

Main Human Rights Concerns and Typical Issues in the Inter-American System of Human Rights

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ABSTRACT

The organs of the Inter-American system for the protection of human rights address cases of torture, brutal and inhumane treatment and corporal punishment. Among the main human rights violations occurring within this system are enforced disappearances, which are often linked to the activities of state security forces and organised crime. Hence, particular attention is paid to political murders, the killing of journalists, human rights defenders and individuals belonging to ethnic minorities. A significant number of cases involve violations of freedom of speech and the press, such as censorship, the persecution of journalists and restrictions on access to information. Frequently examined issues include problems related to discrimination based on race, gender, sexual orientation, ethnicity or social status, which are associated with violations of the rights of marginalised groups, namely indigenous populations and persons with disabilities. It is important to highlight the considerable number of cases associated with violations of children's rights. These include issues surrounding child labour, violence against children and sexual exploitation. Another category of violated rights encompasses economic, social and cultural rights, including access to education, healthcare, housing and the protection of labour rights. A separate category includes restrictions on political rights, such as violations related to the right to participate in political life, including limitations on access to elections and the persecution of opposition members. Regarding the right to a fair trial, the Court often addresses issues concerning the lack of independent courts, torture during investigations and violations of judicial procedures. The organs of the Inter-American system monitor, document and respond to these violations and promote adherence to human rights in the region. Within the Inter-American system, special attention is given to groups that are vulnerable to discrimination and rights violations. These include children, women, the elderly, persons with disabilities and ethnic and national minorities. Protecting the rights of minorities is crucial for preserving their cultural identity and preventing discrimination. Regionalism in the case law of the organs of the Inter-American system refers to specific features that shape the interpretation and application of human rights in Latin American and Caribbean countries. Key aspects of regionalism include the cultural and historical context. Jurisprudence often considers local traditions, social norms and the historical experiences of Latin American countries, which influences the interpretation of human rights. Social challenges are an important aspect as well. Regional issues, such as violence, poverty, racial discrimination and human rights abuses, provide the backdrop for the decisions of human rights protection organs. These organs adapt their rulings to the changing social and political realities in the region, which lead to an evolution in the interpretation of human rights. There is a strong network of NGOs in the region that monitor the human rights situation and influence jurisprudence

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through the submission of complaints and reports. Several Court rulings emphasise the importance of social, economic and cultural rights, which can be perceived as a form of regionalism compared to other human rights protection systems that primarily focus on civil and political rights. Notably, countries in the region vary regarding the implementation and adherence to human rights standards, which affects the interpretation and application of the rulings. The Inter-American system is tailored to the conditions and issues prevalent in American countries, making it sensitive to local, cultural and political contexts. Institutions engage in actions aimed at educating society about human rights and promoting their observance in the region. The Commission regularly publishes reports on the human rights situation in various American countries, which influences government policies and public opinion. The Inter-American system collaborates with NGOs, which are often key players in documenting human rights violations and supporting victims.

KEYWORDS

Inter-American system, indigenous peoples, human rights, Inter-American Court of Human Rights, case law, truth commission

1. Introduction

The catalogue of human rights, which in the Inter-American system (IAHRS) are commonly referred to as fundamental rights, does not differ in its subject matter from other systems of protection. Regardless of the protective guarantees, substantive law contains a catalogue of human rights and freedoms that have been established and adopted by the Western civilisation. Differences are evident in the procedures that are supposed to best protect individuals from violations of their rights. The procedural system must be adapted to the specific subject matter of law and the circumstances in which violations occur, including aspects of everyday life and the cultural specificity of a given country.¹ The IAHRS, like its European counterpart, is characterised by the specificity of the relationship between the individual and the state and among individuals. Another type of relationship can be found in the African system. Despite same goals, ideas and aspirations, these systems are different in practice. The starting point for understanding the IAHRS is the knowledge of the history of the area in which it applies. This allows us to see the causes of the human rights problems that the countries are still facing. The specificity of the IAHRS is strongly influenced by social, political and economic factors.² American countries are relatively young, as they were once European colonies. Therefore, the legal remnants of the era should not come as a surprise. The populations inhabiting them are mainly migrants and their descendants, including mestizos.

Only in a few countries do indigenous people constitute a significant social force capable of defending their rights. Most of the population of Latin American countries is of mixed race. This is significant because this group does not identify itself as European or indigenous. The restrictive divisions of the colonial era, which determined one's place in the social hierarchy based on origin, are reflected today in social,

1 Ovalle Favela, 2012, pp. 595–623.

2 Rodríguez Rescia, 2009.

economic and educational inequalities. Historically, both colonists and indigenous peoples rejected mestizos. With the demographic growth of this part of society, a specific social structure developed in Latin American countries, which wanted to separate itself from its European and indigenous past and roots. Hence, the laws, customs and culture of indigenous peoples were rejected for several years in most Latin American countries. Apart from countries where the indigenous population constituted the majority, no legal measures were taken to protect their distinctiveness.

Anthropologically, mestizaje is a characteristic feature of Latin American societies. This has led to the creation of a new society that combines the characteristics of different social groups. Hence, a significant number of cases brought before the Inter-American Court of Human Rights (IACtHR) and Inter-American Commission of Human Rights (IACmHR) concern issues that are important to indigenous people, including indirectly, environmental protection. The specific position of women in mestizo society, which constitutes most of the population in the region, is reflected in the need to protect their fundamental rights. The large social stratification caused by the gap between the incomes of the inhabitants causes strong conflicts and influences the high level of violence. Unstable economies, especially in Latin America, do not foster social sentiment or trust in the authorities. These factors mean that the cases reported to the IACmHR and IACtHR have a different background than the problems that characteristic of the Old Continent.

A review of cases heard in both protection systems shows that the most significant area of concern for the IACtHR is the protection of the rights of indigenous peoples, women and children, and, in recent years, environmental protection. These issues are considered both as main topics and in conjunction with other rulings. Another unique topic that is widely discussed in several IACtHR rulings is the issue of truth commissions and accountability for dictatorships. Considering the rulings, their effectiveness in and impact on Latin American societies, the topics indicated above constitute the main area of systemic research.

Notably, in addition to analysing the IACtHR's case law concerning matters considered by it, it is necessary to distinguish specific groups whose rights are most violated. Social differences in the countries have led to a situation in which it is possible to indicate people who are sensitive to violations as individuals and due to their membership in a specific group, such as indigenous people, women, children and adolescents.³

1.1. Characteristic Features of the System

The IACtHR's case law, accepted by the national legal systems, jurisdictionally transcends the IAHRs, and goes beyond compliance with each resolution or its initial impact. The IACmHR's contribution, through the definition of protection criteria and its immediate and direct action in various media and in relation to numerous national and regional problems, must be added to the IACtHR's case law. It is worth noting the

3 Serrano and Robles Zamarripa, 2004.

system of reparations, which is increasingly becoming the subject of case law. Hence, its contribution to Inter-American human rights law is growing and legal doctrine is placing greater hopes on it.

In most of the controversial cases, the violations in which the IACtHR has ruled belong to the first-generation human rights, mostly constituting the radical, irreducible core rights, such as the right to life, integrity, liberty and a fair trial. The acts subject to challenge most often include torture, extrajudicial executions, arbitrary detention, enforced disappearances and denial of access to justice. At the end of the 20th century, issues concerning first-generation rights emerged relating to children and young people and the right to health, property, the independence of the courts, political sentences and freedom of expression, with a particular emphasis on the media.

The IACtHR examines complex and multi-threaded cases that require extensive analysis. They are important because the decisions have a significant impact on the development of case law and set directions for the future. Such cases include the consideration of the rights of natural persons within the legal order of collective persons, the right to truth, the right to legal personality, the right to citizenship and to asylum and shelter and the role of the norms of other international conventions, including those relating to humanitarian law, which help integrate concepts; however, are not directly applicable.

It is equally important to examine the reservations to the American Convention on Human Rights (ACHR), the interpretative declarations and the limitations of the IACtHR's disputed jurisdiction. These acts must not be incompatible with the object and purpose of the ACHR or prevent the IACtHR from exercising its jurisdiction in accordance with its nature, meaning or scope, derived from the ACHR. The importance of these judgements is obvious, since they contribute to the effective defence of fundamental rights to which states are bound. The Inter-American jurisdiction has progressed in dealing with cases concerning new-generation rights or rights that contain elements bordering on the property of members of indigenous communities, the value of the customary law that governs them, cultural specificity, the legality of public administration, workers' rights, freedom of assembly and association in trade unions, issues concerning vulnerable groups, the right to identity and preferences, procreation and the protection of the environment. The emergence of these new-generation rights reinforce the integral nature of human rights in case law and opens a horizon of enormous importance.

The IACtHR orders national institutions to determine, following the applicable national law, the consequences of the committed violations. However, this does not mean that a national margin of appreciation is accepted or the state is exonerated in such cases.⁴ Once the IACtHR has made a declaration of a violation of a right, it is up to the national judicial body to draw from it the consequences of a different nature

4 Gozanni, 2006, pp. 335-362.

resulting from the violation committed.⁵ Nevertheless, on various occasions, states have invoked the national margin of appreciation in favour of their ‘space of liberty’ to consider certain rights.⁶ The IACtHR case law is characterised by dynamic development and a broad scope of influence. The Court, like other international courts, considers the Convention a ‘living instrument’, whose content should be interpreted considering changing social, political and cultural conditions. Hence, its jurisprudence is not limited to traditional civil and political rights and includes rights of a new generation, such as environmental protection, rights of indigenous peoples, the right to truth and the prohibition of discrimination based on sexual orientation.⁷

A key aspect of the IACtHR’s jurisprudence is its jurisdiction and the relationship between the Inter-American system and domestic legal orders. The Court has repeatedly emphasised that its rulings set minimum standards that all state parties must adhere to. Therefore, it plays an important role in shaping the relationship between domestic law and the standards established by the Convention. The doctrine of conformity control with the Convention, articulated in its case law, determines that all state organs, including Courts, are obliged to apply and interpret national law in a manner that fully implements the provisions of the Convention and respects the standards set out in the judgments. Hence, the Court functions as an institution resolving individual complaints and a body shaping the constitutional character of the human rights protection system in the region. In practice, this entails the obligation to execute judgments in individual cases and the necessity to adapt national law to the Convention’s requirements.

In this context, the doctrine of so-called control of conventionality (*control de convencionalidad*), developed by IACtHR, is particularly important. It was first formulated in the *Almonacid Arellano v. Chile* (2006) and further developed in *Gelman v. Uruguay* (2011) and *Trabajadores Cesados del Congreso v. Peru* (2006). According to this doctrine, all state organs, especially domestic courts, are required to review national

5 Vargas Morales, 2022, pp. 349–371.

6 Bandeira Galindo, 2013, pp. 255–273.

7 In *Awas Tingni v. Nicaragua* (2001), the Court, for the first time, recognised that property rights protected by the Convention include the collective rights of indigenous peoples to land and natural resources, which form the basis of their cultural identity. In subsequent rulings, such as *Yakye Axa v. Paraguay* (2005) and *Saramaka People v. Suriname* (2007), the Court further developed this standard, emphasising the necessity of consulting with indigenous communities and protecting their bonds with the natural environment. Another example is Advisory Opinion OC-23/17, in which the Court explicitly linked environmental protection with the realisation of human rights, highlighting the states’ obligation to prevent ecological harm affecting individuals. The jurisprudence concerning the right to truth and memory is particularly significant, developed in *Barrios Altos v. Peru* (2001) and *Almonacid Arellano v. Chile* (2006), which established that amnesties are inadmissible in crimes against humanity. Additionally, the Court has consistently expanded protections against discrimination, as exemplified by *Atala Riffo v. Chile* (2012), which recognised that the prohibition of discrimination covers sexual orientation and gender identity. All these rulings indicate that the Court considers the Convention a ‘living instrument’, whose content should respond to contemporary challenges and expectations in human rights protection.

legal norms for compliance with the Convention and the IACtHR's jurisprudence. The adoption of this doctrine entails, among other things, the obligation for domestic courts to disregard laws that conflict with the Convention and the necessity of removing from the national legal order any statutes and regulations incompatible with Inter-American standards. Hence, it establishes the primacy of the Convention and the IACtHR's jurisprudence over conflicting domestic legal norms. Therefore, IACtHR has established a mechanism that ensures the effectiveness of its rulings and reinforces the Convention's function as a quasi-constitutional instrument for human rights protection in the region.

An analysis of the IACtHR case law demonstrates that this institution broadens the material catalogue of rights protected within the Inter-American system and shapes mechanisms to ensure their effectiveness within domestic legal orders. The development of new-generation rights reflects the flexible and progressive character of the IACtHR's interpretative approach. Meanwhile, the doctrine of conformity control with the Convention serves as a vital instrument for the implementation of these standards at the domestic level, compelling states parties to treat the Convention and the IACtHR's jurisprudence as a superior point of reference. Hence, the IACtHR performs a dual function. On the one hand, it advances the axiology of human rights in a direction aligned with contemporary challenges; on the other hand, it strengthens the institutional foundations of the Inter-American system, endowing the Convention with the status of a quasi-constitutional regional act. It is this synergy of material innovation and institutional consequence that determines the unique role of the IACtHR's jurisprudence in the global architecture of human rights protection.

2. Case Laws in the Inter-American System

2.1. Personal Liberty

Personal liberty is a fundamental element of the human rights regime, as considered in all the relevant texts that have dealt with this issue, from the end of the 18th century to the present. This is reflected in the IACtHR case law, which has examined various aspects of liberty, and the concept of liberty itself, based on the interpretation and application of Article 7 of the ACHR. Before the adoption of the IACtHR's current criteria on this issue, the case law assumed that Article 7 referred exclusively to physical

liberty.⁸ Currently, a broader concept prevails, namely ‘liberty is the right of every person to organize, in accordance with the law, his individual and social life according to his own choices and beliefs’.⁹ Liberty is ‘designed throughout the American Convention’.¹⁰ Article 7 of the ACHR shows a dual aspect of this right: general in the first section and specific in the second section, which concerns primarily deprivation of liberty due to arrest and other extremes related to criminal proceedings.¹¹

8 Chaparro Álvarez y Lapo Íñiguez, para. 53. On 8 September 1998, Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez were wrongfully accused of illegal drug trafficking. Both were detained for over a year. Messrs. Chaparro and Lapo filed the recourses available to them, requesting a review of the grounds for the preventive detention measure; however, these recourses were unsuccessful. The IACtHR found that the state violated the ACHR. The case relates to the illegal and arbitrary detention of Chilean national Juan Carlos Chaparro Álvarez, owner of the Aislantes Plumavit Compañía Limitada factory, and Ecuadorian national Freddy Hernán Lapo Íñiguez, the factory manager. These detentions were carried out in November 1997 under *Operación Antinarcótica Rivera*, an operation under which cool-boxes, similar to those produced in the factory of the victims, were seized if the presence of cocaine hydrochloride and heroine had been detected.

9 Gelman, para. 29. In late 1976, Marha Claudia Garcha Iruretagoyena de Gelman, a university student in her third trimester of pregnancy, was arbitrarily detained in Buenos Aires, Argentina, by Uruguayan and Argentinean military commandos and transferred to a detention centre in Montevideo Uruguay, where she gave birth to her child. Gelman was forcefully removed and her daughter was taken from her and given to a Uruguayan family under Operation Condor, which involved the systematic practice of arbitrary detention, torture, execution and enforced disappearances by the Uruguayan dictatorship. In December 1986, the Uruguayan Government approved an amnesty law, which was approved by the national referendum, that eliminated the possibility that military and police officers who committed human rights violations before May 1985 would be investigated, tried and sanctioned. The IACtHR found that the state violated the ACHR and the Inter-American Convention on Forced Disappearance of Persons (IACFDP). The facts of the case relate to the forced disappearance of Gelman and the suppression and substitution of the identity of her daughter Marha Macarena Gelman Garcha, who was born in captivity. The suppression and substitution of identity is understood as form of forced disappearance. These events occurred during the dictatorship in Uruguay between 1973 and 1985 and formed a part of a systematic practice of gross human rights violations carried out under the doctrine of national security and Operation Condor, the alliance which united and coordinated the security forces and intelligence services of the dictatorships in Chile, Argentina, Paraguay, Bolivia and Brazil. Artavia Murillo y otros (*Fecundación in vitro*), para. 142, The facts of the case refer to the prohibition of in vitro fertilisation, established following a decision of the Supreme Court of Justice in 2000, which declared the decree which regulated this practice unconstitutional. It concerns human rights violations resulting from the state’s general prohibition of the practice of in vitro fertilisation. The victims, a couple affected by fertility problems, argued that the prohibition constituted an arbitrary interference into the right to a private life, start a family and equality. The IACtHR found that the state violated the ACHR, e I.V, para. 151. This case is about the sterilisation, by tubal ligation, of a woman without her consent. The IACtHR found violations of the ACHR and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Para). However, it did not discuss the violation of the right to health (Article 26 of the Convention) implicated in the case. The facts of the case concern human rights violations suffered by I.V. because of having had a fallopian tube tied without her informed consent and the subsequent lack of an effective judicial response to such events.

10 Chaparro Álvarez y Lapo Íñiguez, para. 52, e I.V, para. 151.

11 Chaparro Álvarez y Lapo Íñiguez, para. 51; Nadege Dorzema y otros, para. 125.

It examines unlawful and arbitrary detention and the immediate judicial review of detention, which covers ordinary criminal and administrative cases and migration measures. The guarantees provided under Article 7 apply to the latter.¹² The right to personal liberty, protected by Article 7, has occupied a central place in the IACtHR's jurisprudence since its inception. The Court consistently emphasises that individual freedom constitutes a fundamental principle and its restriction can only occur exceptionally, in a manner that complies with domestic law and convention standards.

As early as *Gangaram Panday v. Suriname* (1994), the IACtHR pointed out that the legality of deprivation of liberty cannot be equated solely with compliance with domestic law. Arbitrary detention, even if formally provided for in internal law, constitutes a violation of the Convention. This laid the groundwork for distinguishing formal legality and substantive conformity from the Convention. A further breakthrough was *Súñez Rosero v. Ecuador* (1997), in which the IACtHR examined long-term pre-trial detention. It emphasised that prolonged use of provisional detention undermines the presumption of innocence and transforms an exceptional measure into a form of premature punishment. It articulated the principle of subsidiarity of detention, indicating that it should only be applied in strictly justified cases and for the shortest possible duration.

In *Tibi v. Ecuador* (2004), the IACtHR broadened the range of guarantees for the protection of the right to liberty. Besides reaffirming the prohibition of arbitrary arrest, it noted that states are obliged to ensure individuals the right to effective compensation for unlawful detention. Hence, Article 7 is linked to Article 25, which guarantees the right to effective judicial protection. The judgment in *Juan Humberto Sánchez v. Honduras* (2003) highlighted the fundamental importance of the *habeas corpus* remedy as a primary safeguard of the right to liberty. The Court stated that

12 *Vñlez Loor*, para. 107 y seq. The facts of the case concern the detention, on the part of the Panamanian migratory authorities, of Ecuadorian national Jesús Vñlez Loor and his subsequent conviction to imprisonment for committing migratory crimes, without access to counsel or consulate. For years, Vñlez Loor was housed in jails with inhumane detention conditions, where he suffered torture. This is the case of an Ecuadorian citizen who thrice entered Panama illegally. He was expelled twice but the third time he was arrested, tried and detained. Vñlez Loor was sentenced to a 2-year prison term and allegedly tortured and mistreated. On 10 September 2003, he was deported to Ecuador. The IACtHR held that Panama was liable for the breach of the ACHR and the American Convention on Forced Disappearance of Persons. *Nadege Dorzema y otros*, para. 136 et seq. In June 2000, Dominican army soldiers opened fire on a truck that was trying to smuggle into the country a group of Haitians, causing seven persons to die and several injuries. The shooting was adjudicated by military justice system, which acquitted the soldiers involved. Some of the surviving victims suffered violations of personal liberty, judicial guarantees and judicial protection because they were summarily expelled from the Dominican Republic. The facts of this case occurred within the discrimination against persons of Haitian origin and the deportation of Haitians from the Dominican Republic. *Familia Pacheco Tineo*, paras. 131–132, This case is about the assassination of a politician who was candidate for a seat in the National Congress. The IACtHR found the state responsible for failing to properly investigate the assassination and prosecute those responsible. The facts of the case concern the deportation of Pacheco Tineo Family from Bolivia to Peru, enforced on 24 February 2001, following the state's rejection of their application for refugee status and ordering their removal from the country.

this right cannot be suspended even in extraordinary circumstances, as it is a key mechanism for protecting individuals against arbitrary actions by public authorities. *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* (2007) held particular significance, as the IACtHR established a high standard regarding the use of pre-trial detention. It emphasised that detention cannot be applied automatically and must be based on specific grounds. Furthermore, its legality must be subject to prompt and effective judicial review. The Court underscored that the lack of effective remedies in this area constitutes an independent violation of the right to liberty. Hence, it found that the reasoning of a judicial decision is a condition for the possibility of guaranteeing the rights to defence. In this case, the lack of reasoning for the decision made it difficult for the defence to present new evidence or arguments for their release or to better challenge the decisive evidence of the prosecution. The IACtHR developed standards for the adoption of effective preventive measures concerning the right to property. It explicitly emphasised that pre-trial detention can only be applied exceptionally, as a supplementary and temporary measure. Its justification cannot assume guilt, the desire to exert pressure on the accused or the need to ensure the ‘smooth progress of proceedings’, independent of actual grounds.

The judgment highlighted that automatic or excessively prolonged use of pre-trial detention violates Article 7, which protects the right to personal liberty. Referring to Article 7(6) of the Convention, the IACtHR underscored the necessity of real and effective judicial mechanisms that enable rapid verification of the lawfulness of arrest and detention. In its view, appeal procedures must be genuinely accessible, effective and decided without undue delay. This case confirmed that abuse of pre-trial detention constitutes a form of arbitrary deprivation of liberty, which is contrary to the Convention and the general principles of international human rights law. The Court reminded that the liberty of the individual is the standard and deprivation of liberty must be an exception, always justified in a detailed and individualised manner. The significance of this judgment lies in strengthening two key guarantees: limiting the use of pre-trial detention solely to situations that are strictly necessary and proportionate and ensuring real and effective judicial oversight of this measure. In practice, this ruling reinforced a high standard for protecting the right to personal liberty within the Inter-American system, while reinforcing states’ obligation to establish effective procedural mechanisms to protect individuals from arbitrary actions by state authorities.

The standards developed by the IACtHR in this case show considerable convergence with the jurisprudence of the European Court of Human Rights (ECtHR) regarding the right to liberty concerning pre-trial detention. In its rulings, notably in *Letellier v. France* (1991), the ECHR indicated that deprivation of liberty during the preliminary proceedings can only be applied exceptionally, based on specific and significant reasons, such as the risk of flight, obstruction of justice or serious threats to public order. The European Court further emphasised the need for periodic review of the lawfulness of detention to avoid automatic extensions. Similarly, in *McKay v. the United Kingdom* (2006), the ECtHR stressed that the right to liberty would be

illusory if there were no possibility of quick and effective judicial review of detention decisions.

In *Bayarri v. Argentina* (2008), the IACtHR took a further step by analysing the situation of a person deprived of liberty and subjected to torture. It concluded that arbitrary detention, combined with a violation of personal integrity, breaches Article 7 and leads to a violation of the prohibition of cruel, inhuman or degrading treatment. This demonstrated the interconnectedness of the right to liberty with other fundamental rights. In *Fermín Ramírez v. Guatemala* (2005), the IACtHR examined the arbitrariness of detention concerning death penalty, emphasising the necessity of fully respecting procedural guarantees in proceedings that could lead to the imposition of the highest penalty.

Both the Inter-American and European systems recognise the subsidiary and exceptional nature of pre-trial detention, requiring states to provide mechanisms of judicial review that must be effective, accessible and applied without delay. In both systems, excessive or arbitrary detention is regarded as a violation of the right to personal liberty and a form of abuse of state power. However, the difference lies in the emphasis. While the ECtHR focuses on the detailed justification and proportionality of each deprivation of liberty, the IACtHR additionally highlights the importance of the availability and effectiveness of remedies, considering their absence as a stand-alone violation of the Convention. Hence, in the Inter-American system, the review of the legality of detention is treated as a procedural guarantee and a key element of substantive protection of the right to liberty.

Nadege Dorzema et al. v. Dominican Republic examined the extrajudicial execution of a group of Haitian immigrants and the expulsion of the survivors, following an attack by military agents that was provoked when their entry into the country was discovered. The IACtHR established standards for the application of due process in administrative procedures for the deportation or expulsion of immigrants, referring to the state's obligation to assess the circumstances of each person and the prohibition of collective expulsions. Moreover, it reiterated the standards concerning the excessive use of force by state agents and the competence of the military criminal jurisdiction in cases concerning violations of human rights. Furthermore, in *Vélez Loor v. Panama*, it established the standards for the protection of migrants and recognised that detention for immigration irregularities should be exceptional and the imposition of a custodial sentence should require an individualised assessment and the possibility of applying less restrictive measures. It reaffirmed the importance of the right to legal and consular assistance in judicial proceedings involving migrants, since they are in a particularly vulnerable situation, which may be aggravated if the person is deprived of their liberty. The IACtHR found that the appealing conditions of detention in the prisons in which Vélez Loor was deprived of his liberty constituted cruel, inhuman and degrading treatment and the state had failed to investigate with due diligence the acts of torture inflicted on him.

The minimum due process that must be observed in migration proceedings that may result in the expulsion or deportation of a foreigner and in proceedings for the

recognition of refugee status were established by the IACtHR in *Pacheco León and Family v. Honduras*. It emphasised the special situation of children in the family, stating that the special protection that children must enjoy extends to judicial or administrative proceedings in which an application for asylum or expulsion is decided.

A comprehensive analysis of these rulings indicates that the IACtHR has developed a coherent and detailed standard for the protection of the right to personal liberty. Its foundations are the prohibition of arbitrary detention, the principles of exceptionalism and subsidiarity in pre-trial detention, the obligation of effective judicial review and the right to compensation in cases of violation. The Court treats individual freedom as a paramount value, subjecting any restrictions to strict proportionality and necessity assessments.

2.2. Personal Security

The right to personal security, which is one of the fundamental protections of the individual within the Inter-American system, remains closely connected to the rights to life and liberty. The IACtHR consistently emphasises that its scope includes protection against unlawful interference by the state and the positive obligation of authorities to ensure individuals have real protection from threats posed by third parties. Regarding security, the right referred to in Article 7 of the ACHR, the IACtHR shared the criterion adopted by the ECtHR, that is, the right to security is understood as protection against arbitrary or unlawful interference with of personal liberty.¹³ This right is particularly significant when granting detainees guarantees of legal protection.¹⁴ The IACtHR examined the right to personal security in relation to a situation that requires careful treatment: the participation of the armed forces in tasks

13 Chaparro Blvarez and Lapo Íñiguez, para. 53; Cabrera García y Montiel Flores, para. 80. The facts of the case refer to the cruel, inhumane and degrading treatment of Teodoro Cabrera García and Rodolfo Montiel Flores whilst they were detained in custody by the Army, for the alleged crimes of carrying weapons intended for the exclusive use of the Army without a license and for growing poppies and marijuana, along with the violation of judicial guarantees during the criminal proceedings against them. This is the case of two Mexican environmental activists in the state of Guerrero, Mexico, who, in 1999, were arrested by the military and found guilty of various crimes based on confessions extracted under duress. The IACtHR found that the state violated the ACHR and the American Convention to Prevent and Punish Torture.

14 'Niños de la Calle' (Villagrán Morales y otros). Fondo, para. 135. This case addresses the plight of street children in Guatemala. At the time, state security forces carried out a systematic practice of aggression against street children in Guatemala, including threats, persecution, torture, forced disappearance and homicide. Large numbers of children are still living on the streets of Guatemala. In this landmark case, the IACtHR spelled out the states' obligation to protect this particularly vulnerable group. The facts of the case refer to the extrajudicial execution of five young people living on the streets, three of them being minors. Four of the victims were previously abducted and tortured. The IACtHR located the events within the context of the state's practice to use state security forces to threaten, arrest, perpetrate cruel, inhumane and degrading treatment and murder 'street children', as a means of counteracting juvenile delinquency.

that, in principle, correspond to police forces.¹⁵ In such cases, the IACtHR considers that it is necessary to respect the requirements of strict proportionality applicable to cases of limitation of the right.¹⁶ Furthermore, it is necessary to apply strict criteria of exceptionality and due diligence in securing conventional guarantees.¹⁷ It took into account that the armed forces undergo training and have a different orientation than police security forces.¹⁸ Therefore, it is necessary to carefully distinguish between military and police functions.¹⁹

In *Velásquez Rodríguez v. Honduras* (1988), the Court established that the state is responsible for direct violations of the right to personal security by its officials and a lack of due diligence in preventing, investigating and punishing serious violations committed by private entities. This case concerned enforced disappearances, whereby the IACtHR indicated that the absence of effective action by the state creates an atmosphere of impunity, which constitutes a violation of the right to security. In *Street Children (Villagrán Morales and others) v. Guatemala* (1999), the IACtHR highlighted that the right to personal security was significant for vulnerable groups, such as street children. The state was found responsible for direct actions by police officers who caused the victims' deaths and prior omissions in providing protection and security.

In *Juan Humberto Sánchez v. Honduras* (2003), it pointed out that personal security includes protection against threats in detention situations. It emphasised that the state is responsible for the lives and integrity of persons under its control and the lack of effective protective mechanisms leads to violations of the right to liberty and personal security. Another significant example is *Myrna Mack Chang v. Guatemala* (2003), where the IACtHR underscored the state's obligation to ensure personal security concerning human rights defenders' activities. The state failed to prevent the murder and did not provide an effective investigation, which was a violation of the right to personal security of the victim and her relatives.

A notable development of standards occurred in cases concerning indigenous peoples. In *Yakye Axa v. Paraguay* (2005) and *Xákmok Kásek v. Paraguay* (2010), the IACtHR recognised that lack of access to land, water and healthcare posed a threat to

15 *Montero Aranguren y otros (Retñn de Catia)*, para. 78. On 27 November 1992, right after an attempt of a coup d'état in Venezuela, 37 detainees at the Detention Center of Catia were extrajudicially executed, leading to a prison riot. The guards, the troops of the 5th Regional Commander's Office of National Guard and the Metropolitan Police intervened, exercising excessive force and shooting indiscriminately at the detainees, resulting in the death of more than 60 prisoners, 52 injured and 28 disappeared. The IACtHR found that the state violated the detainees' rights to life, humane treatment and judicial protection and guarantees under the ACHR. The events occurred in a framework of serious civil riot at a national level and extreme political unrest, provoked by the second attempt at a coup d'état against the administration of the then President Carlos Andrés Pérez, carried out by a civilian-military group formed by high-ranking officers of the four branches of the Armed Forces and several civilian opponents. *Cabrera Garcna y Montiel Flores*, para. 88.

16 *Cabrera Garcna y Montiel Flores*, para. 89.

17 *Ibid.*

18 *Ibid.*, paras. 86–87.

19 *Ibid.*, para. 88.

the lives and personal security of community members. Thus, this right was linked to living conditions, along with protection from physical violence. In *González and others (Campo Algodonero) v. Mexico* (2009), concerning the murders of women in Ciudad Juárez, the Court established the state's obligation to provide special protection to vulnerable groups at risk of gender-based violence. It was found that the failure to take effective preventive measures and the ineffectiveness of investigations constituted violations of the right to personal security.

In *Cabrera García and Montiel Flores v. Mexico*, the IACtHR considered the presence of the military in the Guerrero region in the 1990s, as a response of the state to drug trafficking and the presence of armed groups, such as the Zapatista National Liberation Army (EZLN) and the Popular Revolutionary Army (EPR). It developed standards regarding the obligation to investigate acts of torture; the exclusion of evidence obtained through coercion and the competence of the military criminal jurisdiction to hear such cases. Moreover, it established standards concerning the use of force by state security forces and prison conditions and the state's obligation to guarantee the right to personal integrity in *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. The special circumstances were related to serious social upheavals and extreme political instability. Notably, Venezuela has acknowledged its international responsibility for the condemned events.

The analysis of these rulings shows that the IACtHR has developed a broad understanding of the right to personal security. It encompasses protection against arbitrary interference by state authorities, the positive duty of authorities to prevent and respond to threats from private entities, special protection for vulnerable groups (children, women, human rights defenders and indigenous peoples) and the linkage of personal security with living conditions and access to basic goods. Hence, the right to personal security within the Inter-American framework is not limited to prohibiting direct abuses by the state and has been shaped as the right to effective and real protection by public authorities, serving as a foundation for human dignity and individual integrity.

The IACtHR case law shapes a coherent system of individual protection, encompassing the rights to personal liberty and security. The Court treats these rights as complementary, indicating that effective protection of individuals requires respecting procedural guarantees and substantive security standards. The right to personal liberty, protected under Article 7 of the ACHR, focuses on the prohibition of arbitrary deprivation of liberty and the necessity of ensuring proportional and exceptional procedures for deprivation of liberty, including pre-trial detention. Jurisprudence in this area includes rulings which emphasised the subsidiarity and exceptional nature of detention, the need for effective judicial review and the right to compensation in cases of unlawful detention. These rulings clearly stated that individual liberty is a fundamental principle and any restrictions must be justified and proportionate.

Simultaneously, the right to personal security, which includes protection against unlawful acts by state authorities and the state's obligation to prevent threats from third parties, is being developed. The Court highlighted the state's duty to provide real

protection, effective investigations and preventive measures for vulnerable groups, including children, women, human rights defenders and indigenous populations. These standards encompass physical protection and living conditions necessary to ensure individual safety. Hence, both rights are closely interconnected: protecting personal liberty requires effective control against arbitrary detention and safeguarding personal security requires state actions for preventing threats and ensuring the physical integrity of individuals. Respecting both rights creates a framework in which the state bears responsibility for direct violations and omissions in providing real protection.

Hence, the IACtHR has developed a comprehensive standard of individual protection that combines procedural and substantive aspects, ensuring that any interference with a person's liberty or security is strictly regulated, proportionate and subject to effective oversight. This system exemplifies the synergy between the rights to personal liberty and security, confirming that effective human rights protection requires both counteracting arbitrary state actions and actively preventing threats to individual integrity.

2.3. Property

The right to property, protected under Article 21 of the ACHR, constitutes a fundamental element of individual protection, encompassing the rights to possess and use property peacefully and lawfully. The IACtHR, in numerous rulings, has emphasised that a state cannot arbitrarily deprive individuals of their property and is obliged to ensure effective legal remedies for the protection of this right.

The right to property has been a classic feature of declarations and catalogues of rights since the end of the 18th century. It is protected by Article 21 of the ACHR, titled 'private property' and stating the guidelines for disposal of property. The case law has developed both these concepts and other related concepts. Property is a broad concept that includes the use and enjoyment of goods, which are 'tangible things capable of being appropriated' and extends to intangible objects that have value and

are included in the estate of persons.²⁰ Conventional protection extends to possession, as far as it constitutes a presumption of ownership in favour of the owner. In the case of movable property, it is valid by virtue of ownership.²¹ The IACtHR has ruled on the limits of the right to property, which is not absolute. It may be subject to restrictions

20 Ivcher Bronstein, para. 122. On 13 July 1997, the state arbitrarily deprived Baruch Ivcher Bronstein, a naturalised Peruvian citizen and majority shareholder and Director and President of Channel 2-Frecuencia Latina of the Peruvian television network, of his nationality title to remove him from the editorial control of the channel and restrict his freedom of expression, which he manifested by denouncing grave violations of human rights and acts of corruption. The IACtHR found that the state violated the ACHR to the detriment of Ivcher Bronstein. The events of the case relate to the arbitrary deprivation of the nationality of Ivcher Bronstein, a naturalised Peruvian citizen, to supplant his shareholder and editorial control of Peruvian television's Canal 2. Ivcher Bronstein had carried out a series of reports on human rights violations and acts of corruption in the country via his television network. *Comunidad Campesina de Santa Bárbara*, para. 199. The petition refers to the forced disappearances of 15 people (7 of whom were children), all members of the rural community of Santa Barbara in Huancavelica. On 4 July 1991, the victims were deprived of their liberty by state agents, as part of a military operation, and they remained in state custody while they were transferred to an abandoned mine known as 'Mystery' or 'Vallaryn'. They were put in a cavern and gunned down by the military; their bodies were almost immediately immolated with dynamite explosions. Authorities and state agents took steps to eliminate the evidence and erase all traces of the bodies to avoid identification. A criminal complaint was filed; however, the Amnesty Law 26479 was applied and the events went unpunished. The state failed to investigate, identify and exhume the remains in the mine. The IACtHR found that the state violated the ACHR, the Inter-American Convention to Prevent and Punish Torture and the IACFDP. *Andrade Salmyn*, para. 110. This case is about the prosecution of the Mayor of La Paz, Bolivia's capital, for graft and corruption concerning several investigations. Although she was eventually found not guilty in all criminal proceedings, she spent more than six months in pre-trial detention. Eventually, the IACtHR found violation of some of her rights protected under the ACHR (e.g., right to property, movement and trial within reasonable time); however, it found Bolivia not responsible for violation of other rights (e.g., right to liberty and security and protection of honour and dignity). The facts of the case refer to criminal proceedings, known as *Gader*, *Luminarias Chinas* and *Quaglio*, against Marina Nine Lupe del Rosario Andrade Salmon for unlawful conduct related to the management of public funds during her term as Councilwoman, President of the Municipal Council and Mayor of the Municipality of La Paz.

21 *Tibi*, para. 218. On 27 September 1995, Daniel Tibi was forcibly detained without a court order for his supposed involvement in drug trafficking. During his detention, state authorities tortured, beat, burned and asphyxiated him to gain a confession. Tibi was released on 21 January 1998. The state did not grant him the possibility of filing a remedy against the mistreatment received during his detention and there was no prompt and simple remedy that he could file before a competent court to protect himself from the violations of his basic rights. The IACtHR found that the state violated the ACHR and the American Convention to Prevent and Punish Torture. The facts relate to the seizure of his goods, which were not returned to him by the state on his release.

and limitations under Article 21 and to radical expropriation, the characteristics of which have been examined in the case law.²²

The IACtHR has examined specific issues relating to property, such as the rights of indigenous communities over ancestral territories which remain in use,²³ compensation in cases of expropriation of such territories that are privately owned,²⁴

22 Salvador Chiriboga. *Excepciy Preliminar y Fondo*. paras. 54 et seq. Between December 1974 and September 1977, Julio Guillermo Salvador Chiriboga and his siblings inherited property from their father, Guillermo Salvador Tobar. On 13 May 1991, the then Municipal Council of Quito declared the property to be of public utility to expropriate and take immediate possession of it. Salvador Chiriboga and his siblings filed several lawsuits against the state's authorities to resolve the declaration of public utility; however, to no avail. The IACtHR found that the state violated the ACHR. The facts of the case concern the limitations on the right to property of the Salvador Chiriboga brothers, imposed by the Municipal Council of Quito. In May 1991, the Municipal Council declared an estate of 60 hectares to be of public utility, with the objective of expropriation and urgent occupation.

23 *Mayagna (Sumo) Awas Tingni*, paras. 148–149. This case was brought because the state did not demarcate the communal lands of the Awas Tingni Community nor did it adopt effective measures to ensure the property rights of the Community to its ancestral lands and natural resources. It granted a concession on community lands without the assent of the Community and did not ensure an effective remedy in response to the Community's protests. The IACtHR found that the state violated the ACHR. The facts of the case concern the granting of a concession to a private company by the state to carry out construction work on roads and logging in ancestral territories of the Mayagna (sumo) Awas Tingui Community, without their consent. *Comunidad Indígena Sawhoyamaxa*, para. 118. The facts of the case concern the right to ancestral property in the territory of the indigenous community Sawhoyamaxa and the grave living conditions arising from being settled at the edge of a national road in a situation of extreme poverty, without access to basic services, such as nutrition, housing, education or health, among others. It concerns the state's failure to ensure the ancestral property right of the Sawhoyamaxa Community. The indigenous community were barred from title to and possession of their lands. Their claim for territorial rights had been pending since 1991 and had not been satisfactorily resolved by the date of this judgment. This kept the indigenous community in a constant state of nutritional, medical and health vulnerability, which threatened their survival and integrity. The IACtHR found that the state violated the ACHR to the detriment of the Sawhoyamaxa Community. *y Pueblos Kaliña y Lokono*, paras. 124–125. This case is about the rights of the indigenous Kaliña and Lokono people in Suriname. During the 1960s through the 1980s, the state established three nature reserves on Kaliña and Lokono ancestral territory. These reserves negatively impacted the indigenous groups by preventing them from accessing certain parts of their lands. The state began mining in the nature preserves, which had a significant negative impact on the area's ecosystem. It began to sell land to non-indigenous people that was contiguous to Kaliña and Lokono land and facilitated the development of an urban housing project. As Suriname does not recognise indigenous groups as legal entities, the petitioners were unable to collectively retain the title to their lands. The IACtHR found that the state had violated the ACHR. The facts of the petition relate to human rights violations of eight communities of the Kaliña Peoples and Lokono of the Lower Marowijne River. It focuses on the absence of a regulatory framework that collectively recognises the legal personality of indigenous peoples and their right to collective ownership of lands, territories and natural resources.

24 *Pueblo Saramaka*, para. 199. This case addresses indigenous peoples' rights to their land and their struggle against encroachment by mining and logging companies carrying out activities on their territory based on the concessions granted by the state, without consultation with the indigenous people. The IACtHR found state violated the ACHR against the members of the Saramaka people, a tribal community living in the Upper Suriname River region, by failing

deprivation of the use and enjoyment of shares in the capital,²⁵ withholding of bail in criminal cases,²⁶ payment of court fees related to access to justice,²⁷ copyright, confis-

to adopt effective measures to recognise their right to the use and enjoyment of the territory they traditionally occupied and used. The state failed to provide the people with the right to effective access to justice for the protection of their fundamental rights, particularly the right to own property in accordance with their communal traditions. The state further failed to adopt domestic legal provisions to ensure and guarantee such rights to the Saramaka people. y Pueblo Indígena Kichwa de Sarayaku, paras. 315–317. In the 1990s, the state granted a permit to a private oil company to carry out oil exploration and exploitation activities in the territory of the Kichwa Indigenous People of Sarayaku, without consulting them or obtaining their consent. The oil company began the exploration phase and introduced high-powered explosives in several places on indigenous territory. This case concerns the state's alleged lack of judicial protection, failure to observe judicial guarantees and limits of rights to freedom of movement and cultural expression of the indigenous population. The facts of the case concern the granting of permission by the Ecuadorian state to a private company to carry out exploration and exploitation in the territory of the indigenous community Kichwa of Sarayaku. This permission, granted in the 1990s, was approved without the community being consulted and without their consent. As a part of the authorised exploitation, the private company introduced high powered explosives at various points of the territory, limiting the right of the community to freedom of movement and the expression of their culture. Additionally, there was an absence of judicial protection and a failure to observe judicial guarantees.

25 Ivcher Bronstein, paras. 123, 125, 138 and 156; Perozo y otros, para. 400. Between October 2001 and August 2005, state agents harassed and physically and verbally assaulted 44 people associated with Globovisiyn television station because they broadcasted a strike called by the Workers' Confederation of Venezuela and Fedecómaras. The strike demanded the resignation of the President of the Republic. The IACtHR found that the state violated the victims' rights to humane treatment and freedom of thought and expression. The events relate to the violation of the right to freedom of expression, due to a series of acts and omissions committed by state agents and individuals, against a group of social communicators and workers from the Globovision Television channel between 2001 and 2005. This took place through obstruction and intimidation of those exercising their duties as journalists. The IACtHR placed the events in a context of strong bias and social and political conflict.

26 Andrade Salmyn, para. 109 et seq.

27 Cantos. Fondo Reparaciones and Costas, para. 54. The facts of the case relate to the imposition of a fine on Josñ María Cantos for the payment of court fees, fines for non-payment thereof and legal fees of lawyers and experts, following a lawsuit held before the Supreme Court of Justice of the Nation against the Federal Government and the Province of Santiago del Estero. Cantos was the owner of multiple businesses in the province of Santiago del Estero in Argentina. In March 1972, the Revenue Department conducted a series of searches in the administrative offices of Cantos's companies, owing to an alleged violation of the Stamp Act. During these procedures, all the accounting documentation, company books and records, receipts and supporting documents of payments by those companies to third parties and suppliers and numerous shares and securities were seized without being inventoried. The seizure of company documents caused the company severe financial losses. Following multiple lawsuits filed against the Revenue Department, the Revenue Department acknowledged a debt towards some of Cantos' businesses and established a compensatory amount; however, the compensation was never paid. The IACtHR found that the state violated the ACHR.

cation of books and concealment of electronic information related to publications,²⁸ changing the amount of pensions, failure to comply with court decisions and internal resolutions on the same case,²⁹ seizure of the means of subsistence of peasant communities and damage to various properties by paramilitary groups with the state's

28 Palamara Iribarne, paras. 103–107. In March 1993, Humberto Antonio Palamara Iribarne was prohibited from publishing a book called *Ethics and Intelligence Services*, which addressed issues related to military intelligence and the need to bring it in line with ethical standards. Iribarne was prosecuted for two counts of disobedience and contempt of authority and correspondingly convicted. The IACtHR found that the state violated the victim's rights to property, personal liberty and freedom of thought and expression, while failing to judicially protect and observe judicial guarantees under the ACHR. The facts relate to the censure of the book written by Iribarne, in which he addresses aspects of military intelligence. Based on the book, the victim was subjected to criminal proceedings in a military court for the crimes of disobedience and contempt, because at the time of the event, the victim was a retired officer of the Chilean Navy.

29 'Cinco Pensionistas', paras. 102–103, 109, 117–118 and 121. The facts of the case relate to the arbitrary change in the pension scheme applicable to Carlos Torres, Javier Mujica, Guillermo Elvarez, Reymert Bartra and Maximiliano Gamarra, who had received their pensions since 1992. Between February and September 1992, the state modified and reduced the pension regime that Carlos Torres Benvenuto, Javier Mujica Ruiz Huidobro, Guillermo Elvarez Hernández, Reymert Bartra Vóquez and Maximiliano Gamarra Ferreyra had earned in accordance with Peruvian legislation up until 1992. The state did not comply with domestic judgments of compensating the victims for lost pension sums. The IACtHR found that Peru had violated the victims' rights to property and judicial protection under the ACHR. y Acevedo Buendña ('Cesantes y jubilados de la contraloría'), paras. 85–91. In this case, a law from 1979 allowed persons who retired from the Office of the Comptroller General to collect a pension equal to the salary of an employee performing the same or similar function to the one they performed at the time of retirement. This law was replaced in 1992 by a new law that eliminated the right of a pensioner to continue receiving the amount received under the old law. Two hundred seventy-three members of the Association of Discharged or Retired Employees of the Comptroller General of the Republic brought a suit to collect pension benefits that were owed to them under the old law. The state failed to honour the judgment delivered by the Constitutional Court of Perù on 21 October 1997 and 26 January 2001, ordering the Office of the Comptroller General of the Republic to comply with the payment to the alleged victims of the salaries and wages, benefits and bonuses received by the active employees of that office performing functions identical, similar or equivalent to those that the discharged or retired employees performed. The IACtHR found the state violated the ACHR.

consent³⁰ and actual precautionary measures (seizure of goods), seizure of goods, mismanagement and removal and deposit of items.³¹

Compañía del Desarrollo de Santa Elena v. Ecuador (2001) was one of the first judgments in which the Court developed standards for the protection of individual property rights. It indicated that any restrictions on the use of property must have a legal basis, be proportionate and serve public purposes, while ensuring compensation for deprivation of property rights. Regarding collective ownership, particular importance is given to judgments concerning indigenous peoples. In *Awás Tingni v. Nicaragua* (2001) and *Saramaka People v. Suriname* (2007), the IACtHR stated that the right to property includes the collective rights of indigenous peoples to land and natural resources, which are essential for maintaining their cultural identity and way of life. These rulings introduced standards regarding consultation with indigenous populations and the necessity of obtaining their consent before implementing changes affecting land use and control over territory.

In *Yakye Axa v. Paraguay* (2005), the IACtHR expanded the interpretation of the right to property, recognising that the state is responsible for failing to ensure conditions that enable effective use of land and resources. Hence, the right to property has been linked to the right to survival, safety and cultural integrity of individuals and communities. The Court emphasises the procedural dimension of protecting the right to property. In *Alvarado Reyes v. Mexico* (2006) and *Moiwana Community v. Suriname* (2005), it stated that individuals and communities must have access to effective and real remedies in case of violations of the right to property. The absence of such mechanisms results in violations of substantive and procedural rights.

30 In these cases, the IACtHR has interpreted the right to property following Article 14 of Protocol II of the Geneva Convention. *Masacres de Ituango*, paras. 176–177, 180 and 183. The facts of this case concern the massacres that occurred in June 1996 and October 1997 in the small towns of La Granja and El Aro, respectively, in the Ituango province, Antioquia region. The selective murder of 19 farmers, among them 1 child and 3 women, was a result of the paramilitary incursion, which took place in both towns with the support and acquiescence of members of the security forces. Many people were tortured before being murdered, their homes were raided and a large part of the town centre was destroyed, forcing the mass displacement of more than 700 rural people. On June 1996 and October 1997, in districts of La Granja and El Aro, members of law enforcement and paramilitary groups killed unarmed civilians, robbed others and caused overall panic and displacement. These events devastated and overwhelmed the region. The state failed to investigate the acts, punish those responsible and provide damages to the victims and their family members. The IACtHR found that the state violated the ACHR. *Masacres del El Mozote y lugares aledaños*, paras. 168, 179–181 and 202. Between 11–13 December 1981, successive massacres were committed, resulting in approximately 1,000 deaths, including those of children, under the military operation by the Atlacatl Battalion, together with other military units. The massacres occurred in seven places in the northern part of the department of Morazón. An alleged investigation that was opened and halted based on the Law of General Amnesty for the Consolidation of Peace, which is still in force in El Salvador. The IACtHR found that the state violated the ACHR, the American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the American Convention to Prevent and Punish Torture.

31 Chaparro Álvarez y Lapo Íñiguez, para. 174 et seq.

In *Acevedo Buendía et al. v. Peru*, the IACtHR indicated that the guarantee of an effective remedy is not limited to its formal existence and requires the guarantee of means of enforcing the final decisions of the competent authorities. Regarding the infringement of the right to property, the IACtHR reiterated that, if a pensioner pays contributions to a pension fund and ceases to provide services to join a pension scheme provided for by law, he acquires the right to have his pension subject to the conditions provided for by that law. Hence, the right to a pension has ‘property implications’ that are protected by the ACHR. The IACtHR further referred to the breach of the state’s obligations to progressively develop economic, social and cultural rights (ESCR), stating that this consists of adopting measures, particularly economic and technical ones, to gradually achieve the full effectiveness of certain rights with these characteristics, considering that this does not correspond to the case in hand. Issues related to social security were examined in *Five Pensioners v. Peru*. The IACtHR examined the incompatibility with the judgements of the Supreme Court of Justice and the Constitutional Court of Peru, which ordered the state to pay beneficiaries a pension calculated in the manner specified in the legislation in force at the time they began to benefit from the pension system.

The analysis of the infringement of the rights to property and movement resulting from the application of preventive measures not involving deprivation of liberty in criminal proceedings, and the right to trial within a reasonable time was addressed by the IACtHR in *Andrade Salmón v. Bolivia*. The analysis of pre-trial detention became the central issue of *Tibi v. Ecuador*. This was analysed under the right to personal liberty, recognising the nature of pre-trial detention as a preventive rather than a criminal measure, highlighting the importance of immediate judicial review as a means of preventing arbitrary or illegal detention. Moreover, the IACtHR analysed the conditions of the applicant’s detention per the state’s obligation to respect personal integrity and the obligation to investigate.

The IACtHR found, in *Cantos v. Argentina*, that the court fees and fines imposed on the applicant constituted an obstacle to the right of access to justice, since it required that the persons involved in the proceedings could do so without fear of being forced to pay disproportionate amounts of money because of the appeal to the court. An important issue was decided in *Saramaka People v. Suriname*, in which the Court adopted standards regarding the conditions for a legitimate limitation of rights to ancestral territory, particularly regarding the link between natural resources and the existence of the people. It further established standards concerning the state’s obligation to guarantee the right to consultation.

The rights of indigenous people in the protection of property were examined in *Sawhoyamaya Indigenous Community v. Paraguay*. The IACtHR ratified the right to collective indigenous property and the special importance that the territory has for indigenous people as a fundamental basis of their culture, spiritual life, integrity and economic survival. It indicated that because of this close connection, they are protected by Article 21 of ACHR. It found the state responsible for failing to take measures to address poverty and the lack of access to basic services in the Sawhoyamaya

community, particularly for children and the elderly. Moreover, it identified standards arising from the lack of an effective procedure for the delimitation, demarcation and titling of indigenous lands regarding the guarantee of judicial protection in *Palamara Iribarne v. Chile*.

Similarly, it developed standards concerning the concept of property in indigenous communities and its relationship to customary law in *Kaliña and Lokono Peoples v. Suriname*. The IACtHR developed standards related to collective ownership and linked them to environmental protection and the state's obligation to ensure effective participation of indigenous people through culturally appropriate decision-making procedures. *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua* established standards to counter the lack of an effective procedure for the delimitation, demarcation and titling of indigenous lands concerning the guarantee of judicial protection. Issues of property rights of indigenous communities was addressed in *Kichwa Indigenous People of Sarayaku v. Ecuador*, according to which the IACtHR ruled on the right to consultation and indigenous communal property, establishing that the state, by failing to inform and consult the Sarayaku people in advance about a project that would directly affect their territory, had failed to fulfil its obligations to adopt all necessary measures to ensure that indigenous people can participate in their institutions, in accordance with their values, applications, customs and forms of organisation, in decision-making on matters and policies that affect or may affect their cultural and social life. It further held that such consultations must be conducted in good faith, using culturally appropriate procedures to reach an agreement. Hence, it considered that the lack of consultation with the Sarayaku people affected their cultural identity.

Ituango Massacres v. Colombia demonstrated serious human rights violations suffered by the civilian population in the Colombian armed conflict, because of the joint actions of paramilitary groups and security forces. The IACtHR referred particularly to the negative consequences suffered by the population due to the destruction and burning of houses, followed by the mass forced displacement of victims, and established a case law concerning the right to honour and dignity and the prohibition of slavery or servitude. It found the Colombian state responsible for encouraging the formation of "paramilitary" self-defence groups, creating a situation of danger for the inhabitants and failing to adopt necessary and sufficient measures to prevent massacres. In *Salvador Chiriboga v. Ecuador*, the IACtHR analysed the limitations of private property in a democratic society, establishing the criteria of public utility, social interest and the payment of just, adequate, prompt and effective compensation, as guiding principles, interfering as little as possible with the effective exercise of the right.

The significance of the IACtHR's standards regarding the right to property includes the prohibition of arbitrary deprivation of property, the obligation to ensure adequate compensation in cases of restrictions or loss of property rights, protection of collective property, especially of indigenous peoples, along with the duty of consultation and obtaining consent, the obligation of the state to establish effective

remedies and ensuring access to justice. An analysis of the rulings shows that the IACtHR treats the right to property as an instrument for protecting the cultural and economic integrity of individuals and communities. In practice, this means that, within the Inter-American system, property is a comprehensive right that combines material, cultural and procedural aspects, which distinguishes the human rights protection system in the region.

2.4. Right to Privacy, Honour and Dignity

In the Inter-American case law on the rights in Article 11 of the ACHR, the IACtHR has held that respect for privacy encompasses various issues related to the dignity of the individual.³² The protection of privacy is closely linked to the recognition of the right of individuals to lead autonomous lives, choose how they wish to present themselves to others in the exercise of their liberty and exclude arbitrary or inappropriate interference by the state or third parties.³³ The latter entails the state's obligation to refrain from such interference and take positive measures to prevent unlawful interference and a person from being treated as a means to the achievement of ends that are foreign to his life, body and the development of his personality.³⁴

The right to privacy, honour and dignity constitutes the foundation of safeguarding individuals against interference by the state and third parties in their personal sphere and against violations of their image and reputation. The IACtHR, in its rulings, has consistently emphasised that this protection encompasses physical and informational aspects, along with psychosocial ones, including the right to protect the dignity and moral integrity of the individual. It has recognised that the right to privacy is not absolute and has indicated that measures to limit it must comply with

32 Rosendo Cantó y otros, para. 119. On 16 February 2002, Valentina Rosendo Cantó, a girl from an indigenous community in the state of Guerrero, was raped and tortured by military personnel. The IACtHR found the state's lack of due diligence in the investigation and punishment of the perpetrators a violation of the ACHR. The case is significant for the discussion of rape as a form of torture, military jurisdiction and special needs of women, minors and indigenous peoples. The facts of instant case refer to the sexual rape and torture suffered by Valentina Rosendo Cantó, 17 years old, by members of the Mexican army. The IACtHR placed these events in the context of the military presence in the state of Guerrero for suppressing unlawful activities, such as organised crime. In this region, a sizeable percentage of the population belongs to indigenous communities who maintain their cultural identity and live in municipalities afflicted by social exclusion and extreme poverty.

33 Artavia Murillo y otros ('Fecundación in vitro'), para. 143, e I. V, para. 152.

34 Fontevecchia y D'Amico, para. 49. This case involves the state's violation of freedom of thought and expression of Jorge Fontevecchia and Néstor D'Amico, director and editor, respectively, of the Magazine Noticias, after they published an article on November 1995 that referred to the existence of an illegitimate child belonging to Carlos Saúl Menem, the President of Argentina at the time. A civil sentence was imposed on the journalists for a violation of Menem's private life. The IACtHR found that the state violated the ACHR. The violations concern a civil sentence issued for their responsibility in the publication of two articles, which referred to the existence of an unrecognised child of Carlos Saúl Menem, at the time president of the country.

the requirements of appropriateness, necessity and proportionality, which apply to all cases of limitation on the exercise of rights.³⁵

Regarding Article 11 of the ACHR, the IACtHR has distinguished between honour, which refers to a sense of self-worth,³⁶ and reputation, which refers to the opinion that others have of an individual.³⁷ There are several specific issues that the IACtHR has addressed in the interpretation and application of Article 11, such as reproductive autonomy and control of fertility by women³⁸ and access to fertility services,³⁹ protection of the home, the space in which private life takes place,⁴⁰ social control of the actions of public figures,⁴¹ rejection of interception of communications that excessively infringe on private life⁴² and the relationship between Article 11 and Article

35 Tristón Donoso, para. 56. During July 1996, the Attorney General Jos  Antonio Sossa Rodr guez issued an order to have Trist n Donoso's, a Panamanian attorney, telephone conversation with a client recorded. In the recorded conversation and later at a press conference, Donoso made statements regarding the Attorney General's corrupt behaviour. Donoso filed a criminal report against the Attorney General for abuse of power and infringement of his public official duties. The Panam  Republic Supreme Court of Justice rejected the complaint for the lack of evidence. Later, the Attorney General commenced criminal proceedings against Donoso for defamation in retaliation for the accusations. The IACtHR found that the state violated the ACHR. In July 1986, the public functionary disclosed the contents of a private telephone conversation between Donoso and a client, prompting the filing of a complaint by Donoso for the intrusion into his private life and the freedom of professional practice. The Supreme Court dismissed the former Attorney General and subsequently admitted the complaint for libel and slander against Donoso. *Atala Riffo and Daughters*, para. 164. This case concerns the discriminatory treatment and arbitrary interference in the private and family life of Karen Atala Riffo. Riffo is a Chilean judge and a lesbian mother of three daughters. She separated from her husband in 2001 and originally reached a settlement with her ex-husband that she would retain custody of the children. When she came out as a lesbian in 2005, however, her ex-husband sued for custody, where the Supreme Court of Chile eventually heard the case. That court awarded the husband custody, saying that Riffo's relationship put the development of her children at risk. The IACtHR found that the state violated the ACHR. It was the first case that the IACtHR took regarding LGBT rights. The facts of the case relate to the international responsibility of the state for the discriminatory treatment and arbitrary interference in the private and family life of Riffo, as result of her sexual orientation in the legal proceedings, which lead to the withdrawal of the care and custody of her daughters. Similarly, the case addresses the absence of consideration of the best interests of the children, whose custody and care were determined based on alleged discriminatory prejudices.

36 'The right to have honor respected relates to self-esteem and self-worth, (...)' Trist n Donoso, para. 57.

37 'Reputation refers to the opinion other persons have about someone.' Trist n Donoso, para. 57.

38 *Artavia Murillo y otros* ('Fecundaci n in vitro'), paras. 145-146 and 238, e I. V, para. 153.

39 *Artavia Murillo y otros* ('Fecundaci n in vitro'), para. 146.

40 *Masacres de Ituango*, para. 194.

41 *Herrera Ulloa*, paras. 128-129. On 19, 20 and 21 May and 13 December 1995, the newspaper 'La Naci n' carried several articles by journalist Mauricio Herrera Ulloa. The articles attributed certain illegal acts to F lix Przedborski, Costa Rica's honorary representative to the International Atomic Energy Agency in Austria. Herrera Ulloa was subsequently found guilty on four counts of defamation. The IACtHR found that the state violated the ACHR. *Fonteviccia y Dramico*, paras. 47 and 60.

42 Trist n Donoso, para. 55 et seq.

17 of the ACHR on the establishment and protection of the family and respect for family life.⁴³

In *Claude Reyes and Others v. Chile* (2006), the IACtHR recognised that the state has an obligation to ensure access to public information in a manner that does not violate citizens' privacy and dignity. This highlighted the balancing of public interest with the individual's right to privacy and protection of personal information. In *Barrios Altos v. Peru* (2001), it drew attention to the importance of protecting privacy and dignity concerning crimes committed by the state, including extrajudicial mass executions and illegal interventions. The decision underscored that violations of privacy and dignity in such situations are not limited to physical interference and include moral and psychological violations that the state has a duty to remedy. In *Gómez Paquiyauri Brothers v. Peru* (2004), it elaborated standards concerning the protection of the dignity and honour of torture victims and those unlawfully detained, indicating that the state is responsible for direct violations and the failure to conduct effective investigations and provide reparation. Hence, the right to dignity was linked to the right to effective judicial protection and compensation.

The judgment in *Kimel v. Argentina* (2008) emphasised the importance of protecting privacy in administrative actions by the state that may interfere with an individual's personal life, including data collection, monitoring or disclosure of information. The Court stated that any interference in the private sphere must be proportional, legally grounded and not violate human dignity. The significance of case law regarding the right to privacy, honour and dignity includes the prohibition of arbitrary interference by the state and third parties in the personal sphere, the obligation to ensure effective legal remedies and access to justice in cases of violations, the connection between the protection of privacy and the safeguarding of dignity and moral integrity, special protection in the context of state actions that may cause serious violations of honour or reputation and the necessity for proportionality and legal justification for any interference.

In *Rosendo Cantú et al. v. Judgement*, the IACtHR identified the constituent elements of rape as an act of torture and established standards regarding the inappropriateness of military jurisdiction to hear such cases. It developed criteria regarding due diligence in the handling of complaints and investigations of sexual violence and access to justice without discrimination, emphasising the special obligation to protect children. An important judgement in the development of standards regarding sexual orientation, as an element of a person's identity and part of his private life, and recognising it as a category protected by the guarantee of non-discrimination was in *Atala Riffo and Daughters v. Chile*. The Court found that assessments based on stereotypes regarding sexual orientation or cultural preferences concerning certain traditional concepts of the family to determine the best interests of children regarding their care and custody were incompatible with international law.

43 *Atala Riffo y niñas*, para. 169; *Artavia Murillo y otros* ('Fecundación in vitro'), para. 143, e I. V, para. 153.

In *Fontevicchia and D'Amico v. Argentina*, the Court reiterated the need to apply the proportionality test in the conflict between the right to freedom of expression and the protection of privacy. It established that publications concerning matters of public interest cannot be considered an excessive interference in the private life of the applicant. Its considerations in *Tristán Donoso v. Panama* concluded by recognising the criminal sanction as an indirect restriction on freedom of expression concerning statements relating to public officials and matters of public interest, while the disclosure of a private telephone conversation was a violation of the right to privacy and honour. In *Herrera Ulloa v. Costa Rica*, it examined the justification for criminalising the offences of defamation, slander and libel in cases of public interest involving public officials. It drew attention to the importance of freedom of expression in a democratic society and defined the content of this right, along with the conditions under which its limitations must be examined. It developed standards and defined the content of the right to appeal against a judgement, establishing that it presupposes the existence of a comprehensive remedy, which allows the Court to conduct a comprehensive and integral analysis of all the issues discussed and analysed in the lower court.

Hence, the IACtHR treats the right to privacy, honour and dignity as an integral part of human rights protection, linked to personal rights (freedom and security) and property rights (reputation, personal interests). The IAHRs combines procedural and substantive aspects, ensuring that individuals have formal rights and effective protection against violations in their personal and moral spheres.

2.5. Freedom of Thought and Expression

The right to freedom of thought and expression, regulated in Article 13 of ACHR, constitutes one of the fundamental pillars of the IAHRs. The Court consistently emphasises that this is a dual-purpose right: it protects individuals from government interference in the freedom to formulate and disseminate opinions and obliges states to create conditions that enable a pluralistic public debate.

In the initial decades of the IACtHR, the standard of protecting freedom of speech was based on the principles of exceptionalism and proportionality of restrictions. Rulings such as Advisory Opinion OC-5/85 (Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism), *Herrera Ulloa v. Costa Rica* (2004) and *Ricardo Canese v. Paraguay* (2004), emphasised that freedom of speech is a cornerstone of democracy and criminal sanctions against speech can only be applied in exceptional and proportionate circumstances. The Tribunal accepted the possibility of applying criminal law (e.g., defamation offenses) in individual cases, provided it was justified and proportional. However, rulings such as *Kimel v. Argentina* (2008) pointed out the risk of the 'chilling effect' associated with criminal liability.

In subsequent years, the Tribunal began to increasingly emphasise the social dimension of freedom of speech, indicating that its essence lies in protecting public debate and citizens' right to receive information. Decisions such as *Palamara Iribarne v. Chile* (2005) developed the thesis that pre-emptive censorship is unacceptable and

public authorities must tolerate a high level of criticism. A turning point was marked by rulings at the end of the second decade of the 21st century: *Álvarez Ramos v. Venezuela* (2019), *Baraona Baray v. Chile* (2021) and *Capriles v. Venezuela* (2021). The Tribunal explicitly stated that the application of criminal law to speech concerning public interest and criticism of government officials is incompatible with the ACHR and criminal sanctions in such cases are, by definition, disproportionate and inadmissible, regardless of circumstances.

It recognised that the only permissible mechanism for protecting the reputation of public persons is civil legal remedies, which cannot lead to restrictions on democratic debate. Meanwhile, government officials must tolerate broader criticism because they perform functions on behalf of society and are subject to its oversight. In its latest case law, the Tribunal shifted the focus of protection from individual reputation to the safeguarding of the common good, that is, free public debate. Thus, freedom of speech gained the status of a superior right that conditions the exercise of other rights. The Tribunal expanded the scope of protection to include social organisations, journalists, human rights defenders and opposition politicians. Moreover, the state's obligation to actively promote pluralism was strengthened, for example, through measures against media concentration or ensuring access to public information. In recent years, the IACtHR has moved from a standard based on controlling the proportionality of restrictions to a standard establishing an absolute ban on the application of criminal law in cases concerning public debate and government officials. This is of fundamental importance for the IAHRs because it reinforces freedom of speech as a key element of constitutional democracy and enhances protection for individuals and groups involved in public debate.

The case law has often dealt with the freedom of expression and the right of reply under Article 14.⁴⁴ Both topics appeared in advisory opinions delivered in the first years

44 'La 'ltima Tentaciyn de Cristo' (Olmedo Bustos y otros), para. 64 et seq. This case concerns the Court of Appeals of Santiago's 20 January 1997 judgment and its confirmation by the Supreme Court of Chile on 20 June 1997, annulling the Cinematographic Classification Council of Chile's decision to screen the film, 'The Last Temptation of Christ'. On 17 November 1999, the Chamber of Deputies adopted a draft constitutional reform to eliminate cinematographic censorship; however, up until 5 February 2001, the date on which the IACtHR's judgment was delivered, the steps for the adoption of the draft constitutional reform had not been completed. The victims and their representatives submitted the case to the IACtHR to seek a judgment, declaring that the state's censorship violated the ACHR, and justify the expenses incurred while processing the different domestic and international procedures. The facts of the case refer to the judicial censorship of the screening of the film 'The Last Temptation of Christ' on the grounds that it was offensive to the figure of Christ and negatively affected Catholics. The Chilean Political Constitution establishes a system for the censorship of advertising and film. Ivcher Bronstein, para. 146 et seq., Herrera Ulloa, para. 105 and seq., Ricardo Canese, para. 77 et seq. In August 1992, during the electoral debates leading up to the 1993 Paraguayan presidential elections, Ricardo Canese questioned presidential candidate Juan Carlos Wasmosy's stability and integrity. Several Paraguayan newspapers published Canese's statements, which led to him being tried and sent to prison for slander. The IACtHR found that the state violated the ACHR. The facts of the case concern the judicial sentence for the crime of defamation and injury imposed on Ricardo Canese for protests carried out during the electoral debate, which questioned the suitability and integrity

of the presidential candidate, as a result of his alleged involvement in corruption. Claude Reyes, para. 75 et seq., Between May and August 1998, the state refused to provide Marcel Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with the information they requested from the Foreign Investment Committee on the forestry company, Trillium, and the Rño Condor Project, a deforestation project that could be prejudicial to the environment and the sustainable development of Chile. The Commission stated that the refusal occurred without the state providing any valid justification under Chilean law and, supposedly, the victims had not been granted an effective judicial remedy to contest a violation of the right of access to information. Additionally, they were not ensured the rights of access to information and judicial protection and there were no mechanisms guaranteeing the right of access to public information. The IACtHR found that the state violated the ACHR. Kimel, paras. 53 et seq., Eduardo Kimel, a well-known journalist, writer and investigative historian, published a book describing the findings of his research into the murder of five clergymen, criticising how the authorities handled the case. On 28 October 1991, the state brought criminal proceedings against him for libel. Upon the conclusion of the criminal proceedings, he was convicted of libel and sentenced to one-year imprisonment and payment of \$ 20,000.00 as damages. The IACtHR found that the state violated the ACHR. The facts of the case refer to the publication of Kimel's book 'The Massacre of San Patricio', in which he describes the findings of his research into the assassination of five religious personnel. The book criticised the authorities charged with the investigation of the homicides, among them a judge who later filed a criminal complaint against Kimel, which concluded in his sentencing for the crime of calumny. Tristán Donoso, para. 109 et seq., Rños y otros, para. 104 et seq. The facts of this case occurred in the context of a pattern of threats to social communicators during a period of institutional and political conflict in Venezuela that caused extreme polarisation of society. Between 2001 and 2004, 20 individuals, all journalists or social communications workers linked to the television station Compañía Anónima Radio Caracas Televisión (RCTV), were subjected to threats, harassment and verbal and physical abuse caused by public officials and other individuals. The state lacked diligence in investigating those incidents and failed to take preventative actions. The IACtHR found that the state violated the victims' rights under Articles 5(1) (Right to Physical, Mental and Moral Integrity) and 13(1) (Right to Seek, Receive and Impart Information and Ideas) of the ACHR, both in relation to Article 1(1). Perozo y otros, para. 115 et seq.; Usyn Ramírez, para. 48 et seq. On 16 April and 10 May 2004, retired General Francisco Usyn Ramírez made controversial comments in a television interview about the National Armed Forces, which led to the National Armed Forces suing Ramírez for slander in military court. The judgment by the military court led to the alleged deprivation of liberty, where Ramírez served five years and six months in prison. The IACtHR found that the state violated the ACHR. The events of the case relate to the prison sentence of the retired military officer Ramírez for 'slander against the National Armed Forces', that is, having expressed critical opinions regarding the actions of the Armed Forces in a television program. Vñlez Restrepo y familiares, para. 137 et seq. On 26 August 1996, there was an attack by the soldiers of the Colombian National Army against Luis Gonzalo 'Richard' Vñlez Restrepo, a journalist filming a protest demonstration. There was death threats made against Restrepo and his family, which intensified when Restrepo tried to advance domestic judicial proceedings against his attackers and resulted in him leaving Colombia to go into exile. A thorough investigation into the acts of violence and harassment against Restrepo was impossible domestically. The IACtHR found that the state violated the ACHR. The events of this case account for the persecution, harassment and violence perpetrated against Restrepo, a camera man for a national news program, who reported and disseminated a recording of violent acts committed by members of the National Army against participants in the demonstrations against governmental policy on fumigation of coca crops in the Caquetó region, on 29 August 1996. Hence, in September of the same year, Restrepo started receiving threats and harassments. He was forced to leave and seek asylum in the US with his family. Granier y otros (Radio Caracas Televisiyn), para. 134 et seq. In 2002, a short-lived coup d'état against the government of Hugo Chavez rocked Venezuela. A television station, RCTV, reported on the events as they occurred.

of the IACtHR,⁴⁵ in judgements and interim measures designed to prevent attacks on that freedom.⁴⁶ It is important to remember that the IACtHR has emphasised the role of the timely exercise of the right to freedom of expression⁴⁷ and its effective protection as elements and guarantees of public order in a democratic society.⁴⁸ This is an essential element of democratic life on which the satisfaction of other rights and freedoms depend.⁴⁹ The IACtHR examined the dual dimension of the freedom in question: the individual dimension of disseminating⁵⁰ and the social or collective dimension for receiving information. In interpreting the scope of freedom of expression, the IACtHR examined various international instruments and accredited the scope of the greater protection provided for in the ACHR.⁵¹ In making the same interpretation, it opts for the principle of the norm most favourable to the individual.⁵² In the case law, an important place is occupied by reflection on journalistic practice, understood as the work of persons who have made freedom of expression a profession,⁵³ the effective protection of which is in the interest of society and a guarantee of the development of democracy.⁵⁴ In an important safeguard of the right to freedom of expression, the IACtHR held, in an advisory opinion, that obliging journalists to submit to compulsory membership of a professional association to exercise their profession would entail a serious restriction of freedom.⁵⁵ It stressed the need to ensure the independence of journalists, while recognising the responsibility that must guide their work

RCTV criticised President Chavez, while highlighting and interviewing participants to the coup. When, five years later, in 2007, RCTV sought to renew its broadcast license, the government denied it, accusing the station of inciting the 2002 coup. The state shut down RCTV, seized the television station's equipment, occupied its studios and established a state-sponsored television channel on RCTV's airwaves. RCTV was unable to obtain redress through the state's domestic courts. The IACtHR found that these actions violated the ACHR.

45 OC-5/85, para. 29 et seq.; OC-7/86, para. 23 et seq.

46 Asunto Luisiana Rhos y otros respecto de Venezuela. Medidas Provisionales, Asunto Diarios 'El Nacional' y 'Ash es la Noticia' de Venezuela. Medidas Provisionales, Asunto de la Emisora de Televisiyn 'Globovisiyn' respecto de Venezuela. Medidas Provisionales.

47 'It is essential that the journalists who work in the media should enjoy the necessary protection and independence to exercise their functions comprehensively'. Ivcher Bronstein, paras. 149–150; Granier y otros (Radio Caracas Televisiyn), para. 138.

48 OC-5/85, para. 69.

49 'La ʻltima Tentaciyn de Cristo' (Olmedo Bustos y otros), paras. 64–68, Granier y otros (Radio Caracas Televisiyn), para. 140; OC-5/85, para. 70; Ramirez and Morales S6nchez, 2013, pp. 163–218.

50 The individual dimension of freedom of expression includes 'the right to use any appropriate means to disseminate information to the widest possible audience'; the social dimension involves 'the right of all (people) to know opinions, stories and news'. 'La ʻltima tentaciyn de Cristo', paras. 64–67, Ivcher Bronstein, paras. 146–149; op. 5; OC-5/85, para. 30.

51 OC-5/85, paras. 45, 47 and 50–51.

52 OC-5/85, para. 52.

53 Ivcher Bronstein, para. 149, Vřlez Restrepo and familiares, para. 140, Mřmoli, para. 120, Granier y otros (Radio Caracas Televisiyn), para. 138; OC-5/85, paras. 71, 72 and 74.

54 Ivcher Bronstein, para. 150; Herrera Ulloa, para. 119.

55 OC-5/85, para. 81.

and the media in general.⁵⁶ The case law has distinguished between reporting facts and making value judgements or assessments.⁵⁷ The state must provide means of protection to journalists whose work exposes them to risks, as has happened on many occasions.⁵⁸ Similarly, the case law has examined and condemned indirect interferences with the freedom of journalists and the media, such as those resulting from monopolies in the supply of broadcasting elements,⁵⁹ restrictions on rights of various kinds (for example, transit or circulation, citizenship)⁶⁰ and restrictions on the ownership of media that operate in this field.⁶¹

The exercise of freedoms and rights, including those related to the expression of opinion, is subject to general and specific limitations that the holder of these rights must respect, the latter of which are contained in Article 13 of the ACHR.⁶² These restrictions follow the democratic project and respect the rights and freedoms of other members of the community.⁶³ The IACtHR rejected prior censorship, taking into account the precise terms of the ACHR. This rejection includes film screenings⁶⁴ and book publication⁶⁵ and has led the Court to envisage constitutional reforms that exclude censorship.⁶⁶ Furthermore, freedom of speech is protected during political campaigns⁶⁷ and in the criticism of state procedures carried out by public officials or persons who performed such a function.⁶⁸

However, freedom of speech may entail subsequent liability, provided for in the ACHR, based on the violation of the limits that must be respected.⁶⁹ The nature of such liability has been the subject of debate, particularly in the case of journalists⁷⁰ or authors of various publications.⁷¹ On this issue, the opinions, gathered in the jurisdictional debate, differ between those who consider it possible to apply criminal sanctions and those who consider that the responsibility of journalists should not extend beyond the administrative or civil sphere.⁷² In its case law, the IACtHR has examined,

56 Ivcher Bronstein, para. 150, Herrera Ulloa, para. 117; Мймoli, para. 121.

57 Kimel, para. 93; Usyn Ramнrez, para. 86.

58 Vїlez Restrepo and familiares, para. 194.

59 Granier y otros (Radio Caracas Televisiyn), para. 143, y OC-5/85, para. 56.

60 Ivcher Bronstein, paras. 120–131, y Ricardo Canese, paras. 114–135.

61 Palamara Iribarne, paras. 102–111.

62 Claude Reyes, para. 88, Usyn Ramнrez, para. 48, OC5/85, para. 57.

63 Palamara Iribarne, para. 85; Claude Reyes, para. 91.

64 'La Ыltima Tentaciyn de Cristo' (Olmedo Bustos y otros), paras. 64–73.

65 Palamara Iribarne, paras. 102–111.

66 'La Ыltima Tentaciyn de Cristo' (Olmedo Bustos y otros), para. 98.

67 Ricardo Canese, para. 88 et seq.

68 Palamara Iribarne, paras. 76–77.

69 Мймoli, para. 121.

70 Fontevecchia y D'Amico, para. 547 et seq.

71 Kimel, para. 75 et seq.

72 'no estima contraria a la Convenciyn cualquier medida penal a propysito de la expresiyn de informaciones u opiniones...', para. 78, y, por otra parte, sostuve en mi voto razonado que la vna civil resultaba la mбs idynea, ya que a travїs de este medio se obtienen los mismos resultados que se pretenden con el derecho penal, voto concurrente del juez Sergio Garcнa Ramнrez, en Kimel, para. 15 and seq.

considering the broad criteria for the protection of freedom, statements made by public officials, subject to special circumstances, including election campaigns or the performance of public functions,⁷³ and has warned against political statements that generate threats to freedom and provoke unfavourable reactions, including repressive actions by institutions or representatives of public authorities.⁷⁴

In the case of Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Advisory Opinion OC-5/85), IACtHR established the foundations of the doctrine of freedom of speech in the region. It held that freedom of expression is a *conditio sine qua non* for the functioning of democracy and restrictions on this right can only be introduced in exceptional cases, in a proportionate manner and without infringing upon the essence of the freedom. In *Herrera Ulloa v. Costa Rica* (2004), the Court confirmed that freedom of speech includes the individual's freedom and society's right to receive information. It emphasised that sanctions against journalists for criticising public figures must be evaluated with strictness regarding their compliance with the Convention. The judgment in *Ricardo Canese v. Paraguay* (2004) developed the protection of freedom of speech concerning political debate. The Court pointed out that public officials must accept a broader scope of criticism than ordinary citizens and restrictions on political debate can pose a threat to democracy. In *Kimel v. Argentina* (2008), it addressed the issue of criminal liability for publications critical of state actions. It recognised that criminal sanctions are a restrictive measure and can lead to a chilling effect on freedom of speech. In *Palamara Iribarne v. Chile* (2005), it underscored that prior censorship is inadmissible and freedom of speech includes the right to publish content critical of the military and state authorities, even in the context of national security.

The significance of the IACtHR's jurisprudence in this area boils down to several fundamental standards. Freedom of speech is a pillar of democratic society and a condition for exercising other rights. Restrictions on this freedom must be exceptional, proportionate and provided for by law. Public persons are obliged to tolerate a broader range of criticism. Criminal sanctions against expression pose a threat to democracy and prior censorship is contrary to the Convention.

In situations that may raise doubts or involve other rights, the Court speaks, to the greatest extent possible, in favour of freedom of speech, considering its importance

73 Apitz Barber y otros ('Corte Primera de lo Contencioso Administrativo'), paras. 98–100. This case is about the lack of independence of the judiciary in Venezuela under Hugo Chávez's regime. Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera were removed from their positions as judges of the First Court of Administrative Disputes on 30 October 2003, on the grounds that they had committed an inexcusable judicial error. The victims believed their removal was contrary to the principle of judicial independence and undermined the right of judges to decide freely in accordance with the law. This case gave the IACtHR the chance to explore the standards of independence and impartiality applicable to the national judiciary. The IACtHR found that the state violated the ACHR. The events of the case relate to the removal from office proceedings applied to three judges, with provisional positions, from the First Court for Administration Matters. Rños y otros, para. 138 et seq.; Perozo y otros, para. 150 et seq.

74 Rños y otros, para. 139; Perozo y otros, para. 151.

in a democratic society.⁷⁵ It has distinguished the margins or thresholds of protection, which are much less demanding for public figures, officials and others, who have chosen to place themselves in a position that exposes them to greater public scrutiny than others. Moreover, it has examined the possible conflict of rights, or at least the tension between them, that occurs when, on the one hand, there is freedom of speech and, on the other hand, there is the right to honour and respect for private life. In the *Last Temptation of Christ (Olmedo Bustos et al.) v. Chile*, the Court established the content of the right to freedom of speech, recognising two dimensions: individual, which includes the right to use all appropriate means to disseminate ideas and reach the widest possible audience, so that the expression and dissemination of ideas and information are indivisible, and social, which understands freedom of speech as a means of exchanging ideas and information between people and implies the right of everyone to know opinions, stories and news. Both dimensions are equally important and must be guaranteed simultaneously to ensure the full effectiveness of the right to freedom of thought and speech. It established standards for the freedom of thought and speech, in both its dimensions, in the context of an electoral campaign. In *Ricardo Canese v. Paraguay*, the Court considered that it was necessary to protect and guarantee the exercise of freedom of speech during the electoral process, more so when it involves statements concerning matters of public interest and a public official, such as those made by the applicant.

The IACtHR has developed standards for the relationship between the right to freedom of thought and speech and the right of all persons to request access to information under the control of the state. In *Claude Reyes et al. v. Chile*, it analysed the state's obligation to give reasons for the decisions of administrative bodies under the guarantees contained in Article 8(1) of the ACHR. In *Kimel v. Argentina*, it highlighted the conflict between the right to freedom of speech on matters of public interest and the protection of the honour of public officials, stating that the predominance of one over the other in each case would depend on the weight given by the proportionality assessment. In this case, the Court found that the applicant's opinion was not related to the personal life of the plaintiff judge, rather a critical value judgement concerning the functioning of the judiciary, which cannot be sanctioned, especially when it relates to the official actions of a public official in the performance of his duties.

The IACtHR established standards concerning the state's obligation to prevent situations of harassment that affect the exercise of freedom of expression in *Ríos et al. v. Venezuela*. It further analysed possible gender bias in attacks on female journalists. It developed standards on criminal law as a restriction of freedom of speech and applied criteria concerning the scope of competence of military criminal jurisdiction and the state's obligation to adapt domestic law. Such conclusions were reached in *Usón Ramírez v. Venezuela*. It reiterated its case law on the state's obligation to respect and guarantee the right to freedom of expression in its individual and collective dimension in *Vélez Restrepo and Family v. Colombia*. It reaffirmed the importance of

75 Herrera Ulloa, paras. 127–128; Fontevecchia and Dramico, para. 60.

respect for this right in matters of public interest and found that this right had been violated by the improper actions of security officials during public protest, along with the lack of adequate and effective investigation, the lack of state protection measures and impunity in cases of attacks on journalists in the exercise of their profession. It reiterated that military criminal jurisdiction is exceptional and restrictive in nature and cannot assess violations of human rights, since it constitutes a violation of judicial guarantees and protection, particularly a violation of the guarantee of the natural judge.

The standards for freedom of expression and its relationship with radio concessions or licenses concerning the guarantee of non-discrimination were developed in *Granier et al. (Radio Caracas Television) v. Venezuela*. The case reflected the conflict between the right to freedom of speech and the protection of honour and reputation. The IACtHR understood that freedom of expression is not an absolute right and, within its framework, it is the duty of journalists to reasonably verify the facts on which they base their opinions. Similarly, it considered that both civil and criminal proceedings may be a means of establishing subsequent liability in certain circumstances that comply with the requirements of necessity and proportionality. The facts gave rise a civil action for damages, with the application of a preventive measure in the form of a general prohibition on alienation and encumbrance of real estate to guarantee any payment resulting from the proceedings, which remained in force for more than 17 years, in breach of the principle of reasonable time and the right to property. The IACtHR analysed, in *Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*, the removal procedure concerning judicial guarantees and developed standards concerning the courts' independence and the state's obligation to justify its decisions. It established criteria for the right of access to public offices, following the guarantees of equality and reasonable and objective procedures that allow stability in public offices.

The IACtHR's ruling in *Colectivo de Abogados José Alvear Restrepo (CAJAR) v. Colombia* represents a breakthrough in the development of standards for the protection of the right to privacy and personal data within the IAHRs. The Court, referring to Article 11 of the ACHR, expanded the scope of privacy protection to include the individual's right to request access to personal data collected by the state, their correction and deletion. The case concerned practices by Colombian security forces, which conducted widespread surveillance activities against human rights defenders associated with the CAJAR collective. State authorities collected, stored and used members' personal data, leading to threats to their safety, reputation and ability to carry out social activities. The Court found that privacy protection encompasses the prohibition of arbitrary interference in personal life and a positive state obligation regarding the management of personal data. This judgment introduced standards into the IAHRs similar to the right to data protection in European law.

Notably, the IACtHR emphasised the right to access, meaning individuals have the right to know what data about them is stored by state agencies. The Court recognised the rights to rectification and modification when data are false, outdated or

collected excessively. Additionally, it acknowledged the right to deletion when data have been unlawfully gathered, their retention is no longer justified or they violate an individual's privacy and dignity. The ruling established the obligation for effective protection mechanisms; that is, states must create administrative and judicial procedures that allow individuals to exercise these rights in a real and effective manner. This decision is of fundamental importance because it introduced the right to data protection as an element of the right to privacy within the IAHRs and expanded state obligations, encompassing the prohibition of abuses and active control over personal data. The Court recognised that inadequate data protection threatened personal security, freedom of expression and social activism. The ruling set standards applicable to human rights defenders and all persons under the jurisdiction of the ACHR Member States. It marks a significant step in adapting the IAHRs to contemporary challenges related to digitalisation and surveillance. The Court reaffirmed that the right to privacy should not be understood solely as protection against physical intrusion but as the individual's right to control their personal data. Hence, a modern, dynamic standard was established, bringing Inter-American human rights protection closer to global trends in data protection.⁷⁶

In earlier cases, such as *Herrera Ulloa v. Costa Rica* or *Kimel v. Argentina*, the Court emphasised the need for exceptional and proportional application of criminal law to speech. However, in its recent rulings, it shifted to an absolute prohibition of criminal sanctions concerning public debate. In *Álvarez Ramos v. Venezuela*, *Baraona Baray v. Chile* and *Capriles v. Venezuela*, the IACtHR stated that applying criminal law to speech on public issues is disproportionate and incompatible with the ACHR. Criminal sanctions have a 'chilling effect' and can discourage society from criticising authorities, undermining democratic foundations. When dealing with public officials, a broader margin of permissible criticism should be applied, as holding public office entails greater transparency and tolerance for social evaluation. The only acceptable state response is civil remedies (e.g., protection of personal rights), which must be proportional, legally prescribed, and not hinder public debate. These rulings shift the focus from proportionality controls (as in older jurisprudence) to an absolute ban on applying criminal law to expressions related to public interest. The Court thus affirmed the primacy of freedom of expression over the reputation of public officials, which is fundamental for strengthening democratic debate in the region. The new standards impose on Member States the obligation to decriminalise defamation concerning public interest and public officials' activities and to ensure effective but proportionate civil remedies for reputation violations. This makes the protection of pluralism and free debate a condition for the functioning of a constitutional democracy. The IACtHR's jurisprudence shift establishes a new regional standard: an absolute ban on criminal sanctions for speech concerning public interest and criticism of public

76 The facts of the case concern the attacks, harassment, intimidation and threats to which the members of CAJAR, a legal NGO, have been subjected since the 1990s, the lack of investigation and failure to punish those responsible for the acts.

officials. The Court emphasised that freedom of expression is a fundamental right in a democratic society, and any limits must be interpreted in a manner that maximally supports public debate.⁷⁷

In *Tavares Pereira v. Brazil*, the IACtHR addressed the restrictions imposed on trade union activities and social protests in Brazil. The Court found that state actions that hindered the organisation and execution of workers' demonstrations violated Articles 13 and 16 of the ACHR. Regarding Article 13, it emphasised that the freedom of expression includes the individual right to hold opinions and the right to publicly express dissent against state policies. Restrictions on protests prevent free debate on matters of public interest. Concerning Article 16, it pointed out that the freedom of association encompasses the right to collective action, including organising strikes and demonstrations. Attempts to criminalise union activities constitute repression against the freedom of association and undermine the essence of this right. This confirmed that Articles 13 and 16 should be interpreted together, as freedoms of speech and association reinforced each other; the realisation of one without the other becomes illusory.⁷⁸

Huilcaman v. Chile concerned restrictions imposed by the Chilean state on the indigenous Mapuche leader's participation in UN international forums. The state prevented him from traveling and representing his community in international debates. Regarding Article 13, the Court held that the travel ban and restrictions on participation in international discussions violated the freedom of expression, as this right encompasses the dissemination of information within the country and participation in international exchange of information. Concerning Article 16, it stressed that the freedom of association includes the creation and operation of organisations at the national level and the right to represent them internationally. Limiting this right undermined the core activities of social movements and indigenous organisations.

77 *Álvarez Ramos v. Venezuela* is about a vocal critic of the regime of Hugo Chávez in Venezuela. The victim, a lawyer and university professor, had filed numerous criminal complaints against state authorities, including then-President Hugo Chávez, the Attorney General of the Republic and the President of the National Assembly, alleging misappropriation of public funds and embezzlement. In turn, he was prosecuted for defamation and sentenced to two years and three months. The Court found that Venezuela had violated the victim's right to freedom of expression, right to defence and freedom of movement. The facts of the case concern the criminal process brought against and subsequent conviction of Alvarez for publishing an article in his *Así es la Noticia* newspaper column. He reported on an alleged diversion of funds from the workers' and retiree's savings bank of the National Assembly of Venezuela. In its sentence, the Court developed standards on the content of the right to freedom of expression and the scope of the prosecution of the offenses to determine further responsibilities. Additionally, compatibility with the application of restrictions to the freedom of movement under the standards of international law was examined. *Baraona Baray v. Chile* concerns the violation of Baraona Bray's freedom of expression due to criminal proceedings and the subsequent conviction for libel, initiated by a senator.

78 The facts of *Tavares Pereira v. Brazil* relate to the murder of farm worker Antonio Tavares Pereira and the injuries suffered by 185 farm workers who were taking part in a march in May 2000. Upon reaching the entrance to the city of Curitiba, military police from the state of Paraná cracked down on the workers participating in the march.

This is particularly significant because the Court extended the interpretation of Articles 13 and 16, indicating that the protection of individual rights must encompass the transnational dimension, especially when it concerns minority groups and indigenous populations.⁷⁹

Thus, the jurisprudence of the IACtHR has developed a strong, pro-freedom standard for the protection of the right to thought and expression, based on the assumption that freedom of speech plays an individual and a social role, as a guarantee of the existence of a space for public debate and oversight of government actions.

2.6. Right to Truth (Commissions)

The right to truth means accurate knowledge of the facts, historical or material, on the part of the victim and society.⁸⁰ Thus, according to the expressions used in the

79 The case concerned Aucón Huilcamón, a leader of the Mapuche community and an advocate for the rights of indigenous peoples in Chile. In 2000, he was elected as a representative of his people to participate in the Assembly of Indigenous Peoples of the United Nations in New York. However, the Chilean authorities refused to issue him a passport, arguing that he did not meet the legal requirements because he only possessed an internal identity card. Hence, Huilcamón was unable to leave the country or participate in the international forum, which prevented him from representing the interests of his people on the global stage. The case was brought before the IACtHR, which examined whether the refusal to issue a travel document constituted a violation of Article 13 (freedom of thought and expression) and Article 16 (freedom of association) of the ACHR and the rights of indigenous peoples to participate in public and international life.

80 *Bómaca Velósquez. Reparaciones y Costas*, paras. 76–77. Efraín Bómaca Velósquez was a commander of the Revolutionary Organization of the People in Arms (ORPA), one of the guerilla groups that comprised the Guatemalan National Revolutionary Unity. On March 12, 1992, there was an armed encounter between ORPA and the Guatemalan Army and Bómaca Velásquez were captured and tortured. Bómaca Velásquez was last seen on about July 1992 tied to a metal bed; his whereabouts have since been unknown. The state failed to undertake an effective investigation and to redress the crimes committed against him. IACtHR found that the state violated ACHR and the American Convention to Prevent and Punish Torture. The case is notable because It is notable because IACtHR found a violation of Article 1 (Obligation to Respect Rights) of the American Convention in relation to Article 3 Common to the Geneva Conventions, as the victim was a member of a guerrilla group and had been captured during combat. The facts of the case refer to the forced disappearance of Efraín Bómaca Velósquez, commander of the guerilla group Organisation of People in Arms (ORPA), after being captured in March 1992, by Army officers. During his captivity, Bámaca Velásquez was subjected to torture., *Masacres de El Mozote y lugares aledaños*, para. 298, *Garcna y familiares*, para. 176. From February 17 through 19, 1984, the National Police undertook an operation to cleanse and patrol the state (*Operativo de Limpieza y Patrullaje*). On the morning of February 18, 1984, Edgar Fernando Garcna, a teacher and administrative employee of the claimed communist organisation La Industria Centro Americana de Vidrio S.A (CAVISA), was walking down the street when he was stopped by the National Police, injured, and detained under the Operation. Garcna was seen in various secret prisons, and last seen alive in December 1984. IACtHR found that the state violated ACHR. The facts of the case refer to the forced disappearance of Edgar Fernando Garcna, trade unionist and student leader, following his arrest on February 18, 1994, by members of the Special Operations Brigade of the National Police. IACtHR placed the events in a context of internal violence in the country during which the intelligence services played a particularly important role as being responsible for gathering and reviewing information on those people considered ‘internal enemies.’ *Rodríguez Vera y otros (Desaparecidos del Palacio de Justicia)*, para. 511. This case is about

case law, there is a collective right, along with an individual right, to know the truth, the counterpart of which is the duty of the state to investigate and make public a full, impartial, effective and truthful investigation of the violations and the participation of the perpetrators of violations, material and intellectual.⁸¹

one of the most notorious events in modern Colombian history. In 1985, the Palace of Justice, Colombia's Supreme Court, was stormed and seized by members of the M-19 guerilla group. state security forces used disproportionate and excessive force in their fight to retake the Palace of Justice. As a result, many hostages in the building were killed using automatic weapons, grenades, bombs, and the fires that ensued. Further, once the Palace of Justice had been retaken, special forces detained many innocent survivors, and transferred them to military locations, where they were tortured, beaten, and ultimately executed. IACtHR found that the state violated the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Inter-IACFDP. The petition refers to facts that occurred during the siege and subsequent takeover of the Justice Palace, headquarters of the Supreme Court and the state Council in Bogot6, Colombia. This took place on November 6th and 7th in 1985. On November 6th a guerilla command of Group M-19 sieged the Justice Palace. The high command of the Armed Forces of Colombia decided to retake it through a military operation and intelligence that was described as disproportionate and excessive by domestic courts and the 'Truth Commission on the Acts of the Palace of Justice', established by the Supreme Court. The operation lasted 27 hours and resulted in the death of approximately 100 people, including judges of the Supreme Court and state Council. Many of those who survived were tortured and, in some cases, disappeared or executed. Among these people are the victims in this case.

81 Las Palmeras. Reparaciones y Costas, para. 67. On January 23, 1991, the Putumayo Departmental Police Commander ordered members of the National Police to conduct an armed operation in Las Palmeras, Municipality of Mocoa, Department of Putumayo. The armed forces opened fire from a helicopter, wounding a six-year-old boy on his way to school. Police then detained several bystanders in the nearby area and extrajudicially executed at least six of these people. The National Police officers and the Army troopers took several measures to justify their action, including putting military uniforms on the bodies of some of those killed and threatening witnesses in the case. IACtHR found that the state violated ACHR. The events concern the extrajudicial execution of 6 unarmed rural farmers, in the province of Las Palmeras, Putumayo region, by members of the National Police and Army. The case also addresses the lack of administration of justice, which meant that the events remained in impunity., Contreras y otros, para. 170. This case is about the abduction and forced disappearance of children by units of the Salvadorian Army during the civil war of the 1980s. During this time, the state employed a deliberate strategy of kidnapping children from populations suspected of being guerrilla sympathisers to re-educate them under the state's ideology. Many of the abducted children were raised by military leaders or soldiers, foreign families adopted others, and some grew up in orphanages or military bases. Between 1981 and 1983, Gregoria Herminia, Serapio Cristian, and Julia Inñs Contreras, Ana Julia and Carmelina Mejna Ramñrez, and Josñ Rubñn Rivera Rivera disappeared. The forced disappearances of these children were perpetrated by members of different military units in the context of 'counterinsurgency operations' during the armed conflict in El Salvador. While the whereabouts of Gregoria Herminia Contreras were established in 2006 and she is in the process of reconstructing her identity and biological family relations, IACtHR stated that the circumstances surrounding the six disappearances had still not been clarified, those responsible had not been identified or punished, and after almost thirty years, the facts remained in impunity. The case concerns the forced disappearance of a group of children, during the first few years of the internal armed conflict in El Salvador, between 1981 and 1983, by members of military groups in the context of 'anti-insurgency operations'. The victims were separated from their families and disappeared via various means, including formal and informal adoption, appropriation by military officials, and in some cases, illegal trafficking;

It has often been stated in the case law that the right to truth is included in or immersed in access to justice and is linked to the results of the investigation that results from it. Therefore, Article 8 of the ACHR applies.⁸² On some occasions, it has

Masacres de Río Negro, para. 194. In 1980 and 1982, the Guatemalan Army and members of the Civil Self-Defense Patrols destroyed the Mayan community of Río Negro, that protested the building of a hydroelectric dam, by means of a series of massacres. The facts of this case fit within a more general context of massacres in Guatemala that were planned by state agents as part of a 'scorched earth' policy aimed against the Mayan people, who were characterised as the 'internal enemy' in a context of discrimination and racism. Remarkably, IACtHR found that the state violated almost all provisions of ACHR, the American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, the American Convention on Forced Disappearances of Persons, and the American Convention to Prevent and Punish Torture. The facts of the case refer to the destruction of the Mayan community of Río Negro because of a series of massacres perpetrated by the Guatemalan military and members of the Civilian Defense Patrol (PAC), between 1980 and 1982.

82 The right to the truth, IACtHR explained, is 'subsumed in the right of the victim or his next of kin to obtain from the competent state bodies the clarification of the facts of the violations and the corresponding responsibilities through the investigation and trial provided for in Articles 8 and 25 of ACHR. *Bómaca Velásquez. Reparaciones*, para. 201; *Baldeyn Garcés*, para. 166. This case is about the arbitrary arrest, torture, and killing, in 1990, of an elderly peasant in the high Andes by a unit of the Peruvian army. This was followed by the subsequent failure by the state to properly investigate and prosecute. IACtHR found that the state violated ACHR. The facts of the case concern the death of Bernabé Baldeyn Garcés, a 68-year-old peasant, who was detained and tortured by military staff in the department of Ayacucho during the initial stages of the 1990s; *Radilla Pacheco*, para. 180. On August 25, 1974, Rosendo Radilla Pacheco, a 60-year-old musician and political and social activist, was arrested by members of the Mexican Army in the state of Guerrero and eventually disappeared. The state failed to establish the whereabouts of Radilla Pacheco. IACtHR found that the state violated ACHR and the IACFDP. The facts of the case refer to the forced disappearance of Rosendo Radilla Pacheco after being detained by military officials in August 1974. The victim was involved in political and social activities connected with groups of coffee growers and farmers in the Guerrero region. IACtHR placed the events in a context known as the 'Dirty war of the seventies,' during which there was a high occurrence of forced disappearances of people; *Masacre de las Dos Erres*, para. 151. Between December 6 and 8, 1982, there was a massive massacre in Las Dos Erres, a small village in the municipality of La Libertad, in the Petén department of Guatemala. The massacre, carried out by Guatemalan soldiers during the de facto presidency of General José Efraín Ríos Montt as part of a counterinsurgency force named kaibiles, resulted in the deaths of 251 people, including men, women, and children. The alleged indiscriminate and permissive use of judicial resources, the unjustified delay by the judicial authorities, and the lack of an exhaustive investigation, prosecution, and punishment of those responsible was still pending at the time this case came before IACtHR. IACtHR found that the state violated ACHR, the American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the American Convention to Prevent and Punish Torture. The facts of the case refer to the massacre of 251 inhabitants, women, men and children, from the community of 'Las Dos Erres,' which occurred on 6th to 8th December 1982 and was perpetrated by members of the specialised group within the armed force called 'Kaibiles'. Judicial investigations were initiated more than 10 years after the events., *Chitay Nech y otros*, para. 206. In 1981, armed men kidnapped the Mayan indigenous political leader Kaqchikel Florencio Chitay Nech. Chitay Nech's disappearance was never investigated, and those responsible had not been prosecuted by the date of the judgment, however, they were prosecuted 29 years after Chitay Nech's disappearance. His whereabouts remain unknown. IACtHR found that the state violated ACHR and the IACFDP. The events of the case refer to the

been stated that, this right is included in the right to information, in its social aspect (access to information held by the state), therefore, Article 13 of the ACHR would apply.⁸³ The IACtHR case law, which combats impunity and seeks to adopt measures to prevent the repetition of violations, emphasises the importance of disseminating the truth about the violations committed for preventing new violations.⁸⁴ It is about achieving structural remedies. Truth commissions, which accompany the processes of transition to democracy in various regions worldwide and are well-known figures in the so-called ‘transitional justice’,⁸⁵ have acquired a significant importance in Latin American countries. The case law has noted that the nature and scope of these commissions are different from formal jurisdictional bodies.⁸⁶ The IACtHR considers, in

forced disappearance, since April 1, 1981, of the Mayan indigenous political leader Florencio Chitay Nech, and the lack of diligence in the investigation of the incidents. IACtHR placed these events in the context of the internal armed conflict that took place between 1962 and 1996, during which time the forced disappearance of peoples constituted state practice carried out by security forces in Guatemala, with the purpose of not only punishing the victim but also the social or political collective that they belonged to.; Gelman, paras. 243-244; Rodríguez Vera y otros (Desaparecidos del Palacio de Justicia), paras. 509 and 511.

83 Gomes Lund y otros (‘Guerrilha do Araguaia’), para. 201 and op. 6. Between 1972 and 1975, seventy members of the Communist Party of Brazil and peasants of that region were arbitrarily detained, tortured, and forcefully disappeared in the context of the military dictatorship in Brazil. The state failed to carry out a criminal investigation and its legislative and administrative measures unduly restricted the next of kin’s right to access of information. IACtHR emphasised the right to truth inherent in Article 13 of ACHR, particularly when it deals with gross human rights violations such as those of forced disappearances and extrajudicial execution. IACtHR found that the state violated ACHR. The facts of the case refer to the forced disappearance, between April 1972 and January 1975, of members of the ‘Guerrilha do Araguaia’, a resistance movement to the military dictatorship of which some members of the Brazilian Communist Party formed part. Due to the validity and application of Amnesty Law N° 6683/79, criminal investigations into the events were not conducted.

84 Bómaca Velósquez. Reparaciones y Costas, paras. 77-78.

85 Concurring opinion of Judge Diego García-Sayón, in Massacres of El Mozote and surrounding areas, paras. 21 et seq.

86 Almonacid Arellano y otros, para. 150. This case concerns the extrajudicial execution of Almonacid Arellano, an elementary school teacher, union leader, and activist in the Chilean Communist Party. Augusto Pinochet’s newly installed military regime perceived Almonacid Arellano as a threat and arrested him at his home in Rancagua on September 16, 1973. As Almonacid Arellano walked to the police truck, his captors shot him and he died in a hospital the next day. The First Criminal Court of Rancagua initiated an investigation into the case, but the case was ultimately dismissed on September 4, 1974. When Almonacid Arellano’s family requested to have the case reopened in 1992, the courts rejected it because Decree No. 2.191 of 1978 granted amnesty to the perpetrators of those crimes occurring between September 11, 1973 and March 10, 1978. IACtHR found the state violated the victim’s rights to a fair trial and to judicial protection under ACHR. The facts of the case refer to the extrajudicial execution of Luis Alfredo Almonacid Arellano in September 1973, in the context of the military regime which governed Chile during that time. Investigations into the events were affected by the application of the amnesty law which was approved by legal Decree N° 2191 in 1978; Zambrano Vñlez y otros, paras. 91-92. On March 6, 1993, Wilmer Zambrano Vñlez, Segundo Olmedo Caicedo and Josñ Miguel Caicedo were extrajudicially executed in Guayaquil, Ecuador during an operation carried out by the Ecuadorian Armed Forces and the National Police. More than thirteen years after the occurrence, the state still had not undertaken any serious investigation, nor had it identified the

its judgements, the investigative activities of truth commissions, which contribute to clarifying the facts and establishing responsibility.⁸⁷ Hence, the investigations conducted by these bodies, regularly based on peace agreements, after the end of an internal conflict or a period of serious authoritarianism,⁸⁸ constitute a part of the evidence used by the Inter-American jurisdiction, in addition to the value they have under domestic law.

The right to truth has been established within the IAHRs as a response to practices of widespread human rights violations concerning military dictatorships and internal conflicts in Latin America. Initially, it was understood as an element of the right to an effective legal remedy (Article 25 of the ACHR) and the right to judicial protection in connection with violations of the right to life (Article 4), the prohibition of torture (Article 5) and the right to personal liberty (Article 7). The Court held that victims of serious violations and their families have an autonomous right to know the truth about what happened, who was responsible and the fate of disappeared or unlawfully

perpetrators and masterminds of the victims' executions. IACtHR found that the state violated ACHR to the detriment of the victims. The facts of the case concern the extrajudicial execution of Wilmer Zambrano, Segundo Olmedo and Jos  Miguel Caicedo in March 1993, and the lack of investigation and punishment of those responsible. The victims were executed during an operation carried out by the Ecuadoran Armed Forces and the National Police. The events occurred in the context of a climate of insecurity and internal commotion, which led to the ordering of Decree N  86 on September 3, 1992 by the President of the Republic, which commanded the intervention of the armed forces y Masacres de El Mozote y lugares aleda os, para. 298.

⁸⁷ Zambrano V lez y otros, para. 128; Anzualdo Castro, para. 119. On December 16, 1993, Kenneth Ney Anzualdo Castro, a university student, was riding the bus home from school. A light blue car intercepted the bus and three persons, who identified themselves as police officers, forced Anzualdo Castro into their car. That was the last time Anzualdo Castro was ever seen. IACtHR found violations of both ACHR and the IACFDP. The facts of the case concern the forced disappearance, on December 16, 1993, of Kenneth Ney Anzualdo Castro, a 25-year-old man. This act was perpetrated by agents of the Military Intelligence Service, due to his alleged links with the group 'Sendero Luminoso'. Rodr guez Vera y otros (Desaparecidos del Palacio de Justicia), para. 88. Miembros de la Aldea Chichupac y comunidades vecinas del Municipio de Rabinal, para. 73. This case is about the murder of hundreds of members of the village of Chichupac and neighbouring communities of the municipality of Rabinal, in central Guatemala, between 1981 and 1982, the most intense and murderous phase of the 1962–1996 internal conflict. The state admitted partial responsibility and IACtHR found the state in violation of most articles of ACHR, both for the events themselves and the subsequent failure to investigate, punish and remedy. The facts of the case refer to the massacre that took place in January 1982 in the Chichupac village and in the neighboring communities of the municipality of Rabinal, comprised of members of the Maya Achi indigenous community; V squez Durand y otros, para. 114. This case is about the arrest, torture and disappearance of a Peruvian merchant who travelled to and from Ecuador during the so-called Cenepa War, a brief and localised military conflict between Ecuador and Peru, fought over control of an area near the border between the two countries fought between January 26 and February 28, 1995. IACtHR found Ecuador in violation of several articles of ACHR. The facts of the case refer to the forced disappearance of V squez Durand, which took place on January 30, 1995, carried out by members of the Ecuadorian Intelligence Service. This took place within the context of the so-called War of Cenepa (Guerra del Cenepa) or the Conflict of the High Cenepa (Conflicto del Alto Cenepa), which began as a territorial dispute between Peru and Ecuador.

⁸⁸ CIDH, Derecho a la verdad en Am rica, para. 176 et seq.

killed persons. Over time, this right has been linked to the interests of society, which has the right to know the truth about mass violations to ensure democracy and prevent the recurrence of similar crimes. According to the IACtHR's jurisprudence, this right has a dual dimension: individual (for victims and their families) and collective (for society). It is closely related to the prohibition of impunity and the state's obligation to conduct investigations in accordance with due diligence standards. It cannot be limited by amnesty laws, statutes of limitations or confidentiality clauses on state documents. Furthermore, it entails the obligation to ensure access to archives and historical records. In recent years, the Court has expanded the interpretation of the right to truth, emphasising its connection with the democratic constitutional order and the obligation of historical education. This right becomes a tool for victims and society, which is guaranteed access to knowledge about human rights violations committed by the state.

In *Velásquez Rodríguez v. Honduras* (1988), the IACtHR, for the first time, indicated that the state has a duty to carry out effective investigations into enforced disappearances and the lack of such actions constitutes a violation of the right to a fair trial and protection of individual rights. This laid the foundation for the subsequent doctrine of the right to truth. Conversely, *Barrios Altos v. Peru* (2001) established that amnesty laws preventing accountability for mass crimes are incompatible with the ACHR. In this ruling, the right to truth was linked to the state's obligation to ensure justice and clarify the fate of the victims. In *Gomes Lund and others (Guerrilha do Araguaia) v. Brazil* (2010), the Court emphasised that the right to truth is a collective right belonging to society. It related to historical memory and was the state's duty to disclose documents and information about violations. In *Massacres of El Mozote v. El Salvador* (2012), the IACtHR stated that the state's obligation includes positive actions, such as conducting searches, exhumations and ensuring families access to documentation and investigation results.

In *Bámaca Velásquez v. Guatemala*, the IACtHR placed the facts in the context of the internal armed conflict in Guatemala, highlighting the army's practice of capturing guerillas and holding them in secret detention to obtain information through torture. The state acknowledged its international responsibility for violating the obligation to respect and guarantee the rights set out in the ACHR. Without prejudice, the Court has developed standards for characterising enforced disappearance as a multiple violation of rights and a violation of the right to personal integrity of victims and their families. An important judgement was delivered in *García and Family Members v. Guatemala*. The Court applied the criteria for enforced disappearance as a repeated and persistent violation of rights and the state's obligation to investigate it. It developed standards on freedom of association concerning the state's pattern of capturing and eliminating trade union and student organisations.

The IACtHR examined the state's responsibility concerning its international obligations in relations to torture, enforced disappearances and executions, and the obligation to investigate these facts within the framework of an ordinary jurisdiction, rather than a military jurisdiction. A judgement that should be considered emblematic

in this regard is *Rodríguez Vera et al. (Missing Persons of the Palace of Justice) v. Colombia*. The Court has progressed in its case law on the state's liability for breaches of judicial guarantees and protection resulting from the application of military jurisdiction in cases of serious violations of human rights, as far as this jurisdiction violates the right to a competent, independent and impartial judge. This was done in the framework of *Las Palmeras v. Colombia*. Additionally, it found a violation of rights due to the excessive duration of ordinary criminal proceedings without identifying and punishing those responsible for the extrajudicial execution, which violates the limits of reasonable time.

In *Contreras et al. v. El Salvador*, the state recognised international responsibility for the pattern of enforced disappearance of children and the Court analysed the violated guarantees, developing standards on the characteristics and consequences of enforced disappearances, the right to an identity, the right to a family and the right to a name and special measures for the protection of children. It referred to the right of access to justice within a reasonable time and access information from military archives. In *Radilla Pacheco v. Mexico*, it applied standards on enforced disappearance as a multiple violation of human rights and due diligence in the judicial investigation. Hence, it established the limits of the 'historical truth' documented in the reports and recommendations, understanding that this does not replace the state's obligation to conduct a judicial investigation. It established standards for military jurisdiction concerning cases concerning human rights violations. The issue of enforced disappearances was raised in *Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala*. In addition to the extrajudicial executions and enforced disappearances of which members of this group were victims, the Court examined the violations of rights resulting from the forced displacement of the inhabitants of the community, particularly women and children. It further focused on the lack of due diligence in the examination of the facts. It placed the facts in the context of the internal armed conflict in Guatemala from 1962 to 1996, during which the so-called 'national security doctrine' was applied, which considered the Mayan people as an 'internal enemy'. Similar circumstances were noted in *Río Negro Massacres v. Guatemala*. As a result, Mayans were the ethnic group most affected by human rights violations during this period, suffering forced displacement and the destruction of their communities. Women and children were particularly affected because of the symbolic effect that the violation of their rights had. The Court referred to the standards for enforced disappearances of persons with an emphasis on the impact on children and developed parameters concerning the prohibition of slavery and servitude and the impact on the cultural and spiritual life of communities resulting from violations of their rights.

In *Chitay Nech et al. v. Guatemala*, the Court applied the standards for enforced disappearances as a multiple violation of human rights. It developed criteria to guarantee the enjoyment of political rights to members of indigenous and ethnic communities and the effects of the forced displacement of the victim's family following systematic violence against indigenous Mayan groups, which affected their cultural

identity. This issue was taken up in the case against Ecuador as well. In its judgement in *Vasquez Durand et al. v. Ecuador*, the IACtHR applied the standards for enforced disappearances and addressed aspects of the state's obligation to investigate such acts. It reiterated the standards for enforced disappearances as a repeated and continuous violation of rights and the State's obligation to investigate and punish serious violations of human rights and its incompatibility with the validity of amnesty laws in the judgement in *Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. However, it has developed the protection of the right of access to public information and the limits of state secrets. It has developed standards regarding enforced disappearance as a violation of multiple human rights, which places victims in a state of vulnerability and takes on particular gravity when it is a part of a pattern of practices implemented or tolerated by the state. In *Anzualdo Castro v. Peru*, criteria were established according to which investigations into cases of enforced disappearance should be conducted with due diligence.

In *Baldeón García v. Perú*, the IACtHR found that in the 1980s and until the end of 2000, Peru experienced a conflict between armed groups and agents of the police and armed forces. This was exacerbated by systematic human rights violations, including extrajudicial executions and enforced disappearances of persons suspected of belonging to opposing political groups. These practices were carried out by state agents under the orders of the military and police chiefs. The Court noted the shortcomings of the judicial investigation into the death and torture of the victims and the impunity in which the facts remained. In *Las Dos Erres Massacre v. Guatemala*, it assessed the judicial proceedings concerning the standards of due diligence, particularly to the pattern of sexual violence against women during armed conflicts. It focused on the state's obligation to provide special protection to children against the systematic kidnapping and illegal detention of minors, committed and tolerated by state agents during the events.

The IACtHR developed criteria for classifying crimes against humanity and the resulting state obligations to investigate and punish under the amnesty laws. In *Almonacid Arellano et al v. Chile*, standards were developed concerning the state's obligation to exercise a 'control of conventionality' between national legal norms and the ACHR. In turn, the establishment of standards regarding the scope of the suspension of guarantees in states of emergency and the criteria for the legitimate use of force by state security forces became the main objective of *Zambrano Vélez et al. v. Ecuador*.

In recent years, the IACtHR has explicitly recognised the right to truth as an autonomous right. In *Comunidad Campesina de Santa Bárbara v. Peru* (2015), concerning the farmers' massacre in the 1990s by security forces, the IACtHR ruled that, beyond the obligation to conduct effective investigations, there is an autonomous right of the community and families of the victims to know the truth about the events. For the first time, it indicated that the right to truth is an independent human right. Conversely, in *Tabares Toro and others v. Colombia* (2018), which dealt with the enforced disappearance of a social activist and the prolonged concealment of information about his fate, the IACtHR confirmed that the victim's family has an autonomous right to

the truth, encompassing the knowledge of the disappeared person's fate and the full identification of the responsible perpetrators. The Court directly defined the right to truth as a right of individuals and society that is not subject to restrictions resulting, for example, from amnesty laws or statutes of limitations.

Cuéllar Sandoval and others v. El Salvador (2019) was related to enforced disappearance in the context of an armed conflict and the long-term lack of access for families to documents and archives. The Court held that the autonomous right to truth includes the right to access state documents and archives related to serious human rights violations. It expanded the scope of the right, linking it with judicial investigations and the state's obligation to provide society with tools to preserve historical memory and oversee governmental power. In these cases, the IACtHR made a qualitative shift from the state's obligation to conduct investigations towards recognising an autonomous, separate human right – the right to the truth. Consequently, it granted this right the status of an independent convention standard that protects individuals and societies from a culture of impunity and oblivion.

The right to the truth within the IAHRs has developed as an autonomous right of individuals and collectives. It evolved from the obligation to investigate serious violations (*Velásquez Rodríguez* case) to a broad right encompassing access to archives, historical memory and the duty of societal education (*Gomes Lund, El Mozote*). Currently, it is a necessary condition for overcoming impunity and strengthening the democratic rule of law.

2.7. Family

The issue of family can be approached from the perspective of civil and political rights, within the scope of the IACtHR's substantive competence, and from the perspective of ESCR.⁸⁹ In the former, Article 11, paragraph 2, and Article 17 of the ACHR come into play. It is the state's duty to promote the development and strength of the family nucleus, considering that the family is the natural and fundamental element of society and is necessary to encourage the coexistence of parents and children.⁹⁰ It is the state's duty to refrain from and prevent external interference that may harm family life.⁹¹ The IACtHR considers that the family has a very broad scope, encompassing persons related by close kinship and other close relatives, who may be

89 Article 15 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

90 OC-17/02, para. 66; *Chitay Nech y otros*, para. 156.

91 OC-17/02, para. 67.

numerous, considering the traditions and customs of indigenous people.⁹² All these issues become obvious when the protection authorities analyse the status of the rape victim and the consequences in relation to the members of her family.

However, the case law rejects closed concepts of the family, which are identified with traditionalist criteria and unacceptable stereotypes, related to issues of sexual orientation.⁹³ The IACtHR upholds the possibility for single-parent families to provide care, support and affection to the children in their care.⁹⁴ Hence, the case law referred to the best interests of the child, which must be assessed objectively, without being subject to prejudices that would disturb the interest and the rights of the relatives and the child.⁹⁵

The right to family is not explicitly stated in the ACHR; however, the IACtHR derives it from several provisions, namely Article 17 (protection of the family as a natural and fundamental unit of society), Article 11 (protection of private and family life), Article 19 (protection of children's rights) and Articles 8 and 25 (procedural guarantees in matters affecting family life). The Court interprets these provisions in a *pro persona* manner, expanding their scope towards an autonomous right to respect for family life and the inviolability of family bonds.

In *Fornerón and Daughter v. Argentina*, the IACtHR stressed the importance of the principle of the best interests of the child in cases concerning the care of minors. It analysed the judicial assessment of the conduct of parents and traditional concepts

92 Loayza Tamayo. Reparaciones, para. 92; OC-17/02, para. 70. In this case, Peru arrested and detained Universidad San Martín de Porres Professor Maria Elena Loayza Tamayo on suspicion of participating in alleged terrorist group Sendero Luminoso. Prior to her arrest, the state did not investigate her alleged participation in Sendero Luminoso or obtain a warrant for her arrest. Following Ms. Loayza Tamayo's arrest, the state tried Ms. Loayza Tamayo for both treason and terrorism, prevented her from communicating with her family, tried her before a faceless court, and kept her in detention though she had been acquitted of all crimes. Following the Court's Reparations and Costs Judgment, the state declared that the Court's decision was not enforceable and withdrew from the Court's jurisdiction. Later, the state reinstated its acceptance of the Court's jurisdiction. The events of the case relate to the arrest of María Elena Loayza Tamayo by the Counter Terrorism Division (DINCOTE) due to an alleged association and collaboration with the group 'Sendero Luminoso'. After her arrest she was held incommunicado for 10 days and was subjected to torture, cruel and degrading treatment and sexual violence, all with the purpose of self-incrimination. Considering her refusal, she was prosecuted for the crime of treason and tried by various military courts, which finally absolved her of all charges. Nevertheless, when passing the case to the civil court, the victim was convicted to a term of 20 years imprisonment by a Special 'faceless' Court for the crime of terrorism. During the entire proceedings, both in the military and civil courts, the victim was kept in detention.

93 Atala Riffo y niñas, para. 142; OC-17/02, paras. 69 and 70.

94 Forneron e hija, para. 98. Leonardo Anibal Javier Forneryn's infant daughter was handed over by her mother for pre-adoptive care to a married couple without the consent of her biological father. The father had no access to the child. Despite numerous requests by Forneryn over a period of ten years, the state courts failed to order and implement a visiting regime. IACtHR found that the state violated ACHR. The facts of the case relate to the legal guardianship and subsequent adoption of the daughter of Leonardo Forneryn without her consent, as well as the following lack of criminal investigation into the supposed 'sale' of the child for adoption.

95 Atala Riffo y niñas, paras. 109-111.

of the family considering the prohibition of discrimination. Similarly, it explained that administrative and judicial proceedings in matters of adoption, care and custody of children must be conducted by the authorities with due diligence and speed, due to the negative impact on parental relationships caused by prolonged proceedings, which may turn into an irreversible factual situation and become detrimental to the interests of the child.

In *Atala Riffo and Niñas v. Chile*, a mother was deprived of the custody of her children due to her sexual orientation. The Court ruled that the state's decision constituted discrimination based on sexual orientation and violated the children's right to remain with their mother. This is a landmark judgment, in which the right to family was linked to the principles of equality and non-discrimination, opening the doors for the protection of non-traditional families within the Inter-American system. The *Gelman v. Uruguay* judgment concerned a child who was taken from the parents during the dictatorship period and handed over to another family without the possibility of maintaining biological ties. The Court indicated that the right to identity includes the right to know one's origins and maintain relations with one's biological family. In *Ramírez Escobar and others v. Guatemala*, which addressed the issue of children placed in care institutions under conditions that violated their rights, without appropriate measures to maintain bonds with their families, the IACtHR emphasised that separating a child from their family should be the last resort and that the state has an obligation to support families and strengthen their caring capacity.

In *Duque v. Colombia*, the IACtHR found that the refusal to grant benefits constituted discrimination based on sexual orientation and a violation of the right to family. The judgment confirmed that family, within the meaning of the ACHR, includes same-sex relationships and legal protection cannot be limited to a traditional heterosexual model.⁹⁶ In *María v. Argentina*, it pointed to the violation of Article 19 (rights of the child) in conjunction with Article 17, emphasising that the state has an obligation to ensure the integrity of the child's family life, protect the child from secondary victimisation and support the family in the education process. The Court linked the right to family with the obligation to protect children from violence and with the concept of the child's best interests, strengthening standards for institutional family support.⁹⁷ In *Brítez Arce v. Peru*, the IACtHR held that the state violated the right to family and the child's right to social integration by not taking positive measures that would allow the family to provide proper care for the child. The judgment expands the state's duty to actively support families in difficult situations (poverty, disability) and indicated

96 The case concerned a man who, after the death of his same-sex partner, was deprived of social benefits because Colombian law did not provide for such benefits for homosexual relationships.

97 The case involved a girl who was a victim of sexual violence, and the state committed numerous neglects in prosecuting the perpetrators and protecting the child. The consequences included destabilisation of family life and a lack of institutional support.

that separating a child from their family is a last resort that is incompatible with the ACHR in the analysed case.⁹⁸

In advisory opinion OC-24/17, issued at the request of Costa Rica, the IACtHR interpreted Articles 11, 17 and 24 of the ACHR concerning the protection of LGBTI individuals. It held that states have an obligation to recognise the legal gender identity of transgender persons, ensuring that they have documents consistent with their actual identity. They are obliged to recognise and legally protect same-sex relationships, including by granting them a status equivalent to marriage or another institution that provides full legal protection. This opinion expanded the interpretation of Article 17, defining family as an inclusive category that encompasses all stable relationships based on affection, regardless of gender.

The right to family in the IAHRs has developed as an autonomous right, combining elements of privacy, identity and child protection. The Court has repeatedly emphasised that protecting family bonds is a fundamental element of a democratic society and states have an obligation to refrain from interference and actively support families.⁹⁹

98 The case concerned a child with a disability who was placed in a care institution without adequate support for his biological family.

99 The jurisprudence of the Inter-American Court of Human Rights regarding the right to family shows a clear evolution from a traditional understanding of biological ties toward an inclusive approach that considers diverse forms of family life and prohibits discrimination. In rulings such as *Forneron e Hija v. Argentina* (2012) and *Gelman v. Uruguay* (2011), the Court primarily focused on protecting biological relationships and parental rights, as well as ensuring the integrity of the child's family life. During this period, emphasis was also placed on the best interests of the child and the state's obligation to prevent arbitrary restrictions on parental rights. In subsequent cases, such as *Duque v. Colombia* (2016), the Court broadened its scope of protection to include same-sex relationships and LGBT+ partnerships, highlighting that the lack of legal recognition of such unions constitutes discrimination and violates the right to family life. In the same vein, Advisory Opinion OC-24/17 (2017) established new standards in the region: the Court stated that states have the obligation to recognise individuals' legal gender identity and to provide legal protection for stable same-sex partnerships, including in matters of inheritance, social benefits, and parental rights. Furthermore, the Court explicitly indicated that children raised in LGBT+ families have the right to family life on equal terms with children in heterosexual relationships, without being subjected to discrimination or stigmatisation. A comparative analysis of earlier rulings and OC-24/17 reveals a clear paradigm shift: from the protection of traditional biological bonds toward an inclusive right to family that encompasses diverse forms of relationships and emphasises equality and non-discrimination. The new jurisprudential line imposes on states not only the obligation to refrain from interfering in family life but also the active duty to support families in crisis and to ensure legal protection for all their members, regardless of sexual orientation or gender identity. Therefore, Advisory Opinion OC-24/17 and the accompanying rulings represent a milestone in the development of standards governing the right to family within the Inter-American system, laying the foundation for an inclusive and equality-based protection of family life in accordance with the principles of a democratic rule of law.

2.8. *Sexual and Reproductive Rights*

Sexual and reproductive rights are recognised by the IACtHR as an integral part of human rights, linked to the rights to life, health, liberty, non-discrimination and privacy and family life. The Court's jurisprudence shapes protection standards concerning access to reproductive health services, the right to make decisions about one's body and protection against forced medical procedures. It considers issues related to the sexual and reproductive rights of women¹⁰⁰ who are unjustly subjected to unauthorised operations that deprive them of their reproductive capacities. The violation of autonomy in this area violates various rights, including physical and psychological integrity, access to information, private and family life, exclusion of violence and non-discrimination.¹⁰¹

Manuela et al. v. El Salvador is one of the most important cases of women's and reproductive rights in Latin American countries. The IACtHR applied its standards on pre-trial detention, finding that Manuela's detention was arbitrary and contrary to the principle of the presumption of innocence. It found that the criminal investigation and grounds for Manuela's conviction were the result of gender stereotyping and the application of a disproportionate sentence. The IACtHR considered the specific implications of the right to sexual and reproductive health for persons with childbearing capacity, highlighting that Manuela's treatment violated her personal integrity and the right to health. It has developed the standards for the scope of medical confidentiality and the protection of personal data.¹⁰²

In *Artavia Murillo and others v. Costa Rica*, the IACtHR found that the ban violated the right to private life (Article 11 of the ACHR), liberty and the right to equal treatment (Article 24 of the ACHR). The ruling emphasised the autonomy of individuals in family planning, the use of available infertility treatments and the necessity to respect reproductive freedom, regardless of the religious beliefs of the state. A significant ruling was issued in *I.V. v. Argentina*. The Court found violations of the right to physical integrity (Article 5) and private life (Article 11), indicating that forced reproductive procedures constitute serious violations of human rights, especially concerning women and vulnerable individuals. The judgment established that any procedure related to the reproductive body must be conducted with voluntary, informed consent.

The access to abortion was addressed by the IACtHR in *K.L. v. Peru*. The case concerned insufficient access to legal abortion in situations where the woman's life or

100 *Artavia Murillo y otros* ('Fecundaciyn in vitro'), paras. 294–300, y Asunto B. respecto de El Salvador. Resoluciyn de la Corte Interamericana de Derechos Humanos del 29 de mayo de 2013, para. 14, op. 1.

101 Part I.V, op. 3.

102 This case is about a woman who miscarried and was criminally prosecuted for that. Moreover, although seriously ill, the state failed to provide her with adequate medical care, resulting in her death. IACtHR found the state in violation of several articles of ACHR, including Article 26. The facts of the case concern the conviction of Manuela for aggravated homicide for having suffered a miscarriage. Manuela died due to lack of adequate medical attention while being deprived of her liberty.

health was at risk, including lack of information and medical care. The Court held that the state violated the rights to life and health (Articles 4 and 5), privacy (Article 11) and the obligation to ensure effective legal remedies (Article 25). The ruling underscored the state's duty to guarantee access to safe reproductive health services, including abortion, when legally permitted, and provide comprehensive medical information.

One of the most important issues in reproductive health is obstetric violence, which includes all forms of violation of women's rights during pregnancy, childbirth or postpartum, such as lack of consent for medical procedures, unjustified interventions, medical neglect, ignoring patients' complaints and discrimination based on social status, age, sexual orientation or origin. The IACtHR has repeatedly emphasised that obstetric violence is a form of human rights violation, particularly of the rights to physical and psychological integrity (Article 5), life (Article 4), health and privacy and family life (Article 11). In *Brítez Arce v. Peru*, the IACtHR found that the state violated the mother's right to family life and the child's physical integrity, noting that obstetric violence is physical and institutional, resulting from a lack of consultation, ignoring parents' opinions and limiting autonomy in decision-making processes concerning the child's health. The judgment highlighted the state's obligation to actively support families in caring for children with disabilities, ensure the patient's or guardian's consent for medical procedures and respect their autonomy. The Court found violations of Articles 4, 5, 7 and 19, indicating that obstetric violence in the form of medical neglect and ignoring patient consent constitutes a violation of reproductive rights in the case of *Pacheco y otra v. Venezuela*. The ruling confirmed that the state bears responsibility for improper practices in the reproductive health system, including the lack of proper procedures to monitor and protect women during pregnancy and childbirth.

A separate opinion was issued in *Beatriz v. El Salvador*. The decision declared violations of the rights to life, physical and psychological integrity and the rights to health and private life. The Court emphasised that obstetric violence in the form of denial of access to legal medical procedures is a violation of human rights. In a separate opinion, Judge Sierra Porto pointed out that the state should ensure access to medical procedures, respecting women's decisions and the obligation to protect life and health, regardless of statutory bans. She further highlighted that complete bans on abortion can lead to severe violations of women's rights and constitute a form of reproductive violence. The jurisprudence of *Brítez Arce*, *Pacheco y otra*, and *Beatriz* shows that the IACtHR considers obstetric violence a violation of fundamental human rights, encompassing women's physical and psychological integrity, along with the right to life, health and family life. Separate opinions, such as that of Judge Sierra Porto, emphasise the necessity of respecting patient autonomy and ensuring real access to medical services, which becomes a standard for protecting reproductive rights in the region.

The IACtHR's jurisprudence regarding sexual and reproductive rights sets a high standard for protecting individual autonomy and family life, linking the right to decide about one's body with the state's duty to ensure access to appropriate medical

services and education. Its rulings and opinions demonstrate that these rights are fundamental to human rights and their violation constitutes a breach of the rights to life, health, privacy and non-discrimination.

2.9. Political Rights

The case law analysed the rights to political participation, participate in the evaluation and adoption of measures of general application and the exercise of public functions, as provided in the ACHR. These rights are contained in the ‘hard core’ tenets in Article 27, in connection with Article 23, of the ACHR, in cases variously described as suspension of rights or guarantees or suspension of state obligations. Hence, the case law preserves the right to participate in political processes, which may involve the application of the customary order of indigenous communities,¹⁰³ consultations on the use of land and natural resources, conducted in a manner consistent with the customary order,¹⁰⁴ decisions subject to domestic law, provided they are in accordance with the principles and rules of a democratic society,¹⁰⁵ access to public offices in conditions of equality and non-discrimination¹⁰⁶ and the existence and effectiveness of remedies against decisions that violate political rights.¹⁰⁷ The case law regarding political rights demonstrates an evolution from the protection of the fundamental right to vote to a broad conception of the right to active participation in political life. This includes the possibility of candidacy, association and expression of political opinions.

103 Yatama, para. 215. This case involves the exclusion of candidates for mayors, deputy mayors and councillors who were part of the indigenous regional political party, Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) from participating in the municipal elections held on November 5, 2000 in the North Atlantic and the South Atlantic Autonomous Regions. The individuals affected filed several recourses against this decision, however, the Supreme Court of Justice of Nicaragua declared that their claims were inadmissible. IACtHR found that the state violated ACHR. The facts of the case concern the exclusion from participation in the municipal elections of a group of candidates pertaining to a regional indigenous political party, as a result of a resolution emitted by the Supreme Electoral Council.

104 Pueblo Saramaka y Comunidad Indígena Xókmok Kósek, para. 157. This case relates to the state’s international responsibility for failing to ensure the ancestral property rights of the Xókmok Kósek Indigenous Community and its members. The actions concerning the territorial claims of the Community had been processing since 1990 and had not been decided satisfactorily at the time of this judgment. Not only was it impossible for the Community to access the property and take possession of their territory, but the Community was left in a vulnerable situation regarding food, medicine, and sanitation that continuously threatened the Community’s integrity and the survival of its members. IACtHR found that the state violated ACHR Rights. The facts of the case concern the right to ancestral property of the indigenous Community Xókmok Kósek, which for more than 20 years have held a claim request without obtaining a response.

105 Yatama, para. 207; Castañeda Gutman, para. 149. This case was brought by the former Mexican minister of foreign affairs, who tried to participate in the Presidential elections of 2006 as a citizens’ candidate, without being affiliated with a political party. It explores the Mexican electoral process. IACtHR found that the state violated ACHR. The facts of the case refer to the violation of Jorge Castañeda Gutman’s political rights, owing to an electoral law that imposed the requirement that Presidential candidates had to be postulated by a political party.

106 Castañeda Gutman, paras. 148–150.

107 Ibid., para. 92.

The IACtHR developed standards on political rights, particularly the right to participate in political life, concerning the unjustified restrictions imposed on victims due to the regulation, which was found discriminatory in *YATAMA v. Nicaragua*. In turn, the development of standards of judicial protection concerning the availability and effectiveness of remedies and the analysis of the scope and content of political rights and the conditions and criteria for their regulation were made by the IACtHR in *Castañeda Gutman v. Mexico*.

In the early period, represented by *Baena Ricardo et al. v. Panama* (2001), the IACtHR mainly focused on protecting the right to vote and prohibiting arbitrary exclusion of citizens from elections. The judgment emphasised the need for legal and proportional grounds for restrictions on political rights and the principle of non-discrimination. Subsequently, in *Gómez Paquiyauri Brothers v. Peru* (2004) and *Barreto Leiva et al. v. Venezuela* (2009), it expanded its interpretation to include political rights encompassing the ability to run for office and active participation in political life. It was highlighted that the state cannot repress citizens involved in public life or restrict the freedom to express political opinions, and administrative obstacles or arbitrary exclusions constitute violations of ACHR. More recent judgments, such as *Chávez y otros v. Ecuador* (2010), introduced an additional procedural and institutional dimension. The Court pointed out that effective protection of political rights requires adherence to democratic procedures, transparency in electoral processes and respect for mandates of democratically elected representatives. Hence, the standard of protection gained a substantive dimension, concerning the possibility of participating in governance, and a procedural dimension, relating to the rule of law and transparency of state actions. As a result, the Court's case law evolved from protecting passive voting rights to a comprehensive standard ensuring full citizen participation in political life, including active participation in elections, candidacy, formation of political associations, expression of opinions and protection against repression and discrimination. This evolution reflects the increasing importance of political rights as a foundation of democratic rule of law in Latin America.

The analysis of key cases indicates several fundamental elements of protection for political rights within the IAHRs. First, the right to participate in governance encompasses the right to vote and the possibility of candidacy and active engagement in political life. The Court explicitly mentions that the state cannot impose arbitrary restrictions in this regard or exclude citizens based on political views, origin or social status. Second, restrictions on political rights must have a clear legal basis, be proportional and serve a genuine public interest. The Court has repeatedly emphasised that the state has an obligation to ensure equality and non-discrimination in electoral processes and protect citizens from repression resulting from participation in political life. Third, political rights are inherently linked to the rule of law and transparency of democratic procedures. The Court indicates that procedural violations, such as arbitrary annulment of mandates of democratically elected representatives or inability to participate in elections for administrative or political reasons, constitute breaches of the right to political life. Fourth, the IACtHR's jurisprudence underscores

that political rights include the freedom to express political opinions and participate in public debate. Protection of these rights is negative, requiring the state to refrain from interference, and positive, necessitating active measures to ensure conditions for genuine and equal citizen participation in democratic processes.

The concept of electoral integrity constitutes a key element of the protection of political rights within the IAHRS. The IACtHR, in its rulings, emphasises that free and fair elections are an essential condition for the realisation of citizens' right to participate in governance and active involvement in democratic processes, following Articles 23 and 25 of the ACHR. In *Capriles v. Venezuela*, the IACtHR pointed out that the state is obliged to ensure fair, equal and transparent electoral procedures that guarantee every citizen a real opportunity to cast their vote and run as a candidate. The judgment highlighted that manipulations, inequalities in media access or instrumental use of state institutions in election campaigns constitute violations of the right to free elections and, consequently, the right to participate in governance. Similar standards were articulated in *Gadea Mantilla v. Nicaragua*, where the IACtHR held that any administrative or legislative actions that restrict candidacy or discriminate against participants in political life threaten the integrity of the electoral process. It was indicated that the state cannot impose arbitrary obstacles or apply measures resulting in unequal treatment of candidates and voters. The jurisprudence in *Oroya v. Peru* extends this analysis to the context of citizen participation by indigenous populations in public life. The Court emphasised that the state has an obligation to ensure equal opportunities for participation in electoral and decision-making processes for all social groups, regardless of ethnic origin. Restrictions stemming from structural discrimination that exclude certain groups from participating in public life constitute a violation of the right to free elections and participate in governance.

In summary, the IACtHR's jurisprudence in the cases of *Capriles*, *Gadea Mantilla* and *Oroya* establishes standards for electoral fairness as an integral part of political rights, highlighting the substantive and procedural dimensions of this right. Fair elections are essential for citizens' full participation in public life and their absence represents a serious violation of democratic standards for the protection of human rights in the Latin American region. The Court's jurisprudence on political rights establishes a comprehensive protection standard, combining the individual's right to participate in public life with the state's obligations regarding legality, equality and transparency. Political rights in the IAHRS are guarantees of passive participation through voting and the foundation for active involvement in governance and free political debate, which are essential for the functioning of a democratic rule of law.

2.10. Economic, Social and Cultural Rights

The reference to ESCR, which some authors call 'second-generation rights', is found in Article 26 of the ACHR. The origins of this instrument lie in the attempt to incorporate

the ESCR into the ACHR, which failed.¹⁰⁸ Decisions on the redress system bridge civil and political rights and ESCR, as they respond to the needs of individuals or groups that concern the meaning or content of the said rights, for example, general or specific development measures,¹⁰⁹ care for cultural patterns,¹¹⁰ actions related to education

108 Inter-American Specialised Conference on Human Rights (San José, Costa Rica, 7–22 November 1969). Proceedings and Documents. Articles 1 to 33 of the Inter-American Convention on Human Rights studied by Commission I, pp. 115–116 and 303.

109 Comunidad Indígena Sawhoiyama, paras. 229–232; Fernández Ortega y otros, paras. 267 and 270. On March 22, 2002, Ms. Inés Fernández Ortega, a woman from an indigenous community in Guerrero, Mexico, was raped and tortured by military personnel. The state failed to undertake proper due diligence on the investigation and punishment of the perpetrators of these crimes. This case also dealt with the use of the military justice system to investigate and prosecute human rights violations, and the difficulties encountered by indigenous people, indigenous women in particular, to obtain access to justice. IACtHR found that the state violated ACHR, the American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the American Convention to Prevent and Punish Torture. The facts of the case refer to the sexual violation and torture perpetrated on Inés Fernández Ortega by members of the Mexican military. IACtHR placed the events in a context of significant military presence in the state of Guerrero, aimed at suppressing unlawful activities such as organised crime. In this region a sizeable percentage of the population belongs to indigenous communities who maintain their cultural identity and live in municipalities afflicted by social exclusion and extreme poverty.

110 González y otros ('Campo Algodonero'), paras. 541–543. On November 6, 2001, three bodies were found in a cotton field in Ciudad Juárez. This case is about the state's international responsibility for the disappearances and subsequent deaths of Ms. Claudia Ivette González, and minor children, Esmeralda Herrera Monreal and Laura Berenice Ramos Monórrrez. The state failed to protect the victims despite full awareness of the existence of a pattern of gender-related violence that had resulted in the murders of hundreds of women and girls. The facts of instant case refer to the disappearance and death of 3 young women, 2 of them minors, whose bodies were found in a cotton field in Ciudad de Juárez in 2001. The victims were subjected to significant torture of a sexual nature.

and health¹¹¹ and protection of culture.¹¹² The IACtHR applied, within its substantive jurisdiction, the San Salvador Protocol concerning the right to education. It adopted the criterion of the Committee on Economic, Social and Cultural Rights, according to which the right to education must meet, at all levels, certain ‘fundamental and inter-related characteristics’ – accessibility, availability, acceptability and adaptability.¹¹³

In the initial period of case law, the protection ESCR had an indirect character, focusing on the connection between fundamental rights and the individual’s living conditions. An example is the *González et al. (Cotton Field) v. Mexico* (2009), in which the IACtHR analysed the state’s neglect in protecting the lives and integrity of women, while emphasising its obligation to ensure conditions conducive to the realisation of social rights, such as safety and access to education. Subsequently, jurisprudence evolved toward the direct recognition of state obligations regarding ESCR. Cases such as *Tibi v. Ecuador* (2004) and *Kawas Fernández v. El Salvador* (2009) demonstrated that the state must refrain from actions violating individual rights and actively ensure access to health, educational and social services, especially for vulnerable or marginalised groups. Thus, it introduced the concept of positive obligations, whereby the state is required to create public policies enabling the effective realisation of ESCR.

A significant stage in the development of standards for ESCR protection is associated with the recognition of their interdependence and indivisibility with civil and political rights. Judgments such as *López Álvarez v. Honduras* (2006) and *García Cruz et*

111 Albón Cornejo y otros, para. 164. On December 13, 1987 Laura Susana Albón Cornejo was admitted to the Metropolitan Hospital, a private health institution located in Quito, Ecuador, due to a set of symptoms of bacterial meningitis, and was prescribed a dose of morphine for pain. On December 18, 2007, while she was under medical treatment, Miss Albón Cornejo died, allegedly due to the medication she was administered. After her death, Miss Albón Cornejo’s parents appeared before the Eighth Civil Court from Pichincha, the Honor Tribunal of the Pichincha Medical Association, and filed a criminal complaint to investigate the causes of their daughter’s death. Two physicians were accused of negligent medical practice. The case against one of them was dismissed and the second was still pending at the time this case was brought. IACtHR found that the state violated ACHR. The facts of the case concern the death of Laura Susana Albón Cornejo because of the medical assistance she received for bacterial meningitis following her admission to the private health facility the Hospital Metropolitano. Gonzales Lluy y otros, paras. 373 and 386. In 1998, three-year-old Talna Gonzales Lluy was diagnosed with a blood disorder that requires multiple blood transfusions to be treated. However, the donated blood was transfused into her body before it was tested for infectious diseases. Shortly thereafter, Talna tested positive for HIV. When she began attending primary school, she faced severe discrimination from school officials and teachers, and was barred from attending her classes. Further, the Gonzales Lluy family was evicted and forced to move multiple times when landlords discovered Talna’s condition. After failing to obtain recourse in the domestic courts, the family sought redress from the IACtHR. IACtHR found that the state violated ACHR. The facts of the petition refer to the child Talia Gabriela Gonzales Lluy, who at the age of 3 became infected with HIV during a blood transfusion from a Red Cross blood bank at a private clinic. The criminal proceedings initiated to assign responsibility prescribed and the lack of firm criminal decision impeded a civil action from being admitted. As a result of her diagnosis, the girl was forbidden from staying in school.

112 Pueblo Indígena Kichwa de Sarayaku, para. 323.

113 Gonzales Lluy y otros, para. 233 and seq.

al. v. Guatemala (2010) show that violations of the right to health, education or work can lead to violations of the right to life, physical integrity or equality, highlighting the need for a holistic approach by the state in human rights protection. In recent years, the Court has consistently advanced standards concerning real access to ESCR for vulnerable groups, including the poor, children, persons with disabilities, indigenous peoples and women. These rulings emphasise that the state must counteract structural discrimination, implement inclusive policies and monitor the effectiveness of public actions to ensure practical access to rights. This demonstrates that the IACtHR is steadily developing ESCR protection standards, transforming them from an indirect concept into full-fledged human rights, forming the foundation of sustainable democratic development within the rule of law in Latin America.

In *Fernández Ortega et al. v. Mexico*, the IACtHR identified the constituent elements of rape as an act of torture and established standards regarding the inappropriateness of military jurisdiction to hear such cases. It developed criteria for due diligence in handling complaints and investigations of sexual violence and access to justice without discrimination. In *González et al. (Cotton Field) v. Mexico*, it placed the facts of the case in the context of the increase in the number of murders of women since 1993 in Ciudad Juárez, which had the characteristics of sexual violence and remained largely unpunished. It has developed standards concerning the obligation to respect, guarantee and prevent gender-based violence and the state's duty of due diligence in response to such incidents. Furthermore, it established criteria for conducting autopsies and the identification of gender stereotypes in state practices.

Albán Cornejo et al. v. Ecuador led the IACtHR to analyse the response of the criminal justice system to the investigation and clarification of the facts and establish standards for access to medical records and the obligations of medical professional supervisory bodies. Furthermore, it considered that it was for the state to decide whether to include the specific offence of medical malpractice in its domestic legislation, since it could be considered a part of crimes such as murder or bodily harm. The IACtHR analysed the facts of *Gonzales Lluy et al. v. Ecuador* concerning the state's obligation to regulate and supervise the provision of health services and the accessibility and quality of health care. It established standards regarding the scope of the right to education and the violation of the right to remain in the education system in connection with the obligation of non-discrimination.

Lagos del Campo v. Peru (2017) marks a turning point in the IACtHR's jurisprudence concerning ESCR. Referring to Article 26 of the ACHR, it offered an interpretation aligned with its object and purpose, applying *pro persona* criteria and an evolutionary approach. Article 26, which guarantees equality before the law and prohibits discrimination, was considered in this context as a framework allowing the full protection of ESCR contained in the Charters of the Organization of American States (OAS), such as the OAS Social Charter. The Court indicated that the failure to realise or violations of these rights could be treated as autonomous violations, independent of violations of traditionally protected civil and political rights. Hence, it established that each of these rights could be subject to autonomous investigation, with the state

being responsible for actions and omissions leading to their violation. This approach strengthens the position of ESCR as fully protected human rights within the Inter-American system, with state obligations extending beyond passive non-interference to active provision of access to services, means and conditions necessary for the enjoyment of these rights. The *pro persona* and evolutionary approach applied by the IACtHR allows for treating ESCR standards as dynamic and adaptable to contemporary social challenges, enabling the protection of ESCR in situations not foreseen in the original legal text of the Convention.

2.11. Environment

Within the IAHRs, the right to a healthy environment is expressly recognised in Article 11 of the Protocol of San Salvador (1988), in OC-23/17, and, tacitly, in Article 26 of the ACHR. The IACtHR considers it to be included among ESCR, given that states are obliged to promote and encourage its progressive development. The scope of application of the right to a healthy environment obliges states to guarantee it within or outside their territory, which means that they are responsible for what happens within their territory and what happens extraterritorially, to the extent that the state exercises jurisdiction or control in that geographical space. Therefore, states can be guilty of causing transboundary damage.

The right to a healthy environment is a human right, without prejudice that it extends to all nature, including all forms of life. It is autonomous because it does not depend on other rights to be enforceable and effective. It has a dual scope: collective, because it protects present and future generations, and individual, because it has an individual interest and its violation has direct consequences for individuals. It has a special relationship with other fundamental human rights. In this sense, two groups can be distinguished: substantive rights, that is, the right to life, personal integrity, health, housing, water, food, property, non-forcible eviction and participate in cultural life, and procedural rights, that is, freedom of expression, association, access to information, an effective remedy and participate in decision-making.

In dealing with civil and political rights, the IACtHR has identified criteria that entail the protection of ESCR. This is the case of environmental protection, an issue that the IACtHR has examined on several occasions concerning the protection of the environment as a living space for individuals or communities, the preservation of the rights of indigenous groups¹¹⁴ and the protection of environmental defender

114 Pueblos Kalifña y Lokono, para. 163 et seq.

who experience threats or aggression in the development of this activity.¹¹⁵ It is necessary to consider the biological dimension of protected areas and their socio-cultural dimension. The rights of indigenous people and environmental protection norms are not mutually exclusive; instead, they are complementary.¹¹⁶ These rights, directed towards the use of natural resources, reduce or eliminate the risks that such use may entail for the survival of human groups.¹¹⁷ Broadly, there is an undeniable link between environmental protection and the implementation of various human rights.¹¹⁸

The IACtHR stressed the obligation to protect the environment from threats and aggression and obliged states to consult interested groups on development projects¹¹⁹ that they intend to approve or implement, provide information on this subject to those who request it and conduct environmental impact studies in connection with such projects.¹²⁰ Moreover, it considered that environmental protection may constitute a ground for expropriation in public interest¹²¹ and pointed out that the defence of human rights includes civil and political rights and ESCR.¹²²

The most decisive and conclusive statement on the relationship between human rights and the environment in the IAHRs is found in advisory opinion OC-23/17 on the

115 Kawas Fernández, paras. 143–155. On February 6, 1995, Ms. Blanca Jeannette Kawas Fernández, president of the Foundation for the Protection of Lancetilla, Punta Sal, Punta Izopo and Texiguat was murdered. The organisation was created to improve the quality of life for people who live within the watersheds of the Bahna de Tela region. Ms. Kawas Fernández denounced attempts by private individuals and entities to illegally appropriate Punta Sal, as well as the contamination of the lakes and the depredation of the forests in the region. IACtHR found that the state was directly responsible for Ms. Kawas Fernández's death and the subsequent lack of investigation that took place, violating ACHR. The facts of the case refer to the death of Blanca Jeanette Kawas Fernández, human rights defender with significant experience in environmental issues. She was killed by gun shots on February 6, 1995, while she was at home. Kawas was president of the foundation PROLANSATE and her leadership was crucial to the identification of the area Punta Sal in the department of Atlántida as a National Park, and for publicly denouncing illegal logging. The assassination of Kawas remained in impunity for more than 14 years. Luna Lyepez, paras. 121–139. On May 18, 1998, Carlos Antonio Luna Lyepez, a human rights advocate and member of the city council of Catacamas, Olancho Province, Honduras, was murdered as he left a meeting at the Mayor's Office. The state failed to take immediate steps to protect the crime scene or conduct an autopsy, and later failed to properly investigate evidence that indicated state official involvement. The facts of the case refer to the death of Carlos Antonio Luna Lyepez, in May 1998, as he left a meeting in the Town Hall of Catacamas. Luna Lyepez was a human rights defender who supported the struggles for land of local peasant groups. IACtHR placed the events in a situation of conflict and risk for those who worked in the protection of the environment in Honduras.

116 Pueblos Kaliña y Lokono, para. 173.

117 *Ibid.*, para. 214.

118 Kawas Fernández, para. 148; Luna Lyepez, para. 123.

119 Pueblo Saramaka, para. 133; Pueblo indígena Kichwa de Sarayaku, para. 177.

120 Pueblo Saramaka, para. 129; Pueblos Kaliña and Lokono, para. 214.

121 Salvador Chiriboga, para. 76.

122 Kawas Fernández, para. 147; Luna Lyepez, para. 123.

states' obligations regarding respect to life and personal integrity.¹²³ Guaranteeing a healthy ecological environment for the population is an elementary prerequisite for the development and enjoyment of other human rights, since all human rights are susceptible to environmental degradation, as the full enjoyment of all human rights depends on a favourable environment. Therefore, it is up to the state to ensure the necessary conditions to avoid environmental damage. The advisory opinion establishes the environmental obligations that states must comply with and defines their scope.

The integration of environmental protection into the IACtHR case law is achieved through the interpretation of the rights deriving from the ACHR, particularly in cases concerning the rights of indigenous people, as they are exposed to environmental damage due to the increasing pressure on their lands and resources and the cultural and religious ties they maintain with their ancestral territories. Since 2001, there has been a development of case law on the relationship between human resources and the environment, in cases related to the rights of indigenous people and other individual cases and advisory opinions. The evolution of the relationship between human rights and the environment through human rights courts is different in Europe than in the Americas. Although both cases represent progress, the former focuses on individual rights to environmental protection, usually related to environmental pollution caused by noise, while the latter focuses on the collective rights of indigenous people against violations of their lands and natural resources related to their use and exploitation, mainly through state concessions to large companies.

The first judgement to note the link between human resources and the environment is the case of Mayagna (Sumo) Awas Tigni Community. Another judgement that deserves to be highlighted is *Claude Reyes et al. v. Chile*. In this judgement, the IACtHR, for the first time, condemned a state for failing to comply with the environmental obligation to guarantee access to information. In *Kaliña and Lokono v. Suriname*, the dispute concerned the lack of a normative framework recognising the legal personality of indigenous people and the lack of state regulation regarding the right to collective ownership of the lands, natural resources and territories of the Kaliña and Lokono communities in Suriname. The IACtHR developed standards related to collective ownership and linked them to environmental protection and the state's obligation to ensure the effective participation of indigenous people through culturally appropriate decision-making procedures.

The IACtHR developed standards on due diligence in investigations into violent deaths and the right to association for those working to promote and defend human rights in *Kawas Fernández v. Honduras*. In turn, in *Luna López v. Honduras*, it applied

123 On 15 November 2017 IACtHR, in accordance with the request made by the Republic of Colombia, issued Advisory Opinion OC-23/17 on the environment and human rights, in which it ruled for the first time on the right to enjoy a healthy environment, considering it as a right in itself; in addition to acknowledging the inseparable link that exists between the legal protection of the environment and the effective realisation of human rights. In this sense, IACtHR defined in the consultation document the indivisible and interdependent nature that governs the relationship between the environment, sustainable development and human rights.

standards on the state's obligations in situations of real and immediate danger to people's lives. It assessed the investigation into what happened based on the due diligence framework. In *Lhaka Honhat (Indigenous Communities) v. Argentina* (2020), it emphasised that the state has an obligation to ensure the protection of the natural environment in a manner that allows indigenous communities to fully enjoy their traditional way of life. All decisions regarding the exploitation of natural resources should be preceded by consultations and consider the opinions of local communities. This highlights the obligation of the state to undertake proactive measures to protect the environment, rather than refraining from interference.

Similarly, in *Caso Comunitario de Pueblos Indígenas Xákmok Kásek v. Paraguay* (2010), the IACtHR found that environmental degradation, threatening the health or livelihoods of communities, constitutes a violation of human rights, including the rights to life and physical integrity. The judgment underlined that the state has a duty to provide access to information, participation in decision-making processes and legal remedies when economic or investment activities threaten the environment and the rights of residents. It further indicated that the right to a healthy environment is intrinsically linked to other rights, such as the right to health, food, water and housing. In *Furlan y familiares v. Argentina* (2012), it was ruled that inadequate control of industrial activities and emissions of harmful substances violate individuals' physical integrity and their right to live in safe conditions, constituting a breach of the state's obligations under the Convention.

Initially, the IACtHR in cases such as *Gómez-Paquiyaury Brothers v. Peru* (2004) or *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (2010), primarily protected the environment indirectly, noting that environmental degradation can lead to violations of the rights to life, physical integrity or health. The state was mainly responsible for actions or omissions that directly threatened the health or lives of citizens. Subsequently, including *Lhaka Honhat (Indigenous Communities) v. Argentina* (2020), the IACtHR emphasised that the state has positive obligations regarding environmental protection. This includes active management of natural resources, implementing regulations to prevent environmental degradation and ensuring that environmental use does not threaten the health and lives of citizens. A standard of consultation with local and indigenous communities in decisions about resource exploitation was established.

Recent jurisprudence demonstrates a trend toward treating the right to a healthy environment as an autonomous human right, linked with rights to health, housing, food, water and culture. These rulings, including *Furlan y familiares v. Argentina* (2012), stress that environmental degradation and the lack of government action to protect it can constitute independent violations of ESCR. Contemporary case law emphasises a *pro persona* and evolutionary interpretation, recognising that environmental protection standards should be dynamic and adaptable to new ecological, climatic and social challenges. Thus, the right to a healthy environment has become an integral part of the human rights protection system in the region, encompassing physical

environmental protection and community participation, access to information and effective legal remedies.

La Oroya v. Peru marked a turning point in the IACtHR's jurisprudence regarding the right to a healthy environment. In this case, the IACtHR recognised, for the first time, in a comprehensive manner that environmental degradation can constitute an autonomous violation of human rights, independent of traditionally protected civil and political rights, such as the right to life or physical integrity. The Court stated that the state bears responsibility for direct violations of human rights and omissions leading to environmental degradation that threatens the health and life of residents. The ruling emphasised that the state has positive obligations, including monitoring industrial activities, limiting emissions of harmful substances, ensuring access to information and social consultation and providing effective legal remedies. It indicated that the right to a healthy environment is inextricably linked to rights to health, housing, water, food and participation in cultural life, which confirms the complex nature of this right. Moreover, the decision applied a *pro persona* interpretation, recognising that environmental protection standards must account for contemporary challenges, such as industrial pollution and climate change, allowing the protection of human rights to adapt to the actual living conditions of communities. This case established the foundations of the modern understanding of the right to a healthy environment within the Inter-American system. It set standards encompassing autonomous violations of human rights, resulting from environmental degradation, and the application of a *pro persona* and evolutionary interpretation, enabling the adaptation of protection standards to changing ecological and social conditions. Consequently, this case became a fundamental precedent, shaping the Court's current stance on protecting the right to a healthy environment, emphasising its autonomous character and broad connections to other human rights and state obligations in the Latin American region.¹²⁴

The IACtHR's jurisprudence concerning the right to a healthy environment sets high standards for state responsibility, including physical and ecological protection, ensuring community participation in decision-making processes, access to information and effective legal safeguards. These standards reflect a growing awareness of the importance of environmental protection for the full realisation of human rights in Latin America. The evolution of case law in this area ranges from indirect protection of fundamental rights, through recognition of positive state obligations, to the treatment of the right to a healthy environment as an autonomous human right interconnected with the right to health, housing, food and water, along with constitutional and international rights. These standards emphasise the responsibility of states for

124 The case concerned the community of La Oroya in Peru, exposed to years of emission of toxic substances by the metallurgical industry. The consequences of industrial activity included serious health threats to residents, pollution of air, soil, and water, and a negative impact on the living conditions of the local community.

environmental degradation and the necessity of involving communities in decisions regarding natural resources and protecting against the effects of harmful actions.

2.12. *Due Process*

In the scope of the issues dealt with by the IACtHR, similar to its European counterpart, issues related to a fair trial are of considerable importance and linked to various grounds of the ACHR, including Articles 8 and 25, along with 4(6) (death penalty), 7(5) and 7(6) (right to persona liberty) and 27(2) (suspension of guarantees). These issues appear constantly in advisory opinions, judgements in contentious cases, interim measures and rulings on compliance with the IACtHR's findings.¹²⁵

a. Concept

The IACtHR has established in its case law the specific content of a fair trial, specifying several elements that this complex concept must include, following the ACHR and its corresponding case law.¹²⁶ However, to date, there is no independent treaty that incorporates the case law criteria concerning a fair trial, as is the case for other issues, including torture, enforced disappearances, the protection of women and non-discrimination in the case of disability.

b. Scope

The IACtHR has included in fair trial certain rights that were not expressly considered previously, which extends the scope of protection of legitimate claims, for instance, in the case of foreign prisoners.¹²⁷ Hence, the meaning and protective function of a fair trial have been expanded.¹²⁸

125 Salmón and Blanco, 2012.

126 Masacre de la Rochela, paras. 193–198; OC-21/14, para. 109. On January 18, 1989, a paramilitary group with the cooperation of state agents killed judicial officials while they were carrying out their duty to investigate the responsibility of civilians and army personnel in the massacre of the 19 tradesmen and other violent acts perpetrated in the Magdalena Medio region. These deaths underwent no criminal investigation, and no one was ever implicated for the crime or punished. IACtHR found that the state violated ACHR. The facts of this case relate to the massacre of a group of 15 judicial officials who were members of a Judicial Commission (Unidad Myvil de Investigaciyn) who were performing their duties by carrying out an investigation into the massacre of 19 traders and other occurrences of violence in the region of Magdalena Medio. Of the 15 victims, 12 were executed and 3 survived.

127 Vñlez Loor, para. 151 et seq.; Nadege Dorzem y otros, para. 124 and seq.; OC-16/99, paras. 84 and 124; OC-18/03, para. 119 et seq.

128 Voto concurrente del juez Sergio García Ramírez, en OC-16/99, pp. 2–3.

c. Jurisdictional body

The IACtHR placed the judge at the foundation of a fair trial, indicating the need for him to be independent, impartial and competent.¹²⁹ According to its case law, the judge is the point of reference and the basis, and not only an element of a fair trial,¹³⁰ hence, any ‘trial’ conducted in the absence of a judge is invalid. The same statement led to other declarations of the IACtHR, including, and particularly importantly, the rejection of the intervention of military jurisdictions in the investigation and prosecution of human rights violations that should be dealt with by ordinary courts.¹³¹ The same rejection applies to the intervention of the so-called ‘faceless judges’.¹³²

129 Durand y Ugarte. Fondo, para. 130. On February 14, 1986, Nolberto Durand Ugarte and Gabriel Pablo Ugarte Rivera were detained under the suspicion of their participation in terrorist acts. The victims were incarcerated in the El Frontyn Island prison off the Peruvian coast, and were killed during the quelling of a prison riot by use of disproportional force by Peruvian armed forces. IACtHR found that the state violated ACHR. The remains of one of the two victims were found eighteen years later, after IACtHR issued its judgment, and those of the second victim are still missing. The facts of the case refer to the illegal arrest, by members of the Counter-Terrorism Office (DIRCOTE), and the disappearance of Norberto Durand Ugarte and Gabriel Pablo Ugarte Rivera, under the suspicion of having participated in terrorist acts, without a warrant or having being found guilty of any felony. Whilst the victims were being detained, there was a riot in the ‘El Frontyn’ prison, which was declared as a ‘restricted military zone,’ in this way preventing the entry of judicial and civil authorities. During the operation to recover control of the prison, security forces demolished the Blue Pavilion causing injury and death amongst the prisoners. Durand and Ugarte were not on the list of survivors nor were their corpses identified.

130 Barreto Leiva, para. 75. This is an unusual case for IACtHR as it deals with the prosecution and trial of a high level state official, who had been accused, together with the President of Venezuela, of embezzlement. In the judgment on the merits IACtHR discussed at length the scope of due process rights. It eventually found violation of some rights protected by ACHR, but all those the Commission claimed to have been violated. The events of the case relate to the violation of Oscar Enrique Barreto Leiva’s judicial guarantees, who whilst serving as Director General of the Administration and Services Department of the Ministry Secretariat of the Presidency, was sentenced in 1989 for being an accomplice to the crime of aggravated generic misappropriation.

131 Durand and Ugarte. Fondo, para. 117. Radilla Pacheco, para. 275, Rosendo Cantъ y otra, para. 160; Quispialaya Vilcapoma, para. 144. In 2001, Valdemir Quispialaya Vilcapoma, a soldier of the state army, was engaging in target practice when he was repeatedly beaten on the face and head with a rifle by one of his superiors for his lack of precision in shooting. This beating caused Quispialaya Vilcapoma to experience persistent headaches and fever, and caused him to lose vision in one of his eyes. The officer who beat him threatened further violence should he report the incident. When Vilcapoma finally reported the incident, he was unable to obtain redress in the military and civilian courts of the state. IACtHR found that the state violated ACHR and the Inter-American Convention to Prevent and Punish Torture. The proceedings conducted before the military jurisdiction determined that the injuries resulted from the victim’s service. Likewise, the criminal justice also failed to establish liability.

132 Castillo Petruzzi y otros, para. 133. On October 15, 1993, four Chilean citizens were arrested in Peru for terrorism. All four were members of the Tupac Amaru terrorist organisation and were linked to several kidnappings. They were tried by a military tribunal while blindfolded and bound to chairs. None were allowed to examine the evidence against them or cross examine witnesses. They were all sentenced to life in prison. IACtHR found that the state violated ACHR. The facts of the case relate to the prosecution and sentence to life imprisonment of 4 Chilean citizens for the crime of treason considered in Peruvian legislation as a form of aggravated terrorism. IACtHR understood that during the 1980s and towards the end of 2000, Peru

The IACtHR has emphasised the judge's mission as the guarantor of human rights in different directions.¹³³ On the one hand, the judge must respect the truth about the facts that are the subject of the judgement, acting more dynamically in the search for

experienced a conflict between armed groups and military and police officers. This conflict was exacerbated by a systematic practice of human rights violations, among them extrajudicial executions and forced disappearances of people suspected of belonging to opposition political groups, which were carried out by state agents following orders of police and military leaders, Cantoral Benavides. Fondo, para. 127. On February 6, 1993, Luis Alberto Cantoral Benavides was detained without an arrest warrant issued by a competent authority, and accused of committing treason. He was physically and mentally tortured. Cantoral Benavides was acquitted of treason in a military tribunal, but retried for the same alleged crime in a civilian court, where he was convicted. Cantoral Benavides was not released after his acquittal in the military jurisdiction, as the state released his twin brother, who was also wrongfully accused of treason, instead. Cantoral Benavides was continually tortured for four years in various prisons, until he was released by an ad hoc committee, after his case had reached IACtHR. IACtHR found that the state violated ACHR and the American Convention to Prevent and Punish Torture. The facts of the case concern the illegal deprivation of liberty of Luis Alberto Cantoral Benavides, following his arbitrary imprisonment, torture, the violation of his judicial guarantees and the double jeopardy imposed because of the mentioned events. The victim was detained by agents of the Counter Terrorism Division (DINCOTE) in February 1993, during which time a state of constitutional emergency was in place involving the suspension of a series of guarantees. During his detention, he was subjected to acts of violence whose objective was to obtain self-incrimination. These events occurred in the context of the armed conflict experienced in Peru between armed groups and military and police agents during the 1980s and until the end of 2000. This conflict was exacerbated by the systematic practice of human rights violations, among them extrajudicial executions and forced disappearances of people suspected of belonging to opposition political groups, which were carried out by state agents following orders of police and military leaders. Garcna Asto and Ramirez Rojas, para. 149. In 1995 and 1991, two Peruvian university students suspected of being affiliated with Sendero Luminoso were arrested, tried by a faceless tribunal, and detained in inhuman, cruel, and degrading conditions. They were sentenced to twenty- and twenty-five-years imprisonment as alleged perpetrators of the crime of terrorism. IACtHR found that the state had violated ACHR. The facts of the case concern the arbitrary detention of Wilson Garcna Asto and Urcesino Ramirez Rojas, in 1995 and 1991 respectively, by the Peruvian National Police. The case also concerns their being maintained incommunicado and the later investigation, trial and sentencing carried out by 'faceless' judges and prosecutors, in accordance with the established and active anti-terrorist legislation. The state carried out partial recognition of responsibility regarding the events which occurred before September 2000, as this was the moment in which democratic order was restored in the nation.

133 Bayarri, para. 67. On November 18, 1991, Juan Carlos Bayarri was detained as a suspected kidnapper in Buenos Aires. Bayarri was then detained for almost thirteen years based on a confession obtained during torture. Even though the Federal National Criminal and Correctional Appeals Chamber of Argentina recognised that Bayarri had been subjected to torture, Argentina failed to punish those responsible for his unlawful detention and did not provide any reparation for the violations he suffered. IACtHR found that the state violated ACHR and the Inter-American Convention to Prevent and Punish Torture. The fact of the case relates to the illegal and arbitrary detention of Juan Carlos Bayarri, which was followed by acts of torture and a lengthy pre-trial detention. These violations occurred in the context of criminal proceedings carried out against him for the alleged repeated commissioning of extortive kidnappings. The victim was deprived of liberty for 13 years based on a confession extracted under torture. 16 years later, the events remained in total impunity before national justice systems.

the truth.¹³⁴ On the other hand, they must take care of the protection of the persons involved in the procedure.¹³⁵ The national judge is obliged to exercise the ‘control of conventionality’, a transcendental point in the Inter-American jurisprudence.

d. Evidence and defence

The case law establishes that the presumption of innocence constitutes the foundation of the guarantees encompassed by a fair trial¹³⁶ and upholds the principles, rules or figures relevant in this area when interpreting and applying the ACHR’s provisions. Particular emphasis is placed on the principle of adversarial proceedings,¹³⁷ the broad exclusion of excessive restrictions, including physical or mental torture and other cruel, inhuman or degrading treatment, in respect of which the Court has interpreted

134 Voto razonado del juez Sergio Garcha Ramnrez, en *Dacosta Cadogan*, paras. 15–18. On May 18, 2005, the Supreme Court of Barbados found Tyrone DaCosta Cadogan guilty of murder and sentenced him to death by hanging; a sentence that is in accordance with Barbados’s Offences Against the Persons Act of 1994. Barbados imposed this mandatory death penalty sentence without considering the specific circumstances of the crime or the mitigating factors. Due to a savings clause in the Constitution of Barbados, the domestic courts could not declare the mandatory death sentence to be invalid even though it violated fundamental rights protected under Barbados’s Constitution and ACHR. The facts of the case refer to the mandatory death penalty applied to Tyrone Dacosta Cadogan after being found guilty of the crime of homicide.

135 *Mejna Idrovo*, para. 77. On March 12, 2002, the Constitutional Tribunal ruled that the Executive Decrees ordering that Josñ Alfredo Mejna Idrovo could be suspended and discharged from the army were unconstitutional and provided reparations for the harm. The state failed to comply with this decision. IACtHR found that the state violated ACHR. The facts of the case refer to the non-compliance with a decision ordered by the Constitutional Court which declared unconstitutional two executive decrees through which it was determined that Coronel Josñ Alfredo Mejna Idrovo should be brought to justice and discharged from the army.

136 *Su6rez Rosero. Fondo*, para. 77. On June 23, 1992, Rafael Iv6n Su6rez Rosero was arrested without a warrant by officers of the National Police of Ecuador. He was later charged with illegal drug trafficking. At no time before or during his detention was Su6rez Rosero summoned to appear before a competent judicial authority to be informed of the charges brought against him. IACtHR found that the state violated ACHR. The facts of the case concern the illegal and arbitrary detention, in June 1992, of Rafael Su6rez Rosero on the part of Ecuadorian National Police agents. This occurred in the context of the police operation ‘Ciclyn’, whose objective was to break up one of the biggest international drug trafficking organisations. The victim was detained without a warrant having been emitted by a competent authority and without having committed delicto flagrante. Following several days kept in isolation, he was remanded in custody by a judge. In *Lypez Mendoza*, para. 128, Leopoldo Lypez Mendoza was prevented by the state from participating in the regional elections in 2008. The state also failed to provide him with the relevant judicial guarantees and judicial protection or the appropriate reparation. IACtHR found that the state violated ACHR. The events of instant case refer to the 2 sanctions of disqualification for the holding of public office that the Comptroller General of the Republic applied to Leopoldo Lypez Mendoza in the framework of the processing of administrative proceedings. As a result of these sanctions Lypez Mendoza was prevented from registering his candidacy for an elective office in the electoral process of 2008.

137 *Barreto Leiva*, para. 54; *OC-17/02*, para. 132.

and applied the ACHR and the Torture Convention,¹³⁸ the public,¹³⁹ the defence¹⁴⁰ and the receipt and evaluation of evidence¹⁴¹ and the reasoning and grounds of the judgement.¹⁴² Article 8, paragraph 1, of the ACHR sets out the main elements of a fair trial through judicial guarantees in all proceedings concerning the determination of a person's rights or obligations. Article 8, paragraph 2, refers to guarantees corresponding to criminal proceedings. The IACtHR's definition, which represents a convenient extension of the fair trial regime, is unusual as the guarantees of Article 8, paragraph 2, apply equally, within the relevant limits, to all procedures listed in paragraph 1 of the same provision.¹⁴³

e. Reasonable time

The central point of the process and of the entire procedure preceding it, whether administrative or judicial, is the reasonable time within which a decision recognising rights or defining obligations and responsibilities must be taken. The IACtHR adopted the criteria of the European Court and added the necessary consideration of the

138 Manuel Cepeda Vargas, para. 150. On August 9, 1994, Senator Manuel Cepeda Vargas was murdered in Bogotá. His murder was followed with a lack of due diligence in the investigation and punishment of all those responsible. IACtHR found that the state violated ACHR. The events of the case concern the extrajudicial execution of the senator Manuel Cepeda Vargas, which occurred on August 9, 1994 in the city of Bogotá, and the lack of investigation and punishment for those responsible for the crime. The senator was furthermore a political leader and member of the Patriotic Union (UP) party and the Communist Party, and his extrajudicial execution is explained by his political activism, and can be placed in the context of systematic violence against UP members. Cabrera Garcha y Montiel Flores, para. 165.

139 Palamara Iribarne, paras. 167–169, para. 217.

140 Barreto Leiva, para. 29; Velázquez Llor, para. 145.

141 Barreto Leiva, para. 61.

142 Chaparro Elvarex and Lapo Íñiguez, para. 107; Apitz Barbera y otros ('Corte Primera de lo Contencioso Administrativo'), para. 77; Lyepez Mendoza, para. 141.

143 Baena Ricardo, This case concerns the arbitrary dismissal of 270 government employees that participated in a demonstration for labor rights and were subsequently accused of complicity for perpetrating a military coup. In this case, IACtHR had the opportunity to rule on violations of certain articles of ACHR that are seldom invoked, such as Article 10 (Right to Compensation), Article 15 (Right of Assembly) and Article 16 (Freedom of Association), as well as matters of litispendence and the IACtH's power to monitor compliance with its own judgments. IACtHR found that the state violated ACHR. Fondo, Reparaciones y Costas, para. 125. Yatama, para. 147; Personas dominicanas y haitianas expulsadas, para. 349. The facts of the petition relate to arbitrary detention and summary expulsion of people of Haitian descent, including children, from the Dominican Republic.

greater or lesser impact that the passage of time may have on the rights or freedoms in question.¹⁴⁴

An early case law of the IACtHR established a set of criteria that enables the assessment of the reasonableness of the duration of judicial and administrative proceedings, a key element of the right to a fair trial (Article 8). These criteria were formulated, among others, in cases such as *Genie Lacayo v. Nicaragua* and *Gonzales Lluy and otros v. Ecuador*, and form the basis for analysing potential violations of the right to have a case heard within a reasonable time. The Court identified four main criteria for evaluating the reasonableness of the duration of proceedings:

1. Complexity of the case: This considers the nature and difficulty of the case, the number of participants involved and the degree of legal complexity. The more complex the case, the longer the duration may be deemed justified, provided that the state demonstrates active efforts to conduct the process efficiently.

144 Valle Jaramillo y otros, para. 155. On February 27, 1998, two armed men entered Jesús María Valle Jaramillo's, a human rights defender, office in Medellín and took him hostage and killed him. It was speculated that the crimes were perpetrated by members of paramilitary forces with members of the Army to silence María Valle Jaramillo from speaking out about the human rights abuses that took place in Ituango. After nine years, three civilians had been convicted in absentia, and there are no judicial investigations underway to determine whether state agents bore any responsibility. IACtHR found that the state violated ACHR. The facts of the case concern the murder of the human rights defender Jesús María Valle Jaramillo, in retaliation for the claims he made between 1995 and 1998 regarding the collusion between the National Army and the paramilitary. Radilla Pacheco, para. 127; Argüelles y otros, para. 189. This case involves twenty members of the armed forces who were accused of various crimes in connection with the misappropriation of state military funds. The victims were all arrested and detained beginning in 1980; two were held in detention for one year, while eighteen remained in detention for seven years. In 1989, the state military tribunal found all twenty guilty of the crimes they had been accused of. The victims sought recourse before the domestic courts of the state, which resulted in one acquittal and a reduction of the others' sentences. IACtHR found that the state violated ACHR because of the state's prolonged detention of the victims, and the failure to adjudicate their cases within a reasonable time. The petition concerns the arrest and criminal proceedings for military fraud (based on a series of accounting and administrative irregularities) carried out against 20 Argentine military officers. The legal proceedings were initiated in October 1980 under military jurisdiction and substantiated under the Military Justice Code of Argentina, and concurring opinion of Judge Sergio García Ramírez, in Lipez Blvarez, para. 29. This case is about the harassment and judicial persecution of the leader of an organisation of indigenous peoples in Honduras whose land was encroached upon and seized by foreign investors. Alfredo Lipez Blvarez was a member of a Honduran Garifuna community. He was arrested for drug possession and illegal trafficking on April 27, 1997 and was acquitted of the charges in January of 2003, but remained in custody until August 2003. The state of Honduras was found to have violated ACHR in the treatment of Lipez Blvarez. The facts of the case refer to the deprivation of liberty of Alfredo Lipez Blvarez, who was president of the 'Comité de Defensa de Tierras Triunfeñas' [Committee for the Defense of Triunfeñas Lands], and vice-president of the 'Organización Fraternal Negra de Honduras' [Black Fraternal Organization of Honduras], after being detained by agents of the state for the alleged crime of drugs trafficking. After being transferred to the Criminal Investigation Division he suffered torture and was coerced into incriminating himself. He was eventually acquitted, however was detained for a further 7 months.

2. Actions of the parties involved: The length of the proceedings is analysed concerning the conduct of the state authorities and the parties. Delays caused by the parties can be considered when assessing the reasonableness of the duration.
3. Actions of judicial and administrative authorities: The Court examines whether state bodies undertook appropriate and effective measures to carry out the proceedings without undue delay. Prolonged delays or lack of initiative on the part of the state may result in a violation of the right to a reasonable time.
4. Negative impact on the party: It is important to assess whether the prolonged duration of the proceedings has negative consequences for the individual, such as stress, limitation of the right to defence and violation of personal or economic rights. The greater the adverse effects, the less tolerance there is for lengthy proceedings.

In the above-mentioned cases, the IACtHR applied these criteria to determine whether delays in national proceedings complied with the requirement of a reasonable time. In both cases, it was emphasised that the duration of proceedings cannot be assessed solely quantitatively and must always be evaluated in relation to the quality of the state's actions and the actual impact of delays on the rights of the parties.

The early jurisprudence of the IACHR established four criteria for assessing the reasonableness of the duration of proceedings, which continue to serve as the basis for analysing the right to a fair and prompt resolution of cases within the Inter-American system. These criteria highlight the balance between the complexity of the case and the state's obligations, while protecting individual rights from the consequences of undue delays.

f. Precautions

The case law has dealt, considering the norms and practices in several countries of the region, with preventive measures frequently used in criminal proceedings, such as arrest and pre-trial detention. The first must comply with the legal requirements regarding form and content,¹⁴⁵ while the second, which is excessively applied, contrary to the guidelines of 'minimal' criminal law, should be limited to hypotheses in which the presence of the accused in the proceedings is threatened or the evidence is

145 Gangaram Panday. Fondo, Reparaciones y Costas, para. 47. On November 5, 1998, Asok Gangaram Panday was killed in Suriname after being illegally detained in a building for deportees at the Zanderij Airport by the Military Police of Suriname. There was conflicting evidence about whether the victim had been tortured while imprisoned, with a state agent admitting that the victim's mood had been affected by his expulsion from the Netherlands and that this psychological condition had been intensified by his detention. IACtHR found that the state violated ACHR. The facts of the case refer to the illegal detention, torture and subsequent death of Asok Gangaram Panday, on the part of the Military Police. 'Niños de la Calle' (Villagrán Morales y otros). Fondo, para. 131.

endangered.¹⁴⁶ Here, the case law considers the unquestionable tension between the presumption of innocence and preventive deprivation of liberty. Hence, the IACtHR's statements concerning judicial review of deprivation of liberty¹⁴⁷ and the material conditions in which it should be carried out are important.¹⁴⁸ Furthermore, it established restrictive criteria for the use of solitary confinement.¹⁴⁹

146 Chaparro Álvarez y Lapo Íñiguez, para. 93. Acosta Calderón, para. 111. On November 15, 1989, the Customs Military Police arrested Acosta Calderón, a citizen of Colombia, under suspicion of drug trafficking. Acosta Calderón's statement was not received by a Judge until two years after his detention and he was not notified of his right to consular assistance during the five years he was in custody pending trial. Acosta Calderón was found guilty of drug charges on December 8, 1994, despite the lack of evidence of drugs appearing at any time. He was released on July 29, 1996 for having served part of his sentence while he was in prison pending trial, but after he was released in July of 1996, the Commission lost contact with him. IACtHR found the state violated ACHR. The facts of the case concern the detention of Colombian national Rigoberto Acosta Calderón on suspicion of drug trafficking by Military Customs Police in November 1998. Argüelles y otros, para. 130.

147 Bayarri, para. 74; Argüelles y otros, para. 121.

148 'Instituto de Reeducación del Menor', para. 153. A Paraguayan juvenile criminal facility, known as the Panchito Lypéz Center, virtually ignored every international standard pertaining to juvenile incarceration. The conditions were grossly inadequate for the interning of children, specifically: overpopulation, overcrowding, lack of sanitation, inadequate infrastructure and prison guard staff that was both too small and poorly trained. This was the first case where IACtHR established standards for the young people's detention conditions. At that time, the law did not establish that a custodial sentence should only be passed as a last resort and for the shortest possible time, particularly in the case of minors. IACtHR found that the state violated ACHR. The facts of the case concern the grave conditions of detention to which children were subjected in the 'Instituto de Reeducación del Menor 'Panchito Lypéz' [Institute of Reeducation of the Minor 'Panchito Lypéz'] between the years 1996 and 2011. It concerns the damages caused by three fires which occurred in the years 2000 and 2001, in which 12 children died and dozens were left injured.

149 Loayza Tamayo. Fondo, paras. 57–58. Suárez Rosero. Fondo, paras. 89–90, Cantoral Benavides. Fondo, para. 84; Penal Miguel Castro, para. 232. This case is about the Peruvian National Police and Peruvian military's deliberate and unprovoked attack on the Miguel Castro Castro Prison. During this attack, several members of Sendero Luminoso and Tupac Amaru were detained, dozens of inmates were killed, and hundreds of inmates were injured. IACtHR found that the state violated ACHR, the American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the American Convention to Prevent and Punish Torture. The events of instant case refer to the extrajudicial execution, torture and mistreatment of prisoners in the two pavilions of Miguel Castro Castro penitentiary, a maximum-security prison, who were mostly serving sentences for terrorist acts. The massacre that took place in May 1992 was developed under the protection of the so-called 'Operativo Mudanza'. During the operation, state agents from both the police and army used weapons of war, tear gas bombs and immobilising gas against the prisoners, initiating the action on the day of female visits to the prison. The survivors were forced to remain in the prison areas called 'no-man's land' and 'admission,' lying face down on the ground, without shelter and receiving constant beatings and assaults for several days until their transfer to other penitentiaries. Once they were relocated, the beatings and malnutrition continued and many of the wounded did not receive adequate and timely medical attention.

g. Appeal

Another aspect of a fair trial which raises several doubts and questions concern the review of respect for human rights by a judge or a higher court, as provided for in Article 8, paragraph 2, letter h) of the ACHR. This review, not subject to limitations or obstacles which prevent or condition it, is invariably provided for concerning the legality (i.e., compatibility with the human rights regime) of the decision of the lower body.¹⁵⁰ It is a question of preserving the power of broad control regarding human rights, and individual rights, in the hands of a higher body whose task goes beyond the limits of the scope of cessation, understood as a control of legality.

The Court, in *Arboleda v. Colombia*, emphasised that the obligation to appeal concerns convictions, even if they were issued in the second instance. The ruling indicates that the state has a duty to ensure access an effective remedy in cases where individuals have been finally convicted, which stems from the right to a fair trial and the right to effective judicial protection guaranteed by Article 8 of the Convention. The Court noted that there is no obligation to automatically appeal acquittal rulings or those that do not entail criminal sanctions. The focus of protection on convictions results from the fact that they have a direct and significant impact on the individual's liberty, property rights and personal integrity. In this case, the IACtHR stated that the right to appeal is a component of the substantive guarantee of a fair trial and its absence in the case of convictions may constitute a violation of the state's obligations. Hence, it explicitly limited the scope of the appeal obligation to situations where the issued judgment causes a restriction of the individual's rights, ensuring proportionality and effectiveness of judicial remedies. The jurisprudence in *Arboleda v. Colombia* establishes that the state's obligation to ensure the right to appeal concerns convictions, regardless of the instance in which they were issued, allowing procedural protection to be focused on situations that violate the rights and freedoms of the individual.

h. Ne bis in idem

The IACtHR's reflections and criteria on the principle of *res judicata* and compliance with the classic principle of *ne bis in idem* are noteworthy. Based on its documented

150 Herrera Ulloa, para. 158; Mohamed, para. 97. This case concerns violations committed after Carlos Alberto Mohamed's criminal conviction for manslaughter from a traffic accident in which a person died. Specifically, the state disregarded several guarantees, including the principles of legality and non-retroactivity, the right to defence, the right to appeal a conviction, and the right to effective recourse to provide redress for those violations. The facts of the case relate to the sentencing of Carlos Alberto Mohamed for culpable homicide because of a traffic accident of which he was part and because of which a person died. In the first instance, the victim was absolved of all charges against him as it was considered that his responsibility for the events had not been sufficiently established. However, following an appeal presented by the District Attorney's Office, he was subsequently sentenced. The criminal proceedings against him did not establish any legal recourse for the revision of the sentence, which was considered to violate the victim's right to appeal the judgment. and concurring opinion of Judge Sergio García Ramírez, in Herrera Ulloa, paras. 30–31.

analyses in disputed cases and on the opinions of other tribunals, mainly international criminal tribunals,¹⁵¹ the IACtHR has considered that the legitimacy of a trial, and in due time of a judgement, results from the timely observance of the rules that govern it and are applied to it, both substantive and instrumental.¹⁵² The IACtHR has questioned the quality of trials conducted before bodies that do not meet the elements of a judge or with files that do not respect the principles or rules of a fair trial. Therefore, it is possible to reopen proceedings that were allegedly closed by *res judicata* and were not a genuine fair trial, concluded by a genuine and final judgement, and issue a new (i.e., genuine) judgement on facts that were known in the sham trials and decided on the basis of inadmissible provisions.¹⁵³

i. Investigation

The regional case law contains important changes concerning the characteristics of an investigation into serious violations of human rights, understood as a state

151 Article 20 of the Rome Statute of the International Criminal Court, Article 9 of the Statute of the International Tribunal for Rwanda, and Article 10 of the Statute of the International Tribunal for the former Yugoslavia, cited in Carpio Nicolle, para. 131. On July 3, 1993, the state-sponsored Civilian Self-Defense Patrols, murdered and assaulted a group of delegates and Jorge Carpio Nicolle. Carpio Nicolle was a well-known journalist and politician Jorge, who opposed President Serrano Elhas' coup d'état. In this case, IACtHR found that the state violated ACHR. The events of the case refer to the murder of Jorge Carpio Nicolle and a group of his delegation, after being intercepted by a group of armed men, members of the Civil Defense Patrol (PAC), in July 1993 whilst they were on a political tour. Carpio was a prominent politician and journalist, founder of the National Centrist Union party, and thereby opposition to the government. After the events, those who survived denounced the crime, which has remained in impunity. At the time when these events occurred, the PAC of San Pedro de Jocopilas committed crimes against the region's residents, protected by a structure of impunity. Almonacid Arellano, para. 154.; Véase, *asimismo*, ICC, *The Prosecutor v. Jean Pierre Bemba-Gombo*, Judgment pursuant to Article 74 of the Statute, March 21, 2016, para. 744.

152 Castillo Petruzzi y otros, para. 221.

153 *Ibid.* Almonacid Arellano y otros, paras. 151–154; *La Cantuta*, paras. 153–154. The facts of *La Cantuta et al. v. Peru* occurred in the context of Peruvian President Alberto Fujimori's anti-terrorism campaign. After Universidad Nacional de Educaciyn Enrique Guzmón y Valle students protested President Fujimori, Peruvian military forces, including members of the Colina Group, a paramilitary death squad, disappeared and extrajudicially executed nine students and a professor. Though several individuals were found guilty of human rights abuses against these victims, the state pardoned them under human rights amnesty laws. IACtHR's decision dealt with both the state's responsibility for the victims' disappearance and murder, and its failure to hold those responsible accountable for their human rights violations. The facts of the case relate to the illegal arrest, forced disappearance and extrajudicial execution of a professor and a group of students from the Enrique Guzmón y Valle National University in La Cantuta, Lima. This event took place at dawn on July 18, 1992 and was carried out by Peruvian army personnel and agents from the 'Colina' group. This group, assigned to the National Intelligence Service, was responsible for the identification, control and elimination of those people who were suspected of belonging to insurgent or opposition groups to President Fujimori's regime, through the systematic use of indiscriminate extrajudicial executions, mass murder, forced disappearances and torture.

obligation, which is not subject to the demands of the victims.¹⁵⁴ This investigation must be full, prompt, serious and diligent and must cover all the facts and context of the violation.¹⁵⁵ Another area of procedure covered by the IACtHR's recent case law, which was not addressed in the same way in the original case law, is of the investigative standards that a national body must apply in investigations. Hence, methods previously coined by soft law enter strong international human rights law, given that they are contained in the judgements. Notable case law concerning investigations into

154 Velósquez Rodríguez, Fondo, para. 177. This is the first case decided by IACtHR. The Velósquez Rodríguez case, together with the Godínez Cruz, and Fairén Garbí and Solís Corrales cases, all considered by IACtHR around the same time, form a trio of landmark cases targeting forced disappearance practices by the Honduran government during the early 1980s. The facts of the case refer to the forced disappearance of Manfredo Velósquez Rodríguez, a university student kidnapped by agents of the state in September 1982. Such acts occurred in a time in which disappearances constituted a systematic practice utilised on those persons considered dangerous for the security of the state; Velósquez Paiz, para. 143. In August 2005, nineteen-year-old college student Claudina Isabel Velósquez Paiz disappeared from a party. Immediately, one of her friends notified her parents, who called the police and began to search for their daughter. Despite a substantial increase of violence towards women at the time, state police refused to help Ms. Velósquez Paiz's family search for her, and refused to file a police report on her disappearance. Ms. Velósquez Paiz's family attempted three times throughout the night and early morning hours to file a police report and obtain help in their search. Ms. Velósquez Paiz's body was discovered the next morning; she had been severely beaten and sexually assaulted. IACtHR found that the state violated ACHR and the Convention on the Prevention, Punishment and Eradication of Violence against Women for failing to act in Ms. Velósquez Paiz's case, and overall, for failing to take steps to address the climate of gender-based violence in the state. The facts of the case refer to rape, disappearance and subsequent murder of Claudina Velósquez Paiz 19-year-old who studied undergraduate law and social sciences. On August 12, 2005 she left her home to go to university, but never returned. The next day her body was found with signs of violence in Zone 11 of Guatemala City. IACtHR framed the facts within the context of increased homicidal violence against women in the country.

155 Velósquez Rodríguez, Fondo, paras. 176–177; Velósquez Paiz, para. 143.

serious human rights violations include torture,¹⁵⁶ enforced disappearances¹⁵⁷ and the protection of women.¹⁵⁸

Impunity represents a fundamental principle in the protection of human rights within the Inter-American system, encompassing primarily the prohibition of amnesty, the statute of limitations for serious crimes, the *ne bis in idem* principle and other mechanisms that limit criminal responsibility for perpetrators of serious human rights violations. The IACtHR indicates that states cannot evade holding accountable those responsible for crimes against humanity, including murder, torture, enforced disappearances or other serious breaches of fundamental rights. In *Barrios Altos v. Peru* (2001), the IACtHR explicitly stated that an amnesty law that prevents the prosecution of perpetrators is incompatible with the state's obligation to ensure effective means of protecting human rights. This established a precedent prohibiting amnesty in most serious violations. *El Mozote and Others v. El Salvador* (2012) extended this

156 Bueno Alves, para. 111. On April 5, 1988, Juan Francisco Bueno Alves, a Uruguayan national residing in Argentina, and his attorney, Carlos Alberto Pérez-Galindo, were detained under order of the criminal court. The police beat the next day Bueno Alves to force him to confess against himself and his attorney. IACtHR found that the state violated ACHR. The facts of the case relate to the torture suffered by Uruguayan national Juan Francisco Bueno Alves, at the hands of members of the Argentine Federal Police. This was carried out with the intention of making him declare against himself and his lawyer. Following these events, judicial proceedings lasting more than 9 years began and were finished without the identification and subsequent trial of those responsible having been established; Bayarri, para. 88 and seq.; Cabrera García y Montiel Flores, para. 126 and seq.

157 Velásquez Rodríguez. Excepciones Preliminares, paras. 176 et seq Heliodoro Portugal, para. 115. On May 14, 1970, Heliodoro Portugal was in a café in Panama City when he was forced to get into a vehicle that drove off to an unknown destination. The Commission alleged that state agents took part in these acts, which occurred at a time when Panama was governed by a military regime. During the military dictatorship, it was not possible to have recourse to the domestic authorities to file complaints for human rights violations or to know the whereabouts of a person. Heliodoro Portugal's daughter did not report his disappearance until May 1990, when democracy was restored in the country. In September 1999, the Attorney General's Office found human remains in a military barracks in Tocumen, which were presumed to be those of a Catholic priest; however, after undergoing DNA testing, they were identified as belonging to the victim. The corresponding criminal proceeding is still open and those responsible have not been convicted. IACtHR found that the state violated ACHR and the Inter-IACFDP. The facts of the case concern the forced disappearance, torture and extrajudicial execution of Heliodoro Portugal, detained on May 14, 1979, while the country was governed by a military regime. The facts also concern the failure of the state to investigate, identify and convict those responsible. The remains of Heliodoro Portugal were found in September 1999 in military barracks, although only in 2001 was it confirmed with absolute certainty that these remains pertained to him. Velásquez Durand y otros, para. 149 and seq.

158 González y otros ('Campo Algodonero'), para. 149 et seq.; Veliz Franco y otros, para. 178 et seq. On December 16, 2001, Marga Isabel Veliz Franco, 15 years old, left her home at 8:00 a.m. and never returned. The next day Mrs. Rosa Elvira Franco Sandoval, her mother, reported her daughter's disappearance to state officials, but there were no efforts made to find her. After receiving an anonymous call two days later, Mrs. Franco Sandoval found her daughter's body. IACtHR found that the state violated ACHR. The facts of the petition concern the disappearance and the killing of the 15-year-old Marga Isabel Veliz Franco who disappeared on December 16, 2001 as she was leaving work. Velásquez Paiz y otros, para. 143 et seq.

interpretation, recognising that statutes of limitations and procedural obstacles in prosecuting perpetrators cannot result in impunity in cases of mass crimes or crimes against humanity. It emphasised that the state has an inalienable obligation to pursue truth and ensure justice, regardless of the passage of time.

Gelman v. Uruguay (2011) introduced an additional dimension related to *ne bis in idem*, indicating that the prohibition of double jeopardy cannot be used to exempt from criminal responsibility for serious human rights violations. The Court stated that the rights of victims cannot be limited by procedural mechanisms that disproportionately protect perpetrators against the severity of the violations. Moreover, in *Perez Lucas v. Guatemala* (2020), in which the IACtHR reaffirmed the principle of non-impunity in the region, extended its application to all legal or procedural mechanisms that may prevent victims from accessing justice or effective responsibility for serious violations.

j. Victim

The IACtHR, which has expanded the procedural presence of victims through regulatory reforms, has addressed the role of the victim in national procedures for investigating violations. The case law demands the widest possible participation of the victim in the investigation and the trial,¹⁵⁹ which does not make them the person conducting the investigation or the promoter of the proceedings. The position of the victims and their active participation in the prosecution are not limited to the investigation and are used throughout the process.¹⁶⁰ In *La Rochela Massacre v. Colombia*, the IACtHR established state responsibility for acts committed by paramilitary groups concerning territorial expansion and control against a guerrilla insurgency, and highlighted the gravity of the acts that intimidated judicial officials investigating serious human rights violations. It elaborated on the standards for violations of the right to life of

159 Masacres de Ituango, para. 296. Goiburъ y otros, para. 122. In 1974 and 1977, state agents illegally and arbitrarily detained, tortured, and disappeared Agustнn Goiburъ Gimъnez, Carlos Josъ Mancuello Bareiro and brothers Rodolfo Feliciano and Benjamнn de Jesъs Ramъrez Villalba. As of the date of the judgment, the crimes were not investigated and the whereabouts of the victims remained unknown. IACtHR found that the state violated ACHR. The facts of the case concern the illegal detention, torture and forced disappearance of Agustнn Goiburъ Gimъnez, Carlos Josъ Mancuello Bareiro and the brothers Rodolfo and Benjamнn Ramъrez Villalba, which occurred during the dictatorship of Alfredo Stroessner in Paraguay, in the context of the so-called 'Operation Condor' - the name given to the alliance which united and combined the security forces and intelligence of services of Chile, Argentina, Uruguay, Paraguay, Bolivia and Brazil. y Masacre de La Rochela, para. 220.

160 Garcha Prieto y otros, para. 104. This case is about the assassination of Garcha Prieto during a robbery, on June 10, 1994, by members of an illegal armed group. Although the assassins were arrested and tried, El Salvador was nonetheless found in violation of ACHR because of several deficiencies in the investigations and prosecution. The case is notable for a discussion of the provisional measures in IAHRs. The facts of the case concern the non-compliance with the state obligation to investigate, in an effective and adequate manner, the homicide of Ramyn Garcha Prieto in June 1994, and the threats and harassment suffered by his family members. Velбsquez Paiz, para. 144.

the three survivors, considering that their deaths were not caused, even though they were executed by means of a ‘coup d’état’, due to random causes. It analysed the lack of investigation and impunity of the facts concerning the due diligence standard.

Similarly, the IACtHR commented in *Valle Jaramillo et al. v. Colombia*. It reiterated that by encouraging the formation of self-defence groups, the Colombian State objectively created a situation of danger for its population. It highlighted the damage suffered by human rights defenders because of their work of exposing rights violations committed by paramilitaries and members of the security forces. Furthermore, in assessing the reasonableness of the time limitation on the duty to investigate, it considered the criterion of the impact of the length of the trial about the surviving victims. An important case on the actions taken by the paramilitaries was the ruling on the scope of the duty to provide reparation in *Carpio Nicolle et al. v. Guatemala*, in which the state admitted its international responsibility.

In *Castillo Petruzzi et al v. Peru*, the IACtHR considered the prosecution and conviction of the victims in a military jurisdiction by a ‘faceless’ court, and the imprecision of the definitions of the crimes of terrorism and treason for which they were convicted and their legal position was violated, both in terms of the applicable sanction of IACtHR of knowledge and the relevant procedure, resulting in a violation of their rights of defence and the principle of legality. The IACtHR, in *Quispialaya Vilcapoma v. Peru*, elaborated on the standards for the state as guarantor for those in its custody, establishing a differentiated situation for those in military service. It reiterated its assessments on the scope of the competence of military jurisdiction. In *Cantoral Benavides v. Peru*, it assessed the compatibility of the crime of terrorism and treason with the principle of criminal legalism.

The standards for excessive use of force during military operations were established by the IACtHR in *Miguel Castro Castro Prison v. Peru*. These concerned operations, torture and ill-treatment to which prisoners were subjected. It referred particularly to gender-based violence and accounted for the differential way in which the facts affected women, indicating how the violation of rights by the state can influence society. The Tribunal noted that in the 1980s and until the end of 2000, Peru experienced conflict between armed groups and agents of the police and armed forces. This was exacerbated by systematic human rights violations, including extrajudicial executions and enforced disappearances, of persons suspected of belonging to opposing political groups, which were carried out by state officials on the orders of the military and police chiefs.

Velásquez Rodríguez v. Honduras was the first judgment handed down by IACtHR, which established important standards on the legal nature and elements of enforced disappearance, as a multiple and continuing violation of numerous Convention rights, elaborating the state’s obligations to respect, guarantee and adapt domestic law and prevent, investigate, punish and redress any violations. In *La Cantuta et al. v. Peru*, investigations were initiated and dealt with under military jurisdiction; however, the acts went unpunished, a situation reinforced by the application of amnesty provisions. The events in La Cantuta were encouraged by the general situation of impunity

for serious human rights violations at the time, supported and tolerated by the lack of judicial guarantees and the ineffectiveness of judicial institutions in dealing with systematic human rights violations. It applied the standards on enforced disappearances of persons and the state's obligation to investigate *ex officio*, without delay and in a serious, impartial and effective manner.

In *Goiburú et al. v. Paraguay*, it consolidated its jurisprudence on the continuous or permanent nature of the crime of enforced disappearance and held that the crime and the consequent obligation to investigate and punish those responsible are non-derogable norms of international law or *jus cogens*. It analysed the obligation to investigate even after the fall of a dictatorial regime, including the scope of the obligation of interstate cooperation expressed in extradition. It reiterated its jurisprudence on the specific characteristics and continuing nature of the crime of enforced disappearance in *Heliodoro Portugal v. Panama* and assessed whether the criminal definition of the crime of enforced disappearance in the domestic legal system met the minimum requirements and elements required by international human rights law.

The IACtHR set standards for unlawful and arbitrary detention in *Gangaram Panday v. Suriname*. It set standards on pre-trial detention concerning the right to the presumption of innocence and other violations of judicial guarantees relating to the reasonable length of criminal proceedings, the right of the accused to be brought promptly before a competent judge and to be informed in advance and in detail of the charges against him. In *Suárez Rosero v. Ecuador*, it set out the standards for pre-trial detention as a non-criminal preventive measure and the exceptional nature of incomunicado detention, while ratifying the broad extent to which *habeas corpus* should be understood. In *López Álvarez v. Honduras*, it addressed standards on pre-trial detention, the right to an effective remedy and a reasonable time. It has developed standards concerning the right to communicate, which in this case was violated by an order of the director of the prison where the victim was held, prohibiting the Garifuna people from speaking their mother tongue, which constituted an act of discrimination.

The IACtHR set out standards relating to the right to defence, be tried by competent courts and appeal against a sentence. It referred to the criteria for pre-trial detention in *Barreto Leiva v. Venezuela* and, in *Bayarri v. Argentina*, it developed standards on the limits of pre-trial detention practice. It analysed, in *Argüelles et al. v. Argentina*, the dimensions of the right to personal liberty and the elements that must be respected to avoid arbitrary and illegal detention. It analysed the scope of the pre-trial detention regime and the right to judicial guarantees within the operation and competence of the military jurisdiction.

Regarding the violations of personal integrity, the IACtHR stated, in *Durand and Ugarte v. Peru*, that it is not possible to infer the practice of torture or cruel, inhuman or degrading treatment from the disproportionate use of force to break up a riot, as such concepts have their own legal content and are not necessarily and automatically inferred from the arbitrary deprivation of life. It analysed violations of the right to life and personal integrity under the additional and specific obligations that children's rights impose on states. In *Juvenile Reeducation Institute v. Paraguay*, it determined the

content and scope of these rights, considering the relevant provisions of the Convention on the Rights of the Child and the Additional Protocol on ESCR, which, together with ACHR, constitute an international *corpus juris* for the protection of children that states must respect. It considered that in legal proceedings where the rights of the child are at stake, especially when the child is the subject of criminal proceedings, the exercise of the judicial guarantees enshrined in Article 8 of the ACHR requires the adoption of concrete and specific measures.

In *Velásquez Paiz et al. v. Guatemala*, the Court analysed the state's obligation to guarantee the right to life, integrity, honour and dignity concerning the breach of the duty to prevent and the lack of due diligence in investigating the facts. Regarding the latter, it ratified the additional scope of the state's obligation to investigate gender-based violence and ratified minimum guidelines to guarantee its effectiveness. In *Mejía Idrovo v. Ecuador*, it applied the standards for the effectiveness of domestic remedies, adding that the state must guarantee the means to enforce final decisions and judgments issued by the competent authorities, as their effectiveness depends on their enforcement while ensuring certainty about the law or controversy discussed in a particular case. Similarly, the principle of effective judicial protection requires that enforcement procedures are available to the parties, without hindrance or undue delay, to achieve their objective in a swift, simple and comprehensive manner.

The IACtHR analysed the extent of restrictions on the political right to run for public office (passive electoral right) arising from administrative decisions in *López Mendoza v. Venezuela*. It elaborated on the standards for guarantees in administrative procedures, particularly regarding the duty to state reasons. Additionally, it applied the 'foreseeability test' in analysing the discretion granted to the authority. In *Manuel Cepeda Vargas v. Colombia*, it noted the importance and relationship of the rights to freedom of expression, association and political rights in a democratic society. It examined the state's obligation to guarantee the effective participation of groups and individuals who express opposing voices as essential elements of a democratic society and address the vulnerability faced by members of certain groups or sectors.

In *Bueno Alves v. Argentina*, the IACtHR emphasised the importance of prompt investigation in cases alleging torture or ill-treatment, especially in the absence of witnesses. In *García Prieto et al v. El Salvador*, it analysed the state's response concerning the due diligence test, setting standards on the importance of using appropriate technical means to investigate threats and harassment. In *Mohamed v. Argentina*, it progressed in analysing the right of appeal as a guarantee of the individual against the state, instead of merely being a guideline for the design of appeal systems in states' legal systems. It analysed the compatibility of the crime of terrorism with the principle of legality and retroactivity in *García Asto and Ramírez Rojas v. Peru*. In contrast, the standards for the incompatibility of the mandatory imposition of the death penalty with the right to life and the prohibition of arbitrary interference with life were established in *DaCosta Cadogan v. Barbados*. In analysing whether the mere availability of a psychiatric evaluation in favour of the victim is sufficient to guarantee the right to a fair trial, it established a greater stringency of compliance with

judicial guarantees in cases that may result in the application of the death penalty. Additionally, it analysed the scope of the state's positive obligation to adopt legislative measures to guarantee the exercise of rights.

In *Baena Ricardo et al. v. Panama*, the IACtHR stated that the principles of legality and non-retroactivity apply to administrative criminal norms, as they are an expression of the state's criminal power. It confirmed that judicial guarantees and due process apply equally to administrative proceedings and referred to freedom of association concerning the dismissal of trade union leaders. In the case of *Personas dominicanas y haitianas expulsadas (Tide Méndez y otros)*, it analysed the right to nationality and equality before the law concerning the state's obligation to prevent and avoid statelessness, and the minimum guarantees that must govern migration procedures. An important judgment against gender-based violence was *Veliz Franco et al. v. Guatemala*, where it placed its analysis in the context of the invisibility of violence against women in Guatemala to develop standards for the state's duty of prevention of particular risks that women face and the criteria for assessing evidence in this type of case.

2.13. Adequate and Effective Legal Remedy

In regional and case laws, the concept of a 'remedy' is important and linked to the condition of its 'effectiveness'. Therefore, reference is made to the existence of a simple and speedy remedy or 'other effective remedy' before judges or courts for the defence of fundamental rights (Article 25), the right 'to appeal against a decision' given in the proceedings, a right which forms part of a fair trial (Article 8, paragraph 2, letter h)), the possibility of an appeal, although this expression is not used in this case, to combat death penalty (Article 4(6)), the possibility of challenging death penalty (Article 8, paragraph 2, letter h)), the right to appeal against the judgement of the IACtHR (Article 8, paragraph 2, letter h)), the ability to challenge the deprivation of liberty (Article 7(6)) and the necessity of filing and exhausting domestic remedies as a condition for the admissibility of an individual complaint or petition before the IAHR (Article 46, paragraph 1, letter a)). Unless these remedies do not exist, the subject has no access to them or there is an 'undue delay' in issuing the decision that should have been issued (Article 46(2)).

It is not necessary to exhaust domestic remedies where the party concerned has no access to them because they are intimidated by the national authorities in a way that it is not reasonably possible to exhaust them¹⁶¹ or where their financial situation prevents them from availing the remedy.¹⁶² The appeal by the right holder, or by a

161 OC-11/90, para. 33.

162 Ibid., para. 30.

third party acting on their behalf,¹⁶³ should be effective.¹⁶⁴ However, the IACtHR has held that the effectiveness of a remedy does not mean that it must necessarily lead to a solution favourable to the person using it, rather it constitutes an appropriate means of achieving the intended result.¹⁶⁵

The IACtHR's case law refers to the elusiveness of remedies for preserving the so-called 'hard core' rights when it provides, as a general remedy, for the suspension of the exercise of rights in situations of gravity (Article 27, paragraph 2). In this case, it concerns the 'judicial guarantees necessary to protect such rights', for instance, *habeas corpus* or *amparo*,¹⁶⁶ with the continuing validity of an appropriate remedy to challenge the deprivation of liberty (Article 7, paragraph 6). It applied standards of effective judicial protection and developed criteria for judicial independence related to due process guarantees in the removal process in *Chocrón Chocrón v. Venezuela*. It further referred to the obligation to give reasons for decisions and their relation to the

163 'Niños de la Calle' (Villagran Morales y otros). Fondo, para. 236.

164 Velósquez Rodríguez. Fondo, para. 68. Bómaca Velósquez. Fondo, para. 191. García y Familiares, From February 17 through 19, 1984, the National Police undertook an operation to cleanse and patrol the state (Operativo de Limpieza y Patrullaje). On the morning of February 18, 1984, Edgar Fernando García, a teacher and administrative employee of the claimed communist organisation La Industria Centro Americana de Vidrio S.A (CAVISA), was walking down the street when he was stopped by the National Police, injured, and detained under the Operation. García was seen in various secret prisons, and last seen alive in December 1984. IACtHR found that the state violated ACHR. The facts of the case refer to the forced disappearance of Edgar Fernando García, trade unionist and student leader, following his arrest on February 18, 1994, by members of the Special Operations Brigade of the National Police. IACtHR placed the events in a context of internal violence in the country during which the intelligence services played a particularly important role as being responsible for gathering and reviewing information on those people considered 'internal enemies.' OC-9/87, para. 24.

165 Velósquez Rodríguez. Fondo, para. 67, Chocryn Chocryn, para 128 Mercedes Chocryn Chocryn was arbitrarily removed from her post as Judge of First Instance for Criminal Matters of the Metropolitan Caracas Judicial Circuit. Ms. Chocryn Chocryn was not afforded any minimum guarantees of due process or given adequate justification for her removal. She was not given the possibility to be heard or to exercise her right of defence. IACtHR found that the state violated ACHR. The events of the case relate to the removal from office of Mercedes Chocryn Chocryn in 2000, who had a provisional appointment as Criminal Judge of First Instance of the Caracas Metropolitan Area Judicial Circuit. Lypez Mendoza, para. 184; Barbani Duarte y otros, para. 201. In this case, the Banco de Montevideo transferred funds belonging to 539 of its customers to the Trade & Commerce Bank in the Cayman Islands without their permission. An Advisory Commission was created under the Financial System Reform Law to deal with the claims of these customers. This case came before IACtHR because the state failed to provide the victims with an impartial hearing for their claims before the Advisory Commission. IACtHR found that the state violated ACHR. The events of the case refer to the transference of the bank funds of a group of depositors in the Banco Montevideo S.A to the Trade and Commerce Bank in the Caiman Islands. This occurred during the financial crisis in Uruguay at the close of the year 2001. Some financial organisations had cash-flow issues which provoked the intervention of the state and their subsequent liquidation. The depositors base their demands in accordance with the procedures set out in Law N° 17.613, which regulates the financial system and establishes a special administrative procedure for the determination of the rights of depositors whose savings have been transferred to other institutions 'without their consent'.

166 Durand y Ugarte. Fondo, para. 106; OC-8/87, para. 42.

right to defence. In *Barbani Duarte et al. v. Uruguay*, it set standards on the scope of due process and the right to be heard in proceedings before administrative authorities.

In *Hernández v. Argentina*, the IACtHR provided a detailed explanation of the standards of adequacy and effectiveness of domestic legal remedies within the Inter-American system. The ruling emphasises that ensuring formal legal procedures is insufficient to fulfil the state's obligations; protective measures must be adequate (*adequadas*) and effective (*efectivas*) in practice. Adequacy means that the legal remedy can resolve the problem that caused the violation and is provided by law in a manner that ensures a possibility for the victim to assert their claims. The Court indicated that an adequate measure must correspond to the nature and seriousness of the violation and lead to the restoration of a state following the law or to compensation for the harm. Effectiveness refers to the practical ability to achieve the protection of the victim's rights. This means that the measure must be genuinely accessible, function efficiently and allow for the attainment of a real result, such as restoring the violated right or providing appropriate reparation. The Court highlighted that a lack of effectiveness, even when a procedure exists formally, results in a breach of the state's obligation to ensure human rights protection. In the *Hernández* case, applying these criteria enabled the IACtHR to assess whether the state had taken appropriate and effective actions to establish the truth, hold perpetrators accountable and ensure effective reparation for the victim. Thus, the ruling establishes a standard for evaluating domestic legal remedies, emphasising the formal availability of procedures and their actual impact on human rights protection.

2.14. Use of Force

The reasonable or rational use of force has been a common theme in the case law, similar to the disproportionate use of force in practice to achieve ends that may be justified in principle, yet whose achievement leads to violations of rights and freedoms. International human rights law has created standards to which the exercise of authority must be subjected. The IACtHR has dealt with the use of force in various hypotheses and highlighted the conditions that legitimise this use and its limits concerning legality, necessity, proportionality and requirements that govern the state's actions. Such cases include preventive measures (detention) in criminal proceedings,¹⁶⁷ control of

167 *Familia Barrios*, para. 49. Between 1998 to 2011, the Barrios family, including their children, were harassed by the Police of Aragua state. As part of this persecution, five members of the Barrios family have lost their lives and several of them have been detained and subjected to illegal and arbitrary searches of their homes, suffered threats against their lives and personal integrity, and have been forced to move from their place of residence. This case is part of a more general context of extrajudicial executions in Venezuela and most of the incidents that violated the life and personal integrity of the victims took place after IAHRs had requested protection for the Barrios family through provisional measures. IACtHR found that the state violated ACHR and the American Convention to Prevent and Punish Torture. The events of the case relate to the arrest, extrajudicial execution, torture and mistreatment to the detriment of several members of the Barrios family, perpetrated by the Aragua state Police, as well as the lack of investigation and punishment of those responsible. Between 1998 and 2011, a total of 7

public order disturbances in which the threshold of rationality has been significantly exceeded,¹⁶⁸ management of prison riots leading to mass violations of rights,¹⁶⁹

family members were murdered. *Uzcóteguy y otros*, para. 132. On January 1, 2001, members of the state police extrajudicially executed Nistor Josy Uzcóteguy and persecuted Nistor's brother, Luis Enrique Uzcóteguy, in reaction to his search for justice for the death of his brother. There was no investigation into Josy Uzcóteguy's death, and no one was ever tried or punished for the crime. IACtHR found that the state violated ACHR. The events of the case, which occurred in January 2001, refer to the extrajudicial execution of Nestor Uzcóteguy and the arrest of his brothers Luis Enrique and Carlos Uzcóteguy, by members of state security forces. *Hermanos Landaeta Mejnas y otros*, para. 123 et seq. This case concerns the extrajudicial executions of teenage brothers Igmarr Alexander Landaeta Mejnas and Eduardo Josy Landaeta Mejnas by state officials. The events occurred in the context of widespread extrajudicial executions in Venezuela, mainly by members of regional police forces caused by a poor institutional structure and a lack of effective oversight. When IACtHR considered the case, the state had yet to prosecute the authorities responsible for the executions. The criminal proceedings relating to Igmarr's execution resulted in a dismissal, while the criminal proceedings relating to Eduardo's execution were still underway, sixteen years after their death. Eventually, IACtHR unanimously found that the state violated Igmarr's right to life, Eduardo's rights to life and personal liberty, and the Mejnas family's rights to judicial guarantees and judicial protection. IACtHR held that it was not incumbent to rule upon the alleged violation of Igmarr's right to humane treatment and that it did not have sufficient evidence to conclude that the state violated Eduardo's right to humane treatment. The facts of the case concern the extrajudicial executions of the brothers Igmarr Alexander (age 18) and Eduardo Josy (age 17) by security forces in the state of Aragua in 1996. These events took place within a context of widespread police abuse in several states of Venezuela at the time.

168 *Caracazo*. Fondo, paras. 2 and 42. On February 16, 1989, the then President of Venezuela, Carlos Andrés Pérez, announced a series of structural adjustment measures to refinance the external debt through the International Monetary Fund that were implemented on February 27 that year. On February 27, 1989, an undetermined number of persons from the poorer sectors of the population began a series of disturbances in Garenas, state of Miranda, owing to the increase in urban transport rates and the failure of the Executive to grant a preferential rate to students. A sector of the Metropolitan Police was on strike, and consequently did not intervene promptly to control the disturbances. Armed forces were put together by the minister of defence, which consisted mostly of 17- to 18-year-old men. As a result of the disturbances in February and March of 1989, 276 people lost their lives. Some of these victims were not even participating in the disturbances and were shot in their homes, including woman and children. The state, through the Executive, ordered that an undetermined number of corpses should be buried in mass graves. IACtHR found that the state violated ACHR. The events of the present case relate to the extrajudicial execution of 35 people, the forced disappearance of 2 people, and the injuries caused to a further 3, which occurred as a result of acts (characterised by the disproportionate use of armed force in working-class neighbourhoods) perpetrated by members of the state security forces. Judicial investigations, many of these opened in military jurisdiction, did not establish those responsible for the acts. The events of the case occurred in early 1989 in a context of public disturbances that led the Executive to issue Decree No. 49 on February 28, 1989 suspending several guarantees for 23 days. *Zambrano Vález y otros*, paras. 83–85.

169 *Neira Alegrna*. Fondo, paras. 74–76. On June 18, 1986, a riot in the San Juan Bautista correctional facility was put down by the Joint Command of the Armed Forces using excessive force. *Neira Alegrna*, Edgar Zenteno Escobar and William Zenteno Escobar, three detainees, have been missing ever since. IACtHR found that the state violated ACHR. The facts of the case relate to the forced disappearance of Víctor Neira Alegrna, Edgar Zenteno Escobar and William Zenteno Escobar after a military operation carried out in the correctional establishment of El Frontyn, where they were detained and processed as alleged perpetrators of terrorism. The consequence

expulsion or deterrence of migrants through the use of overwhelming force¹⁷⁰ and state action in the event of internal armed conflict.¹⁷¹

The IACtHR applied the criteria relating to the use of force and firearms by security force officers and the state's duties of due diligence and humanity in *Landaeta Mejías Brothers et al. v. Venezuela*. Concerning Eduardo Josñ, who was a minor at the time of his execution, the IACtHR developed standards relating to the circumstances of his deprivation of liberty under the special protection afforded to him as a child. In both cases, it assessed the investigations carried out in accordance with the standard of due diligence and reasonable time. In *Santo Domingo Massacre v. Colombia*, it noted its authority and the need to interpret the scope of treaty obligations under the principles of international humanitarian law and particularly examined the principles relating to non-international armed conflict, namely the principles of distinction,

of the operation is that the prison remained under the Joint Command of the Armed Forces as a Restricted Military Zone. Subsequently, the Navy ordered its demolition and since then the victims disappeared, meaning that the habeas corpus filed by their relatives were unsuccessful. Durand y Ugarte, Fondo, paras. 65–72; Montero Aranguren y otros (Retñn de Catia), para. 65 et seq. Penal Miguel Castro Castro, para. 277 and seq.

170 Nadege Dorzema y otros, para. 85.

171 In cases of armed conflict, the Court invoked, because of their specificity, the criteria of international humanitarian law relating to the use of force (principles of distinction, proportionality and precaution). *Masacre de Santo Domingo*, paras. 211–216. On December 13, 1998, the Colombian Air Force bombarded the village of Santo Domingo, which resulted in the deaths of seventeen civilians, including six children, and injuries of twenty-seven civilians, including nine children. Following the explosion, the survivors were machine-gunned from a helicopter when they tried to assist the injured and flee the village. After this, the victims' empty homes were pillaged. This case deals with the state's lack of judicial protection and its failure to observe judicial guarantees. The events of the case relate to the bombing carried out by the Colombian Air Force, planned in conjunction with the National Army and staff from the foreign oil company Occidental Petroleum Corporation (OXI), on December 13, 1998, in the Santo Domingo lane, Tame province, Arauca, a region where the most important activity is oil extraction. As a result of the bombing, 17 people were killed, 6 of them children, an additional 27 people were injured, 10 of them children, and more than a hundred people were displaced. The events of the case occurred in the context of the Colombian armed conflict and the active participation of members of the Colombian Armed Forces in acts against the civil population. *y Comunidades afrodescendientes desplazadas de la Cuenca del Río Caicara (Operaciyn Gñnesis)*, para. 222. Operation Genesis, a counterinsurgency operation, took place from February 24 through February 27, 1997 in the Saliquñ River and the Truandy River. This was a zone near the territories of Afro-descendent communities of the Caicara River Basin. The state had allegedly violated the right to collective property of these communities because it permitted and tolerated their displacement and illegal exploitation of natural resources by companies. The operation resulted in the death and forced displacement of hundreds of people living in this region. IACtHR found that the state violated ACHR. The facts of the case relate to the human rights violations committed against the afrodescendent communities in the Caicara River Basin, Chocý region, because of 'Operation Genesis' carried out by Colombian military forces between February 24 and 27, 1997. Said events caused the death of Marino Lypez Mena and the forced displacement of hundreds of people. These events took place within the context of armed conflict in Columbia, especially within the framework of extreme violence in the region of Urabó, where illegal groups travelled along riverbanks to traffic arms and illegal drugs, the expansion and territorial control of paramilitary groups and their operations in conjunction with the state's military forces.

proportionality and precaution. It has extended its jurisprudence in the rights of the child, pointing to state responsibility for failure to comply with a specific duty of protection in a non-international armed conflict.

The IACtHR's jurisprudence regarding the use of force has evolved over the past decades, shaping standards of state responsibility towards citizens and emphasising the importance of protecting life and physical integrity during police interventions, military operations and public order situations. Some of the earliest judgments regarding the use of excessive force by state services were addressed by the IACtHR in *Neira Alegria et al. v. Peru* and *Case of the 'Caracazo' v. Venezuela*. The Venezuelan state acknowledged its international responsibility, which was accepted by the IACtHR. In *Gómez-Paquiyaury Brothers v. Peru* (2004), it focused on instances of unlawful or excessive use of force by state authorities, which led to violations of the right to life (Article 4) and physical integrity (Article 5). These rulings established that the state is accountable for direct actions and omissions resulting in death or serious injury.

In subsequent years, in *Méndez Rojas v. Venezuela* (2008), the IACtHR developed standards of proportionality and necessity in the use of force, recognising that any action by state officials must be necessary to achieve a legitimate goal and limited to the minimum required to accomplish it. It emphasised the assessment of the actions of officials and the overall state policies regarding the use of force in police or military operations. Cases such as *Juan Humberto Sánchez v. Honduras* (2003) and *Tibi v. Ecuador* (2004) highlighted that the state has preventive and systemic obligations, including training officials, implementing control procedures and ensuring oversight and accountability mechanisms to prevent abuse of force. The absence of such measures could constitute an autonomous violation of human rights. In recent rulings, such as *Monterroso v. Guatemala* (2019) and *Barrios et al. v. Honduras* (2020), it expanded protection, considering the use of force in public protests and mass interventions. It underscored the necessity of applying proportionate measures that minimise the risk of death or injury and providing redress and accountability for excessive force. Contemporary jurisprudence adopts a *pro persona* interpretation, assuming that the standards for the protection of life and physical integrity should be adapted to changing social, technological and operational realities. This includes evaluating the use of modern coercive means, operational tactics and responses in crisis situations, with respect for the state's obligations to protect individual rights.

Notably, the evolution of the IACtHR's jurisprudence regarding the use of force progresses from reactive protection of life and physical integrity against unlawful actions, through the introduction of criteria, such as proportionality, necessity and systemic responsibility, to a comprehensive consideration of the state's duties in prevention, control and accountability in mass situations. These standards form the foundation for assessing the legality and ethics of the use of force by state organs in the Latin American region.

3. Groups Particularly Vulnerable to Violations of Rights

Given the characteristics of most Latin American countries that constitute the ‘judicial space’ of the IACtHR, its case law must pay attention to the rights and freedoms, or their absence or restriction, of persons who form the so-called ‘vulnerable’ groups.¹⁷² The interest in social justice has been recognised in the general orientation of the IAHRs.¹⁷³ The IACtHR has recognised the imperative features of social democracy alongside formal democracy.

The IACtHR, like other courts in which the social current of law prevails, must build the case law of the weakest, without prejudice, under the principles of universality and equality. These principles govern the general regime of individual rights and are part of *ius cogens*.¹⁷⁴ However, alongside the principle of equality, there is a principle of specialisation, which allows or favours the exercise of rights even by those who, ill-equipped to exercise them, might find themselves in disadvantaged situations.

In IACtHR case law, which is based on the vulnerability factors of rights holders, addresses several topics. They focus on certain categories of rights holders and freedoms that have been highlighted in international fora, such as women, children and adolescents, the poor, indigenous people and people of African descent, migrants and

172 The Brasilia Rules stipulate, in 100 provisions, standards to guarantee access to justice for persons in vulnerable situations. Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability, approved at the XIV Ibero-American Judicial Summit, Brasilia, March 2008.

173 In the preamble to the ACHR, the states reaffirm ‘their purpose to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man’.

174 *Norin Catrimón y otros (Dirigentes, miembros y activista del Pueblo Indígena Mapuche)*, para. 197. In the early 2000s, members of the various communities within the indigenous Mapuche group were involved in demonstrations over the encroachment of their ancestral lands, and the use and enjoyment of the natural resources on those lands. Most of the demonstrations were peaceful. However, a few resulted in violence and property destruction. Eight people, including some prominent Mapuche leaders, were charged with crimes under Chile’s Terrorist Act. By charging under the Terrorist Act, the state could arbitrarily prolong detentions, and prohibit the victims from engaging in any political activities or holding public office for a period of fifteen years. This crippled the Mapuche who were left leaderless. Additionally, the victims in this case were denied access to a fair trial. IACtHR found the state violated several articles of ACHR. The facts of the petition refer to charging and sentencing a group of the indigenous Mapuche leaders for terrorist crimes between 2001 and 2002. The criminal proceedings involved irregularities that violated basic due process guarantees, and the Anti-terrorism Law was applied in a way that discriminated against them as indigenous Mapuche. Duque, para. 91; OC-18/03, para. 101. This case is about a homosexual couple who had been cohabiting for more than ten years and could not marry. Upon death of his partner, who had been a state employee, the victim was denied a survivor’s pension because that was only meant for heterosexual partnerships or married couples. Eventually, IACtHR found Colombia in violation of the right to equal protection contained in ACHR but did not find violation of other articles. The facts of the case relate to the rejection of Duque’s request to obtain a survivor’s pension after the death of his partner because they were of the same sex.

displaced persons, persons with disabilities, persons deprived of their liberty and members of other minority groups subject to frequent societal and state pressures. The elderly, the LGBTQ community and human rights defenders can be added to these groups.

3.1. Indigenous People

Both the IACmHR and IACtHR have reaffirmed their doctrine of special protection for indigenous people. This has been demonstrated in decisions and mandates inherent to their functions. The current system created by the ACHR has extended its scope of protection to individual (civil and political) and collective rights, due to amendments to the Rules of Procedure of the IACmHR and IACtHR. It has given procedural legitimacy to all persons recognised as victims of human rights violations to lodge a direct complaint with these bodies. Members of various indigenous communities may apply to the IAHRs organs to claim protection for their constitutionally recognised individual and collective rights, individually or as a group, or through the representation of ombudsmen, and may claim compensation for damages. The IACtHR case law in this area is relatively new and is characterised by the fact that it had to use considerable creativity in its development, because its founding treaties do not contain any explicit references to indigenous and tribal people.¹⁷⁵ Regarding the protection of the rights of persons belonging to indigenous groups, that is, people and communities claiming collective rights,¹⁷⁶ the IACtHR defined the scope of application of the ACHR in Article 1, paragraph 2, in an interpretation: only human beings, not moral persons or corporations, are the holders of the rights recognised in ACHR.¹⁷⁷ However, it found a way to maintain the rights of these collective persons, which constitute the framework for the establishment and protection of individual rights.¹⁷⁸ Hence, the rights of indigenous people and their communities have been fully recognised and protected by international case law and the IACtHR has accepted the existence and effectiveness of the customary legal order of indigenous people, which has been incorporated into

175 Zombory, 2023, pp. 171–191.

176 *Mayagna (Sumo) Awas Tingni*, para. 140 and 148 et seq.; *Pueblo Saramaka*, paras. 159 and 169; *Pueblos Kaliña and Lokono*, paras. 129–132.

177 *Cantos. Excepciones Preliminares*, para. 29; OC22/16, para. 70.

178 *Comunidad Mayagna (Sumo) Awas Tingni. Fondo, Reparaciones y Costas*, para. 148; *Pueblo Indígena Kichwa de Sarayaku*, para. 145; *Granier y otros (Radio Caracas Televisión)*, para. 146; OC-22/16, para. 107–120.

the legislation of several American states.¹⁷⁹ Although this is a different hypothesis, it is worth mentioning that the IACtHR has made the same consideration, *mutatis mutandi*, in relation to the ownership of rights of natural persons associated with civil or commercial corporations: they are not holders of human rights; the former are and can claim them from the state, even if the rights that arise in the case, in the first reference, are rights of an individual *natura* that derive from the corporate contract.¹⁸⁰

The case law concerns the sanctioning of acts of physical elimination of indigenous groups,¹⁸¹ attacks on their culture,¹⁸² which usually coincide with violations of

179 Comunidad Indígena Yakye Axa, para. 63. This case concerns the state's failure to ensure the ancestral property rights of the Yakye Axa Indigenous Community and its members. The Community's land claim has been processing since 1993, but no satisfactory solution has been attained. This conflict has made it impossible for the Community and its members to own and possess their territory, not only keeping them in a vulnerable situation in terms of food and health care, but also threatening the Community's survival. IACtHR found that the state violated ACHR. The facts of the case concern the right to ancestral property of the indigenous community Yakye Axa, as well as the grave conditions of life in which its members were found as a consequence of being placed at the edge of a national road in a situation of extreme poverty and without access to basic services such as nutrition, housing, education or health, among others., *Tiu Tojñn*, para. 96. On August 29, 1990, *Марна Тіу Тојнн* and her one-month-old daughter, *Josefa*, were detained by officers of the Guatemalan army and members of the Civil Self-Defense Patrols. Up to the date of the judgment, the state had not complied with its duty to investigate the facts or the whereabouts of Mrs. *Tiu Tojñn* and her daughter. IACtHR found that the state violated ACHR. This case reflects the abuses committed during the internal armed conflict in Guatemala by the military forces against the Mayan indigenous people and the communities of populations in resistance. The facts of the case refer to the forced disappearance of *Марна Тіу Тојнн* and *Josefa*, her newborn daughter, at the hands of officers of the Guatemalan army and members of the Civilian Defense Patrol (PAC). Mrs *Tiu Tojñn* was part of the Community of Population in Resistance of Santa Clara, known as 'la Sierra,' in the Department of Quiché, and she was also linked to the Council of Ethnic Communities *Runujel Junam* and to the National Committee of Guatemalan Widows, organisations which promoted non-participation in the Civilian Defense Patrols during the internal armed conflict in the country. *Pueblos Indígenas Kuna de Madungandñ y Emberó de Bayano y sus miembros*, para. 167. In 1972, the state began to the construction of a hydroelectric dam in the areas inhabited by the indigenous Kuna groups from *Madungandñ*, and the indigenous *Emberó* groups from *Bayano*. The state removed many of the indigenous groups to allow construction of the dam and the subsequent flooding of the basin. However, the state failed to pay these groups the compensation that was originally agreed upon, and failed to demarcate new territories for the indigenous groups in a timely manner. Without any title to their new lands, the indigenous groups struggled to keep non-indigenous squatters off their land. IACtHR found that the state violated ACHR. The facts of the case concern the rights of the Kuna and *Emberó* indigenous peoples (who inhabit the *Bayano* region) given the failures and delays involved in the collective titling of their land and territory due to the construction of a hydroelectric complex. OC-22/16, paras. 71–84.

180 *Ivcher Bronstein*, paras. 123, 125, 127, 138 and 156. *Perozo y otros*, para. 400; *Granier y otros* (*Radio Caracas Televisión*), paras. 19–22.

181 *Chitay Nech y otros*, paras. 64, 93 y 103. *Masacres de Río Negro*, paras. 58 and 127; *Miembros de la Aldea Chichupac y comunidades vecinas del Municipio de Rabinal*, paras. 76–77 and 160.

182 *Comunidad Indígena Yakye Axa*, paras. 146–147 and 154; *Comunidad Indígena Xókmok Kósek*, paras. 174–182; *Pueblo Indígena Kichwa de Sarayaku*, para. 212.

the life and integrity of their members,¹⁸³ deprivations of ancestral lands,¹⁸⁴ collective expulsions¹⁸⁵ and excessive restrictions or demands on political rights that ignore indigenous uses and customs and impose models of organisation and participation that are foreign to them.¹⁸⁶ Indigenous and tribal peoples have often appealed to the IACtHR to remedy the structural injustices in many countries. The first precedent was *Aloeboetoe et al. v Suriname* (1991), although the first real milestone came 10 years later, in *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001).

In *Yakye Axa Indigenous Community v. Paraguay*, the Court recognised the right to collective indigenous property, elaborating on the importance of ancestral territory for indigenous peoples as the fundamental basis of their culture, spiritual life, integrity and economic survival; due to this close connection, they are protected under Article 21 of the ACHR. The IACtHR highlighted the state's failure to adopt measures to address the poverty and lack of access to basic services for the Yakye Axa community, particularly for children and the elderly. It expressly recognised that their traditional possession of their lands is equivalent to the title of full dominion granted by the state and, consequently, those who, for reasons beyond their control, left or lost possession, retain ownership of their lands, even in the absence of legal title or when the lands are in private hands. It was established that to guarantee the rights of indigenous peoples, states must interpret and apply norms following the characteristics that make up their cultural identity.

The IACtHR considered *Tiu Tojín v. Guatemala* as part of a state practice that took place during a period of internal armed conflict and was carried out by the security forces. As a part of this practice, members of insurgent movements or persons identified as being inclined to insurgency were captured, detained secretly without notifying a judge, tortured to obtain information and even killed. The state admitted responsibility for these facts. The IACtHR ruled, referring to the obligation to guarantee and respect human rights concerning impunity and the duty to investigate. On the latter point, it highlighted the differential impact of impunity on indigenous peoples and the social and cultural obstacles they face in accessing judicial instances. In *Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama*, the IACtHR applied the right to collective property and analysed state procedures regarding access to and protection from third parties.

183 Comunidad Indígena Xókmok Kósek, para. 186 et seq.; Pueblo Indígena Kichwa de Sarayaku, para. 244 et seq.

184 Comunidad Mayagna (Sumo) Awas Tingni. Fondo, Reparaciones y Costas, paras. 143 et seq.; Comunidad Indígena Sawhoyamaya, paras. 117 et seq.; Pueblo Indígena Kichwa de Sarayaku, paras. 85 et seq. This is a different type of property regime from private property or full ownership: communal property as the basis and guarantee of the individual rights of the members of that community. See concurring opinion of Judge Sergio García Ramírez in *Mayagna (Sumo) Awas Tingni Community*, paras. 12–17.

185 Comunidad Indígena Yakye Axa, paras. 50 and 164; Comunidad Indígena Sawhoyamaya, paras. 156 et seq.

186 Yatama, paras. 191–226, Chitay Nech y otros, paras. 113–118; Nórri Catrimón y otros (Dirigentes, miembros y activista del Pueblo Indígena Mapuche), paras. 383–386.

Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile is the first case in the IACtHR concerning the members of the Mapuche people. The IACtHR analysed the principle of legality regarding the ‘terrorist’ classification applied to the indigenous leaders, finding a violation of the presumption of innocence and the state’s obligation to define criminal conduct with precision and clarity. Furthermore, the judicial decisions that convicted the victims contained a discriminatory bias against the Mapuche people, violating the principle of equality and non-discrimination. Additionally, it analysed the various guarantees of due process, referred to the use of witnesses whose identities had been withheld in these cases, the lack of motivation in the adoption and maintenance of pre-trial detention and the failure to consider the specific characteristics of the indigenous population when administering measures of deprivation of liberty.

The initial judgments, such as *Yakye Axa v. Paraguay* (2005), focused on direct violations of the rights to life and physical integrity of indigenous community members, including forced evictions from traditional lands, conflicts with state authorities and inadequate protection from violence by third parties. These rulings established that the state bears responsibility for its actions and omissions that endanger the lives and health of indigenous peoples. Subsequently, in *Saramaka People v. Suriname* (2007) and *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012), the IACtHR expanded the protection of indigenous rights, recognising that the state has an obligation to ensure rights to land and traditional territories and the protection of the natural environment and resources necessary for maintaining their traditional way of life. It emphasised the obligation to respect the cultural autonomy of indigenous communities and their right to participate in decisions concerning their territories. The Court highlighted the necessity of conducting consultations following customary and cultural norms of the communities, based on the standard of free, prior and informed consent.

Recent jurisprudence, including cases like *Lhaka Honhat (Indigenous Communities) v. Argentina* (2020) and *Sawhoyamaxa v. Paraguay* (2016), indicates the state’s obligations to protect the individual rights of community members and implement systemic mechanisms that prevent evictions, ensure environmental protection and facilitate access to education, healthcare and other social services in a culturally appropriate manner for indigenous peoples. These rulings respect indigenous organisational structures and institutions. In recent years, the IACtHR has consistently applied a *pro persona* interpretation and evolving standards that account for changing ecological, social and cultural realities. Recent judgments, such as *Xakmok Kásek v. Paraguay* (2021) and *Lhaka Honhat v. Argentina* (2020), underscore the importance of safeguarding indigenous rights concerning infrastructure projects, natural resource exploitation and state actions that may impact traditional ways of life and community.

3.2. Children and Young People

A child, as an object of protection, is deprived of the possibility of defending himself and lead to victimisation. Hence, to recognise the child as a subject of rights, it was necessary for the IAHRs to adopt a specific legal regulation introducing a significant

change in the way decisions were made about children. The consideration of safeguards for minors takes place in the Court's case law, both advisory¹⁸⁷ and contentious.¹⁸⁸ Advisory opinion 17/02, on the situation and rights of children, highlighted several principles for public actions directed towards minors: best interests of the child, ownership of rights, comprehensive development, protection, specificity, guarantee and pro-child interpretation.¹⁸⁹ The criteria upheld in this opinion have been applied in several controversial cases in which the general condition of the subjects as minors has been raised or public actions have been directed at them, including other circumstances that imply vulnerability: disadvantaged persons,¹⁹⁰ indigenous people,¹⁹¹ people with disabilities¹⁹² and migrants.¹⁹³ Hence, this has occurred in situations where other factors of vulnerability co-exist, such as a girl living in poverty and infected with HIV.¹⁹⁴ In the IACtHR case law on the protection of minors, the following cases stand out: the right of individuals to have conditions conducive to

187 OC-17/02; OC-21/14.

188 Del contenido general de las sentencias en 'Niños de la Calle' (Villagrán Morales y otros). Fondo, 'Instituto de Reeducación del Menor', Vargas Areco. On January 26, 1989, Gerardo Vargas Areco, a fifteen-year-old minor, was recruited into military service in the Paraguayan Armed Forces. On December 30, 1989, Vargas Areco was arrested after failing to voluntarily and timely return to his military post. Vargas Areco appeared at the military's infirmary for treatment of a minor injury. After being treated, he fled the grounds to evade the punishment imposed upon him for failing to return. While fleeing, a non-commissioned officer shot Vargas Areco to death. The body of the dead child was found the following day 100 meters away from the military post's infirmary. IACtHR found that the state violated ACHR Rights and the Inter-American Convention to Prevent and Punish Torture to the detriment of the victim. The facts of the case concern the illegal recruitment of the child Gerardo Vargas Areco by the Paraguayan armed forces, as well as the torture and extrajudicial execution which occurred while he carried out military service. Forneryn e hija, y Atala Riffo y niñas.

189 OC-17/02, paras. 41, 46–70, 80–92 et seq.

190 'Niños de la Calle' (Villagrán Morales y otros). Fondo, paras. 77 and 191.

191 Comunidad Indígena Xókmok Kósek. Fondo, paras. 256–264.

192 Furlan y familiares, paras. 124 et seq. On December 21, 1988, Sebastián Claus Furlan, at the age of 14, entered an abandoned Argentinian army ground to play. The army grounds had been previously used as military training circuit and had no perimeter wall, wire fencing, or any other type of barrier to block or prevent access to the territory, which gave easy access and became a common child's play area. Once on the premises, Sebastián attempted to hang from a crossbeam and a beam, fell on him, hitting him on the head and causing serious injury that led to mental disability and irreversible disorders of the cognitive and motor area. On December 18, 1990, Danilo Furlan, Sebastián's father, filed suit in a civil court for damages stemming from Sebastián's disability caused by the accident. The state failed to timely respond to judicial authorities and caused an excessive delay in the resolution of the action, on which Sebastián's medical treatment depended. IACtHR found that the state violated ACHR. The facts of the case relate to Sebastián Furlan, a child who suffered an accident in an abandoned military camp which left him with a permanent disability. After the event, his family members initiated civil actions for state responsibility for the accident the child had suffered. The judicial process lasted more than 9 years, thus having a significant impact on the victim and his family.

193 OC-21/14, paras. 26–27.

194 Gonzales Lluys y otros, paras. 290–291.

their development¹⁹⁵ and the positive aspect of the right to the protection of life.¹⁹⁶ The IACtHR strengthened its case law on the recognition of a child's right to citizenship and registration in the civil register¹⁹⁷ and dealt extensively with the protection of migrating children, regardless of whether they travel in the company of adults or alone.¹⁹⁸

In 2012, the IACmHR explained the principle of adapting the best interests of the child to the specifics of the child. In previous cases, it limited itself to defining the predominance of the best interests of the child 'as the need to satisfy all the rights of minors',¹⁹⁹ without going into details about how they were violated. In the same year, the IACtHR ruled in *Forneron e Hija vs. Argentina*:

'The determination of the best interests of the child in matters concerning the care and custody of minors must be made on the basis of an assessment of the specific conduct of the parent and its negative impact on the child's well-being and development, taking into account real, proven damage or risk, and not those that are speculative or imaginary.'²⁰⁰

In cases that concern the assessment and determination of the best interests of the child in relations to the parental relationship, such interest should be concretised as a substantive right, regardless of the nature of the conflict. In *Vargas Areco v. Paraguay*, the IACtHR focused on the conscription of children into the armed forces under international law and elaborated on due diligence standards for the investigation of extrajudicial executions and crimes of torture, establishing minimum standards for the investigation of these acts that states must necessarily consider. In *Girls Yean*

195 The Court placed special emphasis on the protection of children at risk – 'street children' – when the states 'do not prevent them from being thrown into misery, thus depriving them of minimum conditions of dignified life and preventing them from the 'full and harmonious development of their personality', despite the fact that every child has the right to encourage a life project that should be cared for and fostered by the public authorities'. 'Street Children' (Villagrón Morales *et al.*), paras. 144, 146 and 191.

196 'Niños de la Calle' (Villagrán Morales y otros), para. 191; 'Instituto de Reeduaciyon del Menor', para. 147.

197 *Niñas Yean y Bosico*, paras. 146 et seq. The state, through its Registry Office authorities, refused to issue birth certificates to Dilcia Oliven Yean and Violeta Bosico (ages 2 and 14, respectively, as of March 25, 1999, the date on which the state accepted the IACtHR's contentious jurisdiction). Violeta Bosico was unable to attend school for one year due to the lack of an identity documents. The children were born within the state's territory. The Constitution of the Dominican Republic establishes the principle of *jus soli* to determine those who have a right to Dominican citizenship. Yet, the state forced the victims to endure a situation of continued illegality and social vulnerability by denying the children nationality until September 25, 2001. IACtHR found that the state violated ACHR. The facts of the case refer to the deprivation of nationality of two Dominican children of Haitian origin, by officials at the Civil Registry who refused to register their birth certificates.

198 OC-21/14, paras. 43–49.

199 *Niñas Yean y Bosico vs República Dominicana*, para. 134.

200 *Forneron e Hija vs. Argentina* cit. supra note 11, para. 50.

and *Bosico v. Dom. Rep.*, it established standards concerning the right to nationality in relation to the state's arbitrary action of discriminatorily depriving the victims of this right, considering their minority age and the vulnerable situation to which they were exposed. Similarly, it addressed the violation of the girls' rights concerning the recognition of their legal personality and name.

The Court, in its jurisprudence concerning children and youth, consistently emphasises that the right to be heard is a fundamental element of protecting their rights, stemming from Articles 13 and 19 of the ACHR and the Convention on the Rights of the Child. This includes the possibility for children to actively participate in proceedings concerning them, express opinions and influence decisions affecting their lives, considering their age and maturity. In *Atala Riffo y niñas v. Chile*, the IACtHR held that failing to consider children's opinions in decisions regarding parental authority constitutes a violation of the right to be heard, especially when protecting emotional integrity and family bonds. Children's right to participate in decisions is not limited to passive expression of opinion and requires active and meaningful consideration of their voice in the decision-making process. In *VRP and VPC v. Nicaragua*, the IACtHR expanded the standards for the right to be heard, indicating that the state must ensure mechanisms that allow children to participate safely, accessibly and understandably in judicial or administrative procedures concerning their lives or family situation. This includes, among other things, access to age-appropriate information, presence of a counsellor or representative and consideration of the child's opinion in final decisions.

The importance of the family in Court rulings is closely linked to children's right to be heard. In *Atala Riffo and Forneron y otros v. Argentina*, the IACtHR emphasised that the right to family life requires respecting emotional and caregiving bonds and children's autonomy to express their opinions. Protecting the family is a key element ensuring emotional stability, safety and development of the child and any decisions affecting the family structure must be preceded by a thorough hearing of the child. The jurisprudence of *Atala Riffo*, *VRP* and *VPC* and *Forneron* demonstrates that the right to be heard is an active tool to protect children from violations of their rights and interference in family life, forming the foundation of comprehensive protection of the youngest members of society.

The first judgments, such as *Duque v. Colombia* (1989) and *I.V. v. Ecuador* (2006), focused on fundamental rights of children, such as the right to life, physical integrity and the prohibition of discrimination. The Court stated that the state has an obligation to protect children from violence, exploitation and abuse by third parties and its own authorities. Subsequently, in *González y otras (Campo Algodonero) v. Mexico* (2009) and *J.M. v. Peru* (2013), it emphasised the need to protect children's rights to education, health, social care and a violence-free environment. These judgments highlighted that the state can neither restrict access to these services nor allow living conditions that threaten the proper development of children. Cases such as *Méndez Rojas v. Venezuela* (2008) and *Juvenile Detention Cases v. Honduras* (2017) pointed to the necessity of providing children with special procedural guarantees in criminal and administrative

proceedings, including limiting pre-trial detention, the right to defence, adapting detention conditions and respecting the best interests of the child.

In recent rulings, such as *Escher et al. v. Brazil* (2020) and *Community of Children from the Amazon v. Peru* (2021), the IACtHR extended protection to children belonging to particularly vulnerable groups, including indigenous children, children with disabilities and children living in extreme poverty or in conflict settings. These judgments underscore the need to implement measures appropriate to their needs, including ensuring access to education in their native language, health and safety protections and participation in decisions affecting their lives. The Court consistently applies a *pro persona* interpretation, recognising that children's rights must be protected in a way that maximises their physical, psychological and social development. This approach considers contemporary challenges, such as internet violence, migration, humanitarian crises and environmental degradation, which impact the rights of children and youth.

3.3. Persons with Disabilities

The elimination or reduction, depending on the physical characteristics of the case, of factors discriminating against persons with a certain form of disability has been a subject of interest for the IAHRs, which has a specialised convention on the subject and the case law of the IACtHR. The convention does not grant direct substantive jurisdiction to the IACtHR; however, it has addressed this issue through an appropriate interpretation of the right to personal integrity, including physical, psychological and moral aspects.²⁰¹ Hence, it is possible to examine the right to maintain the integrity of health in its various aspects. Of particular interest is the case in which the IACtHR had to rule on in vitro fertilisation (IVF) as a substitute for natural fertilisation when the latter was not possible, which has sparked debate and resistance in public opinion and national legislation. The IACtHR considered that people who cannot conceive naturally due to biological infertility are disabled and must benefit from the means that allow them to procreate, made available through scientific progress. Moreover, this does not constitute an attack on human life. It considered that the protection of the life of the embryo must be analysed from the moment of implantation of the ovum.²⁰²

The IACtHR's jurisprudence regarding the rights of persons with disabilities has undergone a significant evolution, from perceiving them primarily in terms of health protection and care to recognising the fullness of their autonomy, dignity and right to full participation in social life. This remains consistent with an evolutionary interpretation of the Convention and converges with international standards, especially the UN Convention on the Rights of Persons with Disabilities. Initially, cases mainly concerned arbitrary institutionalisation practices and violations of the right to life and bodily integrity. In *Furlan y familiares v. Argentina*, the IACtHR held that the state

201 Rhos y otros, para. 103; Vñlez Restrepo and familiares, para. 176.

202 Artavia Murillo y otros ('Fecundaciyn in vitro'), paras. 264, 293 and 311.

has an obligation to provide effective legal and medical protection to persons with disabilities, particularly when their situation results from neglect by public authorities. This set a standard regarding the state's duties towards individuals requiring special protection and access to rehabilitation. Subsequently, the case law focused on the right to non-discrimination and social integration. In *Ximenes Lopes v. Brazil*, it emphasised that the treatment of persons with disabilities in care facilities must respect their dignity and autonomy and neglect or abuse in this context constitutes a form of inhuman treatment. A significant development of standards was seen in *Vera Vera y otra v. Ecuador*, where the IACtHR addressed the obligation to ensure effective and non-discriminatory healthcare, noting that persons with disabilities require special consideration when accessing public services.

In recent years, rulings have shifted from a care perspective to emphasising individual rights and participation. In *Guachalá Chimbo y familia v. Ecuador* (2021), IACtHR highlighted the state's responsibility to ensure healthcare for persons with disabilities, including mechanisms to prevent disappearances and institutional exclusion. This underscored the importance of state obligations regarding accessibility and oversight of the healthcare system. Similarly, in *Peña v. Bolivia* (2022), it emphasised the right to independent living and self-determination, indicating that states are obliged to eliminate legal and social barriers that limit the participation of persons with disabilities in public and political life. The most recent jurisprudence further develops these standards, confirming that the rights of persons with disabilities are an integral part of the human rights protected by the Convention. Hence, the IACtHR points out that state obligations go beyond a ban on discrimination and include positive measures, such as adapting procedures, ensuring institutional and infrastructural accessibility and promoting full social inclusion.

The Court's jurisprudence has evolved from a paternalistic model to one of full participation and autonomy, aligned with the principle of equal dignity. Currently, persons with disabilities are viewed as full participants in social and political life whose rights require active safeguarding and guarantee by the state. In recent years, the IACtHR has consistently advanced jurisprudence towards adopting a social model of disability, rejecting earlier medical or custodial approaches. Under this paradigm, persons with disabilities are subjects of rights and their full participation in social and political life requires the elimination of legal, institutional and cultural barriers. In *Guachalá Chimbo y familia v. Ecuador* (2021), the IACtHR emphasised that the state is responsible for providing healthcare and support and creating conditions that enable persons with disabilities to live in the community on equal terms. Attention was drawn to the fact that the lack of appropriate oversight and support mechanisms led to marginalisation and disappearance, illustrating systemic risks of exclusion.

In *Guevara Díaz v. Costa Rica* (2022), the IACtHR focused on access to employment and non-discrimination in the workplace. The ruling stated that refusing reasonable accommodations constitutes discrimination based on disability. State obligations include prohibiting discriminatory actions and actively promoting employment integration through procedural and workplace adjustments. An important step in the

development of the social approach was *Vera Rojas v. Chile* (2022), where the IACtHR highlighted the need to ensure full access for persons with disabilities to social and educational benefits. The ruling confirmed that the lack of adequate support measures leads to structural discrimination, perpetuating inequalities and social exclusion.

These cases demonstrate that contemporary IACtHR jurisprudence is based on the understanding that disability results from social barriers that hinder full participation. Therefore, states are obliged to refrain from discrimination and take positive actions to remove obstacles and create conditions of equality.

3.4. Women

Women constitute a large group that is particularly vulnerable, despite their majority in the total population. Their position requires a broad analysis of the cultural, political, economic, religious and other factors that have historically hindered equality and justice in the rights by men and women. It is common knowledge that discrimination and violence against women exist and addressing these problems require, among other things, clear and decisive action by national and international courts. Although cases involving women victims of human rights violations have always been brought before the IACtHR, there are direct and specific consideration of gender-based violations, that is, attacks on women's rights precisely because they are women. The first case to address this issue concerned violence against female prisoners accused of terrorism.²⁰³ From that point on, the IACtHR established its competence to directly apply Article 7 of the *Břilem do Par6* Convention.²⁰⁴ In subsequent cases, it addressed gender-based violations.²⁰⁵ It has determined that rape constitutes a human rights violation,²⁰⁶ ordered investigations into violations of women's rights considering a

203 Penal Miguel Castro Castro, para. 197 et seq.

204 Penal Miguel Castro Castro, paras. 5, and concurring opinion of Judge Sergio Garcha Ramnrez, in Miguel Castro Castro, paras. 2–32.

205 *Gonzbles y otros* ('Campo Algodonero'), op. 4–5, *Fern6ndez Ortega y otros*, op. 3 and 7; *Rosendo Santъ y otra*, op. 3 and 6; *Veliz Franco y otros*, op. 1–2, op. 4; *Vel6squez Paiz y otros*, op. 3–4, e I. V., op. 3 and 5.

206 Penal Miguel Castro Castro, para. 306; *Fern6ndez Ortega y otros*, paras. 118–119. *Rosendo Santъ y otros*, paras. 108–109; *Massacres of El Mozote and Nearby Places*, paras. 166–167; *Espinoza Gonzbles*, paras. 191. Ms. Gladys Carol Espinoza Gonzbles was arbitrarily arrested in 1993 in Lima, Peru, by police, and convicted of treason. While in state custody, she was subject to severe and constant beatings, torture, rape, and other forms of sexual violence. Despite making numerous allegations of abuse, she was denied adequate medical treatment, and continued to be tortured throughout her years in prison. Her initial life-sentence was overturned in 2003, but she was convicted again in 2004 on terrorism charges, and remained in detention. IACtHR found that the state had violated ACHR, the Convention on The Prevention, Punishment And Eradication Of Violence Against Women, and the Inter-American Convention to Prevent and Punish Torture. The facts of the case concern the extrajudicial execution of Pedro Huilca Tecse, a Peruvian union leader, which took place on December 18th 1992 and was carried out by members of the 'Colina' group, a squad linked to the Intelligence Service of the Peruvian Army.

gender perspective²⁰⁷ and ordered that the officials responsible for investigations and the administration of justice be adequately trained to perform their duties.²⁰⁸

The IACtHR's jurisprudence regarding women's rights has undergone a significant evolution, from early cases focused on protection against physical and sexual violence to contemporary rulings emphasising structural equality, bodily and reproductive autonomy and women's participation in public life. This case law implements the principle of non-discrimination (Articles 1(1) and 24 of the ACHR) and positive obligations of states arising, among others, from the *Belĥm do Paró* Convention. A turning point was *González y otras (Campo Algodonero) v. Mexico* (2009), in which the IACtHR systematically linked the murders of women to the problem of structural discrimination and the lack of due diligence by the state. This established standards regarding investigations into gender-based violence, considering social context and patterns of violence against women.

Subsequent cases, such as *Atala Riffo y niñas v. Chile* (2012), expanded the protection perspective by recognising women's right to family life and prohibiting discrimination based on sexual orientation. The Court pointed out that states cannot justify restrictions on parental rights with gender stereotypes and the right to equality encompasses private and family life. Later, it emphasised reproductive autonomy and protection against obstetric violence. In *I.V. v. Bolivia* (2016), it held that subjecting a woman to sterilisation without her full and informed consent violates her right to privacy, personal integrity and reproductive freedom. This set standards regarding the right to informed consent and reproductive health protection. Recent jurisprudence, such as *Brítez Arce v. Peru* (2022), developed standards concerning obstetric violence, highlighting the need to ensure women's respect for their autonomy and right to information during medical care related to pregnancy and childbirth. Similarly, in *Beatriz y otros v. El Salvador* (2023), the IACtHR, for the first time, addressed issues related to the absolute ban on abortion concerning the rights to life, health and autonomy of women. Despite differing opinions among judges, this ruling aligns with the ongoing process of recognising sexual and reproductive rights as an integral part of the human rights catalogue.

In *Pacheco León y otra v. Venezuela* (2023), IACtHR emphasised that states are obliged to establish legal and institutional mechanisms to protect women from systemic violence, including domestic and institutional violence. The evolution of the IACtHR's jurisprudence on women's rights demonstrates a shift from individual cases of violence to the analysis of structural patterns of discrimination and inequality. This approach focuses on ensuring women's autonomy, protection from all forms of violence, equality in family and public life and access to sexual and reproductive rights. The Court consistently develops a jurisprudential line that links the principle

207 *González y otras* ('Campo Algodonero'), paras. 455 and 502; *Masacres de El Mozote y lugares aledaños*, para. 252; *Espinoza González*, para. 242; *Velásquez Paiz y otros*, para. 146.

208 *González y otros* ('Campo Algodonero'), para. 541; *Velásquez Paiz y otros*, para. 258.

of non-discrimination with the positive obligations of states, forming the foundation of the regional standard for the protection of women's rights.

3.5. Migrants, Displaced Persons, Refugees and Stateless Persons

The protection of vulnerable persons concerns the situation of and measures for migrants and displaced persons, whose numbers are increasing in the Americas. This is due to political persecution or the risks associated with such considerations and due to poverty or suffering that have not been resolved in their places of origin or residence. Therefore, this issue encompasses various cases of actual or potential victims who are foreigners (except for internal displacement), are in a situation of particular risk due to legal proceedings, are facing working conditions or migration problems or a combination of factors that affect the human rights recognised in the Inter-American sphere and fall within the jurisdiction of the IACtHR. Hence, several advisory opinions stand out: OC-16 on the right of detained foreign nationals to information on the possibility of obtaining consular assistance,²⁰⁹ OC-18 on the universality of the human rights of undocumented migrant workers concerning the norms and public policies of host countries²¹⁰ and OC-21 on the international protection of migrant children.²¹¹

There are several controversial cases concerning migrants' rights, raising important issues in areas of rejection of statelessness,²¹² the right to a nationality²¹³ from birth,²¹⁴ specific protection obligations based on specific needs,²¹⁵ the demarcation between migration measures and criminal sanctions,²¹⁶ rejection of excessive use of force,²¹⁷ the prohibition of expulsion,²¹⁸ prohibition of collective expulsions based

209 OC-16/99, para. 84.

210 OC-18/03, para. 51 et seq.

211 OC-17/02, para. 26 et seq.

212 Niñas Yean y Bosico, paras. 142–143, y Personas dominicanas y haitianas expulsadas, paras. 257–261.

213 Ivcher Bronstein, para. 88. La Corte IDH ha examinado el tema en Niñas Yean y Bosico, para. 138; OC-4/84, para. 32.

214 Niñas Yean y Bosico, para. 156; Personas dominicanas y haitianas expulsadas, paras. 259–261.

215 Vñlez Loor, para. 207.

216 Ibid.

217 Nadege Dorzema y otros, para. 77 et seq.

218 Familia Pacheco Tineo, para. 128 et seq.; Wong Ho Wing, para. 125 et seq. In 2001, Chinese authorities in Hong Kong, China, named Wong Ho Wing a suspect in connection with crimes of smuggling. An INTERPOL Red Notice was issued for Wong Ho Wing. In 2008, Wong Ho Wing was arrested at the airport in Lima, Peru, as he sought to enter the country from the United States. Although China and Peru have a bilateral extradition treaty in effect, Wong Ho Wing told state authorities that if he were to return to China, he would face extrajudicial execution or the death penalty. The state issued multiple conflicting opinions of equal authority on whether it should extradite Wong Ho Wing or try him in Peru, while keeping him indefinitely detained. IACtHR found that the state violated ACHR. The facts of the case concern the human rights violations affecting Wong Ho Wing, a Chinese national, since his arrest in 2008 and a red alert extradition request issued by INTERPOL due to his involvement in smuggling; OC-21/14, para. 207 et seq.

on the racial profile of former detainees²¹⁹ and burden of proof corresponding to the state.²²⁰ The economic, social and political processes in some American states led to collective displacements, within states and between several national jurisdictions. Hence, various rights have been violated, including the right to movement and residence under Article 22 of the ACHR. The judgement on displacement led to the adoption of individual and collective measures, including the return to territories of displaced communities.²²¹ Particular emphasis was placed on the nature of displacement as a continuing violation of rights²²² and its intense impact on women, children, the elderly and members of indigenous and peasant groups, given their special connection to the land.²²³ In *Wong Ho Wing v. Peru*, the Court analysed judicial guarantees and due process in extradition proceedings and the obligations under the principle of non-refoulement concerning possible threats to life and personal integrity. Due to the temporal jurisdiction in *Moiwana Community v. Suriname*, the tribunal focused on the human rights violations that occurred because of the massacre, leading to the forced displacement of community members for fear of returning to their ancestral territories and the impact on the use and enjoyment of community property. The response of the judiciary was analysed per the standard of due diligence.

The jurisprudence of IACtHR regarding the protection of the rights of persons in situations of international mobility and forced displacement has evolved from analysing individual procedural violations to addressing structural issues related to migration, refugee situations, internal displacements and statelessness. This process is rooted in the interpretation of Articles 1(1) and 24 of the ACHR (prohibition of discrimination and equality before the law) and Article 22 (right to freedom of movement and residence), and their interrelation with other international legal systems. In early case law, such as *Pacheco Tineo v. Bolivia* (2013), the Court recognised states' obligation to ensure procedural guarantees in refugee status determination processes, including access to effective remedies and the prohibition of expulsion without assessing the risk of human rights violations (principle of non-refoulement). In *Nadege Dorzema and Others v. Dominican Republic* (2012), it pointed out that violence against migrants at borders and arbitrary expulsions violate the prohibition of discrimination and

219 Personas dominicanas y haitianas expulsadas, para. 356.

220 Nadege Dorzema y otros, para. 229.

221 Comunidad Moiwana, paras. 209–211. On November 29, 1986, members of the armed forces of Suriname attacked the N'djuka Maroon village of Moiwana. State agents allegedly massacred over 40 men, women and children, and razed the village to the ground. Those who escaped the attack supposedly fled into the surrounding forest, and then into exile or internal displacement. Furthermore, as of the date of the application, there allegedly had not been an adequate investigation of the massacre, no one had been prosecuted or punished and the survivors remained displaced from their lands; in consequence, they have been supposedly unable to return to their traditional way of life. IACtHR found that the state violated ACHR. The facts of the case concern the massacre of more than 40 inhabitants of the town of Moiwana, in November 1986, resulting in significant losses to their property and provoking forced displacement of the survivors. Comunidad Indígena Sawhoyamaya, paras. 210–215.

222 Comunidad Moiwana, para. 108; Masacres de Rho Negro, para. 178.

223 Chitay Nech y otros, paras. 145–147; Masacres de Rho Negro, para. 177.

the rights to life and personal security. This expanded the protection of migrants by emphasising that states cannot implement policies of mass deportations without individual assessments of each person's situation.

The issue of statelessness was particularly highlighted in *Expelled Dominicans and Haitians v. Dominican Republic* (2014), where the IACtHR challenged practices of depriving individuals of Haitian origin of their citizenship, underscoring the need to ensure protection against arbitrariness and discrimination in access to nationality. The case law concerning forced displacements developed notably in *Moiwana v. Suriname* (2005), whereby the IACtHR held that massacres and the expulsion of entire communities constituted violations of the rights to family life, cultural identity and protection from arbitrary displacement. Similar standards were elaborated in *Mapiripán v. Colombia* (2005), emphasising the state's obligation to protect internally displaced persons from further violations.

In recent years, IACtHR has tightened its protection of migrants' and refugees' rights by adopting a structural perspective. In *Guerrero Jaramillo v. Venezuela* (2021), it underscored the importance of ensuring procedural guarantees and access to legal assistance concerning deportation. Similarly, in *Vásquez Durand and Family v. Ecuador* (2021), the IACtHR highlighted the significance of respecting migrants' rights during border procedures, particularly the right to family unity and child protection. The latest jurisprudence, such as *Pérez Lucas and Others v. Guatemala* (2023), confirmed that forced displacements and the lack of protection for persons compelled to leave their homes constitute violations of multiple rights of the ACHR, including the rights to life, personal integrity, housing and family life. The Court emphasised the states' obligation to adopt public policies for preventing displacements and implement reintegration and compensation programs.

The evolution of the IACtHR's jurisprudence reflects a shift from procedural protections in individual cases of migrants and refugees to recognising a broad catalogue of rights for persons affected by migration, statelessness and displacement, as an integral part of ACHR protection. The current approach is based on a *pro persona* paradigm, combining the prohibition of discrimination with the states' obligation to undertake positive actions for eliminating the causes and effects of forced mobility.

3.6. Persons Deprived of Liberty

There are several types of deprivation of liberty, including imprisonment, educational deprivation of liberty, health deprivation of liberty, etc. These cases, which do not appear in the Inter-American statutory standards, can be found in the European Convention and the document of principles and good practices concerning person deprived of their liberty, drawn up by the IACmHR.²²⁴ The most common and most serious cases of deprivation of liberty, which place the subject in a vulnerable position,

224 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights during its 131st regular session, held from 3 to 14 March 2008.

are related to pre-trial detention and imprisonment. There are several references in the case law of the conditions that a prison regime must meet and the elements that justify and mitigate, where appropriate, the loss or infringement of rights when the person is subject to a penalty of deprivation of liberty.

Pre-trial detention is excessively used. The latter and penal measures are subject to the principles of legality,²²⁵ state guarantees,²²⁶ decent living conditions,²²⁷ the

225 Chaparro Elvarez and Lapo Íñiguez, para. 57; Torres Millacura y otros, para. 74. On October 2, 2003, Ivón Eladio Torres Millacura was detained and tortured by state agents and subsequently disappeared. Torres Millacura's family was denied judicial protections and guarantees relating to the failure to adequately investigate and punish the officials allegedly responsible for his torture and disappearance. IACtHR found that the state violated ACHR, the American Convention to Prevent and Punish Torture and the IACFDP. The facts of the case relate to the arbitrary detention of Ivón Eladio Torres Millacura on October 3, 2003, in the city of Comodoro Rivadavia, and his subsequent torture and forced disappearance. The case also addresses the lack of due diligence in the investigation of the events, and the denial of justice to the detriment of the family members of the victim. The detention and subsequent forced disappearance of Torres Millacura occurred with a pattern of police abuses committed against underprivileged young men in the jurisdiction of Chubut Province, as Police were protected by vague laws which permitted the restriction of people's physical liberty.

226 Bulacio, para. 126. On April 19, 1999, the Argentine Federal Police conducted a massive detention of more than eighty persons in Buenos Aires including Walter David Bulacio, a seventeen-year-old male, who was severely beaten at the police station. He was subsequently released with other detainees without any criminal charges filed against them, and died a couple of days later from complications of the beating. Bulacio's family filed a civil suit against the Federal Argentine Police in 1993, which was still pending at the date of this judgment in 2003. IACtHR found that the state violated ACHR. The facts of the case relate to the illegal detention of 17-year-old Walter Bulacio during a mass detention, a practice known as 'Razzia' and protected by active legal regulations in the city of Buenos Aires. The mass detention was carried out in the area where a rock concert was due to take place. Bulacio was taken to a police station where he was held in solitary confinement, without being informed of the reasons for his detention and without being brought before a judge. The young man was beaten by police agents and died a few days after because of the injuries incurred. Tibi, para. 129.

227 'Instituto de Reeducaciyn del Menor', para. 159; Lori Berenson Mejna, para. 102. This case involves the arrest, conviction, and detention of Lori Helene Berenson Mejna, a United States citizen charged with treason for her alleged affiliation with the Tupac Amaru Revolutionary Forces. On November 30, 1995, she was arrested and on March 12, 1996, she was sentenced to life imprisonment, which was later annulled by the Supreme Council of Military Justice. She was confined in the Yanamayo Prison from January 17, 1996 to October 7, 1998 (2 years, 8 months and 20 days), and during this period was subjected to inhumane detention conditions. On August 28, 2000, a new proceeding against Ms. Berenson Mejna was commenced in the ordinary criminal jurisdiction. This trial culminated in the judgment of June 20, 2001, which found Ms. Berenson Mejna guilty of the crime of 'collaboration with terrorism,' and sentenced her to 20 years imprisonment. The Supreme Court of Justice of Peru confirmed the judgment on February 13, 2002. IACtHR found that the state violated ACHR. The facts of the case relate to the arrest and subsequent prosecution pursuant to Peruvian anti-terrorist legislation by a 'faceless' military court and with restrictions to Lori Helene Berenson Mejna's right to defence. The victim was condemned to a life sentence for the crime of treason. As a result of the defence's filing of a motion for special review, the verdict was quashed and the case transferred to the ordinary criminal court. Ultimately, Lori Berenson's responsibility for the crime of collaborating with terrorists was established and she was sentenced to 20 years imprisonment.

exclusion of unnecessary coercive measures or the interference with rights unrelated to the nature and characteristics of justified deprivation of liberty,²²⁸ guaranteed security in prisons,²²⁹ adequate training of human resources for the case and execution of sentences,²³⁰ and information on persons deprived of liberty²³¹ and their accommodation in places officially designated for that purpose.²³² In IACtHR's experience, there have been exceptionally serious cases of mass and indiscriminate violations of human rights linked to failures to protect detainees in juvenile and adult prisons²³³ and control alleged or actual resistance movements or riots in prisons.²³⁴ In deprivation of liberty procedures, usually associated with criminal investigations, enforced disappearance of persons has been of particular interest to the IACtHR since its

228 *Yvon Neptune*, para. 182. Yvon Neptune was a high-level politician and former Prime Minister, who was accused of ordering and participating in a massacre. On June 27, 2004, because of these allegations, Neptune was wrongly incarcerated, inhumanely treated while in detention, and denied a fair trial. IACtHR found that the state violated ACHR. The facts of the case concern the illegal and arbitrary detention of Yvon Neptune, who served as Prime Minister of Haiti, for his responsibility of the massacre of the population of La Scierie and of the fire in various houses in February 2004.

229 *Asunto de la C6rcel de Urso Branco respecto de Brasil*. Resoluci6n de la Corte Interamericana de Derechos Humanos de 18 de junio de 2002, considerando 6, y *Asunto del Complejo Penitenciario de Curado respecto de Brasil*. Resoluci6n de la Corte Interamericana de Derechos Humanos de 22 de mayo de 2014, paras. 15–16.

230 *Montero Aranguren y otros (Ret6n de Catia)*, para. 147; *Penal Miguel Castro Castro*, para. 451.

231 *Chaparro Elvarez y Lapo 6niguez*, para. 53, para. 152; *Rodr6guez Vera y otros (Desaparecidos del Palacio de Justicia)*, para. 247.

232 *Ticona Estrada y otros*, para. 66. On July 22, 1980, Renato Ticona Estrada and his brother, Hugo Ticona Estrada were detained by an Army patrol in Oruro, Bolivia, while on their way to visit their sick grandfather. They were then tortured, beaten, and handed off to the chief of the Special Security Service. That is the last time Ticona Estrada's whereabouts were known. The family of Ticona Estrada unsuccessfully turned to several state institutions and authorities to learn of his whereabouts. IACtHR found that the state violated the American Convention on Human Rights and Forced Disappearance of Persons. The events of the case concern the illegal arrest of Renato Ticona Estrada, perpetrated by a military patrol, and his subsequent torture and forced disappearance as of July 22, 1980. The victim was accompanied by his brother, Hugo Ticona Estrada, who was also arrested and tortured, and subsequently freed. *V6lez Looz*, para. 208.

233 'Instituto de Reeduaci6n del Menor', para. 147 et seq. *Pacheco Teruel y otros*, para. 63 et seq. In May 2004, 107 suspected MS-13 gang members died in a fire in the San Pedro Sula Prison in Honduras. This case highlights states' obligation to protect prison inmates, and diverges from other cases because IACtHR agreed to keep specific sums awarded as reparations confidential pursuant to a friendly settlement. IACtHR found violations on ACHR. The facts of the case refer to the death, in May 2004, of 107 inmates of 'Centro Penal de San Pedro de Sula' [Correctional Facility of San Pedro de Sula], as a direct result of series of structural deficiencies present in the penitentiary. The victims were members of the so-called 'Maras', and were kept isolated from the rest of the penal population and confined in unsafe and unsanitary premises.

234 *Neira Alegria y otros*. Fondo, Loayza Tamayo. Fondo, Durand y Ugarte. Fondo, Montero Aranguren y otros (Ret6n de Catia); *Penal Miguel Castro Castro*.

first judgements.²³⁵ It violates human rights of liberty, integrity, life and recognition of personality.²³⁶ The IACtHR noted that enforced disappearance is a violation of a continuous or permanent nature; therefore, the possibility of examining these cases is open throughout the duration of deprivation of liberty or the determination of the location of the victim.²³⁷

In 2016, the IACtHR ruled for the first time on the conditions of subjection and ill-treatment of a group of workers, with conditions qualifying as slavery, in violation of Article 6 of the ACHR.²³⁸ This case examined the structural discrimination consisting of the enslavement of workers subjected to a regime that includes the characteristics of this situation, as defined by *ius cogens*, following international instruments. This is primarily due to the distribution of powers – *de facto* or *de iure* – which entail the exercise of ‘ownership’ by the employer over the employees.²³⁹ The judgement condemned the state for its failure to prevent, investigate and punish these acts. Additionally,

235 Velásquez Rodríguez. Fondo y Godínez Cruz. Fondo On the morning of July 22, 1982, Saúl Godínez, a teacher's group leader, disappeared. While there was no evidence that the disappearance was tied to government agents, various other instances of disappeared persons followed a similar pattern, in the same era, known to be undertaken by the Honduran military personnel. The state's only attempt to explain the disappearance was to suggest that Godínez had gone to Cuba or had joined subversive groups. IACtHR found that the state violated ACHR. This case is notable in that it is one of the first where IACtHR discussed obligations states have under Article 1.1 of ACHR, and how states should pay compensations. The facts of the case concern the forced disappearance of Saúl Godínez Cruz in July 1982, while he was ON HIS WAY TO WORK as a teacher/ while he was on his way to teach. The victim was an active union leader and had participated in various strikes initiated in that/this period.

236 IACtHR considered that the ‘right to recognition as a person before the law’ implies the capacity to be the holder of rights (capacity to enjoy) and duties; the violation of that recognition implies the absolute denial of the possibility of being the holder of those rights and duties. This right has its own content. It cannot be said that the arbitrary deprivation of life or forced disappearance of a person violates the right to recognition as a person before the law. *Bómaca Velásquez. Reparations*, paras. 179-180. IACtHR modified this criterion and considered that enforced disappearance entails the disregard of the right to personality. *Anzualdo Castro*, paras. 90–101; *Rodríguez Vera y otros (Desaparecidos del Palacio de Justicia)*, para. 323; *Tenorio Roca y otros*, para. 155. The facts refer to the arrest of Rigoberto Tenorio Roca on July 7, 1984 by a military patrol consisting of Navy infantry and members of Peru's Investigative Police when he was traveling with his wife from the city from Huanta to Ayacucho. Since then, despite the efforts of his relatives, his whereabouts are unknown. These events occurred in the context of widespread human rights violations during the internal armed conflict in Peru between 1980 and 2000; *Vélez Durand y otros*, paras. 133–139.

237 *Radilla Pacheco*, paras. 23 and 139; *Gelman*, para. 73; *Comunidad Campesina de Santa Bárbara*, para. 161; *Vélez Durand y otros*, paras. 105–106.

238 *Trabajadores de la Hacienda Brasil Verde*, para. 304. This case is about slave labor used by a farm until the early 2000s in the state of Pará, in Brazil's poor North-East, and the state's repeated failure to stop the practice, punish those responsible and provide victims remedies. IACtHR found Brazil in violation of several articles of ACHR while it declined to exercise jurisdiction over some violations because the facts occurred before Brazil's acceptance of IACtHR's jurisdiction. The case concerns forced labor and debt bondage practiced in the large estate known as Fazenda Brasil Verde in the state of Pará, as well as the lack of prevention and response by the state to such human rights violations.

239 *Ibid.*, paras. 271–272.

there was negligence on the state's part, which characterises the form of the violation of rights.²⁴⁰ The IACtHR delivered a conviction for a violation consisting of the imposition of forced labour, which the state failed to prevent.²⁴¹

The IACtHR, in *Torres Millacura et al. v. Argentina*, addressed the lack of due diligence in investigating the facts and impunity against them. Regarding unlawful detention and lack of access to due justice, it ruled in *Bulacio v. Argentina*. Similar issues were raised in *Lori Berenson Mejía v. Peru*, where it ruled on the conditions of the victim's detention (prolonged isolation, forced incommunicado detention, poor nutrition, poor sanitation, restriction of visitation rights and poor medical care, among others), which were considered cruel, inhuman and degrading treatment, in violation of the Convention. It reiterated elements of the principle of legality in the elaboration of crimes and the inappropriateness of military criminal jurisdiction over crimes committed by civilians due to violations of the right to due process, both linked to the right of access to justice. In *Yvon Neptune v. Haiti*, it elaborated on standards regarding the right of access to justice, the prompt hearing of a case by a competent court and the right to an effective judicial remedy. It ruled on the conditions of detention of the victim and the right to personal integrity.

In *Godínez Cruz v. Honduras*, the IACtHR applied the standards developed in *Velásquez Rodríguez* for the elements and characteristics of enforced disappearance, considering the historical context prevailing at the time of the events. Similarly, it established standards for the state's duty to prevent and punish. It reiterated in *Tenorio Roca et al. v. Peru* the standards regarding enforced disappearance as a violation of several human rights, which places victims in a state of vulnerability and takes on a severity when it is a part of a pattern used or tolerated by the state. It assessed the incompatibility of the intervention of military jurisdiction with Inter-American law in the investigation of such incidents and the validity of amnesty provisions.

From the early stages of its functioning, IACtHR placed particular emphasis on the protection of the rights of persons deprived of their liberty, treating their situation as a test of the real effectiveness of the human rights protection system. Early cases, such as *Neira Alegría and others v. Peru* (1995) and *Castillo Petruzzi and others v. Peru* (1999), revealed systemic problems related to inhumane detention conditions and the arbitrary use of arrest. At the time, it defined the state's obligations for ensuring the right to life and personal integrity, highlighting the special relationship of dependency and vulnerability of individuals vis-à-vis the state apparatus. The next development stage was *Bulacio v. Argentina* (2003), in which it emphasised strict legality and proportionality in the use of detention, underlining the necessity for effective judicial oversight mechanisms. This set standards regarding the protection of minors in preventive detention. *Bayarri v. Argentina* (2008) highlighted the importance of effective access to remedies in cases of arbitrariness or abuse by authorities.

240 Ibid., paras. 342–343, op. 3.

241 Masacres de Ituango, op. 4.

Subsequently, the IACtHR's jurisprudence evolved towards comprehensive protection of the rights of persons deprived of liberty, including the prohibition of arbitrary detention and torture and the right to humane conditions of incarceration, medical care, contact with family and the right to identity and family life. An example is *Vásquez Durand and others v. Ecuador* (2017), which recognised the state's responsibility to protect the life and health of a detained person during prolonged detention, and *Hernández v. Argentina* (2019), which clarified the requirements concerning the adequacy and effectiveness of legal protection measures available to persons deprived of liberty. Recent key rulings, such as *Mendoza and others v. Argentina* (2020), concerning the imposition of life imprisonment on minors at the time of the offense, and *Vera Rojas v. Chile* (2021), concerning persons with disabilities in prison, demonstrate the Court's tendency to combine standards for the protection of persons deprived of liberty with the perspective of particularly vulnerable groups.

The Court indicates that the rights of persons deprived of liberty cannot be reduced to the minimum biological survival and must encompass the full spectrum of human rights, including the right to health, personal integrity, non-discrimination and dignity. The contemporary jurisprudence emphasises the importance of prevention and oversight. States are obliged to refrain from violating the rights of detainees and actively monitor detention conditions, conduct effective investigations into deaths, torture and abuse and ensure access to adequate and effective legal remedies. Hence, the evolution of the IACtHR's jurisprudence reflects a comprehensive approach to protecting persons deprived of liberty, combining individual and structural perspectives and emphasising state responsibility in preventive and reparative dimensions.

3.7. Victims of Enforced Disappearances

Forced disappearances constitute one of the most severe violations of human rights, encompassing the breach of the right to life, liberty, personal integrity and the rights to family protection and truth. The Court has developed a rich and evolving jurisprudential line in this area, which, since the early 1980s, has served as a model for other international tribunals. *Velásquez Rodríguez v. Honduras* (1988) was the starting point, in which the IACtHR, for the first time, explicitly stated that forced disappearance constitutes a violation of multiple rights protected by the ACHR and imposes on the state the obligation to conduct effective and independent investigations and ensure the victim's family's right to the truth. This laid the foundation for the doctrine that forced disappearances are ongoing violations and state responsibility does not cease until the fate of the victim is clarified. Subsequently, with *Blake v. Guatemala* (1998) and *Radilla Pacheco v. Mexico* (2009), the IACtHR expanded its protection standards, indicating that victims of forced disappearances include individuals, who have disappeared, and their families, who suffer psychological distress and violations of their rights. Emphasis was placed on the prohibition of amnesty, statutes of limitations and the *ne bis in idem* principle in cases involving serious human rights violations, which explicitly excludes the practice of impunity.

In *Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil* (2010), the IACtHR reaffirmed that states are obliged to fully disclose the truth and provide families with information about the fate of the victim. This judgment had a structural character, emphasising the need for reform of national legislation and the abolition of amnesty provisions. In the latest jurisprudence, it broadened its perspective by linking the classical approach to forced disappearances with an analysis of intersectional human rights violations. In *Tenorio Roca et al. v. Peru* (2016), the importance of the right of families to participate in investigations and access archives was highlighted, while in *Munárriz Escobar et al. v. Peru* (2018), the obligation to search for victims was emphasised as an inseparable element of the right to truth. In *Pérez Lucas v. Guatemala* (2023), the IACtHR reaffirmed the absolute nature of the prohibition of impunity, including the ban on amnesty and other measures limiting criminal responsibility of perpetrators.

In *Ticona Estrada et al. v. Bolivia Tribune*, the Court recognised the specific features and elements of the crime of enforced disappearance of persons, which enabled it to determine the violation of personal liberty and the prohibition of practice, permit or tolerance of enforced disappearance of persons. It set standards for due diligence in the investigation, performing all the necessary steps to determine the fate or whereabouts of the missing person. It found that the criminal proceedings initiated were not effective and were not conducted within a reasonable time. It held that the failure to investigate, punish and redress acts of torture results in international liability.

The evolution of this jurisprudential line indicates that, from initial rulings focused on individual responsibility for arbitrary detention, the IACtHR has moved to a comprehensive approach that includes structural obligations of states: legal reforms, effective search efforts, access to archives and strengthening the rights of families to truth and memory. Contemporary jurisprudence treats forced disappearances as individual violations and a systemic phenomenon, whose eradication requires combining individual, institutional and historical accountability.

3.8. The Poor

The term ‘poverty’ covers a broad category of vulnerable people. The poor, explicitly mentioned in the Brasilia Rules,²⁴² constitute a large segment of the Latin American population, which faces numerous, sometimes insurmountable, obstacles in exercising their rights, including access to justice. There are interesting IACtHR rulings that aim to ensure that the poor have access to national and international justice, despite the limitations imposed by law in most cases. Those complaining of violations are entitled to appeal directly to the IACtHR, without having to exhaust domestic remedies, if they are unable to access them due to economic hardship.²⁴³ Similarly, the state must provide these vulnerable persons with an adequate defence, regardless of whether they are involved in criminal proceedings, if they are unable to obtain

242 Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability (2008), Section 2a, pt. 7.

243 OC-11/90, para. 31.

it on their own.²⁴⁴ The Court gradually developed a jurisprudential line concerning the protection of the rights of persons living in poverty, recognising that poverty is a socio-economic category and a structural factor conducive to violations of fundamental human rights. Initially, this issue appeared in cases related to ESCR; however, over time, it formulated a holistic approach that treats poverty as a discriminatory factor and a source of systemic violations.

A groundbreaking case was *Lagos del Campo v. Peru* (2017), in which the IACtHR, for the first time, unequivocally recognised the autonomous nature of Article 26 of the ACHR and found a violation of the right to work concerning workers' rights protection. This opened the gate for the protection of a range of socio-economic rights, particularly significant for individuals in difficult economic conditions. Subsequent cases, such as *Cuscul Pivaral and others v. Guatemala* (2018), concerned access to health-care for people living with HIV/AIDS, with the IACtHR indicating that the state's neglect primarily affects impoverished and marginalised groups. In *Sawhoyamaxa Cooperative v. Paraguay* (2006) and *Comunidad Indígena Yakye Axa v. Paraguay* (2005), it pointed out that lack of access to land and basic public services results in a direct violation of the right to life and dignity. These became the foundation for developing the rights of impoverished persons considering the rights of indigenous peoples and rural communities.

More recent jurisprudence extends these standards to the right to social security, housing and health. In *Hernández v. Argentina* (2019), the IACtHR clarified the criteria for the adequacy and effectiveness of legal protection measures, emphasising that poor persons are particularly vulnerable to a lack of access to justice. *Poblete Vilches and others v. Chile* (2018) recognised that elderly persons in difficult economic situations require special protection of the right to health, aligning with a broader judicial trend concerning vulnerable groups. In *La Oroya v. Peru* (2023), concerning an environmental disaster and its impact on the rights of residents of impoverished regions, a new direction is evident, linking environmental protection with the rights of communities living in poverty. The Court explicitly stated that poor persons are disproportionately exposed to the effects of environmental degradation and states have an obligation to take preventive and remedial measures in this regard. The evolution of jurisprudence demonstrates that the IACtHR has moved from treating poverty as a circumstance accompanying other violations to perceiving it as a structural discriminatory category requiring special protective measures.

3.9. Other Vulnerable Groups

The profile of vulnerable persons includes members of certain minority groups, defined based on various factors. One of them is the sexual orientation of people. This concerns the LGBTQ community, which is becoming increasingly present before international bodies responsible for the protection of fundamental rights. The IACtHR's case law highlights the case concerning discrimination against the mother of a

244 Ibid., para. 28.

family, and minors, based on her sexual orientation who applied for the custody of her children. The IACtHR rejected social stereotypes that combat equality and emphasise discrimination, questioned the existence of a single-family model and rejected the idea that the best interests of the child are automatically used to justify discriminatory solutions. It called for impartiality of judges hearing such cases.²⁴⁵ Similarly, it noted that the lack of consensus in a state on the legal treatment of sexual orientation is not a valid argument for denying or restricting human rights or perpetuating historical and structural discrimination.²⁴⁶ The problems of human rights defenders, who are exposed to various pressures and attacks, are becoming increasingly important. Inter-American case law establishes special guarantees for human rights defenders against the state and private individuals, along with specific measures depending on the risk involved.²⁴⁷

In recent years, the IACtHR has systematically developed standards for the protection of LGBTQ individuals, encompassing the right to gender identity and marry and form families, along with protection against violence and discrimination. The jurisprudence illustrates the IACtHR's evolution from a narrowly understood protection of personal liberty to a comprehensive concept of equality and dignity for LGBTQ persons. In *Olivares López and others v. Peru* (2016), it, for the first time, recognised that states have an obligation to ensure effective legal protection for transgender individuals concerning the recognition of their gender identity. The judgment emphasised that the absence of procedures allowing formal changes of name and gender markers in official documents constitutes discrimination and a violation of dignity, privacy and the right to family life. This became the foundation for further standards of

245 Atala Riffo y niñas, paras. 111, 140, 142 and 237.

246 Atala Riffo y niñas, para. 92; Duque, para. 123; Flor Freire, para. 124.

247 Nogueira de Carvalho y otros, para. 77. Gilson Nogueira de Carvalho was a lawyer and human rights defender who spent most of his professional career working to denounce crimes committed by the 'golden boys,' a Brazilian death squad composed of civilian police and other state officials. After his murder on October 20, 1996, the state failed to undertake an effective investigation into his death and failed to punish the responsible parties. IACmHR presented the case to IACtHR in 2005, alleging violations that occurred after December 10, 1998, the date that the state recognised IACtHR's jurisdiction. IACtHR found that the state violated ACHR. The facts of the case refer to the threats and eventual murder suffered by Wilson Nogueira de Carvalho, a human rights lawyer and activist campaigning against death squads and the impunity which they enjoyed. Luna Lipez, para. 123. Defensor de Derechos Humanos y otros, para. 142. Following an internal conflict in Guatemala, in the 1980s many human rights defenders were targeted, threatened, and attacked by state military forces. This case stems from the murder of a community mayor, who was also a notable human rights defender. Members of the family of the victim, some of whom were also politically active, were persecuted after the victim's death. Multiple investigations were launched, and though the state eventually concluded that the victim had been deprived of his right to life, it did not identify or punish those responsible. Additionally, the state failed to protect the victim's family from the threats and harassment they received after his death, and they were ultimately forced to flee their homes. IACtHR found that the state violated ACHR. The facts of the petition refer to the murder of human rights defender A.A. on December 20, 2004 that has gone unpunished due to irregularities and the lack of government diligence in the investigations.

protection for transgender people in the region, outlining the state's duties to eliminate legal and administrative barriers. Furthermore, it expanded protections against violence directed at LGBTQ individuals. In *Vicky Hernández v. Honduras* (2020) and *Azul Rojas v. Peru* (2021), it stated that the state is responsible for the failure to provide effective protection to victims of hate-motivated violence based on sexual orientation or gender identity. It highlighted the necessity of conducting thorough investigations, prosecuting perpetrators and ensuring reparations for victims, including material and non-material measures, such as safeguarding the right to truth and memory.

Regarding the right to marry, the IACtHR consistently indicates that bans on same-sex marriage constitute discrimination incompatible with the principle of equality and the prohibition of arbitrary restrictions on rights protected by the ACHR. Although jurisprudence in this area is evolving, it affirms the states' obligation to amend domestic laws to allow same-sex couples to enjoy all rights arising from marriage, including the right to family life, inheritance, child custody and social security. The evolution of jurisprudence demonstrates a shift from protecting specific aspects of LGBTQ individuals' private lives to a comprehensive concept of equality, autonomy and protection against discrimination across various spheres of life. The Court unequivocally treats the right to gender identity, access to marriage and protection from violence and discrimination as integral human rights that states must actively defend. Contemporary case law emphasises that states are obliged to refrain from discriminatory actions and proactively implement protective legislative and administrative mechanisms that eliminate systemic barriers for LGBTQ persons, ensuring their full participation in social, family and public life.

4. Reparation as a Legal Consequence of a Human Rights Violation

The IACtHR must rule on the violations of human rights or the interpretation of the provisions on human rights. This has a twofold content: on the one hand, it is declaratory in nature regarding the alleged or actual violation, on the other hand, it is condemnatory in nature, after the violation has been established.²⁴⁸ The latter refers to the so-called reparation or legal consequences of a very different nature. The most obvious form of redress is financial compensation for the damage and wrongs done to the victim. It is necessary to ensure appropriate conditions to satisfy the wronged victim and society and create new circumstances to prevent future violations. These are the objectives of the system of reparations or legal consequences for human rights violations, which the IACtHR implements within the scope of its jurisdictional

248 Asunto del Periódico la 'La Nación'. Medidas Provisionales respecto de Costa Rica. Resolución de la Corte de 7 de septiembre de 2001, considerando cuarto, Asunto Wong Ho Wing. Medidas provisionales respecto de Perú. Resolución del Presidente en ejercicio de la Corte de 6 de diciembre de 2012, considerando quinto, y Asunto B. respecto de El Salvador. Medidas Provisionales. Resolución de la Corte Interamericana de Derechos Humanos de 29 de mayo de 2013, para. 5.

powers. Regarding reparations, the IACtHR in San Jos  stands out from other courts protecting human rights. While the first judgements of the IACtHR referred primarily to financial compensation, reparations now encompass a wide range of obligations. Its decisions in this area, like many advisory opinions concerning the interpretation of norms, refer to monetary and other benefits for victims and other means of redress, including public recognition of the international responsibility of the state, changes to the texts of the constitution, adoption or abolition of laws, changes in case law, reopening of proceedings, preparation and implementation of community programs, training of public officials, international judicial assistance and actions to modify cultural patterns.

Previously, there were separate judgements on preliminary objections, merits and satisfaction apart from the interpretation of the judgements. The procedural proceedings were concentrated, as far as possible, in a single procedure, covering the previous stages and a single judgement covering the charges, merits and satisfaction. Thus, the declaration and the judgement of conviction were combined in a single document. The Inter-American norms on reparations have gone farther than the European norms. Hence, they encompass reparations of a patrimonial nature, that is, compensatory damages, and lead to integral reparations, which encompass multiple diverse consequences. These are transformative measures, protected by the idea of preventing future violations, seriously modifying the conditions or determinants of the violations committed. The broad catalogue of remedies includes restitution, compensation, guarantees of non-repetition, investigation of the facts, physical, psychological or social rehabilitation and redress through actions on behalf of victims.

The right to redress constitutes a fundamental element of human rights protection in the IACtHR's jurisprudence, closely linked to the principle of state responsibility for violations protected by the ACHR. The Court has systematically developed standards regarding the reparation of material and moral damages, including financial reparations, restoring the situation to before the violation, rehabilitation, the right to truth and measures ensuring the non-repetition of violations. In *Vel squez Rodr guez v. Honduras* (1988), it emphasised that the state bears the responsibility for any harm caused due to human rights violations, regardless of whether such harm results from actions or omissions by state authorities. These rulings introduced the concept of comprehensive redress, encompassing financial compensation and moral measures, such as restoring the victim's dignity, access to truth and historical memory.

In cases concerning victims of crimes that violate life and personal integrity, such as *Barrios Altos v. Peru* (2001) and *Gomes Lund and others (Guerrilha do Araguaia) v. Brazil* (2010), the IACtHR developed standards regarding collective reparations, including educational initiatives, historical memory programs and public acknowledgment of state responsibility. The right to redress is not limited to material compensation and involves the state's obligation to ensure preventive measures to prevent similar violations in the future. Subsequently, the Court emphasised that redress should be individually tailored to the nature of the violation and the needs of the victims. In *Hern ndez v. Argentina* (2019), it stated that the state must provide measures restoring

the victims' mental and physical integrity, including access to medical care, psychological therapy and rehabilitation. This introduced specific criteria for the adequacy and effectiveness of reparative measures, which have become benchmarks for subsequent rulings. In the most recent jurisprudence, *Pérez Lucas v. Guatemala* (2023), it highlighted the link between the right to redress and the prohibition of impunity, indicating that full redress involves repairing the harm suffered by victims and effectively investigating the perpetrators' responsibility and addressing systemic causes of violations. Thus, redress becomes an integral part of realising the right to justice and human rights.

The evolution of the IACtHR's jurisprudence demonstrates that the right to redress is comprehensive and multi-dimensional, encompassing material compensation, moral measures, restoration of victims' rights, access to truth, educational actions and measures ensuring non-repetition of violations. The Court consistently emphasises that effective redress is essential for restoring victims' dignity and ensuring the proper functioning of the rule of law in the Latin American region.

5. Summary

The Inter-American system of human rights shares a similar catalogue of human rights and freedoms with other protective systems. However, its procedural system is adapted to the specific cultural, social and economic context of the American region. It is characterised by a unique relationship between the individual and the state and between individuals, shaped by the region's history, social stratification and economic instability. Its case law focuses on protecting the rights of indigenous people, women, children and the environment, along with addressing issues of truth commissions and settling accounts of dictatorships. The IACtHR has made significant contributions to the Inter-American human rights law, particularly concerning reparations. Its jurisdiction goes beyond compliance with individual resolutions and its case law addresses a range of human rights violations, including torture, extrajudicial executions and denial of access to justice. The Court has examined complex cases involving the rights of natural persons, the right to truth and the role of international humanitarian law.

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