

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.¹ 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.² 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.³

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-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* (hereinafter referred to as “*Extractive Industries Report*”),⁴ 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*,⁵ the *Situation of Indigenous Peoples and the Right to Consultation in Honduras*,⁶ and on *Indigenous Peoples’ Right to Free, Prior, and Informed Consultation in Bolivia*.⁷ The IACHR also has been informed of irregularities in the consultation process of the Interoceanic 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.⁸ 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.⁹ Furthermore, the Commission published its *Extractive Industries Report* which helped consolidate and disseminate standards on State obligations in this context.

² IACHR, Precautionary Measure No. 505/15 (Extension), *Miskitu Indigenous Peoples of Wangki Twi-Tasba Raya, Nicaragua*, [Resolution 44/16](#), July 21, 2016; IACHR, Press Release 49A/2016, [Report on the 157th Session of the IACHR](#), June 13, 2016.

³ IACHR, [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#), OEA/Ser.L/V/II.Doc. 43/15, para.469 et ss.; IACHR, *Annual Report 2016*, Chapter 4; IACHR, Precautionary measure 321/12, *Matter of Teribe and Bribri Indigenous peoples, Costa Rica*, [Resolution 16/15](#), April 30, 2015; IACHR, Precautionary measure 54/13, *Matter of communities in voluntary isolation of the Ayoreo Totobiegosode People, Paraguay*, [Resolution 4/2016](#), February 3, 2016.

⁴ IACHR, [Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities](#), OEA/Ser.L/V/II., Doc. 47/15, 31 December 2015 (“Extractive Industries Report”).

⁵ IACHR, [Hearing on the Human Rights Situation of Indigenous Persons in the Context of Projects and Extractive Industries in the United States](#), 160th Period of sessions, December 9, 2016.

⁶ IACHR, [Hearing on the Situation of Indigenous Peoples and the Right to Consultation in Honduras](#), 159th Period of sessions, December 1, 2016.

⁷ IACHR, [Hearing on Indigenous Peoples’ Right to Free, Prior, and Informed Consultation in Bolivia](#), 158th Period of sessions, June 7, 2016.

⁸ IACHR, [Hearing on the Rights of Indigenous Communities in Espinar, Cusco, Peru](#), 157th Period of sessions, April 8, 2016; IACHR, [Hearing on the Impacts on Human Rights of Oil Spills in Peru](#), 158th Period of sessions, June 9, 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,¹⁰ and that indigenous women also face particular forms of risk and violence on the basis of their gender.¹¹ 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,¹² as well as has called on States to avoid using criminal law¹³ or other administrative barriers¹⁴ 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;¹⁵ it has deplored the killing of Nelson Noé García, also the beneficiary of precautionary measures;¹⁶ as well as the murder of Guarani-Kaiowá indigenous leader Clodiodi Aquileu Rodrigues de Souza, in Mato Grosso do Sul, Brazil.¹⁷ 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 projects¹⁸, fighting for their right to water,¹⁹ or for the restitution of their lands.²⁰

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”,²¹ as well as on the rights of indigenous children in Canada to their family and to culturally appropriate child welfare services.²²

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

¹⁰ Frontline Defenders, [Annual Report 2016: Stop the killing of Human Rights Defenders](#), (“Annual Report 2016”), *supra*, p. 12.

¹¹ United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para.39.

¹² IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006; IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II., Doc.66, 31 December 2011.

¹³ IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015; Request for information sent to the State of Ecuador pursuant to article 41 of the American Convention on Human Rights, August 5, 2016.

¹⁴ IACHR, [Hearing on the Freedom of Association of Indigenous peoples in Ecuador](#), 157th period of sessions, April 4, 2016.

¹⁵ IACHR, Press Release No. 24/16, [IACHR Condemns the Killing of Berta Cáceres in Honduras](#), Washington, D.C., March 4, 2016.

¹⁶ IACHR, Press Release, No.39/16, [IACHR Deplores Killing of Nelson Noé García in Honduras](#), Washington, D.C., March 21, 2016.

¹⁷ IACHR, Press Release No. 89/16, [IACHR condemns murder of Guarani-Kaiowá indigenous leader in Brazil](#), Washington, D.C., June 27, 2016.

¹⁸ IACHR, Precautionary Measure No. 46/14 (Extension), *Matter of Juana Calfuano, Chile*, [Resolution 33/2016](#), May 23, 2016; IACHR, Precautionary Measure No.277/13, *Matter of the members of the Otomí-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.

¹⁹ IACHR, Precautionary Measure No.452/13 (Extension), *Lauro Baumea Mora et al, México*, [Resolution 7/2016](#), March 2, 2016.

²⁰ IACHR, Precautionary Measure No. 505/15 (Extension), *Miskitu Indigenous Peoples of Wangki Twi-Tasba Raya, Nicaragua*, [Resolution 44/16](#), July 21, 2016.

²¹ IACHR, [Follow-up on the Report “Missing and Murdered Indigenous Women in British Columbia.” Canada](#), 157th Period of sessions, April 7, 2016; IACHR, [Follow-up on the implementation of the National inquiry on Missing and Murdered Indigenous Women in Canada](#), December 9, 2016.

²² IACHR, [Hearing on the rights of indigenous boys and girls in Canada](#), 160th period of sessions, December 9, 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,jo

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

²³ IACHR, Press Release No.82/2016, [The IACHR celebrates the adoption of the American Declaration on the Rights of Indigenous Peoples](#), June 22, 2016.

²⁴ IACHR, *Missing and murdered indigenous women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014.

²⁵ OHCHR, Press Release, [Guatemala: UN experts welcome judgement of two former military officials from crimes against humanity](#), Geneva, March 1, 2016.

²⁶ Gobierno de la República de Guatemala, COPREDEH, *Primer Informe del Estado de Guatemala a la Ilustre Comisión Interamericana de Derechos Humanos sobre el cumplimiento a las recomendaciones contenidas en el "Informe de la Situación de Derechos Humanos en Guatemala: Diversidad, Desigualdad y Exclusión" (2015)*, 10 de octubre de 2016

²⁷ OAS, Department of International Law, *Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (A-68), Signatories and Ratifications*, Online (page consulted on December 23, 2016): http://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism_signatories.asp

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.²⁸ 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.²⁹

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.³⁰ 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.³¹ United Nations experts and the IACHR have highlighted the fact that female human rights defenders face added risk in going about their work because

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.

²⁹ IACHR, Press Release No. 180/16, [It is Time to Increase Action to End and Prevent Violence against Women and Girls](#), December 2, 2016.

³⁰ IACHR, Press Release No. 024/16, [IACHR Condemns the Killing of Berta Cáceres in Honduras](#), March 4, 2016.

³¹ Office of the United Nations High Commissioner for Human Rights (OHCHR). News. Berta Cáceres' murder: UN experts renew call to Honduras to end impunity, April 11, 2016.

through that work and leadership they challenge the traditional role assigned to women within their communities.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-descendent 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.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 Afrodescendent women perform poorly remunerated domestic duties, in precarious working conditions.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.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.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.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

³² Office of the United Nations High Commissioner for Human Rights (OHCHR). News. [Berta Cáceres' murder: UN experts renew call to Honduras to end impunity](#), 11 April 2016; CIDH, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, par. 283.

³³ IACHR, Press Release 040/16, "[IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women](#)," March 21, 2016.

³⁴ IACHR, Press Release 040/16, "[IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women](#)," March 21, 2016. In 2016, the International Labour Organization (ILO) published a report highlighting the finding that Afro-descendent 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.

³⁵ IACHR, Press Release 040/16, "[IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women](#)," March 21, 2016.

³⁶ [IACHR, Press Release, 031/16, "IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights"](#), March 8, 2016.

³⁷ IACHR: [Human Rights Situation of Women Deprived of Liberty due to Obstetric Emergencies during Pregnancy in El Salvador](#), 156th regular period of sessions, October 19, 2015; [Human Rights Situation of Women and Girls in El Salvador](#), 147th regular period of sessions, March 16, 2013.

therapeutic abortion.³⁸ 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.³⁹ 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.⁴⁰ 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."⁴¹ 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.⁴²

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,⁴³ 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.⁴⁴

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.⁴⁵

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,

³⁸ PRI, [Women in Nicaragua fight to the right to get abortions that could save their lives](#), August 16, 2016.

³⁹ Havana Times, [Zika Virus Revives Abortion Debate in Nicaragua](#), February 9, 2016; Catholics for Choice, [Zika: An opportunity for the pro-choice movement in Nicaragua](#), March 25, 2016; PRI, [Women in Nicaragua fight to the right to get abortions that could save their lives](#), August 16, 2016; Women's Health Policy report, [Abortion-rights supporters seek to ease Nicaragua's abortion ban](#), August 18, 2016.

⁴⁰ Las Queremos Vivas, [Proyecto de Ley Especial para la Interrupción del Embarazo por causas de salud](#), March 2016.

⁴¹ United Nations, Committee on Economic, Social and Cultural Rights [Concluding observations on the second periodic report of Honduras](#), E/C.12/HND/CO/2, 11 July 2016, para. 53.

⁴² United Nations, Committee against Torture, [Concluding observations on the second periodic report of Honduras](#), 10 August 2016, para. 47.

⁴³ IACHR, Press Release No. 031/16, ["IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights"](#), March 8, 2016.

⁴⁴ IACHR, Press Release No. 031/16, ["IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights"](#), March 8, 2016.

⁴⁵ IACHR, Press Release No. 031/16, ["IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights"](#), March 8, 2016.

unviability of the fetus, and pregnancy resulting from rape.⁴⁶ 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.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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.

⁴⁶ Chamber of Deputies of Chile, [Boletín N° 9895-11. Regula la despenalización de la interrupción voluntaria del embarazo en tres causales](#), January 31, 2015.

⁴⁷ IACHR, Press Release No. 031/16, "[IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights](#)", March 8, 2016.

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

⁴⁹ See IACHR, *The Human Rights of Migrants, Asylum-seekers, Refugees, Stateless Persons, Victims of Human Trafficking, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*, 2015, par. 7.

39. A common denominator that the IACHR has observed in large mixed migration flows⁵⁰ 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.⁵¹ 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.⁵²

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.⁵³

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 2015.⁵⁴

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. Those

⁵⁰ See, inter alia, IACHR, *The Human Rights of Migrants, Asylum-seekers, Refugees, Stateless Persons, Victims of Human Trafficking, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*, par. 139; and IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, 2013, par. 55.

⁵¹ IACHR, *Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas*, paragraphs 326-327.

⁵² See, inter alia, IACHR, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, 2015, par. 111ff [Tr.: <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>]; and IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, 2013, par. 53ff.

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.

⁵⁴ IACHR *Press Release No. 6/17: IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them*, January 25, 2017.

migrants were mostly from the Warao indigenous people, including men, women, and 180 children (among them newborn babies).⁵⁵

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.⁵⁶

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.⁵⁷

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.⁵⁸ 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.⁵⁹ 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.⁶⁰

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,⁶¹ 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

⁵⁵ IACHR [Press Release No. 6/17: IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them](#). January 25, 2017.

⁵⁶ IACHR, [Press Release No. 146/15: IACHR Expresses Deep Concern regarding Situation of Cuban Migrants on the Costa Rica-Nicaragua Border](#). December 8, 2015.

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

⁵⁸ IACHR, [Press Release No. 102/16: IACHR Expresses Concern at Detentions and Deportations of Cuban Migrants in Ecuador](#). July 26, 2016.

⁵⁹ IACHR, [Press Release No. 112/16: IACHR Deeply Concerned about the Situation of Migrants in Colombia Close to the Panama Border](#). August 8, 2016.

⁶⁰ IACHR, [Press Release No. 102/16: IACHR Expresses Concern at Detentions and Deportations of Cuban Migrants in Ecuador](#). July 26, 2016.

⁶¹ IACHR, [Report on the Human Rights Situation in the Dominican Republic](#). December 31, 2015, par. 96ff. See also, IACHR, [Press Release No. 97/15: IACHR Calls on the Dominican Republic to Meet its Obligations regarding the Right to Nationality and Due Process in Immigration](#). August 27, 2015.

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

⁶² Juzgado de Garantías N° 1 de Concepción del Uruguay, provincia de Entre Ríos. "Botta, Juan carlos s/Querrela por calumnias e injurias". Legajo de Investigación N° 025/15. April 4, 2016. Available at: <http://www.fopea.org/wp-content/uploads/2016/04/FALLO-CASO-BOTTA.pdf>

⁶³ Corte Superior de Justicia de Lima. Séptimo Juzgado Penal de Lima. Expediente No. 701-2014. Judgment of April 18, 2016; IACHR. Office of the Special Rapporteur for Freedom of Expression. April 25, 2016. [Press Release R52/16. The Office of the Special Rapporteur expresses concern over the criminal conviction for defamation of a journalist in Peru](#); Corte Superior de Justicia de Lima.

Uruguay⁶⁴ 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 assembly⁶⁵. Also, there are important decisions by the Superior Court of Brazil⁶⁶ and the Special Criminal Court as part of the Second Criminal Chamber of the Belford Roxo Region in the state of Rio de Janeiro⁶⁷, 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 media⁶⁸. 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 State⁶⁹ 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 of 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 law⁷⁰. 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 institutions⁷¹. There was also the significant approval in the United States of FOIA Improvement Act 2016⁷².

Expediente N° 14156-2014. Judgment of August 29, 2016. Available at: http://legis.pe/wp-content/uploads/2016/09/Lee-aqu%C3%AD-la-sentencia-de-segunda-instancia-que-absuelve-a-Rafo-Le%C3%B3n-Legis.pe_.pdf.

⁶⁴ Poder Judicial. July 21, 2016. *TAP 4º Turno absolvió al Intendente de Salto que fuera procesado por difamación*; Poder Judicial. “L. P. A. - Un delito de Difamación (Ley de medios de comunicación)”. July 21, 2016.

⁶⁵ Superior Court of Quebec. *Villeneuve c. Ville de Montréal*. June 22, 2016.

⁶⁶ Supremo Tribunal de Justiça. *Recurso Especial No. 1.640.084 - SP (2016/0032106-0)*. Judgment of December 15, 2016; Artigo 19. December 16, 2016. *Decisão do STJ sobre desacato é positiva para a liberdade de expressão*.

⁶⁷ Tribunal de Justiça do Estado do Rio de Janeiro. Juizado Especial Criminal Adjunto a 2ª Vara Criminal da Comarca de Belford Roxo. Processo No. 0013156-07.2015.8.19.0008. Judgment of July 4, 2016. P. 4. Available at: <http://emporiodireito.com.br/juiz-do-tjrj-faz-controle-de-convencionalidade-do-crime-de-desacato/>; Justificando. July 6, 2016. *Ao arquivar acusação, Juiz do RJ entende desacato como inconstitucional*.

⁶⁸ El Día. February 22 2016. *Sociedad de Diarios muestra su satisfacción por fallo de Tribunal*; Ley de Expresión y Difusión del Pensamiento. *Ley No. 6132. de Expresión y difusión del Pensamiento*; Knight Center for Journalism in the Americas. February 23, 2016. *Court in Dominican Republic declares imprisonment unconstitutional in cases of defamation against government*; Presidencia de la República Dominicana. April 10, 2016. *Presidente reafirma compromiso del Gobierno con libertad de prensa y expresión (VIDEO)*; Tribunal Constitucional. *Judgment TC/0075/16* of April 4, 2016.

⁶⁹ Ministerio Público December 14, 2016. *Ministerio Público logró condena de 30 años para sargento de la GNB por muerte de Geraldine Moreno*; El Diario Vasco. December 15, 2016. *Justicia venezolana condena a militar por la muerte de manifestante en 2014*.

⁷⁰ República Argentina. Senado y Cámara de Diputados de la Nación Argentina. *Ley 27275. Derecho de Acceso a la Información Pública*. September 14, 2016.

⁷¹ Gaceta Oficial. *Ley 5282 De Libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental*. September 19, 2014; Secretaría Nacional de Tecnologías de la Información y Comunicación (SENATICS). *Informe de gestión. Proyectos 2015*. 2015. Page 11; República de Paraguay. Presidencia de la República. *Decreto N° 4064. Por el cual se reglamenta la Ley No. 528/2014 "De libre Acceso Ciudadano a la Información Pública y Transparencia Gubernamental"*. September 17, 2015. Art. 9; Inter American Press Association (IAPA). April 4, 2016. *Paraguay Report. Mid-year Meeting. Punta Cana*; ABC Color. March 18, 2016. *Uso de Portal es*

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 financing⁷³, 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 obligations⁷⁴.

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 standards⁷⁵.

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,

obligatorio; La Nación. June 15, 2016. [Paraguay presentará avances en transparencia e innovación](#); Open Government Partnership (OGP). July 27, 2016. [Transición entre la finalización del segundo plan y el inicio del tercer plan de acción de gobierno abierto de la República de Paraguay](#).

⁷² [FOIA Improvement Act 2016](#); Department of Justice. August 5, 2016. [OIP summary of the FOIA Improvement Act of 2016](#); Department of Justice. August 2, 2016. [The Freedom of Information Act, 5 U.S.C. § 552](#).

⁷³ [Ley N° 20.900 para el fortalecimiento y transparencia de la democracia](#).

⁷⁴ [Ley Núm. 20.915. Fortalece el Carácter Público y Democrático de los Partidos Políticos y Facilita su Modernización.](#)

⁷⁵ The Guardian. November 22, 2016. [Dutch journalist facing prison term in Panama for criminal libel](#); La Estrella de Panamá. November 23, 2016. [“El periodismo crítico no es posible en el país”](#); El Mundo/EFE. November 21, 2016. [FIP pide liberar a periodista condenado en Panamá por escribir sobre fraude](#); Committee to Protect Journalists (CPJ). November 29, 2016. [Dutch journalist Okke Ornstein jailed in Panama for criminal defamation](#); Committee to Protect Journalists (CPJ). December 13, 2016. [Jailed Dutch reporter Ornstein says Panama failed to inform him of legal proceedings](#).

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 explosives⁷⁶. 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 roads⁷⁷. 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 rights⁷⁸; also, in protests led by the mining cooperatives, rubber bullets and tear gas had also been used, injuring dozens of miners and police⁷⁹.

⁷⁶ G1. January 13, 2016. [Dois manifestantes permanecem detidos após protesto na Paulista](#); Folha de São Paulo. January 12, 2016. [Polícia muda estratégia e reprime manifestação contra tarifa em SP](#); G1. January 15, 2016. [Dois seguem detidos após ato contra aumento da tarifa: 6 foram liberados](#); Rede Brasil atual. January 13, 2016. [Tática policial utilizada em repressão é condenada pelo próprio manual da PM](#); Justificando. January 13, 2016. [Tática policial utilizada em repressão de protesto é condenada pelo próprio manual da PM](#); Jornalistas Livres. January 19, 2016. [Protestos contra tarifa: a repressão policial e a via processual constitucional](#).

⁷⁷ Organización Mundial Contra la Tortura (OMCT). July 13, 2016. [Colombia: Asesinatos, intentos de asesinatos, ataques, amenazas y hostigamiento contra manifestantes en la "Minga Nacional Agraria, Campesina, Étnica y Popular"](#); Telesur. June 8, 2016. [Paro agrario en Colombia](#); El Universal. June 7, 2016. [Paro deja 54 policías heridos, 8 civiles lesionados, 3 muertos y bloqueos](#); El Colombiano. June 7, 2016. [Paro deja policías y civiles heridos, tres muertos y bloqueos](#).

⁷⁸ El Universal. April 27, 2016. [Bolivia: Dispersan con gases a manifestación de discapacitados](#); Agencia EFE. April 27, 2016. [La policía boliviana reprime con gases químicos una manifestación de discapacitados](#); Infobae. April 27, 2016. [Bolivia: la policía dispersa con gases lacrimógenos una protesta de discapacitados](#).

⁷⁹ IACHR. September 9, 2016. [Press Release 130/16. IACHR Condemns the Violent Death of Bolivia's Vice Minister](#); El Deber. September 30, 2016. [Mineros denuncian 59 detenciones por conflicto con el Gobierno](#); Telesur. August 26, 2016. [Mineros cooperativistas suspenden los bloqueos en Bolivia](#); Investig'ation. August 29, 2016. [Diez preguntas y diez respuestas sobre el conflicto con los "cooperativistas" mineros en Bolivia](#).

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 forces⁸⁰. 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 hypothermia⁸¹.

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 injured⁸². 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 (*Carabineros*)⁸³. 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 Alvarado⁸⁴; 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 transporters⁸⁵; in

⁸⁰ IACHR. June 22, 2016. [Press Release 083/16 IACHR Condemns Violence in Oaxaca, Mexico](#); Secretaría de Gobernación. June 19, 2016. [Comunicado conjunto del Gobierno de la República y Gobierno del Estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa CGCP/174/16. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa CGCP/173/16. Emite CNDH medidas cautelares por los hechos de violencia ocurridos hoy en Oaxaca y refuerza su presencia con más visitantes adjuntos y peritos: observa la evolución de los hechos en Tabasco, Chiapas, Guerrero y Michoacán](#).

⁸¹ United Nations. Office of the United Nations High Commissioner for Human Rights (OHCHR). November 15, 2016. [Native Americans facing excessive force in North Dakota pipeline protests – UN expert](#).

⁸² IACHR. June 9, 2016. [Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela](#).

⁸³ Sernam. March 11, 2016. [Declaración Pública Sernam por manifestaciones contra los femicidios frente a La Moneda](#); TheCLinic. March 11, 2016. [Manifestación contra la violencia de género frente a La Moneda termina con más de 10 detenidas](#); ElMostrador. March 11, 2016. [Carabineros detienen a mujeres que protestaban contra los femicidios frente a La Moneda](#); Fundación Heinrich Böll. March 11, 2016. [Alerta de Género: Santiago de Chile. 11 de marzo 2016: Entre toques simbólicos y golpes reales](#).

⁸⁴ IACHR. September 9, 2016. [Press Release 130/16. IACHR Condemns the Violent Death of Bolivia's Vice Minister](#); El Financiero/Reuters. August 24, 2016. [Dos mineros mueren durante violento enfrentamiento con la policía de Bolivia](#); BBC. August 26, 2016. [Lo que se sabe de la muerte del viceministro Rodolfo Illanes, "brutalmente asesinado" en Bolivia por los mineros que lo habían secuestrado](#); La Razón/EFE. August 26, 2016. [Cronología del conflicto minero en Bolivia con la peor violencia en años](#); HispanTV. August 26, 2016. [Conflicto minero: Asesinan a viceministro boliviano del Interior](#).

⁸⁵ United Nations. Office in Colombia of the United Nations High Commissioner for Human Rights (OHCHR). June 8, 2016. [Comunicado de prensa ONU Derechos Humanos insta a redoblar esfuerzos por mantener diálogo entre autoridades y Minga durante protesta social](#); Semana. May 31, 2016. [Paro agrario: Un muerto y cinco heridos en el suroeste del país](#); BBC. May 31, 2016. [Muere un indígena durante paro agrario en Colombia](#); El Tiempo/EFE/CALI. May 30, 2016. [Jornada de paro agrario nacional: hay tensión en vía a Buenaventura](#); El Espectador. June 5, 2016. [Al paro agrario se sumaría, a partir del lunes, el de los transportadores](#); Telesur. July 13, 2016. [Investigan muerte de joven durante paro camionero en Colombia](#); Caracol radio. July 13, 2016. [Muere un joven en disturbios por paro camionero en Duitama, Boyacá](#); Semana. July 12, 2016. [Muere joven que participaba en protesta de camioneros](#).

Mexico, 8 people died in protests in Oaxaca⁸⁶; and in Venezuela 4 people who were demonstrating because of shortages in that country⁸⁷.

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, Mexico⁸⁸. As 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 demonstrators⁸⁹. 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 Venezuela⁹⁰. 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 freed⁹¹. 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 wages⁹², due to their

⁸⁶ IACHR. June 22, 2016. [Press Release 083/16 IACHR Condemns Violence in Oaxaca, Mexico](#); Secretaría de Gobernación. June 19, 2016. [Comunicado conjunto del Gobierno de la República y Gobierno del Estado de Oaxaca](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa CGCP/174/16. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca.](#)

⁸⁷ Runrunes. June 12, 2016. [La guerra del hambre: 3 muertos y 47 saqueos por comida en 10 días](#); El venezolano news. June 14, 2016. [Tres venezolanos han muerto durante represión a protestas por comida](#); La Patilla. June 14, 2016. [Torrealba: Tres muertos en disturbios por hambre en un país al que entran millones de dólares](#); EFE. June 15, 2016. [Las protestas en Venezuela ya dejan 4 muertos mientras el Gobierno intenta 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. [La ONU-DH México hace un llamado a realizar una investigación exhaustiva de los hechos violentos ocurridos en Oaxaca y a privilegiar el diálogo.](#)

IACHR. Office of the Special Rapporteur for Freedom of Expression. June 21, 2016. [Press Release R80/16 Office of the Special Rapporteur Condemns the Murder of a Sixth Journalist in Mexico in 2016](#); Comisión Nacional de Derechos Humanos (CNDH). June 19, 2016. [Comunicado de Prensa DGC/174/16. Lamenta la CNDH la pérdida de vidas y lesionados durante los hechos registrados este día en distintas localidades del estado de Oaxaca](#); United Nations. Mexico Office of the High Commissioner for Human Rights. June 21, 2016. [La ONU-DH México hace un llamado a realizar una investigación exhaustiva de los hechos violentos ocurridos en Oaxaca y a privilegiar el diálogo.](#)

⁸⁹ Inter American Press Association (IAPA). [Midyear Meeting 2016. Brazil report](#). April 6, 2016; Associação Brasileira de Jornalismo Investigativo (Abraji). January 22, 2016. [PM ataca mais sete jornalistas em protesto em São Paulo](#); Elastica. January 14, 2016. [Após nove jornalistas ficarem feridos, PM/SP oferece colete para a imprensa ir ao protesto](#); Sindicato dos Jornalistas Santa Catarina. January 20, 2016. [Nove jornalistas são feridos pela PM durante protesto em SP](#); UOL. January 13, 2016. [PM reprime e fere jornalistas durante cobertura de protesto em São Paulo](#); G1. January 15, 2016. [Dois seguem detidos após ato contra aumento da tarifa; 6 foram liberados.](#)

⁹⁰ IACHR. June 9, 2016. [Press Release 73/16. IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. August 4, 2016. [Joint Press Release R110/16 Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom.](#)

⁹¹ Democracy Now!. September 12, 2016. [North Dakota v. Amy Goodman: Arrest Warrant Issued After Pipeline Coverage](#); Committee to Protect Journalists (CPJ). September 12, 2016. [Arrest warrant for muckraking U.S. journalist](#); Democracy Now!. October 15, 2016. [Breaking: ND Prosecutor Seeks "Riot" Charges Against Amy Goodman For Reporting On Pipeline Protest.](#)

⁹² La línea de fuego. May 30, 2016. [Tribunal de Loja sentenció a 4 años de prisión a dos procesados del caso Saraguro](#); La República. May 30, 2016. [Cuatro años de cárcel para dos de los 29 de Saraguro, ocho declarados inocentes](#); Inredh. July 12, 2016. [Tribunal de Loja emite sentencia escrita en caso Saraguro.](#)

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 Jujuy⁹³, 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 protests⁹⁴. In Cuba, members of the Damas de Blanco organization have been arrested after participating in marches held every Sunday to protest against the government and demand the release of political prisoners⁹⁵. 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”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 release⁹⁷; the conviction in

⁹³ Clarín. January 16, 2016. [Detienen a Milagro Sala en Jujuy por instigar a la violencia](#); Perfil. January 16, 2016. [Detuvieron a Milagro Sala](#); Centro de Estudios Legales y sociales (CELS). October 28, 2016. [Naciones Unidas solicita la liberación inmediata de Milagro Sala](#); La Nación. October 29, 2016. [Un organismo de la ONU pidió la liberación de Milagro Sala](#).

⁹⁴ Office of the High Commissioner. July 4, 2016. [Preocupa la judicialización de la protesta estudiantil de la UNAH](#); Comité por la Libre Expresión (C-Libre). June 7, 2016. [Rectora de la UNAH arrecia criminalización contra seis estudiantes por protestar](#); PEN. June 22, 2016. [HONDURAS: Miembro de PEN se enfrenta a pena de cárcel tras protestas estudiantiles](#); Comité por la Libre Expresión (C-Libre). June 23, 2016. [Más criminalización, intimidación y amenazas contra estudiantes de la UNAH](#); Comité por la Libre Expresión (C-Libre). June 30, 2016. [Juzgado prohíbe a seis universitario asistir a manifestaciones](#); Comité por la Libre Expresión (C-Libre). July 3, 2016. [Piden militarizar la UNAH: 60 estudiantes criminalizados y una desaparición temporal](#).

⁹⁵ CubaNet. July 18, 2016. [Atacan a pedradas sede de las Damas de Blanco y hieren a activista](#); Cuba en Miami. July 18, 2016. [La Policía cubana ataca a pedradas a activistas de las Damas de Blanco](#); Diario de Cuba. January 9, 2016. [La policía política allana el domicilio del prisionero político Egberto Escobedo, según la oposición](#); Damas de Blanco. January 10, 2016. [La policía política allana el domicilio del prisionero político Egberto Escobedo, según la oposición](#).

⁹⁶ Telesur. August 29, 2016. [Detienen en Venezuela a opositor equipado con explosivos](#); El Nacional. August 30, 2016. [MUD: Detención de Yon Goicoechea es un "falso positivo"](#); El Universal. September 19, 2016. [Defensa de Goicoechea asegura que su detención viola Código Procesal Penal](#); El Nacional. September 2, 2016. [Delson Guarate fue detenido por supuestos delitos ambientales](#); El Estímulo. September 5, 2016. [Sebin pide a Colombia captura y extradición de más activistas opositores](#); Cubanet. September 6, 2016. [Maduro pide apoyo a Colombia para detener a opositores](#).

⁹⁷ The Guardian. November 22, 2016. [Dutch journalist facing prison term in Panama for criminal libel](#); Deutsche Welle DW. December 23, 2012. [Panamá: liberan a periodista holandés encarcelado](#); Knight Center for Journalism in the Americas. December 21, 2016. [Dutch journalist jailed in Panama gets reduction in sentence and will be released -](#).

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 years⁹⁸; and the criminal complaint filed by President Michelle Bachelet against journalists who wrote articles accusing members of her family of acts of corruption⁹⁹. 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 locality¹⁰⁰. 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 appeal¹⁰¹. The same occurred in the case of Peruvian journalist Rafael León¹⁰². Also, in 2016 multiple cases were documented of journalists sentenced to onerous civil reparations in Mexico, including Carmen Aristegui¹⁰³ and Sergio Aguayo¹⁰⁴. 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 plataforma #Otro18; Foro por los Derechos y Libertades (Foro Dyl); the independent bulletin "Voz Santiaguera"; the collective Periodismo de Barrio and the platform #TodosMarchamos¹⁰⁵. 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 Castro¹⁰⁶.

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.

⁹⁸ Reporters Without Borders (RSF). September 16, 2016. [Attempts by Honduran authorities to silence outspoken journalists](#); Committee to Protect Journalists (CPJ). August 25, 2016. [Honduran reporter convicted of criminal defamation](#).

⁹⁹ Lawsuit for misdemeanor of private criminal action of serious *injurias* with publicity filed before 2º Juzgado de Garantías, by Juan Pablo Hermosilla, counsel for the president of Chile, Michelle Bachelet. May 31, 2016. Available for consultation at Archive of the Office of the Special Rapporteur for Freedom of Expression. See also: Que Pasa. May 31, 2016. [Presidenta Bachelet se querrela por injurias y calumnias contra revista Qué Pasa](#); Knight Center for Journalism in the Americas. June 1, 2016. [Chilean President Michelle Bachelet sues magazine Qué Pasa for defamation](#).

¹⁰⁰ Sala Penal, Penal Militar, Penal Policial y Tránsito de la Corte Provincial de Loja. Sentencia. February 17, 2016. Available at: <http://consultas.funcionjudicial.gob.ec/informacionjudicial/public/informacion.jsf>

¹⁰¹ Agencia Andina. August 9, 2016. [Anulan condena contra periodista querrellado por Alan García](#); La República. August 9, 2016. [Alan García: anulan condena contra periodista querrellado por expresidente](#); Knight Center for Journalism in the Americas. August 10, 2016. [Peruvian judge overturns defamation conviction against journalist in case involving former president](#).

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](#).

¹⁰³ La Jornada. July 21, 2016. [MVS demanda a Aristegui: la periodista denuncia "persecución judicial"](#); El País. July 22, 2016. [El dueño de MVS demanda a Carmen Aristegui por daño moral](#).

¹⁰⁴ Animal Político. July 13, 2016. [Humberto Moreira demanda a periodista por daño moral; quiere intimidarme, dice Sergio Aguayo](#); Freedom House. July 13, 2016. [Preocupación por la demanda en contra de Sergio Aguayo](#)

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

¹⁰⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 23, 2016. [R196/16 Press Release The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as "El Sexto"](#).

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 Police¹⁰⁷. 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 assembly¹⁰⁸. 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 authority¹⁰⁹. Also, the vice president of Facebook for Latin America, Diego Dzodan, was arrested in São 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)¹¹⁰ for noncompliance by the company; the arrest was overturned by means of Habeas Corpus¹¹¹.

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

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

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

¹⁰⁹ Artigo 19. July 11, 2016. [Prisões por ofensas à PM na Internet atentam contra Marco Civil, dizem especialistas](#); Portal Imprensa. July 1, 2016. [Jovens de SP e CE são detidos por desacato após críticas à PM em redes sociais](#); Folha de São Paulo. July 1, 2016. [Jovens criticam PM nas redes sociais e acabam 'detidos' por desacato](#).

¹¹⁰ Folha de São Paulo. March 1, 2016. [PF prende executivo do Facebook por empresa não liberar dados do WhatsApp](#); G1. March 1, 2016. [Polícia prende vice-presidente do Facebook na América Latina em SP](#); BBC. March 2, 2016. [Executivo do Facebook é libertado em SP](#).

¹¹¹ O Popular. March 2, 2016. [Revoada prisão do executivo do Facebook detido ontem em São Paulo](#); BBC. March 2, 2016. [Executivo do Facebook é libertado em SP](#); Agencia EFE. March 2, 2016. [Revoada prisão do executivo do Facebook detido ontem em São Paulo](#).

sufficient guarantees of independence, autonomy and impartiality¹¹². 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 blocked¹¹³.

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, 2016¹¹⁴ 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, 2016.¹¹⁵ 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.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

¹¹² IACHR. Office of the Special Rapporteur for Freedom of Expression. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 90; The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

¹¹³ CubaNet. February 20, 2016. [ETECSA anuncia que instalará 500 mil nuevas líneas móviles en 2016](#); 14 y Medio. February 19, 2016. [Cuba anuncia incremento de 500.000 nuevas líneas móviles en 2016](#); ABC Internacional. September 9, 2016. [Disidentes denuncian que Cuba bloquea mensajes sobre «democracia» y «derechos humanos»](#); Martí Noticias. September 6, 2016. [Medios de prensa comprueban censura de ETECSA a mensajes con contenido político](#); Committee to Protect Journalists (CPJ). September 28, 2016. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#).

¹¹⁴ IACHR, 157th regular period of sessions, thematic hearing [National Child Protection Systems in the Americas](#), April 7, 2016.

¹¹⁵ IACHR, Press Release, [IACHR Urges Strengthening of National Systems for Protection of Children and Adolescents](#), November 28, 2016.

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.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.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.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.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.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' 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.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.

¹¹⁹ IACHR, 157th regular period of sessions, thematic hearing [Sexual Violence and Human Rights of Children and Adolescents in Paraguay](#), April 4, 2016; IACHR, 159th regular period of sessions, thematic hearing, [Human Rights Situation of Women, Children, and Adolescents in Nicaragua](#), December 7, 2016; CIDH, 158th regular period of sessions, thematic hearing [Sexual and Reproductive Rights of Women in South America](#), June 7, 2016.

¹²⁰ IACHR, Press Release, [IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights](#), March 8, 2016; IACHR, Press Release, [IACHR Calls Attention to the Continuing Challenges Facing Pre-teen and Teenage Girls in the Region](#), October 12, 2016; IACHR, Press Release, [It is Time to Increase Action to End and Prevent Violence against Women and Girls](#), December 2, 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 Ombudsperson'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 \[Ombudsperson's Office rejects judgment acquitting a woman accused of trafficking a 15-year-old girl\]](#), 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.¹²³

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.¹²⁴

83. As the IACHR showed in its report on *Violence, Children and Organized Crime*,¹²⁵ 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*.¹²⁶ 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

¹²³ IACHR, Press Release, [IACHR Calls Attention to the Continuing Challenges Facing Pre-teen and Teenage Girls in the Region](#), October 12, 2016. In addition, see the information provided to the IACHR during thematic hearings: IACHR, 157th regular period of sessions, [Sexual Violence and Human Rights of Children and Adolescents in Paraguay](#), April 4, 2016; CIDH, 159th regular period of sessions, [Human Rights Situation of Women, Children, and Adolescents in Nicaragua](#), December 7, 2016; CIDH, 158th regular period of sessions, [Sexual and Reproductive Rights of Women in South America](#), June 7, 2016.

¹²⁴ *Idem*.

¹²⁵ IACHR, Press Release, [IACHR Presents Report on Violence, Children, and Organized Crime](#), April 6, 2016. IACHR, thematic report [Violence, Children and Organized Crime](#), OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015.

¹²⁶ IACHR, thematic report [Juvenile Justice and Human Rights in the Americas](#), OEA/Ser.L/V/II. doc. 78, July 13, 2011).

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.¹²⁷ 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.¹²⁸ The Rapporteurship wishes to underscore the progress made in Mexico with the adoption of the National Law governing the Comprehensive Criminal Justice System for Adolescents¹²⁹ 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.¹³⁰

6. Persons deprived of liberty

85. 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.

86. 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

¹²⁷ IACHR, Press Release, [IACHR Condemns Acts of Violence in Detention Facilities in Pernambuco, Brazil](#), November 23, 2016. IACHR, Precautionary Measure No. 302-15, [Adolescents Deprived of Liberty at the Center for Socio-Educational Services for Adolescents \(CASA\), Brazil](#), of July 21, 2016; IACHR, Precautionary Measure No. 60-15 [Adolescents deprived of freedom in facilities of juvenile detention reform for men in the state of Ceará, Brazil](#), of December 31, 2015, which was still in effect at December 31, 2016. IACHR, Press Release at the conclusion of its 160th special period of sessions, [IACHR Wraps Up its 160th Session](#), December 19, 2016.

¹²⁸ IACHR, Press Release, [IACHR Presents Report on Violence, Children, and Organized Crime](#), April 6, 2016.

¹²⁹ The text can be accessed at [Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes](#), June 16, 2016. UNICEF, institutional stance, [Justicia penal para adolescentes](#).

¹³⁰ Special Representative of the United Nations Secretary-General on Violence against Children, Press Release, [Special Representative Santos País organizes International Seminar in Argentina on children deprived of liberty](#), 20 de mayo 2016.

address citizen insecurity through deprivation of liberty; and the lack of inter-agency coordination among agents in the justice administration system.¹³¹

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.¹³² 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.¹³³ 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 2016.¹³⁴ At the judicial level, decisions by the highest courts in Peru and Colombia have made significant progress toward rendering pretrial detention as exceptional measure.¹³⁵ 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.¹³⁶

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.¹³⁷

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.

¹³³ Ministry of Justice and Human Rights, [Justicia 2020](#). For further information, see IACHR, Press Release 151/16 - [Rapporteurship on the Rights of Persons Deprived of Liberty Visits Argentina](#) Washington, D.C., October 19, 2016

¹³⁴ Ministry of Justice and Human Rights, Resolution 86/2016, March 23, 2016. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do%3Bjsessionid=DE37328BDB5924F8F4E4745F9C72659E?id=260030>

¹³⁵ Supreme Court of Justice, Criminal Cassation Division, Colombia Case No. 85126, April 20, 2016, MP José Luís 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](#).

¹³⁷ In particular, the IACHR expressed its concern over the following situations characterized by acts of violence: IACHR, [Press release 2/16 - IACHR Regrets Violence in Guatemalan Prison Washington, D.C., January 19, 2016](#); IACHR, [Press Release 16/16 - IACHR Condemns Death of 49 Persons Deprived of Liberty in a Nuevo Leon Prison, Mexico](#) Washington, D.C., February 18, 2016; IACHR, [Press Release 41/16 - IACHR Condemns Violent Deaths in Three Detention Centers in Venezuela](#), Washington, D.C., March 22, 2016; IACHR, [Press Release 79/16 - IACHR Regrets Violence in Detention Centers in Ceará, Brazil](#), Washington, D.C., June 16, 2016; IACHR, [Press Release 86/16 - IACHR condemns prison violence in Nuevo León, México](#), Washington, D.C., June 23, 2016; IACHR, [Press Release 109-16, IACHR Condemns Violence in Guatemalan Prison](#), Washington, D.C., August 3, 2016; IACHR, [Press Release 156/16 - IACHR Condemns Violent Deaths in Brazilian Prison](#), Washington, D.C., October 25, 2016

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

¹³⁸ Government of National Unity and Reconciliation, Nicaragua, [Press Release](#), February 22, 2016.

¹³⁹ CENIDH, [Derechos Humanos en Nicaragua - Informe 2015](#), 2016, p. 35; Insight Crimen, ["Nicaragua libera a 8.000 internos de cárceles superpobladas"](#), February 24, 2016; Nicaragua Hoy, [Oposición ve "trasfondo político" en liberación de reos](#), February 25, 2016, and Fox News, ["Nicaragua dejará en libertad a 845 reos que cumplían penas menores a 5 años"](#), February 22, 2016.

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.

¹⁴¹ IACHR, Press Release 125/16- [The IACHR Welcomes Panama's Efforts to Get Rid of Corruption in the Prison System](#). Washington, D.C., September 1, 2016

¹⁴² IACHR, [Press Release 166/16 - IACHR Welcomes Costa Rica's Efforts to End the Use of Prolonged Solitary Confinement](#). Washington, D.C., November 16, 2016

¹⁴³ IACHR, Press Release 33/16 - [Rapporteurship on the Rights of Persons Deprived of Liberty Makes Visit to Costa Rica](#).

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.¹⁴⁴ 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 relatives of the victims their 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.¹⁴⁵

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-descendent 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.¹⁴⁶

96. This year the IACHR also received information indicating that the situation of Afrodescendent 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-descendent women are notoriously under-represented in decision-making bodies and in terms of political representation. Afrodescendent 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

¹⁴⁴ IACHR, Press release No. 120/16, [IACHR Expresses Concern with the Deficiencies in the Investigation of Cases Relating to Killing of Afro-descendants by the Police in the United States](#), August 23, 2016.

¹⁴⁵ IACHR, Press release No. 120/16, [IACHR Expresses Concern with the Deficiencies in the Investigation of Cases Relating to Killing of Afro-descendants by the Police in the United States](#), August 23, 2016.

¹⁴⁶ IACHR, Press Release 040/16, "[IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women](#)," March 21, 2016.

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-descendent 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-descendent 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

¹⁴⁷ IACHR, Press Release 040/16, "[IACHR Urges States to Adopt Measures to Protect the Rights of Afro-Descendent Women](#)," March 21, 2016.

¹⁴⁸ Verdad Abierta, [Para donde va la restitución de tierras a indígenas y afros?](#) July 24, 2016.

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.

¹⁵¹ IACHR, Press Release No. 021/16, [IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia](#), February 25, 2016.

¹⁵² IACHR, Press Release No. 160/16, [IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia](#), November 2, 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,¹⁵⁶ the police killed more than 100 people in the Rio de Janeiro state, most of them being black youths.¹⁵⁷

100. During its 157^o 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 Husein, 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 underrepresented. 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

¹⁵⁶ *The Guardian*, [Rio Olympics: view from the favelas – In Alemão, deaths aren't investigated](#), July 12, 2016.

¹⁵⁷ Amnesty International, [Campaign. The Deadly Side of the Rio 2016 Olympics](#), 2016.

¹⁵⁸ IACHR, [Hearing on the Human Rights Situation of Afro-descendent Women in Brazil](#), April 7, 2016.

¹⁵⁹ Waiselfisz, Julio Jacobo, *Mapa da Violencia 2015, homicidio de mulheres no Brasil*, 1st edition, Brasilia 2015.

¹⁶⁰ Office of the President of the Republic, Secretariat of Public Policies for Women, [Annual socio-economic report on women, 2014](#), March 2015, p. 30.

¹⁶¹ Pan American Health Organization and others (2013). [The Health of Indigenous and Afro-descendent Peoples in Latin America](#). Page 41.

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.

¹⁶³ [Devyn Spence Benson](#) about her forthcoming book, *Antiracism in Cuba: The Unfinished Revolution* (University of North Carolina Press, April 2016).

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.¹⁶⁵

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.¹⁶⁶

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.¹⁶⁷

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

¹⁶⁵ Press Release No. 117/16, [IACHR Hails Costa Rica's Ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance](#), August 18, 2016.

¹⁶⁶ Organización Nacional Indígena de Colombia, [Capítulo Étnico incluido en el Acuerdo Final de Paz entre el Gobierno Nacional y las FARC](#), August 25, 2016.

¹⁶⁷ Pan American Health Organization, [OAS and PAHO Launch a Plan of Action for People of African Descent](#), July 26, 2016.

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

¹⁶⁸ Frontline Defenders, [Annual Report 2016: Stop the Killing of Human Rights Defenders](#), 2016, p. 12.

¹⁶⁹ Frontline Defenders, [Annual Report 2016: Stop the Killing of Human Rights Defenders](#), 2016, p. 12.

¹⁷⁰ See, for instance, IACHR, [Press Releases](#), No. 39/16 - IACHR Deplores Killing of Nelson Noé García in Honduras (March 21, 2016); 28/16 - IACHR Condemns Killing of Members of the Tolupán Indigenous Peoples in Honduras (March 7, 2016); 27/16 - IACHR Condemns Killings and Other Acts of Violence against Human Rights Defenders of LGBT Persons in Honduras (March 7, 2016); 24/16 - IACHR Condemns the Killing of Berta Cáceres in Honduras (March 4, 2016); 21/16 - IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia (February 25, 2016); 123/15 - IACHR Condemns Killing of Trans Human Rights Defender in Argentina (October 30, 2015); 89/15 - IACHR Condemns Killing of Human Rights Defender in Mexico (August 17, 2015); 70/15 - IACHR Condemns Murder of Human Rights Defenders in Colombia (June 12, 2015); 63/15 - IACHR Condemns Killing of Human Rights Defender of Trans Persons in El Salvador (June 8, 2015); 60/15 - IACHR Condemns Killings of Indigenous Human Rights Defenders in Brazil (June 4, 2015); 11/15 - IACHR Condemns Killing of Human Rights Defender in Mexico (February 12, 2015); 7/15 - IACHR Condemns Killing and Threats Against Defenders and Journalists in Colombia (January 30, 2015). It is also worth mentioning that, in 2015, the IACHR granted 45 precautionary measures, 10 of which (22 percent) involved human rights defenders or justice system operators.

¹⁷¹ IACHR, Press Release No. 024/16, [IACHR Condemns the Killing of Berta Cáceres in Honduras](#), March 4, 2016.

¹⁷² IACHR, Press Release No. 39/16, [IACHR Deplores Killing of Nelson Noé García in Honduras](#), March 21, 2016.

¹⁷³ IACHR, Press Release No. 118/16, [Honduras, one of the most dangerous countries for human rights defenders - Experts warn](#), August 19, 2016.

¹⁷⁴ IACHR, Press Release 21/16, [IACHR Condemns Killings and Threats Directed against Human Rights Defenders in Colombia](#), February 25, 2016.

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

¹⁷⁵ IACHR, Press Release No. 160/16, [IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia](#), November 2, 2016.

¹⁷⁶ IACHR, Press Release No. 54/16, [IACHR Condemns Killings of Human Rights Defenders in Brazil](#), April 27, 2016.

¹⁷⁷ IACHR, [Criminalization of the Work of Human Rights Defenders](#), December 31, 2015.

¹⁷⁸ IACHR, Press Release No. 105/16, [IACHR Presents Report on the Criminalization of the Work of Human Rights Defenders](#), July 28, 2016.

¹⁷⁹ IACHR, [Criminalization of the Work of Human Rights Defenders](#), December 31, 2015, par. 55ff.

¹⁸⁰ See, for instance, IACHR, [Criminalization of the Work of Human Rights Defenders](#), December 31, 2015, pp. 34-35. See also, Amnesty International, [Defending Human Rights in the Americas: Necessary, Legitimate, and Dangerous](#), December 2014, p.11.

¹⁸¹ Observatory for the Protection of Human Rights Defenders, [The criminalization of human rights defenders in the context of industrial projects: a regional phenomenon in Latin America](#), February 2016, p. 19.

¹⁸² CubaNet. September 29, 2016. [Instituto checo denuncia vejaciones a CUBALEX](#); Martí Noticias. September 24, 2016. [Asaltan consultoría Cubalex, de abogada cubana que se reunió dos veces con Obama](#); 14 y medio. September 23, 2016. [Police break into 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 Zacarías, 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.

headquarters; IACHR. Special Rapporteurship for Freedom of Expression. October 13, 2016. [Press release R149/16. IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#). CubaNet. September 29, 2016. [Instituto checo denuncia vejaciones a CUBALEX](#); Martí Noticias. September 24, 2016. [Asaltan consultoría Cubalex, de abogada cubana que se reunió dos veces con Obama](#); 14 y medio. September 23, 2016. [Police break into Cubalex headquarters](#); IACHR. Special Rapporteurship for Freedom of Expression. October 13, 2016. [Press release R149/16. IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#); Martí Noticias, [Abogado de Cubalex preso recibe pase tras acción diplomática de EEUU](#), December 20, 2016.

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 proscribir la ONG mediante la "Ley contra los macetas"](#), November 3, 2016.

¹⁸⁴ IACHR, Press Release No. 30/16, [IACHR Calls on States in the Region to Strengthen Judicial Independence](#), March 7, 2016.

¹⁸⁵ IACHR, Press Release No. 30/16, [IACHR Calls on States in the Region to Strengthen Judicial Independence](#), March 7, 2016.

¹⁸⁶ IACHR, Press Release No. 162/16, [IACHR Condemns the Killing of Berta Cáceres in Honduras](#), November 3, 2016.

¹⁸⁷ IACHR, Press Release No. 161/16, [IACHR Repudiates the Killing of José Ángel Flores and Silmer Dionisio George in Honduras](#), November 3, 2016.

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

119. In 2016, the Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons (LGBTI) used the various mechanisms of the IACHR to monitor the situation of persons who suffer violence, discrimination, and exclusion for reasons relating to their sexual orientation, gender identity, gender expression - real or perceived - and/or bodily diversity in OAS Member States. In particular, following the publication of the report entitled "Violence against LGBTI persons in the Americas", the Rapporteurship has concentrated on promoting it and on launching the English and Portuguese versions. Thus, the Spanish version of the report was launched in connection with the OAS General Assembly session in Santo Domingo in June, along with a training workshop on the subject for civil society organizations. In addition, in October, the Rapporteur on the Rights of LGBTI Persons visited the cities of Brasilia, Salvador de Bahía, and Belo Horizonte in Brazil, with support from the Institute on Race, Equality and Human Rights. During that visit, in addition to meetings with a number of State agencies and civil society organizations, the Portuguese version of the report was launched and a training workshop conducted for civil society organizations. The Rapporteurship is currently working on the presentation of the English version of the Report on Violence against LGBTI Persons and on a new project that includes preparation of the next thematic report, which will analyze best practices in the region with respect to recognition of the rights of LGBTI persons.

120. For its part, in 2016, the Commission continued to receive worrying information regarding serious violations of the human rights of LGBTI persons in the region and ascertained that the major challenges have to do with the high levels of violence, stigma, and discrimination against them, together with the failure to recognize the rights of LGBTI persons and the widespread impunity associated with such situations. Thus, the IACHR has condemned the murder of LGBTI persons in the region,¹⁸⁸ as well as the violence and aggression suffered by those who defend the human rights of LGBTI persons.¹⁸⁹ The IACHR has voiced its concern at the exponential increase in violence and murders of trans persons,¹⁹⁰ and of persons who defend the human rights of LGBTI persons in the Americas.¹⁹¹

121. The Commission also underscored the existence of a growing consensus that States have a duty to guarantee equality and non-discrimination against LGBTI persons, including for reasons related to their sexual orientation, gender identity and bodily diversity. That consensus is leading, thanks to the efforts of various public authorities, to gradual recognition by a number of States of the rights of LGBTI persons: progress that the Commission has commended.¹⁹² The Commission has further acknowledged the efforts by certain States to advance recognition of the rights of LGBTI persons region-wide, and it has welcomed the establishment of the OAS LGBTI Core Group, comprising Argentina, Brazil, Canada, Chile, Colombia, Mexico, United States, and Uruguay¹⁹³. It is worth pointing out that the IACHR has underscored the leadership shown by certain OAS member states, such as Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico, United States, and Uruguay, in putting forward resolutions both to promote the designation of a United Nations Independent Expert on Sexual Orientation and Gender Identity and to defend the continuity of that expert's appointment.¹⁹⁴ Thus, the Commission stresses that that commitment is vital for guaranteeing the continuity of the Independent Expert's mandate, as it reaffirms commitment to promoting the rights of LGBTI

¹⁸⁸ IACHR, Press Release No. 076/16, States, June 14, 2016.

¹⁸⁹ IACHR, Press Release No. 181/16, [IACHR Repudiates Murder of Defender of Trans Rights in Guatemala](#), December 2, 2016.

¹⁹⁰ IACHR, Press Release No. 169/16, [CIDH Urges States to Combat Impunity in cases involving Prejudice against Trans Persons](#), November 18, 2016.

¹⁹¹ IACHR, Press Release No. 181/16, [IACHR Repudiates Murder of Defender of Trans Rights in Guatemala](#), December 2, 2016.

¹⁹² IACHR, Press Release No. 116/16, [IACHR Welcomes Progress on Human Rights of LGBTI Persons](#), August 16, 2016.

¹⁹³ IACHR, Press Release No. 097/16, [IACHR Welcomes Creation of LGBTI Core Group at the OAS](#), July 15, 2016.

¹⁹⁴ IACHR, Press Release No.189/16, [IACHR Expresses Concern at the Possible Indefinite Suspension of the Mandate of the United Nations Independent Expert on Sexual Orientation and Gender Identity and Calls on the States of the Region to Reaffirm their Commitment](#), December 17, 2016.

persons.¹⁹⁵ 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 Bahamas¹⁹⁶– to repeal legal provisions criminalizing consensual sexual relations between same-sex adults dating back to the British colonial era.¹⁹⁷

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 complaints¹⁹⁸; the physical aggression and sexual violence to which they are subjected by police officers when they do attempt to file a complaint¹⁹⁹; mistrust of the State bodies conducting the investigations, because of the high rates of impunity²⁰⁰; 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 investigations²⁰¹; and threats against their lives or bodily integrity if they pursue the complaints any further²⁰².

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.²⁰³ 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.²⁰⁴

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.²⁰⁵ 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

¹⁹⁵ IACHR, Press Release No.189/16, [IACHR Expresses Concern at the Possible Indefinite Suspension of the Mandate of the United Nations Independent Expert on Sexual Orientation and Gender Identity and Calls on the States of the Region to Reaffirm their Commitment](#), December 17, 2016.

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.

¹⁹⁸ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016.

¹⁹⁹ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016; IACHR, Press Release No. 169/16, [CIDH Urges States to Combat Impunity in cases involving Prejudice against Trans Persons](#), November 18, 2016.

²⁰⁰ IACHR, [Report on Violence against LGBTI persons in the Americas](#), OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2011, par. 476.

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

²⁰² IACHR, [Report on Violence against LGBTI persons in the Americas](#), OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015.

²⁰³ IACHR, [Report on Violence against LGBTI persons in the Americas](#), OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, Chapter 3.

²⁰⁴ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016.

²⁰⁵ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016.

work or survival sex.²⁰⁶ As a result, trans women are frequently profiled by the police as dangerous, making them more vulnerable to police mistreatment, criminalization, and imprisonment.²⁰⁷ 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.²⁰⁸

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.²⁰⁹ 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.²¹⁰

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

²⁰⁶ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016.

²⁰⁷ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016.

²⁰⁸ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par. 363ff, 2016.

²⁰⁹ IACHR, Press Release No.189/16, [IACHR Expresses Concern at the Possible Indefinite Suspension of the Mandate of the United Nations Independent Expert on Sexual Orientation and Gender Identity and Calls on the States of the Region to Reaffirm their Commitment](#), December 17, 2017.

²¹⁰ IACHR, [Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas](#), par.363ff, 2016.

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

²¹² IACHR, [Universalization of the Inter-American System of Human Rights](#), OEA/Ser.L/V/II.152. Doc. 21, August 14, 2014.

²¹³ IACHR, Hearing, *Situation of the Right to Freedom of Association in the Americas*, Report on the 157th Period of Sessions of the IACHR, June 13, 2016. Fundación para el Debido Proceso Legal (DPLF), Alianza Ciudadana Pro Justicia, Fundación Andina para la Observación y Estudio de Medios (FUNDAMEDIOS), Fundación Construir, Asociación Civil por la Igualdad y la Justicia (ACIJ).

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 possible 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

²¹⁴ IACHR, Hearing, *States, Corporations, and Human Rights in South America*, 158th Special Period of Sessions, July 7, 2016.

²¹⁵ IACHR, Hearing, *Human Rights Situation in the Context of the Implementation of the Trans-Pacific Partnership (TPP) in the Americas*, 159th period of sessions of the IACHR, December 7, 2016.

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*, 157^o 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.