

COMPENDIUM

TRUTH, JUSTICE AND REPARATION IN TRANSITIONAL CONTEXT

Inter-American Standards



OAS

More rights for more people

OEA/Ser.L/V/II.

Doc. 121

12 April 2021

Original: Spanish

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Compendium of the Inter- American Commission on Human Rights on Truth, Memory, Justice and Reparation in Transitional Contexts

OAS Cataloging-in Publication Data

Inter-American Commission on Human Rights.

Compendium of the Inter-American Commission on Human Rights on truth, memory, justice and reparation in transitional contexts : approved by the Inter-American Commission on Human Rights on April 12, 2021.

p. ; cm. (OAS. Official records ; OEA/Ser.L/V/II)

ISBN 978-0-8270-7277-0

1. Human rights. 2. Civil rights. 3. Fair trial. 4. Truth commissions. 5. Disappeared persons. 6. Freedom of information. I. Title. II. Series.

OEA/Ser.L/V/II. Doc.121/21

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Members

Antonia Urrejola

Julissa Mantilla Falcón

Flávia Piovesan

Margarette May Macaulay

Esmeralda Arosemena Bernal de Troitiño

Joel Hernández García

Edgar Stuardo Ralón Orellana

Acting Executive Secretary

María Claudia Pulido

Chief of Staff of the Executive Secretariat of the IACHR

Norma Colledani

Assistant Executive Secretary for Monitoring, Promotion and Technical Cooperation

María Claudia Pulido

Assistant Executive Secretary for Cases and Petitions

Marisol Blanchard Vera

Approved by the Inter-American Commission on Human Rights on April 12, 2021

TABLE OF CONTENTS

| | |
|--|-----|
| CHAPTER 1 INTRODUCTION | 9 |
| CHAPTER 2 METHODOLOGY | 19 |
| CHAPTER 3 JUSTICE STANDARDS RELEVANT TO TRANSITIONAL CONTEXTS | 23 |
| 1. Prohibition to Apply the Amnesty Figure | 23 |
| 2. Prohibition of the Application of the Statute of Limitations | 39 |
| 3. Considerations on the Figure of the Pardon | 41 |
| 4. <i>Non bis in idem</i> and Fraudulent <i>res judicata</i> | 45 |
| 5. Prohibition on the Use of Military Criminal Justice in Cases of Human Rights Violations | 48 |
| 6. The Obligation of States to Incorporate Certain Conducts as Criminal Offenses in Their Domestic Law | 52 |
| 7. The Obligation to Investigate Contexts and to Articulate Multiple Processes | 55 |
| 8. Proportionality of Penalties | 58 |
| 9. The Participation of Victims and Family Members | 60 |
| 10. Prioritization Mechanisms as a Possible Limitation on Access to Justice | 61 |
| 11. Prison Benefits for Those Convicted of Serious Human Rights Violations | 64 |
| 12. Cooperation between States, Extradition, and Universal Jurisdiction | 66 |
| CHAPTER 4 TRUTH STANDARDS RELEVANT TO TRANSITIONAL CONTEXTS | 73 |
| 1. Development and Conceptualization of the Right to Truth | 73 |
| 2. Truth Commissions and Their Relationship with Judicial Processes | 77 |
| 3. The Search for the Fate or Whereabouts of Victims of Enforced Disappearance or Their Mortal Remains | 85 |
| 4. Declassification, Access and Preservation of Archives | 90 |
| 5. Initiatives on the Maintenance of Historical Memory | 97 |
| 6. Denialism | 103 |
| CHAPTER 5 REPARATIONS STANDARDS RELEVANT TO TRANSITIONAL CONTEXTS | 109 |
| 1. The obligation of States to make reparations for human rights violations | 109 |

| | | |
|--------------------------------|---|------------|
| 2. | On Administrative Reparations Programs and Their Relationship to Judicial Reparations | 112 |
| 3. | Exclusion of Categories of Victims from Administrative Reparation Programs | 116 |
| 4. | The Application of the Statute of Limitations for Access to Judicial Remedies | 118 |
| CHAPTER 6 CONCLUSIONS | | 123 |

CHAPTER 1
INTRODUCTION

INTRODUCTION

1. The IACHR, in compliance with its mandate to provide advice and technical assistance to States, considers it essential to develop instruments and tools, and therefore, on this occasion, through the systematization of inter-American standards on transitional justice, presents this compendium. Its purpose is to be useful both for States and for users of the system, civil society organizations, academia, social movements, and the Commission itself. Over the past decades, the Inter-American Commission has closely followed the serious human rights violations and international crimes that have occurred in the Americas, whether in the context of armed conflicts, military dictatorships or other oppressive regimes that violate human rights and has accompanied the efforts of the States of the region in the areas of truth, justice, reparations and guarantees of non-repetition. Historically, the Commission has referred, in general terms, to and understood the definition of serious human rights violations, which include violations to life and personal integrity such as extrajudicial executions, forced disappearances and torture, gender and sexual violence as an aggravated violation faced in a systematic and differential way by women and girls in the aforementioned contexts. Likewise, the IACHR has referred to the standards on truth, justice, and reparation in the context of international crimes.
2. Through its various mechanisms, the IACHR has developed a series of standards applicable to truth, justice, memory and reparation, with recommendations to ensure an integrated State response to contexts of serious human rights violations. Along these lines, the IACHR has formulated numerous recommendations to States to adapt their domestic legislation and to develop policies and practices for recognition and redress and guarantees of non-repetition of past violations, as well as institutional strengthening so that truth, justice, and reparation systems are able to respond adequately. In addition, the Commission has considered the differentiated impacts of the contexts of serious human rights violations on certain particularly vulnerable or historically discriminated groups.
3. In its report on the *Right to Truth in the Americas*, the Commission looked at the efforts undertaken by the States in the hemisphere in the area of truth, justice and reparation, in the following terms:

136. The countries of the region have made progress in the adoption and implementation of initiatives aimed at the reconstruction and memorialization of the historical truth, the clarification of human rights violations, the dignification of victims and social reconciliation.

In this sense, it has been stated that "if truth is a precondition for reconciliation, justice is both its condition and its result"¹.

137. A series of factors such as the intensity and form of the end of an authoritarian government or a situation of armed conflict or generalized violence; the political will of the parties involved and state actors; the information available; the participation of the victims, their families and society in general; as well as certain structural and institutional components; and the history and dynamics of each country have led to the design and implementation of different mechanisms, modalities and practices².

167. From the scrutiny of the information presented, the Commission observes that the processes of judicialization of cases of serious human rights violations and breaches of IHL have suffered advances and setbacks in the countries of the region and that they still face significant barriers. These obstacles are linked to the existence of domestic legislation that prevents the initiation or progress of judicial investigations in these cases and/or vetoes access to relevant public information, as well as to structural and institutional deficiencies in the justice systems related to insufficient human, technical and financial resources; difficulties in undertaking complex investigations; the effects of the passage of time in obtaining evidence and following logical lines of investigation; and political pressures, among others³.

(...)

206. Taking into account the complexity of the phenomena of massive and systematic human rights violations, other initiatives have also contributed to the guarantee of the right to the truth in a broad sense and have contributed to the clarification and officialization of human rights violations as a measure of reparation for the victims and their relatives, and of commemoration and remembrance for society in general. (...) The Commission considers that the victims, their representatives and civil society organizations have played an indispensable role in requesting, contributing to, designing, implementing and executing a wide range of initiatives aimed at exercising and demanding respect for the right to the truth⁴.

¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 136. Citing: Peruvian Truth and Reconciliation Commission, Final Report, Volume IX, Ch. 1, Fundamentals of Reconciliation.

² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 137.

³ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 168.

⁴ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 206.

207. On the one hand, it is worth highlighting the tireless activity of victims, family members, human rights defenders and civil society organizations that have demanded and continue to demand truth, justice and reparations in cases of human rights violations. Thus, in the region there are numerous examples of civil society efforts to document, verify and disseminate the truth about human rights violations by setting up unofficial truth commissions, conducting investigations and preparing studies and reports⁵, as well as initiatives aimed at pressing for social and public recognition of such violations. Moreover, in many cases, these reports and investigations have subsequently been used as a source of information by official CoVs [Truth Commissions]⁶.

4. Historically, the Commission has been emphatic in 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 off each other. Guarantees of non-repetition in this type of context are directly related to the adequate and effective adoption and implementation of all these standards. In the contexts of grave human rights violations in which the IACHR has accompanied and promoted transitional justice mechanisms, it has emphasized how these mechanisms constitute an expression of this interrelationship. In the words of the IACHR:

48. T]he right to the truth is one of the pillars of transitional justice mechanisms, 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, serve justice, and achieve reconciliation⁷. In particular, in transitional contexts, the achievement of a complete, truthful, impartial and socially

⁵ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 207.

⁶ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 169. Citing: UN, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/21/46, 9 August 2012, para. 54.

⁷ IACHR. The Right to the 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. Within the UN, it has been indicated that the parameters for the analysis of transitional justice mechanisms come from the updated Set of Principles for the protection and promotion of human rights through action to combat impunity (UN, E/CN.4/2005/102/Add.1, February 8, 2005. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?si=E/cn.4/2005/102/Add.1); 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 (UN, General Assembly, Resolution 60/147, December 16, 2005. Available at: <http://www2.ohchr.org/spanish/law/reparaciones.htm>); and Human Rights Council Resolutions 12/11 and 12/12 on Human Rights and Transitional Justice, and Right to the Truth (UN, Human Rights Council, Resolution 12/11 Human Rights and Transitional Justice of 1 October 2009; Resolution 12/12, Right to the Truth of 1 October 2009. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/A-65-53_sp.pdf).

constructed, shared, and legitimized truth is a fundamental element for the reconstruction of citizen confidence in state institutions⁸.

49. In this regard, it has been indicated that truth, justice, reparation and guarantees of non-repetition contribute to the achievement of two intermediate or medium-term objectives (providing recognition to victims and building trust), as well as two final objectives (contributing to reconciliation and strengthening the rule of law)⁹. Since these pillars are complementary but have their own content and scope, "truth cannot be a substitute for justice, reparation or guarantees of non-repetition"¹⁰.

5. However, in transitional justice contexts, the Commission has recognized the complexity of these scenarios to guarantee the components of justice, truth, reparation, and non-repetition. In this regard, the IACHR has indicated that it is aware that States have the right and duty to promote policies and implement programs aimed at the reconciliation of their peoples¹¹. Notwithstanding, when designing such frameworks, there are certain international obligations that must be observed¹².

6. In a similar vein, the IACHR has stated that:

254. Without prejudice to the existence of obligations that must be observed by States in the framework of transitional justice, the Commission stresses the importance of ensuring that such frameworks have particular characteristics that allow them to achieve the objectives for which they were designed. In this sense, the Commission has pointed out that in order to contribute to the construction of peace, transitional justice must create incentives to guarantee the rights of the victims of the conflict, including the investigation of the violations that occurred, the determination of those responsible, and the right to the truth and comprehensive reparation¹³.

⁸ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 48.

⁹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 49. Citing: Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/21/46, 9 August 2012, para. 21.

¹⁰ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 49. Citing: Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/24/42, 28 August 2013, para. 26.

¹¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 83. Citing: See, inter alia, IACHR, [Press Release 150/12](#), Amnesty and Human Rights Violations, December 26, 2012.

¹² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 83.

¹³ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 254. Citing: IACHR, Pronouncement of the Inter-American

7. Among the relevant guidelines to be considered by the States, the Commission has adopted the parameters developed by the United Nations as its own. This has been reflected in statements such as the following:

240. *In this regard*, it should be noted that the UN has indicated that the parameters for the analysis of the mechanisms used by the State in these contexts come from the *updated Set of Principles for the protection and promotion of human rights through action to combat impunity*¹⁴, the ¹⁵*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*, and Human Rights Council Resolutions 12/11 and 12/12 on *Human Rights and Transitional Justice*, and the *Right to the Truth*¹⁶, respectively. Likewise, on the importance of observing such obligations, the UN Special Rapporteur on truth, justice, reparation and guarantees of non-repetition has stated that:

247. [...] Transitional Justice is a strategy to achieve justice to correct massive human rights violations in times of transition; it is not a name for a different form of justice. The satisfaction offered by justice cannot be achieved without truth, justice, reparations and guarantees of non-repetition. Moreover,] only a comprehensive approach to the implementation of these measures can effectively respond to this task and put the victims at the center of all responses. The recognition of victims as individuals and subjects of rights is essential in any attempt to remedy massive human rights violations and prevent their recurrence. Reconciliation cannot be a new burden to be placed on the shoulders of those who have been victimized¹⁷.

Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia, 2006, para. 38.

¹⁴ UN, Commission on Human Rights, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005. Available at: http://ap.ohchr.org/documents/dpage_s.aspx?si=E/cn.4/2005/102/Add.1.

¹⁵ UN, General Assembly, Resolution 60/147, 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, 16 December 2005. Available at: <http://www2.ohchr.org/spanish/law/reparaciones.htm>.

¹⁶ IACHR. *The Right to the Truth in the Americas*. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 84. Citing: UN, Human Rights Council, Resolution 12/11 Human Rights and Transitional Justice of 1 October 2009; Resolution 12/12, Right to the Truth of 1 October 2009. Available at: http://www2.ohchr.org/english/bodies/hrcsil/docs/A-65-53_sp.pdf.

¹⁷ IACHR. *The Right to the Truth in the Americas*. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 84. Citing: Office of the United Nations High Commissioner for Human Rights in Colombia. Press Release, Transitional Justice is not a 'soft' form of justice," new UN Special Rapporteur, Pablo de Greiff, September 11, 2012. Available at: <http://nacionesunidas.org.co/blog/2012/09/11/la-justicia-transicional-no-es-un-forma-blanda-de-justicia-nuevo-relator-especial-de-la-onu-pablo-de-greiff/>. See also, UN, Human Rights Council, 21st

8. In sum, the Commission has indicated that one component for the establishment of a lasting peace is that the transitional justice framework be applied as a system of useful incentives for truth, the identification, prosecution, and punishment of those responsible, and reparations for the victims. The IACHR has emphasized that, in the application of a transitional justice system, the satisfaction of the truth and reparation components must be rigorously examined and confirmed, as an essential condition for the imposition, for example, of a mitigated sanction on a perpetrator¹⁸. In addition, the Commission has indicated that agreements of a political nature between the parties to the conflict cannot in any way exempt the State from the obligations and responsibilities it has assumed by virtue of its ratification of the American Convention and other international instruments on the subject¹⁹.
9. This compendium seeks to systematize the standards developed by the Inter-American Commission, in the framework of its various mandates, on truth, justice and reparations for serious human rights violations in contexts of transition from dictatorships to democracy and in processes of search for and consolidation of peace, also addressing the guarantees of non-repetition of such violations. These standards, related to transitional justice mechanisms, have also made a fundamental contribution to the consolidation of a human rights culture and the issues of memory, truth and justice as pillars for strengthening the rule of law in the region. This systematization seeks to highlight the fundamental importance of transitional justice mechanisms in addressing the grave human rights violations of the past. The Commission also seeks to highlight the essential nature of the standards of truth, justice, and reparation in the framework of transitional justice mechanisms, for the reconstruction of the social fabric, the establishment of historical memory and non-repetition. All these components lead to the strengthening of the intrinsic relationship between democracy and human rights. In this sense, the IACHR hopes that this compendium will serve as tools for the different users of the Inter-American System, and especially for those human rights organizations and societies, which today find themselves in political and social contexts where a lack of democratic institutional framework prevails accompanied by systematic and massive acts of serious human rights violations. Faced with these contexts, the IACHR hopes that, looking to the future, the compendium will serve as a tool for the construction and consolidation of a culture of human rights based on the rule of law.
10. The urgency of adequately implementing the standards of truth, justice and reparation and guarantees of non-repetition is still very much alive, since not only do serious human rights violations persist in the present, but there is still structural impunity for past events, many victims have still not received individual and

session, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, August 9, 2012.

¹⁸ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13. August 2014, para. 85. Citing: 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. 38.

¹⁹ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 85. Citing: See, inter alia, IACHR, Annual Report of the Inter-American Commission on Human Rights 1992-1993, OEA/Ser.L/V/II.83, Doc. 14, March 12, 1993, Ch. IV, p. 195; IACHR. Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85, Doc. 28 rev.

collective reparations, and in many cases the debt to fully establish the truth is still pending. The Commission has cyclically become aware of attempts to setbacks in terms of truth, justice and reparation, to which it has reacted in a timely manner through its different mechanisms. As indicated, the Commission has also accompanied and welcomed the efforts of many States and the results obtained. Recently, in its Resolution 3/19 adopting the Principles on Public Policies on Memory in the Americas, the IACHR acknowledged:

Resolution 3/19

(...) the challenges and progress in terms of public policies on memory, truth and justice in the Americas; the impunity of those who have perpetrated or devised serious human rights violations as one of the problems that most affects and re-victimizes the victims; the human rights violations of the present that are in continuity with the serious human rights violations of the past; the observed trend of the return of the involvement of the armed forces in citizen security; and the urgent need to sensitize the new generations about the importance of defending representative democracy with all its guarantees and ensuring respect for the rule of law and human rights²⁰.

11. To fulfill the objective of systematizing the relevant standards, this compendium is divided into three main parts. First, the multiple standards developed in the area of justice will be addressed. Second, on truth. And third, on reparations. Guarantees of non-repetition, being intrinsically linked to the three previous ones, will be analyzed in a cross-cutting manner.

²⁰ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

CHAPTER 2
METHODOLOGY

METHODOLOGY

12. This document was prepared based on the review, systematization and analysis of the Inter-American standards developed by the IACHR on truth, justice and reparation, relevant in transitional justice contexts.
13. In order to present a representative and coherent instrument, the compendium involved a review of the documents and reports approved and published by the IACHR. In particular, thematic and country reports were examined, as well as substantive decisions on individual cases submitted to the inter-American protection system, including reports approved by the IACHR pursuant to Article 50 of the ACHR and published by the IACHR pursuant to Article 51 of the ACHR, and reports relating to cases referred to the Inter-American Court pursuant to Article 61 of the ACHR and Article 45 of the Rules of Procedure of the IACHR. In this way, the Commission intends to reflect on how the standards of truth, justice and reparation relevant to transitional contexts have been understood, applied and developed. With respect to some issues not yet addressed in detail in the framework of the thematic reports, country reports or the system of petitions and cases, some pronouncements issued in press releases are also included.
14. As a result of the detailed review of the aforementioned documents, the standards relevant to the subject were systematized and, to achieve the compendium's purpose of technical cooperation, the most substantive relevant parts were included in each chapter. With respect to issues addressed by the IACHR throughout its history, priority was given to the most recent pronouncements that reflect the historical construction of the issues.
15. In specific cases, the Commission and the Court have qualified certain conducts as international crimes in their decisions²¹. However, it is important to clarify that for the purposes of this compendium, this qualification is not necessary for the obligations of truth, justice and reparation that are systematized to be enforceable. The inter-American standards developed around truth, justice and reparation are based on the somewhat more general conceptualization of serious human rights violations and their enforcement is not conditioned on compliance with the requirements of international criminal law for them to be classified as international crimes.

²¹ See, for example: IACHR. Report No. 86/10. Case 12.649. Merits. Rio Negro Community of the Mayan Indigenous People and its members. Guatemala. July 14, 2010; IACHR Court. Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 15, 2018. Series C No. 353; and I/A Court H.R., Case of Almonacid Arellano. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154.

16. It is also important to point out that throughout the compendium, various sections also illustrate how, in contexts of armed conflict, international humanitarian law complements the standards of international human rights law, as will be seen, for example, in issues related to amnesties. The Commission also considers it relevant to clarify that the present compendium refers mainly to standards developed over the years and within the framework of its various mandates. Thus, throughout the compendium, some contexts are made visible to the extent that they gave rise to the development of these standards, without prejudice to the fact that some of these contexts have been modified and/or surpassed after the development of the standard.
17. Finally, it is important that the standards addressed in this compendium be considered in conjunction with the diagnoses, standards and recommendations formulated in the framework of other Commission documents, particularly those that recognize the differentiated and/or aggravated impact on the rights of victims based on specific factors of vulnerability or structural or historical discrimination, as well as the intersection of these factors. In this sense, the measures of truth, justice, reparation and guarantees of non-repetition in the contexts of transitional justice must consider both the differentiated impacts 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.
18. With these methodological and terminological clarifications, the standards pertinent to each section are systematized below.

CHAPTER 3
JUSTICE STANDARDS RELEVANT
TO TRANSITIONAL CONTEXTS

JUSTICE STANDARDS RELEVANT TO TRANSITIONAL CONTEXTS

19. In the inter-American system, the right of victims of human rights violations to access to justice and to be heard in proceedings related to such violations ~~is~~ has been widely consolidated. In the case of certain types of violations that coincide with those considered by the organs of the inter-American system as serious human rights violations, States have an obligation to investigate them criminally *ex officio*, identify those responsible, submit them to trial and impose the corresponding sanctions. This is a concretization in the case of serious violations, of the general obligation to investigate, prosecute and punish violations of the American Convention that weighs on the States considering the inter-American instruments that enshrine the rights of access to justice, judicial protection and judicial guarantees - a general obligation that is not restricted in its application to the contexts of transitional justice, in which there is a clear and urgent manifestation. The foregoing is widely consolidated considering the American Declaration, the American Convention and other inter-American instruments related to serious human rights violations²².
20. This compendium does not enter into a detailed analysis of the general developments of the Inter-American Commission on the duty to investigate, identify those responsible, prosecute and establish the corresponding sanctions in cases of human rights violations. The issues that follow in this section are those that are particularly relevant in transitional contexts.

1. Prohibition to Apply the Amnesty Figure

21. The Commission has maintained for more than three decades that the Inter-American legal framework - especially in light of the American Convention and Declaration - prohibits the use of amnesties to prevent the investigation, prosecution and punishment of serious human rights violations. Specifically:
22. (...) the application of amnesty laws that impede access to justice in cases of serious human rights violations generates a double affectation. On one hand, it renders ineffective the obligation of States to respect the rights and freedoms recognized in the American

²² For example, Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on Forced Disappearance of Persons; and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará".

Declaration and American Convention, and to guarantee their free and full exercise to all persons subject to their jurisdiction without discrimination of any kind, as established in Article 1(1) of the ACHR. On the other hand, it prevents access to information on the facts and circumstances surrounding the violation of a fundamental right²³, and eliminates the most effective measure for the enforcement of human rights, i.e., the prosecution and punishment of those responsible, as it prevents the implementation of judicial remedies under domestic jurisdiction²⁴.

22. It is important to note that the obligation to investigate serious human rights violations and its inalienable nature, as well as the incompatibility of amnesty laws that hinder the fulfillment of this obligation with inter-American instruments, have been recognized by the organs of the inter-American system in situations arising in various socio-political processes that have faced different States in the region. In this sense, no distinction has been made between processes of transition from dictatorships to democracy in processes of search for and consolidation of peace²⁵.
23. Through its various mechanisms, the IACHR has been able to pronounce on amnesties issued in a significant number of States in the region²⁶. The following is a recapitulation of the positions that the IACHR has held in multiple contexts and that in most cases preceded and informed the subsequent pronouncements of the Inter-American Court on the incompatibility of amnesty laws with the American Convention.
24. In the case of **El Salvador**, the Commission noted that "the approval of the Amnesty Decree, even after an arrest warrant had been issued for officers of the Armed Forces, legally eliminated the possibility of an effective investigation and prosecution of those responsible, as well as adequate compensation for the victims

²³ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 22. Citing: IACHR. Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, 27 January 1999, para. 150; 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, para. 225.

²⁴ IACHR. The Right to the Truth in the Americas. Para. 22. Citing: IACHR, Report No. 36/96, Case 10.843, Héctor Marcial Garay Hermosilla et al, Chile, October 15, 1996, para. 78; Report No. 34/96, Case 11.228, Case 11.229, Case 11.231, Case 11.282, Juan Meneses, Ricardo Lagos Salinas, Juan Alsina Hurtos, Pedro Vergara Inostrozo, October 15, 1996, para. 76; Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992, para. 41; Report No. 29/92. Cases 10.029, 10.036 and 10.145, Uruguay, 2 October 1992, para. 51. Annual Report of the Inter-American Commission on Human Rights 1997, OEA/Ser.L/V/II.98, Doc. 6 rev, April 13, 1998; 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 Julia Elba Ramos, S.J., S.J., S.J.; Julia Elba Ramos; and Celina Mariceth Ramos, El Salvador, 22 December 1999, para. 200; 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, 7 April 1998, para. 42.

²⁵ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 90.

²⁶ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 91.

and their families, derived from the civil liability for the wrongdoing committed"²⁷. In the words of the IACHR:

In effect, the amnesty decree establishes that those convicted must be released immediately, and that those under trial or in any way involved in serious human rights violations cannot be investigated, prosecuted and punished, or sued civilly, which enshrines impunity in cases of serious human rights violations. Consequently, this law legally eliminates the right to justice established by Articles 1(1), 8(1) and 25 of the American Convention, since it makes it impossible to effectively investigate human rights violations, to prosecute and punish all those involved and to repair the damage caused. Thus, as the IACHR has already stated in relation to this decree, "the legitimate rights of reparation of the victims' next of kin were ignored, which certainly does not constitute a measure of reconciliation"²⁸.

25. The Commission also indicated that "the publication of the Truth Commission's Report and the almost simultaneous approval by the Legislative Assembly [...] of a General Amnesty Law (Decree No. 486 of 1993), [could] compromise the effective implementation of the recommendations made by the Truth Commission, leading to the eventual breach of international obligations acquired by the Illustrious Government of El Salvador upon signing the Peace Accords"²⁹.
26. Subsequently, in the analysis of the application of the amnesty law to the case of the massacres of El Mozote and surrounding areas, the IACHR recapitulated all of its pronouncements on said law in the framework of the different mechanisms and reiterated that:

330. (...) the General Amnesty Law for the Consolidation of Peace and its application in the instant case are incompatible with the international obligations of the State of El Salvador under the American Convention. As indicated, the facts of this case are extremely serious and constitute crimes against humanity whose impunity is openly contrary to the Convention. Thus, the Commission emphatically concludes that the General Amnesty Law for the Consolidation of Peace lacks legal effect and cannot continue to be an obstacle to the investigation of the massacres of El Mozote and

²⁷ IACHR. Report No. 26/92, Case 10.287, Las Hojas Massacre, El Salvador, September 24, 1992, cons. 11; and IACHR. [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, Ch. II.2, Considerations on the Truth Commission.

²⁸ IACHR. Report No. 26/92, Case 10.287, Las Hojas Massacre, El Salvador, September 24, 1992, cons. 11; and IACHR. [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, Ch. II.2, Considerations on the Truth Commission.

²⁹ IACHR. [Report on the Situation of Human Rights in El Salvador](#), OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, Chap. II.2, Considerations on the Truth Commission.

surrounding areas, nor to the identification and punishment of those responsible³⁰.

331. Thus, the domestic judicial authorities cannot excuse themselves in the validity of the General Amnesty Law for the Consolidation of Peace to refrain from investigating and punishing acts such as those that occurred in the present case³¹.

334. (...) The Commission emphasizes that this violation is of a continuing nature and will continue until the State of El Salvador repeals the General Amnesty Law for the Consolidation of Peace and continues the investigations into the facts of this case³².

27. More recently, and 25 years after the Final Report of the El Salvador Truth Commission, the Commission urged the Salvadoran State to comply with its recommendations. In press releases on the subject in 2018, 2019 and 2020, the Commission made the following observations and assessment:

Press Release 74/18

For more than 23 years, the Amnesty Law prevented the promotion of justice for those responsible for human rights violations during the armed conflict and the reparation of victims. More than a year after its annulment by the Constitutional Chamber of the Supreme Court of Justice, it is necessary to intensify progress in the area of transitional justice³³.

The Truth Commission, in conjunction with the peace accords, represents an important step for change in Salvadoran society, and its final report, "From Madness to Hope: El Salvador's 12-year war," establishes important guidelines for the improvement of democracy and the rule of law in the country. More than two decades after the end of the armed conflict and the Truth Commission's report, its recommendations are still valid³⁴.

In recent decades, the IACHR has followed the situation of transitional justice in the country. In this context, the IACHR

³⁰ IACHR. Report No. 177/10. Case 10.720. Merits. Massacres of "El Mozote" and surrounding areas. El Salvador. November 3, 2010. Para. 330.

³¹ IACHR. Report No. 177/10. Case 10.720. Merits. Massacres of "El Mozote" and surrounding areas. El Salvador. November 3, 2010. Para. 331.

³² IACHR. Report No. 177/10. Case 10.720. Merits. Massacres of "El Mozote" and surrounding areas. El Salvador. November 3, 2010. Para. 334.

³³ IACHR. [Press Release 74/18](#), IACHR urges El Salvador to comply with the recommendations of the Final Report of the Truth Commission 25 years after its publication.

³⁴ IACHR. [Press Release 74/18](#), IACHR urges El Salvador to comply with the recommendations of the Final Report of the Truth Commission 25 years after its publication.

recognizes important recent advances in this area, starting with the declaration of unconstitutionality of the Amnesty Law. This year, the Constitutional Chamber of the Supreme Court of Justice issued rulings on cases of forced disappearance during the armed conflict. Also, the Unit on Crimes of the Armed Conflict was created in the Prosecutor's Office to prosecute crimes of the armed conflict, as well as the National Commission for the Search of Disappeared Persons in the Context of the Armed Conflict (CONABUSQUEDA), an autonomous entity in charge of searching for persons who disappeared during the armed conflict in the country³⁵.

However, there is still stagnation in terms of memory, truth, justice and comprehensive reparations for victims. According to the United Nations, only 3 of more than 100 criminal charges have been opened since the Amnesty Law was declared unconstitutional. In addition, information received by the Commission indicates that the Armed Forces do not provide information on cases of the armed conflict. Regarding the right to reparation, a law guaranteeing integral reparation to victims is still pending approval³⁶.

The IACHR urges the State to create and strengthen transitional justice mechanisms in order to comply with international standards on the matter. In particular, the Commission urges the State to file new criminal charges for crimes that occurred during the armed conflict and to approve a comprehensive reparations law for the victims of the armed conflict in accordance with Inter-American standards³⁷.

Press Release 335/19 On preliminary observations of your on-site visit to El Salvador

The Commission has monitored with special attention the processing of the draft National Reconciliation Law initiated as a result of the unconstitutionality process No. 44-2013/145-2013. During the on-site visit, the Constitutional Chamber of the CSJ informed the IACHR that it extended for the third time - until February 28, 2020 - the deadline for the Legislative Assembly to approve a draft bill that complies with the standards dictated in the 2016 Judgment and 2018 Follow-up Resolution. In the dialogue established with the Legislative Branch, the IACHR reinforced the importance that the legal initiative complies with the international obligations assumed by the Salvadoran State on transitional justice issues and considers the voices of the victims. In particular, the IACHR has pointed out the

³⁵ IACHR. [Press Release 74/18](#), IACHR urges El Salvador to comply with the recommendations of the Final Report of the Truth Commission 25 years after its publication.

³⁶ IACHR. [Press Release 74/18](#), IACHR urges El Salvador to comply with the recommendations of the Final Report of the Truth Commission 25 years after its publication.

³⁷ IACHR. [Press Release 74/18](#), IACHR urges El Salvador to comply with the recommendations of the Final Report of the Truth Commission 25 years after its publication.

inadmissibility of amnesty provisions, statute of limitations provisions and the establishment of exclusions of responsibility that seek to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, summary, extra-legal or arbitrary executions and forced disappearances, all of which are prohibited because they contravene non-derogable rights recognized by international human rights law. The IACHR also appreciates that the Presidency of the Legislative Assembly has acknowledged the State's debt in this area and has committed to develop the draft bill with the support of the Inter-American Commission, the United Nations and recognized human rights experts³⁸.

Press Release 2/20

The IACHR is concerned that the content of the current preliminary draft may limit investigations and sanctions for serious violations committed during the internal armed conflict. The Commission recalls that war crimes and crimes against humanity are unlawful and imprescriptible international crimes, regardless of the date on which they were committed. In this regard, the IACHR has pointed out the State's duty to remove any de jure and de facto obstacle that prevents the investigation and prosecution of such acts and, where appropriate, the punishment of those responsible, as well as the search for the truth. In addition, the Commission has pointed out the obligation of every power, organ or authority of the State Party to the Convention to carry out the control of conventionality so that the human rights of the persons subject to its jurisdiction are respected and guaranteed³⁹.

28. In the case of **Argentina**, the Commission noted that the effect of the enactment of the Full Stop Law No. 23,492 and Due Obedience Law No. 23,521 and Decree No. 1002 was to extinguish pending prosecutions against those responsible for past human rights violations. With such measures, any legal possibility of continuing the criminal trials aimed at proving the crimes denounced; identifying their perpetrators, accomplices, and accessories; and imposing the corresponding criminal sanctions was closed. The Laws and the Decree sought and, in effect, prevented the exercise of the right emanating from Article 8(1) of the American Convention⁴⁰.

³⁸ IACHR. [Press Release 335/19](#). IACHR presents preliminary observations from its on-site visit to El Salvador. Washington, DC December 27, 2019.

³⁹ IACHR. [Press Release 2/20](#). IACHR calls on the State of El Salvador to ensure that the National Reconciliation Law initiative ensures the rights of victims of the internal armed conflict, January 10, 2020.

⁴⁰ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 93; IACHR, Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, 2 October 1992, para. 32.

29. More recently, in the context of a contentious case, the Commission reiterated Argentina's international responsibility during the period in which these laws were enforced and highlighted the historical relevance of the lawsuits initiated thereafter in the following terms:

161. As indicated in the section on the determination of the facts, on December 24, 1986 and June 8, 1987, Laws No. 23,492, known as "Punto Final", and No. 23,521, known as "Obediencia debida", were enacted, respectively, which, together with the pardons decreed by President Carlos Menem (No. 1002/98 and others), caused a large number of criminal cases that had been opened after the return to democracy in order to investigate the acts committed during the dictatorship to be paralyzed. 1002/98 and others), caused a large number of criminal cases that had been opened after the return to democracy in order to investigate the acts committed during the dictatorship to be paralyzed. These laws were declared null and void by Law 25.779 and later declared unconstitutional by the CSJN on June 14, 2005⁴¹.

162. Therefore, for more than 18 years, the "Full Stop" and "Due Obedience" laws resulted in a situation of total impunity with respect to the crimes against humanity perpetrated against the Julien-Grisonas family, which, according to the constant jurisprudence of the Inter-American system, as serious human rights violations, cannot be amnestied. During this long period, any attempt to obtain justice for the Larrabeiti Yáñez brothers was frustrated. Therefore, by approving, enforcing and applying the "Full Stop" and "Due Obedience" laws, which had a direct impact on the possible clarification of the facts, the State violated Articles 8(1) and 25 of the Convention, in relation to Articles 1(1) and 2 of the Convention and Article I(b) of the CIDFP, to the detriment of the Larrabeiti brothers and their biological mother and father⁴².

163. The Inter-American Commission recognizes the importance of the judgment of unconstitutionality issued on June 14, 2005 by the CSJN in the "Simón, Julio Héctor" case. It also recognizes and highlights the efforts made by the Argentine State in the area of public policies of memory, truth and justice after the nullification of Laws 23.492 and 23.521, and in particular the numerous criminal cases ~~for~~ of serious human rights violations brought since then. With this turn of events, Argentina ~~took up~~ reached the historic milestone of the 1985 Trial of the Juntas, which is the cornerstone of Argentina's transition to democracy and is also of special international relevance

⁴¹ IACHR. Report No. 56/19. Case 13.392. Admissibility and Merits. Julien Grisonas Family. Argentina. May 4, 2019. Para. 160.

⁴² IACHR. Report No. 56/19. Case 13.392. Admissibility and Merits. Julien Grisonas Family. Argentina. May 4, 2019. Para. 161.

as the first country in the world to try its military leadership for human rights violations immediately after the return to democracy. The Commission emphasizes that Argentina has been recognized internationally as an example of memory, truth and justice⁴³.

30. In the case of **Uruguay**, the Commission has indicated for decades that "Expiration Law No. 15.848 had the intended effect of closing all criminal trials for past human rights violations. This closed any legal possibility of a serious and impartial judicial investigation aimed at proving the crimes denounced and identifying their perpetrators, accomplices and accessories"⁴⁴. Likewise, the IACHR held that "the fact that the Statute of Limitation (Ley de Caducidad) [had] not been applied by the Uruguayan justice system in several cases [was] a significant advance, but it was not sufficient to satisfy the requirements of Article 2 of the American Convention. Not only did the State fail to annul the amnesty law or render it null and void as incompatible with its obligations under the American Convention, but it also failed to provide a remedy that would allow for the resumption of the judicial proceedings filed under the statute of limitation (Ley de Caducidad)"⁴⁵.
31. More recently, the Commission recalled in another contentious case against Uruguay that:

110. 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, extra-legal or arbitrary executions and forced disappearances, all of which are prohibited because they contravene rights that are non-derogable under international human rights law⁴⁶, are inadmissible.

32. It added that, although the State reported that in the specific case the investigations "are currently active," in any case "the Expiry Law constituted an obstacle to the investigations of the facts at different times," which compromised its international responsibility due to its unconstitutionality.⁴⁷ which compromised its international responsibility due to its inappropriateness. Thus, the IACHR continues to reiterate that the application of the Expiration Law in specific cases, even if it had been subsequently remedied, "constituted a gross failure to comply with the State's

⁴³ IACHR. Report No. 56/19. Case 13.392. Admissibility and Merits. Julien Grisonas Family. Argentina. May 4, 2019. Para. 162.

⁴⁴ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 94. Citing: IACHR, Report No. 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Uruguay, 2 October 1992, paras. 35-36.

⁴⁵ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 94. Citing: IACHR. Application to the Inter-American Court of Human Rights in Case 12.607, Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena v. Uruguay, 21 January 2010, para. 73.

⁴⁶ IACHR. Report No. 169/19. Case 12.889. Merits. Diana Maidanik et al. Uruguay. November 9, 2019. Para. 110.

⁴⁷ IACHR. Report No. 169/19. Case 12.889. Merits. Diana Maidanik et al. Uruguay. November 9, 2019. Para. 115.

obligation to investigate and punish serious human rights violations, and to adopt provisions of domestic law, which implies ensuring that no regulatory obstacle prevents the investigation of such acts⁴⁸. In a more recent pronouncement, the Commission indicated that:

Press Release 158/19

On repeated occasions, the Commission has affirmed the inadmissibility of amnesty provisions, statute of limitations provisions and the establishment of exclusions of liability that seek to prevent the investigation and punishment of those responsible for serious human rights violations. In the case of Uruguay, through a communiqué of May 31, 2019, the IACHR expressed concern about the permanence of judicial interpretations in criminal proceedings that deny the imprescriptibility of the serious human rights violations during the period of the Uruguayan dictatorship.

Although this decision [decision of the Supreme Court of Justice in the case [of the victim Gerardo Alter] constitutes an advance in the investigation of the facts of the case, it is essential that the judicial authorities declare the grave human rights violations committed during the civil-military dictatorship to be imprescriptible, in accordance with Inter-American standards. In the present case, the decision of the Supreme Court of Justice revolved around the computation of the statute of limitations. The IACHR reiterates the obligation of the Uruguayan State established by the Inter-American Court of Human Rights in the Gelman Case, to refrain from applying the "statute of limitations, non-retroactivity of criminal law, res judicata, ne bis in idem or any similar exclusion of liability"⁴⁹.

33. In the case of **Chile**, the Commission has considered since the 1990s that "self-amnesty was a general procedure by which the State renounced to punish certain serious crimes. Moreover, the decree, as applied by the Chilean courts, not only prevented the possibility of punishing the perpetrators of human rights violations, but also ensured that no accusations were made and that the names of those responsible (beneficiaries) were not known, so that, legally, they were considered as if they had not committed any illegal act. The amnesty law resulted in the legal ineffectiveness of the crimes and left the victims and their families without any judicial recourse through which to identify those responsible for the human rights violations committed during the military dictatorship, and to impose the corresponding punishments"⁵⁰. Therefore, the IACHR indicated that "the Chilean State, through its Legislative Branch, is responsible for the failure to adapt or

⁴⁸ IACHR. Report No. 169/19. Case 12.889. Merits. Diana Maidanik et al. Uruguay. November 9, 2019. Para. 116.

⁴⁹ IACHR. Press Release 158/19. IACHR takes note of judicial decision in Uruguay limiting the application of the statute of limitations in crime committed during the civil-military dictatorship June 24, 2019.

⁵⁰ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 95. Citing: IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, 15 October 1996, para. 70.

repeal de facto Decree-Law No. 2.191 of April 19, 1978, in violation of the obligations assumed by the State to adapt its norms to the precepts of the Convention, thereby violating Articles 1(1) and 2 of the Convention⁵¹. In addition, the Commission indicated that "[n]otwithstanding that the Supreme Court emphasized the fact that civil and criminal proceedings are independent, the manner in which the amnesty was applied by the courts clearly affected the right to obtain reparation in the civil courts, given the impossibility of individualizing or identifying those responsible"⁵².

34. In the case of **Peru**, the Commission noted that Amnesty Law No. 26,479 constituted an interference in the judicial function and that Judicial Interpretation Law No. 26,492 not only failed to provide an effective remedy, but went further, denying any possibility of filing any remedy or exception for human rights violations⁵³. Consequently, the IACHR recommended that the State repeal these laws because they were incompatible with the American Convention, and that it proceeds to investigate, prosecute and punish State agents accused of human rights violations, especially violations involving international crimes⁵⁴.
35. In multiple cases, the IACHR has continued to declare the unconstitutionality of the Amnesty Law and the international responsibility of the State while it remained in force, including references to the impact that its enforcement had in delaying investigations of serious human rights violations. More recent cases have indicated the following:

254. The Commission observes, according to the proven facts, that for 10 years (from July 4, 1995, the date on which the Criminal Chamber of the Superior Court of Huancavelica declared Amnesty Law No. 26479 applicable until the proceedings were shelved at the end of 2005), the victims' next of kin did not have an effective remedy to assert their rights. During the time that Amnesty Laws 26.492 and 26.479 remained in force, the criminal proceeding followed with respect to the present claim was archived, making it impossible to prosecute the State agents involved by virtue of the aforementioned legislation. Consequently, the aforementioned laws constituted a factor of delay in the investigations and impeded the clarification of the facts while they were in force, which is imputable to the State.

⁵¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 95. Citing: IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, 15 October 1996, para. 60.

⁵² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 95. Citing: IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, 15 October 1996, para. 65.

⁵³ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 96. Citing: Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev. 14 March 1997, Chapter V, Part 4, Section IV.C.

⁵⁴ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 96. Citing: Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., 14 March 1997, Chapter V, Part 4, Section VIII.6. See, also, IACHR, Application to the Inter-American Court of Human Rights in Case 11. 045, La Cantuta v. Peru, 14 February 2006, para. 117.

Therefore, the Commission concludes that during the ten years in which the amnesty laws were applied in the specific case, the State failed to comply with its obligation to adapt its domestic law to the Convention, contained in Article 2 of this instrument⁵⁵.

36. In another case he indicated that:

170. As a result of the foregoing, the Commission considers it proven that for seven years (from December 12, 1995 until January 21, 2003, the date on which the 16th Provincial Criminal Court of Lima ordered the case to be removed from the archives), the victims' next of kin did not have an effective remedy to assert their rights. During the time that the Amnesty Laws 26.492 and 26.479 remained in force, the criminal proceeding followed regarding the present claim was archived, making it impossible to prosecute the State agent involved by virtue of the aforementioned legislation. Consequently, the aforementioned laws constituted a factor of delay in the investigations and impeded the clarification of the facts while they were in force, which is imputable to the State⁵⁶.

37. In the case of **Suriname**, the Commission expressed its deep concern regarding the amnesty legislation approved by the Surinamese Parliament on April 5, 2012, which seeks to consolidate immunity for human rights violations committed during the military era (1982-1992) and eliminate the exception in the 1992 Amnesty Law that applies to crimes against humanity and war crimes. The IACHR also urged the authorities to adopt all necessary measures to comply with their obligation to investigate, prosecute and punish serious human rights violations committed during the military dictatorship⁵⁷.

38. In the case of **Haiti**, the Commission expressed its concern over the decision to apply a statute of limitations to crimes against humanity perpetrated during the Jean-Claude Duvalier regime in Haiti, adopted on January 30, 2012, by the examining the magistrate in charge of investigating the allegations. Already in 2011, the Commission underlined the duty of the Haitian State to investigate the serious human rights violations committed during the regime of Jean-Claude Duvalier and stressed that the torture, extrajudicial executions and forced disappearances committed during that regime are crimes against humanity and, as such, are imprescriptible and cannot be covered by an amnesty. The Commission urged the

⁵⁵ IACHR. Report No. 77/11. Case 10.392. Admissibility and Merits. Campesino Community of Santa Barbara. Peru. July 21, 2011. Para. 254.

⁵⁶ IACHR. Report No. 77/12. Case 11.581. Merits. Zulema Tarazona Arrieta et al. Republic of Peru. November 8, 2012. Para. 170.

⁵⁷ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 97. Citing: IACHR. [Press Release 38/12](#), IACHR expresses concern over Amnesty legislation in Suriname, April 13, 2012.

Haitian authorities to comply with their international obligation to investigate, prosecute and punish these crimes⁵⁸.

39. In the case of **Honduras**, the IACHR expressed its concern regarding the ambiguity of the Amnesty Decree approved by the National Congress on January 26, 2010. In particular, the Commission noted the reference made to political crime, the amnesty for conduct of a terrorist nature and the inclusion of the concept of abuse of authority without indicating its scope. For the IACHR, although the text contemplated certain exceptions for human rights violations, the language was ambiguous, and the decree did not establish precise criteria or concrete mechanisms for its application. The Commission therefore urged the Honduran authorities to review the decree considering the State's obligations under international treaties, especially the obligation to investigate, prosecute and punish serious human rights violations⁵⁹.
40. In the case of **Brazil**, the Commission ruled on Law No. 6.683/79, approved on August 28, 1979. The Commission considered that this law constituted an amnesty law by declaring the extinction of criminal responsibility of all individuals who had committed "political crimes or crimes related to these" during the period of the military dictatorship, between September 2, 1961, and August 15, 1979⁶⁰. The IACHR added that Brazilian courts have interpreted the amnesty law as preventing the criminal investigation, prosecution, and punishment of those responsible for serious human rights violations that constitute crimes against humanity, such as torture, extrajudicial executions and forced disappearances⁶¹. In this sense, the IACHR considered that Law No. 6.683/79 is contrary to the American Convention, "insofar as it is interpreted as an impediment to the criminal prosecution of serious human rights violations"⁶².
41. In the case of **Colombia**, with respect to the "Legal Framework for Peace" adopted prior to the signing of the Peace Agreement, the Commission noted that it was concerned about the concept of selectivity and the contemplated possibility of waiving the investigation and prosecution of serious human rights violations, as they would be incompatible with the State's obligations. The IACHR reiterated that

⁵⁸ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 98. Citing: IACHR, [Press Release 10/12](#), IACHR Urges Haitian Authorities to Investigate, Prosecute and Punish Serious Human Rights Violations, February 1, 2012. See also, IACHR, [Press Release 3/11](#), IACHR Reminds Haiti of its Continuing Duty to Investigate and Punish Human Rights Violations, January 19, 2011; [Press Release 11/13](#), IACHR Reminds Haiti of its Duty to Investigate and Punish Human Rights Violations and Urges that the Independence of the Judiciary be Guaranteed, February 20, 2013.

⁵⁹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 99. Citing: IACHR, [Press Release 14/10](#), IACHR expresses concern over Honduran Amnesty Decree, February 3, 2010.

⁶⁰ IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al (Guerrilla of Araguaia), Brazil, October 31, 2008, para. 97.

⁶¹ IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al (Guerrilla of Araguaia), Brazil, October 31, 2008, para. 100.

⁶² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 100. Citing: IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al. (Guerrilla of Araguaia), Brazil, 31 October 2008, para. 180.

the Inter-American human rights system has insisted that victims of serious human rights violations have the right to judicial protection and judicial guarantees to achieve the investigation and criminal prosecution of the perpetrators in the ordinary jurisdiction⁶³.

42. In its Report on Truth, Justice and Reparations in Colombia, the IACHR indicated the following regarding the relationship between the unwaivability of the State's duty to investigate and amnesty laws:

257. (...) the Commission reiterates that the jurisprudence of the organs of the inter-American system has consistently referred to the inalienability of the State's duty to investigate serious human rights violations and the incompatibility of amnesty laws that hinder compliance with this obligation, even in contexts of massive and systematic violations⁶⁴. In this regard, the Commission has for decades expressed its concern about amnesty laws that impede the prosecution of serious violations, as well as their incompatibility with the American Convention⁶⁵. Likewise, the Commission has submitted cases to the Inter-American Court in which it has determined the incompatibility of amnesties -and the consequent unwaivability of the duty to investigate- with the American Convention in cases of grave human rights violations in Peru (Barrios Altos and La Cantuta), Chile (Almonacid Arellano et al.), Brazil (Gomez Lund et al.), Argentina (Gelman et al.), El Salvador (Massacre of Mozote and nearby places).

258. In view of the foregoing, the Commission notes that the obligation to investigate serious human rights violations and its inalienable nature 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

⁶³ IACHR. [Press Release 144A/12](#), Preliminary Observations of the IACHR on the in loco visit to Colombia, Annex to Press Release 144/12 issued at the culmination of the in loco visit to Colombia, December 7, 2012.

⁶⁴ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 257. Citing: Thus, in the case of the Dos Erres Massacre, the Inter-American Court has stated that "[...] the failure to investigate serious acts against personal integrity such as torture and sexual violence in armed conflicts and/or within systematic patterns, constitute a breach of the State's obligations in the face of serious human rights violations, which contravene non-derogable norms (jus cogens) and generate obligations for States such as the obligation to investigate and punish such practices [...]" 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.

⁶⁵ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Thus, for example, in reference to Laws No. 23.492 and No. 23.521, and Decree No. 1002 (norms known as Due Obedience and Full Stop) in Argentina, the Commission stated that they sought and, in effect, prevented the petitioners from exercising their right under Article 8(1) cited above. By enacting and applying the Laws and the Decree, Argentina has failed in its obligation to guarantee the rights referred to in Articles 8(1), 25(1) and 1(1) of the American Convention. IACHR. Report No. 28/92. Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311. Argentina. October 2, 1992, paras. 37, 39 and 41.

dictatorships to democracy or processes of search for and consolidation of peace⁶⁶.

43. In the specific case of Colombia, the IACHR was able to take a position on the arguments of different actors according to which, considering international humanitarian law, there is a greater margin of acceptance of amnesties in contexts of transition from armed conflict to peace. In response to this argument, the IACHR recalled the inapplicability of amnesties in the case of serious human rights violations and that the determining factor in establishing the acceptability or not of amnesties is the type of act to which they apply, regardless of whether the corresponding act occurred in the context of an armed conflict or not, stating the following:

259. Secondly, the Commission then goes on to rule on the State's statement that, according to its interpretation of what was said by the Inter-American Court in relation to the interpretation of Article 6.5 of Protocol II Additional to the Geneva Conventions of 1949, it should be determined that, in contexts of transition from armed conflict to peace, amnesties are acceptable with the exception of international crimes⁶⁷.

260. In this regard, the Commission notes that Article 6.5 of Protocol II states:

5. At the cessation of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have taken part in the armed conflict or who are deprived of their liberty, interned or detained for reasons related to the armed conflict⁶⁸.

261. The Commission notes that the aforementioned text authorizes the possibility of granting an amnesty, however, such amnesty is not absolute, but rather, according to the text of the article itself, it must be granted in the "broadest possible terms", however, the article itself does not indicate the limits to be observed⁶⁹.

262. In this regard, the Commission notes that the Inter-American Court has referred to Article 6(5) of Protocol II in the case of the *Massacre of El Mozote and other nearby places v. El Salvador* and in the

⁶⁶ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 258.

⁶⁷ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 259.

⁶⁸ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 260

⁶⁹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 261.

case of *Gelman v. Uruguay*⁷⁰. In both cases the Court referred to the study of customary rules of international humanitarian law that was entrusted to the ICRC by the XXVI International Conference of the Red Cross and Red Crescent in Geneva (1995)⁷¹. In that study, as cited by the Court, the International Committee of the Red Cross noted a position put forward by the Union of Soviet Socialist Republics (hereinafter "USSR") during the process of approval of that article of the Protocol, according to which that provision "could not be interpreted [...] in such a way as to allow war criminals, or other persons guilty of crimes against humanity, to escape severe punishment"⁷². The Court in turn cited an ICRC study which indicates as a customary rule that: "[w]hen hostilities have ceased, the authorities in power shall endeavor to grant the broadest possible amnesty to those who have participated in a non-international armed conflict or to persons deprived of their liberty for reasons related to the armed conflict, except persons suspected, accused or convicted of having committed war crimes"⁷³.

263. From the foregoing, the Colombian State understands that taking into account its interpretation of the analysis made by the Inter-American Court in the case of the *Massacre of the Mozote Massacre and nearby places*, the Commission must consider that international law prohibits the application of amnesties in the context of the search for peace, exclusively with respect to "international crimes"⁷⁴.

⁷⁰ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 262. Citing: See respectively I/A Court H.R., Case of *Gelman v. Uruguay*, Merits and Reparations. Case of *Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011 Series C No.221 para. 210 and 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. 286.

⁷¹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 262. Citing: 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. 286 and Case of *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, para. 210.

⁷² IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 262. Citing: I/A Court H.R. Case of *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, para. 210, citing International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 692.

⁷³ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 262. Citing: 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, footnote. 461.

⁷⁴ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 263. Citing: Observations of Colombia to the Draft Report of the Inter-American Commission on Human Rights. Note S-GAIIID-13-048140, December 2, 2013, para. 200; and Annex 1. Section b, para. 25.

264. In this regard, the Commission considers it pertinent to indicate, first, that in accordance with its mandate established by the Convention and the American Declaration, it is incumbent upon it to verify compliance with the obligation to investigate serious violations according to the specific characteristics of each case, without the exercise of this power being conditioned to categories of violations and/or crimes established *a priori*⁷⁵.

269. Therefore, in light of the foregoing considerations, the IACHR observes that the ICRC study i) is a compendium of existing State practices that have been identified as international custom, and, in any case, the treaty obligations of States may vary according to the international instruments to which they are party and the obligations they derive from them; ii) it does not refer to the international human rights obligations that govern States; iii) it does not make distinctions as to a standard applicable to processes of transition to peace or from dictatorships to democracy; and finally, iv) the study itself recognizes the limitations to amnesties that have been pointed out by international human rights bodies in accordance with the obligations that emanate from international treaties on the subject⁷⁶.

271. In this regard, according to the content of the decisions invoked by the Court in that judgment, in its *Report on the Situation of Human Rights in El Salvador*, the IACHR noted that the Government of El Salvador argued that the amnesty sanctioned by its Legislative Assembly was based on the provisions of Protocol II Additional to the Geneva Conventions. The Commission indicated that this protocol "cannot be interpreted in the sense of evading the human rights violations set forth in the American Convention"⁷⁷.

273. In sum, in view of the foregoing considerations, the Commission considers it pertinent to reiterate its constant jurisprudence in the

⁷⁵ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 264.

⁷⁶ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 269. Citing: The Commission highlights that, as the Inter-American Court has recently indicated in the case of the Santo Domingo Massacre, the "American Convention does not establish limitations to the competence of the Court to hear cases in situations of armed conflict" and "by using international humanitarian law as a rule of interpretation complementary to conventional law," it "is not assuming a hierarchy between normative orders" but rather implies that it "can observe the regulations of IHL, as specific regulations on the matter, to give more specific application to conventional law in defining the scope of State obligations." I/A Court H.R. Case of the Santo Domingo Massacre v. Colombia. Judgment on Preliminary Objections, Merits and Reparations of November 30, 2012. Series C No. 259, para. 24.

⁷⁷ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#) OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 271. Citing: Cf. IACHR, [Report on the Situation of Human Rights in El Salvador](#), Case No. 11.138, in document OEA/Ser.L/V/II.85, Doc. 28 rev. of 11 February 1994, General Conclusions, para. C.

sense that the State's duty to investigate, in harmony with the norms of IHL and international human rights law, the serious human rights violations committed during the armed conflict subsists. The waiver of this obligation, whether through the application of amnesty laws or any other type of domestic provision, is incompatible with the American Convention⁷⁸.

2. Prohibition of the Application of the Statute of Limitations

44. The organs of the inter-American system have indicated that "the statute of limitations in criminal matters determines the extinction of the punitive claim due to the passage of time, and generally limits the punitive power of the State to prosecute the unlawful conduct and punish its perpetrators⁷⁹. Likewise, they have indicated that the statute of limitations must be duly observed by the judge when it is applicable to the case of a person accused of having committed a crime⁸⁰. However, the jurisprudence of the Inter-American system indicates the inapplicability of the statute of limitations in certain cases: i) in situations of clear obstruction of justice; and ii) in cases of serious human rights violations⁸¹. In a recent case against Chile, the IACHR recapitulated the standards of the Inter-American system on each of these assumptions of inapplicability of the statute of limitations.
45. Regarding the first assumption, the IACHR recalled the following Inter-American standards:

111. (...) is unacceptable when it has been clearly proven that the passage of time has been determined by procedural actions or omissions aimed, with clear bad faith or negligence, to promote or allow impunity. Thus, the Court reiterates what it has stated on other occasions, in the sense that "[t]he right to effective judicial protection requires [...] judges to direct the process in such a way as to prevent undue delays and hindrances from leading to impunity, thus

⁷⁸ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 273.

⁷⁹ I/ Court H.R., Case of Albán Cornejo et al. Vs. Ecuador. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, para. 111.

⁸⁰ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 110. Citing: IACHR Court. Judgment compliance resolution. Loayza Tamayo Case. July 1, 2011. Citing: Case of Barrios Altos v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75, para. 41; Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 171, and Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, para. 225.

⁸¹ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 110.

frustrating the due judicial protection of human rights"⁸². Likewise, the Court has pointed out that "when a State has ratified an international treaty such as the American Convention, its judges, as part of the State apparatus, are also subject to it, which obliges them to ensure that the effects of the provisions of the Convention are not diminished"⁸³. In other words, the statute of limitations yields to the rights of the victims when there are situations of obstruction of the obligation to identify, prosecute and punish those responsible for a crime⁸⁴.

46. Regarding the second assumption, it recalled that the IACHR itself⁸⁵ has determined that the application of the statute of limitations violates the American Convention in cases of serious human rights violations such as the forced disappearance of persons, extrajudicial execution, and torture, without it being necessary for these crimes to have taken place in contexts of massive and systematic violations⁸⁶. It also reiterated that "in certain circumstances, international law considers inadmissible and inapplicable the statute of limitations[,] as well as amnesty provisions and the establishment of exclusions of responsibility, in order to maintain in time the punitive power of the State over conduct whose gravity makes its repression necessary to prevent its recurrence⁸⁷. The IACHR also emphasized that this formulation on the prohibition of the statute of limitations in cases of serious human rights violations has also been maintained by the organs of the system when such serious human rights violations occurred in the context of internal armed conflicts⁸⁸.

⁸² IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 111. Citing: IACHR Court. Judgment compliance resolution. Loayza Tamayo Case. July 1, 2011. Citing: Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 115; Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 116; Case of Carpio Nicolle et al. v. Guatemala. Supervision of Compliance with Judgment. Judgment of the Inter-American Court of Human Rights of July 1, 2009, Whereas fourteen, and Case of Ivcher Bronstein v. Peru. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 24, 2009, Whereas seventeen.

⁸³ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 111. Citing: IACHR Court. Judgment compliance resolution. Loayza Tamayo Case. July 1, 2011. Citing: Case of Almonacid Arellano et al. v. Chile.

⁸⁴ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 111. Citing: IACHR Court. Judgment compliance resolution. Loayza Tamayo Case. July 1, 2011. Para. 40.

⁸⁵ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 112. Citing: IACHR, Report No 35/98, Case 12.019, Antonio Ferreira Braga, Brazil, July 19, 2008.

⁸⁶ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 112.

⁸⁷ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 113. Citing: I/A Court H.R., Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010 Series C No. 217, para. 207.

⁸⁸ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 115. Citing: See for example. I/A Court H.R., Case of the Massacres of El Mozote and nearby places v. El

47. In multiple cases of serious human rights violations, the Inter-American Commission has made specific recommendations on the duty to investigate, prosecute and punish those responsible, emphasizing emphatically that in the framework of compliance with this obligation, the State may not invoke the statute of limitations to justify non-compliance. Likewise, when necessary, the IACHR has expressly recommended "adopting 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 standards⁸⁹.

3. Considerations on the Figure of the Pardon

48. Although the issue of pardon had been generally mentioned by the bodies of the inter-American system as one of the legal figures that could not be invoked as an excuse for failing to comply with the obligation to investigate, prosecute and punish in cases of serious human rights violations, unlike amnesties and statutes of limitation, the IACHR had not had the opportunity to make a specific pronouncement on this issue, until the pardon of Alberto Fujimori in Peru in 2017.
49. The Inter-American Commission expressed its position on the matter in a press release in the following terms:

Press Release 218/17

The Inter-American Commission on Human Rights (IACHR) expresses its deep concern over the Peruvian government's decision to grant a humanitarian pardon to former Peruvian President Alberto Fujimori, who has been sentenced to 25 years in prison for serious human rights violations. The Inter-American Court and the IACHR have pronounced on several alarming cases of human rights violations in which Alberto Fujimori was involved as perpetrator-by-means, including the massacre of fifteen people in Barrios Altos and the forced disappearance and execution of ten students from La Cantuta University.

According to a press release from the Peruvian Presidency, Alberto Fujimori presented a request for a humanitarian pardon on the grounds that he suffers from serious non-terminal illnesses that would put his life at risk. The official medical board determined that Alberto Fujimori suffers from a progressive, degenerative and incurable disease and that prison conditions pose a serious risk to his life, health and integrity. This report was endorsed by the Presidential Thanks Commission and served as the basis for the

Salvador. 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. 283.

⁸⁹ IACHR. Report No. 169/19. Case 12.889. Merits. Diana Maidanik et al. Uruguay. November 9, 2019. Para. 122.

Peruvian President to grant Fujimori a humanitarian pardon on December 24, 2017, and he was immediately released.

Presidential pardon is a discretionary constitutional power of the President of the Republic, but it must be governed by constitutional principles and international human rights standards. In this sense, the Commission expresses its concern that the pardon of Alberto Fujimori does not comply with fundamental legal requirements, nor with elements of due process and the independence and transparency of the technical evaluation board.

The participation of the private physician of the convicted person in the medical board that made the report advising the pardon flagrantly violates the requirement of independence and objectivity of this board. Likewise, the existence of serious non-terminal illnesses would require the transfer of the convicted person to a hospital for as long as his health requires it, a less restrictive measure to the right of the victims to justice, since the pardon grants a pardon of the sentence, which is something different from the medical attention that the convicted person may require and receive. The decision also disregards the principle of proportionality between the pardon of the sentence and the gravity of the crimes against humanity. Crimes against humanity are those that offend the general principles of law and become a concern of the international community, constituting a very serious offense to human dignity and a flagrant denial of the fundamental principles enshrined in the American Convention on Human Rights, and therefore should not go unpunished.

Both the Commission and the Inter-American Court of Human Rights have recognized that the improper granting of benefits in the execution of sentences may eventually result in a form of impunity, especially in the case of serious human rights violations. The Commission emphasizes that international human rights law prohibits the application of amnesties, pardons and other exclusions of responsibility to persons who have been found guilty of crimes against humanity.

The IACHR recalls that, in 2011, the Inter-American Court of Human Rights found that the crimes perpetrated in the La Cantuta case constitute crimes against humanity. Similarly, in 2001, in the Barrios Altos case, the Court classified the acts committed by the former president as serious human rights violations. The IACHR expresses its deep concern that by suppressing the effects of convictions for crimes against humanity and serious human rights violations in favor of Alberto Fujimori, the Peruvian State failed to comply with the provisions of the judgments of the Inter-American Court and disregarded its international obligations. The granting of the pardon to Alberto Fujimori does not take into account the particularities of

crimes against humanity, nor the right to justice of the victims and their families.

The IACHR will work with the Inter-American Court of Human Rights to hold a public hearing to jointly supervise compliance with the judgments handed down in the La Cantuta and Barrios Altos cases. Also under consideration is the possibility of convening an *ex officio* thematic hearing during the next period of sessions of the IACHR, to be held in February. Peru has always been considered an international reference in the fight against impunity for serious crimes against human rights and the circumstances demand a new evaluation.

On the other hand, the fact that together with the pardon of the sentences imposed on Fujimori, his exclusion from any criminal proceedings against him is also granted as a presidential pardon, violates the international obligation of the Peruvian State, reaffirmed in judgments of the Inter-American Court, regarding the duty to investigate human rights violations, punish those responsible and make reparations to the victims. Thus, for example, by unduly impeding the continuity of the criminal proceedings against Fujimori for the crimes committed in Pativilca (whose trial was authorized by the Chilean Supreme Court in the respective extradition proceedings), it prevents the truth from being clarified, the perpetrators from being identified and punished, and the victims from being granted justice and reparations, regardless of the fact that an eventual conviction of Fujimori might not lead to his being sent back to prison, in accordance with the humanitarian pardon granted.

The pardon took place in the midst of a political crisis in Peru that has been the subject of consternation, particularly for its serious effects on the protection of human rights in the country. The context of its adoption prevents the decision from being transparent and unquestionable. The consequences of the measure applied are particularly serious for historically excluded individuals, groups and collectivities, as well as for the victims of such grave human rights violations and their families.

Finally, in the context of the violent reaction of State security forces against peaceful demonstrations in protest against the granting of the pardon, the IACHR rejects any form of violence and recalls that the repression of mobilization and social protest is incompatible with a democratic society where people have the right to express their opinion peacefully.

The IACHR rejects the pardon of Alberto Fujimori as a decision contrary to the international obligations of the State of Peru and calls

for the adoption of the necessary measures to restore the rights of the victims who were affected by this decision⁹⁰.

50. Subsequently, during the public hearing held by the Inter-American Court on the matter, the Commission held the following:

17 b) In both the universal and European human rights systems, there are pronouncements on the incompatibility of granting not only amnesties, but also pardons or pardons in cases of serious human rights violations. These are legal figures that international human rights law prohibits the use of in cases of serious human rights violations.

c) The application of a legal figure such as pardon, which prevents the satisfaction of the victims' right to justice, is even more serious and reprehensible when it comes to crimes against humanity.

d) There is no minimum parameter of proportionality between the purpose of adopting necessary measures to guarantee access to the medical attention required by Alberto Fujimori and the pardon for humanitarian reasons, taking into account the intense impact on the right to justice and the dignity of the victims and their families. Although persons deprived of their liberty have the right to be treated with dignity and to receive adequate medical care, to achieve these ends it is not necessary to use the figure of pardon, which implies a pardon and the extinction of the sentence; rather, there are multiple means that are less harmful to the rights of the victims.

e) There are substantial and procedural irregularities in the processing of the request for pardon, and he remarked that the illegitimacy of its granting is even more evident since it occurred in a context of political crisis due to the presidential vacancy process that was] underway.

f) While transitional justice and reconciliation processes are relevant and necessary in certain contexts, there is a clear distinction between a unilateral discretionary decision of the Executive Branch and a peace process in which society in general and all branches of government participate so that these processes fulfill the purpose for which they were conceived. Moreover, the supposedly humanitarian pardon not only discourages the reconciliation process that was underway, but has precisely the opposite effect, affecting the process of rescuing the civic trust of the victims of grave violations in their

⁹⁰ IACHR. [Press Release 218/17](#), IACHR expresses deep concern and questions the pardon granted to Alberto Fujimori.

own State, which one day offered them justice and then took it away from them⁹¹.

4. *Non bis in idem* and fraudulent *res judicata*

51. On some occasions, the organs of the inter-American system have been confronted with situations in which, at the time of issuing their pronouncements, there are final acquittals in favor of alleged perpetrators of serious human rights violations. When such acquittals were handed down in the context of proceedings that openly disregarded inter-American standards on truth and justice with respect to the corresponding violations, a tension arises between the guarantee of *ne bis in idem* provided for in the Convention itself (Article 8(4)) and the right of the victims and their next of kin to have the facts investigated and those responsible tried and punished.
52. To address this tension, both the IACHR and the Inter-American Court have resorted to the concept of fraudulent *res judicata*. Although relatively few pronouncements have addressed this tension, they have been clear in pointing out that there are circumstances in which the guarantee of *ne bis in idem* must yield to the rights of victims of serious human rights violations.
53. Thus, for example, when establishing recommendations in cases in which there is a final acquittal, the IACHR has made the following considerations:

156. Taking into account that to date there is a judgment of acquittal at the domestic level of the only person indicated by the victim as the alleged perpetrator, the Commission recalls the concept of "fraudulent *res judicata*" and its relationship with the principle of *ne bis in idem*. As the Court pointed out in the *Case of Gutiérrez and family v. Argentina*, to assume that the provisions of Article 8(4) of the American Convention would apply in all circumstances would imply that the decision of a national judge would take precedence over what one of the inter-American organs may decide in accordance with the American Convention⁹². It would also imply, consequently, that the application, in all circumstances, of the aforementioned Article 8(4) of said treaty, could lead, in the end, to impunity and inapplicability of the corresponding international norms, which is not in accordance with the object and purpose of the Convention⁹³.

⁹¹ 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.

⁹² IACHR. Case 12.690. Report No. 4/16. Merits. V.R.P and V.P.C. Nicaragua. April 13, 2016. Para. 156. Citing: I/A Court H.R. Case of Gutiérrez and Family v. Argentina. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 130.

⁹³ IACHR. Case 12.690. Report No. 4/16. Merits. V.R.P and V.P.C. Nicaragua. April 13, 2016. Para. 156. Citing: I/A Court H.R. Case of Gutiérrez and Family v. Argentina. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 130.

54. In this way, the IACHR has endorsed the pronouncements made by the IACHR Court on the matter and has given them concrete implications within the framework of the petition and case system. Among these pronouncements, the following are noteworthy:

42. At this point, one of the developments of the principle of legal certainty is constituted by institutions such as *res judicata*, which allows judicial proceedings to contribute to the resolution of conflicts by generating the finalization of controversies. In criminal law, the value of *res judicata* is even stronger in order to avoid a disproportionate exercise of the punitive power of the State, aimed at prosecuting again and again the same defendant for the same acts for which he has already been tried. However, it is possible to establish limitations to the right to *ne bis in idem* in order to develop other values and rights that, in a specific case, may be of greater importance⁹⁴.

43. In order to determine the scope of the limitation to these criminal guarantees, it is convenient to distinguish between punishable acts in general and serious human rights violations. In relation to punishable acts in general, where serious human rights violations are not involved, in certain cases, certain restrictions to the principle of *res judicata* may not be applicable because the respective acts do not include particularly serious conduct and the lack of results in a given investigation is not related to procedural actions or omissions aimed, with clear bad faith or negligence, at favoring or allowing impunity⁹⁵.

44. However, when it comes to serious and systematic human rights violations, as in the present case, the impunity in which these conducts may remain due to the lack of investigation, generates a fairly high impact on the rights of the victims. The intensity of this affectation not only authorizes but also requires an exceptional limitation to the *ne bis in idem* guarantee, in order to allow the reopening of these investigations when the decision alleged as *res judicata* arises as a consequence of the gross breach of the duties to investigate and seriously punish these serious violations. In these events, the preponderance of the rights of the victims over legal certainty and *ne bis in idem* is even more evident, given that the victims were not only injured by atrocious behavior but must also endure the indifference of the State, which manifestly fails to comply with its obligation to clarify these acts, punish those responsible and make reparations to those affected. The gravity of what happened in

⁹⁴ I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala*. Case of *Bámaca Velásquez v. Guatemala*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 18, 2010. Para. 42.

⁹⁵ I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala*. Case of *Bámaca Velásquez v. Guatemala*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 18, 2010. Para. 43.

these cases is of such magnitude that it affects the essence of social coexistence and, in turn, prevents any kind of legal certainty. Therefore, when analyzing the judicial remedies that may be filed by those accused of serious human rights violations, the Court emphasizes that the judicial authorities are obliged to determine whether the deviation in the use of a criminal guarantee can generate a disproportionate restriction of the rights of the victims, where a clear violation of the right of access to justice, blurs the criminal procedural guarantee of *res judicata*⁹⁶.

45. These restrictions to the principle of *res judicata* apply a fortiori to limit the scope of a dismissal, given that this procedural institution does not relate to a final judgment on the guilt or innocence of a person, although in some cases it is capable of putting an end to a proceeding⁹⁷.

51. In conclusion, both from the jurisprudence of the Court and from some decisions in comparative law, it is possible to conclude that in the eventual tensions between the right of access to justice of the victims and the judicial guarantees of the accused, there is a *prima facie* prevalence of the rights of the victims in cases of serious human rights violations and even more so when there is a context of impunity. It is therefore necessary that the respective judicial authorities carefully analyze the circumstances and the specific context of each case so as not to generate a disproportionate restriction on the rights of the victims⁹⁸.

55. Based on these parameters and to exemplify the way in which this weighting could operate, in a case against Brazil and Argentina before the IACHR Court, the Commission indicated the following:

241. (...) in the instant case, the court that heard the case in which a federal police officer was acquitted had the purpose of absolving the accused of criminal responsibility, and there was no real intention to bring the perpetrator to justice. It also pointed out that "the severity of the impact on the Gutiérrez family due to the impossibility of obtaining justice in the face of an acquittal obtained in a manner incompatible with the Convention would not be justified by an absolute application of the *ne bis in idem* guarantee in favor of a

⁹⁶ I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala*. Case of *Bámaca Velásquez v. Guatemala*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 18, 2010. Para. 44.

⁹⁷ I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala*. Case of *Bámaca Velásquez v. Guatemala*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 18, 2010. Para. 45.

⁹⁸ I/A Court H.R., Case of *Bámaca Velásquez v. Guatemala*. Case of *Bámaca Velásquez v. Guatemala*. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 18, 2010. Para. 51.

person whose harm, in any case, could be compensated by strict respect for due process and the right to defense⁹⁹.

56. With respect to Brazil, the IACHR indicated that

226. It is clear from the Court's jurisprudence that a judgment pronounced in the circumstances indicated produces an "apparent" or "fraudulent" *res judicata*. The Court considers that if new facts or evidence appear that may allow the determination of those responsible for human rights violations, and even more, of those responsible for crimes against humanity, the investigations may be reopened, even if there is an acquittal as *res judicata*, since the demands of justice, the rights of the victims and the letter and spirit of the American Convention displaces the protection of *ne bis in idem*.

227. In the present case, one of the assumptions of "apparent" or "fraudulent" *res judicata* is met. In 2009, the 1st Federal Criminal Chamber decided to close the investigation opened into the facts of this case, considering that the closing of the investigation previously ordered by the state courts in 1993, in application of Law No. 6.683/79 (Amnesty Law) acquired the force of *res judicata* (*supra* paras. 127-128).

228. In the opinion of the IACHR, given its manifest incompatibility with the American Convention, the interpretation and application of Law No. 6.683/79 (Amnesty Law) in this case had the purpose of removing the alleged perpetrators from justice and leaving the crime committed against journalist Vladimir Herzog in impunity. Under this assumption, the State cannot use the principle of *ne bis in idem* to avoid complying with its international obligations.¹⁰⁰

5. Prohibition on the Use of Military Criminal Justice in Cases of Human Rights Violations

57. Another way of limiting access to justice for victims of serious human rights violations and their families, and the consequent right to know the truth about what happened, has been through military criminal jurisdiction. In this regard, the bodies of the inter-American human rights system have repeatedly and consistently established that military jurisdiction cannot be used to investigate and punish cases

⁹⁹ Summary of the position of the IACHR in: IACHR Court. Case of Gutiérrez and family v. Argentina. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271. Footnote 241.

¹⁰⁰ IACHR. Case 12.879. Report No. 71/15. Merits. Vladimir Herzog et al. Brazil. October 28, 2015. Para. 226-228.

of human rights violations¹⁰¹. The Commission's central and reiterated standard is that military jurisdiction can only be applied when military criminal legal rights are violated¹⁰².

58. In this regard, the Commission has consistently held that:

103. (...) the military criminal justice system has certain particular characteristics that prevent access to an effective and impartial judicial remedy in this jurisdiction. One of them is that the military jurisdiction cannot be considered a true judicial system, since it is not part of the Judicial Branch, but depends on the Executive Branch. Another aspect is that the judges of the military judicial system are generally members of the Army on active duty, which places them in the position of judging their fellow soldiers, making the requirement of impartiality illusory, since members of the Army often feel obliged to protect those who fight alongside them in a difficult and dangerous context.

Military justice should be used only to try active military personnel for the alleged commission of crimes in the strict sense of the term. Human rights violations should be investigated, tried and punished in accordance with the law, by the ordinary criminal courts. The inversion of jurisdiction in this matter should not be allowed, as it denaturalizes judicial guarantees, under a false illusion of efficiency of military justice, with serious institutional consequences, which in fact question the civil courts and the validity of the rule of law¹⁰³.

59. The Commission has also pointed out that crimes of function, which are crimes that can be heard by the military justice system, are "punishable act[s] [that] must occur as an excess or abuse of power occurring within the scope of an activity directly linked to the proper function of the armed force"¹⁰⁴. Moreover, "the link between the criminal act and the activity related to military service is broken when the crime

¹⁰¹ IACHR. The Right to the Truth in the Americas. Citing: See, inter alia, IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999; I/A Court H.R., Case of 19 Merchants v. Colombia. Case 19 Comerciantes v. Colombia. Judgment of July 5, 2004. Series C No. 109; Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140; Case of Vélez Restrepo and Family Members v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248.

¹⁰² IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 23.

¹⁰³ IACHR. The Right to the Truth in the Americas. Para. 103. Citing: IACHR, Report No. 2/06, Case 12.130, Miguel Orlando Muñoz Guzmán, Mexico, February 28, 2006, paras. 83, 84.

¹⁰⁴ IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999, para. 30.

is extremely serious; such is the case of crimes against humanity. In these circumstances, the case must be referred to the civilian justice system"¹⁰⁵.

60. Likewise, the Commission has indicated that military courts cannot be an independent and impartial body to investigate and judge human rights violations since in the armed forces there is an "entrenched *esprit de corps*," which is sometimes erroneously interpreted in the sense that it obliges the officers who make up the military criminal justice system to cover up crimes committed by their colleagues¹⁰⁶. In this sense, the IACHR considered that when military authorities judge actions whose active subject is another member of the Army, impartiality is hindered, because investigations into the conduct of members of the security forces handled by other members of those forces often serve to cover up the facts instead of clarifying them¹⁰⁷.
61. Regarding the specific implications of the use of military criminal justice in terms of impunity, in its third *Report on the Situation of Human Rights in Colombia*, the Commission noted that the problem of impunity in the country was aggravated by the fact that most cases involving human rights violations by members of the State security forces were prosecuted by the military criminal justice system. The IACHR indicated that in Colombia, specifically, military courts systematically refused to punish members of the security forces accused of human rights violations¹⁰⁸. It also identified that the problem of impunity in the military criminal justice system was not exclusively linked to the acquittal of defendants, but that the investigation of cases of human rights violations by the military justice system itself entailed problems of access to an effective and impartial judicial remedy. The IACHR emphasized that the investigation of these cases by the military justice system precluded the possibility of an objective and independent investigation by judicial authorities not linked to the hierarchy of command of the security forces¹⁰⁹.
62. In the framework of friendly settlements, the Commission has achieved structural changes with respect to the scope of military criminal justice. Thus, in a case related to violations of due process in the context of proceedings against military personnel in the military criminal justice system, the friendly settlement had a greater effect and ended in the elimination of that jurisdiction, with an important impact on the investigation and punishment of serious human rights violations, although the

¹⁰⁵ IACHR. Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 30; Application to the Inter-American Court of Human Rights in Case 12.449, Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico.

¹⁰⁶ IACHR. Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999, paras. 26-29.

¹⁰⁷ IACHR. The Right to the Truth in the Americas. Para. 106. Citing: IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 19.

¹⁰⁸ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 444. Citing: IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999, para. 17.

¹⁰⁹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 444. Citing: IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999, para. 19.

original subject of the case was the guarantees of due process in the context of the trial of military personnel. In this case, the IACHR assessed compliance as follows:

25. The Code of Military Justice was repealed in November 2007 and a new system was adopted under which crimes committed by the military will be tried by the ordinary justice system. The new law eliminates military jurisdiction and eradicates the death penalty. It also establishes a new disciplinary regime in which discriminatory sanctions related to homosexuality are eliminated and sexual harassment within the Armed Forces is sanctioned as a serious or very serious offense¹¹⁰.

26. Subsequently, the IACHR issued Press Release No. 36/08 of August 12, 2008, in which it expressed its deep satisfaction with the repeal of the Code of Military Justice in Argentina and the adoption of a new system, in compliance with the Friendly Settlement Agreement contained in Decree No. 1257/2007, signed on September 18, 2007. The Commission highly values the efforts made by the parties to achieve this solution and declares that it is compatible with the object and purpose of the Convention¹¹¹.

63. Finally, with respect to States that have attempted to adapt their military criminal justice norms to Inter-American standards by eliminating the application of such justice to human rights violations committed against civilians, the Commission has been clear in pointing out that these reforms are insufficient, since the prohibition on the use of military criminal justice is applicable in all cases of human rights violations, regardless of whether the victims are civilians or military personnel. The determining factor is the type of act and not the status of the victim. Thus, the IACHR has indicated in the face of a reform of this nature in Mexico that:

8. (...) this reform does not cover all the standards established by the Court in its judgment on the scope of military jurisdiction [... and] it is necessary to clearly state that military jurisdiction is not the competent jurisdiction to investigate, and if necessary, try and punish the perpetrators of human rights violations committed to the detriment of any person - including military personnel"¹¹².

¹¹⁰ IACHR. Report No. 15/10. Case 11.758. Friendly Settlement. Argentina. Rodolfo Luis Correa Belisle. March 16, 2010. Para. 25.

¹¹¹ IACHR. Report No. 15/10. Case 11.758. Friendly Settlement. Argentina. Rodolfo Luis Correa Belisle. March 16, 2010. Para. 26.

¹¹² I/A Court H.R., Case of Cabrera García and Montiel Flores v. Mexico. Case of Cabrera García and Montiel Flores v. Mexico. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of April 17, 2015. Para. 8.

6. The Obligation of States to Incorporate Certain Conducts as Criminal Offenses in Their Domestic Law¹¹³

64. The Inter-American Commission has referred on several occasions to the obligation of States to criminalize certain conducts constitutive of human rights violations as crimes in their domestic legal system. In response to the acts that have constituted deliberate practices in the framework of authoritarian governments and internal armed conflicts, the IACHR has expressed particularly on the classification of the crime of torture and that of forced disappearance. In this regard, the Commission has indicated that said obligation is part of the obligation to prevent the recurrence of these serious human rights violations¹¹⁴, one of the pillars of transitional justice. Likewise, the classification would be a legal consequence of Article 2 (Duty to Adopt Provisions of Domestic Law) of the American Convention, as well as of the Inter-American Convention to Prevent and Punish Torture (CIPST) and the Inter-American Convention on Forced Disappearance of Persons (CIDFP).¹¹⁵

65. Article 6 of the IACPST states, as relevant:

(...) States Parties shall ensure that all acts of torture and attempts to commit such acts are offences under their criminal law and shall provide for severe penalties for such acts which take into account their grave nature. (...).

66. Article III of the CIDFP states that:

The States Parties undertake to adopt, in accordance with their constitutional procedures, such legislative measures as may be necessary to establish the forced disappearance of persons as an offense and to impose an appropriate penalty that takes into account its extreme seriousness. Such crime shall be considered a continuing or permanent crime as long as the fate or whereabouts of the victim has not been established. States Parties may establish mitigating circumstances for those who have participated in acts constituting an enforced disappearance when they contribute to the appearance alive of the victim or provide information that allows for the clarification of the enforced disappearance of a person.

67. In several cases and through other mechanisms, the IACHR has pronounced not only on the need for criminalization of these conducts, but also on the appropriate

¹¹³ On this matter, see the [Compendium on the Obligation of States to Adapt Their Domestic Legislation to the Inter-American Standards of Human Rights](#). OEA/Ser.L/V/II. Doc. 11 25 January 2021.

¹¹⁴ IACHR. Case 11.552. Julia Gomes Lund and Others (Guerrilha do Araguaia). Brazil. March 26, 2009. Para. 253; IACHR. Compendium on the Obligation of States to Adapt Their Domestic Legislation to the Inter-American Standards of Human Rights. 2021. Para. 28.

¹¹⁵ IACHR. Case 12.527. Renato Ticona Estrada and Others. Bolivia. August 8, 2007. Para. 8.

criminalization in accordance with the constitutive elements thereof. An example of attribution of responsibility for the lack of criminalization of forced disappearance is the case of *Ibsen Cárdenas and Ibsen Peña v. Bolivia*. In this case, although the IACHR welcomed the subsequent criminalization, it attributed responsibility to the State for its failure to criminalize for a prolonged period. In the words of the IACHR:

302. At the time of the facts of the case, the crime of forced disappearance was not criminalized in Bolivia. The Bolivian State ratified the Inter-American Convention on Forced Disappearance of Persons on May 5, 1999. However, more than 6 years passed since the State assumed this obligation until the crime of forced disappearance was typified on January 18, 2006, through Law 3326, which was incorporated into the Penal Code (...).

303. The Commission appreciates the incorporation of the crime of forced disappearance of persons in the Bolivian Criminal Code and considers that it represents an important step forward in the development of laws in line with the principles established in the international human rights instruments ratified by the State. However, the Commission requests the Court to establish that between May 5, 1999 and January 18, 2006, the Bolivian State failed to comply with its obligation under Article III of the Inter-American Convention on Forced Disappearance of Persons, in relation to Article IV of said instrument¹¹⁶.

68. Another example has to do not with the lack of criminalization but with international responsibility for the inadequate criminalization of enforced disappearance based on the constitutive elements. In the case of *Tenorio Roca et al. v. Peru*, the IACHR recapitulated the position of the Inter-American system on the criminalization of enforced disappearance and its disagreement with the constitutive elements:

169. In the judgment of the Inter-American Court in the case of *Gómez Palomino vs. Peru* of November 22, 2005, said court concluded that the definition of the crime of forced disappearance provided for in Article 320 of the Peruvian Criminal Code does not conform to the Inter-American standards on the matter, and therefore ordered its modification in accordance with the definition provided for in Article III of the CISDFP. The aforementioned provision of the Peruvian Criminal Code establishes the following:

Article 320

The official or public servant who deprives a person of his liberty, ordering or executing actions that result in his duly proven disappearance, shall be punished with imprisonment

¹¹⁶ IACHR. Application before the Inter-American Court of Human Rights. Case 12.529. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. Bolivia. May 12, 2009. Paras. 302 and 303.

of not less than fifteen years and disqualification, pursuant to Article 36 paragraphs 1) and 2).

170. In the *Gómez Palomino* case, the Inter-American Court concluded that the typification contained in the norm "restricts the authorship of the forced disappearance to public officials or servants" and that it "does not contain all the forms of criminal participation included in Article II of the [CISDFP], thus resulting incomplete". On the other hand, the Inter-American Court emphasized that Article 320 of the Peruvian Criminal Code does not incorporate the refusal to acknowledge the detention and reveal the fate or whereabouts of the detained person as elements of the criminal offense of forced disappearance. Finally, the Court observed that "Article 320 of the Criminal Code [...] makes a reference to the fact that the disappearance must be 'duly proven' [which] presents serious difficulties in its interpretation"¹¹⁷.

69. It is worth mentioning that the multiple pronouncements of the Inter-American system led to the subsequent adaptation of the criminal offense of forced disappearance of persons in Peru.

70. Finally, the Commission has also established the international responsibility of States when the criminal definitions of these conducts are interpreted in a manner incompatible with their constituent elements or with their formulation in the international instrument. For example, with respect to the purposes that torture may pursue, in the case of *Azul Rojas Marín v. Peru*, the IACHR determined that one of the factors of impunity was the interpretation of the Prosecutor's Office of the criminal definition of the crime, when it did not consider that the purpose of torture should be understood in a broad sense. Specifically, it indicated that:

138. In relation to the decision of the Prosecutor's Office of Ascope to reject the request to expand the investigation for the crime of torture, the Commission considers that it was based on a restrictive analysis of the scope of the constituent elements of this crime, contrary to the broader definition of torture in the ICPAT, to which Peru was already a State Party. In particular, the IACHR emphasizes the fact that the decision did not take into account the possible motives of humiliation and degradation present in any act of sexual violence, in addition to the evidence of bias-based violence present in *Azul Rojas Marín's* narratives¹¹⁸.

¹¹⁷ IACHR. Report No. 34/13. Case 12.745. Merits. Rigoberto Tenorio Roca et al. Peru. Paras. 169 and 170 (original citations omitted).

¹¹⁸ IACHR. Report No. 24/18. Case 12.982. Merits. *Azul Rojas Marín* et al. Peru. February 24, 2018.

7. The Obligation to Investigate Contexts and to Articulate Multiple Processes

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 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. It is common that when transitional justice mechanisms are activated, there is a multiplicity of instances in charge of satisfying the rights to truth, justice, and reparation. Regarding the issue of justice, the Commission has pronounced on the importance of ensuring that there is due coordination and articulation of different entities with competence to clarify and prosecute serious human rights violations. Likewise, it is essential to ensure proper coordination between the entities of the justice system itself, with other central actors of transitional justice mechanisms such as truth commissions and commissions for the search for disappeared persons.
72. Thus, for example, in the context of the different transitional justice mechanisms in Colombia that operate in parallel, the IACHR has emphasized "that the multiplicity of instances and normative frameworks in force for the clarification, investigation and punishment of cases of human rights violations and breaches of international humanitarian law must be coordinated and provide reciprocal feedback¹¹⁹. In the words of the IACHR:
229. Likewise, the State must give adequate follow-up in the ordinary justice system to the information revealed in the Justice and Peace processes; in order to guarantee the integrity of the construction of the truth and the complete investigation of the structures in which the human rights violations are framed. This is because progress in the internal processes is inextricably linked to the guarantee of justice in specific cases; the construction of the truth and the memory of the Colombian people; guarantees of non-repetition; and the sustainability of the reparation processes implemented by the State¹²⁰.
73. The Commission valued the initiatives aimed at gathering, systematizing, and analyzing information that is scattered in different instances, and stressed the importance of considering the investigations and reports produced by civil society in this compilation exercise. However, linking the importance of the articulation with the clarity of the processes of construction of the contexts and their

¹¹⁹ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia.](#) OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 211.

¹²⁰ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia.](#) OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 229.

implications in terms of criminal charges, it emphasized that the time it takes for the institutional and procedural adequacy cannot be a detriment to the victims who have been waiting for a long time for a response in terms of justice¹²¹.

74. Specifically on contextual investigations and the obligation of States to identify the criminal structures associated with serious human rights violations, the Commission has agreed with the Inter-American Court that investigations should be directed "to unravel the criminal structures that perpetrated the human rights violations". The Commission has emphasized that the investigation of complex cases must direct efforts to understand the structures that allowed the violations to occur to provide a comprehensive view of the facts, taking into account the background and context in which they occurred and seeking to uncover the structures of participation¹²².

75. Recently, in the case of Members and Militants of the Unión Patriótica, the IACHR made the following consideration when analyzing the State's responsibility for the situation of impunity for what it called the extermination of a political party:

118. (...) the Commission considers that the State *did not take actions aimed at unraveling the criminal structures* that participated in the acts of violence against members and militants of the Unión Patriótica. Taking into account the magnitude of the specific case, which involved around 6,000 victims, which took place in several regions of the country, over an extensive period of time, and which involved different actors such as congressmen, deputies, councilmen, leaders and militants of a political party, the IACHR observes that the existence of an organized criminal structure behind such acts of violence was obvious. However, it finds that the State did not investigate the phenomenon comprehensively to identify the criminal perpetrators, their motives, the interests they had, as well as the connections they had with other legal or illegal forces¹²³.

76. The importance of contextual investigations has been associated not only with the satisfaction of the victims' rights to truth and justice, but also with guarantees of non-repetition. In the same case, the Commission noted that:

1565. (...) although the State authorities currently refer to the context in which the events occurred and indicate that even one of the lines of investigation they have today is the occurrence of political genocide in the terms of domestic legislation, the IACHR observes

¹²¹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 385.

¹²² IACHR. Report No. 170/17. Case 11.227. Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017. Para. 1533. Citing: IACHR Court. Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Paragraph 118.

¹²³ IACHR. Report No. 170/17. Case 11.227. Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017. Para. 1563.

that at the beginning of the events and after several years when the attacks against members of the UP continued to occur, the State did not make the investigative efforts it should have made to identify how the criminal structure operated and to dismantle it. This omission to unravel the criminal structure in order to defeat it, allowed it to continue acting and perpetrating acts of violence against thousands of additional victims¹²⁴.

77. In a similar vein, the Commission noted that the absence of an investigation aimed at understanding the causes and criminal structures behind the extermination came to constitute a message of tolerance for what was happening:

1580. (...) By way of conclusion, the Commission considers that the proven and recognized violation of Articles 8 and 25 of the Convention in the context of the violent actions suffered by the members and militants of the Unión Patriótica, strengthens the considerations made in the section on attribution of responsibility for breach of the duty to respect, as it demonstrates tolerance and acquiescence on the part of the State towards the criminal organization.

The IACHR does not see a valid justification for the State's systematic failure, in a case of the magnitude of the instant case, to identify those responsible for the acts, to prosecute and punish them, and to take measures to protect the persons who were victims of threats before the perpetrators made an attempt on their lives. Therefore, the responsibility of the State is not limited to procedural inactivity for not promoting the corresponding judicial processes, but rather, seen in conjunction with the dimension of the criminality and the way in which the serious acts of violence took place, the absence of investigation implies tolerance and acquiescence with the same criminal activity that it failed to investigate, unravel and dismantle, and which, to this day, has not been precisely identified, as the State itself maintains to date¹²⁵.

78. On the other hand, the IACHR has highlighted the importance of States conducting diligent and exhaustive investigations to determine contexts that link economic and business actors to serious human rights violations, as follows:

215. The duty of States to investigate and adequately punish human rights violations takes on particular importance in these cases, since even when State agents are punished for a violation of conventionally protected rights, the State has the obligation to make every effort to investigate and punish all those responsible for the unlawful acts,

¹²⁴ IACHR. Report No. 170/17. Case 11.227. Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017. Para. 1565.

¹²⁵ IACHR. Report No. 170/17. Case 11.227. Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017. Para. 1581.

including non-State agents. To this end, it is important that the competent national authorities take into account existing international standards for investigating the level of participation of economic actors and the ways to determine their responsibility, as well as the treatment of evidentiary issues in contexts of serious human rights violations involving State agents and companies, otherwise their international responsibility could be compromised¹²⁶.

8. Proportionality of Penalties

79. One issue that arises in transitional justice contexts has to do with the question of the proportionality of the penalties imposed for serious human rights violations, especially when the normative frameworks contemplate certain benefits or low penalties because of the perpetrators' contribution to the truth. On this issue, the Commission has not indicated that the reduction of penalties in these contexts is in itself a violation of the Convention or other applicable instruments, but that the penalties must be proportional, a situation that must be analyzed in each case. The proportionality of the penalties to the gravity of the violations committed, in addition to seeking individual justice for the victims, contributes to non-repetition. On this issue, the IACHR has indicated the following:

255. (...) 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 considering the morigeration of the punitive power of the State, specifically through the imposition of attenuated sanctions¹²⁷. In this case, the Inter-American Court in the case of the *Rochela Massacre* highlighted the importance of taking into account the principle of proportionality in that "the response that the State attributes to the unlawful conduct of the perpetrator of the transgression must be proportional to the legal right affected [...], so it must be established according to the different nature and gravity of the facts"¹²⁸.

¹²⁶ IACHR. [Business and Human Rights Report: Inter-American Standards](#). Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) Section Inter-American Contexts of Special Attention in the Area of Business and Human Rights: A. Transitional Justice and Accountability of Economic Actors, para. 215.

¹²⁷ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 255. Citing: 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.

¹²⁸ IACHR. [Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia](#). OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 255. Citing: IACHR, I/A Court H.R., Case of the Rochela Massacre v. Colombia, May 11, 2007, Series C No.163, para. 196.

80. Specifically in the Colombian context, this debate has arisen. In its Report on Truth, Justice and Reparation, the IACHR noted that:

285. In its 2006 pronouncement, the IACHR formulated a series of analyses, considerations and recommendations that are worth recalling. Thus, the Commission emphasized that in the stage that was beginning, it was crucial that the normative framework and its interpretation by the Constitutional Court be fully respected by the entities in charge of its implementation -the National Prosecutorial Unit for Justice and Peace, the Justice and Peace Courts, the Public Prosecutor's Office and the CNRR- so that the criminal benefits granted to the demobilized paramilitaries would be fully respected by the entities in charge of its implementation -the National Prosecutorial Unit for Justice and Peace, the Justice and Peace Courts, the Public Prosecutor's Office and the CNRR - so that the criminal benefits granted to the demobilized combatants would not constitute a mere gratuitous concession of justice, but would fulfill the genuine objective of operating as an incentive for peace, the search for truth and due reparation for the victims of the conflict. In this sense, the IACHR warned of the need for the Colombian State authorities to rigorously enforce the requirements that conditioned access to the reduced sentence and its preservation; and to contribute to the development of a diligent and exhaustive investigation of the serious crimes subject to this legal regime, so that the imposition of reduced sentences would result from the full truth and not rely exclusively on the confession of the accused¹²⁹.

81. In particular, the Commission indicated that the confession of the accused did not exempt the authorities from the duty to diligently investigate the facts. This obligation, in the context of the Justice and Peace Law, had a double dimension. First, it had the dimension of ensuring the full clarification of the facts. In most cases, the confession would not be sufficient for the full clarification of the events and the State would have to exhaust all investigative measures at its disposal to ensure the truth. The second dimension of the Justice and Peace Law regime consisted of the duty to investigate and avoid impunity. The leniency provided by the Justice and Peace Law offered a very strong incentive not only for those who genuinely decided to fully confess their participation in human rights violations, but also for those who sought to evade prosecution by the State. Furthermore, the exhaustive and diligent investigation of the facts was also a prerequisite for the effective verification of the eligibility requirements for access to the alternative penalty and for preserving it in the future¹³⁰.

¹²⁹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 285. Citing: 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. 3.

¹³⁰ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 286. Citing: IACHR, Pronouncement of the Inter-American

9. The Participation of Victims and Family Members

82. The Commission has highlighted the "tireless activity of victims, family members, human rights defenders and civil society organizations that have demanded and continue to demand truth, justice and reparations in cases of human rights violations". In addition to initiatives to carry out and support fact-finding, victims and their representatives, human rights defenders and civil society organizations have played a crucial role in pushing for and supporting the reforms in law, policy, and practice necessary to overcome obstacles to the right to justice and truth¹³¹.
83. The right of victims of human rights violations and their next of kin to be heard is protected in the American Convention and Declaration. The Commission has repeatedly emphasized that adequate access and participation of victims and their next of kin in all stages of judicial proceedings aimed at clarifying human rights violations is essential. Thus, it has indicated that prosecutions will only be real measures of justice if the victims and their families receive the necessary information and participate effectively in the judicial proceedings¹³².
84. Specifically in transitional justice contexts, the Commission has identified as a challenge the real and effective participation of victims throughout the investigation, trial and reparation processes. In the words of the IACHR:

35. The IACHR notes that the participation of 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 State's actions¹³³.

85. The IACHR also held that:

288. The States, through their institutions, must guarantee that the victims have access to adequate legal representation and that they can participate in each of the procedural stages. Likewise, the IACHR has placed special emphasis on the need to adopt adequate measures

Commission on Human Rights on the application and scope of the Justice and Peace Law in the Republic of Colombia, 2006, para. 27.

¹³¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. Para. 36.

¹³² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 169. citing: UN, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/21/46, 9 August 2012, para. 54. Also see Inter-American Court of Human Rights, Case Gelman v. Uruguay Judgment of 24 February 2011 (Merits and Reparations) para. 187 stating:

Article 8 of the Convention states that the victims of human rights violations, or their relatives, must have ample opportunity to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, as well as to seek due reparation.

¹³³ 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.

to protect victims and witnesses, promote their physical and psychological well-being, as well as their dignity and respect for their private life¹³⁴.

10. Prioritization Mechanisms as a Possible Limitation on Access to Justice

86. One issue on which the Commission has been pronouncing in recent years, especially in the framework of its monitoring of the situation in Colombia, is the prioritization of cases in contexts of transitional justice in which this tool is considered a way to address the challenges in terms of justice, especially when it comes to transitions to peace after decades of conflict. While the IACHR has recognized the dimensions of the justice challenges, it has reiterated that no State measure adopted in the area of justice can result in the total absence of investigation of any case of human rights violations¹³⁵.
87. The Commission has indicated that while in a process of seeking peace, transitional justice instruments that have their own characteristics can be used to achieve that objective. As noted by the UN Secretary-General in his report *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, transitional justice initiatives, applied in a manner consistent with their intended purpose, promote accountability, reinforce respect for human rights and are crucial to generating the strong levels of civic trust that are necessary to foster rule of law reform, economic development, and democratic governance. Such initiatives can involve both judicial and non-judicial mechanisms, including prosecution of individuals, redress, truth-seeking, institutional reform, vetting and dismissals¹³⁶.
88. However, the IACHR has emphasized that when designing such frameworks, there are certain obligations that must be observed to be in accordance with international human rights law. On this point, the Commission has referred to the statement of the UN Special Rapporteur on truth, justice, reparation and guarantees of non-repetition that:

247. Transitional Justice is a strategy to achieve justice to redress massive human rights violations in times of transition; it is not a name for a different form of justice. The satisfaction offered by justice cannot be achieved without truth, justice, reparations and guarantees

¹³⁴ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 288. Citing: 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. 54.

¹³⁵ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 231.

¹³⁶ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 245.

of non-repetition. Moreover,] only a comprehensive approach to the implementation of these measures can effectively respond to this task and put the victims at the center of all responses. The recognition of victims as individuals and subjects of rights is essential in any attempt to remedy massive human rights violations and prevent their recurrence. Reconciliation cannot be a new burden to be placed on the shoulders of those who have been victimized¹³⁷.

89. Likewise, the IACHR has considered the UN Secretary General's statement in his report *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, which, after recognizing the need for the Security Council to consider making explicit reference to the necessary nature of transitional justice measures, encouraged it to "reject any granting of amnesty for genocide, war crimes, crimes against humanity or gross violations of human rights"¹³⁸.
90. The Commission has also pointed out that the construction of peace is inextricably linked to the investigation, prosecution, punishment, and reparation of human rights violations, particularly those committed by agents of the State itself or by paramilitaries or those who have their support or acquiescence. The search for true peace must be based on the respect for human rights. The rule of law must provide the formulas to arrive at the truth, judge those who violate the norms in force, and make reparations to the victims. 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 decisions¹³⁹.
91. Applying the above to legal initiatives that could result in the waiver of the investigation of cases of serious human rights violations and breaches of IHL that are not selected, the IACHR has indicated that this would lead to impunity. As regarding the standards already cited on amnesty laws - which are also based on the principle of non-waivability - the Commission indicated that "taking into consideration that the duty to investigate and prosecute cases of serious human

¹³⁷ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 247. Citing: Office of the United Nations High Commissioner for Human Rights in Colombia. Press Release, Transitional Justice is not a 'soft' form of justice," UN Special Rapporteur, Pablo de Greiff, September 11, 2012. Available at: <http://nacionesunidas.org.co/blog/2012/09/11/la-justicia-transicional-no-is-not-a-soft-form-of-justice-new-un-special-relator-pablo-de-greiff/>. See, also, UN, Human Rights Council, 21st session, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/21/46, August 9, 2012.

¹³⁸ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 248. Citing: UN, Security Council, Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, S/2011/634, 12 October 2011, para. 67.

¹³⁹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 249. Citing: IACHR, Third Report on the Situation of Human Rights in Colombia, February 26, 1999. Final considerations, para. 2.

rights violations is non-waivable, the selection and failure to investigate such cases raises incompatibilities with the State's international obligations¹⁴⁰.

92. In this context, the Commission has referred to case prioritization schemes in order to make justice more efficient in a transitional context such as Colombia's, indicating that:

382. (...) in principle, the prioritization of cases aimed at streamlining the response of the State justice system is not incompatible with the obligations arising from the American Convention and, in certain circumstances, may constitute a suitable way to clarify the truth about serious violations that occurred in the conflict through a diligent investigation. This is without prejudice to the fact that "there are significant differences between the purposes and circumstances of case selection in the International Criminal Court and those of any such process in Colombia, or in any other country facing the broader challenges of transitional justice"¹⁴¹

383. However, the Commission notes with concern that among the grounds for Directive 001 of 2012, it is stated that "the most relevant literature confirms [that] it is never an obligation of the State to carry out an exhaustive investigation, but rather to investigate the most serious violations by the persons most responsible". The Commission emphasizes that this interpretation of the State's obligations is not in line with the standards of the Inter-American system. Indeed, the Commission has already indicated that in transitional justice contexts, States have the duty to investigate all cases of serious human rights violations that occurred during the conflict, and to prosecute and punish those responsible¹⁴².

93. In sum, the Commission has warned that the strategy of prioritizing 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. Given the high rates of impunity in relation to cases of serious human rights violations, such as forced disappearances, torture, sexual violence and recruitment of children and adolescents, the Commission has called for these to be considered as issues to be prioritized¹⁴³.

¹⁴⁰ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 354. Citing: See, inter alia, I/A Court H.R., Case of the Rochela Massacre v. Colombia, Judgment of May 11, 2007. Series C No. 163; Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, para. 166.

¹⁴¹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 382. Citing: ICTJ, Propuesta de criterios de selección y priorización para la ley de Justicia y Paz en Colombia, March 2012, p. 3.

¹⁴² IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 383.

¹⁴³ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 384 (original citations omitted).

11. Prison Benefits for Those Convicted of Serious Human Rights Violations

94. As a result of the fact that some of the amnesty laws declared unconstitutional by the IACHR and the Inter-American Court have ceased to be an obstacle to the investigation of serious human rights violations, important convictions have been handed down in several countries. In this context, one issue that has arisen in recent years is the granting of prison benefits to persons convicted of such acts. An earlier section of this digest recapitulated the Commission's statements on pardons. At this point, reference is made to the reduction of sentences.
95. Thus, faced with a decision of the Supreme Court of Justice of Argentina in 2017, the Inter-American Commission indicated that:

Press Release 60/17

According to publicly available information, on May 3, 2017, the Supreme Court of Justice of Argentina decided to apply a calculation that has the effect of significantly reducing the time in prison of a person who was convicted for crimes against humanity. In order to make such decision, the Supreme Court applied Article 7 of Law 24.390, which was in force from 1994 to 2001, known as "2x1", because it allowed that, after the two years of preventive detention allowed by law had elapsed, two days of imprisonment could be computed for each day spent in detention without a final sentence. The Supreme Court applied this law outside the framework of its validity, since the person favored by this decision was preventively detained as of October 1, 2007.

The IACHR expresses its dismay at the interpretation and application made by the Supreme Court of Justice because the benefit applies to the person found guilty and sentenced to prison for having committed a crime against humanity.

The obligation under international law to prosecute and punish the perpetrators of serious human rights violations is derived from the obligation to guarantee provided for in the American Convention. Crimes against humanity have a series of characteristics differentiated from other crimes by the aims and objectives pursued, which is the concept of humanity as victim. States therefore have an international obligation not to leave these crimes unpunished and to ensure the proportionality of the punishment. The application of the 2x1 or other benefits should not serve to distort the proportionality of punishment for persons responsible for crimes against humanity. Their application would render the punishment imposed inadequate, which is contrary to Inter-American human rights standards.

The IACHR welcomes the fact that the voice of the victims has been heard in defense of the important progress that has been made in the fight against impunity for the grave human rights violations committed during the dictatorship. The IACHR also salutes national and international civil society organizations and human rights defenders for their important work to demand the right to truth, justice and reparations for these serious crimes of the past, within the framework of the rule of law and a vibrant democratic society.

The IACHR takes note of the approval in Congress and enactment of Law 27362, published in the Official Gazette on May 12, 2017. The IACHR welcomes the provisions of Article 1, which establishes that the 2x1 benefit "is not applicable to criminal conduct that falls under the category of crimes against humanity, genocide or war crimes, according to domestic or international law"¹⁴⁴.

96. The Commission also expressed its concern about a legislative initiative in Chile that would authorize house arrest for those convicted of serious human rights violations, saying:

Press Release 87/20

The Inter-American Commission on Human Rights (IACHR) expresses its concern over a legislative initiative that could result in the granting of house arrest to certain persons convicted of, among other crimes, serious human rights violations committed during the civil-military dictatorship. The IACHR reminds the State of Chile to avoid that the international obligation to punish those responsible for crimes of such gravity may become illusory due to the application of prison benefits that would reproduce an impression of impunity.

[...]

In this regard, the IACHR has repeatedly affirmed the State's obligation to prevent, investigate and punish any violation of the rights recognized by the Convention and also to seek the reestablishment, if possible, of the right violated and reparation for the damages caused by the violation of human rights. In particular, in the *Almonacid Arellano et al.* and *García Lucero et al.* cases, the IACHR emphasized that, in relation to serious human rights violations, the State must refrain from resorting to amnesty, pardon, statutes of limitation and the establishment of exclusions of responsibility, as well as measures that seek to prevent criminal prosecution or suppress the effects of a conviction. In this regard, States must ensure the effective enforcement of the sanction adopted by the domestic courts, considering that the imposition of penalties must truly

¹⁴⁴ IACHR. [Press Release 60/17](#), IACHR expresses concern about the decision of the Supreme Court of Justice of Argentina. May 15, 2017.

contribute to preventing impunity as a mechanism to prevent the repetition of such serious crimes.

Specifically on the granting of prison benefits and alternative measures to prison sentences to persons convicted of serious human rights violations and crimes against humanity in Chile, the IACHR has previously stated that such circumstances require a more demanding analysis and requirements based on the legal right affected, the gravity of the facts, and the obligation of States to investigate, prosecute and punish those responsible for crimes against humanity.

Likewise, in its recent [Resolution 1/2020](#) - Pandemic and Human Rights in the Americas, the IACHR called on States to ensure that, in the case of those convicted of serious human rights violations, evaluations of prison benefits and alternative measures to imprisonment are subject to a more demanding analysis and requirements, in accordance with the principle of proportionality and applicable Inter-American standards that take into account the legal right affected, the seriousness of the facts and the obligation of States to punish those responsible for such violations¹⁴⁵.

12. Cooperation between States, Extradition, and Universal Jurisdiction

97. The Commission has also called on States to collaborate with each other in the fulfillment of their obligations in the area of justice for serious human rights violations, including some references to the concept of universal jurisdiction in the following terms:

120. The IACHR considers that given the gravity of international crimes and the importance of the obligation to investigate, prosecute, punish, and provide reparations, States must cooperate in order to avoid impunity and the consequent impact on the right to truth of the victims, their families, and society as a whole. In this regard, the IACHR has indicated that the evolution of international law has made it possible to consolidate the concept of universal jurisdiction, which constitutes an important mechanism of justice¹⁴⁶. Universal jurisdiction empowers States to establish their jurisdiction to prosecute, try and punish those who appear to be responsible for

¹⁴⁵ IACHR. [Press Release 60/17](#), IACHR expresses concern about a legislative initiative in Chile that would authorize house arrest for certain persons convicted of serious human rights violations committed during the civil-military dictatorship.

¹⁴⁶ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 120. citing: IACHR, [Resolution No. 1/03](#), On Trial for International Crimes, October 24, 2003.

serious crimes under international law, regardless of whether the crime was committed in the jurisdiction of the State or whether the perpetrator is a national of that State¹⁴⁷.

121. In this regard, the IACHR has urged OAS Member States to combat the impunity of perpetrators of international crimes through the exercise of universal jurisdiction or, where appropriate, their extradition in order to ensure their prosecution¹⁴⁸.

98. The IACHR also highlighted:

169. [T]he importance of States contributing information they have in their archives in order to facilitate a country's ability to investigate and prosecute those responsible for serious human rights violations. In this regard, the Commission has valued the cooperation agreements signed by the States of Argentina, Brazil, Chile and Uruguay to exchange documentation for the investigation of serious human rights violations that occurred during the dictatorship era in those countries¹⁴⁹.

99. The Commission has made other calls for international cooperation. For example, the IACHR called on OAS member states to open their archives on human rights violations committed under the Jean-Claude Duvalier regime in Haiti¹⁵⁰. The Commission stressed that "the support and commitment of the international community are essential at this historic moment for the Haitian justice system"¹⁵¹.

¹⁴⁷ IACHR, [The Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 120, citing: This universal jurisdiction is reflected in instruments such as the Geneva Conventions of 1949. Likewise, a number of regional and international normative instruments contemplate multiple bases of jurisdiction for the prosecution of international crimes. Among others, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons, within the OAS, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention against the Taking of Hostages within the United Nations, oblige States to take measures to try these crimes in their jurisdiction or otherwise oblige them to extradite the accused persons for trial. The consensus of the States has even extended this concept to other international offenses, as in the case of the Inter-American Convention against Corruption. See: IACHR, [Resolution No. 1/03](#), On Trial for International Crimes, October 24, 2003.

¹⁴⁸ IACHR, [The Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 121. Citing: IACHR, [Press Release 21/98](#), December 15, 1998. Available at:

¹⁴⁹ IACHR, [The Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 169. Citing: Instituto de Políticas Públicas en Derechos Humanos - MERCOSUR, "Mercosur countries agree to cooperate in investigations on human rights violations of dictatorships". Available at: <http://www.ipdh.mercosur.int/Novedad/Details/110152>. For more information see: <http://www.presidencia.gub.uy/comunicacion/comunicacionnoticias/acuerdos-bilaterales-chile-mujica-bachelet-uruguay>.

¹⁵⁰ IACHR, [The Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 170, citing: IACHR, [Press Release 48/14](#), IACHR calls on Member States to open their archives on human rights violations committed under the regime of Jean-Claude Duvalier, May 5, 2014.

¹⁵¹ IACHR, [The Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 170, citing: IACHR, [Press Release 48/14](#), IACHR calls on Member States to open their archives on human rights violations committed under the regime of Jean-Claude Duvalier, May 5, 2014.

It also noted that the Paraguayan authorities of the Museum of Justice, Documentation Center and Archive for the Defense of Human Rights had indicated that they would provide documentation from the "Archives of Terror" to the trials in Argentina related to human rights violations committed during the dictatorship¹⁵².

100. The Commission has also highlighted other cases of support between States to provide evidence for the prosecution of high-level authorities¹⁵³. For example, the United States sent declassified information that served as evidence in the trial and subsequent sentencing of the former President of Peru, Alberto Fujimori, for the crime of homicide against civilians during the armed conflict. The States of Paraguay and the United States sent documentation that also served as evidence for the trial and subsequent sentencing of the former head of state of Uruguay, Juan Bordaberry, for crimes of forced disappearance and political homicide¹⁵⁴.
101. However, the Commission has considered that cooperation mechanisms between States must guarantee the rights of victims to obtain truth, justice and reparation. In this regard, the IACHR has expressed concern about the extradition of demobilized persons from Colombia to the United States¹⁵⁵. The Commission has held that this situation interferes with the Colombian State's obligation to prosecute civilians and State agents involved in cases of serious violations of protected rights¹⁵⁶. More specifically, the IACHR stated:

299. In this regard, the Commission consistently held that "the extradition of a demobilized combatant to answer abroad for less serious crimes than those he is confessing to before Colombian judges is a form of impunity¹⁵⁷. This is because the IACHR has established that extradition: (i) affects the Colombian State's obligation to guarantee the rights of victims to truth, justice and reparation for

¹⁵² IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 171. Citing: press release "Paraguay aportará 'Archivo del Terror' a juicio argentino" published in Hoy. May 2, 2014. Available at: <http://www.hoy.com.py/nacionales/paraguay-aportara-archivo-del-terror-a-juicio-argentino>

¹⁵³ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. August 13, 2014. Para. 172. Citing: For additional information see: Ciorciari, John D. and Franzblau, Jesse M., Missing Files: The Importance of Third-Country Records in Upholding the Right to the Truth (June 4, 2014). Columbia Human Rights Law Review, Vol. 46, No. 1, 2014. Disponible en: <http://ssrn.com/abstract=2446205>.

¹⁵⁴ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 172.

¹⁵⁵ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 173. Citing: IACHR. Press Release 21/08, IACHR expresses concern over extradition of Colombian paramilitaries, May 14, 2008.

¹⁵⁶ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 173. Citing: IACHR, Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. December 31, 2013, para. 303.

¹⁵⁷ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/1331 December 2013. Para. 299. Citing: IACHR, Annual Report of the Inter-American Commission on Human Rights 2008, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, para. 31. See, also, IACHR, Hearing Rule of Law and Independence of the Judiciary in Colombia, March 23, 2009. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=8>.

crimes committed by paramilitary groups; (ii) prevents the investigation and prosecution of serious crimes through the channels established by the Justice and Peace Law and by the ordinary criminal procedures of the Colombian justice system; iii) closes the possibilities of direct participation of the victims in the search for the truth about the crimes committed during the conflict and limits access to reparations for the harm caused; and iv) interferes with efforts to determine the links between State agents and these paramilitary leaders in the commission of human rights violations¹⁵⁸.

301. In the same sense, it has been indicated that in "cases of extradition of demobilized persons, the incentives to collaborate with Colombian justice fade away"¹⁵⁹ and that by virtue of the crimes for which they were extradited, collaboration with justice in the United States is linked to the provision of information regarding drug trafficking and not to the clarification of human rights violations¹⁶⁰.

¹⁵⁸ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 299. Citing: See, inter alia, IACHR, Press Release No. 21/08, IACHR expresses concern over extradition of Colombian paramilitaries, Washington, D.C., May 14, 2008. IACHR Court. Hearing in the case of Marino López et al (Operation Genesis) v. Colombia. Available at: www.vimeo.com

¹⁵⁹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 301. Citing: See Lawyers Without Borders Canada, The Principle of Complementarity in the Rome Statute and the Colombian Situation: Beyond the "Positive", 2012, p. 18. Available at: http://www.asfcanada.ca/uploads/publications/uploaded_asf-rapport-espagnol-v5-lq-pdf-19.pdf.

¹⁶⁰ IACHR. Truth, Justice and Reparation. Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 301. Citing: Expert opinion of Javier Ciurlizza in Case 12.573, Marino López et al. (Operation Genesis) v. Colombia. Available at: <http://vimeo.com/60121157>.

CHAPTER 4
TRUTH STANDARDS RELEVANT
TO TRANSITIONAL CONTEXTS

TRUTH STANDARDS RELEVANT TO TRANSITIONAL CONTEXTS

1. Development and Conceptualization of the Right to Truth

102. As the Commission has indicated, the history of the countries of the hemisphere has been characterized by multiple and repeated ruptures of the democratic and institutional order, situations of non-international armed conflict, civil wars and situations of generalized violence that developed over long periods of time and, in some cases, are still ongoing. In these circumstances, massive and systematic human rights violations and serious breaches of international humanitarian law have been committed by State agents, private individuals operating with the support, tolerance or acquiescence of the State, and members of illegal armed groups, such as paramilitaries¹⁶¹.
103. The lack of complete, objective and truthful information about what happened during those periods has been a constant, a State policy and even a "war strategy", as in the case of the practice of forced disappearances. Thus, the Commission has pointed out that "a difficult problem that recent democracies have had to face is that of the investigation of past human rights violations and the eventual punishment of those responsible for such violations"¹⁶².
104. The right to the truth is not explicitly included in the Inter-American human rights instruments. Nevertheless, since their inception, both the IACHR and the Inter-American Court have determined the content of the right to the truth and the consequent obligations of States through a comprehensive analysis of a series of rights established in both the American Declaration and the American Convention¹⁶³.
105. Within the Inter-American system, the right to truth was initially linked to the widespread phenomenon of enforced disappearance¹⁶⁴. Thus, the right to the truth began to manifest itself as a right of the relatives of victims of enforced

¹⁶¹ IACHR. [The Right to the Truth in the Americas](#). Para. 43.

¹⁶² IACHR. [The Right to the Truth in the Americas](#). Para. 44. Citing: 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.

¹⁶³ IACHR. [The Right to the Truth in the Americas](#). Para. 7.

¹⁶⁴ IACHR. [The Right to the Truth in the Americas](#). Para. 8.

disappearance, in view of which the State is obliged to adopt all necessary measures to clarify what happened, as well as to locate and identify the victims¹⁶⁵.

106. Through the jurisprudence of the IACHR and the Court, supported by various reports and instruments of the United¹⁶⁶ Nations, the right to the truth has been consolidated as a guarantee established in both the American Declaration and the American Convention¹⁶⁷.
107. In this regard, the Commission and the Court have held that the right to the truth is directly linked to the rights to judicial guarantees and judicial protection, which are established in Articles XVIII and XXIV of the American Declaration, as well as in Articles 8 and 25 of the American Convention. Likewise, in certain cases, the right to the truth is related to the right of access to information, contemplated in Article IV of the American Declaration and Article 13 of the American Convention¹⁶⁸.
108. Under these provisions, the right to the truth has a two-fold dimension. First, it recognizes the right of the victims and their next of kin to know the truth regarding the facts that gave rise to serious human rights violations, as well as their right to know the identity of those who participated in them¹⁶⁹. This implies that the right to the truth entails the obligation of States to clarify, investigate, prosecute, and punish those responsible for cases of serious human rights violations¹⁷⁰, as well as,

¹⁶⁵ IACHR. [The Right to the Truth in the Americas](#). Para. 11.

¹⁶⁶ IACHR. [The Right to the Truth in the Americas](#). Para. 12. Citing. UN, Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, Study on the Right to the Truth, E/CN.4/2006/91, January 9, 2006, para. 8.

¹⁶⁷ IACHR. [The Right to the Truth in the Americas](#). Para. 12.

¹⁶⁸ IACHR. [The Right to the Truth in the Americas](#). Para. 13. Also see the following conceptualization of the right to truth issued by the Inter-American Court in the case of Terrones Silva et al. v. Peru, (Preliminary Objections, Merits, Reparations and Costs) September 26, 2018 in which it held:

Although the right to know the truth has been fundamentally framed within the right of access to justice, the truth is that this right to the truth has autonomy, since it has a broad nature and its violation can affect different rights contained in the American Convention, depending on the context and particular circumstances of the case.

¹⁶⁹ IACHR. [The Right to the Truth in the Americas](#). Para. 70. Citing: 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. 181; Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, para. 117, and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 118.

¹⁷⁰ IACHR. [The Right to the Truth in the Americas](#). Para. 70. Citing: IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 147; 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, para. 221; Report No. 37/00, Case 11.481, Monseñor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 142. Case of Goiburú et al. v. Paraguay. Judgment of September 22, 2006. Series C No. 153, para. 165, citing Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149, para. 246; Case of Baldeón García v. Peru. Judgment of April 6, 2006. Series C No. 147, para. 197; Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140, para. 219.

depending on the circumstances of each case, to guarantee access to information on serious human rights violations held in State facilities and archives¹⁷¹.

109. Secondly, the notion has been consolidated that this right corresponds not only to the victims and their families, but also to society. In this regard, the Commission has held that society as a whole 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 future"¹⁷².
110. In this sense, the right to the truth has been understood as a just expectation that the State must satisfy for the victims of human rights violations and their families. Therefore, the full guarantee of the rights to judicial guarantees and judicial protection seeks to combat impunity, understood as "the failure to investigate, prosecute, capture, try and convict those responsible for violations of the rights protected by the American Convention"¹⁷³. Otherwise, the State's lack of diligence leads to the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin¹⁷⁴. It is for this reason that the victims of human rights violations or their next of kin have the right to have everything necessary to know the truth of what happened through an effective investigation, the prosecution of those responsible for the crimes, the imposition of the pertinent sanctions and the reparation of the damages suffered by the next of kin¹⁷⁵.
111. At the same time that it is an obligation of the States derived from the guarantees of justice, the right to the truth also constitutes a form of reparation in cases of human rights violations. Indeed, the recognition of victims is relevant because it is a way of acknowledging the importance and value of people as individuals, victims and rights

¹⁷¹ IACHR. The Right to the Truth in the Americas. Para. 70. Citing: See, inter alia, 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. 243; Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 173; Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 201.

¹⁷² IACHR. The Right to the Truth in the Americas. Para. 71. Citing: 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.

¹⁷³ IACHR. The Right to the Truth in the Americas. Para. 18. Citing. See, inter alia, I/A Court H.R., Case of Ivcher Bronstein v. Peru. Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court H.R., Case of the Constitutional Tribunal v. Peru. Case of the Constitutional Tribunal v. Peru. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R., Case of Bámaca Velásquez v. Peru. Case of Bámaca Velásquez v. Guatemala. Judgment of November 25, 2000. Series C No. 70, para. 211. See also: UN, Commission on Human Rights, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005.

¹⁷⁴ IACHR. The Right to the Truth in the Americas. Para. 18. Citing. See, inter alia, I/A Court H.R., Case of the "White Panel" (Paniagua Morales et al.) v. Guatemala. Case of the "White Panel" (Paniagua Morales et al.) v. Guatemala. Judgment of March 8, 1998. Series C No. 37, para. 173; I/A Court H.R., Blake Case. Blake Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 64; Loayza Tamayo Case. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 170; Case of Carpio Nicolle et al. v. Guatemala. Judgment of November 22, 2004. Series C No. 117, para. 126.

¹⁷⁵ IACHR. The Right to the Truth in the Americas. Para. 18.

holders¹⁷⁶. Likewise, knowledge of the circumstances of manner, time and place, the motivations and the identification of the perpetrators are fundamental elements for the comprehensive reparation of the victims of human rights violations¹⁷⁷.

112. The Commission has also pointed out that the "right to the truth" arises as a basic and indispensable consequence for every State Party of the obligations set forth in the American Convention in accordance with Article 1(1) of that instrument, since ignorance of the facts related to human rights violations means, in practice, that there is no system of protection capable of guaranteeing the identification, prosecution and eventual punishment of those responsible¹⁷⁸. The Commission has established that:

124. part of the right to reparation for human rights violations, in the form 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 the full truth about its past is not only a means of reparation and clarification of the events that occurred, but also has the purpose of preventing future violations¹⁷⁹.

113. The Commission has also highlighted the recognition by OAS States of the importance of respecting and guaranteeing the right to the truth, defined as the right to know the truth:

45. assists the victims of gross violations of human rights and serious violations of international humanitarian law, as well as their families and society as a whole, 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 occurred¹⁸⁰.

¹⁷⁶ IACHR. The Right to the Truth in the Americas. Para. 29. Citing: 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, August 9, 2012, para. 30.

¹⁷⁷ IACHR. The Right to the Truth in the Americas. Para. 29.

¹⁷⁸ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 74. Citing: See, inter alia, IACHR, Report No. 25/98, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.595, 11.657 and 11.705, Alfonso René Chanfeau Orayce et al, Chile, April 7, 1998, para. 87, citing IACHR Court. Case of Castillo Paez v. Peru. Judgment of November 3, 1997. Series C No. 34, para. 86; IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 149.

¹⁷⁹ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 124. citing: IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, 13 April 2000, para. 148.

¹⁸⁰ IACHR. The Right to the Truth in the Americas. Para. 45. Citing: OAS, General Assembly, Resolution AG/RES. 2175 (XXXVI-O/06) "The Right to the Truth". For its part, the Study on the Right to Truth formulated by the Office of the High Commissioner for Human Rights establishes that: "the right to know the truth about gross

2. Truth Commissions and Their Relationship with Judicial Processes

114. Truth Commissions (TRCs) are "official, temporary, non-judicial fact-finding bodies that investigate abuses of human rights or humanitarian law that have been committed over a number of years".¹⁸¹ In this regard, both the Commission and the Court have highlighted the importance of the CoVs as an extrajudicial mechanism of transitional justice, aimed at clarifying situations of massive and systematic human rights violations. In this regard, on multiple occasions both bodies have used the information provided by the final reports of the CoVs as a source of information and evidence in relation to cases processed before the system of cases and petitions¹⁸².
115. In particular, the IACHR has repeatedly emphasized its support for initiatives that seek to investigate and clarify situations of systematic human rights violations¹⁸³. In this regard, the Commission has welcomed the creation of CoVs in the region and their importance in guaranteeing the right to truth in both its individual and collective dimensions. In the case of Brazil, for example, the Commission noted that:

128. The creation of a CoV is] a fundamental step in advancing the clarification of the facts of the past. International human rights law has recognized that everyone has the right to know the truth. In the case of victims of human rights violations and their families, access to the truth about what happened is a form of reparation. In this sense, the formation of a Truth Commission [...] will play a fundamental role in making effective the right to the truth of the victims of human

violations of human rights and serious breaches of human rights law is an autonomous and inalienable right, linked to the obligation and duty of the State to protect and guarantee human rights, to conduct effective investigations and to ensure effective remedies and reparations. This right, closely linked to other rights, has both individual and collective aspects, and must be considered as a non-derogable right that should not be subject to restrictions. UN, Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth, E/CN.4/2006/91, 9 January 2006.

¹⁸¹ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 127. citing: UN, Commission on Human Rights, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005. See, also, ICTJ, In Search of the Truth Elements for the Creation of an Effective Truth Commission, 2013, p. 13. Available at: <http://ictj.org/es/publication/en-busca-de-la-verdad-elementos-para-la-creacion-de-una-comision-de-la-verdad-eficaz>.

¹⁸² IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 Aug. 2014. para. 127. Citing: See, inter alia, 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, para. 91; I/A Court H.R., Case No. 136/99, Case 10.488. Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 232; and Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 234.

¹⁸³ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 128. Citing: See, inter alia, IACHR. Press Release 10/01, Final of the in-loco visit to Panama, June 8, 2001, para. 21.

rights violations committed in the past, as well as of all individuals and society as a whole¹⁸⁴.

116. By virtue of this, the Commission also indicated that:

129. [T]he official disclosure of the truth about past human rights violations can play a critical role in the process of healing and reconciliation and in laying the groundwork for due prosecution and punishment within the judicial system [...]. The disclosure of such atrocities perpetrated during the armed conflict, within an officially approved report, will give the people [...] the possibility to reflect on them, prepare coherent responses and take steps to ensure peace in the future¹⁸⁵....

117. Under these considerations, the organs of the inter-American system have emphasized the need for the CoVs to have unrestricted access to the information necessary to fulfill their mandate. It has also emphasized that, despite their very important role in establishing the truth, the CoVs are not a substitute for criminal investigation and the prosecution and punishment of those responsible. In this regard, the Commission indicated that:

131. when a State decides to create an extrajudicial commission of inquiry as a mechanism to contribute to the right to the truth of the victims of human rights violations and of society as a whole, it must guarantee that the commission has access to all the information necessary to ensure the proper fulfillment of its mandate. In particular, such a commission should have full access to the archives of the period it is responsible for investigating, including access to "secret" or "reserved" information on human rights violations committed during that period. In principle, access to such information should be granted under the same conditions as those that guarantee access to judicial operators investigating human rights violations¹⁸⁶.

118. Thus, the IACHR has held that:

133. [...] despite the importance of the Truth Commission in establishing the facts related to the most serious violations and in promoting national reconciliation, the functions performed by it, although highly relevant, cannot be considered as an adequate

¹⁸⁴ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 128. Citing: IACHR, [Press Release 48/12](#), IACHR celebrates formation of Truth Commission in Brazil, May 15, 2012.

¹⁸⁵ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 129. Citing: IACHR, Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev. 14 March 1997, Ch. V, Guatemala, para. 28.

¹⁸⁶ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 131. Citing: IACHR, Application to the Inter-American Court of Human Rights in Case 12.590, José Miguel Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, 18 February 2011, para. 464.

substitute for the judicial process as a method of arriving at the truth. The value of the Truth Commissions is that their creation is not based on the premise that there will be no trials, but rather that they constitute a step in the direction of the restoration of truth and, in due course, of justice [...].

Nor do they replace the non-delegable obligation of the State to investigate violations committed within its jurisdiction, to identify those responsible, to impose sanctions and to ensure adequate reparation to the victim (Article 1(1) of the American Convention), all within the imperative need to combat impunity¹⁸⁷.

134. Likewise, the Commission has pointed out that:

The [CoV], established by the democratic government to investigate past human rights violations, dealt with a good part of the total number of cases and awarded reparations to the victims or their families. However, the Commission's investigation of cases involving violations of the right to life and victims of other violations, especially torture, were deprived of legal recourse and any other form of compensation.

Moreover, this Commission was not a judicial body and its work was limited to establishing the identity of the victims of violations of the right to life. By the nature of its mandate, the Commission was not empowered to publish the names of those who committed the crimes or to impose any kind of sanction. For this reason, despite its importance in establishing the facts and awarding compensation, the Truth Commission cannot be considered an adequate substitute for a judicial process¹⁸⁸.

119. In the region, numerous Truth Commissions have been implemented, namely: (i) the National Commission on the Disappearance of Persons of **Argentina** (1983); (ii) the National Commission for the Investigation of Forced Disappeared Persons of **Bolivia** (1982) and Truth Commission of Bolivia (2017); (iii) the Special Commission on Political Dead and Disappeared Persons (1995), the Amnesty Commission of the Ministry of Justice (2001) and the National Truth Commission (2011) of **Brazil**; (iv) the National Truth and Reconciliation Commission (1990) and the National Commission on Political Prisoners and Torture (2003) of **Chile**; (v) the National Commission on Reparation and Reconciliation (2005), the Historical Memory Center (2011) and Commission for the Clarification of Truth, Coexistence and Non-Repetition (2017) of **Colombia**; (vi) the Truth and Justice Commission (1996) and the Truth Commission (2007) of **Ecuador**; (vii) the Truth Commission

¹⁸⁷ IACHR. *The 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.

¹⁸⁸ IACHR. *The Right to the Truth in the Americas*. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014.para. 134. Citing: IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, 15 October 1996, paras. 73-74.

(1992) of **El Salvador**; (viii) the Truth and Reconciliation Commission (2001) of **Grenada**; (ix) the Commission for the Historical Clarification of Human Rights Violations and Acts of Violence that Have Caused Suffering to the Guatemalan Population (1997) of **Guatemala**; (x) the National Truth and Justice Commission (1995) of **Haiti**; (xi) the Truth and Reconciliation Commission (2009) of **Honduras**; (xii) the Truth Commission (2001) of **Panama**; (xiii) the Truth and Justice Commission (2003) of **Paraguay**; (xiv) the Truth and Reconciliation Commission (2000) of **Peru**; and (xv) the Parliamentary Investigation Commission on the Situation of Disappeared Persons and the Facts that Motivated it (1985) and the Peace Commission (2000) of **Uruguay**. In addition, in 2008 **Canada** created a Truth and Reconciliation Commission with a specific mandate to investigate rights violations in the context of the treatment of indigenous children in residential schools¹⁸⁹ and the National Inquiry into Missing or Murdered Indigenous Women and Girls in Canada¹⁹⁰.

120. The IACHR has emphasized that the transparency of the mandate of the CoV with respect to its function, its purpose, the object and scope of the investigation, the period of time investigated, and its investigative powers is essential to guarantee its legitimacy and effectiveness. Likewise, the Commission has considered it important that the mandate of each CoV be subject to consultations with society, so that the expectations and perspectives of the victims are adequately valued and taken into consideration, favoring citizen participation and trust, and contributing to maintaining clarity about the expected results of the CoV's work. In this context, consultations with experts in the field could provide theoretical and practical elements to assist in the analysis of the specific factors and conditions of the situation in question¹⁹¹.
121. Given that the determination of the conducts and periods under investigation has legal consequences in relation to the determination of the status of victim and the eventual reparations that may be due, the Commission has considered that a broad approach would give the CoVs the necessary flexibility to adequately address those phenomena that may have been invisible in the context of massive and systematic violations. In particular, the Commission stresses the importance of the mandates of the CoVs adopting differentiated approaches that take into account the particularities of the affectations caused and their impact on vulnerable populations subject to special inter-American protection¹⁹². The differentiated approach of the CoVs proved to be particularly relevant for the identification of patterns related to the rape of women and girls in contexts of internal armed conflict. Thus, for example, with respect to Peru, the Commission analyzed the particular situation of women in the State's anti-subversive struggle and, in particular, the widespread use of sexual

¹⁸⁹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 177. (Original citations omitted).

¹⁹⁰ IACHR. [Press Release 159/19](#). IACHR urges the Canadian State to follow the recommendations of the National Inquiry into Missing or Murdered Indigenous Women and Girls to protect and guarantee their human rights. May 25, 2019.

¹⁹¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 184.

¹⁹² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 185.

violence and, taking into account the findings of the Truth and Reconciliation Commission, the IACHR recognized that:

65. (...) the use of sexual violence in the counter-subversive struggle in Peru was inscribed "in a broader context of discrimination against women, who are considered vulnerable and whose bodies are used by the perpetrator without any apparent motive or strictly linked to the internal armed conflict"¹⁹³.

67. The TRC emphasized that several women interrogated in DINCOTE facilities suffered forced nudity, insults, groping, penetration with the virile member and, in some cases, introduction of objects through the vagina and anus¹⁹⁴. He also indicated that these practices were common during arbitrary detentions by police agents, who generally blindfolded the victims or wore hoods during the aggressions to avoid being identified¹⁹⁵.

122. On the other hand, the IACHR has emphasized that a central factor in relation to the CoV is its composition and integration. The qualities of the members that make up a CoV are essential to inspire public confidence and contribute to the legitimacy of the mechanism. For this reason, it has indicated that it is essential that there be adequate procedures for appointing the members of the CoV, as well as appropriate measures to guarantee their impartiality and independence in the performance of their work¹⁹⁶.
123. In relation to the sources of information, the IACHR has indicated that the testimony of victims, family members and witnesses has been the main source of the work of the CoVs. In addition, the CoVs have made use of national and international reports,

¹⁹³ IACHR. Report No. 76/11. Case 11.769 A. Merits. J. Peru. July 20, 2011. Para. 65.

¹⁹⁴ IACHR. Report No. 76/11. Case 11.769 A. Merits. J. Peru. July 20, 2011. Para. 67. Citing: CVR Final Report, 2003, Volume VI, 1.5 *Sexual Violence against Women*, pages 308, 309 and 328, 329 and 330, available at www.cverdad.org.pe/ifinal/index.php.

¹⁹⁵ IACHR. Report No. 76/11. Case 11.769 A. Merits. J. Peru. July 20, 2011. Para. 67. Citing: CVR Final Report, 2003, Volume VI, 1.5 *Sexual Violence against Women*, pages 348 and 349, available at www.cverdad.org.pe/ifinal/index.php. See also I/A Court H.R., Case of Penal Miguel Castro Castro v. Peru, Judgment of November 25, 2006 (Merits, Reparations and Costs) in which, among other evidence, the Inter-American Court referred to the findings of the CVR stating:

In this regard, in its Final Report, the Peruvian Truth and Reconciliation Commission stated that during the armed conflict there was "a practice [...] of rape and sexual violence against mainly women", which "is attributable [...] primarily to State agents [...] and] to a lesser extent to members of subversive groups". Likewise, the TRC pointed out that during the aforementioned conflict, acts of sexual violence against women were aimed at punishing, intimidating, pressuring, humiliating and degrading the population.

226. The Court has found that various acts that occurred in this case to the detriment of women responded to the aforementioned context of violence against women in the armed conflict (*infra* paras. 306 to 313). Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_esp.pdf

¹⁹⁶ IACHR. The Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 186.

and even the testimony of the individuals accused of being responsible for the human rights violations denounced¹⁹⁷.

124. However, a situation of particular concern in relation to CoV investigations has been the persistence of various obstacles to accessing government information¹⁹⁸.
125. Therefore, the Commission has reiterated that States are obliged to guarantee access to State information, especially in relation to cases of human rights violations. In the context of the creation of a CoV, the State's commitment to create it and collaborate with its work includes the provision of public information. Thus, the failure of state authorities to cooperate in the provision of information constitutes an obstacle to the work of the CoV; contributes to perpetuating silence regarding human rights violations; and raises doubts about the willingness of the authorities to undergo a thorough review of the recent past and present. Indeed, as demonstrated by the cases of the "Diario Militar" in Guatemala or the "Archivos del Terror" in Paraguay, there are state documents that demonstrate the planning, strategy, intentionality and systematicity in cases of massive human rights violations. Therefore, as in the case of the judicial authorities, the information held by the State must be made available to the CoVs without omissions and in an orderly¹⁹⁹ manner.
126. Similarly, as indicated in the section on cooperation between States in judicial proceedings, the IACHR has highlighted the importance of different States providing information from their archives that may be useful and relevant to the work of a CoV in another country. For example, the United States sent declassified documentation to the CoVs of Chile, Peru, Guatemala, Honduras, and recently Brazil, to provide them with more information for their work²⁰⁰.
127. The IACHR has emphasized that the CoVs must carry out their work in an autonomous, independent, and impartial manner and must be provided with the technical, human and financial resources necessary to fulfill their functions²⁰¹. In particular, it is necessary that the working bodies that make up the CoVs use a multidisciplinary approach to the phenomena analyzed and have the appropriate training, education and sensitivity to the issues in question. It is also essential that differentiated measures be adopted for groups in vulnerable situations and that measures be implemented to overcome the barriers of geographic distance,

¹⁹⁷ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 187.

¹⁹⁸ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 188.

¹⁹⁹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 189. Original citations omitted.

²⁰⁰ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 189. Original citations omitted.

²⁰¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 192. Citing: See, inter alia, UN, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/24/42, 28 August 2013, paras. 63-69.

economic impossibility, or language limitations, among others, seeking to avoid situations of retraumatization for victims and their families²⁰².

128. The Commission has stressed the importance that the methodology used to collect, systematize and analyze the information be clearly and expressly stipulated and based on scientific methods. The use of guides for conducting interviews or forms for recording information or documentation contributes to the subsequent formation of a homogeneous database that makes it possible to analyze the information by type of violation, pattern, characteristics of the victims and perpetrators, region and time, among others. Likewise, the organization of information in databases constitutes a fundamental element for the elaboration of public policy and is indispensable to guarantee other obligations, such as confidentiality or anonymity. Scientific rigor and responsibility in the organization and management of information are key to guaranteeing the seriousness of the work of a CoV and of the conclusions and recommendations formulated²⁰³.
129. The Commission has emphasized that, due to the nature and scope of the work of a CoV -which contributes to the identification of victims and focuses not only on human rights violations but also on their causes and consequences- the results of its investigations provide important elements for the identification of institutional deficiencies and responsibilities; for the adoption of measures of symbolic reparation and guarantees of non-repetition; and for the elaboration of reparation programs that take into account patterns, invisible facts, and specific and differentiated effects on the victims and their families²⁰⁴. Additionally, in its recent report on Business and Human Rights: Inter-American Standards²⁰⁵, the Commission and its REDESCA highlighted the importance of the work of the CoVs in revealing the participation and involvement of economic sectors or businesses in the field of transitional justice by saying:

203. Recent studies show that the work of various truth commissions related to serious human rights violations around the world have revealed the involvement of economic sectors or corporations in such events. These studies also indicate that most of the truth commissions identified instances of corporate complicity in nine countries in the region. These commissions have identified 321 economic actors involved, with the commissions of Brazil (with mentions of 123 economic actors) and Guatemala (with mentions of 43 economic actors) being the ones that have dealt with the issue the most. In addition, it was found that participation in human rights violations in these contexts refers not only to private companies but

²⁰² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 192.

²⁰³ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 196. Original citations omitted.

²⁰⁴ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 202.

²⁰⁵ IACHR. [Business and Human Rights Report: Inter-American Standards](#). Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) Section Inter-American Contexts of Special Attention in the Area of Business and Human Rights: A. Transitional Justice and Accountability of Economic Actors, paras. 201 to 219.

also to state-owned companies, joint ventures, associations of economic actors such as business associations, industrial unions, chambers of commerce, among others, and individuals engaged in economic activities²⁰⁶.

130. The Commission has also called for the CoVs to have the necessary political support and backing to be able to complete their work and produce a final report that crystallizes the information gathered, identifies the victims, and analyzes in a complete and detailed manner the human rights violations investigated. The dissemination of an "official" truth regarding gross and systematic human rights violations dignifies the victims and contributes to the strengthening of democratic societies and the rule of law. For this reason, it is necessary that broad campaigns be carried out to disseminate the final reports, including translation into other languages, if necessary, as well as that didactic version of these reports be included in school curricula²⁰⁷.
131. More recently, the Commission has pronounced on the creations of other Truth Commissions, ratifying the above standards. Thus, in relation to Bolivia, in 2017 the Commission noted issued a statement in the following terms:

Press Release 142/17

The Inter-American Commission (...) welcomes the installation of the Truth Commission by the Bolivian government on August 21, 2017, through the installation of its five members in a public ceremony at the Government Palace. The Truth Commission will investigate serious human rights violations that occurred between 1964 and 1982. The IACHR recognizes the efforts of the State of Bolivia to promote the right to truth in the country, following the recommendation of the IACHR in the public hearing of the 154th Period of Sessions, in March 2015 (...).

The IACHR sees the creation of the Truth Commission as an important measure to promote the right to the truth regarding serious human rights violations and crimes against humanity in the country (...).

The IACHR urges the State to ensure the political, institutional and budgetary conditions for full compliance with its functions; likewise, the IACHR emphasizes that the Truth Commission must act independently from the government or other State powers (...).

The IACHR emphasizes that, in addition to the conditions necessary for its operation, the impact of a Truth Commission depends on the

²⁰⁶ IACHR. [Business and Human Rights Report: Inter-American Standards](#). Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) Section Inter-American Contexts of Special Attention in the Area of Business and Human Rights: A. Transitional Justice and Accountability of Economic Actors, para. 203.

²⁰⁷ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014. para. 204.

wide dissemination of its findings and the implementation of its recommendations. In accordance with the jurisprudence of the Inter-American System, while Truth Commissions contribute to the reconstruction of the social fabric, they do not replace the State's obligation to establish the truth through judicial proceedings and to promote justice for those responsible for serious human rights violations. The IACHR urges the State to comply with its international obligations regarding Memory, Truth and Justice in a comprehensive manner²⁰⁸.

132. The Commission has also highlighted and acknowledged CoV's efforts in differentiated approaches to say:

Press Release 185/20

T]he IACHR takes note of the efforts made by the CEV [Colombia] to implement the gender perspective in a cross-cutting manner in its actions and to guarantee the participation and hearing of the voices of women and LGBTI persons²⁰⁹.

3. The Search for the Fate or Whereabouts of Victims of Enforced Disappearance or Their Mortal Remains

133. The Inter-American Commission has pronounced on the search for victims of forced disappearance as a fundamental component of the knowledge of the truth and the cessation of the forced disappearance. In all known contentious cases on this issue, the IACHR recommends that States undertake, through all possible means, the search for the fate or whereabouts of the disappeared person and, if necessary, the proper identification of their mortal remains, followed by the return of the remains to their next of kin²¹⁰.
134. In direct relation to the above, as an indispensable and definitive contribution to the knowledge of the truth, in the cases of forced disappearance it has decided, the IACHR has recommended that States comply with their obligation to investigate, prosecute and punish, both as an autonomous obligation of the States and as a manifestation of the right of access to justice and judicial protection, and as reparation for violations of the right to judicial protection and judicial guarantees;

²⁰⁸ IACHR. [Press Release 142/17](#). IACHR welcomes the installation of the Truth Commission in Bolivia. September 14, 2017.

²⁰⁹ IACHR. [Press Release 185/20](#). IACHR calls on Colombia to redouble its efforts to fully implement the Final Peace Agreement, July 31, 2020.

²¹⁰ IACHR. Report No. 85/13. Case 12.251. Admissibility and Merits. Vereda La Esperanza v. Colombia. November 4, 2013. Para. 311.

in some cases, the two titles have been used concurrently to issue this recommendation.

135. In this regard, in the case of Alcides Torres Arias et al (Colombia), the IACHR declared the international responsibility of the Colombian State for the forced disappearance of two persons, and recommended:

188. (i) "[i]nvestigate in a complete, impartial and effective manner the whereabouts of Alcides Torres Arias and Ángel David Quintero and, if applicable, adopt the necessary measures to identify and deliver the mortal remains to their next of kin"; (ii) "[t]o carry out the domestic proceedings related to the human rights violations declared in this report and conduct the corresponding proceedings for the crime of forced disappearance of Alcides Torres Arias and Ángel David Quintero, impartially, effectively and within a reasonable time, in order to clarify the facts completely, identify all those responsible and impose the corresponding sanctions"; and (iii) "[r]epair adequately the human rights violations declared in this report, both materially and morally, including fair compensation, the establishment and dissemination of the historical truth of the facts and the implementation of an adequate program of care for their next of kin"²¹¹.

136. Similarly, in the case of James Zapata Valencia et al. (Colombia), also concerning forced disappearance, the IACHR first characterized the right of the State to investigate, prosecute and punish those responsible as a right of the victims' next of kin under Articles 8 and 25 of the ACHR, and subsequently ordered as reparation (i) "[t]hat a complete, impartial, and effective investigation be carried out within a reasonable period of time into the circumstances in which James Zapata Valencia and the child José Heriberto Ramírez Llanos died," and (ii) "[t]o adopt the necessary measures to ensure that the State investigates, prosecutes and punishes those responsible for the disappearance, effective and within a reasonable period of time of the circumstances in which James Zapata Valencia and the child José Heriberto Ramírez Llanos died", (ii) "[t]o adopt the necessary measures that tend to ensure the due investigation of the cases of executions perpetrated by State security agents", and (iii) "[t]o adequately compensate the next of kin of James Zapata and José Heriberto Ramírez, taking into account the special condition of child of the latter, at the time the facts occurred"²¹². This approach has been reiterated on multiple other occasions.

²¹¹ IACHR. Merits Report No. 101/17, Case No. 12414-Alcides Torres Arias, Angel David Quinteros et al. (Colombia), September 5, 2017.

²¹² IACHR. Merits Report No. 79/11 Case 10916-James Zapata Valencia and Jose Heriberto Ramirez Llanos (Colombia) July 21, 2011.

137. In a similar vein, the IACHR positively valued the creation of the National Commission for the Search for Disappeared Adults in El Salvador, stating that:

Press Release 150/17

The IACHR welcomes the joint work with civil society in the creation of this mechanism, and hopes that the State will provide the human and material resources necessary for the Commission to carry out its work efficiently.

"The creation of the National Commission for the Search for Disappeared Persons in El Salvador is excellent news, especially because the State worked together with civil society to reach a consensus on the design and operation of the mechanism," said Commissioner Margarete May Macaulay, IACHR Rapporteur for El Salvador.

On the other hand, the Commission calls upon the Salvadoran State to adopt all measures to ensure that the selection and appointment process of the members of this Commission is carried out in a transparent manner, according to previously established objective criteria that guide the evaluation and qualification of the candidates for the appointment of the most suitable and capable persons, in order to ensure the independence and effectiveness of the new body²¹³.

138. In 2019 in its preliminary observations of its in loco visit the IACHR indicated:

Press Release 335/19

With regard to victims of forced disappearance during the armed conflict, the IACHR notes that the National Commission for the Search for Children Disappeared during the Internal Armed Conflict (CNB) has resolved 95 cases of the 265 cases investigated in the eight years of its activities, with the active participation of the Argentine Forensic Anthropology Team, the Guatemalan Forensic Anthropology Foundation (FAFG), and the Institute of Legal Medicine. After a year since the beginning of its activities, the National Commission for the Search of Disappeared Adult Persons in the Context of the Armed Conflict (CONABÚSQUEDA) has published a National Plan for the Search of Adult Persons and carried out its first exhumation with technical support from the FAFG. The IACHR was informed that both commissions have submitted to the Executive Branch a proposal for a national law to search for children and adults who forcibly disappeared in the context of the armed conflict in El Salvador, and therefore calls on the State to follow up on this process and the

²¹³ IACHR. [Press Release 150/17](#). IACHR salutes El Salvador for the creation of the National Commission for the Search for Disappeared Persons. September 17, 2021.

creation of these commissions with the human, economic, logistical, scientific and other resources necessary to investigate and determine the whereabouts of the missing persons. In this context, the IACHR also recognizes the work of the organization PRO-BÚSQUEDA in the investigation of cases of children who disappeared or were involuntarily separated from their families during the internal armed conflict in El Salvador²¹⁴.

139. The IACHR has also indicated to the States that such mechanisms should carry out their work by establishing a communication strategy with family members and agreeing on a framework for coordinated action to ensure their participation, knowledge, and presence²¹⁵.
140. The Commission has also ruled on situations of child abduction and identity substitution that took place in the context of the implementation of the Condor Plan in several Southern Cone countries, as well as in the context of the Central American armed conflicts, particularly in El Salvador. The Commission classified these situations as forced disappearances and by submitting a series of cases to the IACHR Court on this issue, an important jurisprudential development on the right to identity and its different components was achieved. Recently, the IACHR sent a case to the IACHR Court in which it recapitulated the historical findings on this context in the context of the Condor Plan in the following terms:

45. The clandestine repressive operations carried out within the framework of "Operation Condor" often included the abduction and appropriation of children, after their parents were disappeared or executed. Regarding the practice carried out in Argentina during the dictatorship, the Inter-American Court of Human Rights established the following:

Argentine jurisprudence has noted in several decisions that, "during the period of the self-styled National Reorganization Process, minors were taken from the custody of their parents [and that this practice constituted a] public and notorious fact. Pregnant women detained as part of counterinsurgency operations were kept alive until they gave birth and then their children were taken away and disappeared, while in many cases the children were handed over to military or police families after their parents were disappeared or executed.

In general, the policy of "seizure of minors" was carried out in the following stages: (a) children were taken from "the power of their legitimate holders when they could be suspected of having links with subversion or political dissidents with the de facto regime, and

²¹⁴ IACHR, [Press Release 335/19](#). IACHR presents preliminary observations from its on-site visit to El Salvador, Washington, DC. December 23, 2019.

²¹⁵ IACHR, [Press Release 208/20](#). In the framework of the International Day of the Victims of Enforced Disappearances, the IACHR urges States to strengthen their efforts in the search for disappeared victims, September 1, 2020.

according to intelligence reports" or were taken during the clandestine detention of their mothers"; (b) they were then taken "to places located within the dependencies of the public forces or under their operational dependence"; c) the abducted [minors] were "handed over to members of the armed or security forces, or to third parties, so that they could keep them and hide them from their legitimate guardians; d) "within the framework of the appropriations ordered, and with the aim of preventing the reestablishment of the link with the family, [the minors'] civil status was suppressed, registering them as children of those who retained or hid them, and e) false data was "inserted or [was] inserted in birth certificates and documents intended to accredit the identity of the minors [of age].

As for the purposes pursued with the illicit abductions and appropriations, these could correspond: a) to a form of trafficking for irregular adoption of children; b) to a punishment of their parents or grandparents of an ideology perceived as opposing the authoritarian regime, or c) to a deeper ideological motivation related to a desire to forcibly transfer the children of members of opposition groups, in order to prevent the relatives of the disappeared from one day becoming "potentially subversive element[s]"²¹⁶.

141. In this type of case, the Commission has recommended that States search for disappeared children, including the creation of a genetic information system to make their identification feasible. This was done, for example, in the case of *Contreras et al. v. El Salvador*, in which the IACHR requested the following in its application:

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 reparation measures 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 system²¹⁷.

²¹⁶ IACHR. Report No. 56/19. Case 13.392. Admissibility and merits. Julien Grisonas Family v. Argentina. May 4, 2019. Para. 197.

²¹⁷ IACHR. Application before the IACHR Court. Case of Gregoria Herminia Contreras et al. v. El Salvador. Case. 12.517. June 28, 2010. Para. 271.

4. Declassification, Access and Preservation of Archives

142. A recurring theme in truth and memory is related to the declassification, access and preservation of archives.
143. In this regard, the IACHR has recalled that in transitional contexts, the rights to freedom of expression and access to information acquire structural importance. In this regard, the Commission has indicated that States have the obligation to guarantee victims and their next of kin access to information about the circumstances surrounding serious human rights violations²¹⁸.
144. The Commission has emphasized that "the duty to remember," as a corollary of the right to the truth, is of utmost importance to avoid the recurrence of violations in the future²¹⁹ and constitutes an indispensable guarantee to ensure the implementation of measures of non-repetition of the facts of the past²²⁰. In the same sense, the guarantee of the right of access to information in cases of serious human rights violations is fundamental to dissolve the authoritarian enclaves that try to survive the democratic transition²²¹ and constitutes a necessary condition to

²¹⁸ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 24.

²¹⁹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 109. citing: Cf. IACHR, [Third Report on the Situation of Human Rights in Paraguay](#), OEA/Ser.L/VII.110, doc. 52, March 9, 2001, para. 23, citing IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 147. See also 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; Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez (El Salvador), April 13, 2000. In the same vein, the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity establishes: (i) the inalienable right to the truth: every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and motives that led, through massive or systematic violations, to the perpetration of those crimes. The full and effective exercise of the right to the truth provides a fundamental safeguard against the recurrence of such violations; (ii) the duty to remember: a people's knowledge of the history of its oppression is part of its heritage and should therefore be preserved by taking appropriate measures in the interest of the State's duty to remember to preserve archives and other evidence relating to violations of human rights and humanitarian law and to facilitate knowledge of such violations. Such measures should be aimed at preserving the collective memory from oblivion and, in particular, at preventing the emergence of revisionist and negationist theses; (iii) the right of victims to know: regardless of the actions they may bring before the courts, victims and their families have the imprescriptible right to know the truth about the circumstances in which the violations were committed and, in the event of death or disappearance, about the victim's fate; and (iv) guarantees for the realization of the right to know: it is incumbent upon States to take appropriate measures, including measures necessary to ensure the independent and effective functioning of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. UN, Commission on Human Rights, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

²²⁰ IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc.51, December 30, 2009, chapter IV, para. 5.

²²¹ IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression, Access to Information on Human Rights Violations. The right of victims of human rights violations to access information held by State

promote accountability and transparency in state management, as well as to prevent corruption and authoritarianism²²².

145. As the IACHR has indicated, the right of access to information is a fundamental right protected by Article 13 of the American Convention²²³. It is a particularly important right for the functioning of democratic systems and an indispensable tool for the exercise of other human rights²²⁴. As reaffirmed by inter-American jurisprudence, every person is entitled to the right of access to information under the control of the State, therefore, it is not necessary to prove a direct interest or a personal affectation to obtain the information held by the State, except in cases in which a legitimate restriction permitted by the American Convention applies²²⁵.
146. Inter-American jurisprudence has recognized that the right of access to information protects the right of victims and their families, as well as of society, to know information on serious human rights violations that is in the archives of the State, even if such archives are located in security agencies, military or police agencies²²⁶. This implies a set of positive obligations or obligations to do, which are accentuated in transitional contexts towards a democratic state based on the rule of law²²⁷.
147. First, States must adapt their legal framework to guarantee the full and effective exercise of the right of access to information on serious human rights violations. Legislation must ensure that access to information is governed by the principles of maximum transparency and good faith. As the Inter-American Court has established, in cases of human rights violations, state authorities cannot legitimately invoke mechanisms such as state secrecy or confidentiality of information, or

agencies on such violations, para. 12, citing Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic ("Birthler Commission"), activity reports for 1999, 2001, 2009, describing the contribution of the Federal Commissioner's office to the convictions of guards and others involved in murders committed on the former borders of the German Democratic Republic. This commission has also facilitated the seeking of redress by victims of arbitrary detention, political persecution, employment discrimination, unlawful confiscation of property, etc. Between 1991 and 2009 more than 2.6 million people consulted the archives maintained by the Federal Commissioner. Available at: http://www.oas.org/en/iachr/expression/topics/access_information.asp.

²²² IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc.51, December 30, 2009, chapter IV, para. 5.

²²³ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 97.

²²⁴ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 97.

²²⁵ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 97.

²²⁶ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 97. Citing: IACHR, Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 107 et seq; IACHR, Office of the Special Rapporteur for Freedom of Expression, El derecho de acceso a la información en el marco jurídico interamericano (second edition). Para.77; IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report (2010), Chapter III, Access to Information on Human Rights Violations.

²²⁷ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 97. Citing: IACHR, Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 110 et seq.

reasons of public interest or national security, to avoid providing the information requested by the judicial or administrative authorities in charge of the pending investigation or trial²²⁸. Several countries in the region have adopted norms that establish that information on human rights violations must not only be provided to the authorities in charge of investigating these crimes, but that in no case may it be kept confidential²²⁹.

148. Secondly, the State must seek the information necessary to achieve the objectives of an investigation and allow the truth of what happened to be known, by all possible means, making a "substantive effort" in good faith, and when it has been illegitimately removed from the official archives, it must adopt the necessary mechanisms to recover it²³⁰. If the above efforts are unsuccessful, the State has the obligation to reconstruct the lost information. This duty to search for, recover and reconstruct the relevant information is inherent²³¹ to the right of access to information. In no case can the final decision on the existence of the requested documentation be left to the discretion of a State body whose members are attributed with the commission of the unlawful act. The IACHR has pointed out that in Germany, for example, after the fall of the Berlin Wall, thousands of bags were discovered that contained the remains of documentation belonging to the intelligence services. The Birthler Commission, charged with enforcing the Stasi Archives Act, determined that the documents in 6,500 bags could be recovered, and has since been able to manually reconstruct the documents in more than 400 of the bags found²³². The Inter-American Commission has considered along these lines

²²⁸ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 98. Citing: IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 113. See, inter alia, IACHR Court. Case of Myrna Mack Chang v. Guatemala. Judgment of November 25, 2003. Series C No. 101, para. 180; Case of Tiu Tojin v. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 258; Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 196-202.

²²⁹ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 98. Citing: IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 113. See, Republic of Peru, Law No. 27806-Law on Transparency and Access to Public Information art. 15-C, establishing that "information related to the violation of human rights or of the Geneva Conventions of 1949 carried out under any circumstances, by any person, shall not be considered classified information"; Oriental Republic of Uruguay, Law No. 18.381 Right of Access to Public Information, art. 12, stating that, "The subjects bound by this law may not invoke any of the reservations mentioned in the preceding articles when the requested information refers to human rights violations or is relevant to investigate, prevent or avoid human rights violations"; OAS, [Model Inter-American Law on Access to Information](#), 2010, Art. 45. See also IACHR Right to Information and National Security, OAS/Ser.L/V/LL, IACHR/RELE/INF.24./20 July 2020.

²³⁰ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 99. Citing: IACHR, Office of the Special Rapporteur for Freedom of Expression, [Annual Report \(2010\)](#), Chapter III, Access to Information on Human Rights Violations, para. 19.

²³¹ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 99. Citing: IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 116.

²³² IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and Relatives. Bolivia. May 8, 2018. Para. 99. Citing: See, in general, Jefferson Adams, Probing the East German State Security Archives, 13 *International Journal of Intelligence and Counterintelligence* 21(2000).

that States should make significant efforts to find the information that was allegedly destroyed: if in Germany it was possible to reconstruct literally shredded documents, States in our region should conduct serious, committed and effective investigations to find copies of the information that was allegedly lost²³³.

149. Third, state efforts to guarantee access to information should include opening archives so that the institutions investigating the facts can make direct inspections; conducting inventories and searches of official facilities; promoting search operations that include raids on places where the information may be located; conducting hearings and interrogations of those who may know where it is located or those who can reconstruct what happened; among others. The victims' relatives and their legal representatives must be able to participate in these actions and have direct access to the documentation obtained. When it comes to information related to the forced disappearance of persons, it cannot, under any circumstances, be kept confidential from those investigating the crime or from the direct victims or their relatives. The IACHR has recognized that the lack of knowledge of information that would make it possible to find the whereabouts of a disappeared relative or to clarify the circumstances in which the crime was committed constitutes a form of cruel and inhuman treatment²³⁴.
150. Fourthly, the State has the duty to preserve and facilitate access to State archives, when they exist, and to create and preserve them when they have not been compiled or organized as such. When it is a question of grave violations of human rights, the information that these archives can gather is of undeniable value and is indispensable not only to promote investigations, but also to avoid the repetition of aberrant acts. This practice has already been reflected in some countries in the region, which have created "memory archives" responsible for collecting, analyzing, classifying, and disseminating documents, testimonies and other information related to human rights violations in the recent past²³⁵. For example, Argentina created the "National Memory Archive" (published in the Official Gazette on December 17, 2003). Article 1 of the regulation establishes that the archive will have the function of "obtaining, analyzing, classifying, duplicating, digitalizing and archiving information, testimonies and documents on the violation of human rights and fundamental freedoms in which the responsibility of the Argentine State is involved and on the social and institutional response to these violations"²³⁶.

²³³ IACHR. Report No. 60/18. Case 12.709. Merits. Juan Carlos Flores Bedregal and family members. Bolivia. May 8, 2018. Para. 99. Citing: IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report (2010), Chapter III, Access to Information on Human Rights Violations, para. 19.

²³⁴ IACHR, Office of the Special Rapporteur for Freedom of Expression. The Right of Access to Information in the Inter-American Legal Framework (Second Edition), March 7, 2011, paras. 80-86.

²³⁵ IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 118.

²³⁶ IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, 13 August 2014, para. 119.

151. More recently, the IACHR adopted Resolution 3/19 establishing the Principles on Public Policies on Memory in the Americas, in which it defined what is meant by "archives" in this context and recapitulated the standards for access, preservation and restrictions. The relevant sections of the Resolution are:

Definitions

(...)

Archives are understood to be those documentary collections or collections, in any medium, related to serious human rights violations or of any nature that can assist in their investigation, as well as those related to the actions of civil society in the defense and promotion of human rights and democratic values in such contexts. Public archives include documents related to national and local government agencies, including police headquarters and other institutions related to the security forces, the armed forces, the judiciary, the prosecutor's and ombudsman's office, truth commissions, reparations commissions, among others. Non-state archives of public value may include those held by: a) non-governmental agencies; b) academic institutions involved in the protection of human rights; c) private companies and institutions; and d) insurgent groups, e) intergovernmental organizations, among others²³⁷.

Principle XIV. Creation or recovery, preservation and management in a sustainable manner

States have a duty to create or recover and sustainably manage archives as an important effort for the restoration and recognition of historical truth. Likewise, archives constitute an educational tool against denialism and revisionism, ensuring that victims, society as a whole and future generations have access to primary sources. At the same time, they provide a documentary basis useful for the realization of rights, the non-repetition of serious human rights violations and the dissolution of authoritarian enclaves that may survive in a democracy. Therefore, States have the obligation to create or recover and sustainably manage State archives, and to contribute to the creation or recovery and sustainable management of non-State archives of public value. To this end, States should ensure:

- a. The completion of a listing of state archives and non-state archives of public value;

²³⁷ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

- b. The promotion and establishment of search operations that include searches and on-site visits to the places where the information could be found;
- c. Conducting hearings with those who may know where information is found or those who can reconstruct what happened, guaranteeing their safety;
- d. The seizure of the archives of institutions whose members are attributed with the commission of serious violations of human rights;
- e. The preservation, classification and systematization of documents that may contain information related to serious human rights violations or of any other nature that may assist in their investigation;
- f. Promoting legislative actions, adopting administrative measures and making technical efforts to regulate and promote the digital reproduction of archival records necessary for the preservation of historical memory.
- g. The development of public policies that guarantee and facilitate citizen access to the information contained in the archives and the promotion of research initiatives aimed at ensuring the proper preservation of the original records in their different media.
- h. The preparation of official records on the progress of trials for serious human rights violations committed;
- i. Working together with the affected communities and civil society organizations to preserve, classify and systematize the records kept, in any medium, on serious human rights violations and/or in relation to their actions in the defense and promotion of human rights and democratic values;
- j. Working together with affected communities in which oral memory is a priority in order to build archives that preserve the memory of what happened over time;
- k. The training of justice operators in the consultation of archives and in documentary and testimonial analysis techniques for a better use of resources and for the promotion of interdisciplinary work;
- l. The adoption of pertinent technical measures and sanctions to prevent the theft, destruction, obstruction, dissimulation or falsification of files;
- m. Making every effort within its power to recover or reconstruct information necessary to clarify human rights violations whose

custody was its obligation and which has been destroyed or illegally removed;

n. The non-destruction of documentation that could contain information on serious human rights violations. Any destruction of a document that could assist in the investigation of serious human rights violations should be delayed until after consultation with evaluation commissions made up of professionals, civil society organizations and victims. State archives should keep complete records of all decisions regarding the destruction of documents, including the list of documents disposed of and how they were disposed of.

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 cases of serious human rights violations. In particular, courts, extrajudicial commissions of inquiry and investigators should be able to freely consult the archives. Every person has the right to know whether his or her name and/or identity is found among the state archives, as well as to register his or her statement on the content of the information, but in no case shall the documents be modified. The original and the observation must be provided together, whenever the former is requested.

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 established in advance and in an express, specific, precise and clear manner in a law. Victims of serious 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 challenge, even when they are legitimate interests that the State can protect in other contexts. Likewise, States must have a simple, rapid and effective judicial

remedy that, in cases in which 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 access²³⁸.

152. In sum, the above obligations entail the duty to make, in good faith, significant efforts to ensure that the victims of serious human rights violations and their families, those responsible for investigating these crimes, and society can have access to all the information held by the State necessary to know the truth of what happened.

5. Initiatives on the Maintenance of Historical Memory

153. The Commission has also referred to other types of state initiatives related to historical memory. Thus, in its Report on the Right to Truth it stated that:

35. Considering the complexity of the phenomena of massive and systematic human rights violations, other initiatives have made a significant contribution to official efforts by helping to guarantee the right to the truth in a broad sense. These initiatives have contributed to the clarification and officialization of human rights violations as a measure of reparation for the victims and their families, as well as of commemoration and remembrance for society in general. Although this report analyzes mainly State initiatives, the Commission also refers to the indispensable role that victims, their representatives and civil society organizations have played in requesting, contributing to, designing, implementing and executing a wide range of initiatives aimed at exercising and demanding respect for the right to the truth²³⁹.

36. On the one hand, it is worth highlighting the tireless activity of victims, family members, human rights defenders and civil society organizations that have demanded and continue to demand truth, justice and reparation in cases of human rights violations. In addition to initiatives to carry out and support fact-finding, victims and their representatives, human rights defenders and civil society organizations have played a crucial role in pushing for and supporting the reforms in law, policy and practice necessary to overcome obstacles to the right to truth. Without claiming to be exhaustive, the report refers to examples of creative, highly engaging initiatives from diverse sectors that reflect the application of human rights principles in the pursuit of truth and justice²⁴⁰.

²³⁸ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

²³⁹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 35.

²⁴⁰ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 36.

154. As the IACHR indicated, there have been State initiatives in the region aimed at collective reflection and the construction of memory about the massive and systematic human rights violations of the past, as well as the dignification of the victims. These efforts include acknowledgements of responsibility and public apologies for the commission of serious human rights violations by high-level State authorities, the construction of museums, memorials, archives and monuments aimed at remembering and consolidating the historical record of such violations, among others²⁴¹.
155. The Commission has urged States to continue adopting measures of recognition, remembrance and commemoration of cases of human rights violations, since the acknowledgment of responsibility and the request for forgiveness, as well as the strengthening of the collective memory of what happened, constitute an important measure of reparation and represent a commitment to the non-repetition of the serious violations perpetrated²⁴².
156. In Resolution 3/19, the IACHR adopted the Principles on Public Policies on Memory in the Americas. In this document, the Commission emphasized 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 violations"²⁴³. Among the relevant definitions, it is worth highlighting the following:

Memory is understood as the ways in which individuals and peoples construct meaning and relate the past to the present in the act of remembering serious human rights violations and/or the actions of victims and civil society in the defense and promotion of human rights and democratic values in such contexts;

Public policies of memory are understood as the different interventions, based on documentary and testimonial evidence, and forged with the participation of the victims and civil society, which are aimed at the State's recognition of the facts and its responsibility for the serious human rights violations that occurred, the vindication and preservation of the memory and dignity of the victims, the dissemination and preservation of the historical memory and the promotion of a culture of human rights and democracy aimed at the non-repetition of the facts;

Memory initiatives of an educational, cultural or other nature are understood as state and non-state interventions aimed at promoting the objectives of public memory policies;

²⁴¹ IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 37.

²⁴² IACHR. [The Right to the Truth in the Americas](#). OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 235.

²⁴³ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

Sites of memory are understood to be all those places where serious human rights violations were committed, or where such violations were suffered or resisted, or that for some reason the victims or local communities consider that the place can serve as a memorial to those events, and that are used to rethink, recover and transmit traumatic processes, and/or to pay tribute and make reparations to the victims²⁴⁴.

157. Through these same Principles, the IACHR included specific provisions on the comprehensive approach to memory policies, the participation of victims, the involvement of civil society, the suitability of the people in charge of memorial policies, the importance of interdisciplinarity, the need for an intercultural and gender approach, the importance of dialogue and regional cooperation, the State's obligation to finance these policies, and the need for an ²⁴⁵adequate regulatory framework. It is worth transcribing verbatim in this compendium Principle IX in which the IACHR exemplified the diversity of public policies on memory:

Principle IX. Design and implementation of memory initiatives.

States should 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;
- b. Incorporation of human rights education at all curricular levels, in order to generate knowledge about past and present human rights violations and their historical processes, using as educational resources: the participation of victims, testimonies, archives, memory sites, among other resources gathered or produced in the search for truth, justice and reparation;
- c. Creation of a national commemorative day to remember the serious human rights violations that have occurred;
- d. Publication and official dissemination of court rulings on 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

²⁴⁴ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

²⁴⁵ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

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;

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;

j. Provision of updated and permanent training in international human rights law at the formal and non-formal levels by civilian teachers with human rights training, aimed at the population in general and the armed and security forces and intelligence, justice system and prison agencies in particular;

k. Development of guidelines on human rights in the use of the media;

l. Development of publicity and dissemination initiatives about access to memory sites and archives; m. Carrying out campaigns to donate objects and obtain information related to the perpetration of the serious human rights violations that occurred;

n. Promotion of cultural events (theater, cinema, art exhibitions, among others) and the use of social networks and media to disseminate information about the serious human rights violations that have occurred²⁴⁶.

158. Similarly, in its Report on the Impact of Friendly Settlements, the Commission highlighted the following regarding symbolic measures of satisfaction for the purpose of maintaining historical memory:

166. The Inter-American Commission has repeatedly referred to the fundamental value of the recovery of the historical memory of serious human rights violations as a mechanism for prevention and non-repetition. In the same sense, the Inter-American Court has said that part of the integral reparation for human rights violations is the

²⁴⁶ IACHR. [Resolution 3/19](#). Principles on Public Policies on Memory in the Americas. November 9, 2019.

realization of acts or works of public scope or repercussion that have effects such as the recovery of the memory of the victims²⁴⁷.

167. Through the signing of friendly settlement agreements, petitioners and States have agreed on reparation measures aimed at recognizing the dignity of the victims, keeping alive the memory of the events, and serving as a guarantee of non-repetition. Reparation measures of a symbolic nature have been agreed upon in friendly settlement agreements in different modalities: the construction of monuments in honor of the victims, the designation of public spaces and buildings with the name of the victims, and the establishment of commemorative plaques²⁴⁸.

159. The Commission has also issued press releases welcoming the implementation by States of measures related to memory. Thus, for example, on the Inauguration of the Museum of Memory in Chile, the Commission issued the following statement:

Press Release 1/10

On the occasion of the inauguration of the Museum of Memory in Chile, the Inter-American Commission on Human Rights congratulates the Chilean Government and people for this transcendent work. (...) The initiative of the Chilean State represents an important symbol of the will to fight impunity and the creation of a democratic culture based on respect for human rights.

The Inter-American Commission has repeatedly alluded to the fundamental value of recovering the historical memory of serious human rights violations as a mechanism for prevention and non-repetition. In the same sense, the Inter-American Court has said that part of the integral reparation for human rights violations is the realization of acts or works of public scope or repercussion that have effects such as the recovery of the memory of the victims²⁴⁹.

160. Similarly, the Commission has called on States to actively promote memory and other measures of satisfaction in the face of historical contexts of grave human rights violations. The following statement is an example of this:

Press Release 60/18

On the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade, the Inter-American Commission on Human Rights (IACHR) honors the memory of the more than 15 million African men, women, boys and girls who were victims of the

²⁴⁷ IACHR, [Impact of the Friendly Settlement Procedure](#) (Second Edition). Para. 142.

²⁴⁸ IACHR, [Impact of the Friendly Settlement Procedure](#) (Second Edition). Para. 142.

²⁴⁹ IACHR, [Press Release No. 1/10](#) Opening of Chile's Museum of Memory. January 11, 2010.

deplorable transatlantic slave trade, considered the largest forced migration in history.

On this date, the IACHR warns that the phenomenon of slavery and the subsequent lack of positive actions taken to neutralize and reverse its effects, resulted in the perpetuation of mechanisms of direct and indirect discrimination against the Afro-descendant population. This has generated a pattern of historical and systematic racial discrimination and exclusion that still affects the Afro-descendant population in the Americas to this day.

The Commission has maintained that the absence of information on the contribution of the Afro-descendant population to the societies of the Americas has contributed substantially to the maintenance of their invisibility. The IACHR also considers it important to modify the contents of textbooks and educational programs to include relevant information on the contributions of the Afro-descendant population, with the understanding that knowledge of these historical facts will facilitate the adoption and incorporation of patterns of solidarity and inclusive coexistence.

States should make efforts to modify curricula and school programs to incorporate the study of slavery, colonialism and independence processes from basic education, in the light of an integrationist and inclusive perspective, so as to recognize that the historical debt with the Afro-descendant people still exists (...)

On the other hand, the IACHR today stresses the importance of implementing educational campaigns and initiatives to make existing discrimination and racism visible. It is important that they highlight the structural nature of racial discrimination and its everyday occurrence, as a first step towards eliminating racial discrimination and building inclusive societies. The IACHR also stresses that in the framework of the International Decade for People of African Descent, States must adopt concrete and practical measures through the adoption and effective implementation of national and international legal frameworks, as well as policies and programs to combat racism, racial discrimination, xenophobia and related forms of intolerance faced by people of African descent²⁵⁰.

²⁵⁰ IACHR. [Press Release 20/18](#). On the International Day of Remembrance for the Victims of Slavery and the Transatlantic Slave Trade, the IACHR Urges States to Employ Efforts to Protect and Promote Afro-American Culture. March 23, 2018.

6. Denialism

161. Although this issue has been little addressed by the IACHR, in its Report on the Right to the Truth, the Commission made a brief reference to the issue by invoking the *updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*. As highlighted by the IACHR, this document establishes:

109 (footnote page 151) (i) the inalienable right to the truth: every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and motives that led, through massive or systematic violations, to the perpetration of those crimes. The full and effective exercise of the right to the truth provides a fundamental safeguard against the recurrence of such violations; (ii) the duty to remember: a people's knowledge of the history of its oppression is part of its heritage and should therefore be preserved by taking appropriate measures in the interest of the State's duty to remember to preserve archives and other evidence relating to violations of human rights and humanitarian law and to facilitate knowledge of such violations. Such measures should be aimed at preserving the collective memory from oblivion and, in particular, at preventing the emergence of revisionist and negationist theses; (iii) the right of victims to know: regardless of the actions they may bring before the courts, victims and their families have the imprescriptible right to know the truth about the circumstances in which the violations were committed and, in the event of death or disappearance, about the victim's fate; and (iv) guarantees for the realization of the right to know: it is incumbent upon States to take appropriate measures, including measures necessary to ensure the independent and effective functioning of the judiciary, to give effect to the right to know²⁵¹.

162. Thus, for example, with respect to the armed conflict in Guatemala, the Commission has analyzed, both in its country reports and through the examination of cases, the situation of the Maya indigenous people with respect to the grave human rights violations committed against them during the armed conflict. As the IACHR recapitulated in its most recent Country Report, the legacy of the internal armed conflict that Guatemala experienced between 1960 and 1996, meant great human, material, institutional and moral costs. The grave human rights violations committed during this period were multiple, massive, and systematic: massacres, extrajudicial executions, forced disappearances, rape, scorched earth operations, forced displacement, torture, illegal detentions, kidnappings, many of them as part of a genocide. During this period, it has been estimated that more than two hundred thousand people were victims of arbitrary executions and forced disappearance as

²⁵¹ IACHR, *The Right to the Truth in the Americas*, OEA/Ser.L/V/II.152. Doc. 2. 13 August 2014, para. 109, footnote 151, in reference to non-repetition and citing: Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

a consequence of political violence. In ethnic terms, 83% of the victims were members of the Mayan indigenous people²⁵².

163. Through various pronouncements and a multiplicity of cases sent to the Inter-American Court, the Commission has described what happened in Guatemala as genocide and has insisted on the need for truth, justice and reparations. The Commission has closely followed the trials initiated at the national level and, in the face of a denialist attitude, indicated the following:

437. During the administration of former President Pérez Molina, the government rejected the classification of the facts of the conflict, with its devastating effect on indigenous communities, as genocide. The report of the State of Guatemala presented in October 2015 reiterates that what happened during the internal armed conflict does not fall under the category of genocide as an international crime because the conflict occurred within the framework of the cold war and its origin was not interethnic. Likewise, it is offensive and unacceptable to state that there was genocide in Guatemala because no court has determined it in a final sentence²⁵³.

438. The denial of the existence of genocide in Guatemala was the subject of a pronouncement by the Guatemalan Congress itself. On May 13, 2014, the Congress of the Republic adopted a declaration through which some recommendations were formulated regarding the scope of the National Reconciliation Law and the Peace Accords. According to Resolution Point 3-2014, the Congress affirmed that "despite the fact that the prevailing legislation shows that the elements that make up the criminal offenses mentioned above are legally unfeasible in Guatemala, mainly in terms of the existence of genocide on Guatemalan soil during the internal armed confrontation", and stated that the investigation and punishment of the crimes should be carried out in accordance with the law. and pointed out that the investigation and punishment of the grave human rights violations committed during the conflict would foster "conditions contrary to peace" and "would impede a definitive national reconciliation". At the same time, it makes explicit reference, in the first line of its text, to the trial initiated a year ago against retired military officers Efraín Ríos Montt and Mauricio Rodríguez Sánchez, and directly urges the Judiciary to administer justice: "in such a way that justice produces peace". It is important to point out that this Resolution Point was approved the same week in which the

²⁵² IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. 31 December 2015. Para. 40. Original citations omitted.

²⁵³ IACHR. [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15. 31 December 2015. Para. 437. Original citations omitted.

succession in the mandate of the head of the Public Prosecutor's Office²⁵⁴ took place.

439. Faced with this situation, the IACHR issued Press Release No. 058 in which it noted with concern that the aforementioned Resolution Point makes specific reference to a criminal proceeding for genocide, with respect to which it states that the elements of the respective criminal type are not met and seeks to offer guidelines regarding how the Judiciary should decide this type of case. In this regard, the Commission urged the State to preserve the principle of separation of powers as an essential condition for judicial independence. The IACHR indicated the following:

The Inter-American Commission considers that a statement of this nature, issued in the current context of the country, does not represent a constructive step forward in the efforts that various State institutions have been making to investigate and punish serious human rights violations and combat impunity.

Likewise, the Inter-American Commission notes with concern that the aforementioned Resolution Point makes specific reference to a criminal proceeding for genocide, with respect to which it states that the elements of the respective criminal type are not met, and it intends to offer guidelines as to how the Judiciary should decide this type of case. In this regard, the Commission urges the State to preserve the principle of separation of powers as an essential condition for judicial independence; and recalls that the Political Constitution itself provides in Article 46 the general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over domestic law²⁵⁵.

164. Moreover, as cited above, in its Principles on Public Policies on Memory in the Americas, the IACHR linked memory policies to the need to confront revisionism and denialism²⁵⁶. More recently, the Inter-American Commission expressed its concern over a series of violent attacks on memory sites in Chile and called on the State to adopt the necessary measures for their preservation in the face of such threats and attacks. In its press release, the IACHR indicated that:

Press Release 25/20

(...) Expresses its concern over the repeated attacks on memory sites located in different regions of Chile and calls on the State to

²⁵⁴ IACHR. Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OEA/Ser.L/V/II. Doc. 43/15. 31 December 2015. Para. 438. Original citations omitted.

²⁵⁵ IACHR. Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OEA/Ser.L/V/II. Doc. 43/15. 31 December 2015. Para. 439. Original citations omitted.

²⁵⁶ IACHR. Resolution 3/19. Principles on Public Policies on Memory in the Americas. November 9, 2019.

investigate such acts, as well as to adopt measures to ensure the preservation of these spaces.

The IACHR reaffirms that memory sites are a way to keep alive the memory of victims and raise awareness to prevent the repetition of serious human rights violations. In its Resolution 3/2019 - Principles on Public Policies on Memory in the Americas - the IACHR recommends that States develop a precise and adequate normative framework that regulates the preservation of these spaces. Additionally, the IACHR indicates that States should guarantee administrative mechanisms so that any person or institution with a legitimate interest can urge the preservation of memory sites.

(..)

The repeated aggressions to the memorials related to the victims of the Chilean dictatorship constitute a worrisome scenario of intolerance that should be the object of attention of the authorities. (...) The damage to the memorial sites consists of an aggression against the dignity and memory of the victims of the dictatorship"²⁵⁷.

²⁵⁷ IACHR. [Press Release 25/20](#). Expresses concern over repeated attacks on memory sites in Chile. February 6, 2020.

CHAPTER 5
REPARATIONS STANDARDS
RELEVANT TO TRANSITIONAL
CONTEXTS

REPARATIONS STANDARDS RELEVANT TO TRANSITIONAL CONTEXTS

1. The obligation of States to make reparations for human rights violations

165. International human rights law has recognized different rights of individuals as victims of unlawful acts, including those related to reparation measures²⁵⁸. 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. Regarding 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 the means of reparation, and to ensure reparation measures that, under no circumstances, exclude, marginalize or revictimize women, girls and adolescents. Likewise, the State has the unavoidable duty to make reparations for those human rights violations for which it is responsible²⁵⁹. 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 victim²⁶⁰.
166. The Inter-American system has pioneered the development and application of the concept of integral reparation, which is composed of measures of restitution, compensation, rehabilitation, satisfaction, and non-repetition. In addition, reparation measures linked to truth and justice have been a fundamental part of reparations in the inter-American system, particularly in cases of gross human rights violations.
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

²⁵⁸ 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.

²⁵⁹ 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.

²⁶⁰ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 461. Citing: See, inter alia, I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Case of Velásquez Rodríguez v. Honduras. Compensatory Compensation (art. 63.1 American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25.

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.²⁶¹ In this sense, the States must apply restitution measures in the exercise of the right when the nature of the facts that gave rise to the violation of human rights makes it materially feasible and to the greatest extent possible. However, the adoption of these measures is especially limited in the face of irreversible situations, such as in cases of extrajudicial execution, torture or sexual violence.²⁶² In accordance with the guidelines established within the Inter-American System of Human Rights, in cases in which it is not possible to adopt restitution measures, other forms of reparation are especially important, such as compensation or reparation measures of a structural nature, in accordance with the nature of the human rights violations and the damage caused to the victims.²⁶³

168. Specifically, regarding guarantees of non-repetition in contexts of transitional justice, the Commission has made various recommendations to the States aimed at the adoption of legislative, administrative, and any other measures, in order to adapt legislation and judicial practices to inter-American standards, and thus eradicate problems and obstacles in matters of truth and justice. Also, the IACHR has recommended the implementation of human rights education programs for the security forces; the classification of the crime of forced disappearance, among other measures²⁶⁴ aimed at consolidating and propagating a culture that respects human rights with a view to strengthening the rule of law and democratic institutions. In addition,, it is important to emphasize that it is mainly the comprehensive satisfaction of the standards on truth, justice and reparation that contributes decisively to the non-repetition of serious human rights violations. Therefore, the issue of non-repetition is transversal to all the standards systematized in this compendium, to the extent that in addition to satisfying the needs of the victims and their families, their implementation has a structural impact on the non-repetition of the facts. In contrast, when the standards of truth, justice and reparation are not met, a fertile environment is created for the repetition of the facts. This relationship

²⁶¹ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation 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.

²⁶² IACHR. General guidelines for monitoring the recommendations and decisions of the Inter-American Commission on Human Rights. OEA / Ser.L / V / II.173, Doc. 177, September 30, 2019, Annex 1 - Types of measures recommended by the IACHR, p. twenty-one.

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

²⁶³ I/A Court H.R., Case of Blake v. Guatemala. Repairs and Costs. Judgment of January 22, 1999. Series C No. 48, para. 42.

²⁶⁴ IACHR. Report No. 52/16. Case 12.521. Background. María Laura Órdenes Guerra and others. Chili. November 30, 2016. Page 30; IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al. (Guerrilla de Araguaia), Brazil, October 31, 2008, Para. 259.

between truth, justice, reparation and non-repetition was highlighted by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition:

(...) it should be clear that the promise of ensuring non-repetition of mandated violations can become more than a promise only if there are, in fact, social and structural transformations that transcend those arising from the implementation of the measures referred to in the resolution. Clarifying the ways in which the implementation of truth, justice and reparations is linked to development and security concerns and, indeed, the role they can play in development and security planning in general, can only contribute to making the guarantee of non-repetition of violations effective²⁶⁵.

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 implementation²⁶⁶. 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.
170. The Commission has recognized that, in serious, systematic, and prolonged situations of human rights violations, States may 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 considering 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 law²⁶⁷.
171. The following highlights the main debates on access to reparations, particularly relevant in transitional contexts in which States are called upon to redress massive human rights violations.

²⁶⁵ UN, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff, A/HRC/21/46, August 9, 2012, para. 51.

²⁶⁶ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 463.

²⁶⁷ IACHR. Truth, Justice and Reparation. Fourth Report on Human Rights Situation in Colombia. OEA/Ser.L/V/II.Doc. 49/1331 December 2013. Para. 467.

2. On Administrative Reparations Programs and Their Relationship to Judicial Reparations

172. In a Merits Report on Chile, the Inter-American Commission recapitulated the position of both bodies of the Inter-American system on the issue of administrative reparations programs and their relationship to judicial reparations as follows:

96. The Inter-American Court has indicated that "if national mechanisms exist to determine forms of reparation, these procedures and [their] results must be evaluated" and that, to this end, it must be considered whether they "satisfy criteria of objectivity, reasonableness and effectiveness"²⁶⁸. Specifically, regarding Chile's administrative reparations program, in the case of *Almonacid Arellano et al. v. Chile*, the Court expressed that it "positively values the policy of reparations for human rights violations advanced by the State"²⁶⁹.

97. However, beyond this generic recognition and without concrete legal consequences in the aforementioned case, subsequently, in the case of *García Lucero et al. v. Chile*, the Inter-American Court indicated that:

(...) the existence of administrative reparation programs must be compatible with the State's obligations under the American Convention and other international norms and, therefore, cannot result in an impairment of the State's duty to guarantee the "free and full exercise" of the rights to judicial guarantees and protection, in the terms of Articles 1(1), 25(1) and 8(1) of the Convention, respectively. In other words, administrative reparations programs or other regulatory or other measures or actions that coexist with them, cannot generate an obstruction to the possibility that the victims, in accordance with the rights to judicial guarantees and protection, may file actions claiming reparations²⁷⁰.

²⁶⁸ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 96. Citing: I/A Court H.R. Case of *García Lucero et al. v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 189. I/A Court H.R., Case of *Gomes Lund et al. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 303.

²⁶⁹ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 96. Citing: I/A Court H.R. Case of *Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 161.

²⁷⁰ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 97. Citing: I/A Court H.R. Case of *García Lucero et al. v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 190.

In the words of the Court in the same case "it is in accordance with the observance of conventional rights that the establishment of internal administrative or collective systems of reparation does not prevent victims from exercising jurisdictional actions to claim reparation measures"²⁷¹.

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 they obtain reparations. 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"²⁷².

100. Referring to the relationship between the two types of reparations in the Colombian case, the Commission noted that:

(...) the administrative reparations procedure should not imply a withdrawal of the contentious-administrative judicial action that seeks precisely to determine the legal responsibility of the State, nor should it imply a withdrawal of the incident of reparations. 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 process²⁷³.

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, being possible the confluence of both and allowing 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

²⁷¹ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 98. Citing: I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 192.

²⁷² 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.

²⁷³ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 100. Citing: IACHR. [Principal guidelines for a comprehensive reparations policy](#). February 19, 2008, para. 7.

administrative reparations program, "in accordance with Articles 8(1) and 25(1) of the 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"²⁷⁴.

175. The Commission recently reaffirmed this standard by reiterating that "States have the obligation to provide comprehensive reparation to victims of human rights violations" and that "in serious, systematic and protracted situations of human rights violations, States may create reparation programs that enable affected persons to have recourse to expeditious and effective mechanisms"²⁷⁵. However, the Commission insisted that:

195. [T]he 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 considers that the determination of reparation, whether determined through administrative or judicial channels (without excluding either of the two channels), 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 law²⁷⁶.

176. Regarding the relationship between reparations issued in administrative reparations programs and those issued in the Inter-American system in the framework of the petition and case system, the IACHR has indicated that:

197. (...) the complementarity between administrative and judicial reparations is verified at the international level, where, for example, the Inter-American Court has established judicial reparation measures, even when the victims had already received some type of compensation within the framework of general reparation programs at the national level²⁷⁷.

²⁷⁴ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 102.

²⁷⁵ IACHR. Report No. 56/19. Case 13.392. Admissibility and merits. Julien Grisonas Family v. Argentina. May 4, 2019. Para. 195. Citing: IACHR. *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V.II. Doc. 49/13. 31 December 2013, para. 467.

²⁷⁶ IACHR. Report No. 56/19. Case 13.392. Admissibility and merits. Julien Grisonas Family v. Argentina. May 4, 2019. Para. 195.

²⁷⁷ IACHR. Report No. 56/19. Case 13.392. Admissibility and merits. Julien Grisonas Family v. Argentina. May 4, 2019. Para. 197. Citing: 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. 468.

177. Thus, for example, in relation to the Victims and Land Restitution Law (Law 1448) in Colombia and its implications in the framework of contentious cases, the Commission has indicated the following:

1601. The Commission observes that beyond describing the reparations available under said Law, there is no detailed information that would make it possible to establish that the victims in this case have already received some reparations as a consequence of the Law, so that it would be possible to take them into account in order to impact the scope of the recommendations in relation to the concept of integral reparation. In this scenario, and regarding the eventual implementation of the recommendations through said Law, the Commission reiterates its position that administrative reparation mechanisms differ from judicial reparation, which is characterized by individualized determinations of the extent of the damage caused to the victims and which entails a burden voluntarily assumed by such persons to prove the specific violations and the respective damage. Reparations ordered by the Commission and the Court in the inter-American system are based on individual and proven determinations of both the violations to the detriment of the victims and the international responsibility of the State for them. In this sense, when a State has not effectively implemented reparations in favor of the victims who resort to the inter-American system, it is not appropriate to substitute the reparations of this process for the mechanisms or contents of the administrative reparation programs available to all persons, whose effectiveness has not been accredited in the specific case, which implies an additional burden on the victims to return to the domestic remedies that were ineffective at the time and that generated their complaint before the inter-American system in the first place²⁷⁸.

1606. Consequently, the Commission considers that the State must make full reparations to the victims in the present case and emphasizes that, in cases in which individual reparations were made, the State may take such prior reparations into account when determining the amount to be paid in reparations by virtue of the liability declared (...)²⁷⁹.

178. In a correlative manner, the IACHR has explained that while the State has a central role and primary responsibility in guaranteeing victims effective and equal access to reparations, in no way can the exercise of this right be subject to the determination of the criminal responsibility of the perpetrators, nor to the prior

²⁷⁸ IACHR. Report No. 170/17. Case 11.227. Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017. Para. 1601.

²⁷⁹ IACHR. Report No. 170/17. Case 11.227. Merits. Members and Militants of the Patriotic Union. Colombia. December 6, 2017. Para. 1602.

judicial execution of their personal property, legal or illegal²⁸⁰. On the other hand, with respect to the procedures to be implemented in the framework of an administrative program of integral reparations, the IACHR has considered that these, as administrative procedures, must respect the rights and guarantees established in Articles 8 and 25 of the American²⁸¹ Convention. Among the elements that make up due process in administrative proceedings, the IACHR has identified: the guarantee of a public hearing to determine rights, the right to legal representation, prior notification of the existence of the proceeding, the right to a well-founded decision, the publicity of the administrative proceedings, the right to a reasonable time, and the right to judicial review of administrative decisions²⁸². The IACHR has established that such procedures must 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 an armed 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. 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 assistance²⁸³.

3. Exclusion of Categories of Victims from Administrative Reparation Programs

179. Another issue that has been analyzed by the Commission is the exclusion of certain categories of victims from administrative reparation programs.
180. In a recent case against Argentina, the Commission ruled on a difference in treatment in the implementation of reparations programs for human rights violations committed during the dictatorship. The Commission analyzed the issue as follows:

57. (...) the reasoning offered by the State before the IACHR to justify the exclusion is not consistent with the reasoning on which it was based in the domestic sphere and, therefore, it is not conducive to

²⁸⁰ 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.

²⁸¹ 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.

²⁸² 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, 7 September 2007, pp. 36-48.

²⁸³ 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. 51. I/A Court H.R.I. Advisory Opinion No. 11/90.

formulate its defense in the international proceeding under the right to equality before the law. In this sense, the exclusion having occurred not for lack of evidence, but because the interpretation applied to the alleged victim determined that the *de facto* probation was not contemplated in the norm, the analysis that corresponds to the IACHR is whether said exclusion was justified in an objective and reasonable manner. As indicated above, the State did not provide such justification; likewise, the IACHR considers that the lack of reasonableness of the exclusion in light of the purposes pursued by the respective legislation can be inferred from the subsequent change of criterion that resulted, as will be seen below, in other persons in a situation similar to the one alleged by Mr. Almeida -such as his wife- having access to reparation²⁸⁴.

58. By virtue of the foregoing considerations, the IACHR considers that the State did not provide an explanation that would allow it to conclude that the exclusion that operated in the specific case of Almeida was objective and reasonable. Consequently, the IACHR considers that it violates the right to equality before the law, established in Article 24 of the American Convention, in relation to Article 1(1) of the same instrument²⁸⁵.

181. When analyzing the judicial remedies to challenge the exclusion of certain victims from the reparation's mechanisms, the Commission indicated the following:

66. The Commission considers that the need for an effective remedy on this point was fundamental, not only because it was an argument about the right to equality before the law, but also because the difference in treatment caused by the different criteria over time regarding *de facto* probation was related to a matter of great importance such as reparations for human rights violations committed during the military dictatorship²⁸⁶.

69. Within this weighing, special consideration must be given to the fundamental nature of the matter in question. In this case, the Commission considers that reparations for human rights violations committed in a context such as that of the dictatorship in Argentina, which could be similar or analogous to other cases that have been redressed, cannot depend solely on the moment in time at which the request is filed. On the contrary, this weighting should consider possible modulations of the effects of the sentences over time, so that changes in criteria such as *Robasto* may have retroactive effects, so as

²⁸⁴ IACHR. Report No. 147/18. Case 12.950. Merits. Rufino Jorge Almeida. Argentina. December 7, 2018. Para. 57. The facts of the case were punctually related to the non-recognition of a reparation to a person who was subjected to a *de facto* probation regime.

²⁸⁵ IACHR. Report No. 147/18. Case 12.950. Merits. Rufino Jorge Almeida. Argentina. December 7, 2018. Para. 58.

²⁸⁶ IACHR. Report No. 147/18. Case 12.950. Merits. Rufino Jorge Almeida. Argentina. December 7, 2018. Para. 66.

not to result in the unequal application of the law in matters of great importance, such as reparations for human rights violations²⁸⁷.

4. The Application of the Statute of Limitations for Access to Judicial Remedies

182. In recent years, the Commission has also analyzed the statute of limitations not only in criminal matters, but also in judicial reparations. In analyzing this issue for the first time in a case against Chile, the Commission recapitulated some relevant developments in both international and comparative law²⁸⁸.

183. Thus, for example, he cited what was said by the then Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Gross Human Rights Violations in 1993:

118. (...) the application of statutes of limitations often deprives victims of gross violations of human rights of the reparations to which they are entitled. The principle that claims for reparations for gross violations of human rights shall not be subject to statutes of limitation should prevail. In this regard, it should be borne in mind that the consequences of gross violations of human rights are the result of the most heinous crimes which, according to well-established legal opinions, should not be subject to statutes of limitation. Moreover, it is sufficiently proven that, for most victims of gross violations of human rights, the passage of time has not erased the traces, but quite the contrary, as it has caused an increase in post-traumatic stress that has required all kinds of material, medical, psychological and social help and assistance for a long time²⁸⁹.

184. The IACHR considered that,

199. Subsequently, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, adopted in 2005 by the United Nations Commission on Human Rights, included in its principles 23 and 32 the following with respect to the link between claims for reparation measures and the statute of limitations for civil actions regarding serious human rights violations:

²⁸⁷ IACHR. Report No. 147/18. Case 12.950. Merits. Rufino Jorge Almeida. Argentina. December 7, 2018. Para. 69.

²⁸⁸ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 116.

²⁸⁹ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 118. Citing: United Nations Commission on Human Rights (UNCHR-UN), Final Report submitted by the Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation of Victims of Gross Violations of Human Rights and Fundamental Freedoms, E/CN.4/Sub.2/1993/8, 2 July 1993, para. 135.

Principle 23. Prescription restrictions

The statute of limitations for a criminal offense, both with respect to prosecution and punishment, shall not run during the period in which there are no effective remedies for that offense. The statute of limitations shall not apply to serious crimes under international law that are by nature imprescriptible. When it does apply, the statute of limitations may not be invoked in civil or administrative actions brought by victims to obtain reparations.

Principle 32. Remedial procedures

Whether in criminal, civil, administrative or disciplinary proceedings, every victim must have the possibility of an accessible, rapid and effective remedy, including the restrictions imposed on the statute of limitations by Principle 23 (...) ²⁹⁰.

185. The IACHR also noted that:

120. in 2006 the United Nations General Assembly 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. Principles 6 and 7 of this instrument state that:

6. Where provided for in an applicable treaty or as part of other international legal obligations, no statute of limitations shall apply to gross violations of international human rights law or serious violations of international humanitarian law that constitute crimes under international law.

7. National provisions on the statute of limitations for other types of violations that do not constitute crimes under international law, including the statute of limitations for civil actions and other proceedings, should not be overly restrictive ²⁹¹.

186. Based on these pronouncements, the Commission affirmed that the application of the statute of limitations to the civil action constituted a restriction on the possibility

²⁹⁰ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 119. Citing: UNHRC, Diane Orentlicher, Independent Expert to update the Set of Principles to combat impunity, E/CN.4/2005/102, 18 February 2005.

²⁹¹ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 120. Citing: General Assembly (GA). A/RES/60/147, March 21, 2006. Resolution adopting 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."

of obtaining reparations²⁹². In subjecting this restriction to a proportionality test²⁹³, the Commission considered that legal certainty may be one of the legitimate purposes pursued by the statute of limitations for civil actions for reparations²⁹⁴ and that "there may exist, in the abstract, a relationship of suitability between such legal certainty and the establishment of statute of limitations periods for civil actions for reparations". However, it added that the State "did not demonstrate that it is indispensable to apply the statute of limitations to civil actions for reparations for crimes against humanity for the purpose of guaranteeing legal certainty". On the contrary, if it is understood that the principle of legal certainty seeks to contribute to public order and peace in social relations, the right to a judicial remedy to obtain reparations for crimes against humanity does not undermine this principle, but rather strengthens it and contributes to its optimization²⁹⁵.

187. The Commission also stressed that "reparations for crimes against humanity, because of the gravity of such crimes and their impact on society that transcends individuals, must be given greater weight than that attributed to legal certainty"²⁹⁶.
188. The Commission also affirmed that there is clear inter-American jurisprudence on the unlawfulness of the application of the statute of limitations in cases of serious human rights violations. The Commission recalled that the *raison d'être* of this prohibition is related to the fundamental nature for the victims of serious human rights violations, the clarification of the facts and the obtaining of justice. This is also consistent with the developments cited in the United Nations system and in comparative law, which indicate that legal actions for reparations for the harm caused by international crimes, such as crimes against humanity, should not be subject to the statute of limitations²⁹⁷.

²⁹² IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 127.

²⁹³ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 128.

²⁹⁴ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 129.

²⁹⁵ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 130.

²⁹⁶ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 131.

²⁹⁷ IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016. Para. 132.

CHAPTER 6
CONCLUSIONS

CONCLUSIONS

189. The Inter-American Commission, in compliance with the mandate set forth in Article 41 of the IACHR and in Article 106 of the OAS Charter to provide advice to States on human rights, has decided to prepare this document, which has as its main objective to provide a tool on technical cooperation, aimed at improving and strengthening the legislation, policies and practices of the States to advance towards the fullest protection of human rights.
190. This compendium is an up-to-date and easily accessible reference instrument for State actors, civil society, academia, and other international organizations regarding a subject of great relevance to the region. These modalities of cooperation tools are developed by the Inter-American Commission, pursuing the objective of promoting greater knowledge and use of the Inter-American human rights standards. At the same time, provide a practical instrument 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. Consequently, the purpose of the compilation of standards and jurisprudence contained in this compendium is to improve the design of interventions and public policies. Thus, the IACHR recalls the importance of States adopting diligent efforts to apply the legal standards of the Inter-American system on human rights.
191. The Inter-American Commission reiterates its commitment to collaborate with the American States through technical assistance and cooperation as a tool for institutional strengthening with the objective of helping the States to guarantee the objective and conditions aimed at materializing the efforts and public policy initiatives to promote the enjoyment of human rights.