2. Overview of the human rights situation from the monitoring work of the Thematic Rapporteurships

13. In Chapter IV.A, the Commission provides an overview for 2016 of the human rights situation in the region and priority issues. In 2016, the Commission decided to focus in this section on the persons, groups, communities, and topics that the Commission pays special attention to in connection with its thematic rapporteurships. Thus, the IACHR seeks to provide analysis of the principal trends, problems, challenges, advances, and best practices relating to the human rights of indigenous peoples, women, migrants, children, persons deprived of liberty, Afro-descendants, human rights defenders, and LGBTI persons in the Americas in 2016. The IACHR also includes an analysis of trends and priority issues relating to rights in respect of freedom of expression and economic, social, and cultural rights.

14. The methodology used for this Chapter comprised analysis of events in the region since the end of 2015 through December 2016 and of the information received in the course of each thematic rapporteurship’s general monitoring of developments. Information was also obtained in connection with this Commission’s public hearings during its 157th, 158th, 159th, and 160th regular and special sessions as well as from the requests for information that this Commission is empowered to make under Article 41 of the American Convention on Human Rights (hereinafter, American Convention or ACHR) and Article 18 of the Commission’s Statute. In addition, information has been garnered from various United Nations mechanisms whose mandate is related to the topics of this study, from reports by international and local civil society organizations, and from press reports, and from information in the public domain.

15. The IACHR reaffirms its commitment to continue working with the States to address these human rights matters and priorities.

1. Indigenous peoples

16. Over the course of the year, the Rapporteurship on the rights of indigenous peoples has monitored closely the situation of indigenous people’s rights and reported on State compliance with their obligations. Through its various mechanisms, the Commission has received information of great concern for the rights of indigenous peoples over the course of the year, and has noted that the most prominent challenges relate to the failure by various States to properly register, demarcate and title the ancestral territories of their indigenous communities; the failure to respect and guarantee the right to prior consultation in the continent; the impact of extractive and development industries on the rights of indigenous peoples; as well as the situation of violence, intimidation and threats faced by indigenous communities, including the repression of social protest and the criminalization of indigenous defenders. While the Commission has observed some constructive and positive measures, it continues to observe the persistence of deeply rooted laws, policies and practices which gravely limit the rights of indigenous peoples.

17. To begin, the Commission continues to receive information of concern with regards to the failure of many States to fulfill their obligations of registration, demarcation and titling of indigenous lands. This failure to provide indigenous people legal certainty over their land tenure vis-à-vis the acts of third parties and State agents has resulted over the course of the year in situations of conflict and violence, as well as the invasion of these lands by third parties and the entry of extractive, infrastructure and development projects onto these lands without following consultation processes. For example, through its precautionary measures mechanism, the IACHR has been monitoring the situation of the Miskitu indigenous people in Nicaragua who have reported brutal attacks, intimidation, threats, and the burning of crops, all of which are taking place as part of a conflict over their ancestral lands in the absence of official State recognition of their

1 In particular through the issuance of press releases, precautionary measures, Article 41 letters requesting information, and thematic hearings.
ownership over said lands. According to the information received, third parties are allegedly entering and settling in their ancestral territory, and authorities have been granting concessions without prior consultation for projects in their lands. The Commission has also been carefully watching the situation in Guatemala, Colombia, Venezuela, Costa Rica, and Paraguay.

18. The Commission has also highlighted as a major challenge the lack of appropriate and effective enforcement of the right to prior, free, informed, and culturally adequate consultation, consent, and effective participation, in all of its dimensions, in decisions that may impact on the rights of indigenous peoples. As the Commission noted in its report on Indigenous Peoples, Afro-Descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities (hereinafter referred to as "Extractive Industries Report"), there is a structural problem with regards to consultation in the region. Three common scenarios stand out: some States do not recognize the right to consultation and thus do not undertake any type of consultation at any stage of a development project; some States recognize the right to consultation in their normative framework, but apply it in a manner that is incompatible with international standards; and finally, some States recognize the right and regularly apply it, reaching agreements with affected communities, who then face serious difficulties enforcing State compliance with the agreements. Many civil society organizations over the course of the year have come to the IACHR to denounce the failure to adequately guarantee the right to consultation, as they did during the hearings on the Human Rights Situation of Indigenous Persons in the Context of Projects and Extractive Industries in the United States, the Situation of Indigenous Peoples and the Right to Consultation in Honduras, and on Indigenous Peoples’ Right to Free, Prior, and Informed Consultation in Bolivia. The IACHR also has been informed of irregularities in the consultation process of the Interoceánic Canal in Nicaragua.

19. In addition, the Commission has expressed concern this year with regards to the increase of extraction, exploitation, and development activities in the hemisphere, their frequent implementation without consultation on indigenous lands, territories and resources, as well as the breadth and complexity of the problems that they generate for the recognized rights of indigenous peoples. In this regard, the Commission held a hearing on the situation of Human Rights of Indigenous Peoples and Campesino Communities in Espinar, Cusco, Peru, during the 157th Period of sessions, as well as a hearing on Impacts on Human Rights of Oil Spills in Peru, during its 158th Period of sessions, in which it was informed about the adverse consequences of mining activities on the health of indigenous communities. It also held a hearing on the Impacts on Human Rights of Mining Activity in Brazil during its 158th period of sessions, in which it heard about the disastrous consequences of the rupture of a mining company’s tailing dams containing toxic waste in the region of Minas Gerais. Furthermore, the Commission published its Extractive Industries Report which helped consolidate and disseminate standards on State obligations in this context.

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6 IACHR, Hearing on the Situation of Indigenous Peoples and the Right to Consultation in Honduras, 159 Period of sessions, December 1, 2016.


9 IACHR, Hearing on Impacts on Human Rights of Mining Activity in Brazil, 158th Period of sessions, June 8, 2016.
20. Another recurrent topic of major concern for the IACHR is the violence faced by indigenous authorities and leaders when defending their rights from private parties and, at times, State agents. Information provided to the Commission indicates that land and environmental defenders are exposed to high levels of risk of violence in the Americas, and that indigenous women also face particular forms of risk and violence on the basis of their gender. The Commission has repeatedly encouraged States to set up national protection mechanisms and global protection policies to prevent such violence and to allow defenders to continue their crucial work, as well as has called on States to avoid using criminal law or other administrative barriers to hinder their advocacy work. Nonetheless, the Commission laments that these measures are not providing the desired results, in particular for indigenous defenders. In this regard, the Commission has expressed its condemnation of the killing of Berta Cáceres, beneficiary of precautionary measures and indigenous activist, in her home in Honduras; it has deplored the killing of Nelson Noé García, also the beneficiary of precautionary measures, as well as the murder of Guarani-Kaiowá indigenous leader Clodiiodi Aquileu Rodrigues de Souza, in Mato Grosso do Sul, Brazil. It has also granted precautionary measures to various indigenous human rights defenders who were facing threats, intimidation and violence for the work they undertook opposing development projects, fighting for their right to water, or for the restitution of their lands.

21. The Commission also highlights that over the course of the year, it has held hearings on the situation of murdered and missing aboriginal women in Canada to follow-up on the implementation of the recommendations in its report “Missing and Murdered Indigenous Women in British Columbia, Canada,” as well as on the rights of indigenous children in Canada to their family and to culturally appropriate child welfare services.

22. Despite these challenges, this year has also come with significant advances with regards to indigenous people’s rights. On the one hand, the American Declaration on the Rights of Indigenous Peoples was adopted during the 46th Ordinary Period of Sessions of the General Assembly of the Organization of American

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18 IACHR, Precautionary Measure No. 46/14 (Extension), Matter of Juana Califuano, Chile, Resolution 33/2016, May 23, 2016; IACHR, Precautionary Measure No.277/13, Matter of the members of the Otomi-Mexica Indigenous Community of San Francisco Xochicuautla, Mexico, Resolution 32/2016, May 11, 2016; IACHR, Precautionary Measure No.112/16 (Extension), Matter of the members of COPINH, Berta Cáceres’ relatives and other, Honduras, Resolution 16/2016, March 23, 2016; IACHR, Precautionary Measure No.112/16, Matter of the members of COPINH, Berta Cáceres’ relatives and other, Honduras, Resolution 8/2016, March 5, 2016.
States, on June 15, 2016, after 17 years of negotiations, thus achieving a key step forward towards the recognition, promotion and protection of indigenous people’s rights. The Commission celebrates this achievement, and urges Member States of the OAS to implement measures at the national level to guarantee the full and appropriate fulfillment of the all of commitments contained in the Declaration.23

23. Further, States have implemented measures and recommendations issued by the IACHR on some of the major issues facing indigenous peoples in the hemisphere. For instance, the Commission celebrates the decision by the State of Canada to launch an Inquiry into the murders and disappearances of indigenous women and girls in Canada, complying with a recommendation contained in the Report on Murdered and Missing Aboriginal Women in British Columbia.24 Although the design of the national inquiry has received some criticisms, the IACHR nonetheless acknowledges this as a crucial and necessary step forward in the respect and guarantee of the rights of indigenous women in Canada. In Guatemala, two former military officials were condemned for sexual violence against Q’eqchi indigenous women during the internal armed conflict in an important step to combat impunity.25 In addition, the Commission was also made aware of an initiative in Guatemala to implement a constitutional reform which contemplates the inclusion of legal pluralism in the Constitution, thereby affording indigenous authorities the competence to apply justice in accordance with their norms, procedures, uses and customs.26 The IACHR also salutes the efforts of Peru and Costa Rica for, respectively, signing and ratifying the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.27

24. The Commission lauds the efforts undertaken by States in the region over the course of the year to adopt their own regional declaration on the rights of indigenous peoples, to redress the situation of structural violence and discrimination which affect indigenous women, and to respect and guarantee the right of indigenous people to prior consultation. However, the Commission remains concerned given the breadth of the challenges that indigenous peoples continue facing in the continent, with regards to their rights to consultation, to collective property, to human rights defense, among others, and the standstill at which many of these rights find themselves, despite the clear international standards on the matter. In this regard, the Commission calls on the States to redouble their efforts and take the necessary measures to respect and guarantee the fundamental rights of indigenous peoples. In particular, the Commission urges States to implement the necessary measures to provide legal certainty to indigenous peoples with regards to their land ownership, through the delimitation, demarcation and titling of their lands; to set in place internal legal frameworks that include the right to consultation of indigenous peoples when their rights may be affected, as well as to apply them effectively, especially in the context of the implementation of extraction, exploitation and development activities; as well as to adopt the necessary measures to protect indigenous leaders.

2. Women

25. In 2016, the Rapporteurship on the Rights of Women used the various mechanisms available to the IACHR to monitor the human rights situation of women in the countries of the region. The IACHR recognizes major legislative initiatives in 2016 to guarantee and advance respect for women’s rights, such as the presentation by the Chilean State of a bill to decriminalize voluntary interruption of pregnancy on three
grounds and the request to Congress by the President of the Dominican Republic, Danilo Medina, to include three exceptions in the bill to amend the provisions of the Criminal Code relating to voluntary interruption of pregnancy. The IACHR also welcomes the inclusion of gender issues in the peace agreements in Colombia; the handing down in Guatemala of the first conviction for crimes of sexual enslavement in an armed conflict; and the adoption of measures in Canada to investigate the disappearance and murders of indigenous women and girls. The IACHR also received disturbing information in 2016 regarding the set of barriers and obstacles that women in the Hemisphere still face to have their human rights fully respected and guaranteed. Thus, the IACHR has identified several areas of particular concern, including the high levels of extreme violence against women and girls, structural discrimination against them, and the persistent denial of their sexual and reproductive rights in several countries.

26. First and foremost, the IACHR remains worried at the very serious situation of violence against women, adolescents, and young girls in the countries of the region. Commemorating International Day for the Elimination of Violence Against Women, several United Nations experts, including the Special Rapporteur on violence against women, its causes and consequences, the Committee on the Elimination of Discrimination against Women (hereinafter the "CEDAW Committee"), and the Working Group on the issue of discrimination against women in law and in practice issued a call, jointly with the IACHR, for stepped-up international, regional, and national efforts to end femicides and gender-based violence. In that communiqué, the experts pointed out that violence against women is rooted in inequalities and discrimination against women and its prevention and eradication must be grounded in achieving gender equality and empowerment of women.

27. In another communiqué, on December 2, 2016, the United Nations Special Rapporteur on violence against women and the Rapporteur on the Rights of Women of the IACHR expressed their profound alarm and concern over the continuing acts of extreme violence against women and girls in the Americas and called on States to step up their actions to end and prevent such violence. The Rapporteurs highlighted some recent tragic examples of the continuous pattern of violence against women in the Americas and expressed serious concern over the fact that these cases are not isolated in the Americas but rather symptomatic and illustrative of the structural and endemic nature of violence against women and girls. The Rapporteurs expressed their profound repudiation of these killings and jointly called for increased action to end these brutal acts of violence.

28. The IACHR is also particularly worried about the information it has received regarding violence against women human rights defenders working in rural or community settings; women defenders of people's territory, the environment, and natural resources; those who denounce gender-based violence; and those who defend sexual and reproductive rights. The IACHR underscores, in particular, its total repudiation of the murder of Berta Cáceres, a well-known human rights defender, indigenous leader, and Coordinator General of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH). Berta Cáceres had been the beneficiary of precautionary measures granted by the IACHR in 2009, who had repeatedly and publicly denounced the grave risk and harassment to which she was exposed. Several United Nations rapporteurs consider that Berta Cáceres was murdered not just because of her work as an activist but also because she was a woman and indigenous. United Nations experts and the IACHR have highlighted the fact that female human rights defenders face added risk in going about their work because

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28 IACHR, Press Release No. 172/16, Joint Call of the UN Rapporteur on Violence Against Women and All other Global and Regional Mechanisms to End Femicides and Gender Based Violence, November 22, 2016.


through that work and leadership they challenge the traditional role assigned to women within their communities.\textsuperscript{32}

29. Marking International Day for the Elimination of Racial Discrimination, on March 21, the Inter-American Commission also voiced its concern at the structural inequality faced by the Afro-descendant population in the Americas, given the persistence of norms and institutional practices that prevent the full exercise of Afro descendants’ basic economic, social, and cultural rights. Within that context, the IACHR also drew attention to the particularly worrisome plight of women and girls of African descent.\textsuperscript{33} The IACHR pointed out that women of African descent are among the most marginalized social groups in the Hemisphere and that, because of their limited access to education, employment, and health care, they face multiple hurdles to accessing the sexual and reproductive health services they need. Many Afrodescendant women perform poorly remunerated domestic duties, in precarious working conditions.\textsuperscript{34} The IACHR also noted in that press release that Afro-descendent women, in comparison to other women, are underrepresented in decision-making bodies and opportunities for political participation and are also particularly affected by armed and land-related conflicts.\textsuperscript{35}

30. On March 8, 2016, the IACHR underscored the importance of States realizing that the serious sexual violence issue, the barriers to access to high quality sex education and to badly needed family planning methods, and the laws restricting access to the reproductive health services that women sorely need, are serious human rights issues affecting all women in the Americas. The Commission stressed that it had received worrisome information regarding the sexual violence and incest problem and the way in which it especially impacts female adolescents and girls in the region. It has a disastrous impact on their lives, bodily integrity, personal development, and reproductive health; often results in unwanted and high-risk pregnancies; increases the risk of sexually transmitted diseases; and impairs their right to education.\textsuperscript{36}

31. Throughout 2016, the IACHR continued to receive worrying reports about the impact of laws criminalizing abortion across the board, including cases in which the mother’s life is at risk and the pregnancy results from rape. For instance, the IACHR received continuous reports from civil society regarding the negative impact of such restrictive legislation on the human rights to life, personal integrity, dignity, and non-discrimination of women and children in El Salvador.\textsuperscript{37} On this, in July 2016, the IACHR was notified of a new legislative amendment bill proposed by the Partido Alianza República Nacionalista, ARENA, in El Salvador, allegedly increasing sentences for all kinds of terminations of pregnancy and related offenses. The Commission asked the State for information on this matter.

32. The IACHR also received information regarding Nicaragua, where civil society organizations expressed alarm at the large number of women who die as a result of their being denied access to a


\textsuperscript{33} IACHR, Press Release 040/16, “IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendant Women,” March 21, 2016.

\textsuperscript{34} IACHR, Press Release 040/16, “IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendant Women,” March 21, 2016. In 2016, the International Labour Organization (ILO) published a report highlighting the finding that Afro-descendant women tend to be over-represented in domestic work in Latin America. See ILO, Regional Office for Latin America and the Caribbean, Policies to Formalize Paid Domestic Work in Latin America and the Caribbean, 2016, pp. 12-13.

\textsuperscript{35} IACHR, Press Release 040/16, “IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendant Women,” March 21, 2016.


therapeutic abortion. The discussion in Nicaraguan media concerning the impact of criminalizing all forms of abortion increased in 2016 as a result of various topics that needed to be addressed. They included the emblematic case of a 26-year-old woman who was allegedly denied the chemotherapy she needed because of her pregnancy and the spread of the Zika virus. Early in 2016, the organization "We Want Them Alive" (Las Queremos Vivas) presented a bill to the National Assembly calling for interruption of pregnancy for health reasons which was admitted for consideration but has not yet been voted on. Regarding Honduras, in 2016 the United Nations Committee on Economic, Social and Cultural Rights expressed concern that "abortion is considered, without exception, a crime, and it is concerned about the negative impact that the ban on the use and distribution of emergency contraceptives has on women's and adolescents' exercise of the right to sexual and reproductive health." The Committee against Torture also expressed its concern in 2016 regarding the restrictions on abortion in Honduras, especially in cases of victims of sexual violence.

33. In 2016, the IACHR received worrisome information regarding the spread of the Zika virus and its specific impact on women, especially women of reproductive age. In a press release, the Commission joined the call of the Office of the United Nations High Commissioner for Human Rights stressing the importance of all women's sexual and reproductive rights being fully guaranteed for an effective response to this public health crisis. Accordingly, the IACHR urged States to adopt specific preventive and emergency measures to ensure that all women receive the necessary information, support, and services, free from any kind of discrimination, to make independent and free decisions regarding their reproductive health and family life in that context. These measures are particularly important in the case of girls and adolescents, and women with low incomes and living in rural areas, women from different races, ethnicities, sexual orientations and diverse gender identities, and women living with disabilities.

34. Despite the above, the IACHR welcomes the efforts undertaken by several States in the region to fulfill their obligation to combat violence against women. In particular, the Commission acknowledges the Canadian Government's decision to adopt a national plan of action aimed at conducting a national investigation into the disappearance and murder of indigenous women and girls in Canada, especially in British Columbia, in recent years. As it pointed out in its report on Missing and Murdered Indigenous Women in British Columbia, Canada, the Commission recalls that initiatives, programs, and policies relating to indigenous women must be tailored to their needs and concerns. Accordingly, the Canadian State must continue to take steps to promote the active participation of indigenous women in the design and implementation of such initiatives, policies, and programs.

35. The IACHR likewise acknowledges the Chilean State's efforts to present a bill on decriminalizing voluntary interruption of pregnancy on three grounds: risk to the life of the mother,
unviability of the fetus, and pregnancy resulting from rape. The IACHR calls upon the Chilean State to take steps to expedite the consideration and adoption of that bill and it urges the countries of the region that criminalize abortion regardless of the circumstances to amend their laws in such a way as to ensure due observance and guarantees for all women’s rights, including those relating to their lives, integrity, health, and non-discrimination. The IACHR also notes as a positive step forward the request to Congress by the President of the Dominican Republic, Danilo Medina, on December 19, 2016, to include three exceptions in the bill to amend the provisions of the Criminal Code relating to voluntary interruption of pregnancy.

36. At the same time, the IACHR welcomes the judgment handed down by High Risk Criminal Court A in Guatemala City convicting former members of the Army for crimes against humanity during the internal armed conflict, in the case known as "Sepur Zarco", in which they were found guilty of the crimes of murder, forced disappearance, and sexual enslavement. This Commission appreciates this conviction -- the first to convict for sexual enslavement offenses during an armed conflict in the country in which those crimes were committed -- as a major achievement in the quest for justice for women victims of sexual violence during armed conflicts and in the eradication of impunity. In addition, the IACHR welcomes the inclusion of a gender approach in the peace agreements reached between the Government of Colombia and the FARC and suggests that diligent steps be taken to ensure compliance with those provisions. The IACHR underscores the importance of incorporating a gender perspective in the implementation of measures and immediate actions to prevent, investigate, punish, and make reparation for violence against women and girls perpetrated during armed conflicts.

37. In light of the above considerations, the Commission recognizes the various efforts undertaken in the region to combat discrimination and violence against women. That said, and considering the ongoing challenges addressed above, the IACHR calls upon the States in the Hemisphere to adopt with all due diligence the measures needed to ensure that all women in the Americas can fully exercise their human rights. The IACHR considers it vital that women, adolescents, and girls in the Hemisphere can live free from violence and discrimination, in settings in which their sexual and reproductive rights are effectively respected.

3. Migrants

38. In 2016, the Inter-American Commission on Human Rights used the various mechanisms at its disposal to monitor the situation of migrants, asylum-seekers, refugees, stateless persons, victims of human trafficking, and internally displaced persons in the OAS member states. A situation of particular concern for the Inter-American Commission and its Rapporteurship on the Rights of Migrants in 2016 and in recent years is the regular situation of vulnerability of tens of thousands of migrants in connection with both mixed and large migration flows. Precisely because they are migrants, these individuals tend to face multiple violations of their human rights at every stage of the migration process, that is to say, in their countries of origin, transit, destination, and return. Moreover, many of the violations of the human rights of migrants have a direct impact on their family members.

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46 Chamber of Deputies of Chile, Boletín No. 9895-11, Regula la despenalización de la interrupción voluntaria del embarazo en tres causales, January 31, 2015.


48 NTN24, Canciller de Colombia desea que aplicación del acuerdo de paz con FARC permita igualdad de género, December 16, 2016.

39. A common denominator that the IACHR has observed in large mixed migration flows throughout the countries of the region is that they have comprised persons living in poverty who have found themselves forced to migrate through irregular channels given the impossibility of their doing so through regular and safe channels. The IACHR has extensively documented how people forced to migrate irregularly in large mixed migration flows tend to fall victim to multiple violations of their human rights in border areas and all along dangerous clandestine migration routes due to numerous forms of discrimination. Many such migrants have disappeared or lost their lives along the migration routes and many others are holed up and exposed to extreme vulnerability and deprivation of rights in border areas.

40. In this section, the Commission will address the principal human rights issues in mass and mixed migration flows that it monitored through the mechanisms at its disposal in 2016, including some prior to 2016 but which continued to impact the situation in 2016. One of the principal aspects of the mass migration monitored by the Commission in recent years has to do with the marked increase in forced migration of persons from the "Northern Triangle" countries (El Salvador, Guatemala, and Honduras) and Mexico due to the violence associated with organized crime (gangs, known as "maras", and drug trafficking cartels), violence by State agents, and natural disasters related to the effects of climate change. These factors tend to be compounded by other variables triggering forced migration that have long plagued the region, such as inequality, poverty, and armed conflicts.

41. The Commission has observed that the refugee crisis in the Northern Triangle countries and Mexico has worsened in recent years. At end-2010, those four countries were the countries of origin of 13,231 asylum-seekers and 18,773 refugees. By mid-2016, those same four countries were the countries of origin of 157,473 asylum-seekers and 48,723 refugees. In other words, between 2010 and mid-2016, the number of asylum-seekers from those countries rose by 1,082 percent and the number of refugees by 160 percent.

42. In addition to the above, the countries in the region have also been experiencing other mass migration phenomena in recent years. The Commission has also monitored the situation of a large number of Venezuelans forced to migrate to other countries as a survival mechanism, as a result of the humanitarian crisis, particularly the effects of food, medicine, and health care shortages. For lack of legal, regular, and safe migration channels, many people have had no other option than to resort to clandestine channels involving irregular migration along hazardous land and sea routes. According to statistics compiled by the United Nations High Commissioner for Refugees (UNHCR), toward end-2012 asylum-seekers from Venezuela numbered 505 and then rose to 1,153 in 2013; 4,820 in 2014; and 15,094 at end-2015. In other words, the number of Venezuelans requesting refugee status abroad rose by 2,889 percent between 2012 and 2015.

43. Accordingly, the IACHR expressed its concern at the actions taken by the Brazilian Federal Police and other authorities on December 9, 2016, aimed at deporting approximately 450 undocumented Venezuelan migrant from Boa Vista, in the state of Roraima, Brazil, near the border with Venezuela.


53 UNHCR, Mid-Year Trends 2016, pp. 35-36. See also, IACHR, Press Release No. 81/16: IACHR Calls on States to Protect Asylum Seekers and Refugees and Guarantee their Rights, June 20, 2016.

migrants were mostly from the Warao indigenous people, including men, women, and 180 children (among them newborn babies).  

44. In another context, following the beginning of the regularization of relations between Cuba and the United States in December 2014, there has been an increase in the thousands of Cuban migrants ultimately seeking to reach the United States of America as their final destination. The massive influx of Cubans has triggered crises in several countries in the region since end-2015. Accordingly, in December 2015, the Commission expressed its profound concern at the highly vulnerable situation of approximately 4,500 Cuban migrants on the border between Costa Rica and Nicaragua, who were on the Costa Rican side of the border after Nicaraguan security forces denied them passage through Nicaragua en route to the United States.  

45. During 2016, thousands of Cubans continued to arrive in Panama and Costa Rica and were unable to continue their journey to the United States as a result of the closing of the Costa Rica-Nicaragua border. In May 2016, the Panamanian Government decided to close its border with Colombia and stepped up its security forces there in order to stop flows of Cuban, Haitian, and African migrants intending to continue their journey to Central America and from there to the United States.  

46. As a result of the above, another crisis was triggered between May and August 2016 by the arrival of thousands of migrants, holed up in the Municipality of Turbo, near the Darien Gap, Colombia, close to the border with Panama. The migrants comprised men, women (some of them pregnant), and children, including newborn babies. Most were from Cuba, Haiti, and African and Asian countries, heading for the United States. By the end of July 2016, the Colombian authorities had registered 1,273 Cuban migrants, including nearly 300 children, vulnerable to precarious conditions in the Municipality of Turbo. Regarding the situation of Cuban migrants, the Commission also voiced its concern at the eviction and arbitrary arrest of nearly 150 Cuban migrants in Quito, Ecuador, as well as the summary deportation of 121 of them.  

47. With respect to Haiti, that country's alarming poverty, combined with environmental degradation and the impact of natural disasters, such as the 2010 earthquake and Hurricane Matthew in October 2016, have led hundreds of thousands of Haitians to migrate to other countries in the region, mostly to the Dominican Republic, given its geographical proximity, but also to the United States, using perilous land and sea routes. In 2016, the IACHR also monitored the situation of thousands of Haitian migrants stuck on the border between Mexico and the United States, hoping to be able to enter the latter.  

48. In order to prevent and respond to situations in which human rights are violated, and to provide technical assistance to States in the region with developing and implementing migration policies, laws, and other measures, the Inter-American Commission and Court have devised standards for the protection of the human rights of persons migrating as part of mass and/or mixed migration flows, especially


[57] Panama, Ministry of Foreign Affairs, Gobierno de Panamá anuncia cierre de la frontera con Colombia, May 9, 2016.  


those who find themselves in situations of vulnerability or who are stranded. Therefore, the IACHR deems it appropriate to issue a reminder that human rights norms and standards prohibit any form of discrimination against migrants. Likewise, States must adopt all necessary measures to ensure that racial profiling is not used in migration control operations. States, in turn, have an obligation to identify among migrants those who have special protection needs, such as asylum-seekers and refugees and victims of trafficking, among others, and to take steps to protect them.

49. The IACHR likewise reiterates that States are duty-bound to implement all measures needed to protect the life, integrity, and safety of all migrants under their jurisdiction. An effective guarantee of the right to life requires that States adopt special prevention, protection, and assistance measures when they become aware of situations, during transit or at borders, in which migrants or persons needing international protection are in danger. Migration procedures, particularly those that may lead to deportation, must include analysis and substantiation on an individual case basis and must observe minimum guarantees. These include: the right to be heard by the relevant authority in the context of the deportation proceeding and to have sufficient opportunity to exercise their right to a defense; the right to interpretation and translation; the right to have legal representation; the right to consular protection; the right to receive notification of a deportation order; access to an effective remedy to challenge a deportation decision; the right to appeal a deportation decision; and the right to suspension of deportation while the matter is under appeal. Detention of a migrant must be an exceptional measure of last resort and be as brief as possible, once an individual evaluation of each case has been conducted and alternative measures considered. Likewise, the State may not resort to detention of migrant children and their parents for purposes relating to a migration proceeding or a procedure to determine refugee status.

4. Freedom of Expression

50. In its evaluation of the situation of freedom of expression in 2016, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) observes that the American continent continues to be one of the most dangerous for the practice of journalism. During 2016, the Office of the Special Rapporteur documented 33 killings of journalists and media outlet employees in circumstances that could be related to their profession. At the same time, episodes of harassment and threats continue. An increase was also observed in the use of criminal law against journalists who disseminate information of public interest, along with civil trials against journalists in countries where crimes of slander have been abolished.

51. The Office of the Special Rapporteur also expresses concern over the excessive response by various States to the right of demonstration and protest. In a number of countries, protests were reported to have been dissolved through the use of excessive force by state security bodies, along with arrests of activists and journalists, aggressions, and damages to journalists’ equipment. Recognition of the community media sector continues to be a challenge and a pending task in many countries of the continent. Another latent challenge involves the existence of initiatives in certain States Parties to regulate the Internet; such initiatives must take into consideration the inherent characteristics of the Internet, must be contained in the law, must be necessary in a democratic society and be strictly proportional, thus avoiding violation of the right to freedom of expression.

52. In 2016, the Office of the Special Rapporteur also recorded hemispheric progress, particularly various judicial rulings that established stronger protection for freedom of expression and apply standards developed by the Inter-American System in that field. Thus, for example, in Argentina62, Peru63 and

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Uruguay rulings were handed down the revoked sentences against journalists and public officials convicted of crimes of slander stemming from the dissemination of information of public interest; another example is the decision by the Superior Court of Quebec that invalidated the provisions of By-law P-6 concerning the prevention of breaches of the peace, public order and safety and the use of public property and determined that the requirement for prior communication of the itinerary of demonstrations to the police forces unduly restricted spontaneous protests. Similarly, the Court concluded that the prohibition against people covering their faces in public constituted an unjustified violation of the rights to freedom of expression and peaceful assembly. Also, there are important decisions by the Superior Court of Brazil and the Special Criminal Court as part of the Second Criminal Chamber of the Belford Roxo Region in the state of Rio de Janeiro, which, after a constitutional review, declared that the crime of contempt is contrary to the right to freedom of expression, as has been indicated by this Commission. The Constitutional Court of the Dominican Republic declared the unconstitutionality and unconventionality of the stringent penalties for the crimes of defamation and insult committed by journalists against public officials; according to the Court, the penalties limited the right to present evidence and contemplated the so-called "cascade effect", through which the directors and owners of media outlets could be criminally sentenced for conducts by third parties, even when they are unrelated to the media. Finally, the conviction handed down in Venezuela by Trial Court 1 of Carabobo against two officers of the Bolivarian National Guard (Guardia Nacional Bolivariana) (GNB) over the death of student Geraldine Moreno Orozco, which took place on February 19, 2014 during a demonstration held in Carabobo State is also relevant.

53. In terms of access to information, important laws were enacted that favor exercise of the right to freedom of expression and access to information in certain countries of the hemisphere; one example is the Law on Access to Public Information in Argentina, the aim of which is "to guarantee effective exercise of the right to freedom of expression and access to information in certain countries of the hemisphere; one example is the Law on Access to Public Information, promote civic participation and transparency in governance" and which creates the Agency for Access to Public Information, in the realm of the executive branch that is to ensure compliance with the law. The IACHR underscores the importance of the entry into force of obligations under the Law for Free Civic Access to Public Information and Governmental Transparency of Paraguay to facilitate online access by citizens to public information in the hands of governmental institutions. There was also the significant approval in the United States of FOIA Improvement Act 2016.
The new law limits the application of exceptions for access to state information by the public and strengthens, among other things, active transparency by state agencies, ordering that all information requested three or more times be made available to the public on online platforms. In Chile, Law 20.900 was enacted for the “Strengthening and Transparency of Democracy”, which regulates electoral campaign financing, along with Law 20.915, which aims “to strengthen the public and democratic character of the parties and to facilitate their modernization”. The latter law also incorporates obligations for active transparency in political parties and subjects them to oversight by the Council for Transparency (Consejo para la Transparencia) regarding fulfillment of these obligations.

54. Finally, the IACHR and its Office of the Special Rapporteur value the decision by Panamanian President Juan Carlos Varela which, by means of executive decree No. 429, authorized complete suspension of the sentence of 20 years imprisonment imposed upon journalist Okke Ornstein and his immediate release. The journalist had been arrested on November 15, 2016 by Panamanian authorities over a criminal conviction issued against him for the crimes of slander and libel on December 14, 2012, and confirmed on appeal on December 5, 2013. The article that led to the sentence dealt with matters of public interest. The decision by the Panamanian government also acknowledged that the existence in its legal system of crimes of slander and libel regarding matters of public interest and the arrest of a journalist as a result is contrary to the international obligations assumed by the State. The State of Panama began a dialogue with the Office of the Special Rapporteur on the need to advance and to provide assistance for the adjustment of internal legislation in accordance with Inter-American standards.

55. The information provided in this section can be seen in greater detail in the 2016 Annual Report by the Office of the Special Rapporteur.

a. Violence against Journalists

56. As previously mentioned, 2016 was a painful year for journalism in the Americas, because for the fourth consecutive year, there was an increase in the number of journalists killed. At least 33 journalists and employees of media outlets were killed for reasons that could be related to the practice of their profession. The hemisphere has become one of the world’s most dangerous regions for practicing journalism, and the most serious aggressions, such as homicides and kidnappings, have become one of the worst forms of censorship due to their effects on the victims as well as on journalistic activity, and because of their impact on society’s right to receive information. It is alarming that, for the fourth consecutive year, this horrendous method of silencing voices on the continent has increased: in 2015, 27 journalists were killed, whereas in 2014 25 such homicides were committed and in 2013 there were 18.

57. In 2016, there were cases of journalists killed in Brazil, Honduras, Mexico, Guatemala, the United States, El Salvador, Peru and Venezuela. The men and women journalists who were killed and harassed mostly covered actions by organized crime, matters of political corruption or represented a robust voice in their local communities. Linked to the situation of violence, high rates of impunity persist in many countries in terms of identification and punishment of the perpetrators and masterminds of these crimes.
which generates a widespread inhibiting effect that limits the right to freedom of expression in entire zones of the continent.

58. While homicides are the most extreme form of censorship, the 2016 Annual Report of the Office of the Special Rapporteur refers to hundreds of aggressions, threats and harassments among other acts of violence against journalists or employees of media outlets in the course of their professional activities or as a result of denunciations made or information disseminated.

59. The IACHR and its Office of the Special Rapporteur recommends that the States adopt adequate mechanisms for prevention to avoid violence against men and women journalists, including public condemnation of all acts of aggression; the adoption of effective measures for protection to guarantee the safety of those who are subject to a particular risk due to exercise of their right to freedom of expression; the carrying out of serious, impartial and effective investigations into acts of violence against journalists and employees of media outlets; the trial and conviction of all those responsible for such events, and adequate reparation for the victims and their families.

b. Social Protest

60. During 2016, demonstrations and protests were a key factor for the exercise of freedom of expression and the channeling of social demands such as those associated with the fight against corruption and nondiscrimination, and respect for the rule of law in the Americas. In many of these demonstrations, a disproportionate use of force to disperse or silence those protesting in the streets was recorded. The Inter-American Commission and its Office of the Special Rapporteur observe that in contexts of social protest, certain groups face greater risks of suffering human rights violations.

61. The Office of the Special Rapporteur documented numerous episodes in which the security forces used tear gas and rubber bullets to disperse protests and has received information about the abusive use of force by state agents in the above-mentioned operations. Some of the cases occurred in multiple protests in different states of Brazil, stemming, among other reasons, from the removal of ex-president Dilma Rousseff as well as in opposition to a constitutional amendment that limits public expenditure over the next 20 years, in which various persons were injured and the police used teargas, rubber bullets and nonlethal explosives. Similarly, in the framework of agrarian protests in Colombia, there were complaints over the excessive use of force by the Mobile Anti-Riot Squad (Escuadrón Móvil Antidisturbios ESMAD) in different locations of the country where demonstrators had blocked the roads. In Bolivia, teargas and rubber bullets had been used by the Police to disperse demonstrations by disabled persons in the Plaza de Armas of the city of La Paz to demand their rights; also, in protests led by the mining cooperatives, rubber bullets and tear gas had also been used, injuring dozens of miners and police.

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**Notes:**


62. In Mexico, in June, during the eviction of blockades set up in the context of demonstrations by teachers in Oaxaca who protested against educational reforms, members of the police used teargas, rubber bullets and even lethal weapons. In response to that situation, the National Human Rights Commission (CNDH) issued cautionary measures to protect the rights of those who were injured and subsequently, a parliamentary commission concluded that there was abuse of force by the security forces. In November in the United States, police in the state of North Dakota used pepper spray, rubber bullets and water cannons, among other measures, against members of the Standing Rock Sioux indigenous community and those who were accompanying them in a camp in protest over construction of the oil pipeline in Morton Country, North Dakota, because it would go through lands considered sacred by the community and affect the water supply. As a result of attempts at eviction by the police, hundreds of people were injured and many suffered from hypothermia.

63. In Venezuela, due to protests over shortages in the country as well as demonstrations demanding the recall of President Nicolás Maduro, dozens of demonstrators were injured. In Chile, after a massive march in March of 2016, women denounced that they had been victims of physical mistreatment, including sexual violence by the police. Other countries in which there were incidents and possible use of excessive force in handling protests were Argentina, Canada, El Salvador, Haiti, Panama and the Dominican Republic.

64. The IACHR and its Office of the Special Rapporteur condemned the deaths of demonstrators and state agents that occurred in the context of the protests. During 2016, the Office of the Special Rapporteur documented the deaths of three miners in Bolivia along with the killing of the Vice Minister of the Interior, Rodolfo Illanes Alvarado; in Colombia the deaths of three indigenous persons who took part in the agrarian strike were reported along with that of a student who participated in a strike by cargo transporters; in

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65. The Office of the Special Rapporteur also views with concern the persistence of aggressions against journalists in the framework of social protests. Journalist Elidio Ramos Zárate was killed during protests by teachers in Oaxaca, Mexico. In previous years, the Office of the Special Rapporteur documented dozens of aggressions against journalists who were covering protests, and which in many cases were committed by agents of the security forces but in others also by demonstrators. Thus in Brazil, and particularly in Sao Paulo, at least 16 journalists were injured or attacked by agents of the security forces, some of whom despite identifying themselves as members of the press; an additional 15 journalists were physically and verbally attacked by demonstrators. The Commission publicly expressed its concern over aggressions against journalists who were covering demonstrations against the scarcity of basic products in Venezuela, and the Special Rapporteurs for Freedom of Expression of the IACHR and the UN also expressed their concern over attacks suffered by journalists and media outlets who were covering the effects of the economic crisis in Venezuela. In the protests in North Dakota in the United States, journalist Amy Goodman was arrested by State Police on trespassing charges, however, upon appearing before a judge, the charges against her were dismissed and she was freed. The Office of the Special Rapporteur also documented dozens of aggressions against members of the press during protests in Bolivia, Canada, Colombia, El Salvador and Paraguay.

66. Finally, the Office of the Special Rapporteur observes that in certain countries, social protests have been criminalized along with those who lead them. Thus for example, in Ecuador on May 29, indigenous leaders Luisa Lozano and Servío Amable Angamarca were convicted of the crime of paralysis of public services and sentenced to four years imprisonment and a fine of four unified basic wages, due to their activities in the framework of social protests. On May 30, in Saraguro, Ecuador, the Tribunal of Loja sentenced two protesters to four years imprisonment for their role in the protests, while the government seeks for leaders Luisa Lozano and Servío Amable Angamarca to be declared guilty of paralysis of public services and sentenced to four years imprisonment and a fine of four unified basic wages.

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87 CIDH. Relatoría Especial para la Libertad de Expresión. 21 de junio de 2016. Comunicado de Prensa R80/16. La Relatoría Especial condena el asesinato de un periodista en México, el sexto en ese país en 2016; Comisión Nacional de Derechos Humanos (CNDH). 19 de junio de 2016. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca; ONU. Alto Comisionado para los derechos Humanos. 21 de junio de 2016. \textit{La ONU-DH México hace un llamado a realizar una investigación exhaustiva de los hechos violentos ocurridos en Oaxaca y a privilegiar el diálogo.}

88 CIDH. Relatoría Especial para la Libertad de Expresión. 21 de junio de 2016. Comunicado de Prensa R80/16. La Relatoría Especial condena el asesinato de un periodista en México, el sexto en ese país en 2016; Comisión Nacional de Derechos Humanos (CNDH). 19 de junio de 2016. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca; ONU. Alto Comisionado para los derechos Humanos. 21 de junio de 2016. \textit{La ONU-DH México hace un llamado a realizar una investigación exhaustiva de los hechos violentos ocurridos en Oaxaca y a privilegiar el diálogo.}


participation in the indigenous protest of August 18, 2015. The criminal charges made against the leader of the Tupac Amaru movement in Argentina, Milagro Sala, after leading a protest in the province of Jujuy\textsuperscript{95}, are worrisome. In Honduras, at least 75 students from the Universidad Nacional Autónoma de Honduras (UNAH) were the target of criminal trials in 2016 for the crimes of Sedition, Usurpation and Damages to public installations because of their participation in student protests.\textsuperscript{94} In Cuba, members of the Damas de la Mano organization have been arrested after participating in marches held every Sunday to protest against the government and demand the release of political prisoners.\textsuperscript{95} In Venezuela, the leaders of the opposition Voluntad Popular party have been accused by senior state officials of planning to destabilize the government and of being terrorists. Those accusations were made after leaders of the group called upon the citizenry to march in demand of a recall, which was called "the takeover of Caracas"\textsuperscript{96}.

67. The IACHR and the Office of the Special Rapporteur recommend that the OAS Member States design regulatory frameworks aimed at protecting and facilitating the exercise of social protest and adopt special measures to protect men and women journalists who cover situations of acute social conflict and guarantee that they not be arrested, threatened or attacked nor that their rights be limited in any way when exercising their profession; and that their working equipment or material not be destroyed or confiscated by the authorities. They also recommend that the States ensure protection for people and abstain from stigmatizing or stereotyping demonstrators and their grievances, and avoid making generalizations based on the behavior of particular groups or isolated events. If the security forces must act during a demonstration, they must use safer measures that are less harmful to people's rights.

c. Use of Criminal Law and Subsequent Liabilities

68. In certain member States, criminal complaints filed by state officials or candidates for elected offices have been reported, due to the publication of opinions or information associated with matters of public interest. In several of the cases studied, the trials have ended with prison sentences for journalists or political or social activists involving the application of criminal definitions that protect honor, such as defamation, insult or slander. In some of these cases, punishments were commuted for less restrictive penalties or the charges were finally dismissed. In other countries, where the crimes of slander and libel are no longer part of the legal system, civil penalties imposed on journalists as a result of complaints filed alleging moral damages stemming from publication are disproportionate and have an intimidating effect. Some of the proceedings documented in the Annual Report by the Office of the Special Rapporteur include the arrest and conviction of Dutch journalist Okke Ornstein in Panama along with his subsequent release\textsuperscript{97}; the conviction in


the first instance against journalist Ariel Armando D’Vicente in Honduras, which not only led to a prison sentence but also an accessory punishment prohibiting him from practicing journalism for three years; and the criminal complaint filed by President Michelle Bachelet against journalists who wrote articles accusing members of her family of acts of corruption. Also the conviction and prison sentence imposed upon a Counselor of Loja in Ecuador as a result of a communication made on Twitter questioning the governance by the Mayor of that locality. In Peru, journalist Fernando Valencia Osorio was convicted of the crime of aggravated defamation against former president Alan García, however, the sentence was overturned on appeal. The same occurred in the case of Peruvian journalist Rafael León. Also, in 2016 multiple cases were documented of journalists sentenced to onerous civil reparations in Mexico, including Carmen Aristegui and Sergio Aguayo. The Office of the Special Rapporteur continued to follow up on application of the Organic Communications Law of Ecuador and observed that during this period, numerous punishments were imposed on media outlets in a manner incompatible with Inter-American standards in the field of the right to freedom of expression.

69. The Office of the Special Rapporteur documented various cases of journalists and activists arrested in Cuba in 2016, who belonged to, among others, the following publications and/or organizations: Damas de Blanco; CubaNet; Comisión de Atención a Presos Políticos and Familiares (CAPPF); the agency Hablemos Press; Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP); the Unión Patriótica de Cuba (Unpacu); the platform #Otro18; Foro por los Derechos y Libertades (Foro Dyl); the independent bulletin “Voz Santiaguera”; the collective Periodismo de Barrio and the platform #TodosMarchamos. The Office of the Special Rapporteur expressed concern over the arrest of artist Danilo Maldonado, known as “El Sexto”, for the crime of damages to property after painting graffiti critical of Fidel Castro.

70. In a fully democratic system, public deliberation must be promoted along with guarantees for greater openness to expressions and appreciations by citizens in exercising democratic control, and therefore, the Office of the Special Rapporteur recommends that the States abolish laws that enshrine contempt and criminal defamation in cases involving the public interest, modify ambiguous or imprecise criminal laws that limit freedom of expression, and incorporate Inter-American standards into civil legislation so that criminal trials against people who have made declarations about matters of public interest will apply the standard of actual malice, pursuant to Principle 10 of the Declaration of Principles of Freedom of Expression of the IACHR, and which would be proportionate and reasonable.

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102 La República. September 9, 2016. Sala Superior absuelve a periodista Rafo León por delito contra el honor; Knight Center for Journalism in the Americas. September 9, 2016. Court annuls defamation sentence against Peruvian journalist “Rafo” León.


105 Diario de Cuba. March 21, 2016. La Asociación Pro Libertad de Prensa denuncia detenciones y amenazas a periodistas.


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d. **Stigmatizing Declarations**

71. In diverse countries in the region, attacks continued against journalists and media outlets by means of stigmatizing declarations towards those who publish information that is not to the liking of the authorities. During 2016, this occurred mainly in Bolivia, Colombia, Honduras, El Salvador, Ecuador and Venezuela, where the most senior officials criticized employees of media outlets for their news or opinions.

72. In this regard, state authorities are urged to abstain from making declarations that could stigmatize journalists, media outlets and human rights defenders, particularly those that could endanger people’s lives and integrity.

e. **Freedom of Expression and the Internet**

73. The Office of the Special Rapporteur observes that various States of the region have promoted attempts to regulate some aspect of Internet use and access or have adopted decisions in that regard, in response to the need to prevent crime and protect the fundamental rights of third parties. Warning is made that many of these initiatives fail to take into account the particular characteristics of this technology and, as a result, unduly restrict freedom of expression in the Internet space.

74. In Brazil, the military police of the state of Rio Grande del Norte decreed the administrative detention of a military police officer for 15 days due to a comment he made on Facebook in April of 2016, about an initiative to monitor activities of the Police. The president of the Association of Military Firefighters of the Rio Grande del Norte (Asociación de los Bomberos Militares del Rio Grande del Norte) was also punished with three days of detention for sending an audio to a WhatsApp group convoking the associated members for an assembly. Also, two people were arrested in late June for publishing criticisms on social media of the military police of their cities. Both individuals, one an adolescent in São Paulo and the other in Ceará, have to respond for the crime of contempt of authority. Also, the vice president of Facebook for Latin America, Diego Dzodan, was arrested in Sao Paulo for the company’s alleged refusal to share information on WhatsApp associated with a criminal investigation. The judge imposed a daily fine of 50 thousand reais (some 15 thousand US dollars), the total amount of which reached 1 million reais (some 330 thousand dollars) for noncompliance by the company; the arrest was overturned by means of Habeas Corpus.

75. In various countries, cyber-attacks were reported against media outlets, and in some cases the attacks consisted of blocking the webpage for hours or closing the social network accounts of the media. The use of legislation that protects copyrights in order to remove contents that are part of specially protected speech or which carry the presumption of protection is a source of concern for the Office of the Special Rapporteur when that presumption has not been disproved by a competent authority that would provide

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107 The Intercept Brasil. September 26, 2016. *Comentário no Facebook criticando a policia rende prisão no Rio Grande do Norte*;
G1. September 27, 2016. *Comandante manda prender PM que usou rede social para criticar a policia*.

108 The Intercept Brasil. September 26, 2016. *Comentário no Facebook criticando a policia rende prisão no Rio Grande do Norte*;
G1. September 27, 2016. *Comandante manda prender PM que usou rede social para criticar a policia*.


sufficient guarantees of independence, autonomy and impartiality\textsuperscript{112}. At the same time, the Office of the Special Rapporteur documented in the Cuban case that, despite an incipient opening of Internet access, obstacles for access to the network continue to exist and certain journalistic contents considered critical of the government continue to be blocked\textsuperscript{113}.

5. **Children and adolescents**

76. In 2016, the Rapporteurship on the Rights of the Child monitored the effective exercise and observance of the rights of children and adolescents, focusing in particular on the workings of National Child Rights Protection Systems (hereinafter NCRPS), since they provide the basic framework and institutional and operational structure needed to ensure the effective exercise, protection, and defense of children's rights. The importance of addressing this issue in depth is reflected in the frequency with which the IACHR and other human rights organizations have urged States through their various mechanisms to strengthen those systems, while pointing out the need to provide precise principles and standards to govern the way those systems operate. Within the framework of the cooperation agreement between the IACHR and the non-governmental organization World Vision, the Rapporteurship is currently preparing a thematic report analyzing the workings of the NCRPS in the region, identifying the principal challenges, and making recommendations aimed at strengthening their operational impact from a children's rights perspective.

77. Thus, as regards the NCRPS, the IACHR was advised in the ex officio hearing held on April 7, 2016\textsuperscript{114} and through the replies by States and civil society organizations to its questionnaire of the efforts undertaken by the States in this field, which have transformed the lives of millions of children in the region. While recognizing such progress, and even though the majority of countries in the region have adopted legislation establishing institutions, structures, and specific mechanisms for protecting children, in practice they are still principally geared to intervening in response to violations of rights after they have occurred, as the IACHR pointed out in its press release of November 28, 2016.\textsuperscript{115} In general, there is a need for States to redouble their efforts to generate the conditions needed for the enjoyment and effective exercise of all rights for all children, with a comprehensive and holistic visions, in addition to paying more heed to policies and programs aimed at primary prevention and at dealing with the structural causes underlying infringements of children's rights and violence against them.

78. The IACHR saw first-hand the efforts to which Mexico went in 2016 to install its new NCRPS throughout the country, after it was established under the recently enacted General Law on the Rights of Children and Adolescents. The Rapporteurship visited Mexico from November 14 to 19, 2016, to learn more about its new NCRPS.\textsuperscript{116} Also in 2016, according to information received by the IACHR, Chile and Panama continued processes designed to build regulatory proposals for adopting legislation to provide comprehensive protection of the rights of children and adolescents, along with a NCRPS and the institutions


\textsuperscript{114} IACHR, 157th regular period of sessions, thematic hearing *National Child Protection Systems in the Americas*, April 7, 2016.


\textsuperscript{116} The Rapporteurship has kept close track of the process leading up to enactment of the new law and the establishment and installation of Mexico's NCRPS, from 2014 to the present, including two working visits. The first was conducted from October 6 to 14, 2014. Press Release, *Rapporteurship on the Rights of the Child Culminates Visit to Mexico*, October 20, 2014.
and mechanisms needed to guarantee the effective exercise of those rights. As for countries that already have regulatory frameworks in place for a NCRPS, the IACHR was told that Argentina, El Salvador, Guatemala, and Honduras, for example, have taken steps to ensure the full installation and efficient and effective operation of their NCRPS nationwide.\(^\text{117}\)

79. A decade after the very serious and urgent report issued by the United Nations on violence against children, violence in all its manifestations is still rampant in the region, with disastrous consequences for children and adolescents.\(^\text{118}\) Particularly alarming is the violence, especially sexual violence, against girls and female adolescents. A whole set of issues have been identified in connection with this form of violence, making it one of the most prevalent, hushed up and under-reported forms of violence in the region, with extraordinarily high levels of impunity. The information that the IACHR received in 2016 through its various mechanisms, including several thematic hearings, was deeply disturbing.\(^\text{119}\) Moreover, the IACHR issued three press releases in 2016 related to the constant challenges faced by girls (children and adolescents) with respect to the exercise of their rights, especially as regards violence and discrimination against them.\(^\text{120}\)

80. The IACHR has pointed out that the violence against pre-teen and teenage girls and the difficulties they face with exercising their right are closely related to conditions favoring structural discrimination against women and to the gender stereotypes found in all the countries in the Hemisphere. The IACHR has also stated that sexual violence is one of the most serious forms of violence because it is an affront to the dignity of pre-teen and teenage girls and severely impacts their lives, physical and psychological integrity, and personal development, in addition to negatively impacting on their health and frequently resulting in unwanted and high-risk pregnancies, illegal and unsafe abortions, and heightened risk of sexually transmitted diseases. The levels of prevalence of this form of violence are shattering, with some countries in the region showing the highest rates in the world. Even so, the data available do not reflect the real magnitude of the problem, because of massive under-reporting due to the stigma associated with this form of violence, ignorance, fears or deceit, or because the aggressor is usually a family member or close acquaintance or someone who is more senior than the victim, or else due to lack of faith that the State will respond, given the high level of impunity in such cases.\(^\text{121}\)

81. There are structural barriers to access to justice for girls who are victims of these kinds of crime, due, inter alia, to the scant availability of cost-free legal counseling; the fact that some countries limit the range of people who can file the complaint\(^\text{1}\) and to statutes of limitation that allow these kinds of crime to prescribe. The low number of cases that are effectively investigated and tried, and result in a conviction is one reason why violence against girls continues to spread. Some legislations have also failed to characterize some legal offenses correctly, such as the crime of trafficking for sexual exploitation purposes. The IACHR has also been told of certain, allegedly restrictive, interpretations by the courts of the legal characterization of the crime of trafficking for sexual exploitation purposes, which have resulted in cases going unpunished.\(^\text{122}\)

\(^{117}\) Replies by States and civil society organizations to the IACHR questionnaire.

\(^{118}\) IACHR, Press Release, IACHR Urges States to Eradicate Violence against Children 10 Years after the Publication of the United Nations Secretary-General’s Study on Violence against Children, March 5, 2016.


\(^{121}\) IACHR, Press Release, IACHR Calls Attention to the Continuing Challenges Facing Pre-teen and Teenage Girls in the Region, October 12, 2016.

\(^{122}\) Ombudsman’s Office in Peru, Press Release 161/OCII/DP/2016, Defensoría del Pueblo rechaza sentencia que absuelve a mujer acusada de trata contra una adolescente de 15 años [Ombudsman’s Office rejects judgment acquitting a woman accused of trafficking a 15-year-old girl], September 23, 2016.
Generally speaking, investigation and trial procedure are still plagued by gender stereotypes and still subject victims to "re-victimization." Also badly needed are protocols for the effective investigation of sexual crimes against pre-teen and teenage girls, as well as protocols for medical care tailored to such cases. As for access to medical services by pre-teen and teenage girl victims of sexual violence, the IACHR has received worrisome information about the absence of adequate protocols for attending to them, access to information, and legal interruption of pregnancies resulting from sexual violence against girls, leading to unwanted and life-threatening pregnancies, especially in cases involving young girls.  

82. Information provided to the IACHR suggests that one of the circumstances exacerbating the vulnerability of pre-teen and teenage girls is lack of access to information and to high quality sex education tailored to their age, as well as to sexual and reproductive health services available to adolescents, on a timely, appropriate, affordable, and sustainable basis. Worryingly negative trends have been noted in the region with respect to access to this right. In addition, the early onset of sexual activity among adolescent girls lacking adequate information regarding their sexual and reproductive health results all too often in unwanted pregnancies jeopardizing their health or in illegal and unsafe abortions. When pregnancies occur, family and social pressure often push teenage girls into marriages or precocious relationships that impair their opportunities for personal, educational, and professional development or for taking important decisions regarding their future, all of which renders them more vulnerable. Pregnant girls and adolescents are still discriminated against in educational establishments and prevented from attending class during their pregnancy.  

83. As the IACHR showed in its report on Violence, Children and Organized Crime, another widespread form of violence to which children and adolescents in the region are exposed is that practiced by armed criminal groups and gangs. The IACHR is pleased to note that the recommendations contained in that report were welcomed by such countries as Costa Rica, Guatemala, Mexico, and El Salvador, which took part in the First Forum on Violence against Children and Adolescents: "Maras," Gangs, and Other Forms of Violence, convened by the Inter-American Children’s Institute (IIN) of the Organization of American States (OAS) and held on July 25 and 26. That Forum reviewed the specific context in each of the countries with regard to this issue and drew up a map of actions needed based on the IACHR’s recommendations. Based on the information it has received, the IACHR also sees promise in Colombia’s efforts in 2016 to develop a public policy to prevent the involvement of adolescents and young people in criminal activities by taking into consideration the IACHR recommendations published in its Violence, Children and Organized Crime report. Along the same lines, in 2016 the IACHR and the IIN-OAS reached an agreement on expanding the dissemination of that IACHR report and promoting the implementation of its recommendations via the various mechanisms at the disposal of the IIN-OAS. For its part, the Rapporteurship has actively promoted the dissemination of the conclusions and recommendations of its report with the support of the non-governmental organization Plan International.

84. In the monitoring it conducted in 2016, the Rapporteurship continued to note with grave concern that the legal systems and practices of all the countries in the region, without exception, have still not completely aligned themselves with inter-American and universal standards for juvenile justice or with the recommendations put forward by the IACHR in its report on Juvenile Justice and Human Rights in the Americas. The IACHR has expressed its utmost concern regarding the highly precarious conditions in which adolescents are deprived of liberty and regarding the violence, cruel, inhuman, and degrading treatment and
torture it is aware of and which have triggered public expressions of concern by the IACHR and the adoption of precautionary measures, especially in respect of Brazil. There are also still worrying tendencies, in several countries in the region, such as Brazil, to lower the age of criminal liability and lengthen sentences for certain crimes, although the IACHR has noted that this is a matter of recurrent debate in most countries in the region. In its recent report on Violence, Children, and Organized Crime, the IACHR has also drawn attention to the increase in arbitrary arrests, usually under laws that allow the detention of adolescents on suspicion of their belonging to criminal groups or gangs (maras), which has led to the application of subjective criteria, such as suspicion based on the display of tattoos. Citizen security strategies in States have also led to harsher criminal law practices, such as increased use of pre-trial detention, even for non-violent micro drug-trafficking offenses. While preparing its report on the situation of children and adolescents in the adult penal system in the United States, the IACHR received very worrying information about the treatment meted out to children and adolescents at odds with the international standards in certain states, with no regard for their special status or best interests and no application of specialized juvenile justice rules tailored to their condition as young persons in the process of developing and no concern for their positive and constructive reintegration into society. The IACHR has also urged the urgent, effective, and priority implementation in the region of a restorative justice model based on social and educational measures geared to the rehabilitation and reintegration into society of adolescents at odds with the law. The Rapporteurship wishes to underscore the progress made in Mexico with the adoption of the National Law governing the Comprehensive Criminal Justice System for Adolescents and calls upon Argentina to continue its efforts to adopt juvenile justice legislation in line with its international obligations. Finally, the Rapporteurship welcomes the priority attached by the United Nations to the situation of children and adolescents deprived of liberty during the preparation of its Global Study on Children Deprived of Liberty, a process to which the Rapporteurship has contributed with inputs from the inter-American human rights system.

6. Persons deprived of liberty

In 2016, the Rapporteurship on the Rights of Persons Deprived of Liberty used the various mechanisms available to the IACHR to monitor the situation of persons subject to any form of deprivation of liberty in the OAS member states. In particular, the Rapporteurship is executing a project financed by Spain, which seeks to promote the implementation of comprehensive public policies designed to reduce the use of pre-trial detention in the Americas and foster the use of alternatives to it. To that end, the Rapporteurship is preparing a report on major advances and challenges with implementing the recommendations made by the IACHR in its 2013 report, along with “Practical Guidelines on Measures to Reduce Pre-Trial Detention.” For its part, in 2016, the Commission continued to receive worrisome information regarding serious violations of the human rights of persons deprived of liberty in the region. It ascertained that the main challenges have to do with excessive use of pre-trial detention, over-crowding, and inappropriate prison conditions.

First, the IACHR notes that one of the principal issues relating to this target population is the generalized and excessive use of pretrial detention. Specifically, the main challenges that States face when they want to restrict the use of pretrial detention and implement alternative measures, include: criminal policies that propose more extensive incarceration as a solution to citizen security issues and translate into laws favoring pretrial detention and restricting the establishment of alternatives; the inadequate defense mechanisms provided to persons in pretrial detention; pressure from the media and public opinion to...
address citizen insecurity through deprivation of liberty; and the lack of inter-agency coordination among agents in the justice administration system.  

87. Despite the challenges for warranting exceptional use of pretrial detention, the IACHR observes that in 2016, a number of States took steps to reduce its use. Thus, at the legislative level, the IACHR underscores the entry into force in Mexico of the National Code of Criminal Procedure, which includes, inter alia, a greater number of alternatives of pretrial detention and provides for the regulation of pretrial services through risk assessment and supervision of precautionary measures imposed. In the administrative sphere, the IACHR welcomes the implementation of the "Justice 2020" Program in Argentina, which began in March 2016, and offers an opportunity for dialogue between authorities and civil society aimed at formulating, implementing, and evaluating access to justice policies. With respect to the State of Argentina, the IACHR also appreciates the broadening of the scope of application of the electronic mechanisms in criminal matters program through resolution 86/2016, issued by the Ministry of Justice and Human Rights, in March 2016. At the judicial level, decisions by the highest courts in Peru and Colombia have made significant progress toward rendering pretrial detention as exceptional measure. The IACHR particularly underscores the implementation of custody hearings (audiencias de custodia) in Brazil, whereby persons caught in flagrant, regardless of their motivation or the nature of the crime, are brought before a judge within 24 hours of detention. In a press release on March 7, 2016, the IACHR marked the first anniversary of such hearings, which were introduced on a pilot scheme basis in the state of São Paulo on February 24, 2015 and which not only avoid unnecessary pretrial detentions but also encourage the use of alternatives measures.

88. Likewise, in the period under review, the IACHR constantly received information, through the various mechanisms at its disposal, regarding the overcrowding that continues to be the norm in the region’s prisons. Among the consequences of overcrowding, the IACHR highlights the increased levels of violence, and expresses its deep concern regarding the prison riots, clashes among member of criminal gangs, attacks using firearms, and other unrest that lead to the deaths of dozens of people and numerous injuries. In 2016 alone, the Commission issued seven press releases, condemning the acts of violence that occurred and calling upon Brazil, Guatemala, Mexico, and Venezuela to investigate and clarify the circumstances in which those acts of violence occurred and, where applicable, to identify and punish those responsible for them.  

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131 This information was garnered through various mechanisms, but especially through activities in connection with the compilation of the report on "Measures to Reduce Pre-Trial Detention".

132 National Code of Criminal Procedure, Mexico, published on March 5, 2014 and in forces throughout the national territory as of June 18, 2016.


135 Supreme Court of Justice, Criminal Cassation Division, Colombia Case No. 85126, April 20, 2016, MP José Luis Barceló Camacho; Supreme Court of Justice, Criminal Cassation Division, Colombia Case No. 84957, May 11, 2016, MP Francisco Acuña Vizcaya. Available at: http://190.24.134.101/corte/wp-content/uploads/novejuri/tutela/STP6017-2016.pdf, and Permanent Criminal Division of the Supreme Court of Justice, Peru, Cassation N° 626-2013 Moquegua, February 27, 2016. Available at: http://perso.unifr.ch/derechopenal/assets/files/jurisprudencia/J_20160508_01.pdf. For further details regarding the decisions handed down by the Supreme Court of Colombia, see IACHR, Annual Report 2016, Chapter V, Colombia.

136 IACHR, Press Release 29/16 - "IACHR Celebrates the Anniversary of the Implementation of the Custody Hearings in Brazil," March 7, 2016. In particular, the IACHR appreciated the fact that, according to the Judiciary, in the first year 49,668 custody hearings were conducted throughout Brazil and in 24,641 (49.61%) of those cases pre-trial detention was declared inadmissible. National Judicial Council of Brazil, Mapa de implementación de las audiencias de custodia en Brasil.

89. For its part, the IACHR notes that, apart from the efforts listed by the States to reduce the use of pretrial detention and, hence, overcrowding, one of the main measures adopted to reduce the rates of persons deprived of liberty was Nicaragua’s implementation of alternatives to imprisonment. In particular, in a press release issued on February 22, 2016, the Nicaraguan State announced that, within the framework of a "Humanitarian Policy Geared to Reconciliation and Unity of Nicaraguan Families", a total of 8,149 people deprived of liberty had been released since 2014 under "living with the family rules" (régimen de convivencia familiar), 845 of them in the first two months of 1916.138 Here, while it appreciates the State’s efforts to reduce prison overcrowding, the IACHR notes the existence of severe criticism by civil society and public opinion of the lack of transparency and openness accompanying the adoption of these measures.139 Accordingly, based on official information in the public domain, the IACHR observes that the only known requirement to benefit from the "living with the family rules" is to have been convicted of minor crimes carrying prison sentences of five years or less. That being so, the IACHR expresses special concern at the lack of information available regarding the implementation of this measure and calls upon the State to have information available to the public on aspects affording insight into how the aforementioned measure is being implemented as well as on its outcomes and effectiveness three years after it was adopted.

90. In 2016, the IACHR also received information about the risks to life and bodily integrity faced by persons deprived of liberty in the Americas. Thus, prison conditions in the region are characterized not just by overcrowding, but also by deficient medical care; poor hygiene and insalubrious conditions; inadequate food; acts of corruption; denial of communications and visits; the commission of acts of torture and of cruel, inhuman, and degrading treatment; and the use of solitary confinement against international standards. In particular, the IACHR is especially concerned by reports that police detention centers are being used for permanent deprivation of liberty in countries such as Argentina, Nicaragua, and Venezuela, even though they were designed to be temporary detention centers and even though they are overcrowded and lack the infrastructure and basic services needed to ensure decent detention conditions.140

91. Despite the above, the IACHR made two pronouncements in relation to detention conditions welcoming actions taken in this regard by Panama and Costa Rica. Thus, on September 1, 2016, the Inter-American Commission on Human Rights welcomed the efforts undertaken by the State of Panama to combat acts of corruption in the penitentiary system, by dismantling a corruption network.141 Regarding Costa Rica, in a press release of November 16, 2016, the Commission welcomed the steps taken to eradicate the use of prolonged periods of solitary confinement in the Centro de Atención Institucional La Reforma,142 a situation referred to by the Commission in its press release of March 11, 2016, issued on the occasion of the Rapporteurship’s visit to Costa Rica in February 2016.143

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140 Regarding the situation in Argentina, see: IACHR, Press Release 151/16 - Rapporteurship on the Rights of Persons Deprived of Liberty Visits Argentina, Washington, D.C., October 19, 2016. As regards Nicaragua, the IACHR received this information in requests for hearings in connection with the 157th and 159th regular periods of sessions. CENIDH and CEJIL, Request for a Hearing "Situation of persons deprived of liberty in Nicaragua," in connection with the 159th regular period of sessions, October 10, 2016; Asociación Nicaragüense Pro-Derechos Humanos (ANPDH), Request for a Hearing "Overall human rights situation in Nicaragua," information provided to the IACHR in connection with the 157th regular period of sessions, January 2016. On Venezuela, see IACHR, 2016 Annual Report, Chapter IV.B, Venezuela.
92. In light of the above, the Commission recognizes the various efforts made in the region to achieve a penitentiary system in line with international human rights standards. Nevertheless, considering the ongoing challenges with safeguarding the rights of this population and given that their situation remains a matter of grave concern, the IACHR calls upon the States of the region to adopt the measures needed to ensure the enjoyment of their rights. In particular, it urges States to take steps to reduce the use of pretrial detention and current levels of prison overcrowding, above all through the regulation and application of alternatives to imprisonment; and to respect and guarantee the life and personal integrity of persons deprived of liberty by ensuring at a minimum conditions compatible with their dignity as human beings.

7. Afro-descendants and efforts to combat Racial Discrimination

93. In 2016, the Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination used the various mechanisms available to the IACHR to monitor the situation of racial discrimination and, especially, the human rights situation of persons of African descent in the region, and currently it is preparing a report on the problem of police violence in the United States and its human rights implications. For its part, in 2016, the Inter-American Commission continued to receive worrisome information regarding the persistence of types of structural discrimination and violence that particularly affect persons of African descent in the Hemisphere.

94. On August 23, 2016, the Inter-American Commission expressed profound concern regarding recent incidents that reveal a pattern of impunity with respect to the killings of Afro-Descendants committed by the police in the United States. Therefore, the Commission condemned several killings of Afro-American men and women as a result of the excessive use of lethal force by police officers and urged the Federal and state governments to conduct prompt, exhaustive, independent, and impartial investigations guaranteeing the relatives of the victims access to justice. The IACHR emphasized that the ineffectiveness of the State’s response is fostering high levels of impunity, making such killings chronic and leaving victims and their next of kin defenseless.

95. In connection with the International Day for the Elimination of Racial Discrimination, on March 21, the IACHR urged States to adopt special affirmative action measures and comprehensive state policies aimed at eradicating deep-seated racial discrimination. It urged States to pay particular heed to the plight of Afro-descendant women, due to the multiple forms of discrimination they have suffered historically, due to their gender, race, and other factors. The IACHR has stressed that the concentration of ethnic/racial groups in the most poverty-stricken strata in most countries in the region and the fact that they are hardest-hit by high infant mortality, low life expectancy, and low income and employment rates point to a situation of systematic discrimination.

96. This year the IACHR also received information indicating that the situation of Afrodescendant women, adolescents, and girls in the Hemisphere remains dire. Women of African descent are among the most marginalized social groups in the Hemisphere. They have limited access to education, employment, and health care, and they face multiple hurdles to accessing the sexual and reproductive health services they need. The IACHR has also ascertained that, compared to other women, Afro-descendant women are notoriously under-represented in decision-making bodies and in terms of political representation. Afrodescendant women and their legacy are disproportionately affected by armed and land-based conflicts, including forced displacement, by failure to observe their right to grant prior, free, and informed consent, and because women make up such a high percentage of heads of household in such contexts. The IACHR also


underscores that women of African descent are especially likely to bear the brunt of violence. It notes that one of the principal challenges faced by Afro-descendant women is the institutional violence meted out by public and judicial authorities that do not understand their world view, traditions, and culture. Institutional violence is also directed at organizations working to defend the rights of women of African descent. 147

97. In 2016, the IACHR monitored the situation of Afro-descendants in several countries of the region. Thus, the Commission heard worrisome reports regarding the implementation of Decree Law 4635 of 2011 in Colombia, which allows Afro-descendant peoples to claim their territorial rights. By 2016, five years after that law was enacted, Colombia’s special land rights court had reportedly handed down just one judgment restoring territorial rights to Afro-Colombian communities: in the Renacer Negro community council case in Timbiquí, Cauca. 148 In addition, the number of cases brought in the administrative phase of the restitution process and the number of Afro-Colombian collective land claim suits presented by the Land Restitution Unit is still very small compared to the scope of the dispossession to which Afro-Colombian communities were subjected. 149 Regarding collective reparation proceedings, the Unit for Attending to and Making Reparations to Victims has indicated that reparation to ethnic communities is one of the areas to which public authorities need to pay most attention. 150

98. The IACHR also voices its concern regarding Afro-descendent human rights defenders in Colombia. On February 25, 2016, in a press release, this Commission condemned the situation in which Afro-descendent human rights defenders have been murdered for playing a leadership role in claiming, defending, and protecting the human rights of Colombians of African descent, especially their right to their territories. 151 In November 2016, the Inter-American Commission deplored the increased number of murders of human rights defenders in the last few months of 2016 and noted with concern that Afro-Colombian leaders were particularly exposed to such violence. 152 The IACHR also received information from the Proceso de Comunidades Negras (PCN) regarding instances of excessive use of force by the Mobile Anti-Riot Squad (Escuadrón Móvil Antidisturbios - ESMAD) and denunciations of death and other threats against members of the Movilización de Mujeres por la Vida y el Territorio Ancestral and of the Association of Community Councils of Northern Cauca (ACONC) in connection with the nation-wide mobilization for the Agrarian Summit and March for Life and Ancestral Lands conducted on April 25-27, 2016 in the municipality of Santander de Quilichao. 153

99. The IACHR has also received continuous reports regarding ethnic and racial disparities with respect to the enjoyment of human rights of persons of African descent in Brazil. For instance, the Commission has been told that enormous inequalities persist between Afro-Brazilians and the rest of the population. 154 Three quarters (75%) of the poorest 10% of the Brazilian population are black or dark-skinned, 23.9% are white. 155 The IACHR also notes with concern that there is still a significant disparity in life

149 Verdad Abierta, Ponen barreras a restitución de tierras de los afros? May 6, 2016.
150 RCN radio, Alán Jara, director de la Unidad de Víctimas visitó Chocó August 12, 2016.
153 Proceso de Comunidades Negras en Colombia (PCN), Santos dialoga con represión contra la gente Negra del Norte del Cauca, April 26, 2016.
154 Brazilian Institute of Geography and Statistics, IGBE Summary of Social Indicators - An analysis of the living conditions of the Brazilian population, November 2014, p. 156.
155 Brazilian Institute of Geography and Statistics, IGBE Summary of Social Indicators - An analysis of the living conditions of the Brazilian population, November 2014, p. 156.
expectancy for the white and black populations in Brazil. In connection with public security operations, in the fight against drugs, and, more recently, in the run-up to the Olympic Games in Rio de Janeiro, the police killed more than 100 people in the Rio de Janeiro state, most of them being black youths.\(^{157}\)

100. During its 157\(^{\circ}\) period of sessions, the IACHR held a hearing on the situation of Afro-descendent women in Brazil during which the organizations requesting the hearing presented information on the grave situation of structural violence against Afro-Brazilian women.\(^{158}\) According to that information, Afro-descendent women constitute more than two-thirds (66.7\%) of all the women murdered in Brazil in 2013,\(^{159}\) indicating a disproportionate percentage of Afro-descendent women victims of violent deaths. For their part, health sector statistics show that Afrodescendent women account for most (more than 60\%) of maternal mortality victims.\(^{160}\) A number of illnesses are also more prevalent among Afro-Brazilian women.\(^{161}\) Despite the adoption in Brazil of the Maria da Penha Law on violence against women, the number of attacks against Afro-descendent women has not declined and most cases go unpunished.

101. In Cuba, as regards differences in access to housing for persons of African descent, the State has fostered policies conducive to broadening access by the least privileged to homes or opportunities to access resources allocated to home construction or improvement. The Cuban State informed the United Nations Committee on the Elimination of Racial Discrimination that work was being done on changing the persistence of historical patterns in housing and the structure of housing arrangements in urban districts that were due to inherited forms of inequality, not to ongoing racial segregation.\(^{162}\)

102. Likewise, in terms of political participation, the IACHR highlights that persons of African descent are largely underrepresented in the highest offices of the States of the Hemisphere.\(^{163}\) Regarding this matter, on June 13, 2016, the United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, informed the Human Rights Council during its 32nd session that in his capacity as coordinator of the International Decade for People of African Descent, he was worried about the persistently low level of political representation of Afro-descendants in Latin America and the Caribbean. In particular, he pointed out that there are approximately 150 million persons of African descent in the region, or about 30 percent of the population. Nevertheless, their representation at the highest level of government, including ministerial cabinet positions, is well below that. According to the High Commissioner, this lack of representation at the highest levels of power affects the whole of society. Parliaments, jobs in the public and private sectors, schools, courts, the media are all segments of society in which the voices of Afro-descendants are under-represented. He therefore urged States to take steps to reflect the diversity of their populations in decision-making bodies, including giving consideration to affirmative action policies.\(^{164}\)

103. In this context, the IACHR welcomes the efforts undertaken by several states in the region to revert the situation of racial discrimination and marginalization of the Afro-descendent population. The

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\(^{156}\) The Guardian, Rio Olympics: view from the favelas – In Alemao, deaths aren’t investigated, July 12, 2016.


\(^{158}\) IACHR, Hearing on the Human Rights Situation of Afro-descendent Women in Brazil, April 7, 2016.


\(^{162}\) United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention, CERD/C/CUB/19-21, September 9, 2016, para. 125.


\(^{164}\) United Nations, High Commissioner for Human Rights, Hate is being mainstreamed - global update by the High Commissioner, June 13, 2016.
IACHR welcomes the ratification by Costa Rica of the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance of August 5, 2016. In so doing, Costa Rica became the first country to ratify the Inter-American Convention against Racism adopted by the General Assembly of the Organization of American States in June 2013. The IACHR congratulates Costa Rica on its contribution to attain the entry into force of this international instrument that requires that two instruments of ratification or accession be deposited by OAS member states.  

104. This Commission also welcomes the inclusion of an ethnicity chapter in the peace agreements in Colombia. That chapter acknowledges that ethnic peoples have helped build sustainable and lasting peace and have contributed to progress and the economic and social development of the country. They also acknowledge that, historically, they have had to endure injustice as a result of colonialism, enslavement, exclusion, and being dispossessed of their lands, territories, and resources. Moreover, the chapter indicates that their lives were severely impaired by the internal armed conflict; and that they must be granted maximum safeguards for the full exercise of their human and collective rights within the framework of their own aspirations, interests, and visions of the cosmos.

105. The IACHR also welcomes the presentation by the Organization of American States and the Pan American Health Organization, in July 2016, of the new Plan of Action for the Decade for People of African Descent in the Americas, an initiative that seeks to strengthen public policies geared to safeguarding the rights of that population and their full and equal participation in the region between now and 2025. That initiative is aimed, moreover, at improving the health and wellbeing of the more than 150 million Afro-descendants estimated to be living in the Western Hemisphere and in conditions that, from a health point of view, are worse than those of other racial groups, due to the inequalities, poverty, and social exclusion closely associated with racism, xenophobia, and intolerance.

106. In light of the above considerations, the Commission recognizes the various efforts undertaken in the region to combat discrimination against people of African descent. Nevertheless, the IACHR calls upon the States in the region to step up the efforts needed to combat ongoing racial discrimination and the marginalization of the Afro-descendent population, within the framework of the International Decade for people of African Descent proclaimed by the United Nations General Assembly.

107. The IACHR also voices its concern regarding the scarce official information available regarding the human rights situation of people of African descent and of Afro-descendent women in particular. In that regard, the Inter-American Commission has expressed its concern at the structural inequality that the Afro-descendent population in the region has to contend with and especially the situation of Afro-descendent women, adolescents, and girls. It has stressed that, in order to craft and implement effective measures, it is essential that the States in the region promptly and with all due diligence compile statistics on the human rights situation of people of African descent and of Afro-descendent women, in particular.

8. Human Rights Defenders

108. In 2016, the Rapporteurship on Human Rights Defenders used the various mechanisms of the IACHR to monitor the situation of human rights defenders in the OAS member states. In particular, the Rapporteurship undertook a series of activities to disseminate and promote its latest report on Criminalization of the Work of Human Rights Defenders, and currently it is preparing a report on national programs and mechanisms to protect human rights defenders. For its part, in 2016, the Inter-American

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Commission continued to receive worrisome information indicating that human rights defenders still face a series of obstacles hampering their efforts to promote and defend human rights. Specifically, the Commission has identified a series of problem areas where their work is obstructed or prevented in several countries of the region; among other impediments, murders, attacks, and threats continue, while their work is both stigmatized and criminalized.

109. First and foremost, the IACHR notes that defending human rights in the Americas continues to be an extremely dangerous activity. According to published data, almost half of all murders of human rights defenders are perpetrated in Latin America.\(^{168}\) In the course of 2016, the IACHR received information on killings in Brazil, Colombia, El Salvador, Guatemala, Honduras, Mexico, and Nicaragua. The types of defenders at most risk and the greatest cause for concern are those working to defend the environment, gender equality and sexual and reproductive rights, the rights of indigenous peoples, and land rights. They were the victims in 41 percent of the homicides in the region.\(^{169}\) The Commission profoundly deplores the deaths of human rights defenders as a result of these attacks.\(^{170}\)

110. An emblematic case illustrating the seriousness of the situation is the murder of the well-known human rights defender, Berta Cáceres. On March 4, 2016, the Inter-American Commission on Human Rights expressed its total repudiation of the murder of Berta Cáceres, a well-known human rights defender, indigenous leader, and Coordinator General of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH). Berta Cáceres had been the beneficiary of precautionary measures granted by the IACHR in 2009, who had repeatedly and publicly denounced the grave risk and harassment to which she was exposed.\(^{171}\) Twelve days after her murder, on March 15, another leader and member of COPINH, Nelson Noé García, was also murdered. He, too, had been granted precautionary measures by the IACHR weeks before he was murdered.\(^{172}\) In August 2016, the United Nations Special Rapporteur on the situation of Human Rights Defenders, Michel Forst, and the IACHR’s Rapporteur on the Rights of Human Rights Defenders, José de Jesús Orozco Henríquez, stated that Honduras had become one of the most dangerous countries for human rights defenders.\(^{173}\)

111. Throughout 2016, the IACHR also observed with concern the situation of human rights defenders in Colombia. On February 25, 2016, the Commission condemned the murder of five human rights defenders in Colombia, as well as the widespread pattern of retaliations, harassments, and threats against those working to defend rights in that country.\(^{174}\) On November 2, 2016, the Inter-American Commission deplored the increased number of murders of human rights defenders in recent months and noted with concern that small farmer, indigenous, and Afro-Colombian leaders were particularly exposed to such...
violence. The IACHR noted that while there were significantly fewer threats, attacks, arbitrary arrests, and cases of harassment against human rights defenders in 2016, compared to 2015, murders increased sharply in the last few months of 2016. According to civil society organizations, 19 human rights defenders and community leaders were murdered between July and September 2016 (three more than in the preceding quarter and in the same period in 2015). There were 54 murders overall between January and October, 2016. In most cases, the perpetrators were reportedly illegal armed groups. 175

112. The IACHR also resolutely condemned the murder of at least six human rights defenders in Brazil in the first four months of 2016, along with the increasingly widespread harassment, intimidation, and threats against defenders, particularly those working to defend rights relating to land, work, and indigenous peoples. Throughout 2016, the Commission observed the intensification of social movements in Brazil calling for the preservation of the rule of law, constitutional rights, and effective public policies to address such structural situations as agrarian reform and access to health and education. 176

113. It is also important to underscore the growing tendency to criminalize the defense of human rights and peaceful social protest movements, an issue that the Rapporteurship addressed in its latest thematic report on Criminalization of the Work of Human Rights Defenders, presented on April 9, 2016. 177 In recent years, thanks to its continuous monitoring, the IACHR has observed increasing sophistication in actions undertaken by both State and non-State actors in several countries of the region to prevent, obstruct, or discourage the defense and promotion of human rights. 178 Throughout the region, in fact, both State and non-State actors were behind many of the baseless complaints and attacks and intimidation directed against human rights defenders, including a significant number of judicial proceedings brought by corporations against defenders and small-farmer and indigenous communities. 179 The IACHR reiterates that such criminalization and stigmatization of human rights defenders lead to them being marginalized, identified as "traitors" or "opponents", isolated from society, and, ultimately, rendered more vulnerable and exposed to the risk of various kinds of assault. 180 This Commission observes that the criminalization of the leaders of these groups results in much more weakly structured movements. According to information received by the IACHR, in about half of all cases, the criminalized defender is also an indigenous leader. 181

114. Therefore, and as an example, the IACHR has monitored the situation involving the criminalization of the members of Cubalex. According to information received by this Commission, on September 23, 2016, Cuban police and State security personnel allegedly raided the offices of the Cubalex organization, based on a search warrant that, it was alleged, did not meet legal requirements. Before the raid, all communications to and from the offices had been cut, as were the cell phone lines of the organization's members. During the search, according to the information received by the Commission, the following objects were confiscated: five computers, including a server; four laptops, three printers, mobile phones, and confidential documents and archives relating to several cases being handled by the office. In addition, Cubalex members were reportedly interrogated and five of them -- four women and a man -- had been forced to strip for a body search. 182 The organization states that the Cuban Government is attempting to break up Cubalex

by using what is known as the "Law against Flowerpots" [Ley contra los macetas] (Decree law No. 149/1994), which establishes "exemplary measures against those who steal, speculate with, or divert State resources, engage in black market activities, and other forms of enrichment that do harm to society." 183

115. The IACHR has also monitored the situation of judges, public defenders, public prosecutors, and ombudspersons in the region and has identified a series of obstacles ranging from defects of an institutional nature in safeguarding the independence of the judiciary to attacks, acts of aggression, and harassment in reprisal for acts of justice system operators.

116. In this respect, the Commission has called upon Member States of the Organization of American States to strengthen the independence of their judiciaries through appointment procedures that meet international standards. 184 The IACHR has kept close track of this situation in the region, particularly in such countries as Argentina, Guatemala, and Honduras in which judges of the highest courts were being chosen or are being appointed. 185 The IACHR also condemned the murder in Mexico of Judge Vicente Antonio Bermúdez Zacarias, who served on the fifth district court for amparo and federal civil suits in Toluca, Mexico, and urged the Mexican State to investigate that crime and punish those responsible. 186

117. Despite the above, the IACHR welcomes the efforts undertaken by several States in the region to comply with their obligation to protect human rights defenders when they find themselves at risk because of their work. Countries such as Brazil, Colombia, Guatemala, Honduras, and Mexico have recently introduced or are considering laws or decrees aimed at protecting human rights defenders through national protection programs or mechanisms. In particular, the Commission welcomes the efforts in Honduras that led to the passing of the Law for the Protection of Human Rights Defenders, Journalists, Broadcasters, and Justice System Personnel and the enabling regulations for that law in August 2016. Nevertheless, the State needs to redouble its efforts to ensure that the National Mechanism of the Protection of Human Rights Defenders is fully operational, by providing it with the human and material resources it needs to perform its functions properly. 187

118. In light of the above considerations, the Commission recognizes the various efforts undertaken in the region to afford protection to human rights defenders. Nonetheless, given that conditions that obstruct the work of human rights defenders persist and in some cases are getting worse, the IACHR calls upon States in the region to take all necessary steps to ensure that defenders can go about their work in defense of human rights. Accordingly, it urges States in the region to adopt and effectively implement holistic and comprehensive protection programs and/or mechanisms.

183 Cubalex, Cubalex denuncia acciones del Estado cubano para criminalizar su trabajo en defensa de los derechos humanos, November 3, 2016; Cubanet, Cubalex: El régimen intenta proscibir la ONG mediante la "Ley contra los macetas", November 3, 2016.


9. **Personas Lesbianas, Gays, Bisexuales, Trans e Intersex**

119. En 2016, la Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons (LGBTI) usó los diversos mecanismos de la IACHR para monitorear la situación de personas que sufren violencia, discriminación, y exclusión por razones relacionadas con su orientación sexual, identidad de género, expresión de género - real o percibida - y/o diversidad corporal en los Estados Miembros de la OEA. En particular, siguiendo la publicación del informe titulado "Violencia contra LGBTI personas en las Américas", la Rapporteurship se concentró en promoverlo e impulsar su lanzamiento en las versiones en inglés y portugués. Así, la versión española del informe fue lanzada en junio, en conexión con la Sesión General de la reunión de la OEA en Santo Domingo, junto con un taller de capacitación para organizaciones de la sociedad civil. Además, en octubre, la Rapporteur on the Rights of LGBTI Persons visitó las ciudades de Brasilia, Salvador de Bahía, y Belo Horizonte en Brasil, con el apoyo de la Fundación sobre Raza, Igualdad y Derechos Humanos. Durante este viaje, en conexión con reuniones con una serie de instituciones estatales y organizaciones de la sociedad civil, se lanzó la versión portuguesa del informe y se realizó un taller de capacitación para organizaciones de la sociedad civil. La Rapporteurship está trabajando actualmente en la presentación de la versión en inglés del Informe sobre Violencia contra LGBTI Personas y en un nuevo proyecto que incluye la preparación del próximo informe temático, que analizará prácticas mejores en la región sobre reconocimiento de los derechos de LGBTI personas.

120. Por su parte, en 2016, la Comisión continuó recibiendo información preocupante sobre violaciones graves de los derechos humanos de LGBTI personas en la región y confirmó que los principales desafíos son los altos niveles de violencia, estigma y discriminación contra ellos, junto con el fracaso para reconocer los derechos de LGBTI personas y la impunidad asociada con esta situación. Así, la IACHR ha condenado el asesinato de LGBTI personas en la región, así como la violencia y agresión sufrida por quienes defienden los derechos humanos de personas LGBT. La IACHR ha expreso su preocupación por la exponencial aumento en la violencia y los asesinatos de personas transexuales, y de personas que defienden los derechos humanos de personas LGBT en la América. La IACHR ha expresado su preocupación por el incremento exponencial en violencia y asesinatos de personas transexuales, y de personas que defienden los derechos humanos de personas LGBT en la América.

121. La Comisión también resaltó que existe una creciente consensión de que los Estados tienen una obligación para garantizar la igualdad y no discriminación contra los LGBTI personas, incluyendo por razones relacionadas con su orientación sexual, identidad de género y diversidad corporal. Este consenso se debe en gran medida a los esfuerzos de diferentes autoridades públicas, para que la rápida reconocimiento de la mayoría de los derechos de los LGBTI personas: progreso que la Comisión ha elogiado. La Comisión ha reconocido los esfuerzos realizados por ciertos Estados para avanzar en el reconocimiento de los derechos de LGBTI personas a nivel regional, y ha recibido el apoyo de la creación del Grupo de Trabajo OAS LGBTI, compuesto por Argentina, Brasil, Canadá, Chile, Colombia, México, Estados Unidos, y Uruguay. Es importante señalar que la IACHR ha destacado el liderazgo demostrado por ciertos Estados miembros de la OAS, tales como Argentina, Brasil, Chile, Colombia, Costa Rica, El Salvador, México, Estados Unidos, y Uruguay, en poner en marcha resoluciones que promueven la designación de un Experto Independiente de Naciones Unidas sobre Orientación Sexual y Identidad de Género y para hacer frente a la continuidad de esta posición. Así, la Comisión reafirma la importancia de garantizar la continuidad del mandato del Experto Independiente, así como reafirma su compromiso en promover los derechos de LGBTI personas.
persons. In 2016, the IACHR also congratulated Belize on declaring that it is unconstitutional to criminalize consensual sexual relations between same-sex adults. With that historic decision, Belize became the second country in the English-speaking Caribbean—after Bahamas—to repeal legal provisions criminalizing consensual sexual relations between same-sex adults dating back to the British colonial era.

122. As regards the overall trends in the violence against LGBTI persons in the region, it is worth noting that LGBTI persons frequently fail to file a complaint due, among other things, to the mockery, discrimination and aggression to which they are subjected by those responsible for registering their complaints; the physical aggression and sexual violence to which they are subjected by police officers when they do attempt to file a complaint; mistrust of the State bodies conducting the investigations, because of the high rates of impunity; the lack of impartiality in the investigations, because sometimes, as the IACHR has been told, the aggression and/or threats that prompted the complaints were perpetrated by members of the police, which is then supposed to conduct the investigations; and threats against their lives or bodily integrity if they pursue the complaints any further.

123. Regarding these trends, the IACHR has likewise observed that no official statistics are kept in the region on the situation and needs of LGBTI persons; there is a pervasive atmosphere of violence against them; the day-to-day violence is hushed up; the violence practiced against certain groups, such as trans, bisexual, and intersex persons is hushed up; high levels of cruelty persist; and violence is used as a reprisal against public demonstration of affection among same-sex persons. Thus, the IACHR has repeatedly received information about acts of violence against LGBT persons perpetrated by State security forces, including torture, inhuman or degrading treatment, excessive use of force, illegal and arbitrary detention, and other forms of abuse. Along those same lines, in 2016, concerning trans persons, the IACHR continued to hear extremely worrying information to the effect that the average life expectancy of trans women in the region is 35 years or even less, making them the group hardest hit by police violence, above all in connection with sex work.

124. Here, the IACHR was able to ascertain that trans women in the Americas tend to be caught up in a spiral of violence, discrimination, and criminalization from a very young age, due to exclusion and violence in their homes, schools, and communities, which is exacerbated by the lack of legal recognition of their gender identity in most countries in the region. As a result of such exclusion, abuse, and discrimination in the family, society, and schools, trans persons face poverty, social exclusion and in many cases lack of access to housing, all of which forces them to work in crime-ridden informal jobs, such as sex work.

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196 IACHR, OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, Chapter 3.

197 IACHR, Press Release No. 119/16, IACHR Hails Unconstitutionality Decision on Criminalization of Consensual Sexual Relations between Same Sex Adults in Belize, August 22, 2016.


201 IACHR, Press Release No. 169/16, CIDH Urges States to Combat Impunity in cases involving Prejudice against Trans Persons, November 18, 2016.


work or survival sex. As a result, trans women are frequently profiled by the police as dangerous, making them more vulnerable to police mistreatment, criminalization, and imprisonment. Faced with these realities, the IACHR recommended that States in the region adopt laws that fully recognize their rights in a non-pathologizing way, and that those laws be accompanied by public policies with a gender identity and gender expression approach, tailored to the particular circumstances and needs of trans persons in the region.

125. The situation with respect to LGBTI persons' rights in the region is very uneven, with some States making significant progress, as mentioned earlier. However, violence and discrimination are still widespread, requiring the intervention of the different branches of government. Accordingly, the IACHR has underscored the importance of having independent public authorities that ensure that rights recognition processes are rooted in democratic decisions that abide by the international obligations that States have signed on to. Along those same lines, the IACHR stresses the importance of boosting efforts in the region to standardize levels of protection for LGBTI persons. One of the challenges that the region faces in seeking to improve protection and recognition of the rights of LGBTI persons is making the special effort needed -- in society, the educational system, and the legislature -- to counteract deep-seated practices of discrimination, prejudice and negative stereotypes based on sexual orientation, gender identity and expression – real or perceived-, and bodily diversity, . Because those prejudices translate into violence, exclusion, and failure to recognize the rights of LGBTI persons in the Americas.

126. Thus, it is vital to pool our efforts to compile detailed statistics and information on the situation and needs of LGBTI persons in order, inter alia, to keep track of the effectiveness of practices implemented by States, identify new areas requiring attention, and design appropriate and inclusive public policies that address the specific needs of LGBTI persons. Likewise, the IACHR underscores the need to guarantee comprehensive legal recognition, in a non-pathologizing way, of trans persons’ right to gender identity; and to guarantee LGBTI persons’ rights, without discrimination, to: work; family protection; and access to the health system, education, and housing.

10. Economic, Social, and Cultural Rights

127. In 2016, the Unit on Economic, Social, and Cultural Rights continued to use the various mechanisms of the IACHR to monitor observance of, and guarantees for, economic, social, and cultural rights in the region. In particular, the Rapporteurship is currently implementing a project financed by the European Union, namely the preparation of its first report on Poverty, Extreme Poverty, and Human Rights in the Americas. Indeed, one of the most worrisome and widespread human rights situations ascertained by the IACHR in 2016 is that related to the poverty and extreme poverty engulfing more and more people in the Hemisphere. The vastness and complexity of this human rights dilemma, and the need to solve it, has been acknowledged by several States and by civil society, as well as international institutions and organizations, such as the United Nations, the World Bank, the Inter-American Development Bank, and others.

211 Particularly worth underscoring is the "2030 Agenda", adopted by the United Nations General Assembly in September 2015. It lists 17 sustainable development goals that will shape global development programs for the next 15 years. The priority goal of that agenda is to end poverty in the world by 2030, as well as to eradicate hunger and achieve food security; ensure healthy lives and quality education for all; achieve gender equality; ensure access to water and energy; promote sustained economic growth; take urgent action to combat climate change; promote peace and provide access to justice, among other goals. See the General Assembly resolution: Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015.
128. As part of the above-mentioned project on poverty and extreme poverty, in 2015 the Commission initiated the process of preparing the first thematic report on human rights and poverty in the Americas. To garner information, the ESCR Unit paid seven visits to member states (two to the United States and one to each of the following: Paraguay, Bolivia, Guatemala, Guyana, and Peru), and met with state authorities responsible for the area, visited urban shanty towns and communities living in poverty and extreme poverty, and had talks with civil society. The 2016 visit to Guyana was the first time ever that the IACHR had conducted an observation mission in that country. In November 2016, there was a conference of experts on the subject, which was attended, inter alia, by representatives of the Economic Commission for Latin America and the Caribbean (ECLA) and the United Nations Food and Agriculture Organization (FAO). In the regular period of sessions of the IACHR held in Panama in December 2016, the Unit consulted both states and civil society regarding the project. On December 22, 2016, the ESCR Unit submitted a preliminary draft of the report for public review and hopes to come up with the final version in first half 2017.

129. Also worth mentioning, as a best practice related to ESCR, in December 2016, the Commission welcomed with satisfaction Costa Rica’s ratification of the Inter-American Convention on Protecting the Human Rights of Older Persons. That meant that the Convention had been ratified by two countries, Uruguay and Costa Rica, and thus entered into force. Uruguay was the first country to ratify that Convention, which had been adopted by the OAS General Assembly on June 15, 2015. The IACHR has repeatedly stressed the importance of universal ratification of the instruments of the inter-American system as a crucial ingredient for the full observance and safeguarding of human rights in the Americas.212

130. In 2016, the ESCR Unit identified a series of economic, social, and cultural rights-related challenges, especially the above-mentioned difficulties regarding the violation of, and failure to satisfy, the human rights of individuals, groups, and communities living in poverty and extreme poverty; the lack of access to water in the Hemisphere; the lack of food security, especially the serious cases of malnutrition of children and pregnant women; the lack of access to education and health in the region; and all the issues mentioned below that are particularly dire for individuals, groups and communities that have traditionally been the victims of discrimination.

131. In 2016, the ESCR Unit also received worrying information about the right to freedom of association in the region. Civil society organizations told the IACHR that in many countries the rules governing the establishment of organizations are set by ministerial decrees and resolutions, not by laws passed by Parliament.213 The process of acquiring legal status as an organization involves obtaining prior authorization to practice the activities proper to such an organization. That process is highly centralized and plagued with bureaucratic, discriminatory, and often also arbitrary hurdles. The CSOs also pointed to the problems encountered by already authorized organizations, such as arbitrary suspension of their permit and the existence of ambiguous and discretionary criteria for revoking and canceling their permits (such as minor, and easily rectifiable, technical errors or criteria allegedly based on protection of the public interest, order, and security). The organizations also told the IACHR of violations of the freedom of expression and association of civil society organizations, in the form of public campaigns to discredit their work and official pronouncements against organizations because of their participation in public discussions, or violent disruptions of peaceful demonstrations and the use of vaguely phrased anti-terrorist laws to criminalize social protest. They claimed that such measures had an intimidating and dissuasive impact on democratic participation.

132. In 2016, the Commission continued to receive worrisome information regarding human rights challenges related to the business sector. In particular, the ESCR Unit received information during the hearing on States, Corporations, and Human Rights in South America regarding the alleged lack of access to justice and reparation for victims of human rights violations committed by companies. A series of civil society

organizations and social movements provided information regarding the situation of indigenous peoples in
the region reportedly impacted by megaprojects and specific situations in a number of States in the region. 214
They also underscored the importance of national action plans addressing business and human rights that are
being worked on in the region as a way of applying the United Nations Guiding Principles on the subject; and
the importance of their being drawn up in a participatory and legitimate process that includes those affected
and is rooted in diagnostic assessments of the circumstances in each country. At that hearing, the ESCR Unit
was informed that it was vital to establish general standards for business and human rights, including the
States’ obligations to provide access to justice and their liability for violations when they fail to regulate
business.

133. At the same time, it is worth pointing out that in the hearing on the Human Rights Situation
in the Context of the Implementation of the Trans-Pacific Partnership (TPP) in the Americas, the organizations
voiced their concern at the protection afforded in the agreement to investors, through subjective provisions,
with respect to States’ decisions to implement public policies, including those relating to the protection of
human rights. 215 They claimed that the Partnership provisions would hamper full enjoyment by indigenous
peoples in the region of their right to prior, free, and informed consent regarding projects to be carried out in
their ancestral territories. They maintained, in addition, that the Partnership agreement's conflict resolution
clauses would impair rights to an impartial trial and due process in the signatory States. Furthermore, they
asserted that the Partnership’s provisions on intellectual property would negatively impact the right to health
in the region because of the priority they accord to protecting commercial patents over the treatment and
disease prevention needs of the public health systems of the states. They urged the Commission to monitor
very closely the connections between the signing of international trade agreements and their plausible
consequences for human rights. The Commission acknowledged the importance of debating this and other
agreements affecting the region and of monitoring their potential impact on human rights in the Hemisphere.

134. The ESCR Unit was also concerned about information it received to the effect that lack of
access to medicines is one of the most serious issues impairing the right to health in the Americas, not just
because it undermines the right to health and life, but also because, based on the data cited, it affects more
than 2 billion people in the world. 216 The information suggests that our region faces several issues, such as a
lack of research and development of medical technologies needed to prevent, diagnose, and treat most of the
diseases prevalent in the region; the high prices of pharmaceuticals, especially in the case of newly pioneered
medicines; and the blocking of access to generic medicines. In a public hearing before the IACHR, the
sponsoring organizations made a series of suggestions for addressing the shortage of medicines needed in
medium- and low-income countries, including: 1. Supporting the design of incentives for pharmaceutical
innovation that are unrelated to patents and high monopoly prices; 2. Abolishing pharmaceutical patents in
medium- and low-income countries, in respect of medicines needed for health and life; 3. While the abolition
of pharmaceutical patents is being achieved, making full use of the legal instruments devised to counteract
the harm they do; 4. Promoting the criminalization of blocking access to affordable generic medicines as a
crime against humanity. The IACHR appreciated the information provided and said it was committed to
continuing its work on the subject as one of its priorities.

135. Information was also received in connection with a public hearing on an emerging issue
related to the human rights impact of addiction to tobacco. 217 Here, the IACHR underscored the importance
of the first hearing on this issue as an opportunity to jointly explore the subject and stressed the importance of

216 IACHR, Hearing, Right to Health and Lack of Medicine in the Americas, 159th period of sessions of the IACHR, December 6, 2016.
217 IACHR, Hearing, Right to Health and Tobacco Addiction in the Americas, 157th regular period of sessions of the IACHR
Requested by the O’Neill Institute for National and Global Health, Georgetown Law, Action on Smoking and Health (ASH), Fundación
Inter-Americana del Corazón, Argentina (FIC). The link provides direct access to the televised record of the Hearing.
striking a balance between individual liberties and the rights to health and equality. Specifically, those who had requested the hearing pointed out that tobacco is a deadly product that kills half of its users and is the leading cause of illness and disability. In addition, civil society organizations and academics working in this field stated that tobacco addiction perpetuates poverty and hampers the sustainable development of States, disproportionately harming social sectors that, historically, have been victims of discrimination. They maintain that it has also had an enormous financial impact on health systems due to the high cost of treating the illnesses associated with tobacco use. The organizations claimed that, to keep its products in the market and boost its profits, the tobacco industry deliberately directs its publicity campaigns to target groups traditionally discriminated against, such as women, children, adolescents, and LGBTI persons. They also said that these enterprises develop strategies to thwart efforts by States to regulate tobacco and advance public health policies. For that, they resort to litigation and to lobbying lawmakers, among other tactics. They went on to indicate that there are effective policies that need to be implemented to stop the tobacco addiction epidemic and protect the life and health of the population. They pointed, in particular, to the World Health Organization's Framework Convention on Tobacco Control and its specific measures that the States Parties should implement to minimize the impact of tobacco on public health. In that context, and to comply with international human rights obligations, they pointed out that States urgently need to implement tobacco control measures and guarantee transparency vis-à-vis the tobacco industry.

136. In light of the above considerations, the Commission observes a series of challenges that are currently preventing full enjoyment of economic, social, and cultural rights, especially for persons, groups, and communities that have historically suffered discrimination. The IACHR therefore calls upon the States of the region to take all necessary steps to ensure the enjoyment of those rights. In particular, it urges states to continue adopting public policies aimed at progressively guaranteeing the full enjoyment and exercise of ESCRs in the Americas. Likewise, the IACHR deems it essential that immediate action be taken to guarantee satisfaction of a basic minimum of core economic, social, and cultural rights, based on recognition of, and concern for, human dignity.