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REPORT OF INTER-AMERICAN JURIDICAL COMMITTEE.

**GUIDE FOR REGULATING THE USE OF FORCE AND PROTECTION OF
PEOPLE IN SITUATIONS OF INTERNAL VIOLENCE THAT
DO NOT QUALIFY AS ARMED CONFLICT**

I. MANDATE OF THE INTER-AMERICAN JURIDICAL COMMITTEE

In resolution CJI/RES. 182 (LXXIX-O/11), adopted unanimously on August 5, 2011, the Inter-American Juridical Committee decided to include the following topic on the agenda for its eightieth regular session, to be held in Mexico City, starting on March 5, 2012: "Guide for regulating the use of force and protection of people in situations of internal violence that do not qualify as armed conflict." Accordingly, it designated Dr. Fernando Gómez Mont Urueta as Rapporteur for this topic.

During its eightieth regular session, the Committee examined and exchanged ideas concerning the draft Guide presented by the Rapporteur, and received the observations made by representatives of the International Committee of the Red Cross (hereinafter the "ICRC") on the subject. The Committee again decided to include this topic on the agenda for its eighty-first regular session, to be held in Rio de Janeiro starting on August 6, 2012. It also asked the Rapporteur to introduce a new draft Guide that would include the relevant changes based on the comments received. The Committee plans to take up the new draft at that eighty-first regular session.

The challenges that internal violence poses for the protection of human rights is not a new topic in our Hemisphere. Various instruments, case law and articles have been developed and written in recent decades that, either directly or indirectly, deal with the scope of and limits to a State's use of force in such situations and the need to protect persons affected by internal violence.

Within the United Nations system, the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1969), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1966), the *International Convention for the Protection of All Persons from Enforced Disappearances* (2006) and other instruments recognize the rights to life, to humane treatment, to personal security and to peaceful assembly. They prohibit arbitrary detentions and recognize the right that persons deprived of their liberty have to receive humane treatment. They also prohibit arbitrary interference in a person's private life or domicile. These instruments also provide that the right to life and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, among other rights, are not subject to suspension under any circumstance. They also enumerate the restrictions allowed to the right to peaceful assembly.

The human rights recognized in the above instruments are the bases for a number of United Nations "soft law" instruments that address the specific problems associated with the use of force and rights of detained persons. The following "soft law" instruments are particularly germane to the scope of and limitations to the use of force and their relationship to the observance of human rights: the *Code of Conduct for Law Enforcement Officials*^{1/} (1979) (hereinafter the "Code of Conduct") and the *Basic Principles on the Use of Force and Firearms by*

^{1/} Adopted through United Nations General Assembly resolution 34/169 of December 17, 1979.

Law Enforcement Officials (1990)^{2/} (hereinafter the “Basic Principles”). The following should be cited in connection with the rights of persons deprived of liberty: the *Standard Minimum Rules for the Treatment of Prisoners* (1965)^{3/} and the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).^{4/}

In the academic realm, the protection of persons affected by violent situations has been addressed in a declaration of experts on the subject, titled the *Declaration of Minimum Humanitarian Standards* (1990)^{5/} (hereinafter the “Turku Declaration”), which affirms the minimum, nonderogable rights of persons in all situations, including internal violence, disturbances, tensions, and public emergency.

The European Court of Human Rights has developed case law pertaining to the use of force. Of particular interest are its judgments in *McCann and Others v. United Kingdom* (1995)^{6/} and *Makaratzis v. Greece* (2004).^{7/} The principles established in that case law have been echoed in a number of subsequent cases.^{8/}

Within the Organization of American States, the *American Declaration of the Rights and Duties of Man* (1948) (hereinafter the “American Declaration”), the *American Convention on Human Rights* (1979) (hereinafter the “American Convention”), the *Inter-American Convention to Prevent and Punish Torture* (1985), and the *Inter-American Convention on Forced Disappearance of Persons* (1994) recognize, *inter alia*, the right to life, the right to personal liberty, the right to personal security and integrity, the right of peaceful assembly, and the inviolability of the home. They prohibit arbitrary deprivation of life and recognize the right of persons deprived of liberty to be treated with the respect for the inherent dignity of the human person. They also provide that the rights to life and to personal integrity, among others, and the judicial guarantees essential for the protection of those rights may not be suspended under any circumstances.

In a number of its reports, the Inter-American Commission on Human Rights (hereinafter the “IACHR”) has examined the issue of the use of force and the protection of persons in situations of violence. Salient among these are following: the Commission’s reports in the case of *Abella et al. v. Argentina* (1997),^{9/} the case of *Finca la Exacta v. Guatemala* (2002),^{10/} and the report on *Citizen Security and Human Rights* (2009).^{11/}

2. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, August 27 to September 7, 1990.

3. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1965, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of July 31, 1967, and 2076 (LXII) of May 13, 1977.

4. Adopted through United Nations General Assembly resolution 43/173 of December 9, 1988.

5. Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/ Åbo (Finland), November 30 to December 2, 1990, and subsequently revised at a meeting of the Norwegian Institute of Human Rights held in Oslo (Norway) on September 29-30, 1994.

6. ECHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324.

7. _____, *Makaratzis v. Greece*, no. 50385/99, 20 December 2004.

8. See in this regard: ECHR, *McKerr v. United Kingdom*, no. 28883/95, 4 May 2001; ECHR, *Kelly and others v. United Kingdom*, no. 30054/96, 4 May 2011; ECHR, *Kakoulli v. Turkey*, no. 38595/97, 22 November 2005; *Isayeva and others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, 24 February 2005; ECHR, *Erdogan and others v. Turkey*, no. 19807/92, 25 April 2006.

9. Inter-American Commission on Human Rights, *Abella et al. v. Argentina*, Case 11.137, Report 55/97, OEA/Ser.L/V/II.97, 18 November 1997.

10. _____. *Report 57/02 Case 11.382. Merits. Finca “La exacta” Guatemala*, October 21, 2002.

11. _____. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II.Doc.57, December 31, 2009.

The Inter-American Court of Human Rights (hereinafter the “Court”) has also had occasion to develop case law pertaining to the use of force in situations of internal violence and the protection of the individual in these situations. The Court’s judgments in the cases of *Neira Alegría et al. v. Peru* (1995),^{12/} *Durand and Ugarte v. Peru* (2000),^{13/} *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela* (2006)^{14/} and *Zambrano Vélez et al. v. Ecuador* (2007)^{15/} are some of the most representative judgments on this subject.

In 2005 and again in 2008, the ICRC hosted a meeting in Lima, Peru titled *Sub-Regional Meeting of Government Experts on Regulating the Use of Force and Protection of Persons during Internal Disturbances and other Situations of Internal Violence*, where the emphasis was on the need to strengthen the States’ mechanisms for regulating this matter.

The Inter-American Juridical Committee’s decision to revisit this issue takes on particular relevance given the situations of violence in our Hemisphere today. This is the first report that the Committee will examine on the subject.

II. SITUATIONS OF INTERNAL VIOLENCE THAT DO NOT QUALIFY AS ARMED CONFLICT

Situations of violence within a State can be classified according to the level of violence, ranging anywhere from a non-international armed conflict to an internal disturbance or internal tension.

Non-international armed conflicts are regulated by international humanitarian law, particularly Common Article 3 of the Geneva Conventions of August 12, 1949, in which the scope of the definition of a non-international armed conflict is broad, and Protocol Additional II to those Conventions (June 8, 1977) relating to the protection of victims of non-international armed conflicts and in which the scope of the definition of a non-international armed conflict is narrower.

Using the broader definition given in Common Article 3, the case law of the International Criminal Tribunal for the former Yugoslavia holds that “*an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.*”^{16/}

In this connection, the IACHR has written that non-international armed conflicts:

[...] typically involve armed strife between governmental armed forces and organized armed insurgents. It also governs situations where two or more armed factions confront one another without the intervention of governmental forces where, for example, the established government has dissolved or is too weak to intervene.^{17/}

In its case law, the International Criminal Tribunal for the Former Yugoslavia has added that:

^{12.} Inter-American Court of Human Rights, *Case of Neira Alegría et al. v. Peru*. Merits. Judgment of January 19, 1995.

^{13.} ———. *Case of Durand and Ugarte v. Peru*. Merits. Judgment of August 16, 2000. Series C No. 68.

^{14.} ———. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006.

^{15.} ———. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007.

^{16.} International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, October 2, 1995, IT-94-1-A, paragraph 70.

^{17.} Inter-American Court of Human Rights. *Abella et al. v. Argentina*, Case 11.137, Report 55/97, OEA/Ser/L/V/II.97, November 18, 1997, paragraph 152.

The determination of the existence of an armed conflict is based solely on two criteria: the intensity of the conflict and organization of the parties, the purpose of the armed forces to engage in acts of violence or also achieve some further objective is, therefore, irrelevant.^{18/}

Still, there is no consensus in the literature as to what role the motives of armed groups play in classifying a situation as an armed conflict. Some legal scholars agree with the International Criminal Court that the motives or purpose of armed groups are irrelevant, while others maintain that in order for a situation to be classified as a non-international armed conflict, the armed group must be pursuing political objectives.

The Peace Research Institute Oslo (PRIO) and the Uppsala Conflict Data Program (UCDP), whose criteria were recently adopted by UNESCO, are of the view that a non-international armed conflict “has to entail ‘contested incompatibility’ over government and/or territory where the use of armed force is involved, and where one of the parties to the conflict is the state.”^{19/} Other authors like Bruderlein,^{20/} Gasser^{21/} and Wallensteen also share this view. As they see it, this is a useful criterion by which to distinguish a non-international armed conflict, which involves organized violence that is political in origin, from the different situation involving widespread violence associated with criminal activities on a massive scale. This Rapporteur shares Wallensteen’s view that:

[S]ometimes actors are not fighting there for political power, but for criminal gain of various sorts. We would not call this an armed conflict, as the actors do not want to exert political power. We would separate political conflict from criminal activities – we don’t want to have pure criminal activity in the category of armed conflict.^{22/}

As for the other situations of internal violence, i.e., those do not qualify as a non-international armed conflict, the ICRC observes that the:

Concept of internal disturbances and tensions may be illustrated by giving a list of examples of such situations without any attempt to be exhaustive: riots, such as demonstrations without a concerted plan from the outset; isolated and sporadic acts of violence, as opposed to military operations carried out by armed forces or armed

^{18.} International Criminal Court for the Former Yugoslavia, *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgment of Trial Chamber II of November 30, 2005, paragraph 170.

^{19.} UNESCO, Education for All Global Monitoring Report 2011, “*The Hidden Crisis: Armed Conflict and Education*”, p.138, available at:

<http://unesdoc.unesco.org/images/0019/001907/190743e.pdf> . The Uppsala Conflict Data Program of *Uppsala Universitet* in Sweden, whose data sets used established criteria for identifying conflicted-areas, is available at <http://www.pcr.uu.se/research/ucdp/database/>. The research done by the Peace Research Institute Oslo (PRIO) is available at: <http://www.prio.no/Research-and-Publications/Programmes/Conflict-Resolution-and-Peacebuilding/> .

^{20.} BRUDERLEIN, V.C., “*The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra- State Wars*”, Centre for Humanitarian Dialogue, Geneva, May 2000, cited in Vité, Sylvain, “*Typology of armed conflicts in international humanitarian law: legal concepts and actual situations*,” in *International Review of the Red Cross*, vol. 91, No. 873, March 2009, footnote 34.

^{21.} GASSER, H.P. *International Humanitarian Law: an Introduction*, in: *Humanity for All: the International Red Cross and Red Crescent Movement*, H. Haug (ed.), Paul Haupt Publishers, Berne, 1993, p. 555, cited in ICRC Opinion Paper (March 2008) titled “How is the term “Armed Conflict” defined in international humanitarian law?”, footnote 18.

^{22.} WALLENSTEEN, Peter, cited in “Interview with Peter Wallensteen”, *International Review of the Red Cross*, No. 873, March 2009, p. 10.

groups; other acts of a similar nature, including, in particular, large scale arrests of people for their activities or opinions.^{23/}

These examples are cited by the IACHR.^{24/} Situations of internal disturbances and situations involving internal tensions are both governed by international human rights law and the provisions of domestic law.

The principal feature that distinguishes serious tensions from internal disturbances is the level of violence involved.

The ICRC has described internal disturbances as follows:

This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules.^{25/}

The ICRC describes internal tensions as follows:

Situations of serious tension (political, religious, racial, social, economic, etc.), but also the sequels of armed conflict or of internal disturbances. Such situations have one or more of the following characteristics, if not all at the same time: large scale arrests; a large number of "political" prisoners; the probable existence of ill-treatment or inhumane conditions of detention; the suspension of fundamental judicial guarantees, either as part of the promulgation of a state of emergency or simply as a matter of fact; allegations of disappearances.^{26/}

Summarizing, and as the ICRC wrote, “[i]n short, as stated above, there are internal disturbances, without being an armed conflict, when the State uses armed force to maintain order; there are internal tensions, without being internal disturbances, when force is used as a preventive measure to maintain respect for law and order.”^{27/}

It is particularly important that a situation of internal violence be properly classified because this determines what the source of the applicable law will be. As was mentioned, non-international armed conflicts are governed by international humanitarian law, which is the *lex specialis* that applies to armed conflicts; in cases of non-international armed conflicts, international human rights law applies as a complementary body of law. In the other situations of

^{23.} International Committee of the Red Cross. *Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, paragraph. 4474.

^{24.} IACHR, *Abella et al. v. Argentina*, Case 11.137, Report 55/97, OEA/Ser/L/V/II.97 (Nov. 18, 1997), paragraph 149.

^{25.} ICRC, *Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, paragraph 4475.

^{26.} ———. *Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, paragraph 4476.

^{27.} ———. *Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, paragraph 4477.

internal violence –namely, internal disturbances or tensions– the applicable law is international human rights law and the provisions of domestic law.^{28/}

One of the most tangible practical consequences of this distinction is the question of whether certain rights can be suspended. While the international humanitarian law that applies to non-international armed conflicts does not allow suspension or derogation of any of its provisions, international human rights law that applies in other situations of international violence—whether they be internal disturbances or tensions—allows some human rights to be suspended under certain circumstances, the kinds of circumstances that often attend a situation of internal violence.

Here, Article 27 of the American Convention authorizes a States Party to take measures derogating from its obligations under the Convention “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party.”

The European Court of Human Rights has written that a public emergency threatening the life of the nation refers “to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.”^{29/}

The measures that the States adopt in the circumstances described above must meet certain requirements. Under Article 27 of the American Convention, these measures:

- i. Must be adopted to the extent and for the period of time strictly required by the exigencies of the situation;
- ii. Shall not be inconsistent with the State’s other obligations under international law;
- iii. Shall not involve discrimination on the ground of race, color, sex, language, religion, or social origin; and
- iv. A State Party availing itself of the right of suspension shall immediately inform the other States Parties of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

In any event, any suspension of guarantees must not exceed the limits of what is strictly necessary to deal with the situation; as the Inter-American Court has held, “any action on the part of the public authorities that goes beyond those limits, which must be specified with precision in the decree promulgating the state of emergency, would also be unlawful notwithstanding the existence of the emergency situation.”^{30/}

While suspension of certain human rights is authorized in the circumstances described above, international law also recognizes that there are certain core rights that, given their importance, are nonderogable and cannot be suspended under any circumstances. Article 27 of the American Convention lists these core, nonderogable rights as follows: the right to juridical personality, the right to life, the right to humane treatment, freedom from slavery, freedom from *ex post facto* laws, freedom of conscience and religion, rights of the family, rights of the child, the

^{28.} See IACHR, *Abella et al. v. Argentina*, Case 11.137, Report 55/97, OEA/Ser/L/V/II.97 (Nov. 18, 1997), paragraphs. 148 and 151, in which the Inter-American Commission on Human Rights observed that “[t]he legal rules governing an internal armed conflict vary significantly from those governing situations of internal disturbances or tensions”; hence, “a proper characterization of the events (...) is necessary to determine the sources of applicable law. [...] (paragraph 148), and that “[s]ituations of internal disturbances and tensions are expressly excluded from the scope of international humanitarian law as not being armed conflicts. Instead, they are governed by domestic law and relevant rules of international human rights law.” (paragraph 151).

^{29.} European Court of Human Rights, *Lawless v. Ireland* (no. 3), judgment of 1 July 1961, Series A no. 3, p. 14, paragraph 28.

^{30.} Inter-American Court of Human Rights, *Habeas Corpus in Emergency Situations*, Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 38.

right to participate in government, the right to a name and the right to nationality, and the judicial guarantees essential for the protection of those rights. The Court has held that these guarantees include “*writs of habeas corpus and of “amparo,”*” which also serve to “*preserve legality in a democratic society.*”^{31/}

III. THE USE OF FORCE IN SITUATIONS OF INTERNAL VIOLENCE

Under the Inter-American Democratic Charter (2001), democracy is indispensable for the effective exercise of fundamental freedoms and human rights. The main purpose served by regulating the use of force is to protect the nonderogable right to life. In a representative democracy, the State has sole claim on the legitimate use of force; it is the State, acting through its institutions, that uses this monopoly on the legitimate use of force to maintain order, the rule of law, liberty and the public peace necessary for social coexistence.^{32/} Max Weber also uses this concept, as he defines the State as “*the form of human community that (successfully) lays claim to the monopoly of legitimate physical violence within a particular territory.*”^{33/}

The State has the right and the obligation to provide protection when the lives, personal integrity and security of persons living within its territory are threatened by situations of violence. In concrete situations, this may include the use of lethal means, as both the IACHR^{34/} and the Court^{35/} have recognized. As the Court wrote, “*the right of the State to use force, even if this implies depriving people of their lives, to maintain law and order [...] is not under discussion.*”^{36/}

The use of physical force has been defined as “*the function with which certain members of the group appear to be endowed, to act on the community’s behalf to prevent and repress violation of certain rules by which the group is governed, if need be through coercive intervention that may involve the use of force.*”^{37/}

In a democratic State, this function is reserved exclusively for law enforcement officials. Under the Code of Conduct, those officials include all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. These include military authorities, whether uniformed or not, and State security forces in those countries

^{31.} _____. *Habeas Corpus in Emergency Situations*, Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 42.

^{32.} Supreme Court of Justice of the Nation, Mexico, *Dictamen que valora la Investigación constitucional realizada por la Comisión designada en el Expediente 3/2006*, public version, pp. 447 and 448.

^{33.} WEBER, Max. “Politics as Vocation,” in *The Vocation Lectures*, edited by David Owen and Tracy B. Strong, translated by Rodney Livingstone. Indianapolis, IN: Hackett Publishing Company, 2004.

^{34.} Inter-American Commission on Human Rights, *Report on citizen security and human rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 113; *Report on terrorism and human rights*, OEA/Ser.L/V/II.116, doc. 5, October 22, 2002, paragraph 87.

^{35.} Inter-American Court of Human Rights, *Case of Neira Alegría et al. v. Peru*. Judgment of January 19, 1995 (merits), paragraphs 74 and 75; *Case of Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, paragraph 154; *Case of Godínez Cruz*, Judgment of January 20, 1989, Series C No. 5, paragraph 162.

^{36.} _____. *Case of Neira Alegría et al. v. Peru*. Judgment of January 19, 1995 (merits), paragraph 74.

^{37.} LOUBET DEL BAYLE, Jean Louis, *La Police. Approche socio-politique*. Paris, Montchrestien, 1992, p. 19, cited [in Spanish] by GONZÁLEZ CALLEJA, Eduardo, *Sobre el Concepto de represión*, Hispania Nova- Revista de Historia Contemporánea, No. 6, 2006, p. 17 and by MARTÍNEZ MERCADO, Fernando, *Documento de Trabajo No. 4. Uso de la Fuerza, Notas y experiencias para la reforma policial en México*, Center of Studies in Citizen Security, University of Chile, available [in Spanish] at:

http://www.cesc.uchile.cl/serie_documentos_06.htm. [English translation ours.]

where they exercise police powers.^{38/} The exception are the cases in which, because concrete circumstances make it impossible for the State to protect individuals, the latter are permitted to use force in legitimate defense.

The practice of resorting to the military authorities to help a State's security forces restore order has happened on a number of occasions in the history of our Hemisphere when violent situations occurred. It is a lawful measure to which States resort when their police or security forces do not have the wherewithal necessary to deal with a certain situation. In the opinion of this Rapporteur, its legitimacy notwithstanding, this measure must always be exceptional in nature, used only when the police or security forces do not have the means necessary to cope with a situation. It must be a temporary default measure until the police and security forces shore up their own capacities or the deadly threat posed by the criminal organizations is weakened. Whatever the case, the armed forces should be acting in support of and under the orders of the elected civilian authorities. The Court has underscored "*the extreme care which States must observe when they decide to use their Armed Forces as a mean for controlling social protests, domestic disturbances, internal violence, public emergencies and common crime,*"^{39/} and observed that "*States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.*"^{40/}

However, this legitimate and exclusive authority of the State to use force through its law enforcement officials is not an unlimited authority. As the Court has observed:

Regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action.^{41/}

International human rights instruments and the Court's case law hold that for the use of force by the State—including the use of firearms—to be legitimate, the principles of legality, necessity, and proportionality must be observed.

(i) *Legality – Existence of a legal framework regulating the use of force*

States must have adequate laws and clear guidelines echoing the principles and standards by which law enforcement officials may use force. The purpose of these laws and guidelines must be to ensure that law enforcement officials respect the right to life of persons under their jurisdiction, and to ensure independent control of the legality of the use of force.^{42/}

The Basic Principles^{43/} provide that the rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

^{38/} *Code of Conduct for Law Enforcement Officials*, adopted by the United Nations General Assembly in resolution 34/169 of December 17, 1979, Article 1.

^{39/} I/A Court H.R. Case of *Zambrano Velez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs). Paragraph 51.

^{40/} _____. Case of *Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, paragraph 78.

^{41/} _____. *Case of Neira Alegría et al.*, Judgment of January 19, 1995, Series C No. 20, paragraph 75; *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, paragraph 154; *Case of Godínez Cruz*, Judgment of January 20, 1989, Series C No. 5, paragraph 162.

^{42/} See Inter-American Court of Human Rights, *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraphs 66 and 75; Inter-American Court of Human Rights, *Case of Zambrano Velez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs). Paragraph 86.

^{43/} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principle 11.

- a. Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- b. Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- c. Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- d. Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- e. Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- f. Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Law enforcement officials may only use force when it is intended to achieve a legitimate objective, as established in the respective law. Thus, no operation may be targeted at killing an individual, which would be an illegitimate objective; instead, the objective of any operation must be to arrest or detain offenders. In operations of this type, a prompt arrest will avert an escalation in the use of force.

(ii) *Necessity*

Under the principle of necessity, law enforcement officials may use force “*only when strictly necessary and to the extent required for the performance of their duty.*”^{44/} Accordingly, the only defensive or offensive security measures used should be those strictly necessary to carry out the lawful orders of a competent authority in the event of acts of violence or crime that imperil the right to life or the right to personal security of any person.^{45/}

Observance of the principle of necessity implies unwavering acknowledgement of the exceptional nature of the use of force. Here, the Court has written that “force or coercive means can only be used once all other methods of control have been exhausted and have failed.”^{46/}

With specific reference to the use of lethal force and inasmuch as it is an extreme measure, the Court has added that:

The use of lethal force and firearms against individuals by law enforcement officials – which must be forbidden as a general rule – is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and restrictively construed, so that they are used to the minimum extent possible in all circumstances and never exceed the use which is “absolutely necessary” in relation to the force or threat to be repelled.^{47/}

(iii) *Proportionality*

^{44.} *Code of Conduct for Law Enforcement Officials*, adopted by the United Nations General Assembly in resolution 34/169 of December 17, 1979, Article 3.

^{45.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 116; see also Inter-American Court of Human Rights, *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs). Paragraph 85.

^{46.} I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007, paragraph 83; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 67.

^{47.} I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007, paragraph 84; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 68.

Under the principle of proportionality, law enforcement officials must exercise restraint and act in proportion to the seriousness of the offense and the legitimate objective to be achieved.^{48/}

To that end, the Basic Principles provide that whenever possible, law enforcement officials must use non-violent means before resorting to the use of force and firearms. Their weapons and ammunition should include “*non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.*”^{49/}

Force and firearms should only be used when other means are ineffective or are no guarantee that the planned outcome will be achieved. Law enforcement officials, therefore, should be equipped with various types of weapons and ammunition that allow for a differentiated use of force and firearms.^{50/}

The Code of Conduct states that the use of firearms is considered an extreme measure.^{51/} Under the Basic Principles,^{52/} which the IACHR has cited,^{53/} law enforcement officials shall not use firearms against persons (i) except in self-defense or defense of others; (ii) against the imminent threat of death or serious injury; (iii) to prevent the perpetration of a particularly serious crime involving grave threat to life; (iv) to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and then only when less extreme means are insufficient to achieve these objectives. The Basic Principles also provide the following: “*In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.*”

In such situations, law enforcement officials must identify themselves as such and give a clear warning of their intention to use firearms. The warning must be given sufficiently in advance to be considered, except when such a warning would unduly endanger the law enforcement officials, create the risk of death or serious injury to other persons, or is obviously inadequate or useless given the circumstances. Whenever a firearm is discharged, the competent authorities must be informed immediately.

Compliance with the aforementioned principles requires that States properly plan any use of force.

This includes the States’ duty to provide law enforcement officials with adequate training in the use of force, consistent with the principles described above. As the Court has held:

[a]n adequate legislation would not fulfill its goal if, inter alia, the States do not educate and train the members of their armed forces and security agencies pursuant to

^{48.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principle 5 a).

^{49.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principles 2 and 4.

^{50.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principles 2 and 4.

^{51.} *Code of Conduct for Law Enforcement Officials*, adopted by the United Nations General Assembly in resolution 34/169 of December 17, 1979, paragraph c) of the commentary on Article 3.

^{52.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principle 9.

^{53.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 113; *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, doc. 5, October 22, 2002, paragraph 87.

the principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject, even under a state of emergency.^{54/}

The Basic Principles provide that law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. The Principles add that all law enforcement officials should receive training and be tested in accordance with appropriate proficiency standards in the use of force. The purpose is to ensure that those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in the use of firearms. In that training, special attention should be given to “*issues of police ethics and human rights, [...] to alternatives to the use of force and firearms, [...] the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.*”^{55/}

States also have a duty to develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms, endeavoring always to preserve the life and physical integrity of all persons. Accordingly, these should include the development of non-lethal incapacitating weapons as mentioned earlier. The Principles also provide that the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.^{56/}

The Principles also state that law enforcement officials should be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.^{57/}

In addition to the above, the State has a duty to adequately control and review the legality of the use of force, especially when this is used by those acting by mandate of the State. As previously noted, whenever a firearm is discharged, the law enforcement official must immediately inform the competent authorities.

Upon learning that firearms have been used by members of its security forces and that such use had lethal consequences, “*the State has the obligation to initiate, ex officio and without delay, a serious, independent, impartial and effective investigation.*”^{58/} This is a basic and necessary condition to ensure that the right to life was not violated when that lethal force was employed. As the Inter-American Court has written, *the general rule that prohibits state agents from arbitrarily taking life would be ineffective were there no procedures by which to verify the legality of the lethal force employed by agents of the State.*^{59/}

Here, the law must: (i) ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence; (ii) ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did

^{54.} I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 77.

^{55.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principles 18 to 21.

^{56.} *Ibid*, principles 2 and 3.

^{57.} *Ibid*, Principle 2.

^{58.} Inter-American Court of Human Rights. *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs), paragraph 88.

^{59.} _____. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraphs 79-83.

not take all measures in their power to prevent, suppress or report such use; (iii) ensure that superiors who order the unlawful use of force or firearms are held accountable, and (iv) reflect the principle that obedience to superior orders shall be no defense if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow that order.^{60/}

Under the Basic Principles, persons affected by the use of force and firearms or their legal representatives or heirs, shall have access to an independent process, including a judicial process.^{61/}

When not done in accordance with the applicable principles and standards, a law enforcement official's use of lethal force may even constitute arbitrary deprivation of life, in violation of the right to life recognized in Article I of the American Declaration and Article 4 of the American Convention.^{62/} The Court has held that "[w]hen excessive force is used, any resulting deprivation of life is arbitrary."^{63/}

The criteria described above apply to any situation of internal violence. The following are some of the specific standards and criteria that, in addition to those already described, must apply to the use of force in the face of two specific recurring forms of internal violence in our Hemisphere: the violence engendered by unlawful or violent gatherings, and the violence engendered by organized crime.

A. The use of force to disperse unlawful or violent gatherings

As recognized in Articles XXI and XXII of the American Declaration and Articles 15 and 16 of the American Convention, every person has the right to assemble peaceably with others, without arms, in a formal public meeting or an informal gathering, and the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports or other purposes.

These rights create the State's corollary obligation to protect the lawful and peaceful exercise of the rights of assembly and association. The IACHR has written that:

[i]mplicit in protection of the right of assembly is not just the State's obligation to refrain from interfering in the exercise of that right, but also its obligation to adopt, in certain circumstances, positive measures to guarantee it: for example, protecting demonstrators from physical violence by persons who may hold the opposite opinion.^{64/}

This corollary obligation of the State includes the obligation to design operating plans and procedures that will facilitate the exercise of the right of assembly. According to the IACHR, this involves everything from rerouting pedestrian and vehicular traffic in a certain area, to escorting those who are participating in the mass gathering or demonstration in order to guarantee their safety and make it possible for the activities involved to take place. The State must also establish rules of conduct and provide the police forces with professional training, equipment, communication devices, vehicles, means of personal defense and non-lethal deterrence so that

^{60.} Basic Principles, principles 7, 24 and 26.

^{61.} *Basic Principles*, principles 1, 2, 7, 19, 23 and 26.

^{62.} See Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, doc. 5, October 22, 2002, paragraphs 89 and 90; *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 114; Inter-American Court of Human Rights, *Case of Neira Alegría et al.*, Judgment of January 19, 1995, Series C No. 20, paragraph 76.

^{63.} Inter-American Court of Human Rights, *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs), paragraph 84; *Case of Montero Aranguren et al. (Detention Center of Catia)*, paragraph 68.

^{64.} Inter-American Commission on Human Rights, *Annual Report 2007*, Chapter IV, paragraph 259.

they are prepared for situations involving mass gatherings, and thus create the conditions for these events to take place within the framework of the established standards and without adversely affecting the exercise of other human rights.^{65/}

As the IACHR has recognized the State can impose reasonable restrictions on demonstrations to ensure that they are peaceful.^{66/} Under the American Convention, the only restrictions that may be placed on the exercise of the right of assembly are those stipulated by law and those necessary to preserve national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

The IACHR has observed, for example, that “states may regulate the use of public space, for example by establishing requirements of prior notice, but such regulations may not impose excessive demands that invalidate the exercise of the right.”^{67/} In effect, the IACHR’s position has been that some of the restrictions imposed by states, such as arresting peaceful demonstrators^{68/} or criminalizing demonstrations on public thoroughfares when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly^{69/} (the so-called “criminalization of social protest”) are contrary to the right to freedom of assembly as they go beyond what the American Convention deems to be permissible restrictions on the right to freedom of assembly. If, despite the measures taken, the right to freedom of assembly is abused or unlawfully exercised, the IACHR has acknowledged that the State may “impose reasonable restrictions on demonstrations [...] to disperse those demonstrations that turn violent or obstructive, provided that those restrictions are informed by the principles of legality, necessity and proportionality.”^{70/} Nevertheless, the actions of law enforcement officers should protect, rather than discourage, the right to assembly and therefore, the rationale for dispersing the demonstration must be the duty to protect people.^{71/}

The use of force by law enforcement officers in these situations must be proportionate to the level of violence of the demonstration. The Basic Principles provide that when dispersing assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. When dispersing violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.^{72/} Indeed, law enforcement officials shall not use firearms against persons except when strictly necessary to protect life, either in self-defense or in defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape.^{73/}

To ensure that the use of force in public demonstrations is the exception, used only in those circumstances that are strictly necessary, the IACHR has recommended that the States

^{65.} _____. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 193.

^{66.} _____. OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 194.

^{67.} Inter-American Commission on Human Rights, *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, paragraph 56.

^{68.} _____. OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, paragraph 56.

^{69.} _____. *Annual Report 2007*, Chapter IV, paragraph 266; Inter-American Court of Human Rights, *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, paragraphs 96 to 98.

^{70.} _____. *Annual Report 2007*, Chapter IV, paragraph 260.

^{71.} _____. *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, paragraph 63.

^{72.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principles 13 and 14.

^{73.} *Basic Principles*, Principle 9.

adopt administrative controls and special measures for planning, prevention, and for the investigation of possible abuses of the use of force. These measures include the following:^{74/}

- a. implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as a recourse in public demonstrations;
- b. implementation of an ammunition registration and control system;
- c. implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out;
- d. promotion of visible means of personal identification for police agents participating in public law enforcement operations;
- e. promotion of opportunities for communication and dialogue prior to demonstrations and of the activities of liaison officers to coordinate with demonstrators concerning demonstration and protest activities and law enforcement operations, in order to avoid conflict situations;
- f. the identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct;
- g. the establishment of an administrative sanctions regime for the law enforcement personnel involving independent investigators and the participation of victims of abuses or acts of violence; and
- h. the adoption of measures to ensure that police or judicial officials (judges or prosecutors) directly involved in operations are not responsible for investigating irregularities or abuses committed during the course of those operations.

As observed, disproportionate use of force by law enforcement officials in suppressing public demonstrations or riots may constitute an arbitrary deprivation of life, as the reports of the IACHR^{75/} and the case law of the Court^{76/} have established.

B. The use of force in response to the violence engendered by organized crime

The countries of the region now have some of the highest crime rates in the world. The age group most affected, both as victims and perpetrators, are youth. The IACHR acknowledged as much when it wrote that for the first time in decades, crime has replaced unemployment as the public's chief concern and that in these countries, "[t]he judicial branch, public prosecutor's offices, the police and the prison system have failed to develop the capability to respond effectively through lawful measures to prevent and suppress crime and violence."^{77/} It observed that in some cases, private enterprise, social organizations and other actors have tried to replace the State with very precarious results and that in some countries of the region, corruption and impunity have enabled criminal organizations to grow and establish parallel power structures.^{78/}

^{74.} Inter-American Commission on Human Rights. *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, paragraph 68; *Report on citizen security and human rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 201.

^{75.} See Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Chile*, OEA/Ser.L/V/11.66, doc. 17, September 27, 1985, Chapter III, paragraph 101.

^{76.} Inter-American Court of Human Rights, *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000 (Merits), paragraph 118.

^{77.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 3.

^{78.} _____. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 33.

Under the definition given in the United Nations Convention against Transnational Organized Crime (hereinafter the “Palermo Convention”),^{79/} an “organized criminal group” is “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”

As previously noted, the State has an obligation to guarantee the rule of law and citizen security. The IACHR has defined citizen security as “a situation in which persons are able to live free of the threats caused by violence and crime, and the State has the necessary means to guarantee and protect the human rights directly threatened by violence and crime” [...] in other words, it is “a condition in which individuals live free from the violence practiced by State and non-state actors.”^{80/}

Organized criminal groups use force unlawfully, and organized crime is a manifestation of violence that poses a challenge to democratic coexistence and jeopardizes citizen security. The State, therefore, has an obligation to establish laws, institutions and steadfast policies whose purpose is to prevent and punish the activities of organized criminal groups, so as to protect the human rights of persons within their jurisdiction. As the IACHR has observed:

In the rule of law, the use of force and other legitimate means of coercion are reserved exclusively for the public authorities, who must exercise them in accordance with the standards discussed earlier [...] States are not fulfilling their duties to protect and ensure human rights when they allow, encourage or tolerate private groups that usurp the essential functions of the institutions within the system for the administration of justice or the police force. The recent history of the Hemisphere has seen practices of this type, which have caused extensive and systematic violations of human rights. Therefore, it is the duty of a democratic state to exercise strong control over such groups, to prevent them from operating and, where necessary, to apply the appropriate penalties under its criminal laws.^{81/}

Under the Palermo Convention, States Parties have an obligation to adopt such legislative and other measures as may be necessary to establish the intentional commission of the following as criminal offences: participation in an organized criminal group; organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group; and laundering proceeds of crime and corruption. They are also to adopt measures, *inter alia*, to enable confiscation of proceeds of crime and the property, equipment or other instrumentalities used in or destined for use in the offences covered by the Palermo Convention.^{82/} Under the Hemispheric Plan of Action against Transnational Organized Crime, the States are to adopt legislative measures and national strategies to prevent and combat transnational organized crime; to pursue, prosecute, and appropriately punish perpetrators of transnational organized crime; and adopt and use special investigative techniques to combat this crime.^{83/}

This Rapporteur also concurs with the IACHR on how important it is that the State design and put into practice comprehensive public policies on citizen security, under which specific measures and strategic plans at the operational, normative, and preventive levels are carried out

^{79.} Adopted by the United Nations General Assembly on November 15, 2000, through resolution A/Res/55/25, Article 2 a).

^{80.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 221.

^{81.} _____ . _____ . OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 209.

^{82.} Palermo Convention, adopted by the United Nations General Assembly on November 15, 2000, through resolution A/Res/55/25, articles 5, 6, 8 and 12.

^{83.} Hemispheric Plan of Action against Transnational Organized Crime, Doc. CP/RES. 908 (1567/06), adopted by the OAS Permanent Council at the meeting held on October 25, 2006.

simultaneously. These policies must be sustainable and be subjected to periodic evaluation and accountability mechanisms involving broad citizen participation.^{84/}

The State must also bolster its institutional capacities to deal with these situations. Police and prosecution institutions play a vital role here. The IACHR has written that in democratic systems of government, they are “*an irreplaceable cog in the machinery that guarantees the human rights threatened by violence and crime.*” The police and the prosecution have an important role to play not just in preventing, deterring, and controlling crime and violence, but also in ensuring that the administration of justice functions properly. Police are responsible for conducting criminal investigations, identifying assailants, victims and witnesses, gathering and analyzing material evidence, and preparing reports for prosecutors and judges. The State has an obligation to strengthen the legitimacy and efficacy of these institutions so that they are better able to combat organized crime. It must provide law enforcement personnel and prosecutors with the training, infrastructure, and equipment needed to perform their functions properly. It must also ensure that the police force receives support and cooperation from the actors in the criminal justice system, government organizations, civil society organizations and private enterprise.^{85/} The police must be endowed with the constitutional authorities necessary to investigate and pursue members of these criminal organizations. To that end, it must be taken as a given that these organizations always operate clandestinely and the dynamics and relationships among their members are complex. The police should be equipped with the appropriate technological tools to investigate and pursue this criminal phenomenon.

As in other circumstances, the State’s use of force to preserve the rule of law and keep it safe from the violence perpetrated by organized crime must be exercised with the utmost respect for human rights. Here, the Court has written that while the criminal threat “*can certainly constitute a legitimate reason to use state security forces in specific cases [...] States’ fight against criminality must take place within the limits and in accordance with the proceedings which allow for the preservation of both public security and the full respect of human rights of the individuals under their jurisdiction.*”^{86/}

Despite this obligation, the IACHR has observed that the citizen security policies historically pursued in numerous states of the Americas have, in general terms, diverged from international standards in the area of human rights. In many cases, the authorities have resorted to the illegal and arbitrary use of force in the name of crime prevention and control.^{87/} The IACHR has underscored the fact that “*t]he use of force beyond the boundaries established by law and by international standards, compounded by the inability of the institutions responsible for ensuring citizen security to develop effective measures to deal with crime and violence, only increases the public’s insecurity.*”^{88/}

Addressing this situation in its case law, the Court has held that no matter how difficult its circumstances, they do not relieve a State Party to the American Convention of its obligations under the Convention; these obligations remain intact, especially in those difficult circumstances. In this regard, it has underscored that “*no matter the circumstances in any State, there exist an absolute prohibition of torture, forced disappearances of individuals and summary and*

^{84.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 232(A), subparagraph 1.

^{85.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraphs 222 to 224.

^{86.} Inter-American Court of Human Rights, *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs), paragraph 96; Cf. *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C. No. 52, paragraph 207.

^{87.} Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 32.

^{88.} _____. _____. OEA/Ser.L/V/II, doc. 57, December 31, 2009, paragraph 34.

extrajudicial executions; and that such prohibition constitutes a mandatory rule of International Law not subject to derogation.^{89/}

IV. PROTECTION OF PEOPLE IN SITUATIONS OF INTERNAL VIOLENCE

Situations of internal violence are, generally speaking, accompanied by numerous human rights violations. While not claiming to be an exhaustive list, Harrof-Tavel has enumerated the following violations:

- *physical damage: injury, illness, disability or death;*
- *torture and ill-treatment;*
- *disappearances: these may be the result of a deliberate State policy, or the doing of paramilitary groups or opposition movements. Those who disappear may be held captive at secret locations; more often than not, however, they are killed, either to terrorize the population or to avoid the stigma of national or international disapproval resulting from the arrest and detention of certain opposition figures;*
- *deprivation of freedom: the classic form of detention is incarceration in a closed place designed for the purpose (prisons, camps, or-in some countries-psychiatric hospitals, etc.), but there are others, such as assignment to residence or confinement in another region of the country, often far away, isolated and insalubrious;*
- *a person's inability to satisfy his vital needs (security, material survival, psychological needs), when he has lost his means of subsistence, has been displaced within the country or has had to seek refuge abroad;*
- *separation of families, whose members are without news of their relatives on account of the hostilities or unrest;*
- *the suffering of individuals or communities indirectly affected by the strife, such as families with no means of support, communities whose precarious economic situation is threatened by the additional burden represented by refugees or displaced populations, and persons who are suspect on account of their kinship with someone involved in the violence.*^{90/}

The human rights violations and suffering engendered during situations of internal violence are cause for serious humanitarian concerns. It is imperative that the States provide and facilitate humanitarian assistance to persons affected by these situations. As the Turku Declaration states, “[i]n situations of internal violence, [...] humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.”^{91/}

The duty to provide humanitarian organizations with the necessary facilities includes the obligation not to obstruct their work and to respect and protect the humanitarian aid personnel, their installations and means of transportation in situations of violence. As the Turku Declaration recognizes, “[m]edical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.”^{92/}

Here, particular mention should be made of the work that humanitarian organizations like the ICRC are performing in a number of countries of this Hemisphere. They engage in preventive

^{89.} Inter-American Court of Human Rights, *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs), paragraph 96.

^{90.} Harrof-Tavel, Marion, “*Action taken by the International Committee of the Red Cross in situations of internal violence.*” *International Review of the Red Cross* No. 117, May-June 1993. Available at: <http://www.icrc.org/eng/resources/documents/misc/57jmhy.htm>.

^{91.} *Declaration of Minimum Humanitarian Standards (Turku Declaration)*, adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University in Turku/ Åbo (Finland), November 30 to December 2, 1990, and subsequently revised at a meeting at the Norwegian Institute of Human Rights held in Oslo (Norway) on September 29-30, 1994, Article 15.

^{92.} *Ibid.*, Articles 14 and 15.

work like training and dissemination of the humanitarian principles and standards on the use of force, and in the actual delivery of humanitarian assistance and aid to persons affected by violence, whether by offering their services to the States and acting with their consent, or by supporting the assistance that the local Red Cross organizations in each country provide. States must be particularly attentive to their international obligations to respect and protect the emblem of the Red Cross and the Red Crescent, both in the case of the work performed by the ICRC itself and that performed by the local Red Cross organizations.

The above serves as a reason for this Committee to most emphatically urge the States of our continent to allow these humanitarian organizations to intervene in the situations of internal violence referred to in this study, taking into account that past actions have shown these organizations to be an effective remedy to mitigate the suffering that such situations cause in our communities.

The following are certain aspects of some of the human rights most frequently affected in situations of internal violence:

(i) *Right to life*

In situations of internal violence, one of the most imperiled rights is the right to life. The right to life, recognized in Article I of the American Declaration and in Article 4 of the American Convention, is the supreme right and one of that nucleus of rights that cannot be suspended, no matter what the circumstances.

The Court has written that the right to life protected under the American Convention carries corollary obligations, among them that the State shall deprive no one of his or her life arbitrarily (negative obligation) and, given its duty to ensure the free and full exercise of human rights, that the State shall adopt all appropriate measures to protect and preserve the right to life (positive obligation) of those persons under its jurisdiction.^{93/} The United Nations Human Rights Committee has written that “States have the supreme duty to prevent [...] acts of mass violence causing arbitrary loss of life.”^{94/}

Moreover, States must take all measures necessary to, *inter alia*, establish a framework of laws that deters any possible threat to the right to life and establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals. The Court underscores that States must especially ensure “that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”^{95/}

Protection of the right to life is the paramount purpose of the principles and standards governing the use of force by law enforcement officials. Under the Basic Principles, whenever the lawful use of force and firearms is necessary, law enforcement officials shall “respect and

^{93.} Inter-American Court of Human Rights, *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs), paragraph 80; *Cf. Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 144; *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 237; *Case of Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, paragraph 14.

^{94.} Human Rights Committee, *General Comment No. 6*, Article 6-Right to Life, 16th session, UN Doc. HRI/GEN/1/Rev.7 (1982).

^{95.} Inter-American Court of Human Rights, *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007 (Merits, Reparations and Costs), paragraph 81.

preserve human life;^{96/} and, [i]n any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.^{97/}

On occasion, situations of violence often lead to the regrettable disappearance of persons involved in or affected by those situations. In this regard, the Human Rights Committee has written that the right to life includes the duty of States to “take specific and effective measures to prevent the disappearance of individuals” and to “establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”^{98/}

(ii) *The right to humane treatment*

The right to humane treatment is protected under Article I of the American Declaration and Article 5 of the American Convention. It, too, is one of that core body of rights that cannot be suspended or derogated under any circumstance.

As the American Convention has established, the right to humane treatment includes every person’s right to have his or her physical, mental and moral integrity respected. For their part, the Basic Principles provide that whenever the use of firearms is unavoidable, law enforcement officials are to “[m]inimize damage and injury.”^{99/}

The right to humane treatment is closely related to the right of the sick and injured in situations of violence to receive medical attention. Here, the Basic Principles provide that law enforcement officials shall ensure “that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”^{100/} The Court has framed the relationship between the lack of medical attention as a component of the right to health and the nonderogable right to personal integrity as follows:

Lack of adequate medical assistance could be considered per se a violation of Articles 5(1) and 5(2) of the Convention depending on the specific circumstances of the person, the type of disease or ailment, the time spent without medical attention and its cumulative effects.^{101/}

^{96.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principle 5(a).

^{97.} *Ibid*, Principle 9.

^{98.} Human Rights Committee, General Comment No. 6, paragraph 4.

^{99.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principles 5 (b) and (c). See also *Declaration of Minimum Humanitarian Standards (Turku Declaration)*, adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/ Åbo (Finland), November 30 to December 2, 1990, and subsequently revised at a meeting at the Norwegian Institute of Human Rights held in Oslo (Norway) on September 29-30, 1994, articles 12 and 13.

^{100.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principle 5(b) and (c). See also *Declaration of Minimum Humanitarian Standards (Turku Declaration)*, adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/ Åbo (Finland), November 30 to December 2, 1990, and subsequently revised at a meeting at the Norwegian Institute of Human Rights held in Oslo (Norway) on September 29-30, 1994, articles 12 and 13.

^{101.} Inter-American Court of Human Rights. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 103.

Another aspect of the right to humane treatment protected under the American Convention is the right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment. The Code of Conduct expressly provides that:

[n]o law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.^{102/}

The rights of persons deprived of liberty to be treated with respect for the dignity inherent in the human person, and to decent conditions of detention are also protected under the nonderogable right to humane treatment recognized in the American Convention. In situations of internal violence, particular care must be taken to ensure that the circumstances attending the violence do not lead to inadequate and improper detention conditions. As the Court has written, the State has a special duty as guarantor of the rights of those deprived of their liberty, given the control or authority that prison officials have over those in their custody and inasmuch as the particular circumstances that attend incarceration make it impossible for those deprived of their liberty to satisfy, by their own means, a number of the most basic needs essential for one to live a decent life.^{103/} The Court has held that the unavoidable consequence of any deprivation of liberty is the impairment of other human rights; hence, such impairment must be strictly minimized and *the State must ensure that the manner and method used to carry out the measure do not subject the detainee to more suffering and hardship than detention inevitably involves and that, the practical demands of imprisonment notwithstanding, his or her health and wellbeing are properly attended.*^{104/}

To protect the right to humane treatment in the case of persons deprived of liberty, the Basic Principles provide that in their relations with persons in custody or detention, law enforcement officials (i) shall not use force except when strictly necessary to maintain security and order within the institution or when personal safety is threatened, and (ii) shall not use firearms, except when strictly necessary to protect life, either in self-defense or in the defense of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention who poses the danger of perpetrating a particularly serious crime involving a grave threat to life.^{105/}

For its part, the Code of Conduct requires that law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.^{106/} Here, the Court has held that:

Lack of adequate medical assistance does not satisfy the minimum material requisites of a treatment consistent with the human condition as stipulated in Article 5

^{102.} *Code of Conduct for Law Enforcement Officials*, adopted by the United Nations General Assembly in resolution 34/169 of December 17, 1979, Article 5.

^{103.} Inter-American Court of Human Rights. *Case of Neira Alegría et al.*, Judgment of January 19, 1995, Series C No. 20, paragraph 60; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 87.

^{104.} ———. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 86.

^{105.} *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, approved by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, August 27 to September 7, 1990, Principles 15 and 16.

^{106.} *Code of Conduct for Law Enforcement Officials*, adopted by the United Nations General Assembly in resolution 34/169 of December 17, 1979, Article 6.

of the American Convention. The State has the duty to provide detainees with regular medical check-ups and care and adequate treatment whenever necessary.^{107/}

A number of instruments and a body of case law have been developed on the subject of the rights of persons deprived of liberty. The Standard Minimum Rules for the Treatment of Prisoners,^{108/} the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,^{109/} the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas^{110/} and other instruments establish detailed standards to provide States with guidance on what constitutes humane treatment and the proper detention conditions for persons deprived of liberty. These instruments prescribe that a register shall be kept of persons deprived of liberty; that separate categories of prisoners must be established; that persons deprived of their liberty are to be provided with the means for their personal hygiene as well as food, physical exercise and medical services; they must be accommodated in spaces that are well ventilated and have adequate lighting; next of kin are to be notified in the event of an inmate's death, illness or transfer, and inmates are not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. The Court has written that overcrowding in prisons constitutes cruel, inhuman and degrading treatment and therefore a violation of the right to humane treatment^{111/} and that

poor physical and sanitary conditions in detention centers, and inadequate lighting and ventilation can be violations of Article 5 of the American Convention, depending on their intensity, the length of the detention and the personal health of the person who must endure those conditions, since the suffering they may cause can exceed the hardship and suffering that incarceration will inevitably cause and leave those so incarcerated with a sense of humiliation and inferiority.^{112/}

(iii) *Right to personal liberty*

Situations of internal violence occasionally result in large-scale detentions.

Article 7 of the American Convention protects every person's right to personal liberty and security. It provides that no one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto, and no one shall be subject to arbitrary arrest or imprisonment. The Court's interpretation of that article is as follows:

This provision contains specific guarantees against illegal or arbitrary detentions or arrests, as described in clauses 2 and 3, respectively. Pursuant to the first of these provisions, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the

^{107.} Inter-American Court of Human Rights, *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 102.

^{108.} Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the United Nations Economic and Social Council in its resolutions 66 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977.

^{109.} Adopted by the United Nations General Assembly in its resolution 43/173 of December 9, 1988.

^{110.} Approved by the IACHR at its 131st regular session, held March 3 to 14, 2008.

^{111.} Inter-American Court of Human Rights, *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, paragraph 91.

^{112.} *Ibid*, paragraph 97.

fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.^{113/}

The Human Rights Committee has observed that if so-called preventive detention is used for reasons of public security, it must not be arbitrary and must be based on grounds and procedures established by law.^{114/}

It is also worth noting that the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas state that, in accordance with national legislation and international law, regular visits and inspections of places of deprivation of liberty shall be conducted by national and international institutions and organizations in order to ascertain, at any time and under any circumstance, the conditions of deprivation of liberty and the respect for human rights. The Principles and Best Practices also stipulate that its provisions shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1997, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.^{115/}

(iv) Right to privacy and protection of domicile

Situations of internal violence also occasionally result in intrusions into the domicile or property of the persons involved.

Article 11 of the American Convention prohibits all arbitrary or abusive interference with the private lives of persons, and lists various realms of private life, such as family, home and correspondence. The Court has written that “the sphere of privacy is characterized by being exempt and immune from abusive and arbitrary invasion by third parties or public authorities.” The foregoing notwithstanding, the right to privacy is not absolute and is, therefore, subject to state-imposed restrictions provided that any state interference in private life is neither abusive nor arbitrary; therefore, any such restrictions must be provided by the constitutions and laws, pursue a legitimate end and be those necessary to preserve a democratic society.^{116/}

(v) Right to effective judicial protection

The Inter-American Court has held that the general obligations of States include a positive duty to guarantee the rights of all individuals within their jurisdiction. This includes the duty to take all necessary measures to remove any impediments that would prevent individuals from enjoying the rights the Convention guarantees. Any state that tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is in violation of Article 1(1) of the Convention. The State also has the general obligation established in Article 2 of the Convention, to adapt its domestic laws to the provisions of the American Convention so as to ensure the rights protected therein. That Article 2 obligation includes the enactment of laws and the development of practices conducive to the effective observance of the rights and freedoms recognized in the Convention, and the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the Convention.^{117/} This rapporteurship, therefore, is offering a proposal which it believes would

^{113.} Inter-American Court of Human Rights, *Case of Gangaram Panday*. Judgment of January 21, 1994. Series C. No. 16, paragraph 47.

^{114.} Human Rights Committee, General Comment No. 8, Article 9 - *Right to liberty and security of persons* (Art. 9), 16th session (1982).

^{115.} *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, (document approved by the Inter-American Commission on Human Rights at its 131st regular session, held March 3 to 14, 2008). Principle XXIV.

^{116.} Inter-American Court of Human Rights. *Case of Escher et al. v. Brazil*, Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C. No. 200.

^{117.} ———. *Case of Yvone Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C. No. 180. *Case of Albán Cornejo et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C. No. 171. *Case of Hilaire, Constantine and Benjamin et*

be an effective means of avoiding arbitrary conduct in detentions and arrests and in any investigative techniques and practices that may infringe an individual's right to privacy. It is proposing that the States introduce controls to ensure that police and prosecutorial authorities are operating within the law when they authorize arrests or infringements of a person's privacy rights or when, in urgent cases or cases of *flagrante delicto*, they confirm such arrests or infringements after the fact. Such controls should test for the presence of the conditions of necessity that would justify such restrictive measures and, wherever necessary, should be entrusted preferably to judicial authorities rather than the authorities in charge of the investigation. In any event, an effective judicial recourse should always be available to confirm that any arrests or privacy infringements are not arbitrary.

V. CONCLUSIONS AND RECOMMENDATIONS

1. Situations of internal violence that do not qualify as armed conflict, namely internal tensions and disturbances, are governed by international human rights law and domestic law.

2. Under the American Convention, only in time of war, public danger, or other emergency that threatens its independence or security may a State party suspend certain rights, and then only as an exception. However, if the suspension is to be valid, it must be done strictly in accordance with the requirements set forth in Article 27 of the American Convention. Otherwise, all human rights remain in force and must be respected.

3. Democracy is indispensable for the effective exercise of fundamental freedoms and human rights. The main purpose served by regulating the use of force is to protect the nonderogable right to life. In a democratic State, the State has sole claim on the legitimate use of force; the State uses this monopoly on the legitimate use of force to maintain the order, rule of law, freedom and public peace necessary for social co-existence.

4. The State has the right and the obligation to provide protection when the security of persons living within its territory is threatened by situations of violence. In practice, this may include the use of lethal means.

5. In a democratic State, the use of force is reserved exclusively for law enforcement officials, which include all officers of the law who exercise police powers, including military authorities and State security forces in those countries where they exercise police powers. This does not preclude acknowledging that in exceptional cases individuals are authorized to use force in legitimate defense. While States may legitimately resort to their military authorities to perform these functions, such a measure must always be exceptional in nature, used only when the police or security forces do not have the means necessary to cope with a situation. It must be a temporary default measure until the police and security forces shore up their own capacities. In such cases, the armed forces should be acting in support of and under the orders of the elected civilian authorities.

6. The legitimate and exclusive authority of the State to use force is not an unlimited authority. States must have adequate laws and clear guidelines to ensure that the use of force by law enforcement officials is done with complete respect for human rights and in compliance with the relevant international instruments. States must ensure that their domestic laws and regulations are compatible with the principles and standards of international human rights law that regulate the use of force in situations of internal violence and, to that end, must promote a review and amendment of the existing body of law and/or the adoption of specific laws and regulations on the subject.

7. When law enforcement officials use force, they must at all times respect the principles of legality, necessity and proportionality. The use of firearms should be considered an extreme measure.

al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C. No. 94; *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C. No. 100, and *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C. No. 101.

8. States must properly plan their use of force and provide law enforcement officials with the training, equipment and resources they need to use force in a manner that is fully respectful of human rights and the relevant international instruments, and that serves to keep them safe.

9. States must control and review the use of force. When States learn that their security agents have used firearms with lethal consequences, they have an obligation to initiate, *ex officio* and without delay, a serious, independent, impartial and effective investigation. Persons affected by the use of force and firearms or their legal representatives or heirs, must have access to an independent process, including a judicial process through which those responsible for the unlawful use of force are punished.

10. States have an obligation to protect the lawful and peaceful exercise of the right of assembly and freedom of association. This obligation entails positive measures, including the design of operating plans and procedures, training and equipment for law enforcement personnel, all with a view to ensuring that demonstrations take place peacefully.

11. The only restrictions that States can impose on the right of assembly and freedom of association are those recognized by the relevant international instruments.

12. States have a duty to prevent situations of violence caused when the right of assembly is abused or unlawfully exercised. When dispersing demonstrations that are unlawful but nonviolent, law enforcement officials are to avoid the use of force or, where this is not possible, are to keep the use of force to the absolute minimum necessary. When dispersing violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary, as a last resort and when strictly necessary to protect life.

13. As part of the State's obligation to protect and guarantee the human rights of those subject to its jurisdiction, it has an obligation to exert effective control on situations of violence caused by organized crime and to prevent and punish the crimes committed by organized criminal groups.

14. States must design, implement and constantly evaluate public policies on citizen security and ensure that they are comprehensive, sustainable and crafted from a human rights perspective. These policies must feature legislative measures and comprehensive national strategies to prevent and combat organized crime. The States must be able to protect and guarantee human rights amid situations of violence engendered by organized crime. Hence, they must take these situations into particular account when reinforcing the legitimacy and efficacy of their law enforcement personnel by providing them with training, supplying them with infrastructure and equipment, and other measures.

15. The States must ensure that the human rights of persons involved in or affected by situations of internal violence are adequately protected. States must ensure that law enforcement officials respect the right to life of those under their jurisdiction.

16. The States must provide and facilitate humanitarian assistance to persons affected by situations of internal violence. States must grant humanitarian organizations all the facilities necessary to enable them to carry out their humanitarian mission and have access to the population and provide humanitarian aid; States must refrain from obstructing the work of these organizations and respect and protect humanitarian aid workers and their facilities and means of transportation. Accordingly, this Committee urges the member States of our organization to authorize the fullest possible collaboration of humanitarian organizations to mitigate the human suffering caused by such violent situations.

17. States must guarantee protection of the right to life of persons involved in or affected by situations of internal violence. They must take care to ensure that the law enforcement personnel who are authorized to use force are respectful of the right to life of the persons under the States' jurisdiction. States must have a framework of laws and a judicial system that are adequate for these purposes. The States have an obligation to adopt concrete and effective measures and procedures to prevent disappearances and thoroughly investigate cases of persons who went missing or disappeared under circumstances that may suggest a violation of the right to life.

18. The States have an obligation to guarantee the right to humane treatment of persons involved in or affected by situations of internal violence. They have a duty to provide medical attention to persons injured or otherwise affected by these situations. The States may not inflict, instigate or tolerate any act of torture or cruel, inhuman or degrading treatment or punishment. They must also respect the rights that persons deprived of liberty have to be treated with respect for the dignity inherent in the human person and to decent conditions of detention, as required under the applicable international instruments.

19. The States must respect the right to personal liberty of persons involved in or affected by situations of internal violence. A detention done for reasons of public safety must not be arbitrary and must be based on grounds and procedures established by law.

20. The States must respect the privacy rights of individuals, their families, their homes or private correspondence. Any restrictions to this right must be provided for in the constitutions and laws, pursue a legitimate end and be those necessary to preserve a democratic society.

21. The States must make provision for effective judicial remedies that ensure that the measures taken by police and prosecutorial authorities are respectful of the individual rights protected under the Convention. It is therefore recommended that controls be established to ensure that detentions and infringements of privacy rights are done according to law.

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VI.