

CHAPTER IV DEVELOPMENT OF HUMAN RIGHTS IN THE REGION

INTRODUCTION

1. The Inter-American Commission on Human Rights continues its practice of including a Chapter in its Annual Report to the General Assembly of the Organization of American States on the situation of human rights in the member States of the Organization, based on its competence from the OAS Charter, the American Convention on Human Rights, the Statute and the Commission's Rules.

2. Preparing reports on the situation of human rights in the countries of the region has been one of the main tools of the Commission's work since its mandate began. Those reports were prepared since the beginning of the Commission's work. Since its first Annual Report to the OAS General Assembly in 1969, the IACHR provided information and observations on specific countries.¹ Beginning in 1977, the Commission started to publish this information systematically, using different titles, chapters or sections, in what essentially has become Chapter IV.²

3. In 1996, the Commission established four specific criteria to identify those OAS member States whose human rights practices merited special attention by the IACHR and consequently a special analysis to be included in the annual report. In the 1997 Annual Report, the Commission added a fifth applicable criterion to be followed when deciding which countries to include in this Chapter. The IACHR underscores that the interpretation of such criteria has been done on the basis of the mandate and faculties assigned to it by regional instruments, and that accordingly it analyzes the situations described in the criteria in light of the actions of States, pursuant to inter-American human rights standards.

4. Following a process of reflection on the strengthening of the Inter-American Human Rights System, the IACHR issued Resolution 1/2013, "Reform of the Rules of Procedure, Policies and Practices," which included changes with respect to the content of Chapter IV of its annual report. Along these lines, Chapter IV has been divided into two sections:

¹ The Report includes references to the situation in Guatemala, Cuba, the Dominican Republic, Haiti, Paraguay, El Salvador, Honduras and Panama, whose object was to update the work of the Commission in these countries, which included *in loco* visits, country reports and observations and recommendations in previous reports on its activities. Also, at various times the General Assembly of the OAS has adopted resolutions requesting that the IACHR follow-up on the situation of human rights in different countries.

² In 1978, the Commission published a "Section IV" called "Development of the Situation of Human Rights in Various Countries", which examined the situation of human rights in Chile, Panama, Paraguay and Uruguay. This "Section IV" provided information on the Commission's work with regard to the preparation and publication of separate reports on each one of these countries, and observed that the General Assembly had requested the Commission to continue to provide information on developments in each one of them. In its Annual Report for 1979-80, the Commission published update reports with respect to Chile, Paraguay, Uruguay and El Salvador. That year the Commission changed the format of its Annual Report and published the follow up information in Chapter V instead of "Section IV", although the objective and content of this information followed the previous practice. In its Annual Report for 1981-82, the Commission published updated information in Chapter V on the situation of human rights in nine countries, following the same criteria applied in previous years.

- i. Section A) will include an annual overview of the human rights situation in the hemisphere, derived from its monitoring work, which shall identify the main tendencies, problems, challenges, progress and best practices of civil and political rights, and social, economic and cultural rights;
- ii. Section B) will include the special reports that the Commission considers necessary regarding the situation of human rights in Member States, pursuant to the criteria, methodology and procedure provided below.

5. As part of the process of reflection, the Commission reviewed and modified the criteria to be applied for including a State in Chapter IV. B. The current criteria are:

CRITERIA

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

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

METHODOLOGY

6. The Commission assesses the situation of human rights in the OAS Member States throughout the year in the exercise of its mandate to promote and protect human rights in the region. It gathers information from multiple sources and, in particular, utilizes reliable information obtained from the following sources in making its evaluation:

- (a) Official acts of all level and branches of government, including Constitutional amendments, legislation, decrees, judicial decisions, statements of policy, official communications to the Commission and other human rights bodies, as well as any other statement or action attributable to the government.
- (b) Information available in cases, petitions and precautionary and provisional measures in the Inter-American system, as well as information on compliance by the State with recommendations of the Commission and judgments of the Inter-American Court.
- (c) Information gathered in the course of on-site visits by the Commission, its Rapporteurs, and members of its staff.
- (d) Information obtained during hearings held by the Commission as part of its sessions.
- (e) Findings of other international human rights bodies, including UN treaty bodies, UN Rapporteurs and working groups, the Human Rights Council, and other UN specialized agencies.
- (f) Human rights reports issued by governments and regional bodies.
- (g) Reports by civil society organizations, as well as information presented by such organizations and private persons.
- (h) Public information widely disseminated in the media.

7. The Commission deliberates in plenary during its third session each year, applying the methodology and criteria indicated to make reasoned decisions on Chapter IV and on other matters included in the Annual Report. During its 149 Period of Sessions, the IACHR analyzed informative *memoranda* about the situation of human rights in some countries, which were previously requested by the Commissioners, and voted on whether include them or not. As a result, in some cases it was decided to include the State in Chapter IV.B; and in others, not to do so.

8. The Commission, by an absolute majority, and based on the indicated criteria, decided to include three member States in the current Chapter: Cuba, Honduras and Venezuela. In addition, as provided in the Rules of Procedure, the Commission sent the draft of the respective sections of Chapter IV.B to the State concerned with a request to present relevant observations within a certain time, which have been taken into account when adopting the final text of this report. Of the three States included in this Chapter, only Honduras and Venezuela sent their observations within the deadline established by the IACHR.

9. It should be mentioned that, in its reform process, the Commission considered establishing a procedure by which a State that has received an on-site visit from the Commission, would not be included in Chapter IV.B of the Annual Report of that year. The monitoring of the situation of human rights would be carried out by means of a country report derived from the on-site visit. Once the country report is published, the Commission will follow up on compliance with the respective recommendations by means of Chapter V of its Annual Report. Thereafter, the Commission will decide what would be the appropriate procedure to monitor the situation. Such is the case of Colombia, which received a visit from the Commission in December 2012 and whose country report is included in Volume II of this annual report.

A. Overview of the human rights situation in the hemisphere

1. List of press releases and request for information from the states in the exercise of the monitoring faculty

10. In keeping with its mandate to monitor the human rights situation in the hemisphere in 2013, the Commission issued several press releases regarding situations that raised concerns and, also, voiced positions recognizing best practices of some States. The complete list of press releases issued by the Commission over the course of 2013 appears hereunder:

- 103/13 - IACHR Condemns Forced Transfer of Djamel Ameziane from Guantanamo to Algeria. Washington, D.C., December 19, 2013
- 102/13 - UN International Migrants Day “Migrants are human beings with human rights” Geneva / Washington, D.C., December 18, 2013
- 101/13 - IACHR Expresses Concern over Incidents of Violence in Argentina. Washington, D.C., December 18, 2013
- 100/13 - IACHR Takes Case involving Peru to the Inter-American Court. Washington, D.C., December 18, 2013
- 99/13 - IACHR Takes Case involving Ecuador to the Inter-American Court. Washington, D.C., December 18, 2013
- R98/13 - Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras Washington, D.C., December 11, 2013
- 97/13 - IACHR Wraps Up Visit to the Dominican Republic Santo Domingo, December 6, 2013 Annex to the Press Release: Preliminary Observations
- 96/13 - IACHR Concerned over Killing of a City Council Candidate and other Incidents of Alleged Political Persecution in Venezuela. Washington, D.C., November 30, 2013
- 95AN/13 - IACHR announces location for reception of complaints in Santo Domingo. Washington, D.C., November 29, 2013
- 95/13 - IACHR Will Conduct On-Site Visit to the Dominican Republic. Washington, D.C., November 27, 2013

- 94/13 - The IACHR creates Rapporteurship to address issues of Sexual Orientation, Gender Identity, Gender Expression, and Body Diversity. Washington, D.C., November 25, 2013
- 93/13 - IACHR Takes Case involving Peru to the Inter-American Court. Washington, D.C., November 22, 2013
- 92/13 - The IACHR is concerned about violence and discrimination against LGBTI persons in the context of education and family settings. Washington, D.C., November 22, 2013
- 91/13 - IACHR Condemns Killing of Human Rights Defender in Colombia. Washington, D.C., November 22, 2013
- 90/13 - IACHR Condemns Attack on Pro-Búsqueda and Destruction of Records in El Salvador . Washington, D.C., November 22, 2013
- 89/13 - IACHR acknowledges recent steps taken by several OAS Member States to further equality for LGBTI persons. Washington, D.C., November 21, 2013
- 88/13 - IACHR and McGill University co-organize event on Race, Discrimination and Economic, Social and Cultural Rights in North America. Washington, D.C., November 18, 2013
- 87/13 - IACHR Welcomes Opening of Trial over Murder of Human Rights Defender in Brazil. Washington, D.C., November 12, 2013
- 86/13 - IACHR Concerned over Violent Deaths in Prisons in Brazil. Washington, D.C., November 12, 2013
- R85/13 - Office of the Special Rapporteur for Freedom of Expression Commends Jamaica's Recent Legislative Reform Regarding Freedom of Expression. Washington, D.C., November 11, 2013
- 84/13 - IACHR Thanks Donors. Washington, D.C., November 8, 2013
- 83/13 - IACHR Wraps Up its 149th Session. Washington, D.C., November 8, 2013
Direct Access to the Annex
- 82/13 - IACHR Ensures Access to Hearing for Persons with Disabilities. Washington, D.C., October 30, 2013
- 81/13 - IACHR Deplores Violent Deaths in Mexican Prison. Washington, D.C., October 29, 2013
- 80/13 - Guatemala Must Investigate Serious Violations of Human Rights Occurred during the Armed Conflict. Washington, D.C., October 25, 2013
- 79/13 - IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons. Washington, D.C., October 24, 2013
- 78/13 - IACHR Announces Schedule of Hearings for 149 Sessions. Washington, D.C., October 21, 2013.
Direct Access to Schedule of Hearings
- 77/13 - IACHR Urges States to Take Steps to Guarantee Rights of Rural Women. Washington, D.C., October 15, 2013
- 76/13 - IACHR Takes Case involving Honduras to the Inter-American Court. Washington, D.C., October 11, 2013
- R75/13 - Office of the Special Rapporteur Calls for Candidates for the Fellowship Orlando Sierra 2014. Washington, D.C., October 10, 2013
- 74/13 - IACHR Urges States to Abolish Death Penalty or Impose a Moratorium on its Application. Washington, D.C., October 9, 2013
- 73/13 - IACHR Expresses Deep Concern Over Ruling by the Constitutional Court of the Dominican Republic. Washington, D.C., October 8, 2013
- 72/13 - El Salvador Must Investigate Grave Human Rights Violations from the Armed Conflict. Washington, D.C., October 2, 2013
- 71/13 - IACHR Condemns Killing of Human Rights Defender in Colombia. Washington, D.C., September 25, 2013
- 70/13 - IACHR Deplores Deaths in Venezuelan Prison. Washington, D.C., September 20, 2013
- R69/13 - Office of the Special Rapporteur Condemns Murder of Lawyer and Radio Host in Colombia. Washington, D.C., September 20, 2013

- 68/13 - IACHR Holds Regional Meeting on Education, Culture, and Rights of LGBTI Persons. Washington, D.C., September 19, 2013
- 67/13 - IACHR Urges United States to Suspend Execution of Robert Gene Garza. Washington, D.C., September 18, 2013
- 66/13 - Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala. Washington, D.C., September 18, 2013
- R65/13 - Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests (Joint Statement). September 13, 2013
- 64/13 - IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention. Washington, D.C., September 10, 2013
- 63/13 - IACHR Condemns Murder of Human Rights Defender in Paraguay. Washington, D.C., August 29, 2013
- 62/13 - IACHR Deplores Violent Deaths in Bolivian Prison. Washington, D.C., August 28, 2013
- 61/13 - IACHR Condemns Attack against Maya Q'eqchi' Children in Guatemala. Cobán, Alta Verapaz, Guatemala, August 24, 2013
- 60/13 - IACHR expresses concern about violence and discrimination against LGBTI persons, particularly youth, in the Americas. Washington, D.C., August 15, 2013
- 59/13 - IACHR calls on Member States to guarantee respect for the human rights of indigenous peoples in voluntary isolation and initial contact. Washington, D.C., August 9, 2013
- 58/13 - IACHR Presents Report on Persons Deprived of Liberty in Honduras. Tegucigalpa, Honduras, August 2, 2013
- 57/13 - IACHR's amended Rules of Procedure enter into force today. Washington, D.C., August 1, 2013
- 56/13 - IACHR Condemns Murder of Human Rights Defender in Mexico. Washington, D.C., August 1, 2013
- 55/13 - IACHR Condemns Murder of Judge in Honduras. Washington, D.C., July 30, 2013
- 54/13 - IACHR Condemns Recent Wave of Violence against LGBTI Persons in Haiti. Washington, D.C., July 30, 2013
- R53/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Mexico. Washington, D.C., July 22, 2013
- 52/13 - IACHR Condemns the Murder of Lenca indigenous leader and injuries to a child in Honduras Military operation. Washington, D.C., July 19, 2013
- 51/13 - IACHR Expresses Concern over Excessive Use of Solitary Confinement in the United States. Washington, D.C., July 18, 2013
- R50/13 - Office of the Special Rapporteur Condemns Murder of Kidnapped Journalist in Honduras. July 15, 2013
- 49/13 - IACHR Launches Initiative for Human Rights Promotion and Signs First Agreement with UNAM. Washington, D.C., July 2, 2013
- 48/13 - IACHR Takes Case involving Peru to the Inter-American Court. June 28, 2013
- R47/13 - Office of the Special Rapporteur for Freedom of Expression States its Concern over the Enactment of the Communications Act in Ecuador. June 28, 2013
- R46/13 - Joint Declaration on Surveillance Programs and their Impact on Freedom of Expression. (Joint Statement) June 21, 2013
- 45/13 - IACHR Office of the Rapporteur on the Rights of Children and Special Representative of the Secretary-General on Violence against Children Strengthen Strategic Cooperation in the Americas. Washington, D.C., June 21, 2013
- 44/13 - IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists during Protests in Brazil. Washington, D.C., June 20, 2013
- R43/13 - Office of the Special Rapporteur Condemns Murder of Media Executive in Brazil. Washington, D.C., June 17, 2013

- 42/13 - IACHR Condemns Death of Haitian Immigrant at Hands of State Agents in the Dominican Republic. Washington, D.C., June 12, 2013
- 41/13 - OAS General Assembly Elects Commissioners. La Antigua, Guatemala, June 7, 2013
- 40/13 - IACHR Rapporteurship Welcomes Adoption of Conventions against Discrimination. La Antigua, Guatemala, June 6, 2013
- 39/13 - IACHR To Hold First Inter-American Conference on Friendly Settlements. Washington, D.C., June 6, 2013
- 38/13 - IACHR Deplores Murder in Venezuela of Tenth Member of the Barrios Family, a Beneficiary of Provisional Measures. Washington, D.C., May 29, 2013
- 37/13 - The IACHR Calls Member States to Ensure Respect of the Rights of LGBTI Persons by Public Officials. Washington, D.C., May 17, 2013
- R36/13 - Office of the Special Rapporteur for Freedom of Expression Expresses Its Concern over Telephone Records Obtained from Associated Press Journalists. Washington, D.C., May 15, 2013
- 35/13 - IACHR Urges the State of Venezuela to Guarantee the Rights of all Persons under its Jurisdiction. Washington, D.C., May 10, 2013
- 34/13 - IACHR Takes Case involving Venezuela to the Inter-American Court. Washington, D.C., May 9, 2013
- 33/13 - IACHR Takes Case involving Mexico to the Inter-American Court. Washington, D.C., May 9, 2013
- 32/13 - IACHR urges Belize to Guarantee the Rights of Maya Indigenous Communities. Washington, D.C., May 6, 2013
- R31/13 - 20th Anniversary of World Press Freedom Day. Washington, D.C., May 3, 2013
- 30/13 - IACHR Deplores Violent Deaths in Mexican Penitentiary. Washington, D.C., May 2, 2013
- 29/13 - IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health Reiterate Need to End the Indefinite Detention of Individuals at Guantánamo Naval Base in Light of Current Human Rights Crisis. Washington, D.C. / Geneva, May 1, 2013
- 28/13 - IACHR Takes Case involving El Salvador to the Inter-American Court. Washington, D.C., April 29, 2013
- 27/13 - IACHR Regrets Murder of Colombian Activist and Urges State to Protect Community Leaders Advocating for Rights of Those Displaced by Armed Conflict. Washington, D.C., April 19, 2013
- R26/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Brazil. Washington, D.C., April 17, 2013
- R25/13 - Office of the Special Rapporteur Presents its 2012 Annual Report. Washington, D.C., April 17, 2013
- 24/13 - IACHR Presents its 2012 Annual Report. Washington, D.C., April 16, 2013
- 23/13 - IACHR Wraps Up its 147th Session. Washington, D.C., April 5, 2013
Direct Access to the Annex
- 22/13 - IACHR Takes Case involving Panama to the Inter-American Court. Washington, D.C., April 4, 2013
- 21/13 - IACHR Takes Case involving Honduras to the Inter-American Court. Washington, D.C., April 4, 2013
- 20/13 - For International Day on the Elimination of Racial Discrimination: Racism in sport. Geneva / Washington, D.C., March 21, 2013
- 19/13 - IACHR Approves Reform of its Rules of Procedure, Policies and Practices. Washington, D.C., March 19, 2013
- R18/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Brazil. Washington, D.C., March 12, 2013
- 17/13 - IACHR Elects New Board. Washington, D.C., March 8, 2013

- 16/13 - The rights of women: The road to fulfilling the promise in the Americas. Washington, D.C., March 8, 2013
- R15/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Mexico. Washington, D.C., March 6, 2013
- 14/13 - IACHR Announces Schedule of Hearings for 147 Sessions. Washington, D.C., March 1, 2013
Direct Access to Schedule of Hearings
- 13/13 - IACHR Condemns Killing of Human Rights Defender in Paraguay. Washington, D.C., February 28, 2013
- R12/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Brazil. Washington, D.C., February 28, 2013
- 11/13 - IACHR reminds Haiti of its Duty to Investigate and Punish Human Rights Violations and Urges to Guarantee the Independence of the Judiciary. Washington, D.C., February 20, 2013
- 10/13 - IACHR Announces Submission of Reform Proposals to Public Consultation. Washington, D.C., February 13, 2013
- 9/13 - IACHR Concludes Its Working Visit to Suriname. Washington, D.C., February 12, 2013
- 8/13 - IACHR Deplores Violent Death of 59 Persons in Venezuelan Prison. Washington, D.C., January 31, 2013
- 7/13 - IACHR Condemns Killing of the Indigenous Leader Rafael Mauricio Giron Ulchur in Colombia. Washington, D.C., January 30, 2013
- 6/13 - IACHR Deplores Murder in Venezuela of Ninth Member of the Barrios Family, a Beneficiary of Provisional Measures. Washington, D.C., January 18, 2013
- 5/13 - IACHR Values Derogation of Governmental Resolution 370-2012 in Guatemala. Washington, D.C., January 18, 2013
- 4/13 - IACHR Expresses Concern over Constitutional Reform in Colombia. Washington, D.C., January 4, 2013
- 3/13 - In View of Situation in Honduras, IACHR Stresses Importance of Principle of Independence of the Judiciary. Washington, D.C., January 3, 2013
- 2/13 - IACHR Deplores Violent Deaths in Mexican Prison. Washington, D.C., January 3, 2013
- 1/13 - IACHR Publishes Report on Human Rights in Jamaica. Washington, D.C., January 3, 2013

11. Additionally, in exercising the powers granted to it under Article 41 of the American Convention on Human Rights and Article 18 of its Statute, the Commission requested information from Member States, regarding the specific issues listed hereunder:

Member State	Issue / Situation	Date
Brazil	Situation of the Terena indigenous people	June 2013
Brazil	Violent incidents in the Complejo de Maré [Maré Complex]	July 2013
Brazil	Violence against children and adolescents in the Fundación Casa [House Foundation]	September 2013
Brazil	Violent incidents in the Parque Cocó [Cocó Park]	September 2013
Brazil	Human rights violations during protests in Rio de Janeiro	November 2013
Brazil	Recommendations on the international parameters regarding respect for freedom of expression and crimes against honor and the adaptation of provisions regarding crimes against honor appearing in the draft amendment to the Criminal Code	November 2013
Chile	Situation of a person incarcerated in the Centro de Detención para Menores de Chol Chol [Chol Chol Juvenile Detention Center]	July 2013 and August 2013

Member State	Issue / Situation	Date
Colombia	Request for additional information about the situation of freedom of expression in Colombia 2012	January 2013
Colombia	Absence of access of children and adolescents to health in Colombia	May 2013
Colombia	Attempt on the life of a journalist	May 2013
Colombia	Arrest of and aggression against journalists and communicators in the context of protests, threats against journalists, and establishment of the Forum to Monitor Justice in cases of aggression against journalists	September 2013
Cuba	Death of Oswaldo Payá and Harold Cepero	April 2013
Ecuador	Basic Law on Communication	June 2013
Ecuador	Situation of the indigenous peoples dwelling in the area covered by the Yasuní-ITT Initiative	August 2013
Ecuador	Rules for Operation of the Unified Information System for Social and Citizen Organizations, and their application for the dissolution of civil society organizations in Ecuador	December 2013
United States	Freedom of expression and surveillance of communication	November 2013
Guatemala	Request for information about the proposal of a program to protect journalists	January 2013
Guatemala	Situation of indigenous leaders	April 2013
Guatemala	Siege in the municipalities of the departments of Santa Rosa and Jalapa	May 2013
Guatemala	Situation of the Monte Olivo community along the Dolores River, Q'eqchi' Maya People, Cobán	August 2013
Guatemala	Request for information about the Unit on Crimes against Journalists of the Human Rights Prosecution Office of the Ministry of Justice; Program for the Protection of Journalists at Risk; investigations of crimes against journalists	October 2013
Guatemala	Situation of the K'che's indigenous inhabitants of the 48 cantons of Totonicapán	October 2013
Honduras	Establishment of the Auditing Commission and the draft bill for a Law on Mechanisms to protect defenders	June 2013
Honduras	Motion for bills to amend Article 321 of the Criminal Code	October 2013
Jamaica	Killing of Dwayne Jones and mob attacks against LGBTI persons	October 2013
Mexico	Situation of the Binnizá people and community	July 2013
Mexico	Aggression and arrests at social protests	October 2013
Mexico	Request for up-to-date information about the progress made in implementing and operating the mechanism to protect defense attorneys and journalists	November 2013
Nicaragua	Amendments to Law 779	October 2013
Nicaragua	Activities of intimidation against a journalist of <i>Esta Semana y Confidencial</i> [This Week and Confidential]	November 2013
Panama	Draft of General Law on Adoptions (Law 551)	June 2013
Panama	Death of newborns in a state hospital	July 2013
Paraguay	Situation of the Cuyabía Community and the communities in voluntary isolation of the Ayoreo People	February 2013
Paraguay	Situation of indigenous communities El Chaco of Paraguay during elections	April 2013
Paraguay	Law of National Defense and Homeland Security and Meeting of Human Rights Ombudspersons	September 2013
Paraguay	Decision of the Supreme Court of Justice of Paraguay No. 1306 on the right to have access to information and the incorporation of inter-American standards for this right	October 2013

Member State	Issue / Situation	Date
Peru	Draft Law 1464/2012-PE	April 2013
Peru	Law on Negationism	April 2013
Peru	Draft of the new Code for Children and Adolescents	October 2013
Dominican Republic	Draft Law proposing amendments to the Code of the System for the Protection and Basic Rights of Children and Adolescents (Law No. 136-03)	October 2013
Uruguay	Young boarder of the Hogar de la Colonia Berro [Home of the Berro Colony]	April 2013
Uruguay	About the draft Audiovisual Communication Services Law	August 2013
Venezuela	Administrative penalization proceedings against Corpomedios GV e inversiones CA (Globovisión)	January 2013
Venezuela	Administrative investigation proceedings against the organization AC Ciudadania Activa [Active Citizenship]	April 2013
Venezuela	Current situation of the inmates of the Coro Penitentiary Community	April 2013
Venezuela	Situation of violence after elections	April 2013
Venezuela	Request for information about the investigation of a journalist, detention of a retired general, suspension of the TV station <i>Ate! Televisión</i> and detention of a journalist	June 2013
Venezuela	Situation of Mr. Alejandro Silva	November 2013

12. Under Chapter IV.A, the Commission provides a yearly overview of the human rights situation in the region and, in so doing, has deemed it important to spotlight certain issues, as laid out below:

Right to personal liberty

13. Since the United States Government opened the detention center at its Naval Base Guantánamo, Cuba, in early 2002, the Inter-American Commission has closely followed the situation of the persons being held in that facility and has repeatedly called for the closing of the detention center at Guantánamo. As part of its ongoing efforts to monitor the situation, the Commission has issued two

resolutions;³ three precautionary measures;⁴ one admissibility report;⁵ seven press releases;⁶ and has conducted nine public hearings.⁷

14. The Inter-American Commission also sought permission during 2007 and 2011 to carry out an on-site visit to Guantánamo Bay to monitor conditions of detention. While representatives of the US Government did indicate that the IACHR could visit the base at Guantánamo, they informed the Commission that it would not be permitted to freely interview detainees. Therefore, the Commission declined to conduct a visit under such limitations. The Inter-American Commission continues to be interested in conducting a visit to the US detention center in Guantánamo without restrictions.

15. Following the hunger strike initiated in February 2013 by various detainees to protest their state of indefinite detention, on May 1, 2013, the IACHR issued a joint press release with the UN Working Group on Arbitrary Detention, the UN Rapporteur on Torture, the UN Rapporteur on Human Rights and Counter-Terrorism, and the UN Rapporteur on Health, reiterating the need to end the indefinite detention of individuals at Guantánamo Naval Base. In this joint communiqué, these mandate holders stated that:

[T]he Guantánamo detainees' lack of legal protection and the resulting anguish caused by the uncertainty regarding their future has led them to take the extreme step of a hunger strike to demand a real change to their situation.

[E]ven in extraordinary circumstances, when the indefinite detention of individuals, most of whom have not been charged, goes beyond a minimally reasonable period of time, this

³ IACHR, Resolution No. 2/06, On Guantánamo Bay Precautionary Measures, July 28, 2006. Available at:

<http://www.cidh.oas.org/resolutions/resolution2.06.htm>. IACHR, Resolution No. 2/11, Regarding the Situation of the Detainees at Guantánamo Bay, Precautionary Measure 259-02, July 22, 2011. Available at: <http://www.cidh.oas.org/pdf%20files/Resolution%202-11%20Guantánamo.pdf>

⁴ PM-259-02 - detainees being held by the United States at Guantánamo Bay, Cuba; PM-8-06 - Omar Khadar

(the IACHR lifted this PM after the beneficiary was released from Guantánamo); and PM-211-08 - Djamel Ameziane. A summary of the facts is available at <http://www.oas.org/en/iachr/pdl/decisions/Guantánamo.asp#Medidas>.

⁵ IACHR, Report No. 17/12, P-900-08, Admissibility, Djamel Ameziane, United States, March 20, 2012. The petition is currently at the merits stage.

⁶ IACHR, Press Release No. 27/06, Inter-American Commission urges immediate closure of Guantánamo; No. 02/09, IACHR Welcomes Order to Close Guantánamo Detention Center; No. 75/10, IACHR Deplores Forced Transfer of Guantánamo Detainee; No. 37/11, IACHR Expresses Deep Concern over New Revelations about Guantánamo; No. 86/11, IACHR Urges the United States to Close the Detention Facility at Guantánamo; No. 3/12, 10 Years After Detentions in Guantánamo Began, the IACHR Repeats its Call to Close the Detention Center; and No. 29/13, IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health Reiterate Need to End the Indefinite Detention of Individuals at Guantánamo Naval Base in Light of Current Human Rights Crisis.

⁷ The hearings were as follows: October 16, 2002, Precautionary measures for persons detained in Guantánamo, 116th Session; October 20, 2003, Precautionary Measures for Persons under Detention in Guantánamo, 118th session; March 3, 2005, Precautionary Measures for Persons Detained in Guantánamo, 122nd session; October

20, 2005, Precautionary Measure 259/02, Detainees in the Guantánamo Bay Military Base, 123rd session; March 13, 2006, Precautionary Measure 8/06, Omar Khadr, United States, 124th Session; July 20, 2007, Precautionary Measures for the Detainees in the Naval Base of the United States in Guantánamo, 128th session; October 28, 2008, PM 259/02, Detainees at the Guantánamo Naval Base, and PM 211/08, Djamel Ameziane, 133rd Session; October 29, 2010, Petition 900/08, Djamel Ameziane, United States, 140th Session; March 12, 2013, Human Rights Situation of the Persons Detained in the Naval Base of Guantánamo, 147th Session; October 28, 2013, Human Rights Situation of Detainees at Guantánamo Naval Base, 149th Session.

constitutes a flagrant violation of international human rights law and in itself constitutes a form of cruel, inhuman, and degrading treatment.

[T]he duty of medical personnel to act ethically and the principle of respect for individuals' autonomy, among other principles, must be respected. Under these principles, it is unjustifiable to engage in forced feeding of individuals contrary to their informed and voluntary refusal of such a measure. Moreover, hunger strikers should be protected from all forms of coercion, even more so when this is done through force and in some cases through physical violence. Health care personnel may not apply undue pressure of any sort on individuals who have opted for the extreme recourse of a hunger strike. Nor is it acceptable to use threats of forced feeding or other types of physical or psychological coercion against individuals who have voluntarily decided to go on a hunger strike.

16. Further, in July 2013 the IACHR decided to extend the scope of the precautionary measures in favor of the detainees held at Guantánamo in order to require the immediate closure of the detention facility. The extension was based on the failure of the United States to comply with the precautionary measures, the persistence of situations of prolonged and indefinite detention, and allegations of widespread abuse and mistreatment, including unnecessary and humiliating searches, the force feeding of detainees who have chose to participate in a hunger strike, and the increasing segregation and isolation of detainees. The Commission also requested the Government of the United States to expedite the release of the detainees who have already been cleared for transfer; and required that those subject to trial be housed in appropriate conditions and accorded applicable due process rights. On September 18, 2013, the Executive Secretariat met with the Department of State's Special Envoy for Guantanamo Closure.

17. As mentioned above, the Inter-American Commission has dealt with the situation in Guantánamo through its different mechanisms (precautionary measures; individual cases; and public hearings). Now the IACHR is preparing a thematic report on the situation of detainees held at Guantánamo. The purpose of the report is to address the situation from an overall perspective taking into consideration recent developments in conditions of confinement, access to legal representation, and transfer restrictions, among others.

18. In the framework of the drafting of this thematic report, the IACHR organized an expert meeting to gather first-hand information from experts whose work focuses on the situation of the detainees. The Commission invited a small group of experts from various backgrounds in order to have a fruitful dialogue and to inform itself of different perspectives on the subject. The meeting was held on October 3, 2013 and was chaired by Commissioner Tracy Robinson, IACHR Rapporteur for the United States.

19. On December 19, 2013, the Commission issued a press release condemning the forced transfer of Djamel Ameziane from the United States Naval Base at Guantánamo Bay to Algeria. The forced transfer of Djamel Ameziane to Algeria is in violation of the principle of non-refoulement, which prohibits transfers and deportations of individuals to countries where they may run the risk of being tortured. Moreover, with this transfer the United States disregarded precautionary measures 211/08 and 259/02 of the Inter-American Commission on Human Rights.⁸

⁸ IACHR. Press release No. 103.13

Freedom of Expression⁹

20. During 2013, the Inter-American Commission received information regarding a variety of situations affecting freedom of expression in Ecuador. The most significant events reported during 2013 on freedom of expression are described in the following paragraphs.

a) The Communications Act

21. On June 22, the President of Ecuador signed into law the Communications Act that had been passed by the National Assembly of Ecuador on June 14.¹⁰ In a June 28 press release, the Office of the Special Rapporteur for Freedom of Expression expressed its concern over the onerous restrictions established under that Law.¹¹ The articles of the Act establish some important principles regarding the exercise of the right to freedom of thought and expression. Nevertheless, in regulating those principles, the law establishes onerous restrictions that render them virtually ineffective. Such restrictions, examined in a letter¹² sent to the State by the Office of the Special Rapporteur, could severely hinder the exercise of the right of freedom of expression and have a serious chilling effect that is incompatible with a democratic society. The Act imposes a significant number of obligations on all communications media, without regard to their format or size. Additionally, the Act creates an administrative entity called the “Office of the Superintendent of Information and Communications,” whose head will be appointed by a collegiate administrative body from a slate of three candidates sent by the President of the Republic. This administrative official is not afforded the minimum institutional guarantees that would enable him or her to operate autonomously and independently of the government. Nevertheless, his or her authorities include oversight of all communication media. The infractions and sanctions regime establishes potentially ambiguous and onerous obligations. For example, the Act creates an infraction called “media lynching,” by which any sustained report of corruption that could lead to a loss of the “public credibility” of the public servant involved could be deemed by the competent administrative body to be “media lynching” and constitute grounds for the respective sanctions. The Act also creates the obligation of all media outlets, regardless of their form and content, to draft a codes of ethics, the basic content of which is established in the text of the Act itself (Articles 9 and 10).

22. The Law also creates the obligation of all media outlets to “cover and disseminate matters of public interest” and stipulates that “the deliberate and repeated omission to disseminate matters of public interest is an act of prior censorship” (Article 18) that will be subject to the corresponding sanctions. The executive branch, through the Office of the Superintendent, defines what matters of public interest the media are obliged to publish. Also, the Office of the Special Rapporteur indicated that the Act establishes the requirement that all communications media must have an “ombudsman of the audiences and readers” (Art. 73). Each medium’s watchdog will be elected in a competitive public process by a State body called the Council of Citizen Participation and Social Control.

⁹ For more information see: IACHR. Annual Report 2013. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere)*.

¹⁰ National Assembly. Official Record No. 22, June 25, 2013. [Communication Act](#).

¹¹ IACHR. Office of the Special Rapporteur of Freedom for Expression. Press Release R47/13. [Office of the Special Rapporteur for Freedom of Expression states its concern over the enactment of the Communications Act in Ecuador](#).

¹² IACHR. Office of the Special Rapporteur of Freedom for Expression. June 28, 2013. [Letter to the State of Ecuador](#)

It is of enormous concern that the State might require the media to put on their payrolls and in their newsrooms a person chosen through a procedure designed and implemented by the State, whose powers and responsibilities would be set by the State itself and to whom the media might have to provide spaces for the publication of errors and corrections (Art. 73). Also, the Act establishes that only “professional” journalists and media workers may perform the ongoing journalistic activities of the communications media, at any level or position. Exceptions are made for those who have specialized or opinion programs and columns and those who perform journalistic activities in the “languages of the indigenous peoples and nations” (Art. 42). In this regard, according to the information received, the Criminal Code sanctions with imprisonment from six months to two years those who practice a profession without a degree, in those cases that a degree is required by law. Also, “the professionals who favor the actions of another person in the illegal practice of the profession” will be sanctioned with imprisonment from three months to one year and barred from practicing the profession for six months (Art. 330).¹³

b) Stigmatizing Statements

23. The Government of Ecuador has continued the practice of using public media, to systematically stigmatize non-governmental organizations, human rights defenders and journalists, who express opinions or report critically of the performance of the State. For example, during the weekly broadcasts of the presidential program *Enlace Ciudadano*, --a “weekly slot of the President to communicate and inform, aimed at accounting to constituents [those who gave him his mandate] on government performance and the latest issues of social significance” --a segment is broadcast, lasting at least 30 minutes, called “La libertad de Expresión ya es de todos” [*Freedom of Expression already belongs to everyone*], devoted to criticizing journalists, the media and members of the opposition. The leader uses audiovisual aids in his explanations, which are produced by the National Communications Secretariat, to refute information published by the media, journalists and media outlets are discredited and the images of the criticized journalists are flashed on the screen. The media are systematically labeled the “corrupt press,” journalists are called “ignorant,” “sick,” “human misery,” and are accused of “lying,” “twisting” and “manipulating” information and attempting to “destabilize the government.” Some segments are repeated each week, such as the ones called “La caretucada de la semana” [*The ‘outrageous thing’ of the week*], “La cantinflada de la semana” [*The cantinflada of the week*] or “La amargura de la semana” [*The bitter thing of the week*] in which opinions, comments or information recently given by the journalists or broadcasters are mocked. Additionally, during 2013, the Government of Ecuador maintained the practice of using its legal authority to issue mandatory messages for purposes of disseminating the government opinion on certain matters in private media outlets. Often the programming is interrupted so that the official message is broadcast only on the station on which the information or opinion called into question by the government was originally broadcast.

c) Attacks and threats

24. The Inter-American Commission has received reports regarding attacks on journalists, media workers and human rights defenders, because of their expressions. In some instances, the assaults and threats were committed against persons who have been stigmatized by high-ranking

¹³ Comprehensive Organic Penal Code approved by the National Assembly on December 17, 2013. Article 330. Available for consultation at: <http://www.asambleanacional.gov.ec/>

government officials, such as the case of journalists Martin Pallares and Diego Cornejo, cartoonist Javier Bonilla, members of the organization Fundamedios, and singer-songwriter Jaime Guevara.

d) Subsequent Liability

25. The Inter-American Commission views with concern the existence of criminal laws used to sanction the exercise of freedom of expression, as well as civil laws that could lead to the imposition of disproportionate penalties against individuals who have publicly expressed criticism of high-ranking government officials in Ecuador. In this regard, in 2013, the Inter-American Commission has received information about the existence of several lawsuits against journalists, media workers and citizens for the manifestation of expressions or opinions that high-level public officials have considered offensive or defamatory. For example, on April 16, 2013, the Specialized Criminal Chamber of the National Court of Justice handed down a judgment convicting National Assembly member Cléver Jiménez of the Pachakutik political movement, former trade unionist Fernando Villavicencio, and activist Carlos Figueroa, and sentencing them to prison time for the offense of defamation against Ecuador's President Rafael Correa. The case began when Jiménez, Villavicencio, and Figueroa filed a complaint before the Office of the Public Prosecutor alleging that on September 30, 2010, President Rafael Correa allegedly committed crimes against humanity, in light of Articles 7 and 8 of the Rome Statute, as well as other offenses defined in the Ecuadoran Criminal Code. The case was not admitted by the National Court of Justice, which called it "malicious and reckless". Subsequently, the President brought a defamation case against the plaintiffs pursuant to Article 494 of the Criminal Code. In April of 2013, the National Court of Justice found them guilty of "false accusation of a crime" [*injuria judicial*], and sentenced them to "a term of imprisonment of one and a half years, and a fine of thirty-one dollars [...] [and] the suspension of their rights of citizenship for a period of time equal to the prison sentence." Due to mitigating factors in Figueroa's case, he was sentenced to six months in prison and a fine of eight dollars.

Independence of the Judiciary

26. Over the course of 2013, the Commission has received information on situations that could affect the independence and impartiality of operators of justice in the region¹⁴. With regards to Ecuador, the IACHR has been monitoring the process of restructuring of the judiciary in Ecuador as of 2011 and In January 2013, the Transitional Judiciary Council, the body in charge of judicial administration and that is made up of one presidential appointee, one National Assembly appointee and one Transparency Service appointee, officially completed its 18 month term for the restructuring of the Judiciary. Based on figures provided by the Transitional Council itself, during the time it performed its duties, the body decided to remove hundreds of judicial officials, including judges. Most of them were career officials and their removal from office was on the grounds of "harmful error" as established in the Organic Code of the Judicial Service. In this context, the IACHR received reports of possible interference by executive officials in the judiciary by exerting control over the administration of justice, as well as in processes of appointment of positions and disciplinary proceedings for removal from office.

¹⁴ For more information see: IACHR. Garantías para la Independencia de las y los operadores de justicia. Hacia el fortalecimiento del acceso a la justicia y el Estado de Derecho en las Américas. Diciembre 2013 <http://www.oas.org/es/cidh/defensores/docs/pdf/Operadores-de-Justicia-2013.pdf>

Right to nationality and non-discrimination

27. On October 8, 2013, the Inter-American Commission on Human Rights expressed deep concern over judgment TC/0168, issued on September 23, 2013 by the Constitutional Court of the Dominican Republic.¹⁵ This judgment retroactively amends the law that has been in force in the country from 1929 to 2010, stripping tens of thousands of individuals born in the Dominican Republic of Dominican nationality.

28. The Inter-American Commission on Human Rights (IACHR) conducted an on-site visit to the Dominican Republic on December 2-5, 2013. The purpose was to observe the situation related to the rights to nationality, identity, and equal protection without discrimination, along with other related rights and issues. The delegation was composed of IACHR Chairman José de Jesús Orozco Henríquez; First Vice-Chair Tracy Robinson; Second Vice-Chair Rosa María Ortiz; Commissioners Felipe González, Dinah Shelton, and Rose Marie Antoine; Executive Secretary Emilio Álvarez Icaza L.; Assistant Executive Secretary Elizabeth Abi-Mershed; Special Rapporteur for Freedom of Expression Catalina Botero; and other staff members of the Executive Secretariat.

29. During the visit, various IACHR delegations visited the provinces of Bahoruco, Dabajón, Jimaní, La Romana, San Pedro de Macorís, Santo Domingo, and Valverde. The IACHR held meetings with State authorities, civil society organizations, victims of human rights violations, and representatives of international agencies. During its visit, the IACHR received testimony, petitions, and communications from 3,994 individuals. The IACHR has been able to appreciate various advances in the development of democratic institutions and the protection of human rights. The Commission particularly values and welcomes as a very positive step forward the fact that, through the 2010 reform of the Constitution, international human rights law and all international human rights commitments adopted by the State are incorporated directly into domestic law, with constitutional ranking.

30. The Commission observed that the violations of the right to nationality have been exacerbated as a result of Judgment TC 168/2013 of the Constitutional Court. An indeterminate but very significant number of Dominicans, estimated by various sources at more than 200,000 people, have been arbitrarily deprived of their nationality as a result of the ruling. Consequently, these individuals have seen their right to legal personhood violated, and they live in a state of extreme vulnerability.

31. During the visit, the IACHR focused its attention on the exercise and enjoyment of the right to nationality in the Dominican Republic. This right is protected in a fundamental way in international human rights law, in order to protect people from possible arbitrary acts by States. Article 20 of the American Convention on Human Rights establishes that every person has the right to a nationality, that every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality, and that no one shall be arbitrarily deprived of his nationality or of the right to change it.

32. The determination of who are nationals continues to fall under States' domestic jurisdiction; however, this authority is limited by States' obligation to provide individuals with equal and effective protection of the law without discrimination, and by their obligation to prevent, avoid, and reduce statelessness.

¹⁵ IACHR, Press Release No. 73/13

33. On September 23, 2013, the Constitutional Court of the Dominican Republic handed down Judgment 168/13, whereby it gave a new interpretation as regards the acquisition of nationality by individuals born in the country to foreign parents in transit. Based on this interpretation, individuals who previously had been recognized as having Dominican nationality were denationalized.

34. Through this ruling, the Constitutional Court retroactively changed the interpretation of “foreigners in transit” in the constitutions in effect from 1929 to 2010, which established that category as a restriction to the acquisition of the right to nationality by *jus soli*. The court stated that “foreigners in transit” refers to those individuals who do not have legal domicile in the Dominican Republic because they lack a residency permit.

35. Based on the foregoing, the Constitutional Court ordered the General Office of Migration to issue a temporary immigration permit until such time as the National Plan for the Regularization of Foreigners with Irregular Migration Status—provided for in Article 151 of the 2004 Migration Law—determines the conditions under which these types of cases can be put on a regular footing. This new interpretation by the Constitutional Court retroactively strips the right to Dominican nationality from tens of thousands of people who had been considered Dominicans for their entire lives, many of whom were registered at birth as Dominican nationals by the appropriate authorities and throughout their lives were provided with other documents establishing their identity, such as national ID cards (*cédulas*), voter credentials, and passports.

a) Arbitrary Deprivation of Nationality

36. The Commission considers that the Constitutional Court’s ruling implies an arbitrary deprivation of nationality. The ruling has a discriminatory effect, given that it primarily impacts Dominicans of Haitian descent, who are Afro-descendant persons; strips nationality retroactively; and leads to statelessness when it comes to those individuals who are not considered by any State to be their own nationals, under their laws.

37. The Commission believes it is pertinent to state once again that nationality constitutes the legal connection between an individual and a particular State, one that ensures that the individual will have a minimal measure of protection in international relations and that has an impact on the exercise of other political and civil rights, as well as economic, social, and cultural rights. In addition, international recognition of every person’s right to nationality imposes on States the obligation to prevent and eradicate statelessness. Along these lines, the obligations rooted in international human rights law require that States refrain from applying policies, laws, judgments, or practices that result in people being unable to have access to any nationality, as the Inter-American Court established in the Case of the Girls Yean and Bosico, in its judgment of September 8, 2005. That judgment also establishes that when there is a risk of statelessness, the person who might be affected need prove only that he or she was born in the territory of the State in question to obtain the respective nationality.

38. The Commission received reports that many officials of the Central Electoral Board deny individuals born in the Dominican Republic their documentation, depriving them of their nationality arbitrarily and at their own discretion.

39. The lack of recognition of these individuals’ legal personhood as a result of their not being registered, or because of difficulties in access to a *cédula* creates a situation of extreme

vulnerability that leads to violations of other human rights, in a vicious circle that can be broken only through recognition of their nationality.

40. The denial of documents to a large number of people born in the Dominican Republic is a practice that has been carried out in recent years, a time in which there have also been arbitrary deportations and expulsions. Among those deported were individuals born in the Dominican Republic whose Dominican nationality the Dominican State had recognized through the issuance of birth certificates and ID cards. The Inter-American Commission views the order by the President of the Republic to suspend deportations as a positive step. Nonetheless, the Commission received information on the ground indicating that the deportations continue, though at a slower pace than in previous years.

41. The Inter-American Court has established that there is an inextricable link between the obligation to respect and guarantee human rights and the principle of equal protection of the law without discrimination, and that this should permeate every action taken by the State. In this sense, the State may not act against any specific group of people for reasons such as race, ethnicity, or national origin, among others.

b) Multiple Levels of Discrimination

42. Besides affecting individuals born in the Dominican Republic in numerical terms, the Commission observes that Judgment 168/13 disproportionately affects individuals who are already subject to many forms of discrimination, particularly discrimination based on race and poverty. On this point, in its analysis of the situation in the Dominican Republic in April of this year, the Committee for the Elimination of Racial Discrimination referred to three particularly relevant aspects: the persistence of structural racism and discrimination based on color and national origin; the link between poverty and racism in general; and the “firm denial” by the State of the existence of racial discrimination, which constitutes a critical obstacle in terms of compliance with its international obligations.

43. The IACHR visited several bateyes in (communities of sugar workers) in different parts of the country and took note of the conditions of poverty, exclusion, and discrimination in which its inhabitants live. Poverty disproportionately affects Dominicans of Haitian descent, and this is related to the obstacles they face in access to their identity documents.

44. The Commission received many testimonials that pointed to the persistence of racial discrimination not only in society in general, but also in terms of access to public services specifically. Given the central importance of equal protection without discrimination, the Commission underscores the need for the government to adopt any measures that may be necessary to guarantee its effective enjoyment, particularly to ensure the accountability of those acting on its own behalf.

c) Access to Justice

45. One of the safeguards for any human right is judicial protection, applied in a way that is accessible and effective. During its visit, the Commission identified several concerns with respect to access to justice in the area of the rights to nationality, identity, and equal protection without discrimination, particularly for people affected by Judgment 168/13.

46. The Commission spoke with many people who stated that without a cédula they are unable to file a claim or follow through with a judicial proceeding. One mother informed the delegation

that, since neither she nor her son have documents certifying that they were born in the country, she cannot sue her son's father for child support. In the bateyes, members of the communities referred not only to the problem of documentation, but also to issues of geographical accessibility as well as the costs associated with seeking justice. The Commission received consistent information with respect to the Central Electoral Board's practice of indefinitely holding onto documents or suspending their delivery to Dominicans who are of Haitian descent or are perceived as such. On another matter, the Commission received information on several cases in which courts have issued writs for protection of constitutional guarantees (*recursos de amparo*) in favor of plaintiffs—for example, ordering the issuance of documents—but the Central Electoral Board has failed to comply.

d) Intolerance and Incitement to Violence

47. The publication of Judgment 168/13 of the Constitutional Court of the Dominican Republic on September 23, 2013, produced reactions of both support and rejection in the country. In particular, an atmosphere of hostility was created against those who have criticized the ruling and defended the right to Dominican nationality of those affected by it. According to information received by the Inter-American Commission, statements directed against journalists, intellectuals, lawyers, politicians, legislators, human rights defenders, and public figures who have criticized the ruling have become alarmingly aggressive. These individuals have been described as “traitors to the homeland” and have received serious threats through social media, comments in online newspapers, and slogans at protests and demonstrations calling for “death to the traitors.” The Inter-American Commission expresses its concern over the threats and disparaging remarks targeting individuals who have spoken up to criticize the court decision.

48. In this context, other cases have been reported in which human rights defenders and members of the media have been stigmatized and have received threats. In addition, a repudiation campaign is reportedly being carried out against countries and regional and international organizations that apparently expressed their disagreement with the constitutional ruling. Along those lines, high-level government officials reportedly have issued statements questioning the role of agencies such as the UNHCR or the OAS.

49. With regard to these episodes, the Inter-American Commission observes that, in principle, all forms of speech are protected by the right to freedom of expression, regardless of their content and regardless of whether they enjoy a greater or lesser degree of acceptance by society or the State. Nevertheless, there are certain types of speech that—based on prohibitions specifically laid out in international human rights law—are excluded from the sphere of protection of this right, such as the “advocacy of national, racial, or religious hatred” and speech that constitutes “incitements to lawless violence,” understood as the clear incitement to commit crimes, under the terms of international human rights law.

e) Conclusions and Recommendations

50. In keeping with its practice, at the conclusion of the visit, the Commission shared its preliminary observations on the situation based on the visit it conducted, and voiced its willingness to work together with the State to seek solutions to protect fundamental rights in keeping with international human rights standards. In the spirit of collaboration to find a human rights-abiding solution, the Commission highlighted that measures taken to address the challenges identified regarding

the right to nationality, particularly, under judgment 168-13 of the Constitutional Court, should conform to the following:

- 1) They should guarantee the right to nationality of those individuals who already had this right under the domestic legal system in effect from 1929 to 2010.
- 2) People with a right to nationality, such as those who were denationalized under ruling 168/13, cannot be required to register as foreigners as a prerequisite for their rights to be recognized.
- 3) Measures to guarantee the right to nationality of those harmed by Judgment 168/13 should be general and automatic. These mechanisms must be simple, clear, fast, and fair. They must not be discretionary or implemented in a discriminatory fashion.
- 4) The mechanisms must be financially accessible.

51. Finally, in order to achieve a result that is effective, it is important to create an opening for consultation and the participation of civil society and representatives of the populations affected by the court decision.

52. Due to the seriousness of the rights violations resulted from the lack of identification documents, the Commission stresses that it is absolutely essential to take urgent measures to ensure full enjoyment of the human rights of individuals who have been deprived of nationality, until such time as a long term solution is implemented to put an end to these situations. These urgent measures must ensure access of all persons to basic services, such as health and education, and must effectively avoid any expulsion or deportation.

53. Lastly, the Commission emphasizes that everyone has the right to accessible and effective judicial protection and a fair trial, in order to safeguard the rights of nationality, identity, equality and non-discrimination, which constitute the main focus of this visit.

2. Overview on universal ratification, incorporation of standards, conventionality control and compliance with IACHR's recommendations and decisions

54. Article 59 of IACHR's Rules of Procedure, which came into force on August 1, 2013, indicates that Chapter IV.A) of its Annual Report shall include an overview of the human rights situation in the hemisphere, stemming from the Commission's monitoring work, highlighting main trends, problems, challenges, progress and best practices. To enforce these regulatory provisions, in 2013, the IACHR decided to examine, among other issues, the progress and challenges in relation to the universal ratification of inter-American human rights treaties and the incorporation of inter-American standards into domestic law, as well as review of laws for compliance with international human rights conventions and effective enforcement of related decisions and recommendations. On August 30, 2013, the IACHR published a questionnaire for the purpose of obtaining inputs from the users of the Inter-American Human Rights System (hereinafter also referred to as the IAHRs), about the following matters:

1. Identify how the ratification of the OAS Charter, the American Convention and other inter-American human rights instruments has contributed to incorporating inter-American standards into the design of public policy and the adoption of laws and practices domestically.

2. Indicate the priority challenges pending in terms of incorporating human rights standards into the domestic legal system.
3. Provide examples of decrees or resolutions of the different public authorities that incorporate the standards of the inter-American human rights system.
4. Indicate whether guidelines have been developed by the judiciary to incorporate the standards of the inter-American system into its rulings.
5. Indicate whether in your country the concept of judicial control of compliance with the norms of the System is applied, requiring judges to review the compliance of State measures with a State's international human rights commitments and, if so, share examples of judicial decisions that reflect this.
6. Indicate what mechanisms have been established domestically to effectively implement the Commission's decisions and recommendations.

55. Nine Member States submitted their observations¹⁶ and a total of 38 reports were presented by nongovernmental organizations, representatives of offices of human rights ombudsmen or other state entities whose mandates include the defense of human rights, scholars, and individuals. In light of the inputs received during this consultation, which was published on August 30, 2013, and this year's monitoring activities, the IACHR drew conclusions about the trends, challenges, progress and best practices regarding universal ratification of human rights treaties, the incorporation of standards, and the review of laws for compliance with international human rights conventions throughout the region.

Universal ratification of human rights treaties

56. The promotion of the signing, ratification or adherence to the American Convention and other inter-American instruments has been on IACHR's agenda over the past decades. For several years, the speeches delivered by the Chairs of the IACHR at the Summits of the Americas, the General Assemblies of the OAS, and the opening sessions of the IACHR periods of sessions have addressed the need for all States of the region to ratify and implement inter-American human rights treaties. In each one of these forums, the IACHR has repeated the need for Member States to overcome the impediments preventing each and every citizen of the Americas from enjoying the same level of human rights protection, which shall only be achieved when all inter-American instruments in this area are ratified.

57. The IACHR has issued a series of press releases celebrating the ratification of international human rights instruments.¹⁷ The IACHR has made working visits to English-speaking Caribbean countries, Canada and the United States, and its representatives have held meetings with state authorities for the purpose of motivating ratification and adherence to inter-American treaties,

¹⁶ These countries are Guatemala, Uruguay, Honduras, Jamaica, Colombia, Argentina, Mexico, Costa Rica, and Suriname. The IACHR notes that several countries that had not submitted their observations within the stipulated time-limits had requested an extension of the deadline for responding to the consultation of August 30, 2013.

¹⁷ See, for example, press releases 25/05, 12/05, 47/06, 33/06, 1/06, 62/07, 40/08, 12/12 and 75/12.

especially the American Convention. Some of these visits have been made in collaboration with representatives of OAS political bodies.¹⁸

58. When adopting its Strategic Plan for 2011-2015, the IACHR identified universal acceptance of human rights treaties as one of the principal challenges of the IAHRs. On that occasion, the Commission underscored that:

What the region now has is a system with three levels of acceptance: one level, of universal acceptance and the minimum for all the Member States ensures that people enjoy the protection of the rights recognized in the American Declaration and the OAS Charter, under the Inter-American Commission's supervision; a second level is for Member States that have ratified the American Convention, but have not accepted the jurisdiction of the Court; the third level is for those Member States that have ratified the Convention and have accepted the Court's jurisdiction. This arrangement leaves millions of people at a disadvantage in terms of the degree of international protection of their rights.¹⁹

59. Therefore, the IACHR underscored that one of its priority goals for the 2011-2015 period is "promoting the observance of human rights, knowledge and understanding of the system, and universal acceptance of the regional human rights instruments."²⁰

60. During the review of its Rules of Procedures, institutional policies and practices, which took place between 2011 and this year, the IACHR received inputs pointing out that the full effectiveness of the Inter-American System requires Member States to ratify all inter-American human rights treaties. This requirement has been welcomed by the IAHRs, which undertook to include the promotion of universality as a priority issue on its agenda.²¹

61. The IACHR wishes to underscore statements made by several Member States before the organization's political bodies, pointing out that the absence of universal ratification of the IAHRs' treaties tends to undermine it. At the third Summit of the Americas, held in Canada in April 2001, heads of State of several countries of the region stressed the importance of signing, ratifying or adhering to, as quickly as possible, all universal and inter-American human rights instruments. The Foreign Ministers of the Member States have also pledged, through various resolutions of the General Assembly of the OAS, to undertake the efforts needed to achieve the universalization of the IAHRs.

62. Although Member States recognizes that the IAHRs' effectiveness depends on universal ratification of human rights treaties, at the time of the present Annual Report's publication and more

¹⁸ For example, on April 21-22, 2008, a delegation comprised of the then chair of the Committee of Juridical and Political Affairs, Ambassador of the Permanent Mission of the Dominican Republic to the OAS, Roberto Álvarez, the then Commissioner Clare Roberts, and the Executive Secretary of the IACHR met with authorities of the State of Canada and civil society organizations, where they spoke about the importance of having Canada adhere to the American Convention. See Report to the Committee of Juridical and Political Affairs of the Permanent Council of the OAS regarding the visit to Canada on April 21-22, 2008, OEA/Ser. G, CP/CAJP-2646/08. May 21, 2008, available at www.oas.org/consejo/sp/cajp/ddhh.asp.

¹⁹ IACHR, Strategic Plan 2011-2015, Part I, page 58.

²⁰ IACHR, Strategic Plan 2011-2015, Part I, page 63.

²¹ See IACHR, Resolution 1/2013, March 19, 2013, page 16, section I, subparagraph A, which underscores that, when reviewing its Strategic Plan, the IACHR shall include as an institutional priority promotion of the universality of ratification of the American Convention and other inter-American human rights instruments and their optional clauses.

than 44 years after the American Convention was adopted in November 1969, 12 of the 35 Member States of OAS have not ratified it and 15 have not accepted the contentious jurisdiction of the Inter-American Court of Human Rights (hereinafter referred to as the Inter-American Court).

63. As highlighted in the table below, the last instrument of ratification of the American Convention was deposited in June 1993 by Dominica. Since then, there have been no additional ratifications and two Member States denounced the above-mentioned instrument: Trinidad and Tobago in May 1999 and Venezuela in September 2013.²² Although the above-mentioned decision does not prevent IAHR bodies from hearing complaints alleging failure to comply with the American Convention for events occurred before the denunciation came into force,²³ the citizens of Trinidad and Tobago and Venezuela have been deprived of greater protection of their fundamental rights. Human rights violations that have occurred in these countries after denunciation of the Convention cannot be heard by the Inter-American Court and shall be the subject of review by the IACHR only in the framework of the American Declaration on the Rights and Duties of Man,²⁴ the OAS Charter, and those inter-American instruments that continue to be in force for Trinidad Tobago and Venezuela.

64. The IACHR is aware that the ratification and adherence to an international treaty is a voluntary and sovereign act of States. Without detriment to this, the absence of ratification of the principal treaty of the Inter-American System, that is, the American Convention, as well as denunciation of this treaty, is contrary to one of the integration ideals of the peoples of the Americas. Article 3, subparagraph I), of the OAS Charter enshrines the fundamental rights of the human person as one of the Organization's basic principles. Likewise, in its preamble to the American Declaration of the Rights and Duties of Man, adopted at the same Ninth International Conference of American States, which led to the establishment of the Organization, the Member States unanimously agreed that: "The international protection of the rights of man should be the principal guide of an evolving American law."

65. For the IACHR, the difficulties in achieving universal ratification of the American Convention not only undermines the guiding principles of integration of the Americas as enshrined since the establishment of the OAS, but also consolidates a situation of disadvantage for those citizens under the jurisdiction of Member States that have not yet adhered to all the inter-American treaties. In this vein, the most pernicious consequence of the absence of universal ratification is depriving hundreds of millions of citizens of the America of full protection of their rights.²⁵

²² In view of Trinidad and Tobago and Venezuela's denounce of the American Convention, the IACHR expressed at that time its deep concern. See press releases Nos. 10/98 and 64/13, available at: www.IACHR.org/Comunicados/Spanish/1998/Comunicados.10-14.htm and www.oas.org/es/IACHR/prensa/comunicados/2013/064.asp.

²³ According to Article 78.2 of the American Convention, the denouncement of this treaty "shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation."

²⁴ Both the IACHR and the Inter-American Court have contended that although it was originally adopted as a declaration, this instrument is source of international obligations for the OAS Member States. See I/A Court of HR. *Interpreting the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paragraphs 35 to 45.

²⁵ IACHR, *Annual Report*, OEA/Ser.L/V/II.147, Doc. 1, March 5, 2013, paragraph 19.

**CURRENT STATUS OF RATIFICATION OF THE AMERICAN CONVENTION AND ACCEPTANCE OF THE COURT'S
CONTENTIOUS JURISDICTION**

SIGNATORY COUNTRIES	DATE OF SIGNING	DATE OF RATIFICATION/ADHERENCE	DATE OF DEPOSIT
Antigua and Barbuda			
Argentina	02-02-84	08-14-84	RA 09-05-84
Bahamas			
Barbados	06-20-78	11-05-81	RA 11-27-82
Belize			
Bolivia		06-20-79	AD 07-19-79
Brazil		07-09-92	AD 09-25-92
Canada			
Chile	11-22-69	08-10-90	RA 08-21-90
Colombia	11-22-69	05-28-73	RA 07-31-73
Costa Rica	11-22-69	03-02-70	RA 04-08-70
Dominica		06-03-93	RA 06-11-93
Ecuador	11-22-69	12-08-77	RA 12-28-77
El Salvador	11/22/69	06-20-78	RA 06-23-78
United States of America	06-01-77		
Grenada	07-14-78	07-14-78	RA 07-18-78
Guatemala	11-22-69	04-27-78	RA 05-25-78
Guyana			
Haiti		09-14-77	AD 09-27-77
Honduras	11-22-69	09-05-77	RA 09-08-77
Jamaica	09-16-77	07-19-78	RA 08-07-78
Mexico		03-02-81	AD 03-24-81
Nicaragua	11-22-69	09-25-79	RA 09-25-79
Panama	11-22-69	05-08-78	RA 06-22-78
Paraguay	11-22-69	08-18-89	RA 08-24-89
Peru	07-27-77	07-12-78	RA 07-28-78
Dominican Republic	09-07-77	01-21-78	RA 04-19-78
Saint Kitts and Nevis			
Saint Lucia			
St. Vincent & the Grenadines			
Suriname		11-12-87	AD 11-12-87
Trinidad & Tobago		04-03-91	AD 05-28-91*
Uruguay	11-22-69	03-26-85	RA 04-19-85
Venezuela	11-22-69	06-23-77	RA 08-09-77**

Source: Department of International Law of the General Secretariat of the OAS

* Denounce submitted in May 1998

** Denounce submitted in September 2012

RA = RATIFICATION

AD = ADHERENCE

66. Regarding the eight other treaties comprising the Inter-American System, the following Member States of OAS have ratified or adhered to them:

CURRENT STATUS OF RATIFICATION OF THE ADDITIONAL PROTOCOLS TO THE AMERICAN CONVENTION AND OTHER INTER-AMERICAN HUMAN RIGHTS TREATIES

States	APACESCR ²⁶	PACHRADP ²⁷	IACPPT ²⁸	IACFDP ²⁹	IACPEVW ³⁰	IACEFDPD ³¹	IACAFDI ³²	IACRRDRFI ³³
Antigua and Barbuda					A 19-11-98			S 06-07-13
Argentina	R 23-10-03	R 05-09-08	R 31-03-89	R 28-02-96	R 05-07-96	R 10-01-01	S 06-07-13	S 06-07-13
Bahamas					A 16-05-95			
Barbados					R 16-05-95			
Belize					A 25-11-96			
Bolivia	R 05-10-96		R 21-11-06	R 05-05-09	R 05-12-94	R 30-05-03		
Brazil	A 21-08-96	R 13-08-96	R 20-07-89		R 27-11-95	R 15-08-01	S 06-07-13	S 06-07-13
Canada								
Chile		R 16-10-08	R 30-09-88	R 26-01-10	R 15-11-96	R 26-02-02		
Colombia	A 23-12-97		R 19-01-99	R 12-04-05	A 15-11-96	R 11-02-04		
Costa Rica	R 16-11-99	R 26-05-98	R 08-02-00	R 02-06-96	R 12-07-95	R 08-02-00		S 06-07-13
Cuba								
Dominica					R 06-06-95			
Ecuador	R 25-03-93	R 15-04-98	R 09-11-99	R 27-07-06	R 12-07-95	R 08-02-00	S 06-07-13	S 06-07-13
El Salvador	R 06-06-95		R 05-12-94		R 26-01-96	R 08-03-02		
United States								
Grenada					R 15-02-01			
Guatemala	R 05-10-00		R 29-01-87	R 25-02-00	R 04-04-95	R 28-01-93		
Guyana					R 28-02-96			
Haiti					A 02-06-97	R 03-09-09		
Honduras	A 10-11-11	A 10-11-11		R 11-07-05	R 12-07-95	A 10-11-11		
Jamaica					R 14-12-05			
Mexico	R 16-04-96	R 28-06-07	R 22-06-87	R 09-04-02	R 12-11-98	R 25-01-01		
Nicaragua	R 15-03-10	R 09-11-99	A 23-11-09		R 12-12-95	R 25-11-02		
Panama	R 18-02-93	R 28-08-91	R 28-08-91	R 28-02-96	R 12-07-95	R 16-02-01		
Paraguay	R 03-06-97	R 07-12-00	R 09-03-90	R 26-11-96	R 18-10-95	R 22-10-02		
Peru	R 04-06-95		R 28-03-91	R 13-02-02	R 04-06-96	R 30-08-01		

²⁶ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, adopted in San Salvador, El Salvador, November 17, 1988, 18th Regular Period of Sessions of the General Assembly.

²⁷ Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted in Asunción, Paraguay, June 8, 1990, 20th Regular Period of Sessions of the General Assembly.

²⁸ Inter-American Convention to Prevent and Punish Torture, adopted in Cartagena de Indias, Barranquilla, Colombia, December 9, 1985, 15th Regular Period of Sessions of the General Assembly.

²⁹ Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, June 9, 1994, 24th Regular Period of Sessions of the General Assembly.

³⁰ Inter-American Convention to on the Prevention, Punishment and Eradication of Violence against Women, adopted in Belém do Pará, Brazil, June 9, 1994, 24th Regular Period of Sessions of the General Assembly.

³¹ Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, adopted in Guatemala City, Guatemala, June 7, 1999, 29th Regular Period of Sessions of the General Assembly.

³² Inter-American Convention against All Forms of Discrimination and Intolerance, adopted in Guatemala City, June 5, 2013, 43rd Regular Period of Sessions of the General Assembly.

³³ Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance, adopted in Guatemala City, June 5, 2013, 43rd Regular Period of Sessions of the General Assembly.

Dominican Republic		A 27-01-12	R 29-01-87		R 07-03-96	R 02-05-07		
Saint Kitts and Nevis					R 12-06-95			
Saint Lucia					R 04-04-95			
St. Vincent and the Grenadines					R 31-05-96			
Suriname	A 10-07-90		R 12-11-87		R 08-03-02			
Trinidad and Tobago					R 08-05-96			
Uruguay	R 02-04-96	R 04-04-94	R 10-11-92	R 02-04-96	R 02-04-96	R 20-07-91	S 06-07-13	S 06-07-13
Venezuela		R 06-10-93	R 26-08-91	R 19-01-99	R 03-02-95	R 28-09-06		

Source: Department of International Law of the General Secretariat of the OAS

R = RATIFICATION S = SIGNING

A = ADHERENCE

67. As indicated in the tables above, to date only seven Member States have ratified all inter-American human rights treaties: Argentina, Costa Rica, Ecuador, Mexico, Panama, Paraguay and Uruguay.³⁴ The IACHR is convinced that the citizens of these countries have benefited from better and greater protection of their fundamental rights both domestically and internationally.

68. The IACHR stresses that most of the inputs obtained during the consultation that started on August 30, 2013 agree with respect to how ratification of the American Convention and other inter-American treaties have contributed to drafting public policies and adopting laws leading to the observance of international human rights standards.

69. Some civil society organizations underscored the indivisible character of human rights, highlighting the need for Member States to step up their efforts to draw up and implement treaties establishing the international adjudication of Economic, Social and Cultural Rights. On this specific matter, the IACHR stresses that only 16 countries have ratified the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (ESCR), adopted in June 1994 in San Salvador. In other words, less than half of the Member States have adhered to the principal instrument of the IAHRs aimed at protecting and defending ESCR.

70. The inputs received from civil society organizations indicate that ratification of human rights treaties has enabled them to broaden the use of the monitoring and defense tools that IAHRs bodies have available. Furthermore, they stressed that the ratification of regional instruments has contributed to mainstreaming inter-American standards and has made it possible for them to call for implementation of the decisions by IAHRs bodies in their dialogues with national authorities.

71. Finally, on the basis of the information received during the consultation of August 30, 2013 and follow-up on this matter, the IACHR underscores the acknowledgment by IAHRs stakeholders that ratification of the American Convention and other regional human rights treaties tends to contribute to mainstreaming inter-American standards into public policymaking and the adoption of

³⁴ Regarding this, the Inter-American Convention against All Forms of Discrimination and Intolerance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance were not taken into consideration as they were recently adopted, in June 2013.

domestic laws and practices. Finally, the IACHR calls upon Member States to ratify all inter-American human rights treaties and to dismantle any obstacles there might be to reaching this goal.

Incorporation of inter-American standards and conventionality control

72. The efficacy of the IAHRs requires not only that victims of human rights violations have full access to the human rights defense and protection mechanisms afforded by the IACHR and the Inter-American Court of Human Rights, but also that domestic authorities properly incorporate and enforce inter-American standards. The obligation to incorporate those standards follows, *inter alia*, from the preamble to the American Declaration,³⁵ Article 2 of the American Convention³⁶, Articles 26 and 27 of the Vienna Convention on the Law of Treaties³⁷ and the fundamental principles of the OAS Charter.

73. As expressed in the preamble to the American Convention, the IAHRs is based on the principle of complementarity³⁸ whereby the member States are the principal parties responsible for preventing human rights violations and ensuring their effective enjoyment by all persons subject to their jurisdiction.

74. When they accede to the instruments that govern the Inter-American Human Rights System, member States pledge that their domestic organs and authorities shall ensure that the inter-American standards take precedence in the event of conflict with domestic law. This maxim depicts what the Inter-American Court has called “conventionality control.” Although the expression was first used in the IAHRs in the judgment delivered in the *Case of Almonacid Arellano et al. v. Chile*,³⁹ the gist of this principle was already present in previous pronouncements by the Inter-American Court and the Inter-American Commission, whereby they asserted that domestic provisions clashing with the American Convention have no legal effects. In early 1990s, the Inter-American Commission had already held, for instance, that amnesty laws enacted in Argentina⁴⁰, Uruguay⁴¹, Guatemala⁴² and El Salvador⁴³ were incompatible with the obligations to investigate and punish serious human rights violations.

³⁵ The preamble of the American Declaration states that “[t]he affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions ...”

³⁶ While Article 1(1) of the American Convention establishes the States’ obligation to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms recognized therein, Article 2 provides that “[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms ...”

³⁷ Article 26 of the Vienna Convention on the Law of Treaties enshrines the general principle of International Law – *pacta sunt servanda*, as it provides that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.” On the other hand, Article 27 states that “[a] party [to the Vienna Convention] may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

³⁸ In the preamble to the American Convention, international protection of the essential rights of the person is “in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.”

³⁹ I/A Court H.R. *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, paragraph 124.

⁴⁰ IACHR, *Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 v. Argentina*, Report No. 28/92 of October 2, 1992.

⁴¹ IACHR, *Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 v. Uruguay*, Report No.29/92 of October 2, 1992.

75. In judgments recently handed down by the Inter-American Court, it has defined the scope of the obligation to exercise *ex officio* conventionality control as follows:

When a State has ratified an international treaty such as the American Convention, the judges are also subject to it; this obliges them to ensure that the *effet util* of the Convention is not reduced or annulled by the application of laws contrary to its provisions, object and purpose. In other words, the organs of the Judiciary should exercise not only a control of constitutionality, but also of “conventionality” *ex officio* between domestic norms and the American Convention; evidently in the context of their respective spheres of competence and the corresponding procedural regulations⁴⁴.

The Judiciary, at all levels, must exercise *ex officio* a form of “conventionality control” between domestic legal provisions and the American Convention, obviously within the framework of their respective competences and the corresponding procedural regulations. In this task, the Judiciary must take into account not only the treaty itself, but also the interpretation thereof by the Inter-American Court, which is the ultimate interpreter of the American Convention⁴⁵.

76. The information the IACHR has in its possession indicates that Constitutional provisions and prevailing judicial precedents of the English-speaking Caribbean countries, the United States and Canada place international human rights treaties on a par with domestic statutory law. On the other hand, in Roman-Germanic tradition countries, international human rights treaties usually take precedence over statutory law and, in some cases, over the Constitution. In the processes of adoption of new national Constitutions or amendment faced by several Latin-American countries, the trend appears to be giving the rights and guarantees recognized in international treaties the same rank as constitutional norms.⁴⁶

77. In addition to the process of Constitutional enactment and amending, the interpretations delivered by several constitutional and supreme courts have been instrumental in accommodating domestic legislation to the State’s international obligations in the area of human rights. The highest courts of some States have held that the standards established in inter-American law are

...continuation

⁴² IACHR, Annual Report of 1996, Chapter V, Human Rights Development in the Region, section on Guatemala.

⁴³ IACHR, *Massacre of Las Hojas v. El Salvador*, Report No. 26/92, September 24, 1992.

⁴⁴ I/A Court H.R. *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Judgment of November 24, 2006. Series C No. 158, paragraph 128, citing the *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, paragraph 124.

⁴⁵ I/A Court H.R. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 225, which cites the case of *Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 219, and the case of *Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, paragraph 202.

⁴⁶ See, for example, Article 46 of the 1993 Constitution of Guatemala; Article 75, paragraph 22, of the Constitution of the Argentine Republic, as amended in 1994; Article 23 of the 1999 Constitution of the Bolivarian Republic of Venezuela; Article 424 of the 2008 Constitution of Ecuador; articles 13, section IV, and 410, section II, of the 2009 Constitution of the Plurinational State of Bolivia; Article 74, paragraph 3, of the 2010 Constitution of the Dominican Republic, and Article 1 of the Constitution of the United Mexican States, as amended in 2011.

binding upon the judicial organs and other organs of State power. In this exercise, the rulings of the IAHRs' organs have been cited to support and reinforce the scope and content of domestic case law.⁴⁷

78. Over the course of this year, the IACHR has observed a number of setbacks with respect to conventionality control of the legal effects of provisions that obstruct the investigation of serious human rights violations in some countries of the region. Although significant progress has been made in Brazil with respect to the obligation to expose the truth about the crimes committed during the military dictatorship, no such progress has been made with respect to the State's obligation to ensure justice. The information received indicates that the position of the Federal Supreme Court, set forth in a majority decision of April 2012 upholding Law 6683/79 [Amnesty Law] still prevails in the criminal court system. The Federal Supreme Court's current position is an impediment to efforts by the Public Prosecution and other sectors of the Brazilian State to solve and punish crimes against humanity committed by agents of repression between 1964 and 1979.

79. The IACHR is deeply concerned over the passage of a law in Suriname in April 2012 which expanded the scope of the previous 1992 Amnesty Law, which obstructs prosecution of human rights violations committed under the military dictatorship that ruled that country between 1982 and 1992. While the 1992 Amnesty Law contained an exception to allow investigation of crimes against humanity and war crimes, the exception was lifted under the April 2012 law, thereby preventing investigation of the most serious human rights violations committed by the forces of law and order in that decade of Suriname's recent history, spent under a dictatorial regime.

80. The IACHR observes setbacks in Uruguay as well, in the form of the judgments delivered by its Supreme Court on February 22 and March 12, 2013, which declared the trials conducted against former members of the Armed Forces under Law 18,831 of 2011 to be unconstitutional. That law had reinstated the authority of the Public Prosecution Office to seek prosecution and punishment of crimes of State terrorism committed as of March 1, 1985, which were classified as crimes against humanity. When it issued its ruling on Law 18,831, the Supreme Court ordered that the State's punitive authority with respect to those crimes was time barred, and in so doing ignored the jurisprudence of the organs of the IAHRs to the effect that legal measures like the statute of limitations or other measures whose effect is to exempt perpetrators of criminal liability do not apply in the case of serious human rights violations and, most especially, crimes against humanity.

81. In press releases issued in October 2013, the IACHR urged Guatemalan⁴⁸ and Salvadoran⁴⁹ authorities to ensure that their respective amnesty laws – Guatemala's Decree 8-86 and El

⁴⁷ On the matter of the recognition of the State's obligation to enforce inter-American standards at the domestic level, as upheld in domestic rulings by the supreme courts and constitutional tribunals, see, for example, the Constitutional Chamber of the Supreme Court of Costa Rica, Judgment of May 9, 1995, constitutionality challenge, vote 2313-95 (Case 0421-5-90), *consideranda* VII; Constitutional Court of Colombia, Judgment of January 19, 2000, C-010/00, paragraph 6; Supreme Court of the Dominican Republic, Judgment No. 1920-2003, judgment of November 13, 2003; Constitutional Tribunal of Peru, Judgment of July 21, 2006, Case No. 2730-2006-PA/TC, argument 12; Supreme Court of the Argentine Nation, Judgment of July 13, 2007, Mazzeo, Julio Lilo *et al.*, petition of cassation and constitutionality challenge, M. 2333. XLII and others, paragraph 20; Constitutional Chamber of the Supreme Court of Justice of Nicaragua, case file No. 574-2009, judgment of March 10, 2010; Constitutional Tribunal of Bolivia, Judgment of May 10, 2010 (Case No. 2006-13381-27-RAC), section III.3 and National Supreme Cort of Justice of Mexico, cse file various 912/2010, Case Rosendo Radilla Pacheco, judgment of July 12, 2011.

⁴⁸ See IACHR, Press Release No. 80/13 of October 25, 2013, available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/080.asp.

Salvador's 1992 General Amnesty Law for the Consolidation of the Peace- do not obstruct the investigation of the serious violations of human rights that took place during the armed conflicts in both countries.

82. Given the concerns described above, the Commission calls upon the member States to take the necessary legislative or judicial measures so that their authorities do not allow such serious human rights violations to go unpunished, and instead practice proper conventionality control of any domestic laws that pose obstacles to the observance of the States' international obligations in that regard.

83. In the consultation initiated by the IACHR in August 30, 2013, the States and civil society organizations described the laws, public policies and administrative measures adopted that, in their judgment, are in line with inter-American human rights standards. According to the information received, several of these measures are the result of compliance with recommendations made by the IACHR within the framework of the petition and case system and in the course of performing its function of monitoring the human rights situation in the region. Prominent among the topics mentioned in the information the IACHR received were the adoption of laws or court rulings in various member States concerning the following:

- Correcting the long-standing history of discriminatory practices and violence against women;
- Promoting access to information in the public domain;
- Limiting the use of criminal law to punish opinions that concern matters of public interest;
- Preventing the military criminal justice system from asserting jurisdiction in the case of crimes involving serious human rights violations;
- Guaranteeing the enjoyment of civil, economic and social rights to members of the LGBTI community, on an equal footing with the rest of the population;
- Regulating the use of force by security agents;
- Protecting the ancestral lands of indigenous and tribal peoples and guaranteeing prior consultation procedures;
- Adapting the definitions of crimes under domestic law to conform to the definitions contained in regional conventions like the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons.

84. A number of civil society organizations emphasized the fact that one of the main challenges with respect to the introduction of inter-American standards in their respective countries is the absence of an efficient institutional structure or organs specialized in certain subjects. By way of example, respondents mentioned the fact that in many countries neither the judicial branch of government nor the Public Prosecution Service has offices or sections specialized in investigating and prosecuting crimes classified as gender violence or other serious human rights violations. There were also reports that even where such specialized offices do exist, they lack the resources or institutional support needed to effectively perform their mandate.

85. The responses to the IACHR's questionnaire also identified another obstacle that stands in the way of incorporating inter-American standards, which is that training activities for State officials

...continuation

⁴⁹ See IACHR, Press Release No. 72/13 of October 2, 2013, available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/072.asp.

or other civil servants are either altogether lacking or inadequate. To this regard, the IACHR has signed agreements with high courts in the region in order to establish close relationships, conduct forums and training seminars for justice operators and State agents dedicated to the defense of human rights.⁵⁰ Salient among the activities conducted by the IACHR in this area is the cooperation agreement signed with the Supreme Court of Mexico, which has enabled the IACHR to participate in seminars that trained over 1200 federal judges and magistrates in conventionality control and other themes related to the incorporation of inter-American standards.⁵¹

86. Although the information the IACHR received indicates that in a minority of the countries of the region specific guidelines have been issued by the Judicial Branch for incorporation of inter-American standards, both the States and civil society organizations described countless decisions, delivered for the most part by lesser courts, in which they performed *ex officio* a kind of conventionality control of the provisions of domestic laws. Despite the increase in the number of justice operators who regularly invoke inter-American standards in their rulings, it has occasionally happened that the disciplinary organs within the justice systems of some countries have instituted administrative proceedings against judges who fail to cite judicial precedents or cite legal provisions that are patently contrary to inter-American standards. For the IACHR, such examples demonstrate that the process of making conventionality control standard practice in the daily activities of magistrates requires not only their training and initiative, but also that specific guidelines be adopted to ensure the possibility of harmonizing a country's domestic legal system with its international human rights obligations.

Compliance with the Commission's decisions and recommendations

87. The power to supervise compliance with IACHR recommendations is based on Article 41 of the American Convention, Article 18 of the IACHR Statute, and Article 48 of its Rules of Procedure. That power is exercised through reporting on progress made in complying with its decisions, in Chapter II of the Annual Report, as well as in the context of hearings and working meetings. The IACHR also regularly examines and processes communications submitted by the States and petitioners indicating the extent of compliance with recommendations issued in final reports on the merits and in commitments made in friendly settlement agreements.

88. With respect to precautionary measures, the IACHR permanently monitors information submitted by petitioners and the States and carry out periodic meetings in order to determine whether the measures granted should remain in effect or be amended. In doing this monitoring, the IACHR, in accordance with Article 25(9) and (10) of its Rules of Procedure, examines the information received during the processing of the petition, requests information from the parties, convenes hearings or working meetings, and conducts monitoring and review visits.

89. Several of the activities the IACHR carries out to promote and monitor the human rights situation have specific follow-up mechanisms. Pursuant to Article 59(2)(f) of its Rules of Procedure, in Chapter V of its Annual Report, the Commission publishes a report on progress and difficulties encountered in complying with the recommendations issued in country reports adopted in earlier years.

⁵⁰ These memoranda of understanding are summarized at the following IACHR web address: <http://www.oas.org/en/iachr/mandate/mou.asp>.

⁵¹ See Press Release No. 112/11 of October 24, 2011, available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/112.asp.

As for thematic reports, the IACHR has maintained the practice of convening public hearings and supporting channels for dialogue with members of the inter-American human rights community so they can express their views on progress made in the implementation of the recommendations indicated therein.

90. In its 2011-2015 Strategic Plan, the IACHR emphasized that one of the principal challenges to the effectiveness of the IAHRs is that the Member States must comply with the decisions of the Commission and the Court and, to that end,

must [...] adopt the legislative measures necessary to establish a juridical mechanism that ensures enforcement of the decisions of the Court and the Commission. While important progress has been made with implementation of the Commission's recommendations and compliance with the Court's judgments, the level of compliance needed to ensure the effectiveness of the System's decisions has not yet been achieved.

The States have introduced legislative reforms to comply with the decisions of the Commission. Both in terms of content and name, these reforms conform to the standards set by the Commission through its individual case system.⁵²

91. Along these same lines, for the period 2011-2015, the IACHR established the priority strategic objective of "promoting full compliance with its decisions and recommendations."⁵³

92. On various occasions, the OAS General Assembly has urged the Member States to fully comply with IACHR recommendations and decisions.⁵⁴ When reviewing its Rules of Procedure, policies, and institutional practices, the IACHR was able to observe the concern shared by those participating in the IAHRs given limited compliance with the decisions of its constituent bodies. On that occasion, the Member States expressed difficulties in complying with certain recommendations issued in final reports on the merits and requested more counsel from the Commission in order to resolve that situation. In response to that request, the IACHR undertook to seek the resources needed to prepare a study on the status of compliance with its decisions, highlighting trends and good practices in the countries of the region, as well as a comparative analysis of legislation governing domestic compliance with decisions issued by the bodies of the IAHRs.⁵⁵

93. When amending its Rules of Procedure on March 19 of this year, the IACHR established in Article 46(2) the ability to grant longer extensions for suspending the time limit for referring cases to the jurisdiction of the Inter-American Court inasmuch as the state expressly waive the submission of preliminary objections regarding the deadline for the submission of the case before the Inter-American Court, provided by Article 51(1) of the American Convention. According to that provision, this possibility is contingent, *inter alia*, on proper documentation by the State that is requesting the extension of

⁵² IACHR, 2011-2015 Strategic Plan, Part I, page 83.

⁵³ IACHR, 2011-2015 Strategic Plan, Part I, page 87.

⁵⁴ A more detailed reference on the General Assembly resolutions addressing the need for Member States to comply with the decisions of the IAHR bodies can be found in the introduction to Chapter II of this Annual Report.

⁵⁵ IACHR, *Response to the Permanent Council of the OAS regarding the recommendations of the Special Working Group to Reflect on the Workings of the IACHR with a View to Strengthening the IAHRs*, October 23, 2013, p. 47, para. 182, available at <https://www.oas.org/es/cidh/fortalecimiento/docs/RespCP.pdf>.

difficulties in complying with the recommendations issued in final reports on the merits, due to the complexity of the matter and when compliance with the recommendations involves different branches of government or coordination between central and regional governments, among other factors.

94. During the consultations initiated on August 30, 2013, the IACHR received information indicating that an absolute minority of Member States has specific laws designed to govern the mechanisms for complying with decisions and recommendations issued by that international body. Some civil society organizations reported situations in which the highest levels of the Judicial Branch declared decisions issued by both the Commission and the Inter-American Court to be unenforceable. On the other hand, the IACHR has been informed of decisions issued by the Supreme Courts of some countries declaring that the recommendations issued in reports on the merits adopted in accordance with Article 51 of the American Convention are mandatory⁵⁶.

95. During the consultations, some States indicated that although they had no formal implementation mechanisms, institutionalized practices have been consolidated, such as the formation of periodic roundtables between state agencies and petitioners. They also pointed to the existence of permanent multi-sector groups to involve all relevant state agencies in the process of implementing IACHR recommendations.

96. Some States indicated that their systems have specific laws empowering anyone to demand, in the courts, the execution of reparation measures issued by the bodies of the IAHRs and to summon officials who are opposed to complying with the resolutions of supranational human rights bodies. Other countries have legal provisions requiring the government to pay indemnities for damages caused by human rights violations established in decisions from international bodies⁵⁷.

97. After examining the input received during the consultations, the IACHR believes that specific implementation mechanisms tend to reduce the difficulties that States face in complying with the decisions of the IAHR bodies. However, it is important to emphasize that the effect of institutional designs and laws for executing the decisions of the IAHR bodies is more notable in the case of compliance with monetary recommendations. The information the IACHR receives periodically within the framework of its powers to monitor the implementation of its decisions indicates significant obstacles to the States' compliance with recommendations involving measures related to non-repetition, investigation, and punishment of those responsible for human rights violations.

98. In view of the foregoing, the IACHR reiterates its call for the Member States to adopt the measures necessary to establish mechanisms for implementing the decisions of the IAHR bodies at the domestic level. Such measures must be designed so that actions taken by all areas of government incorporate the inter-American standards on the subject of human rights.

⁵⁶ See, e.g., Supreme Court of Justice of Argentina, Case Carranza Latrubesse vs. National State, judgment of August 6, 2013.

⁵⁷ For instance, the Mexican General Law of Victims of May 3, 2013, establishes in its Article 65(d) that the victims of human rights violations will be compensated in accordance with the amount established in resolutions issued by an International organ of human rights protection acknowledged by International Treaties ratified by Mexico. In a similar way, see Colombian Law 288 of July 5, 1996.