



**Basic Guidelines for Investigating Crimes
against Human Rights Defenders
in the Northern Triangle**



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I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “IACHR” or “Commission”) has emphasized the importance of the work of human rights defenders for the universal implementation of human rights, and for the full existence of democracy and the rule of law. Human rights defenders are an essential pillar for the strengthening and consolidation of democracies, since the purpose that motivates their work involves society in general, and seeks to benefit society.¹
2. The Commission recognizes the fundamental role that human rights defenders have historically played in the Americas, and in the Northern Triangle countries [El Salvador, Guatemala, and Honduras]. This role is closely associated with denunciations of human rights violations, most related to potential environmental damage, the promotion of policies and practices intended to guarantee greater access to justice for victims of serious human rights violations and the right to the truth, combating corruption and promoting transparency and accountability, civil society participation, democracy, and the rule of law.
3. The monitoring, denunciation and educational activities performed by human rights defenders make an essential contribution to respect for human rights, because they act as guarantors against impunity.² The Inter-American Commission has pointed to the need for human rights defenders to exercise the necessary citizen oversight of public officials and democratic institutions, which means that they play an irreplaceable role in building a solid and lasting democratic society. [A]ccordingly, when a person is kept from defending human rights, the rest of society is directly affected.³ The IACHR has underscored the important citizen oversight role played by human rights defenders in investigating and reporting corruption.⁴
4. The IACHR has noted with concern the sustained violence against human rights defenders in the Northern Triangle countries. Therefore, the States must reinforce or implement a comprehensive system of protection for human rights defenders based on recognition of the importance of the protection of human rights for the strengthening of democracy and of the rule of law. In turn, the investigation of crimes against human rights defenders is fundamental in guaranteeing the full and free exercise of the right to protect human rights. The IACHR notes that the most effective means of protecting human rights defenders is the effective investigation

¹ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 13.

² IA Court HR. *Case of Fleury et al. v. Haiti*, [seriec_236_ing \(corteidh.or.cr\)](#). Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, par. 80.

³ IACHR, Report on the Situation of Human Rights Defenders in the Americas. [ohchr.org](#), OEA/Ser. L/V/II.124 Doc. 5 rev.1, 7 March 2006, par. 23.

⁴ IACHR, Resolution 1/17, [Human Rights and the Fight against Impunity and Corruption \(oas.org\)](#), September 12, 2017.

of threats and violence against them and punishing the perpetrators, as a fundamental obligation of the States in combating impunity.

A. *Situation of Human Rights Defenders in the Northern Triangle Countries*

5. The situation of human rights defenders in the Northern Triangle countries has been a source of constant concern to the IACHR in view of the acts of violence, stigmatization, and criminalization to which these groups are constantly exposed. The IACHR, through its different mechanisms, has continued to receive information on situations that have jeopardized the life, well-being, and personal liberty of human rights defenders in Honduras, Guatemala, and El Salvador. The information received makes evident how challenging it is to exercise effectively, freely, and without any sort of intimidation, the right to protect human rights in the Northern Triangle.
6. On different occasions, the Commission has expressed its concern regarding the increasing numbers murders of and attacks against defenders, especially in Honduras and Guatemala,⁵ which are considered some of the most dangerous countries for human rights defenders in the world.⁶
7. In both countries, human rights defenders carry out their activities in a hostile environment generated in the context of social conflict stemming from the development projects under way, primarily projects to exploit natural resources,⁷ which often leads to aggression against these groups. In that regard, this region has witnessed threats, harassment, stigmatizing statements, and even murder that may be directly related to private companies.
8. During 2020, the IACHR was informed of an increase in the number of attacks and aggressions against human rights defenders in Guatemala. In this regard, between January and September 2020, the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEFUGA in spanish) registered 844 attacks against human rights defenders; mostly threats, surveillance, acts of intimidation and harassment⁸.

⁵ IACHR, Press Release No. 118/16, [Honduras, one of the most dangerous countries for human rights defenders – Experts warn \(oas.org\)](#), August 19, 2016; IACHR, Press Release No. 88/17, [Experts Condemn the Attacks and Killings of Environment Defenders in Guatemala \(oas.org\)](#), June 30, 2017; IACHR, Press release No. 230/18, [IACHR Expresses Alarm over the Increase in Murders and Aggressions against Human Rights Defenders in Guatemala \(oas.org\)](#), October 31, 2018; IACHR, Press Release No. 137/18, [IACHR and OHCHR Condemn Murder of Campaigners and Activists Supporting Indigenous Peoples and Peasants in Guatemala \(oas.org\)](#), June 27, 2018; IACHR, Press Release No. 215/20, [The IACHR Condemns Murders and Attacks Against Defenders in Guatemala \(oas.org\)](#), September 11, 2020.

⁶ IACHR, Press Release No. 118/16, [Honduras, one of the most dangerous countries for human rights defenders – Experts warn \(oas.org\)](#), August 19, 2016; Enemies of the State? How governments and business silence land and environmental defenders, [Enemies of the State.pdf](#), July 2019, p. 9.

⁷ Amnesty International, We Are Defending the Land with Our Blood, [AMR0145622016ENGLISH.PDF \(amnesty.org\)](#), September 2016, p. 16.

⁸ UDEFEFUGA, [“Aumento histórico en agresiones contra personas defensoras en Guatemala registra UDEFEFUGA”](#), 20 de noviembre de 2020.

Regarding Honduras, the IACHR was informed about the murder of at least 8 human rights defenders during 2020⁹.

9. The Commission has noted in El Salvador, for its part, a lack of recognition of the work done by human rights defenders, made evident in a context of stigmatization and defamation of their work.¹⁰ This stigmatization has been characterized by public pronouncements issued by high state authorities in social media, which send a message that seeks to discredit the work of human rights defenders in the country.
10. The Commission has registered that the attacks are directed to defenders who are dedicated to defending the rights of indigenous peoples and Afro-descendants, the territory, the land, and a healthy environment.¹¹ Similarly, it has been identified that women defenders and those who defend the rights of LGBTI persons also face particular risks.¹²
11. Access to justice remains a significant challenge in these countries. Failure to investigate and punish those responsible for these crimes, both perpetrators and masterminds, has resulted in high levels of impunity in connection with these facts, which encourages their repetition by sending a message to the perpetrators regarding the tolerance of these acts by the States.
12. The criminalization of human rights defenders in the Northern Triangle countries has also been frequent practice. The Commission has noted that the criminalization of them has had a chilling effect on efforts to protect human rights in the Northern Triangle countries. This has also generated community division since criminal prosecution of a human rights defender often generates mistrust and collective insecurity, as well as a climate of fear, threats, accusations, and social ostracism.¹³
13. In this regard, during 2020 the IACHR was informed of more than 65 acts of criminalization of defenders in Guatemala, which include the filing of allegedly unfounded complaints and illegal detention¹⁴. In Honduras, the IACHR observes that the improper use of the penal system continues to be a recurrent practice of harassment against human rights defenders. In this regard, the Commission was

⁹ OACNUDH, *Situación de los derechos humanos en Honduras*, A/HRC/46/75, 11 de marzo de 2020.

¹⁰ Amnesty International, Report 2015/16, *The State of the World's Human Rights*, [Amnesty International Report 2015/16](#), 2017, p. 169.

¹¹ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, par. 196; IACHR, *Situation of Human Rights in Honduras*, [Honduras-en-2015.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 42/15, 31 December 2015, par. 47; IACHR, [IACHR Condemns Killing of Members of the Tolupán Indigenous Peoples in Honduras](#), March 7, 2016, IACHR, [IACHR Deplores Killing of Nelson Noé García in Honduras](#), March 21, 2016.

¹² Fundación de Estudios para la Aplicación del Derecho (FESPAD), [Defendiendo DDHH en El Salvador en tiempos de COVID-19](#), February 16, 2020; Center for Justice and International Law (CEJIL), [El Salvador: Las medidas del gobierno salvadoreño ante la COVID-19 han propiciado un entorno violento y hostil que dificulta la labor de las defensoras de derechos humanos](#), June 16, 2020. [Both available only in Spanish]

¹³ IACHR, *Criminalization of Human Rights Defenders*, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 221.

¹⁴ Convergencia de Derechos Humanos, Report for the Public Hearing “[Impunidad de agresiones y asesinatos de personas defensoras en Guatemala](#)”, October 2 2020 in the context of the 177 Period of Sessions of the Inter-American Commission on Human Rights.

informed about the alleged criminalization, through the subjection to criminal proceedings, of 13 environmental defenders of the Guapinol community, accused of the crimes of unjust deprivation of liberty, aggravated arson, robbery and association illicit as possible retaliation for their work as defenders of land, territory, water and the environment¹⁵.

14. In contrast to investigations into crimes perpetrated against defenders, criminal prosecutions of them proceed swiftly and are often characterized by the use of prolonged preventive detention.

B. Objective and Methodology

15. The standards set herein are drawn from the precedents and recommendations of the Commission in their case reports, thematic¹⁶ and country reports; the resolutions of its precautionary measures mechanism; and the jurisprudence of the Inter-American Court of Human Rights (hereinafter “IA Court HR”), within the broad framework of the principles of international human rights law.
16. It is essential for these guidelines to be disseminated to and assimilated by the institutions with responsibility for guaranteeing the rights of human rights defenders at the different levels of the three branches of government of the States of Guatemala, Honduras, and El Salvador, as a practical tool. Especially for the public officials with responsibility for providing some type of public service to human rights defenders and for providing a secure environment in which their work can be carried out. The adoption of comprehensive measures coordinated among the different State entities for improvement of their protection system; and combating impunity in cases of attacks and threats against human rights defenders as a guarantee of non-repetition, among other things, may contribute to strengthened protection of the role of human rights defenders in protecting human rights.
17. In addition to this introduction and the current context of human rights defenders in the Northern Triangle, these guidelines are organized into two other titles: (II) the concept and role of human rights defenders in a democratic society; and (III) the State’s obligations regarding human rights defenders. Title III in turn is subdivided into: (1) the obligation to investigate, clarify, prosecute, and punish crimes perpetrated against human rights defenders; and (2) the obligation to prevent and respond to the criminalization of human rights defenders.

¹⁵ Request for information to the State of Honduras in accordance to Article 41 of the American Convention on Human Rights.

¹⁶ IACHR, Integral Protection Policies for Human Rights Defenders, [Defensores-eng-2017.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 207/17, 29 December 2017; Criminalization of Human Rights Defenders, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015; Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011; Report on the Situation of Human Rights Defenders in the Americas. ([ohchr.org](#)), OEA/Ser.L/V/II.124 Doc. 5 rev.1, 7 March 2006. See also IACHR, Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas, [Guarantees for the Independence of Justice Operators \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 44, 5 December 2013; IACHR, Violence against LGBTI Persons, [ViolenceLGBTIPersons.pdf \(oas.org\)](#), OAS/Ser.L/V/II.rev.2. Doc. 36, 12 November 2015.

II. CONCEPT AND ROLE OF HUMAN RIGHTS DEFENDERS IN A DEMOCRATIC SOCIETY

18. In the inter-American system, the Commission has held that “every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally, must be considered a human rights defender.”¹⁷ This broad definition covers professional activities or personal efforts that have only occasional links with the protection of human rights.¹⁸ This definition also includes those who contribute to ensuring justice, who, in the exercise of their function, through representation of a victim, through the investigation, punishment, and/or reparation of a violation, and/or by imparting justice independently and impartially, contribute to providing access to justice. It should also be noted that this definition is consistent with that of the United Nations and its Special Rapporteur on the situation of human rights defenders.
19. Human rights defenders are those persons who promote and seek in any way the attainment of human rights and fundamental freedoms recognized at the national and international levels.¹⁹ The criterion used to identify whether a person should be considered a human rights defender is the activity undertaken by the person and not other qualities, such as whether or not they are paid for their work or whether or not they belong to a civil society organization.²⁰
20. The Commission has also recognized that the exercise of the right to defend human rights entails the possibility of promoting and freely and effectively protecting any right whose acceptance is unquestioned, the rights and liberties contained in the Declaration on Defenders itself, and also “new rights or components of rights whose formulation is still a matter of debate.”²¹
21. The IA Court HR, for its part, has also considered that the status of a human rights defender is defined by the work carried out, regardless of whether the person is a

¹⁷ IACHR, Report on the Situation of Human Rights Defenders in the Americas. (ohchr.org), par. 13. Second Report on the Situation of Human Rights Defenders in the Americas, defenders2011.pdf (oas.org), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 12.

¹⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR): Protecting the Right to Defend Human Rights, Fact Sheet No. 29, 2004, pp. 7-8: “Many professional activities do not involve human rights work all of the time but can have occasional links with human rights.” When these activities are carried out in such a way as to provide specific support for human rights, it may be said that those carrying them out are acting as human rights defenders. Moreover, “Many people act as human rights defenders outside any professional or employment context.” What is important is to consider how these persons act in support of human rights and, in some cases, to decide whether they are making a “special effort” to promote or protect human rights.

¹⁹ IACHR, Report on the Situation of Human Rights Defenders in the Americas. (ohchr.org), OEA/Ser. L/V/II.124 Doc. 5 rev.1, 7 March 2006, par. 23.

²⁰ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, defenders2011.pdf (oas.org), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 12; Criminalization2016.pdf (oas.org), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 19.

²¹ IACHR, Report on the Situation of Human Rights Defenders in the Americas. (ohchr.org), OEA/Ser. L/V/II.124 Doc. 5 rev.1, 7 March 2006, par. 36.

private citizen or a public servant.²² In that regard, it has referred to the monitoring, reporting and education activities²³ carried out by human rights defenders, emphasizing that the defense of rights not only applies to civil and political rights, but also necessarily covers economic, social and cultural rights, according to the principles of universality, indivisibility and interdependence.²⁴ The Court has considered that the right, individually and in association with others “to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” must be carried out peacefully, so that this concept does not include acts of violence or acts that lead to violence.²⁵

22. Therefore, the concept of human rights defender is broad and flexible by nature and is evaluated with regard to the criterion of the activity carried out by the person. Any categorization of that concept in norms, guidelines, and public policy documents must be flexible in order to make possible case-by-case evaluation, with open criteria in the light of the standards outlined herein.
23. The activities of a defender include, among others, documenting and reporting human rights violations, support and care for victims in search of the truth, justice and reparation, combating the culture of impunity, bringing to the fore the thematic areas on government agendas, and criticizing the government and its policies, which are positive contributions in the common quest for peace.

²² IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Judgment of August 28, 2014, par. 129; See IA Court HR. *Case of Luna López v. Honduras*, Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, par. 122.

²³ IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Judgment of August 28, 2014, par.129; see IA Court HR. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of July 7, 2009, Series C No. 201, par. 88; *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par. 147, and *Case of Fleury et al. v. Haiti*, [seriec_236_ing \(corteidh.or.cr\)](#). Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, par. 80.

²⁴ IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Judgment of August 28, 2014, par. 129, citing IA Court HR. *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par. 147. Also IACHR op. cit., see OHCHR: Protecting the Right to Defend Human Rights, Fact Sheet No. 29, 2004, p. 3.

²⁵ IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Judgment of August 28, 2014, par. 129, citing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter Declaration on human rights defenders), [OHCHR | Declaration on the Right and Responsibility](#), Article 12.3; Europe Union, EU Guidelines on Human Rights Defenders, [EU Guidelines on Human Rights Defenders - European External Action Service \(europa.eu\)](#), 8 December 2008, par. 3, and OHCHR: Protecting the Right to Defend Human Rights, Fact Sheet No. 29, 2004, p. 11.

III. THE STATE'S OBLIGATIONS REGARDING HUMAN RIGHTS DEFENDERS

24. The obligations of the States regarding human rights defenders and the right to protect human rights are directly related to the enjoyment of the rights set forth in the American Convention on Human Rights (hereinafter “the American Convention”) to life, to physical integrity, to freedom of expression and of association, to a fair trial, and to judicial protection, which in conjunction with one another make possible the free exercise of activities to protect human rights and are realized as the exercise of the right to protect human rights.
25. The Commission and the IA Court HR have emphasized the obligations of the State regarding the rights of human rights defenders: guaranteeing the necessary conditions to ensure that human rights defenders can carry out their activities²⁶; the specific prevention and protection obligations²⁷; and the obligation to investigate crimes perpetrated against defenders.²⁸
26. In that regard, the Commission has indicated that the obligation of the State regarding human rights defenders is to prevent violations against them and protect those who are at risk, which means: 1) ensuring the conditions that ensure that defenders are able to freely engage in their activities; 2) refraining from imposing restrictions on their work and removing existing obstacles that would make their work more difficult; 3) preventing and responding to acts that unduly criminalize their work; 4) protecting them if they are at risk, which may involve implementing precautionary measures issued by the IACHR; and 5) the cross-cutting obligation to investigate, clarify, prosecute, and punish crimes perpetrated against them.²⁹
27. The Commission has recognized that States' obligations to protect the right to defend human rights are interrelated to and interdependent as far as securing comprehensive protection. Thus, to guarantee an environment that is free and safe for human rights defenders to do their work, States must fully comply with their obligations in this area. In this regard, States have a duty to not only refrain from violating the rights of human rights defenders but to adequately prevent the risks they face and protect them from those risks, under the recognition of the importance of human rights defense for all democratic societies.

²⁶ IA Court HR. *Case of García and Family Members v. Guatemala*. Merits, Reparations and Costs. Judgment of November 29, 2012. Series C No. 258, par. 182.

²⁷ IA Court HR. *Case of Yarce et al. vs. Colombia*. Judgment of November 22, 2016. Series C No. 325. par. 99; *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014, Series C No. 283, par. 140; *Case of Luna López v. Honduras*, Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269. par. 120.

²⁸ IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. par. 142 and 202.

²⁹ Cf. IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf](#) ([oas.org](#)), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 479.

28. The IACHR emphasizes that all the obligations mentioned above must be observed in a comprehensive and complementary manner, since all the obligations arising from the duty to guarantee and respect the right to defend human rights are interrelated.
29. For the purposes of these Basic Guidelines for Investigating, Title III will be subdivided into two subsections. The first will address the investigation of crimes whose victim is a human rights defender (the obligation to investigate, clarify, prosecute, and punish crimes perpetrated against them), and the second, which will analyze cases whose aim is to unduly criminalize a human rights defender, and in which, therefore, the subject of the crime is a defender (obligation to prevent and respond to the criminalization of human rights defenders).

A. *Obligation to Investigate, Clarify, Prosecute, and Punish Crimes Perpetrated against Defenders*

30. The organs of the system have referred to the obligation of the State to provide simple, prompt and effective remedies, characteristics that the available judicial remedies should have in connection with crimes perpetrated against human rights defenders. The effectiveness of a remedy has to do with its "suitability," which is its potential "to determine whether a violation of human right has been committed and do whatever it takes to solve it,"³⁰ and its capacity to "yield positive results or responses to human rights violations."³¹ The following should be taken into account: a) the possibility of the remedy verifying the existence of violations of fundamental rights; b) the possibility of remedying them; and c) the possibility of making reparation for the damage done and of punishing those responsible.³² A remedy is not effective when it is "illusory," excessively onerous for the victim, or when the State has not ensured its proper enforcement by the judicial authorities.³³
31. The obligation to investigate is greater when a human rights defender is involved.³⁴ The organs of the inter-American system have emphasized that the most effective way to protect human rights defenders is by effectively investigating the acts of violence against them, and punishing the persons responsible³⁵ in order to identify

³⁰ See IA Court HR, *Case of Durand and Ugarte*. Judgment of August 16, 2000, Series C No. 68, par. 102; *Case of Cantoral Benavides*, Judgment of August 18, 2000. Series C No. 69, par. 164; *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, par. 136; *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79, par. 113; and *Judicial Guarantees in States of Emergency (Articles 27(2), 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 24, among others. IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, par. 246.

³¹ IA Court HR. *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4.

³² IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, par. 248.

³³ IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, par. 251.

³⁴ IA Court HR. *Case of Escaleras Mejía et al. vs. Honduras*. Judgment of September 26, 2018. Series C No. 361, par. 54. [Available only in Spanish]

³⁵ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, [defenders2011.pdf](https://www.oas.org/oas/ser.l/v/ii) (oas.org), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 233.

and address the reasons behind those acts, thus preventing their repetition. They have emphasized that to guarantee the protection of defenders, it is a fundamental obligation of the State to combat impunity in connection with attacks against them.³⁶

32. The Inter-American Commission and the IA Court HR have established that impunity—meaning the overall lack of investigation, tracing, capture, prosecution and conviction of those responsible for violations of the rights protected by the American Convention—promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin. Impunity is one of the reasons for the continuity of acts of harassment, attacks and murders of human rights defenders, it increases their situation of defenselessness and vulnerability, and it has a chilling and intimidating effect³⁷ on them, on other human rights defenders, on those who turn to them, and on those connected to their work.
33. The Commission has noted that the impunity rate in connection with crimes against human rights defenders in the Northern Triangle countries remains alarmingly high. According to available information, the impunity rate in connection with crimes against human rights defenders in Guatemala and Honduras exceeds 90%.³⁸ In the case of El Salvador, very little information is available regarding these crimes, and their investigation, so that the rate cannot be estimated.
34. Compliance by the State with its obligation to investigate violations against defenders, when carried out with diligence, is an important measure for prevention and non-repetition. This implies conducting serious, independent, transparent, and timely investigations to identify the perpetrators and masterminds, prosecute them, and ensure adequate reparations to the victims.³⁹
35. The IA Court HR has emphasized that the due diligence obligation means that criminal investigations must exhaust all logical lines of investigation. This means that investigations promoted by the State must take into account “the complexity of the facts, the context in which they occurred and the systematic patterns that may explain why the events occurred,” ensuring that there are no omissions in the gathering of evidence or in the development of logical lines of investigation.⁴⁰ The investigation should include the circumstances that may have affected the level of

³⁶ IA Court HR. *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, par. 145; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 28.

³⁷ IA Court HR. *Case of Huilca Tecse v. Peru*. Merits, Reparations, and Costs. Judgment of March 3, 2005, Series C No. 121, par. 78 and 82.

³⁸ IACHR, 177th period of sessions, Public Hearing “Impunidad de agresiones y asesinatos de personas defensoras en Guatemala”, October 2 2020; IACHR, Situation of Human Rights in Honduras [Honduras2019-en.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 146, August 27, 2019, par. 77.

³⁹ IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015 par. 287(25).

⁴⁰ IA Court HR. *Case of the Rochela Massacre v. Colombia*. Merits, Reparations, and Costs, Judgment of May 11, 2007. Series C No. 163, par.158; IA Court HR. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Judgment of May 26, 2010, Series C No. 213, par. 106-110 and 167.

risk to which the human rights defender was exposed; the type of threats or attacks against him; and their level of repetition or increase.

36. Acts of violence against defenders cannot be analyzed in isolation; they must be investigated in a comprehensive manner in a context that provides the support needed to understand the systems working behind the crimes.⁴¹ In that regard, the investigation must be conducted taking into account the context in which the human rights defender carried out his or her work.⁴²
37. The obligation to conduct the investigation with due diligence and exhaust all logical lines of investigation is especially relevant in cases of violence against human rights defenders, since an investigation that does not consider aspects related to the context, such as their professional or personal activity and the rights they are defending, will be less likely to yield results and make it possible to question the intent of the authorities to clarify the crimes under investigation and the international responsibility.⁴³ Therefore, investigations should take into account, as a starting point, the role of the human rights defender.
38. In practice, if a State does not promote and implement the essential procedures, only focusing on i) taking a large number of steps not aimed at determining the truth; ii) only opening investigations that remain without activity for a long period of time, or even iii) producing the separate results that these types of investigation may have, this does not satisfy the due diligence requirement. Due diligence requires the investigating body to carry out all measures and investigations necessary to try and obtain the required result. Otherwise, the investigation is not effective in the terms of the [American] Convention.⁴⁴
39. Compliance with the duties of investigation and punishment of those responsible is broadly related to the “right of the next of kin of the alleged victims to know what happened and to know who was responsible for the respective events⁴⁵, therefore, the authorities must ensure knowledge of the truth by the relatives of the defenders who have been irreparably affected in their human rights.⁴⁶

⁴¹ United Nations, Report of the Special Rapporteur on the situation of human rights defenders, [A/74/159 - E - A/74/159 -Desktop \(undocs.org\)](#), A/74/159, July 15, 2019, par. 118.

⁴² IA Court HR. *Case of Yarce et al. v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 22, 2016. Series C No. 325, par. 295. [Available only in Spanish]

⁴³ IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, par. 216.

⁴⁴ IA Court HR. Cf. *Case of the Serrano-Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, par. 83, and *Case of Albán Cornejo et al. v. Ecuador*, Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, par. 62; *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, par. 200.

⁴⁵ IA Court HR. *Case of García Prieto y otros Vs. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007, Series C No. 168, par. 102, *Case Masacre de las Dos Erres v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, par. 105; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 237.

⁴⁶ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 237.

40. The Commission has also repeatedly held that, according to the due diligence standard, where allegations have been made that a crime may have committed in reprisal for a defender's work, the investigating authority must necessarily investigate that possible motive.⁴⁷ That is, due diligence will not have been demonstrated if the State deliberately ignores this theory of the crime or does not make an exhaustive investigation of it.
41. Aspects that the State should investigate include, for example, the type of activity that the defender was carrying out at the time of the aggression and which persons or interests might be opposed to or be affected by that activity.⁴⁸ The State incurs responsibility if the relevant procedures were not carried out to determine whether the existing evidence might be linked to that motive.⁴⁹
42. In seeking patterns that may tend to produce results, the officials with responsibility for investigation should seek to unify, rather than fragment, criteria, using all available means to carry out the actions and investigations necessary to clarify the facts. For example, consideration of the same *modus operandi* in crimes committed against a number of social leaders or leaders of opposition political movements may result in the identification of a pattern or a systematic common element.
43. The obligation to investigate and punish exists not only for persons participating in violations of rights of human rights defenders, but also extends to all those who participate in planning human rights violations against them.⁵⁰
44. The States have an obligation to ensure an exhaustive search of all information in order to design and conduct an investigation that results in proper analysis of the theories of the crime, through action or omission, at different levels, exploring all relevant lines of investigation in order to identify the different perpetrators.⁵¹ Not only the immediate perpetrators and participants must be investigated, but also the masterminds, in any of their forms, in order to prosecute them and punish them accordingly.
45. As part of the State's obligation, the IA Court HR has analyzed, in the context of the investigation into the death of a human rights defender, its seriousness in its first procedures. The IA Court HR has established that efficient determination of the truth, in the context of the obligation to investigate a death, should be evident from

⁴⁷ Cf. IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 68.

⁴⁸ IA Court HR, *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, par. 216..

⁴⁹ Cf. IA Court HR. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, par. 220.

⁵⁰ IACHR, Report No. 86/13, Cases 12.595, 12.596, and 12.621. Merits. [Ana Teresa Yarce et al. \(Commune 13\), Colombia](#). November 4, 2013, par. 347. [Available only in Spanish]

⁵¹ IA Court HR. [Case of Escaleras Mejía et al. v. Honduras](#). Judgment of September 26, 2018. Series C No. 361, par. 143. [Available only in Spanish]

the first procedures carried out with full diligence.⁵² The IA Court HR has exhaustively set out the duties of the state authorities who are conducting an investigation into the death of a human rights defender.⁵³

46. The IACHR has also recommended strengthening the institutional capacity to combat the pattern of impunity surrounding cases of threats and murders of human rights defenders by preparing investigatory protocols that take into account the risks inherent in the work of human rights defenders, in order to allow a comprehensive development of the investigation under this hypothesis⁵⁴ and that tend towards the unification of investigations and towards coordinated lines of investigation.
47. In Guatemala, for example, General Instruction 5-2018 was issued, which contains the “Protocol to Investigate Crimes Committed against Human Rights Defenders,” the purpose of which was to provide personnel of the Office of the Public Prosecutor who investigate and handle cases of crimes committed against human rights defenders with specific criteria and instruments to act in keeping with the national and international normative framework that governs the constitutional function of the Office of the Public Prosecutor on this matter.⁵⁵ However, according to information received by civil society organizations, this Protocol is not applied when investigations are conducted into crimes committed against these groups. The civil society organizations also reported to the Commission that the district and municipal prosecutor’s offices were unaware of this Protocol and there were no uniform criteria that could link files on aggression against human rights defenders, which led to delay in investigations and made evident a lack of care in the analysis of context in investigations of aggression against human rights defenders.⁵⁶
48. Honduras, for its part, is reported to have a specialized inter-agency group for the elaboration of a protocol for the investigation of crimes against human rights defenders. However, it had not been finalized as of the date of the report.⁵⁷

⁵² IA Court HR. *Cf. Case of Juan Humberto Sánchez v. Honduras*. Interpretation of the Judgment of Preliminary Objections, Merits and Reparations. Judgment of November 26, 2003. Series C No. 102, par. 127, and *Case of Luna López v. Honduras*. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, par. 159; *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, par. 204.

⁵³ IA Court HR, *Cf. Case of Juan Humberto Sánchez v. Honduras*. Interpretation of the Judgment of Preliminary Objections, Merits and Reparations. Judgment of November 26, 2003. Series C No. 102, par. 127, and *Case of Luna López v. Honduras*. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, par. 159; *Case of Human Rights Defender et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283, par. 205 ff.

⁵⁴ IACHR, Report No. 56/12, Case No. 12.775, Merits, Florentín Gudiel Ramos, Makrina Gudiel Alvarez et al., REPORT No (oas.org), March 21, 2012, par. 220.

⁵⁵ IACHR, 2019 Annual Report, Chapter V, Second Report on Follow-Up on Recommendations Issued by the IACHR on the Situation of Human Rights in Guatemala, 2019 Annual Report - Chapter V Guatemala (oas.org), par. 182.

⁵⁶ IACHR, 177th period of sessions, Public Hearing “Impunidad de agresiones y asesinatos de personas defensoras en Guatemala”, October 2, 2020. [Available only in Spanish]

⁵⁷ UNHCHR, 2019 Annual Report of the United Nations High Commissioner for Human Rights. Situation of human rights in Honduras, A/HRC/43/3/Add.2 - E - A/HRC/43/3/Add.2 -Desktop (undocs.org), A/HRC/43/3/Add.2, 2 April 2020, par. 54.

49. The Commission emphasizes that the preparation and adoption of these protocols are important initiatives that may assist in reducing impunity surrounding these crimes. However, it also emphasizes that, for their effective implementation, the political will of States is necessary.
50. Another important aspect to note is the obligation to conduct investigations within a reasonable period. To that end, the authorities responsible for the investigation should take the investigative steps expeditiously, avoiding delays, obstructions, or unwarranted complications of the processes that lead to impunity and violate due judicial protection, in order to protect the interests of the victims, to preserve the evidence and even to safeguard the rights of all persons who, in the context of an investigation, may be considered suspect.⁵⁸
51. The role of justice workers is fundamental in providing human rights defenders who are victims of human rights violations with access to justice, since by ensuring proper performance of judicial functions, they guarantee that both the investigation and the judicial proceedings are carried out in keeping with the international human rights standards. Accordingly, it is fundamental for justice workers to familiarize themselves with and apply these guidelines in the performance of their functions.
52. Justice operators must also take into account the international instruments that protect human rights defenders. That is, undertake a conventionality control between domestic norms and the American Convention. Justice operators must ensure the correct application of the law and seek the truth of the facts occurred, acting with professionalism, in good faith, with procedural loyalty.⁵⁹
53. In this regard, it is fundamental for protection mechanisms to be coordinated with the corresponding investigation units in order to determine the risk sources and to identify and sanction possible perpetrators. Progress in the investigations will also make it possible to strengthen the effectiveness of the protection measures adopted and deactivate the elements that put at risk the persons who are protected under these protection programs.⁶⁰
54. Coordination among the different institutions that carry out activities to investigate and prosecute threats and attacks against human rights defenders is conducive to the effectiveness of those activities by avoiding duplication and achieving the implementation of more expeditious and efficient procedures.
55. In the Northern Triangle, specialized prosecutor's offices have been established for the investigation of crimes against human rights defenders. In Guatemala, the Public Ministry plays an important role in the investigation and criminal prosecution of crimes committed against human rights defenders. The IACHR notes positively the creation within the Public Ministry of a Human Rights Prosecutor's Office, which in turn is made up of four specialized units on activists, journalists, trade unionists, and

⁵⁸ IACHR, Report No. 05/03 *Jesús María Valle Jaramillo v. Colombia* (Admissibility), February 20, 2003, par. 31.

⁵⁹ IACHR, [Criminalization2016.pdf](#) (oas.org), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015 par. 287(21).

⁶⁰ IACHR, *Situation of Human Rights in Mexico*, [mexico2016-en_0.pdf](#) (justice.gov), OEA/Ser.L/V/II. Doc. 44/15, 31 December 2015, par. 453.

justice operators. However, some challenges have also been observed within these institutions, which impede progress in crime investigations, such as the lack of sufficient human and financial resources, the lack of specialized training, the lack of application of the specialized protocols, among others.⁶¹

56. Honduras, has the Special Prosecutor's Office for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators, an entity in charge of investigating crimes committed by its work of defense, with the exception of crimes against life. In this regard, the IACHR has warned about the important role that this Office of the Prosecutor could play in the protection of human rights defenders, and highlights the importance of providing it with a sufficient budget to guarantee its effective functioning.⁶² Honduras also has a Special Prosecutor for Crimes against Life, which includes a Section for the Violent Death of Persons Belonging to Vulnerable Groups.
57. Honduras also has an Office of the Special Prosecutor for Human Rights (FEDDDH), which investigates and prosecutes, with national coverage, all crimes related to human rights violations committed by public agents and officials. However, according to reports, this only has offices in San Pedro Sula and Tegucigalpa, which means that personnel must travel to cover cases in the interior of the country.⁶³ The Commission has also noted that in Honduras, this duplication of offices, and in some cases functions, can create confusion with regard to each entity's obligations, which in turn could have repercussions in terms of an effective and timely State response. The procedures for investigating, as well as the entity in charge, should be clearly defined and should not give rise to confusion.⁶⁴ Also, better coordination is required between the National Mechanism for the protection of human rights defenders, journalists, media workers and justice system actors and the entities with responsibility for investigating crimes against human rights defenders.
58. The IACHR also recommends that policies be adopted for building confidence in the institutions that investigate and prosecute crimes against human rights defenders. In that regard, the Commission has noted that in Guatemala, one of the factors that promotes impunity is the fact that often defenders do not file reports of the crimes of which they are victims, owing to the lack of confidence in the effectiveness of the justice system.⁶⁵ The same phenomenon is reported to be occurring in Honduras,⁶⁶ where the IACHR has received reports that several organizations and social movements said that in some cases, they choose not to report incidents because they know that investigations will stall and will not lead to those

⁶¹ United Nations, Situación de las personas defensoras de derechos humanos en Guatemala: entre el compromiso y la adversidad, 21 May 2019, par.104. [Available only in Spanish]

⁶² IACHR, Situation of Human Rights in Honduras Honduras2019-en.pdf (oas.org), OEA/Ser.L/V/II. Doc. 146, August 27, 2019, par. 156.

⁶³ Washington Office on Latin America (WOLA), Protección de los Derechos Humanos en Honduras: Evaluando la Capacidad Estatal de Proteger y Promover los Derechos Humanos, Series 1, December 2019, p. 26. [Available only in Spanish]

⁶⁴ IACHR, Situation of Human Rights in Honduras, Honduras-en-2015.pdf (oas.org), OEA/Ser.L/V/II. Doc. 42/15, 31 December 2015, par. 270.

⁶⁵ United Nations, Situación de las personas defensoras de derechos humanos en Guatemala: entre el compromiso y la adversidad, 21 May 2019, par.101. [Available only in Spanish]

⁶⁶ IACHR, Situation of Human Rights in Honduras Honduras2019-en.pdf (oas.org), OEA/Ser.L/V/II. Doc. 146, August 27, 2019, par. 78.

responsible being punished. Some organizations even reported that the Public Prosecutor's Office would not accept their complaints. However, they continue to report the most serious incidents.⁶⁷ It is essential to strengthen justice systems in order to generate greater confidence between human rights defenders and the authorities responsible for imparting justice.

59. The IACHR has also observed that in the Northern Triangle, there is "selective justice," which, on the one hand, acts slowly and does not provide an effective response in connection with human rights violations but, on the other, in some cases favors the interests of different actors connected to the government and political and business interests, because proceedings against opposition leaders or human rights defenders are advancing swiftly.⁶⁸
60. In El Salvador, civil society organizations reported to the IACHR that the State treats aggression against human rights defenders as invisible. They reported that aggression against them is being attributed to the general security situation in the country and not to the theory that these crimes may have been perpetrated as a result of their protection activities.⁶⁹ In this case, progress in the investigations into crimes against human rights defenders cannot be identified.
61. The Commission has also issued recommendations for defenders of specific rights. In that regard, judicial authorities must seek to adopt cross-cutting and differentiated ethnic-racial and gender approaches when investigating, trying, and punishing crimes against these defenders and when providing reparations for them.⁷⁰
62. The Commission emphasizes that many of the violent acts committed against women defenders have an indisputable gender dimension. Therefore, for the States to be able to guarantee effective compliance with the obligation to investigate, they must ensure that they are carried out from a gender perspective, and for this, adequate training in the matter is required. In this regard, the IACHR has indicated that a very serious problem for the development of activities carried out by women's rights defenders is the application of gender stereotypes in the language and reasoning of the justice operators in charge of investigations into violations of your rights.⁷¹

⁶⁷ Amnesty International, We Are Defending the Land with Our Blood, Defenders of the Land, Territory and Environment in Honduras and Guatemala, [AMR0145622016ENGLISH.PDF \(amnesty.org\)](#) September 2016, p. 32.

⁶⁸ IACHR, Meeting with family member of victims of persons murdered and injured in the post-electoral context, Tegucigalpa, July 31, 2018. IACHR, 169th regular period of sessions, Thematic Hearing, "[Personas criminalizadas y privadas de libertad en el contexto poselectoral en Honduras.](#)" Boulder, Colorado, United States, October 3, 2018. [Available only in Spanish]

⁶⁹ Information provided by civil society organization at a technical meeting with the IACHR.

⁷⁰ IACHR, Press Release No. 174/20, [IACHR Concerned about Murders of Human Rights Defenders and Social Leaders During First Half of 2020 in Colombia \(oas.org\)](#), July 23, 2020; IACHR, Press Release No. 078/19, [IACHR Condemns Murder of Indigenous Bribri Leader Who Was a Beneficiary of Precautionary Measures in Costa Rica \(oas.org\)](#), March 25, 2019.

⁷¹ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 289.

63. The Commission also emphasizes the duty of the State to strengthen the means of investigating threats made electronically so that they can be investigated effectively, their investigation enables the perpetrators to be punished, and there is no impunity in cases of this modality of crime.
64. Based on the foregoing, the Commission emphasizes the following guidelines:
- Provide simple, prompt, and effective judicial remedies that are available in cases of crimes perpetrated against human rights defenders.
 - Publicly recognize and disseminate to public entities that the most effective means of protecting human rights defenders is to investigate acts of violence against them in order to identify and address the reasons behind that violence, and punish those responsible for those acts, thereby preventing their repetition.
 - Promote these investigations and conduct them diligently, gearing them to the new forms of crime, and end impunity, which is an important measure for prevention and non-repetition.
 - Justice operators should ensure access to justice for human rights defenders, proper application of the law, and the search for the truth of the facts that occurred, acting with professionalism, good faith, and procedural loyalty. Justice workers should guarantee that both the investigation and the prosecution are carried out in keeping with the international human rights standards.
 - Prepare specialized investigation protocols that take into account the risks inherent in the work of protecting human rights and allow for an exhaustive investigation based on the theory that the crime was committed in reprisal for or to hinder the work of a human rights defender, and include a search for patterns that may lead to results. Apply these protocols correctly.
 - Coordinate, unify, and systematize investigations into acts of aggression and harassment perpetrated against human rights defenders and their organizations, with particular attention to acts perpetrated against the same persons, and the patterns that may explain those acts.
 - Conduct the initial procedures, and all relevant procedures, with all due diligence to determine whether there is evidence that crimes may have been related to the work of a human rights defender.
 - Consider the type of activity being carried out by the human rights defender at the time of the aggression and what persons or interests may have been opposed to or affected by that activity.
 - Investigations should take into account the complexity of the facts, the context in which they occurred, and the patterns that explain why they were committed, ensuring that there are no omissions in the gathering of evidence and in the logical lines of investigation. Investigations should be conducted within a reasonable period and include the circumstances that may have

influenced the level of risk incurred by the human rights defender; the types of threats or attacks made against him or her; and their level of repetition or increase.

- Investigation authorities should guarantee the use of cross-cutting and differentiated ethnic-racial and gender approaches when investigating, trying, and punishing crimes against human rights defenders and when providing reparations for them.
- Provide training to justice operators on human rights and on the role played by human rights defenders, under an intersectional and sensitive approach to gender and diversity issues.
- Build institutional capacity for combating the pattern of impunity in cases of aggression against human rights defenders and ensure coordination between the corresponding investigation authorities and the protection mechanisms in order to clarify the sources of risk and identify and punish possible perpetrators.
- Strengthen the means of investigating threats made electronically so that they can be investigated effectively.

B. Obligation to Prevent and Respond to the Criminalization of Defenders

65. The IACHR understands that the criminalization of human rights defenders through the misuse of criminal law involves the manipulation of the State's punitive power by State and non-State actors in order to hinder their advocacy work, thereby preventing the legitimate exercise of their right to defend human rights.⁷²
66. The Commission has found that at the regional level criminalization processes usually begins with the filing of baseless allegations or complaints based on criminal offenses that do not conform to the principle of legality or criminal offenses that do not meet inter-American standards. These criminal offenses are often linked to punishable conduct such as "incitement to rebellion", "terrorism", "sabotage", "incitement to crime" and "attack or resistance to public authority," and tend to be arbitrarily applied by the authorities. Often, the misuse of criminal law is preceded by statements made by public officials in which human rights defenders are accused of committing crimes.⁷³
67. In other cases, criminal offenses are misused to criminalize human rights defenders involved in social protests under the pretext of protecting the right to freedom of movement, as well as the safety of traffic and means of transportation, or the misapplication of other criminal offenses, such as resisting arrest or damages in the

⁷² IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 3.

⁷³ IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015 par. 6.

context of demonstrations dispersed by the police.⁷⁴ The States that have wide or ambiguous definitions of criminal offenses that may promote the criminalization of peaceful social protest should amend their laws.⁷⁵

68. The States should also ensure that their normative framework conforms to the international standards in this area. They should review their codes to ensure that criminal offenses are defined without ambiguous wording, and strictly, precisely, and unequivocally.
69. In Guatemala, the Commission has received information on the misuse of criminal offenses such as instigation to commit a crime or plagiarism and kidnapping to criminalize human rights defenders. Likewise, it has observed that they are subjected to unjustified judicial processes and prolonged substitute measures, unsubstantiated arrest warrants, arbitrary detentions and preventive detention in order to criminalize their activities in defense of human rights.⁷⁶
70. Likewise, in Honduras the IACHR has received information on the recurrent use of criminal offenses such as usurpation, insults and slander, attack, or the threat of filing civil lawsuits against them, as a method to obstruct the defense of human rights.⁷⁷ The new Penal Code in Honduras typifies the crime of usurpation lacking precision regarding the intentionality required for its commission, which allows greater discretion to justice operators to misuse this criminal type, favoring the criminalization of defenders.⁷⁸ Although this new Code decriminalizes the crime of defamation, it maintains the crime of slander and injury with deprivation of liberty and a fine respectively.⁷⁹
71. In El Salvador, the criminalization of defamation and slander has been identified as a way of criminalizing human rights defenders.⁸⁰
72. The Commission has indicated that cases in which state authorities make statements or issue communiqués publicly incriminating a human rights defender of acts that have not been proven in a court of law constitute a violation of the human rights defender's right to honor and dignity.⁸¹ It further recalls that, by the principle of the

⁷⁴ IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 117.

⁷⁵ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 108.

⁷⁶ IACHR, Situation of Human Rights in Guatemala, [Guatemala2017-en.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 208/17, 31 December 2017, par. 166; Also, [Guatemala Criminal Code](#) articles 394 and 201.

⁷⁷ IACHR, Situation of Human Rights in Honduras [Honduras2019-en.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 146, August 27, 2019, par. 157.

⁷⁸ IACHR, [IACHR and OHCHR Express Concern over the Provisions of the Criminal Code in Honduras and Call for a Review in Accordance with International and Inter-American Human Rights Standards](#), July 12, 2019; [Honduras Criminal Code](#) Articles 229, 230, 231, 378, 379, 380 y 570.

⁷⁹ United Nations, ONU, [Informe del Relator Especial sobre la situación de los defensores de los derechos humanos, Visita a Honduras](#), A/HRC/40/60/Add.2, par. 20.

⁸⁰ Amnesty International, [Informe 2016/17 Amnistía Internacional: La situación de los derechos humanos en el mundo](#), 2017, p. 173; Ver: El Salvador Criminal Code, articles 177 and 178.

⁸¹ IACHR, [Democracy and Human Rights in Venezuela \(cidh.org\)](#), OEA/Ser.L/V/II., Doc. 54, 30 December 2009, par. 616. IACHR. Report No. 43/96, Case 11.430, José Francisco Gallardo (Mexico), October 15, 1996, par. 76. IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia [Colombia-Truth-Justice-Reparation.pdf \(oas.org\)](#) OEA/Ser.L/V/II. Doc. 49/13, 31 December 2013, par. 775.

presumption of innocence, States must avoid publicly incriminating any human rights defender whose alleged crimes have not been proven in a court of law.⁸²

73. The IACHR has indicated that criminalization is a complex obstacle that in different ways impacts the free exercise of the protection of human rights. Criminalization may also have social effects by affecting structures, leadership, the ability to function as a group, and collective symbols. In that regard, when criminalization affects persons who play significant roles in a society, town or community, such as social and community leaders and indigenous authorities, it has a very negative impact on the collective because not only is the prosecuted person affected, but also the society in which he or she plays a role, as that person is prevented from exercising his or her position of representation, leadership, or authority.⁸³ Misuse of criminal law can also generate community division, because when a defender is criminalized, it often generates mistrust and collective insecurity, as well as a climate of fear, threats, accusations, and social ostracism.⁸⁴
74. The Commission reiterates, as it emphasized in its Second Report on the Situation of Human Rights Defenders in the Americas, that no human rights defender may be subject to a criminal proceeding indefinitely; such a situation would infringe on the guarantee of a reasonable time period. This guarantee, in addition to being a basic element for the right to a trial in accordance with the rules of due process, is especially essential to prevent unwarranted criminal proceedings from preventing defenders from doing their work.⁸⁵
75. The Commission has received information about the prolonged use of pre-trial detention in cases of criminalization of human rights defenders and the use of criminal offenses that do not allow for alternative measures to pre-trial detention. The Commission has also observed the constant postponement of hearings in cases of crimes against human rights defenders, which leads to their remaining longer in pre-trial detention.⁸⁶
76. In that regard, the Commission has indicated that justice operators should ensure that human rights defenders are not subject to criminal proceedings that are unnecessarily accelerated or of prolonged length⁸⁷ and prevent the use of preventive detention as a tool for impeding the right to protect rights, ensuring that

⁸² IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia [Colombia-Truth-Justice-Reparation.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/13, 31 December 2013, par. 775.

⁸³ IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 220.

⁸⁴ IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 221.

⁸⁵ IACHR, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 181 and Second Report on the Situation of Human Rights Defenders in the Americas, [defenders2011.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 66, 31 December 2011, par. 111.

⁸⁶ IACHR, Situation of Human Rights in Guatemala, [Guatemala2017-en.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 208/17, 31 December 2017, par. 175; IACHR, 2018 Annual Report, Chapter V, Report on Follow-Up of Recommendations Issued by the IACHR in its Report on the Human Rights Situation in Guatemala, [Annual Report - Chapter V Guatemala \(oas.org\)](#), par. 164.

⁸⁷ IACHR, [Directrices básicas para la investigación de violaciones a los derechos de las personas defensoras de derechos humanos en las Américas](#), OEA/Ser.L/V/II. Doc. 211, 31 December 2017, par. 66. [Available only in Spanish]

it is used on a truly exceptional basis and in accordance with the principles of legality, the presumption of innocence, necessity, and proportionality.

77. The judiciary plays an essential part in preventing the undue criminalization of human rights defenders. To that end, it should ensure zero tolerance for the use of the legal system as a method of intimidation or to impede the work of persons defending human rights and should ensure that justice workers are trained in the field of human rights and, in particular, on the situation of human rights defenders.
78. In that regard, the Commission has urged the States to take all steps necessary to prevent human rights defenders from being subjected to unjust or baseless investigations and/or trials which, in general, also has impact on their protection. Therefore, the States must ensure that both the reasonable period of time and the other guarantees of due process are respected so that the defenders against whom criminal proceedings are initiated are duly heard by a competent, independent and impartial judge or court, established previously by law where their right to the presumption of innocence is guaranteed, as well as to appeal the decisions that are issued against them.⁸⁸
79. Additionally, the IACHR has held that the States should decriminalize the offenses of slander and libel which have sometimes been used by public officials to limit freedom of expression and the work of human rights defenders.⁸⁹
80. Based on the foregoing, the Commission emphasizes the following guidelines:
- Give public officials precise instructions regarding the obligation not to subject human rights defenders to criminal proceedings for carrying out their legitimate work, and punish officials who do not comply with these instructions. Accord priority to disciplinary action taken against officials who have engaged in this misconduct.
 - Take the steps necessary to modify the Code of Penal Procedure so as to decriminalize the offenses of slander and libel, in accordance with the inter-American standards.
 - Ensure that the criminal offenses contemplated in the National Criminal Codes are in line with international standards on the matter and modify or reform those with a broad or ambiguous formulation that may lead to the criminalization of human rights defenders.
 - Prevent state agents from publicly incriminating any human rights defender whose alleged crimes have not been proven in a court of law.

⁸⁸ IACHR, Criminalization of Human Rights Defenders, [Criminalization2016.pdf \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015, par. 28.

⁸⁹ See Annual Report of the Inter-American Human Rights Commission 2009. Report of the Special Rapporteur for Freedom of Expression, [CHAPTER I \(oas.org\)](#), OEA/Ser.L/V/II. Doc. 51, 30 December 2009, par. 120 ff; IACHR, [Situación de la Libertad de Expresión en Chile](#), OEA/Ser.L/V/II. CIDH/RELE/INF.16/17, 15 March 2017, par. 46. [Available only in Spanish]

- Take all necessary steps to prevent authorities or third parties from manipulating the punitive power of the State and its justice bodies to the detriment of human rights defenders in order to harass them and hinder their work; and ensure the application of the corresponding sanctions if such manipulation takes place.
- Prevent the use of pre-trial detention as a tool for hindering the right to protect rights, ensuring that it is used on a truly exceptional basis and in accordance with the principles of legality, the presumption of innocence, necessity, and proportionality.
- Ensure that both the reasonable period and the other guarantees of due process are respected so that the defenders against whom criminal proceedings are initiated are duly heard by a competent, independent and impartial judge or court, previously established by the law where they are guarantee their right to the presumption of innocence, as well as to appeal the decisions that are issued against them.