of the IACHR working visit to Colombia carried out June 8-10, 2021, July 7, 2021, para. 29.

230. Considering the particular risk factors mentioned in the previous section, the IACHR has developed a series of standards applicable to the protection mechanisms that States must adopt to protect women defenders, social leaders and journalists, especially in transitional contexts. Among others, States must apply a differentiated approach in each of the actions developed by the protection programs⁷¹⁸ and, in the risk assessment procedure, the gender approach must have special importance⁷¹⁹. On the other hand, the State response must be immediate from the first moment it becomes aware of the risk, and the persons in charge of the protection mechanism must be duly qualified and trained⁷²⁰. Likewise, protection mechanisms must be adjusted to the situation of aggravated vulnerability that certain groups of women face in the context of armed conflicts.⁷²¹

Country reports

IACHR, [*Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

190. In this scenario, although the IACHR appreciates the efforts made by the State to develop a differentiated approach in the implementation of protection programs, it emphasizes that the implementation of this approach must be applied constantly in each of the actions carried out by

⁷¹⁸ IACHR, [*Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 190.

⁷¹⁹ IACHR, [*Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 221.

⁷²⁰ IACHR, [*Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019, para. 221.

⁷²¹ IACHR, [*Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 191.

these programs. Therefore, it is essential that measures be taken to train all the personnel of the different agencies, with the purpose of ensuring its continuous application.

191. The IACHR has already established that the situation of risk to which certain groups of women may be exposed does not always affect all women to the same extent⁷²². In this regard, the Commission has stressed the need for a comprehensive protection policy that is tailored to their needs and that takes into consideration their situation of aggravated vulnerability due to the impact of the armed conflict on their lives. Therefore, the Commission considers it necessary to strengthen the protection of women's organizations working in the interior of the country, especially those that are promoting land restitution processes and that have been subjected to different types of gender-based violence. The Commission also notes the multiple levels of vulnerability that indigenous and Afro-descendant women leaders may face.

193. The Commission urges the State to adopt immediate actions to incorporate in the relevant protocols, guidelines, risk assessment processes, implementation and follow-up of protection measures an approach that takes into consideration the gender expression, gender identity and sexual orientation of the persons who come to the protection program. In this framework, it is considered necessary that all authorities work together to create guidelines and train the relevant authorities on how their risk situation should be assessed, in light of the various forms of violence and social exclusion experienced by LGBTI persons and defenders who work with this issue. [...]

⁷²² IACHR, Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser/L/V/II. 124/ Doc.6, October 18, 2006, para. 140.

Thematic reports

IACHR, [*Economic, Social, Cultural and Environmental Rights of People of African Descent Inter-American Standards for the Prevention, Combating and Eradication of Structural Racial Discrimination*](#). OEA/Ser.L/V/II. Doc. 109 16 March 2021

139. [...] In this regard, the IACHR has emphasized that the protection schemes granted to human rights defenders must ensure a gender focus, which integrates the particularities and specific risks faced by groups of women such as Afro-descendant women leaders⁷²³.

IACHR, [*Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*](#), OEA/Ser.L/V/II. Doc.262/19, December 6, 2019.

221. In this sense, the gender approach should be of particular importance in the risk assessment procedure, since it could result in a differentiated impact on the level of risk, as well as in the implementation of protection measures. In order for the measures to be effective, it is essential that: a) the State respond immediately from the first moment it becomes aware of the existence of the risk, so that they are timely; b) that the persons involved in the protection of human rights defenders have the necessary training and education to perform their functions and on the importance of their actions; and c) they must be in force for as long as the victims of violence or threats need them⁷²⁴.

⁷²³ IACHR, Report on the Situation of Human Rights Defenders and Social Leaders in Colombia, OEA/Ser.L/V/II, 6 December 2019 (hereinafter, "IACHR, Human Rights Defenders and Social Leaders in Colombia, 2019"), para. 219.

⁷²⁴ I.A. Court H.R.. [*Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*](#). Judgment of August 28, 2014. Series C No. 283, para. 157.

223. Protection schemes must ensure the inclusion of a differentiated perspective that takes into account the specific vulnerability to violence faced by LGBTI human rights defenders in the process of designing and adopting protection measures⁷²⁵ and an approach that takes into consideration the gender expression, gender identity, and sexual orientation of people who turn to the State for protection must be contemplated⁷²⁶.

314. In light of the above observations, the IACHR takes up the following recommendations addressed to the State of Colombia in its Preliminary Observations of the working visit and, based on the information analyzed and included in this report, adds some additional recommendations:

5. Deepen the context analysis for risk assessment and for the adoption of protection measures, under a differentiated approach that takes into account the particular situations of the population requiring protection and the place where they work. In particular, include the ethnic, collective and gender approach in prevention and protection measures;

13. Adopt differential approaches to gender, ethnicity and LGBTI population, both in the construction of guarantee programs, as well as in research;

⁷²⁵ IACHR, [Violence against LGBTI persons](#), OAS/Ser.L/V/II.rev.2. Doc. 36, 12 November 2015, p. 305.

⁷²⁶ IACHR, [Towards a comprehensive policy for the protection of human rights defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, para. 316.

Precautionary measures

IACHR, [Resolution 80/21, MC 491-21 - S.G.R.Q. and her family](#), Colombia, October 4, 2021.

53. Consequently, Colombia is requested to:

a) adopt the necessary measures to protect the rights to life and personal integrity of Mrs. S.G.R.Q. and her family. In particular, the State must ensure that the protection measures implemented are sufficiently effective and adequate, with the corresponding ethnic-racial and gender focus, in light of the risks identified in the resolution and in response to the shortcomings indicated;

b) adopt the necessary protection measures so that Mrs. S.G.R.Q. can continue to carry out her activities as a community leader and human rights defender without being subjected to risk events against her;

6.3. Measures in the area of the Right to Truth with a gender and intersectional perspective

230. In establishing the historical truth in transitional justice processes, the IACHR has highlighted the importance of adopting approaches that take into account the differentiated and disproportionate impact of violence on women, girls and adolescents. Such an approach must also be multidimensional and incorporate variables such as forced displacement, sexual violence, among others⁷²⁷. Likewise, the establishment of historical truth and the creation of historical

⁷²⁷ IACHR, [Annual Report, Chapter V. "Follow-up to the recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia,"](#) 2020, para. 111.

awareness must also include the experiences of trans and gender-diverse victims of past violence⁷²⁸.

Thematic reports

IACHR, [Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights](#), OEA/Ser.L/V/II. Doc. 239, August 7, 2020

421. Acts of recognition of responsibility can include a series of diverse measures that involve symbolic acts of reparation, such as official statements, requests for forgiveness and historical recognition, or state support for initiatives that seek to document and disseminate the records and testimonies of trans and gender-diverse people who managed to survive the contexts of exclusion and violence in which they were forced to live, especially in contexts of military dictatorships. These policies should be designed and implemented with the ultimate goal of creating historical awareness of this issue.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. "Follow-up to recommendations made by the IACHR in the report Truth, Justice and Reparation: Sixth Report on the Situation of Human Rights in Colombia"](#), 2020

111. Similarly, the IACHR calls for strengthening the intersectionality of approaches in the establishment of the historical truth, taking into account that women, the elderly, girls and boys have differentiated and disproportionate impacts, making necessary a holistic and multidimensional approach to the conflict that analyzes variables such as

⁷²⁸ IACHR, [Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights](#), OEA/Ser.L/V/II. Doc. 239, August 7, 2020, para. 421.

forced displacement, recruitment, selective murder and sexual violence, among others, in relation to the aforementioned populations.

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia", 2018](#)

242. Finally, regarding the rights of women victims to truth, justice and reparation, the Commission notes positively that the provision in Decree No. 588 of 2017 creating, within the Truth Commission a gender working group, responds to the objective of contributing to the investigation and clarification of acts of violence against women⁷²⁹, particularly acts of sexual violence largely silenced. [...].⁷³⁰

6.4. Training and awareness raising with a gender perspective

231. From a gender perspective, the IACHR has called on the States to adopt actions aimed at training different authorities, as well as raising awareness among the general population.
232. In particular, the IACHR has indicated that States should establish education and training programs for security agents⁷³¹ and justice

⁷²⁹ El Espectador, The Truth Commission and women, December 13, 2018.

⁷³⁰ UN - Resident Coordinator's Office, Joint Contribution of the UPR Country Team Colombia-Third Cycle, 2018. Para. 37.

⁷³¹ IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011, recommendation 8.

operators⁷³², in areas such as: (i) protection of women's rights⁷³³; (ii) violence and discrimination in contexts of armed conflict⁷³⁴, and (iii) investigation of torture and sexual violence⁷³⁵.

233. The IACHR has also urged States to undertake initiatives to raise public awareness of: (i) the situation of violence suffered by women as a result of the internal conflict⁷³⁶; (ii) the services and resources available to access justice for the violation of their rights⁷³⁷ in these contexts; and (iii) the duty to respect women's rights in different areas, including sexual and reproductive rights⁷³⁸.

Cases submitted to the I/A Court H.R.

IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011.

5. Adopt legislative, administrative or other measures necessary to ensure that complaints of torture and sexual violence against security agents are investigated ex officio

⁷³² IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011, recommendation 5, and IACHR, [Violence and discrimination against women in the armed conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 204.

⁷³³ IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011, recommendation 8.

⁷³⁴ IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011, recommendation 8; IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 204.

⁷³⁵ IACHR. [Report No. 67/11](#). Case 11.157. Admissibility and Merits. Gladys Carol Espinoza Gonzales. Peru. March 31, 2011.

⁷³⁶ IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#), OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 204.

⁷³⁷ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 923, recommendation 7.

⁷³⁸ IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013, para. 923, recommendation 7.

and diligently. Implement training programs for public officials responsible for the application of these measures.

8. Implement, within a reasonable period of time, permanent human rights education programs within the Police Forces, at all hierarchical levels, and include special mention in the curriculum of such training programs of international human rights instruments, specifically those related to the protection of women's rights, particularly their right to live free from violence and discrimination.

Country reports

IACHR, [Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia](#), OEA/Ser.L/V/II Doc. 49/13, December 31, 2013.

923. Based on the information and considerations set forth in this report, the Commission recommends to the State of Colombia:

7. Implement dissemination measures and campaigns aimed at the general public on the duty to respect women's rights, in civil, political, economic, social, cultural, sexual and reproductive matters; the services and resources available to women who have experienced the violation of their rights; and the legal consequences for the perpetrators.

Thematic reports

IACHR, [Violence and Discrimination against Women in the Armed Conflict in Colombia](#). OEA/Ser.L/V/II. Doc. 67, October 18, 2006

Create conditions for the INML [National Institute of Forensic Medicine] to continue training and raising awareness among judicial authorities who hear cases of different types of violence, so that they can adequately and carefully evaluate all available evidence in the resolution of cases of sexual violence, including forensic medical examination, physical and psychological findings, and laboratory tests, among others. It is important to encourage multidisciplinary investigation of these crimes.

Chapters of IACHR Annual Reports

IACHR, [Annual Report, Chapter V. Follow-up on recommendations made by the IACHR in its country or thematic reports, "Follow-up on recommendations made by the IACHR in the report Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia"](#), 2017.

265. [...] The Commission in turn urges the State to adopt educational actions with a gender perspective to prevent future acts of violence and discrimination against women in the context of the armed conflict.

V. CONCLUSIONS

V. CONCLUSIONS

234. This Compendium is an updated and easily accessible reference tool for state actors, civil society, academia, other international organizations and users of the System, on a topic of great relevance for the region. These types of cooperation tools are developed by the Inter-American Commission with the objective of promoting greater knowledge and use of inter-American human rights standards.
235. At the same time, the compilation of standards and jurisprudence contained in this Compendium is a practical tool to advance in strengthening the capacities of actors both at the local level and at the level of the International System for the Protection of Human Rights. In this way, the IACHR recalls the importance of States adopting diligent efforts to apply the legal standards of the Inter-American System in the field of human rights⁷³⁹.
236. The information presented clearly reflects the fundamental role that, for decades, the Inter-American Commission on Human Rights has played in the progressive establishment of guidelines and directives that have guided the processes and mechanisms of transitional justice that seek to comprehensively redress the harm caused to victims of grave violations in contexts of armed conflict, military dictatorships or other oppressive and authoritarian regimes of the past. As can be seen from the systematization carried out in this Compendium, in such contexts, gender-based discrimination and violence are intensified, generating differentiated risks and impacts. This in turn generates reinforced obligations on the part of the States and the need to adopt a gender approach not only in the prevention and punishment of such violence, but also in the reparation of the consequences of human rights violations suffered by women and LGBTI persons. However, it is observed that the

⁷³⁹ In this sense, see IACHR, [Compendium of the InterAmerican Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts](#). OEA/Ser.L/V/II. Doc. 121 April 12, 2021, para. 190.

application of a gender perspective and differentiated approaches to reparations in transitional contexts has not been, until recent years, a relevant aspect in the development of standards in the Inter-American System.

237. In this context, this compilation of standards marks a starting point in the treatment of these issues in order to facilitate the continuation of a progressive and innovative development that has as a transversal axis the transformative vocation of reparation. Also, the statements contained in this document make visible: (i) the special situation of risk that girls, women, LGTBI persons, among other groups, face in these contexts, and (ii) the consequent obstacles they face in the effective access to reparation programs, and in their participation in their design and implementation.
238. Based on the analysis and standards contained in this Compendium, it is clear that it is necessary to strengthen the application of the gender perspective and the intersectional approach in transitional justice contexts as a necessary prerequisite to guarantee comprehensive and effective reparation -as well as an adequate response to a situation of structural violence- in transitional scenarios. To this end, attention must be paid to: (i) the differentiated consequences generated by the violation of rights; (ii) the prevailing gender stereotypes; (iii) the other specific conditions and particularities that generate a special situation of risk for women, LGTBI persons and other groups; and (iv) the need to combat structural inequality and exclusion, including the patterns and stereotypes of discrimination that facilitated the perpetration of violations in armed conflicts, military dictatorships or other oppressive and authoritarian regimes. Likewise, it is essential that States guarantee -through differentiated treatment- the effective participation of women, LGTBI persons and other populations in all stages of reparation mechanisms, that is, from their design to their implementation. Without this, there is a risk that reparation measures will ignore gender-based violence and violence based on other discriminatory factors that operate in these contexts.

239. In view of the above, gender and intersectionality should be considered as guiding principles in reparations -adopted in light of their transformative vocation- in order to combat the underlying causes of the serious human rights violations in these scenarios, and the structure of gender exclusion and other additional factors of discrimination. The above, also, with a view to generating a symbolic effect that contributes to the satisfaction and non-repetition of the facts. The IACHR also emphasizes that the cross-cutting approach of differentiated approaches included in this Compendium also responds to the cross-cutting theme of "Gender, interculturality, and intersectionality," contained in the current [IACHR Strategic Plan 2023-2027](#).
240. Finally, the Inter-American Commission reiterates its willingness, commitment and full disposition to collaborate with the States through technical assistance and cooperation as a tool for institutional strengthening with the objective of contributing to guaranteeing real and objective conditions for the materialization of State efforts and initiatives in the area of reparations in transitional justice contexts, integrating the gender perspective in a cross-cutting manner in all phases of its implementation.

REASONED VOTE

REASONED VOTE COMMISSIONER STUARDO RALÓN ORELLANA

By means of this reasoned vote, I come, in the first place, to congratulate the work that the Commission and, in particular, its Executive Secretariat, carries out for the purpose of preparing compendiums of pronouncements issued by this institution on various topics. These compendiums are documents that not only reflect the opinions expressed by this Commission, but also allow academics, litigants, and interested members of the public to learn more about the Commission's work in fulfilling its task of "promoting the observance and defense of human rights [in the region]," as stated in Article 41 of the American Convention.

This compendium states that it seeks to "systematize **standards** developed by the Commission over more than two decades, through its various mechanisms, in the area of comprehensive reparations in transitional justice contexts, with emphasis on the incorporation of a gender and intersectional approach" (para. 2). In this sense, this document "was prepared based on the review, identification, compilation, systematization, and analysis of the **Inter-American standards** developed by the IACHR in the area of transitional justice" (para. 10).

Said inter-American standards are referred to by the compendium itself, which states that they were considered: "(i) cases referred to the Inter-American Court of Human Rights (hereinafter "IACHR Court")-applications and merits reports subsequent to the 2009 reform of the Rules of Procedure of the IACHR Court), (ii) merits reports published by the IACHR; (iii) friendly settlement reports; (iii) country reports; (iv) thematic reports; (v) chapters of Annual Reports; (vi) resolutions; (vii) practical guides, guidelines and other guidelines; (viii) resolutions on precautionary measures; and (ix) exceptionally, **press releases were considered due to the uniqueness of the subject matter presented**" (para. 11). Taking advantage of the opportunity offered to me in connection with this last reference, I would like to make a statement on an issue that, in my opinion, is of clear legal interest.

The notion of Inter-American human rights standard is one regarding which there is ample debate in the doctrine (in this regard, see: Marcela Molina, "Estándares jurídicos internacionales: Necesidad de un análisis conceptual", *Revista de Derecho Coquimbo*, year 25, No. 1, pp. 233-256. 2018; and Ignacio de Casas, "What are human rights standards?", *International Journal of Human Rights*, vol. 9, No. 2, pp. 291-301. 2019). This debate, likewise, is projected towards the determination of what are precisely those standards of conduct that are legally binding on States. In this sense, if inter-American standards are conceived as legally enforceable rules of conduct for States, the only standards would be represented by the set of conventional norms that make up the inter-American human rights system. This is simply because the States have only consented to those norms and, therefore, they are the only ones that can be subject to general application.

In this context, attributing the character of an inter-American standard - conceived as a rule of obligatory and legally enforceable action by the States - to decisions of the Commission, or to "practical guides, guidelines and other directives" is, at least, a debatable issue, an issue that this reasoned opinion, naturally, does not intend to resolve. However, regardless of that debate, **what is unquestionable is that the press releases, prepared by the Executive Secretariat and issued by the Commission, do not have sufficient authority to construct, on the basis of particular situations that are the subject of the corresponding opinion, rules of general scope, legally binding and, therefore, enforceable on the States Parties.**

Press releases are informal pronouncements that seek to express the Commission's opinion on certain particular situations affecting States. From this perspective, it is excessive to pretend that, based on these press releases, it is possible to construct rules of action that are binding for all States Parties. This is because the communications are not issued by this Commission with the specific intention of developing the rules and standards contained in the American Convention, but rather with the purpose of expressing an opinion on a situation that, from the perspective of human rights in the region, is of interest to the Commissioners.

Likewise, it would be incorrect, from a normative perspective, to assume that opinions of an eminently particular scope can acquire, by themselves, a general character.

From this perspective, I welcome the clarification provided by the Commission in footnote 6 (page 6). The footnote in question states that "**press releases (...) refer to standards, but do not imply their development or issuance**". In doing so, the Commission clarifies an issue that, until today, has been highly controversial. The clarification in question promotes the values of legal certainty and reinforces international legality in an area where such clarification was necessary. Indeed, clarifications of this type make it possible to prevent, for example, that, in the future, States Parties might be condemned for failing to comply with rules of conduct whose legally enforceable nature was, at least, doubtful (in this regard, see a recent work that addresses the problem indicated and, to overcome it in a manner consistent with the requirements of legal certainty, proposes the need to progressively clarify the rules that make up the set of inter-American standards, a path along which, precisely, footnote No. 6 of the compendium advances. 6 of the compendium: Gonzalo *Candia and René Tapia*, "Los estándares interamericanos de derechos humanos y el estado de derecho: una evaluación crítica", *Revista Chilena de Derecho*, Vol. 50, No. 2, pp. 157-184. 2023).

It is in this context that I must state that the wording of paragraph 11 of the compendium, in light of what is indicated in its footnote No. 6, is contradictory. Paragraph 10 states that the compendium was constructed on the basis of "the review, identification, compilation, systematization, and analysis of (...) **inter-American standards**". Notwithstanding the above, paragraph 11 includes press releases within those standards. This, despite the fact that the Commission itself states, in footnote 6, that those press releases **do not represent inter-American standards**. This, evidently, generates a confusion that could be problematic in the future. This, even though paragraph 11 states that it has included the communications "exceptionally".

A correct wording of paragraph 11 -or at least one that was consistent with footnote 6- would simply have excluded press releases from the set of "inter-American standards" referred to in the compendium. This is, of course, because press releases do not represent standards. Hence, the wording of the paragraph in question, in relation to this point, is, to say the least, unfortunate.

In spite of this, I once again highlight the clarifying progress made by the Commission regarding the legal nature of its own press releases. Finally, it is clear that the contents of the press releases cannot create or develop standards that are legally enforceable on States. Undoubtedly, this represents an advance in the process of "strengthening the guiding capacity of the inter-American human rights system" (see: *Candia and Tapia*, p. 176).

I request the Inter-American Commission on Human Rights IACHR and the Executive Secretariat that since this is a report approved by regulation, by the IACHR Plenary and that said report refers to a Compendium of clear interest for the Inter-American Human Rights System, a footnote be made indicating that I have made this reasoned vote, that it is available to anyone who requests it from the Executive Secretariat of the IACHR and that it may be published by the Commission in due course when required in accordance with the regulations in force.



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