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Obligation of States to Adapt Their Domestic Legislation to the Inter-American Standards of Human Rights



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TABLE OF CONTENTS

INTRODUCTION	9
A. <i>Objective</i>	9
B. <i>Methodology</i>	10
C. <i>Structure</i>	11
CHAPTER 1 THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS	15
<hr/>	
A. <i>Background Information</i>	15
B. <i>Basis of the Obligation of States to Adapt their Domestic Legislation to the Inter-American standards of Human Rights</i>	17
C. <i>Scope of Application</i>	20
CHAPTER 2 DEVELOPMENTS OF THE IACHR ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE HUMAN RIGHTS STANDARDS OF THE INTER-AMERICAN SYSTEM	25
<hr/>	
A. <i>Inter-American Human Rights Instruments</i>	25
B. <i>The Obligation to Adapt Domestic Legislation to the American Convention</i>	31
C. <i>The Obligation of every Public Authority</i>	39
D. <i>The Obligation to Adapt Domestic Legislation Exercised Ex Officio</i>	42
E. <i>The obligation to Adapt Domestic Legislation by Subnational Jurisdictions</i>	44
CHAPTER 3 IMPLEMENTATION OF THE OBLIGATION OF THE STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS	51
<hr/>	
A. <i>With regard to Special Courts for Human Rights Violations</i>	57
B. <i>With Respect to Amnesty Laws and Provisions</i>	59
C. <i>With Regard to Regulations on Death Penalty</i>	67
CHAPTER 4 CONCLUSIONS	75
<hr/>	
REFERENCES AND REPORTS	77

INTRODUCTION

INTRODUCTION

A. *Objective*

1. The Inter-American Commission on Human Rights (hereinafter the “IACHR”, the “Commission” or the “Inter-American Commission”) is a principal and autonomous body of the Organization of American States (OAS), whose mission is to promote and protect the observance and defense of human rights, and to serve as a consultative body of the OAS in the matter. It fulfills these duties through several mechanisms: visiting countries, drafting reports on the human rights situation in a given country or on a specific thematic issue, adopting precautionary measures or requesting provisional measures from the Inter-American Court of Human Rights (hereinafter the “Inter-American Court” or the “Court”), processing and reviewing petitions through the system of individual cases, and providing States with technical advice and cooperation services.
2. The countries in the region have made significant steps by ratifying the inter-American instruments and by incorporating the human rights standards developed within the framework of the inter-American system of protection and promotion of human rights. However, the need to strengthen the democratic institutions of the States and to reinforce the capabilities to implement public policies with a human rights perspective that can create concrete impacts on the enjoyment and exercise of these rights remains being a challenge in all the countries of the region.
3. For the effectiveness of the inter-American system of human rights, it is required not only that the victims of human rights violations have full access to the mechanisms of defense and protection available at the IACHR and the Inter-American Court, but also that domestic authorities incorporate and duly apply the inter-American standards. In this regard, the obligation to incorporate such standards derives, *inter alia*, from the preamble to the American Declaration, Article 2 of the American Convention, as well as Articles 26 and 27 of the Vienna Convention on the Law of Treaties and the fundamental principles of the OAS Charter.
4. In this way, States must specify the obligation to guarantee human rights at the domestic level by verifying that their national regulations and practices are aligned with their inter-American obligations in the field of human rights. For the Inter-American Commission, in international law, particularly in the inter-American human rights system, the obligation of States to adapt domestic legislation is based on the human rights conventions and treaties to which they are party.
5. The IACHR, in fulfillment of its mandate to provide advice and technical assistance to States, considers it essential to develop instruments and tools that are useful to

both the States and the users of the system, civil society organizations, academia, social movements and the Commission itself.

6. As part of the 2017-2021 Strategic Plan of the IACHR¹, Strategic Objective 3 aims at promoting democracy, human dignity, equality, justice and fundamental freedoms based on an active contribution to the strengthening of state institutions and human rights public policies in accordance with the inter-American norms and standards, and to the development of the capacities of social and academic organizations and networks to act in defense of human rights. This compendium on the obligation of States to adapt their domestic regulations to the inter-American standards is one of the actions carried out by the Commission to improve and strengthen the public policies, regulations, practices and initiatives of the countries in the region, so as to improve the protection of fundamental rights. In this regard, this compendium is an updated and easily accessible tool of reference for state actors, civil society and the IACHR's Executive Secretariat itself on an essential topic for the region.
7. In this compendium, the IACHR gathers and systematizes the relevant extracts from the reports published on the subject through its different mechanisms. It is important to emphasize that this document is not a document of exhaustive historical analysis, but rather systematizes the main standards regarding the most recurrent or relevant themes, without pretending to cover all situations and exceptions. It is also important to note that the quotations from the reports of petitions and cases, thematic or country reports, do not necessarily reflect the legal situation of the case cited with respect to the responsibility of the State concerned. With this compendium, the Commission intends to provide a tool for strengthening the capacities of State agents, civil society and other relevant sectors such as the academia and social movements at both the local level and at the level of the inter-American system, to disseminate the standards and recommendations of the IACHR regarding the obligation of States to adapt their domestic legislation and thereby contribute to the incorporation of inter-American human rights law in the regulations, practices and public policies of the region.

B. Methodology

8. The present compendium was prepared by reviewing, systematizing and analyzing the standards developed by the IACHR regarding the obligation of States to adapt their domestic legislation to inter-American standards of human rights. In this regard, the compendium draws upon the historical work done by the Commission while fulfilling its mandate through the incorporation of certain relevant extracts developed by the Commission.
9. In relation to the sources of information, this compendium included a review of the materials prepared and published by the IACHR. In particular, thematic and country reports were examined, together with substantive decisions made on cases

¹ IACHR. [Strategic Plan 2017/2021](#). OAS/Ser.L/V/II.161 Doc. 27/17.

submitted to the inter-American protection system, including reports published by the IACHR pursuant to Article 51 of the American Convention on Human Rights (hereinafter ACHR) and reports on cases submitted to the Inter-American Court pursuant to Article 61 of the ACHR and Article 45 of the IACHR's Rules of Procedure. The annual reports published by the IACHR in accordance with Article 59 of the Rules of Procedure were also reviewed.

10. In order to present an updated and thorough instrument, the compendium was prepared by reviewing reports published by the IACHR. During the review of the reports, those standards deemed relevant were systematized, and relevant extracts were collected for each section depending on their source and scope. Although the systematized information is not fully comprehensive, the examples cited are those that have been considered most relevant for the stated purpose of this compendium, and therefore additional citations are included to expand the information collected in this field.

C. Structure

11. This compendium is made up of three chapters, which present the most relevant standards in this field. The first section presents the objectives, the structure and the methodology used for systematizing the standards on the obligation of States to adapt their domestic legislation to human rights standards.
12. Chapter I introduces conceptual notions regarding the obligation of States to adapt their domestic legislation to the relevant legal bases. It also explores the fields of application and the main background information on this obligation.
13. Chapter II of the compendium presents the development of cases and themes for which the Commission has pronounced itself on the obligation of States to adapt their domestic legislation to human rights standards. Cases and themes are classified and ordered according to the elements comprised in this obligation.
14. Chapter III includes relevant extracts from published reports in which the Commission has explored the exercise and the application of the obligation of States in the region to adapt their domestic regulations to the international commitments in the field of human rights. Finally, a number of relevant conclusions are drawn.

CHAPTER 1

THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER- AMERICAN STANDARDS OF HUMAN RIGHTS

THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS

15. In this first section of the compendium, the Commission sets out a number of general considerations on the obligation of States to adapt their domestic legislation to the inter-American standards of human rights. In this regard, it contains an overview of this obligation and presents the main bases, the fields of application and general background information, as well as a series of conceptual clarifications relevant to the subject.

A. *Background Information*

16. In recent years, the region has witnessed a growing interaction between international human rights law and the domestic law of the States. This relationship can be seen in the incorporation of international law into domestic law and, in turn, in the influence of domestic law on the contents and scope of internationally recognized rights.
17. The obligation of States to adapt their domestic legislation to the standards of the Inter-American Human Rights System (hereinafter IAHR) has been part of the historical recommendations made by the IACHR through its pronouncements concluding that the provisions of domestic law contrary to the American Convention have no legal effect. In its first reports, the Commission referred to this matter on the basis of the incompatibility of amnesty laws with the conventional obligations assumed by States in cases of serious human rights violations. The Commission has therefore concluded that these laws are contrary to the obligations to investigate and punish, contained in various inter-American instruments, with respect to serious violations of human rights in the cases of Argentina², Uruguay³, Guatemala⁴ or El Salvador⁵.

² IACHR. Annual Report of the IACHR 1992-1993 [Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 v. Argentina](#), Report No. 28/92 of October 2, 1992.

³ IACHR. Annual Report of the IACHR 1992-1993 [Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 v. Uruguay](#), Report No.29/92 of October 2, 1992.

⁴ IACHR. [Annual Report 1996](#), Chapter V, Human Rights Developments in the Region, section on Guatemala.

⁵ IACHR. Annual Report of the IACHR 1992-1993 [Case 10.287](#), El Salvador Report No. 26/92 of September 24, 1992.

18. The exercise and developments that the IACHR has carried out on the obligation of States to adapt their domestic legislation, policies and practices to the inter-American standards has gone beyond the inter-American legal body of human rights. Thus, in exercising its powers and through its various mechanisms, the IACHR has expressed its opinion on the scope of this obligation in its individual case reports, country reports, thematic reports and annual reports.
19. On its part, the obligation of the States to adapt their domestic legislation, policies and practices to the inter-American standards was developed as part of the concept of “control of conventionality” coined by the Inter-American Court of Human Rights as the judicial body of the inter-American system in the judgement of the case of *Almonacid Arellano v. Chile* in 2006, where it established the following:

124. The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of “conventionality control” between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.⁶
20. According to its powers, established in Article 64 of the American Convention on Human Rights, the IACHR may request the interpretation of the Convention or other human rights treaties to the Court, and for its part, the Court may issue opinions on the compatibility between the domestic laws of the States and the international instruments. In this regard, whenever the Court opens an advisory opinion procedure, it requests the IACHR to send its considerations. This type of action promotes the articulation between the bodies of the system and consolidates the progressive development of inter-American human rights law and the obligations of the States in the areas in question.⁷
21. In this way, through the mechanisms of each body of the inter-American system, the contents of the obligation to adapt domestic legislation to the inter-American standards has been consolidated, so that this obligation has a comprehensive scope of all legal situations that may arise in the States of the hemisphere.

⁶ IACHR Court. *Case Almonacid Arellano et al. v. Chile*. Preliminary objections, merits, reparations and costs. Judgement of September 26, 2006. Series C No. 124.

⁷ See [Observations of law presented by the Inter-American Commission on Human Rights on the request for an advisory opinion presented by the State of Ecuador](#).

B. Basis of the Obligation of States to Adapt their Domestic Legislation to the Inter-American standards of Human Rights

22. The founding instrument of the inter-American human rights system, the American Declaration of the Rights and Duties of Man (ADRDM), reads:

The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable.⁸

23. In addition, the preamble to the American Convention on Human Rights (ACHR) states that the inter-American system of human rights is based on the principle of complementarity,⁹ and Member States are primarily responsible for the prevention of human rights violations and the guarantee of the effective enjoyment of human rights in favor of any person under their jurisdiction.
24. The obligation to respect and guarantee human rights, and to adapt domestic legislation to the inter-American standards, are the norms that determine the linkage and articulation between inter-American law and domestic law. By adhering to the instruments that make up the Inter-American system for the protection of human rights, Member States assume the obligation to ensure that inter-American standards are observed within their organs when the provisions of domestic law are somehow contradictory to the inter-American law.
25. The obligation of States to adapt their domestic legislation to the inter-American human rights standards contributes to the effectiveness of the inter-American instruments. With respect to the American Convention, the obligation is stated specifically on Articles 1.1, 2 and 29 thereof. Article 1.1 of the Convention provides for:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex,

⁸ American Declaration of the Rights and Duties of Man, Bogotá, 1948.

⁹ According to the preamble to the American Convention, the international protection of the essential rights of the human person is “reinforcing or complementing the protection provided by the domestic law of the American states.”

language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 2 states:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Article 29 of the same instrument establishes:

No provision of this Convention shall be interpreted as: a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

26. The need to adapt domestic legislation to international obligations arises from the principles of public international law, as well as from the Vienna Convention on the Law of Treaties.¹⁰ In this sense, the States must comply in good faith with the treaties to which they are parties, taking into account their object and purpose, refraining from invoking provisions of domestic law as a basis for non-compliance with their international commitments.¹¹ In this regard, the Commission recalls that the object and purpose of the American Convention is the protection of human

¹⁰ See Vienna Convention on Law of Treaties, from May 23, 1969, which entered into force on January 27, 1990. This Convention explores said principles as follows:

Article 26. '*Pacta sunt servanda*'. Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

¹¹ See IAHR Court. *Case of Almonacid Arellano et al. v Chile*. Preliminary objections, merits, reparations and costs. Judgement of September 26, 2006. Series C No. 124, paragraph 19 supra: IAHR Court. *Case of Boyce et al. v. Barbados*. (2007), IAHR Court. *Case of Radilla Pacheco v. Mexico* (2009), IAHR Court. *Case of Cabrera Garcia and Montiel Flores v. Mexico* (2010), IAHR Court. *Case of Members of the Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala* (2016), among others.

rights, which is why it is always required to interpret it in the sense that the regime for the protection of human rights acquires all its useful effect.¹²

27. Hence, the exercise of this obligation can be understood as an operation necessary to make effective the rights and freedoms recognized in the regulations of the inter-American system, through the removal of those legal obstacles that prevent guaranteeing the effectiveness of the standards; this ultimately ensures the full and free exercise of the rights recognized in inter-American instruments.
28. According to the jurisprudence of the inter-American system, this obligation requires taking two types of measures. On the one hand, the rules and practices of any nature that violate the guarantees provided for in the inter-American instruments or which do not recognize the rights recognized therein or impede their exercise shall be suppressed. On the other hand, standards and practices leading to the effective observance of such guarantees shall be developed. The first measure can be implemented by reforming, repealing or annulling the norms or practices with the aforementioned scope, as appropriate.¹³ The second measure obliges States to prevent the recurrence of human rights violations; therefore, States must take all the necessary legal, administrative or other measures to prevent similar events from happening again in the future.¹⁴ On certain occasions, the duty to adopt provisions of domestic law has obliged States to criminalize certain conducts.¹⁵
29. Thus, the obligation of guarantee is translated into the obligation that the State assumes to organize the entire apparatus of public power to assure the full and effective enjoyment and exercise of the rights recognized in the inter-American instruments once they enter into force for the State Party. This is independent of the system of normative hierarchies foreseen in the local constitutions and laws. In other words, the State must promote effective conditions that allow the enjoyment and exercise of the rights enshrined in the inter-American instruments and cannot invoke provisions of domestic law in order not to comply with the obligations undertaken.
30. In this way, the obligation to adapt domestic legislation to human rights standards includes the duty of the officials of each State to integrate the norms contained in the inter-American instruments and the standards developed by the organs of the system, in compliance with their own obligations which are part of the adopted conventions.

¹² Report of the Inter-American Commission on Human Rights (Art. 51 American Convention on Human Rights), Advisory Opinion OC-15/97, November 14, 1997, I / A Court H.R. (Series A) No. 15 (1997).

¹³ This is, without distinctions regarding special jurisdictions for the trial according to roles and functions, particularly when it comes to state agents prosecuted for human rights violations. See chapter III.

¹⁴ IAHR Court. [Case of Fornerón and daughter v. Argentina](#). Merits, reparations and costs. Judgement of April 27, 2012. Series C No. 242, paragraph 131. Quoting. See also IAHR Court. [Case of Salvador Chiriboga v. Ecuador](#). Preliminary objections and merits. Judgement of May 6, 2008. Series C No. 179, paragraph 122, and IAHR Court. [Case of Fontevecchia and D'Amico v. Argentina](#). Merits, reparations and costs. Judgement of November 29, 2011. Series C No. 238, paragraph 85.

¹⁵ See IAHR Court. [Case of Ibsen Cárdenas and Ibsen Peña v Bolivia](#). Judgement of September 1, 2010. Merits.

C. Scope of Application

31. The obligation to adapt domestic legislation to the human rights standards consists of the verification carried out by all state agents regarding the adequacy of domestic legal norms practices to the inter-American instruments on human rights and the standards developed by the organs of the inter-American system for the protection of human rights.
32. In the domestic sphere, it must be carried out within the framework of the power of each authority, by all state agents, in particular by justice operators when analyzing the compatibility of the internal norms with the inter-American instruments. It is noteworthy that every state official is obliged to interpret the internal rules of the State in such a way that they are compatible with the international obligations undertaken, which guarantee the effectiveness of human rights. In this way, the exercise of the obligation by the national authorities has an important preventive function with respect to human rights violations.
33. In relation to the application at the regional level, the organs of the inter-American system, within the framework of their mandate, can make adjustments when considering general situations or hearing individual cases. The Commission, within the framework of its mandate regarding individual cases and complaints, carries out an adequacy control regarding state actions or omissions, which are submitted to it in particular circumstances. Furthermore, the Inter-American Court also carries out a conventionality control in the cases that are submitted to it, provided that the States Parties to the case have recognized or recognize said jurisdiction. In this way, the organs of the inter-American system, when hearing particular situations or cases, monitor the compatibility of state norms with the inter-American instruments.
34. The Commission has emphasized the capacity of state institutions to influence, based on their decisions and resolutions, on the proper interpretation of rules and regulations, the allocation of resources and the inclusion of individuals or groups within a public program or policy with an inter-American human rights perspective. In order to verify the need for adaptation, for example, public policies and programs, or other specific actions, have been implemented to repair human rights violations. In this way, all state authorities must monitor their own actions or omissions with respect to inter-American norms to ensure that by exercising their public functions they do not compromise the international responsibility of the State.
35. Regarding the scope of international responsibility, if state agents or officials enforce a law or rule that violates inter-American human rights instruments, they may compromise the responsibility of such State. This also derives from the principle of international law, included in international human rights law, since

every State is internationally responsible for acts or omissions of any of its powers or organs regarding the violation of rights enshrined internationally.¹⁶

36. When a State has ratified an international treaty such as the American Convention, its judges, legislators and other state representatives are subjected to those instruments, which oblige them to ensure that the effectiveness of human rights treaties is not diminished or nullified by the application of laws contrary to its provisions, object and purpose. In other words, the organs of the State, within the framework of their respective competence, must exercise *ex officio* control between the internal rules and the inter-American instruments.¹⁷
37. In this way, it is possible to specify that the content and scope of the obligation to adapt domestic legislation implies verifying the compatibility of domestic rules and other practices with the inter-American human rights instruments and their applicable standards. Carrying out this control is an obligation that corresponds to every state authority within the scope of its competence and must be carried out *ex officio*, which includes the suppression of rules that oppose international commitments on human rights or the adaptation of its interpretation in accordance with said instruments, depending on the powers of each competent state authority.

¹⁶ IAHR Court. [Case of Ximenes Lopes v. Brazil](#). Judgement of July 4, 2006. Series C No. 149, paragraph 172; IAHR Court. [Case of Baldeón García](#). Judgement of April 6, 2006. Series C No. 147, paragraph 140.

¹⁷ IAHR Court. [Case of the Dismissed Congressional Employees \(Aguado Alfaro et al.\) v. Peru](#). Preliminary objections, merits, reparations and costs. Judgement of November 24, 2006. Series C No. 158.

CHAPTER 2

DEVELOPMENTS OF THE IACHR ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE HUMAN RIGHTS STANDARDS OF THE INTER-AMERICAN SYSTEM

DEVELOPMENTS OF THE IACHR ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE HUMAN RIGHTS STANDARDS OF THE INTER-AMERICAN SYSTEM

38. The IACHR has included in some of its reports the manner in which the judicial authorities of the States have exercised the obligation to adapt their domestic legislation to the inter-American standards and their relationship with the particular obligations derived from the various human rights instruments.

A. Inter-American Human Rights Instruments

39. The obligation to adapt domestic legislation must be carried out in accordance with international human rights obligations that are acknowledged in all the inter-American treaties on the subject, i.e. the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights, or Pact of San José; the Protocol related to the Abolition of the Death Penalty; the Additional Protocol to the American Convention, or Protocol of San Salvador, as well as other human rights treaties that have been adopted within the Organization of American States, such as, among others, the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, or Convention of Belém do Pará.
40. The following are a series of relevant extracts from reports published by the IACHR that account for the extent of the aforementioned obligation with respect to the inter-American human rights instruments.

Merits Reports

*Report No. 5/16 Forced Disappearances in Peru. Report on the Merits (Case 11.054: Teresa Díaz Aparicio; Case 12.224: Santiago Antezana Cueto; Case 12.823: Cory Clodolia Tenicela Tello); Report on Admissibility and Merits (Case 11.053: Wilfredo Terrones Silva, and Case 12.225: Néstor Rojas Medina) OAS/Ser.L/V/II.157 Doc. 9 April 13, 2016*¹⁸

221. Given that to date the Peruvian State has not modified the criminal law definition of forced disappearance set forth in Article 320 of the Criminal Code, through the mechanisms provided for in its legal system, the IACHR considers that Peru persists in its failure to carry out the obligation to adopt provisions of domestic law, as per Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons.¹⁹

*Report No. 3/16 Case 12.916 of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, Jose Ángel Alvarado Herrera and Others v. Mexico OAS/Ser.L/V/II.157 Doc. 7 April 13, 2016*²⁰

256. Inasmuch as the reforms had not yet been made at the time military justice considered the case, the Commission considers that

¹⁸ See IACHR Court. Case of Gudiel Álvarez *et al.* (“Diario Militar”) v. Guatemala. Merits, reparations and costs. Judgement of November 20, 2012. Series C No. 253, in which the following is stated:

330. In addition, this Court has established in its jurisprudence that when a State is party to international treaties such as the American Convention on Human Rights, the Inter-American Convention on Forced Disappearances, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará, these treaties are binding on all of its organs, including the Judiciary, whose members must ensure that the effects of the provisions of the said treaties are not impaired by the application of laws or interpretations contrary to their object and purpose. Judges and organs related to the administration of justice at any level are obliged to exercise *ex officio* control of “conventionality” between domestic law and the human rights treaties to which the State is party; evidently, within their respective spheres of competences and in keeping with the corresponding procedural regulations. In this task, the judges and organs related to the administration of justice, such as the Public Prosecution Service, must take into account not only the American Convention and other inter-American instruments, but also the Inter-American Court’s interpretation of them.

¹⁹ Between August 1992 and June 2003, the Inter-American Commission on Human Rights received five petitions, in which the State of Peru was considered internationally responsible for the alleged forced disappearances of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, which took place between 1984 and 1992.

²⁰ The [Inter-American Convention on Forced Disappearance of Persons](#) states the following:

Article III

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined. The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

the State failed to comply with its obligation to adopt domestic legal provisions compatible with Article 2 of the Convention.

257. In light of the foregoing considerations, the Commission concludes that by maintaining a legal framework that made it possible to apply military justice to the instant case, the State of Mexico violated the rights to a fair trial and judicial protection, specifically the right to have recourse to competent, independent and impartial authorities, pursuant to Articles 8.1 and 25.1 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, to the detriment of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza and Rocío Irene Alvarado Reyes, as well as their next of kin as set out in paragraphs 59-61 of this report. In addition, the Commission considers that the State failed to comply with its obligations under Article IX of the IACFDP.

*Report No. 50/16 Case 12.834. Undocumented Workers v. United States of America OAS/Ser.L/V/II.159 Doc. 59 November 30, 2016*²¹

73. The notion of equality set forth in the American Declaration relates to the application of substantive rights and to the protection to be given to them in the case of acts by the State or others [80]. The Commission has clarified that the right to equality before the law does not necessarily mean that the substantive provisions of the law have to be the same for everyone, but that the application of the law should be equal for all without discrimination [81]. In practice, this means that States have the obligation to adopt the measures necessary to recognize and guarantee the effective equality of all persons before the law; to abstain from introducing in their legal framework regulations that are discriminatory towards certain groups either on their face or in practice; and to combat discriminatory practices.

*Report No. 12/15 Case 11.458. Report on Admissibility and Merits. Jorge Vasquez Durand and Family v. Ecuador OAS/Ser.L/V/II.154 Doc. 6 March 23, 2015*²²

165. The IACHR has analyzed on several occasions the Ecuadorian regulation that determined that the habeas corpus had to be filed with the Mayor or President of the Council, an administrative authority responsible for deciding the legality of the arrest. And in that sense it has established for more than a decade that the State has

²¹ The case relates to the alleged forced disappearance of Nitza Paola Alvarado Espinoza, José Ángel Alvarado and Rocío Irene Alvarado Reyes, by state agents in Ejido Benito Juárez, state of Chihuahua, Mexico, as of December 29, 2009.

²² The case relates to the forced disappearance of Jorge Vasquez Durand by Ecuadorian state agents, on January 30, 1995, in the border town of Huaquillas. The forced disappearance began in the context of the international armed conflict between Ecuador and Peru, known as the Alto Cenepa conflict.

the duty to “take all the steps necessary within its domestic legislation to amend the law on habeas corpus [...] so that judges and not mayors shall decide the legality of an arrest, and take immediate steps to give effect to that amendment.”²³ In the instant case, although the appeal was not lodged based on the above mentioned reasons, it is important to emphasize that the same regulation was per se contrary to the American Convention and turned the habeas corpus into an ineffective and inappropriate remedy, according to the standards of the Convention.

166. Therefore, the IACHR concludes that although Ecuador adopted a new Political Constitution in 2008 and that the habeas corpus rules have been altered substantially,²⁴ the habeas corpus regulations in force in Ecuador for the events of the instant case contravened Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons.

*Report No. 34/13 Case 12.745. Merits. Rigoberto Tenorio Roca et al. v. Peru*²⁵

175. The fact that the forced disappearance of persons is classified as a special offense of its own in Article 320 of the Peruvian Criminal

²³ See IACHR. Report No. 66/01, Case 11.99. Daría María Levoyer Jiménez v. Ecuador, June 14, 2001, paragraphs 36 and 37, and IACHR. Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in Case 12.091, Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Iñiguez v. Ecuador. June 23, 2006, paragraph 165.c

²⁴ The text of Articles 89 and 90 of the Political Constitution of 2008 reads as follows:

Article 89: Habeas corpus proceedings are aimed at restoring the freedom of those who are being held illegally, arbitrarily or illegitimately by order of a state authority or any other persons, as well as to protect the life and bodily safety of persons in prison. Immediately after the proceedings are filed, the judge shall convene a hearing, which must be held within the following twenty-four hours, when the warrant of arrest and imprisonment with the legal formalities and the justifications of fact and law that substantiate the measure must be presented. The judge shall order the appearance of the imprisoned person, the authority in whose charge the imprisoned person has been committed, the court-appointed defense attorney and the person who had ordered or caused the imprisonment, depending on the case. If necessary, the hearing shall be held in the place of detention. The judge shall rule within twenty-four hours after completion of the hearing. In the event of illegitimate or arbitrary detention, release from prison shall be ordered. The ruling ordering release from prison shall be complied with immediately. If any kind of torture, inhumane, cruel or degrading treatment is confirmed, the order to release the victim, provide integral and specialized care, and provide measures that are alternative to imprisonment when applicable shall be issued. When the order for imprisonment has been issued in criminal proceedings, the appeal shall be made with the Provincial Court of Justice.

Article 90: When the place of incarceration is unknown and there are indications of interference by some state official or another agent of the State or persons who are acting on the basis of the latter's authorization, support or acquiescence, the judge must summon the top representatives of the National Police Force and the competent minister to a hearing. After listening to them, the measures needed to locate the person and those responsible for his/her imprisonment shall be adopted.

²⁵ The case relates to the alleged arrest of Rigoberto Tenorio Roca on July 7, 1984, as well as his transfer to a Navy barracks in the province of Huanta, department of Ayacucho; his whereabouts have not been known since then.

Code requires the competent judicial authorities to conduct a due control of conventionality in order to adjust its interpretation to the scope of Article III of the IACFDP, which expressly establishes that the aforementioned offense “shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.” In this regard, the IACHR considers that the prohibition of criminal prosecution of forced disappearances in relation to those persons who ceased to be state agents at the time the aforementioned criminal offense came into force in domestic law contravenes Article III of the IACFDP and the jurisprudence of the organs of the Inter-American Human Rights System.

176. Therefore, given that to date the Peruvian State has not modified the criminal law definition of forced disappearance set forth in Article 320 of the Criminal Code, through the mechanisms provided for in its legal system, the IACHR considers that Peru persists in its failure to carry out the obligation to adopt provisions of domestic law, as per Article 2 of the American Convention and Article III of the IACFDP.

The IACHR recommends to:

Adapt domestic legislation to the inter-American standards regarding the classification and prosecution of the crime of forced disappearance of persons, according to paragraph 176 of this report.

*Report No. 23/11 Case 12.519. Leopoldo García Lucero et al. v. Chile. March 23, 2011*²⁶

92. In conclusion, the Commission considers that since the State has not adopted legislative measures to adapt its legal system to the provisions of the American Convention and has maintained in force Decree Law 2.191, Chile is responsible for failing to comply with its obligation to guarantee human rights under Article 2 of the American Convention. The IACHR also considers that the absence of an effective and timely investigation by the State in relation to the alleged acts of torture committed against Mr. García Lucero, in a context of massive and serious human rights violations during the period of the military dictatorship in Chile, constitutes a violation of the rights enshrined in Article XVIII of the American Declaration and Articles 5.1, 8.1 and 25.1 of the American Convention in relation to the general obligations set forth in Article 1.1 of said treaty, and of the obligation set forth in Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. García Lucero and his next of kin.

²⁶ The case relates to the international responsibility of the State for the lack of investigation and comprehensive reparation for the various acts of torture suffered by Mr. Leopoldo Guillermo García Lucero after his arrest from September 16, 1973, to June 12, 1975, when he left the Chilean territory under a decree of the Ministry of the Interior.

*Admissibility and Merits Report No. 51/01 Case 9903. Rafael Ferrer-Mazorra et al. (Cubanos del Mariel) v. United States. April 4, 2001*²⁷

219. The Commission considers that the domestic legislation on which the petitioners' arrest was founded, as described above, it is in its essence contrary to the protections under Articles I and XXV of the Declaration since it does not recognize the petitioners' right to liberty in spite of them being physically present in the territory of the State. It prescribes a presumption of detention, rather than a presumption of freedom, and is therefore incompatible with the objective and purpose of Articles I and XXV of the Declaration, namely, to guarantee the freedom of the individual, except in exceptional circumstances justified by the State as legal and not arbitrary. Accordingly, the Commission considers that the treatment given to the petitioners under domestic law is per se inconsistent with their right to liberty enshrined in Article I of the Declaration and their right not to be arbitrarily deprived of their liberty, as set for in Article XXV of the Declaration.

Annual Reports

Annual Report 2010, Chapter IV: Cuba

346. The Inter-American Commission on Human Rights considers that criminal law should sanction crimes or possibly their frustrated attempts, but never the attitudes or presumptions of such acts. Dangerousness is a subjective concept on the part of the person who makes the assessment, and its vagueness is a factor of legal insecurity for the population since it creates the conditions for authorities to commit arbitrary acts. The Commission also considers it extremely serious that these regulations, which are in themselves incompatible with the principles established in the American Declaration, are applied by means of a summary proceeding to persons who have not committed any criminal but who, as per the discretion of the Cuban authorities, are considered dangerous to society, and thus deserving of severe security measures to deprive them of their freedom. In these cases, the State intervenes in the lives of citizens without limitations to maintain social peace and violates, without hesitation, the right to individual liberty.

348. In summary, the Commission calls on the Government of Cuba to bring its procedural rules into line with the international standards on due process so that those persons who come before or are brought before the courts for the determination of their rights and responsibilities may have minimal legal guarantees to mount their

²⁷ The case relates to the violation of Articles I, II, XVII, XVIII and XXV of the American Declaration of the Rights and Duties of Man, regarding the duration of the period in which the petitioners were detained in the United States and the alleged absence of adequate mechanisms to review the legality of their detention.

defense. The Commission considers that the existing legal framework does not comply with Cuba's international obligations in this respect. The full observance of the judicial guarantees enshrined in the American Declaration is based on an independent and autonomous judicial branch and on the enforcement of provisions that are clear and specific and do not allow for the discretionary abuse of authority.

B. The Obligation to Adapt Domestic Legislation to the American Convention

41. In accordance with the principles of international law, States cannot invoke their domestic law to cease to comply with the obligations assumed through international instruments. In particular, Article 2 of the American Convention establishes international obligations with respect to the domestic regulatory frameworks of States upon ratification of the American Convention. This standard provides for the need to bring the domestic legal order into line with the American Convention and other human rights treaties in the following terms:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

42. According to the provisions of that article, States Parties must adapt their domestic legal system by suppressing those rules that contravene the international obligations assumed, as well as by identifying those legislative and institutional measures that must be adopted, so that the rights established in the American Convention can be effectively respected and guaranteed.
43. Likewise, as indicated in paragraph 27 of this compendium, the IAHR Court has specified that the contents of these obligations, as appropriate, can be implemented by reforming, repealing or annulling the rules or practices that are contrary to the rights and obligations set forth in international instruments. In addition, States must take all the necessary legal, administrative and other measures to prevent similar events from happening again.²⁸

²⁸ IAHR Court. [Case of Fornerón and daughter v. Argentina](#). Merits, reparations and costs. Judgement of April 27, 2012. Series C No. 242, para. 131. Quoting. See IAHR Court. [Case of Salvador Chiriboga v. Ecuador](#). Preliminary objections and merits. Judgement of May 6, 2008. Series C No. 179, para. 122, and IAHR Court. [Case of Fontevecchia and D'Amico v. Argentina](#). Merits, reparations and costs. Judgement of November 29, 2011. Series C No. 238, para. 85.

Cases in the Court

*Application filed before the Court in Case No. 78/04. Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru, 2005*²⁹

25. On October 19, 2004, having examined the positions of the State and the petitioners, the Commission adopted Report on Merits No. 78/04, as set forth in Article 50 of the American Convention and Article 42 of the IACHR's Rules of Procedure. In that report, the IACHR concluded that the State of Peru was responsible for violating the right to judicial protection embodied in Article 25.1, the right to judicial guarantees embodied in Article 8.1 and the obligation to adopt domestic legal provisions contained in Article 2 of the American Convention, to the detriment of the 257 employees dismissed from Congress. The foregoing also constituted a violation by the State of the obligation imposed by Article 1.1 to respect and ensure the rights embodied in the Convention.

*Application filed before the Court in Case 11.663. Oscar Barreto Leiva v. Venezuela, October 31, 2008*³⁰

151. Throughout this application, the Commission has alleged that the Venezuelan State violated, to the detriment of Mister Barreto Leiva, several provisions of the Convention as a consequence of applying laws and regulations of the Constitution and of the Code of Criminal Procedure that were in force at the time.

152. Specifically, the Commission considers that Article 73 of the Code of Criminal Procedure and Article 60 of the 1961 Constitution, which established that the whole summary investigation phase was secret and closed to the accused and his attorney until an arrest warrant for the accused had been executed, are incompatible with the Convention because, as it has been noted throughout this report, they impede the effective exercise of judicial guarantees.

153. Likewise, the Commission considers that Article 82 of the Code of Criminal Enforcement, which established the general imposition of the precautionary measure of preventive detention so long as there were indications of criminal responsibility, is incompatible with Article 7 of the American Convention which, just as it has been interpreted by the organs of the inter-American system, establishes

²⁹ The case relates to a group of 257 workers who were dismissed from the National Congress of the Republic of Peru and who belonged to a group of 1117 workers who were dismissed from the same institution as per Congress Resolutions of December 31, 1992.

³⁰ The case relates to the criminal proceeding in which Mr. Oscar Enrique Barreto Leiva was sentenced to one year and two months in prison for crimes against public property, as a result of his actions while serving as Director General, Department of Administration and Services of the Ministry of the Secretariat of the Presidency of the Republic, in 1989.

the purely procedural objectives of deprivation of liberty under the measure of preventive detention which, as it has been reiterated, must be the exception and not the rule.

154. The Commission notes and requests that the Court find that, although this legal framework was replaced by the 1999 Constitution and by the Organic Code of Criminal Procedure of 1998, the fact that the victim was sanctioned by laws that were incompatible with the Convention during the course of the proceedings against him violated the obligation to adopt domestic legal remedies enshrined in Article 2 of the American Convention.³¹

*Application filed before the Court in Case 12.450 of Eduardo Kimel v. Argentina*³²

150. But even if the legislation under consideration in the present case had not been applied, such a fact would not be sufficient to comply with the requirements set forth in Article 2 of the American Convention. First, this is because, as stated in the preceding paragraphs, Article 2 imposes a legislative obligation to suppress any rule in violation of the American Convention and, second, because the criterion of domestic courts may change and they may choose to apply again a provision that remains in force nationally.³³

151. For the foregoing, the Commission requests the Court to declare that Argentina has violated its duty to adapt domestic legislation to the object and purpose of the American Convention as a result of keeping in full force and effect provisions that unreasonably restricted the free circulation of opinions on the official acts of public authorities, as established in Article 2 of the Convention; the State also violated its obligation to ensure the exercise of the right to freedom of expression, as enshrined in Article 1.1 of the American Convention.

³¹ As for the violation of Article 2 of the American Convention, the incompatible rules and regulations had been repealed at the time of the Court's decision. See IAHR Court. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgement of July 5, 2006. Series C No. 150, para. 135.

³² On October 28, 1991, former judge Guillermo Federico RIVAROLA, responsible for the investigation of the crime committed against clergymen belonging to the Pallottine Order, promoted a criminal proceeding against journalist Eduardo KIMEL for the crime of libel upon considering that certain paragraphs of the book *La masacre de San Patricio* (San Patricio Massacre) constituted defamation.

³³ See IAHR Court. *Case of Almonacid Arellano et al. v. Chile*. Preliminary objections, merits, reparations and costs. Judgement of September 26, 2006. Series C No. 154.

*Application filed before the Court in Case 12.535 of Jorge Castañeda Gutman v. México*³⁴

89. But even if Article 73, Section VII, of the Amparo Act had not been applied in the present case, such a fact would not be sufficient to comply with the requirements set forth in Article 2 of the American Convention. First, this is because, as stated in the preceding paragraphs, Article 2 imposes a legislative obligation to suppress any rule in violation of the American Convention and, second, because the criterion of domestic courts may change and they may choose to apply again a provision that remains in force nationally.³⁵

90. For the foregoing, the Commission requests the Court to declare that Mexico has violated its duty to adapt domestic legislation to the object and purpose of the American Convention as a result of keeping in full force and effect provisions that unreasonably restricted the possibility of legally challenge the decisions of electoral bodies, as established in Article 2 of the Convention; the State also violated its obligation to ensure the exercise of the right to legal protection, as enshrined in Article 1.1 of the American Convention.

Reports on Merits

*Report No. 97/17 Case 12.924. Julio Cesar Ramón del Valle Ambrosio and Carlos Eduardo Domingues Linares. OAS/Ser.L/V/II.164 Doc. 115 September 5, 2017*³⁶

*Report No. 98/17 Case 12.925 of Oscar Raúl Gorigoitia v. Argentina OAS/Ser.L/V/II. 164 Doc. 116 September 5, 2017*³⁷

Recommendations

3. To order the legislative measures needed to adjust domestic law regarding cassation appeals to the standards set forth in the present report on the right enshrined in Article 8.2 h) of the American Convention. Furthermore, apart from the adjustment of the

³⁴ The facts of the case occurred within the framework of a registration process of presidential candidates in Mexico. On March 5, 2004, the victim filed an application with the General Council of the Federal Electoral Institute to register as a candidate for the Office of President of Mexico in the elections that would be held on July 2, 2006.

³⁵ See also IAHR Court, *Case of Almonacid Arellano et al. v. Chile*, Judgement of September 26, 2006, Series C No. 154, para. 123.

³⁶ This case relates to the violation of the right to appeal the ruling to a judge or higher court, as well as to the failure to comply with the duty to adopt provisions of domestic law due to the regulations of cassation appeals in the province of Córdoba at the time when the facts occurred.

³⁷ In this case, the State of Argentina was found internationally responsible for violating the right to appeal the ruling to a judge or higher court, to the detriment of Mr. Oscar Raúl Gorigoitia, as well as for failing to comply with the duty to adopt provisions of domestic law due to the regulations of cassation appeals in the province of Mendoza at the time when the facts occurred.

regulatory framework, ensure that judicial authorities exercise control over the enforcement of conventions when ruling on appeals against judgements of conviction in line with the standards set forth in the present report.

*Report No. 77/16 Case 12.602. Walter Munárriz Escobar et al. v. Peru. OAS/Ser.L/V/II.XX Doc. 85 December 10, 2016*³⁸

153. Since to date the Peruvian State has not amended the criminal classification of forced disappearance as stipulated in Article 320 of its Criminal Code through the mechanisms provided in its legal system, the IACHR considers that it is still not in compliance with the obligation to adopt the necessary legislative measures, in accordance with Article 2 of the American Convention and Article III of the CIDFP.

*IACHR. Merits Report No. 84/09 Case 12.525. Nelson Iván Serrano Sáenz v. Ecuador,*³⁹ August 6, 2009

77. In this case, it has been verified that domestic legislation grants powers to police authorities to order the detention of persons and subject them to a trial of minimal duration and with the consequence of them being expelled from the country. As it also has been verified in the case of Mr. Serrano Sáenz, these provisions may be interpreted as not having an effective judicial control to determine the rights of a person, with special gravity for the victim in this case that led him to a procedure in which he was sentenced to death in another country. The IACHR deems that Ecuador has been remiss in its duty to bring its domestic legislation into line with international obligations, in particular relating to the procedure of arresting persons for deportation.

78. Based on the facts analyzed in the previous sections of this report, the IACHR concludes that the Ecuadorian State did not comply with its duty to guarantee Nelson Iván Serrano Sáenz the free and full exercise of his rights established in the American Convention when he was illegally detained and deported from his own country and sent to the United States, where he faces his probable execution through the application of the death sentence. Furthermore, the Ecuadorian State should adjust its domestic law in order to make effective the rights and liberties of the American Convention. In particular, the State must adopt the necessary measures to review and modify the

³⁸ The case relates to the forced disappearance of Mr. Walter Munárriz Escobar as of March 20, 1999, after being arrested at the Hospedaje Los Manolos by police staff and taken to the police station of Lircay, where he was deprived of his liberty.

³⁹ In this case, the State was found responsible for the illegal detention of Nelson Iván Serrano Sáenz, a citizen with dual nationality of Ecuador and the United States, and for his immediate deportation to the United States to face a trial for the murder of four persons in the state of Florida. Mr. Serrano Sáenz was sentenced to death, punishment yet to be executed at the time this report was adopted.

provisions that establish the application of a police process that allows for detaining and deporting persons without being brought before a judge.

Admissibility and Merits Reports

*Report No. 132/17 Case 12. 452. Tirso Román Valenzuela Ávila and Next of Kin v. Guatemala OAS/Ser.L/V/II.165 Doc. 158 October 25, 2017.*⁴⁰

110. Both the Court and the Inter-American Commission have indicated that death sentences must comply with Article 4.2 of the American Convention, that is, they can only be imposed for the most serious crimes⁴¹ and their use cannot be extended to the future for crimes for which they were not established at the time of ratification of the American Convention.⁴² Likewise, from the text itself and from the interpretation made by the IACHR, it appears that the imposition of the death penalty in proceedings that lack due process results in a violation of Article 4.2 of the American Convention.⁴³

111. The Commission has already established that in the proceeding that culminated in the imposition of the death penalty on Tirso Román Valenzuela Ávila: i) a rule inconsistent with the principle of criminal legality and presumption of innocence was applied as a criterion when establishing the future dangerousness of the convicted person; and ii) the right to appeal the judgement was violated.

112. In light of the foregoing, the Commission concludes that the imposition of the death penalty was contrary to the American Convention, in violation of Articles 4.1 and 4.2 thereof, in relation to the obligations set forth in Articles 1.1 and 2 thereof.

⁴⁰ The case relates to a series of violations of due process during the criminal proceeding against Tirso Román Valenzuela Ávila for the crime of murder, in which he was sentenced to death on the basis of the legal concept of dangerousness. It also relates to a series of acts of torture perpetrated at the time of the arrest, when Mr. Valenzuela Ávila was recaptured after having escaped from prison in June 1998 first and in June 2001 secondly. This case also addresses the presumed extrajudicial execution of Mr. Valenzuela Ávila.

⁴¹ IAHR Court. Advisory Opinion OC-3/83. Restrictions to the Death Penalty (Arts. 4.2 and 4.4 of the American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 54.

⁴² IACHR. The Death Penalty in the Inter-American Human Rights System: Restrictions to Abolition. OAS/Ser.L/V/II. Doc.68, December 31, 2011, para. 88.

⁴³ IACHR. The Death Penalty in the Inter-American Human Rights System: Restrictions to Abolition. OAS/Ser.L/V/II. Doc.68, December 31, 2011.

Annual Report

Annual Report 1994 Chapter IV: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights

Introduction

In this chapter, the Commission will review the compatibility of laws that punish offensive speech aimed at public officials, the so called “contempt laws”, *leyes de desacato* (laws against insulting, threatening, or injuring a public official), with the right of freedom of speech and thought set forth in the American Declaration on the Rights and Duties of Man, and the American Convention on Human Rights. As the Inter-American Court of Human Rights has said, the Commission has the authority to determine that any domestic law of a State Party violates the obligations assumed in ratifying or acceding to the Convention. As a consequence of this power to pass judgement on domestic laws, the Commission may recommend that the State should repeal or amend the law that is in violation of the Convention, and for the Commission to be able to do so, the law may have come to its attention by any means, regardless of whether or not that law is applied in any specific case before the Commission. After making a thorough study of the contempt laws, *leyes de desacato*, the Commission recommends that the Member States of the Organization of American States that have these or similar laws in their legal system should repeal or amend them to bring them into line with international instruments, and with the obligations acquired under those instruments, so as to harmonize their laws with human rights treaties.

Country Report

*Report on the Situation of Human Rights in the Dominican Republic.
OAS/Ser.L/V/II. Doc. 45/15 December 31, 2015.*

217. Civil society organizations have told the Commission that judgement TC/0168/13, Law No. 169-14, regulated by Decree No. 250-14, and other laws and decisions that the Dominican authorities adopted, like Immigration Law No. 285-04, 2007 Resolution 02 of the Central Electoral Board, 2007 Circular No. 17 of the Central Electoral Board’s Administrative Chamber, and 2007 Resolution No. 12 of the Board’s Plenary, violate Article 2 of the American Convention with respect to the State’s duty to adopt such legislative measures as may be necessary to give effect to rights recognized in the American Convention, like the rights to nationality, juridical personality, name, equality without discrimination, and others.

219. The Commission must point out that the organs of the inter-American system are not called upon to examine the domestic laws

of each State as a function of its Constitution; instead, they must perform a conventionality control, i.e. an analysis of the alleged incompatibility of those domestic laws, practices and decisions with the States Party's international obligations under the American Convention.⁴⁴ In this regard, both the Commission and the Court have ruled on the incompatibility of State's laws, court rulings and/or practices with the American Convention.⁴⁵

227. Inasmuch as judgement TC/0168/13 arbitrarily and retroactively deprives persons of their nationality and disproportionately affects persons of Haitian descent born in the Dominican Republic to parents with irregular migratory situation, the Commission concludes that the judgement is incompatible with the American Convention as it involves a violation of the rights to nationality, recognition as a person before the law and name, recognized in Articles 20, 3 and 18 thereof, and in relation to such rights, the right to identity and the right to equal protection before the law, recognized in Article 24 of the American Convention, all as a function of the failure to comply with the obligations established in Article 1.1 and the duty to adopt domestic legislative measures established in Article 2 of the Convention.

Thematic Reports

Special Rapporteurship for Freedom of Expression. Silenced Zones: Highly Dangerous Areas for Exercise Freedom of Expression. OAS/SER.L/V/II IACHR/RELE/INF.16/17 March 15, 2017

165. In order to prevent violence against journalists and media workers, it is indispensable for legal systems to punish this conduct in a manner that is proportional to the damage committed.⁴⁶ In a

⁴⁴ IAHR Court. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary objections, merits, reparations and costs. Judgement of November 24, 2010. Series C No. 219, para. 49.

⁴⁵ IAHR Court. *Case of Baena Ricardo et al. v. Panama*. Merits, reparations and costs. Judgement of February 2, 2001. Series C No. 72, para. 126.; IAHR Court. *Case "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Merits, reparations and costs. Judgement of February 5, 2001. Series C No. 73, para. 88; IAHR Court. *Case of La Cantuta v. Peru*. Judgement of November 29, 2006, Series C No. 162, para. 174.; IAHR Court. *Case of Boyce et al. v. Barbados*. Preliminary objections, merits, reparations and costs. Judgement of November 20, 2007. Series C No. 169, paras. 77 and 78.; IAHR Court. *Case of Xákmok Kásek Indigenous Community v. Paraguay*. Merits, reparations and costs. Judgement of August 24, 2010, Series C No. 214, para. 313; IAHR Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary objections, merits, reparations and costs. Judgement of August 30, 2010, Series C No. 215, para. 1. IAHR Court. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary objections, merits, reparations and costs. Judgement of August 31, 2010. Series C No. 216, para. 220; *Case of López Mendoza v. Venezuela*. Merits, reparations and costs. Judgement of September 1, 2011, Series C No. 233, para. 228; IAHR Court. *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary objections, merits, reparations and costs Judgement of November 28, 2012 Series C No. 257.

⁴⁶ IAHR Court. *Case of La Rochela Massacre v. Colombia*. Merits, reparations and costs. Judgement of May 11, 2007. Series C No. 163. para. 193. As the Commission has pointed out, in accordance with international law, States have a fundamental obligation to ensure the right to life by establishing effective provisions in their domestic criminal legislation and by creating the necessary enforcement mechanisms. IACHR. Report on

more general sense, Article 2 of the American Convention requires States to adopt legislative or other measures that may be necessary to make the rights and freedoms recognized in the treaty effective.⁴⁷

IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American System of Human Rights. OAS/Ser.L/V/II. Doc. 46/15 December 31, 2015.

180. As the IACHR observed in its report titled *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, the principal objectives of the inter-American human rights system and the principle of efficacy demand that the rights and freedoms recognized in the American Convention are observed and are practiced. Therefore, when the exercise of any of the rights recognized in the American Convention is not yet guaranteed *de jure* and *de facto* within their jurisdiction, States parties have an obligation, under Article 2 of the Convention, to adopt the legislative or other measures necessary to give effect to those rights or freedoms.

C. The Obligation of every Public Authority

44. The exercise of the obligation to adapt domestic legislation to human rights standards extends to all state authorities that make up the different organs and hierarchies, who within the scope of their respective competences and responsibilities must be committed to the direct effect of the inter-American instruments ratified by each of the States. On its part, the Inter-American Court established that the obligation to exercise a conventionality control is not only aimed at the judiciary, but that all state authorities have the obligation to exercise *ex officio* a control of conventionality between the internal norms and the American Convention.⁴⁸
45. The exercise of this obligation reaches all the state authorities, since the obligation to respect and guarantee the rights in accordance with Articles 1.1 and 2 of the Convention corresponds to the State therefore, its fulfillment cannot be subject to the division of competences set forth by domestic law. Likewise, the authorities that

Citizen Security and Human Rights. OAS/Ser.L/V/II Doc. 57. December 31, 2009. para. 44. See also European Court of Human Rights. Case of Kılıç v. Turkey. Application no. 22492/93. Judgement of March 18, 2000. para. 63.

⁴⁷ IACHR. Annual Report 2013. Report of the Special Rapporteurship for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OAS/Ser.L/V/II.149. Doc. 50. Tuesday, December 31, 2013.

⁴⁸ IAHR Court. Case Gelman v. Uruguay. Monitoring Compliance with Judgement. Resolution of the Inter-American Court of Human Rights, March 20, 2013, paragraph 66.

have a higher hierarchical role must also make adaptations regarding the actions of other officials. Below are some relevant extracts from reports published by the IACHR that show the extension of this state obligation.

Country Report

IACHR. Situation of Human Rights in Mexico. OAS/Ser.L/V/II. Doc. 44/15 December 31, 2015

86. Notably, the conventionality control, as established by the Inter-American Court, is binding also for military, administrative, and labor courts, and for all public authorities, and therefore the justice operators that work at these entities should also receive the same level of training. The IACHR is aware that this represents an enormous challenge for the justice system in Mexico, particularly since, as pointed out publicly by a Mexican judge, there is still in Mexico a certain reticence to apply inter-American jurisprudence and standards in the field of human rights.⁴⁹

Thematic Report

IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OAS/Ser.L/V/II. Doc. 56/09. December 30, 2009

43. Article 2 of the American Convention places States Parties under the general obligation to adjust their domestic legislation to the standards of the Convention so as to ensure the enjoyment of the rights it embodies. The obligation to adapt internal legislation to the American Convention under Article 2 “is, by its very nature, one that must be reflected in actual results.”⁵⁰ States must, therefore, review their legislation, procedures and practices so as to ensure that indigenous and tribal peoples’ and persons’ territorial rights are defined and determined in accordance with the rights established in the inter-American human rights instruments.⁵¹ As a corollary, States are under the obligation to abstain from adopting legislative or

⁴⁹ IACHR. [Situation of Human Rights in México](#). OAS/Ser.L/V/II. Doc. 44/15 December 31, 2015.

⁵⁰ IAHR Court. [Case of the Yakve Axa Indigenous Community v. Paraguay](#). Merits, reparations and costs. Judgement of June 17, 2005. Series C No. 125, paragraph 100. IAHR Court. [Case of Caesar v. Trinidad and Tobago](#). Merits, reparations and costs. Judgement of March 11, 2005. Series C No. 123, paragraph 93.

⁵¹ IACHR. [Report No. 75/02 Case 11.140. Mary and Carrie Dann v. United States](#). December 27, 2002, paragraph 173, Recommendations 1 and 2.

administrative measures of a regressive nature, which can hinder the enjoyment of indigenous peoples' territorial rights.⁵²

Cases in the Court

*Report No. 41/17 Case 12.701. Report on the National Association of Discharged and Retired Staff from the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. OAS/Ser.L/V/II.162 Doc. 53 May 23, 2017*⁵³

116. Additionally, and taking into account the abovementioned considerations, the Commission considers that the case of the members of ANCEJUB-SUNAT is one more example of an overall structural issue that consists in noncompliance with court judgements. This situation is made even worse due to a common practice by which the judicial authorities in charge of the execution of these judgements do not take the necessary measures to resolve fundamental debates about the implementation of the judgements, nor do they use mechanisms to coercively ensure enforcement, thus materializing the right to effective judicial protection. The Commission highlights that despite being aware of this issue, the State has failed to adopt the necessary overall measures to remediate this situation and prevent its reiteration. Consequently, the Commission considers that the State is also responsible for the violation of Article 2 of the American Convention.

The IACHR recommends to:

3. Adopt measures of a legal nature, or other nature, that may be necessary to avoid reiteration of the violations listed in this report. To that end, the State shall order measures so as to: i) ensure that state bodies or agencies comply with court judgements recognizing pension rights for former workers; ii) ensure that court judgement execution processes are in line with conventional standards to make them simple and expeditious; and iii) ensure that judicial authorities dealing with these processes are legally empowered and put the necessary coercive mechanisms in practice in order to guarantee compliance and enforcement of court judgements.

⁵² In the event of adopting regressive provisions, States are under the obligation to nullify them or refrain from applying them. IACHR. [Third Report on the Situation of Human Rights in Paraguay](#). Doc. OAS/Ser.L/VII.110, Doc. 52, March 9, 2001, paragraphs 49-50. Recommendation 4.

⁵³ In this case, the State of Peru was found internationally responsible for the violations of various rights committed to the detriment of 597 members of the National Association of Discharged and Retired Staff of the National Tax Administration Superintendence (ANCEJUB SUNAT) due to the unjustified delay in the compliance with the judgement of the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic of Peru of October 25, 1993, in violation of the right to an effective judicial recourse and the guarantee of reasonable term in the judgement execution.

D. The Obligation to Adapt Domestic Legislation Exercised Ex Officio

46. One of the central characteristics of the obligation to adapt domestic legislation to human rights standards is that it must be exercised *ex officio*. That is to say, the authorities must know the content of human rights norms and must apply them when pertinent and without ignoring the formal and material admissibility and procedural requirements of the actions,⁵⁴ in order to guarantee the direct effect of the Convention and other human rights instruments. In this way, all public officials, authorities and state agents can compromise the international responsibility of the State, in case of applying a norm in a manner incompatible with the aforementioned inter-American instruments.
47. Thus, all public officials, authorities and state agents may engage the international responsibility of the State if they apply a norm that is incompatible with the aforementioned inter-American instruments. In particular, the State may be internationally responsible for acts or omissions carried out by any of its powers or organs due to internationally established rights, according to Article 1.1 of the American Convention, as with other inter-American instruments on the subject⁵⁵. This principle regarding the obligation to adapt internal regulations to standards has been developed by the Commission and the following are some examples in this regard:

Thematic Reports

IACHR. Towards Effective Integral Protection Policies for Human Rights Defenders. OAS/Ser.L/V/II. December 30, 2017

132. Finally, the Commission reiterates that the State must take the necessary steps to modify those rules, by removing obstacles to the defense of human rights. Nevertheless, even when the applicable regulations or legal framework violate the rights of defenders, the authorities are also obliged, within their own spheres of competence and in respect of the functions they perform, to monitor their actions or omissions *ex officio*, to make sure that they do not violate human rights, if necessary by not applying regulations that could turn out to be detrimental to the rights of defenders.⁵⁶

⁵⁴ IAHR Court. Case Dismissed Congressional Employees v. Peru.

⁵⁵ IAHR Court. [Case of Ximenes Lopes v. Brazil](#). Judgement of July 2, 2006. Series C No. 149, paragraph 172; IAHR Court. [Case Baldeón García v. Peru](#). Judgement of April 6, 2006. Series C No. 147, paragraph 140.

⁵⁶ Case of Rochac Hernández *et al.* v. El Salvador. Merits, reparations and costs. Judgement of October 14, 2014, paragraph 213. In this case, for example, the Inter-American Court has indicated that the State must “ensure that the General Amnesty Law for the Consolidation of Peace never again represents an obstacle to the investigation of the events that are the subject of this case or to the identification, prosecution and eventual punishment of those responsible for these and other similar grave human rights violations that occurred during the armed conflict in El Salvador. This obligation is binding upon all of the State’s powers and organs,

Criminalization of the Work of Human Rights Defenders/Inter-American Commission on Human Rights. OAS/Ser.L/V/II.Doc. 49/15

259. Despite this, the Commission has learned that in some States justice operators face challenges in the application of criminal law when dealing with criminal offenses that directly criminalize the promotion and protection of human rights. In response, the IACHR considers that justice operators must take into account the international instruments protecting human rights defenders, interpreting the definitions of the criminal offenses in a manner consistent with the American Convention on Human Rights and other legal instruments. In other words, they must undertake a conventionality control between internal norms and the American Convention.

260. According to the applicable principles, the IACHR considers that the judicial officers should refrain from initiating criminal proceedings against human rights defenders under criminal offenses that are contrary to international standards, such as contempt laws that criminalize the promotion of LGBT rights, without prejudice to the State's obligation to adopt domestic laws to harmonize its legislation with the standards of the inter-American system.

271. The Commission has also received information regarding decisions declaring criminal offenses that do not conform to the principle of legality unconstitutional. Sometimes in these decisions the judges undertook conventionality control between the criminal offenses contained in domestic legislation and the legal standards set by the inter-American system.

275. The IACHR considers that the decisions which determine that criminal norms are not applicable for being contrary to the principle of legality, in order to adapt them to international standards, constitute positive steps towards preventing the misuse of criminal law. These decisions ensure that justice operators will not apply rules for the mere purpose of impacting human rights defenders in the exercise of their duties. Therefore, the IACHR urges state organs to carry out actions aimed at promoting conventionality control in their decisions in order to effectively protect the right to defend human rights.

which are required to exercise *ex officio* "conventionality" control between domestic norms and the American Convention, obviously within the framework of their respective jurisdictions and the corresponding procedural regulations."

Cases in the Court

*Application filed before the Inter-American Court of Human Rights in the Case of Eduardo Kimel (12.450) against the Argentine Republic*⁵⁷

149. In this case, the Argentine judicial authorities, in compliance with the guarantee obligation, had to refrain from applying the criminal offenses of defamation under their current legal definition, to sanction the dissemination of opinions about the performance of the state official who dealt with the investigation of the murder of clergymen from the Pallottine Order.

E. The Obligation to Adapt Domestic Legislation by Subnational Jurisdictions

48. The obligation to adapt domestic legislation to the inter-American human rights standards must be carried out with respect to laws, decrees, rules and, in general, to any provision that constitutes a legal norm regardless of the hierarchy of the body that issues it. Likewise, within the framework of their respective competencies and regulations, the judges and bodies related to the administration of justice at all government levels are obliged to make such adaptation *ex officio* between the internal norms and the inter-American instruments.⁵⁸
49. In addition, the IACHR has recognized the so-called federative principle, according to which the subnational states enjoy a certain autonomy. However, it should be noted that, according to Article 28 of the American Convention, in the case of a State Party constituted as a Federal State, the State has the obligation to comply with all the provisions related to the subjects over which it exercises legislative and judicial jurisdiction. Likewise, the instrument provides that, when the jurisdiction of subnational entities is involved, the State has the obligation to immediately take pertinent measures, in accordance with its constitution and laws, so that the competent authorities of said subnational entities can adapt the provisions in order to comply with international obligations.

⁵⁷ The case refers to the international responsibility of the State for the conviction of Eduardo Kimel for the crime of libel due to the publication of a book.

⁵⁸ IAHR Court. [Case Cabrera García and Montiel Flórez v. Mexico](#). Judgement of November 26, 2010, paragraph 225.

Reports on the Merits

*Report No. 37/10. Case 12.308 Manoel Leal de Oliveira v. Brazil. March 17, 2010*⁵⁹

147. The Commission has also pronounced on the content of Article 28 of the American Convention.⁶⁰ In the case of Newton Coutinho Mendes against Brazil, the IACHR has underscored the international responsibility of the State for the exercise of the human rights recognized in the Convention across its territory, which extends to the actions and omissions of state agents within the jurisdiction of any federated entity. With reference to bringing the federal structure of the Brazilian State into harmony with its duties stemming from the American Convention, the IACHR has stated that:

The so-called “federative principle” whereby the individual States enjoy autonomous status has been used as explanation given in many instances preventing investigation and the determination of those responsible for the violations—frequently serious ones—of human rights, and it has helped to accentuate the impunity accorded to the perpetrators of such violations.

149. The Commission deems it important to mention the Brazilian Government’s efforts to adapt legislative measures to comply with the provisions of the aforementioned conventional provision. In this regard, it refers to the provisions of Article 109, paragraph 5 of the Federal Constitution, included by way of Constitutional Amendment No 45/04 of December 30, 2004. This paragraph empowers the Attorney General of the Republic to initiate the transfer to the Federal Justice system of an investigation or criminal case “for the purpose of ensuring compliance with the obligations derived from the international human rights treaties to which Brazil is party.”

150. Lastly, although it falls to the Federal States themselves to choose the appropriate legislative, judicial and administrative measures to implement the obligations set forth in the Convention in its territorial units, and despite its recognition of the efforts of the Brazilian Government in this regard, the Commission observes that in the instant case, Brazil did not take all of the necessary measures to guarantee and respect the rights to life, freedom of thought and expression, due process guarantees and judicial protection in favor of

⁵⁹ On January 14, 1998, Manoel Leal de Oliveira was executed in the city of Itabuna, state of Bahia, by gunmen from the region. The incident occurred after the publication of various complaints in the newspaper “A Região,” of which Manoel de Oliveira was the editor, about corruption and irregularities allegedly committed by municipal government officials and police authorities. Manoel Leal de Oliveira was known in his city for his inveterate activism, and had to respond to several judicial processes after reporting acts of corruption that involved local politicians.

⁶⁰ IACHR. [Annual Report 1991](#), Report No. 8/91. Case 10.180, Deputies in the state of Nuevo Leon (Mexico), paragraph 41 and IACHR. [Annual Report 1993](#), Report No. 14/93, Case 10.956, Luis Felipe Brado Mena (Mexico).

Manoel Leal de Oliveira and his next of kin. Therefore, it considers that while the actions giving rise to those violations may have been committed by agents and units of a federated entity, the international responsibility for them lies with the Federative Republic of Brazil,⁶¹ as does the obligation to make the respective reparations.

Thematic Reports

Towards the Effective Fulfillment of Children's Rights: National Protection Systems. November 30, 2017

120. The particular situation of federal States means that states (or provinces, in the case of Argentina) have autonomy in the adoption of statutes and regulations within the scope of their legal competence. Even though states must respect the federal constitution, in matters not reserved or not specifically delegated to the central or national government, they may have legislative, regulatory and policy-making autonomy, including for the establishment of children's institutions.⁶² In these systems of government, each state creates its own children's policy formulation and execution bodies and the form and hierarchy thereof. Notwithstanding this, the IACHR recalls that under Article 28 of the ACHR,⁶³ in connection with Article 2 of the same instrument, international obligations arising from treaties are of mandatory compliance at all levels of the State, and the National Government is obliged to take measures to ensure this compliance.

121. Federal systems pose an additional challenge in terms of harmonization of federal and state/provincial norms in the area of children's rights. In practice, bringing state/provincial laws into line with federal legislation can come about slower in some states/provinces than in others and, consequently, progress in federal legislation may not be reflected as progress in all states/provinces of the country. There may be disparities and varying degrees of spottiness or a patchwork in the recognition, implementation and protection of rights among different

⁶¹ IACHR. [Annual Report 2001. Report No. 35/01 Case 11.364. Jailton Néri da Fonseca v. Brazil](#), February 22, 2001, paragraph 13 and [Annual Report 2000. Report No. 10/00 Case 11.599. Marcos Aurélio de Oliveira v. Brazil](#), paragraph 21.

⁶² The federal States that exist in the hemisphere have different structures and operating models; therefore, the aspects referred to in this report regarding federal States must be contextualized to the structure, competences and specific functioning of each of them.

⁶³ [American Convention on Human Rights](#).

Article 28. Federal Clause: 1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction. 2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

states/provinces, which means that the rights of children and adolescents are better ensured and protected in some states/provinces than in others.⁶⁴

Country Report

*Situation of Human Rights in Mexico. OAS/Ser.L/V/II. Doc. 44/15
December 31, 2015*

84. Secondly, to implement the conventionality control as established by the Inter-American Court of Human Rights, it is indispensable to unify human rights judicial criteria. This becomes particularly relevant for federal countries such as Mexico, since the possibility of disparate application of the same concepts, principles, and standards is multiplied at the federal level, on the one hand, and the state level, on the other.

85. In order to achieve this homologation, it is necessary to carry out integral and uniform training of all justice operators, which has happened to some degree in Mexico.⁶⁵ The State reports that 62,440 people have been trained in the context of the implementation of the new criminal justice system, including judges, defense attorneys, public prosecutors, experts, police officers, penitentiary staff, among others.⁶⁶ The IACHR recognizes and congratulates the Mexican State for such substantial progress regarding the training of public servants.

Applications filed before the Inter-American Court

*Case No. 12.584. Milagros and Leonardo Aníbal Fornerón v. Argentina, 2010*⁶⁷

129. In the instant case, the petitioners allege that Milagros was the object of child trafficking. They also say that the State breached its obligation to thoroughly investigate and punish this act by setting aside the preliminary inquiry because said offense is not criminalized

⁶⁴ Committee on the Rights of the Child, [Concluding observations: Brazil. CRC/C/15/Add.241](#). November 3, 2004, paragraph 13.

⁶⁵ Some analysts consider, for example, that with a diffuse control of conventionality, a judge may deviate from certain interpretive principles, such as temporality, specialty or hierarchy, and give preference to a subsequent rule in time (temporality), a more general one (specialty) or even a lower one (hierarchy), if the conventionality control requires it. Zamir Andrés Fajardo Morales, [“El control difuso de convencionalidad en México: Elementos dogmáticos para una aplicación práctica”](#).

⁶⁶ “Visit of the Inter-American Commission on Human Rights to Mexico: Information from the Mexican State,” Mexico, D.F. December 25, 2015, page 54.

⁶⁷ The case relates to the international responsibility of the State for the violations of due process in the case concerning a child custody dispute of Leonardo Fornerón with respect to his biological daughter M. IACHR. Case No. 12.584. Milagros Fornerón and Leonardo Aníbal Fornerón v. Argentina, 2010.

under Argentine law. The petitioners argue that this is a widespread practice in some provinces in Argentina and yet there are no laws punishing such conduct. The State made no submissions in this regard.

133. The Commission concludes that the Argentine State had the obligation under Article 2, in connection with Article 1.1 and 19 of the American Convention, to adopt legislative measures to prevent child trafficking in its territory and that it has not done so. The foregoing meant that Mr. Fornerón's submission (later presented by the office of the Attorney General) that Milagros could have been the victim of an act of child trafficking was not investigated with due diligence.

CHAPTER 3

IMPLEMENTATION OF THE OBLIGATION OF THE STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER- AMERICAN STANDARDS OF HUMAN RIGHTS

IMPLEMENTATION OF THE OBLIGATION OF THE STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS

50. The approach to the obligation to adapt domestic legislation to human rights standards has been significantly developed in the inter-American system. This chapter includes relevant extracts and examples in which the Commission has explored the development and the application of the obligation of the States in the region to adapt their domestic legislation to the international commitments in the field of human rights.
51. In addition, this section analyzes a number of themes on which the IACHR has pronounced itself since the very first years of its work on the absence of compatibility of the domestic law with the inter-American instruments, including amnesty laws, special jurisdiction and death penalty. As a result, a series of relevant extracts from reports published by the IACHR in the field are listed.

Thematic Reports

*Considerations Related to the Universal Ratification of the American Convention and Other Inter-American Human Rights Treaties, OS/Ser.L/V/II. 152, August 14, 2014*⁶⁸

46. As for judicial branch activity, various countries reported to the IACHR on the development and implementation of the concept of conventionality control to ensure that judges review the compliance of domestic measures with international commitments in the area of human rights, and provided examples reflecting this phenomenon.⁶⁹ Guidelines and training programs have also been developed and implemented, reflecting the content of the inter-American system's

⁶⁸ In 2013, the IACHR decided to examine the progress and challenges related to, among other issues, the universal ratification of inter-American human rights treaties, the incorporation of inter-American standards at the internal level and the control of conventionality and the effective fulfillment of the decisions and recommendations issued. In this regard, it published a consultation with the aim of receiving input from the actors of the inter-American human rights system. Point 5 of the consultation requested the States to indicate whether the concept of conventionality control had been developed in their countries to ensure that judges reviewed if State measures complied with international human rights commitments and, if so, share examples of court decisions that proved this.

⁶⁹ For example, see responses to the questionnaire from Argentina, Costa Rica, Guatemala and Mexico.

standards in countries like Colombia, Guatemala and Uruguay. The IACHR has also emphasized in its earlier reports examples of judicial decisions adopted by judicial branch bodies that refer to standards of the inter-American system such as the American Convention and the Convention of Belém do Pará, and examples were provided in different responses to the questionnaires.⁷⁰

69. In its response to the questionnaire, Argentina presents examples of how the standards of the inter-American system relevant to the rights of women, children and persons with disabilities have been incorporated in laws and public policies. It also reports on the creation of institutions to ensure the advance of human rights with a gender perspective, such as the Woman's Office in the Judicial Branch. It also presents examples of how the concept of conventionality control has been applied by the domestic courts in order to ensure that judges review the compliance of State measures with international commitments in the area of human rights.

Country Reports

Situation of Human Rights in Guatemala. OAS/Ser.L/V/II. Doc. 208/17 December 31, 2017

391. The Commission views as positive that for 17 years the death penalty has not been imposed by judicial authorities and that for more than a decade commutation of death penalty sentence has been ordered for persons previously sentenced. In response to recent calls to resume the application of the death penalty, the IACHR recalls that even though it is not used in practice, as long as the domestic law provides for its use, potential implementation of the death penalty lies dormant. As the Inter-American Court has held, even when the accused has not been executed, "the mere existence of [a rule that provides for the death penalty] is, per se, a violation" of the provision of the Convention to adopt laws in the domestic legal system to give effect to the right to life.⁷¹ In May 2016, in relation to compliance with the judgment in the case of *Raxcacó v. Guatemala*, the Inter-American Court oversaw potential amendment to Article 132 of the Criminal Code on the crime of murder and the ability to impose the death penalty on the grounds of "dangerousness of the agent," as well as amendment to Article 201 of the Criminal Code which sets forth the elements and punishment of the crime of abduction or kidnapping, in such a way that different definitions and punishments are set forth for different forms of that criminal offense, and during the

⁷⁰ IACHR. Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application, OAS/Ser.L./V/II.143 Doc. 60, November 3, 2011; Response to the questionnaire of the Association for Civil Rights (Argentina).

⁷¹ IAHR Court. Case of Raxcacó Reyes v. Guatemala. Judgement of September 15, 2005. Merits, reparations and costs. Series C No. 133, para. 88.

implementation of these amendments, to not apply the death penalty for that crime.⁷² The Commission takes note and views positively that as a consequence of actions of both the Executive Branch and of the Judicial Branch, in keeping with the judgments of the Inter-American Court, more than 17 years have elapsed without the death penalty being imposed or executed in Guatemala. In view of the above, the Commission finds that, in practice, the State of Guatemala has taken steps forward towards abolishing the death penalty, which is consistent with the spirit of the American Convention on the subject matter.

392. Additionally, the IACHR acknowledges the ruling of the Constitutionality Court of October 24, 2017, declaring unconstitutional the application of the death penalty to the crimes of parricide, extrajudicial execution, abduction or kidnapping, forced disappearance, and killing the president or vice president.⁷³ The grounds for the Court's decision included the inconsistency between the application of the death penalty and international human rights treaties ratified by the Guatemalan State. In this regard, the Commission notes that while Article 18 of Guatemala's Constitution still provides for the death penalty, it may no longer be imposed in the country in light of Article 4.2 of the American Convention.⁷⁴ The IACHR welcomes this advancement towards the abolition of the death penalty.

Situation of Human Rights in Mexico. OAS/Ser.L/V/II. Doc. 44/15 December 31, 2015

461. The Commission appreciates the measures the State has taken regarding human rights. Particularly, the Commission recognizes the important human rights reforms that have been adopted in Mexico since 2011. The IACHR recognizes the amendment of various articles of the Constitution, which establish that in Mexico all persons shall enjoy the human rights enshrined in the Constitution and in the international treaties to which Mexico is party, as well as the guarantees for their protection. Similarly, the Commission notes the decision of the Supreme Court of Justice, which limits military

⁷² IAHR Court. *Annual Report of the Inter-American Court of Human Rights 2016*. p. 83.

⁷³ File 5986-2016, which declared the paragraphs of Articles 131, 132 bis, 201, 201 ter and 383 of the Code of Criminal Procedure and the Law against Narcoactivity unconstitutional. Press Release. Agencia EFE, "La Corte de Constitucionalidad de Guatemala anula la pena de muerte de cinco delitos", October 27, 2017. Available at: <https://www.efe.com/efe/america/sociedad/la-corte-de-constitucionalidad-guatemala-anulapena-muerte-cinco-delitos/20000013-3420629>.

⁷⁴ [American Convention on Human Rights](#).

Article 4.2: "In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply."

jurisdiction in cases in which members of the armed forces commit human rights violations against civilians, as well as the decision that established the authority of all courts in the country to undertake conventionality control.

Annual Report

Annual Report 2016. Chapter IV. Report on human rights situation in the hemisphere.

4. Freedom of expression

52. In 2016, the Special Rapporteurship also recorded hemispheric progress, particularly various judicial rulings that established stronger protection for freedom of expression and apply standards developed by the inter-American system in that field. Thus, for example, in Argentina⁷⁵, Peru⁷⁶ and Uruguay⁷⁷ rulings were issued to revoke sentences against journalists and public officials convicted of crimes of slander stemming from the dissemination of information of public interest; another example is the decision by the Superior Court of Quebec that invalidated the provisions of *By-law P-6 concerning the prevention of breaches of the peace, public order and safety and the use of public property* and determined that the requirement for prior communication of the itinerary of demonstrations to the police forces unduly restricted spontaneous protests. Similarly, the Court concluded that the prohibition against people covering their faces in public constituted an unjustified violation of the rights to freedom of expression and peaceful assembly.⁷⁸ Also, there are important decisions by the Superior Court of Brazil⁷⁹ and the Special Criminal Court to the Second Criminal Chamber of the Belford Roxo Region in the state of Rio de Janeiro,⁸⁰ which, after a constitutional review, declared that the crime of contempt is contrary to the right to freedom of expression, as it has been indicated by this Commission. The Constitutional Court of the Dominican Republic declared the

⁷⁵ Supervisory Court No. 1. *“Botta, Juan carlos s/Querrela por calumnias e injurias”*. *Investigation File No. 025/15* (Source: Forum for Argentine Journalism). April 4, 2016.

⁷⁶ Superior Court of Justice of Lima. *Sentencia del Séptimo Juzgado Penal de Lima recaída al expediente 701-2014*. April 18, 2016; IACHR. Special Rapporteurship for Freedom of Expression. April 25, 2016. *Press Release R52/16. The Office of the Special Rapporteur expresses concern over the criminal conviction for defamation of a journalist in Peru*; Supreme Court of Justice of the Republic of Peru. *Acuerdo plenario Nº 3-2006/CJ-116* of October 13, 2006; Supreme Court of Justice of Lima. File No. 14156-2014. *Judgement* of August 29, 2016.

⁷⁷ Judicial Power. July 21, 2016. *TAP 4º Turno absolvió al Intendente de Salto que fuera procesado por difamación*; Judicial Power. *“L. P., A. - Un delito de Difamación (Ley de medios de comunicación)”*. July 21, 2016.

⁷⁸ Superior Court of Quebec. *Villeneuve c.. Ville de Montréal*. June 22, 2016.

⁷⁹ Supreme Court of Justice. *Special Writ No. 1.640.084 - SP (2016/0032106-0)*. Decision of December 15, 2016; Article 19. December 16, 2016. *Decisão do STJ sobre desacato é positiva para a liberdade de expressão*.

⁸⁰ Court of Justice of the State of Rio de Janeiro. Special Criminal Court to the Second Criminal Chamber of the Belford Roxo Region. Proceeding No. 0013156-07.2015.8.19.0008. Judgement of July 4, 2016. p. 8. Available at: <http://emporioidireito.com.br/juiz-do-tjrj-faz-controle-de-convencionalidade-do-crime-de-desacato/>.

unconstitutionality and unconventionality of the stringent penalties for the crimes of defamation and insult committed by journalists against public officials; according to the Court, the penalties limited the right to present evidence and contemplated the so-called “cascade effect”, through which the directors and owners of media outlets could be criminally sentenced for conducts by third parties, even when they are unrelated to the media.⁸¹ Finally, the conviction handed down in Venezuela by Trial Court 1 of Carabobo against two officers of the Bolivarian National Guard (*Guardia Nacional Bolivariana*, or GNB) over the death of student Geraldine Moreno Orozco, which took place on February 19, 2014 during a demonstration held in Carabobo state, is also relevant.⁸²

Annual Report 2018 Chapter V. Follow-up to Recommendations made by the IACHR in its Country or Thematic Reports. Third report on follow-up of recommendations issued by the IACHR in its report on the human rights situation in Mexico.

17. With respect to the recommendation about developing a concrete plan for the gradual withdrawal of the Armed Forces from public security tasks, the IACHR observes that the Domestic Security Law, published in the Official Gazette (*Diario Oficial de la Federación*, or DOF) on December 21, 2017, was invalidated on its entirety by the Supreme Court of Justice of the Nation (SCJN) on November 15, 2018. The SCJN ruling is based on the consideration that the Domestic Security Law contravenes the constitutional and conventional (international treaty) order in that it contains provisions seeking to normalize the use of the Armed Forces in public security tasks.⁸³ In a press release, the Commission welcomed the SCJN ruling. In particular, the Commission underscored that it is vital to establish a clear and precise distinction between domestic security as a police function and national defense as a function assigned to the armed forces, given that they are two, very different institutions in respect of the purposes for which they were created and in terms of their training and preparation.⁸⁴

⁸¹ El Día. February 22, 2016. [Sociedad de Diarios muestra su satisfacción por fallo de Tribunal](#); Law on Expression and Dissemination of Ideas. *Ley No. 6132, de Expresión y difusión del Pensamiento*; Knight Center for Journalism in the Americas. February 23, 2016. [Tribunal de República Dominicana declara inconstitucional pena de cárcel en casos de difamación contra el Gobierno](#); Presidency of the Dominican Republic. April 10, 2016. [Presidente reafirma compromiso del Gobierno con libertad de prensa y expresión \(VIDEO\)](#).

⁸² Office of the Public Prosecutor, December 14, 2016. [Ministerio Público logró condena de 30 años para sargento de la GNB por muerte de Geraldine Moreno](#); El Diario Vasco. December 15, 2016. [Justicia venezolana condena a militar por la muerte de manifestante en 2014](#).

⁸³ Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled *The Human Rights Situation in Mexico*, p. 2-12.

⁸⁴ IACHR. Press Release 251/18 [IACHR Welcomes Mexican Supreme Court of Justice Ruling on Unconstitutionality of Domestic Security Law](#). Washington D.C., November 22, 2018.

52. The IACHR has identified the challenge posed by the incorporation of the inter-American standards by state officials. In this regard, the exercise of the obligation to bring domestic legislation into line with human rights standards is a mechanism which the IACHR recommends incorporating in practice to strengthen the capacities of justice operators and state agents dedicated to the defense of human rights.

Annual Report

Annual Report 2013 Chapter IV. Development of Human Rights in the Region

86. Although the information the IACHR received indicates that in a minority of the countries of the region, specific guidelines have been issued by the Judicial Branch for incorporation of inter-American standards, both the States and civil society organizations described countless decisions, delivered for the most part by lesser courts, in which they performed *ex officio* a kind of conventionality control of the provisions of domestic laws. Despite the increase in the number of justice operators who regularly invoke inter-American standards in their rulings, on some occasions, the disciplinary organs within the justice systems of some countries have instituted administrative proceedings against judges who fail to cite judicial precedents or cite legal provisions that are patently contrary to the inter-American standards. For the IACHR, such examples demonstrate that the process of making conventionality control a standard practice in the daily activities of judges requires not only their training and initiative, but also that specific guidelines be adopted to ensure the possibility of harmonizing a country's domestic legal system with its international human rights obligations.⁸⁵

Country Report

Situation of Human Rights in Mexico. December 31, 2015

37. Evaluate the effective implementation of the new criminal justice system, and identify the areas where a closer follow-up will be required, with adequate training and the necessary resources. Include ongoing training for justice operators and public defenders on conventionality control.⁸⁶

Other Areas of Implementation

⁸⁵ IACHR. Annual Report 2013. Chapter IV. Development of Human Rights in the Region.

⁸⁶ IACHR. [Situation of Human Rights in Mexico](#). OAS/Ser.L/V/II. Doc. 44/15 December 31, 2015.

A. *With regard to Special Courts for Human Rights Violations*

53. The Inter-American Commission has stated that, because of its nature and structure, military criminal courts do not meet the requirements of independence and impartiality imposed by Article 8.1 of the American Convention. When the State permits investigations to be conducted by entities with possible involvement, independence and impartiality are clearly compromised, as a result of which it is impossible to conduct the investigation, obtain the information, and provide the remedy that is allegedly available, and what occurs is *de facto* impunity, which violates the principles of the American Convention.
54. The Inter-American Commission on Human Rights has repeatedly considered the situation of the military courts with regard to the independence and impartiality requirements for the prosecution of civilians and military officers in cases of human rights violations. The Commission recalls that the scope of authority of criminal military courts must apply on a limited and exceptional basis and be aimed at the protection of special legal interests that are tied to the function assigned by law to the military forces. Therefore, the Inter-American Court has underscored that military criminal courts do not meet the requirements to deal with cases of human rights violations imposed by the American Convention.⁸⁷

Reports on Merits

*Report No. 53/01, Case 11.565 Ana, Beatriz and Celia González Pérez v. Mexico. April 4, 2001*⁸⁸

81. In the past, the Inter-American Commission has maintained that “when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised,” as a result of which it is “impossible to conduct the investigation, obtain the information, and provide the remedy that is allegedly available,” and what occurs is *de facto* impunity, which “has a corrosive effect on the rule of law and violates the principles of the American Convention.” In particular, the IACHR has determined that, as a result of its nature and structure, military courts do not meet the requirements of independence and impartiality imposed under Article 8.1 of the American Convention. In that regard, the Inter-American Court ruled:

⁸⁷ IAHR Court. Case of Las Palmeras v. Colombia. Merits. Judgment of December 6, 2001. Series C No. 90, para. 53.

⁸⁸ The case relates to the international responsibility of the United Mexican States for the illegal detention, rape and torture of the Tzeltal indigenous sisters Ana, Beatriz and Celia González Pérez, as well as the subsequent absence of investigation and reparation of such facts. IACHR. Report No. 53/01, Ana, Beatriz y Celia González Pérez, Case 11.565 (Mexico). April 4, 2001.

In a democratic State governed by the rule of law, the scope of authority of criminal military courts must apply on a limited and exceptional basis and be aimed at the protection of special legal interests that are tied to the function assigned by law to the military forces. Consequently, the prosecution of civilians cannot fall under military jurisdiction and military officers must be prosecuted for the commission of only those offenses and infractions that, because of their nature, have an adverse effect on the assets of the military.

*Report No. 51/16 Case 11.564. Gilberto Jiménez Hernández et al. (La Grandeza) v. Mexico. November 30, 2016*⁸⁹

161. Because at the time the events of this case were heard by the military courts this amendment had not been instituted, the Commission deems that the State breached its obligation to adopt domestic legislative and other measures, as provided for under Article 2 of the Convention.

162. Based on the preceding considerations, the Commission concludes that in maintaining a legal framework, which enabled the application of military justice to the instant case, the Mexican State violated the rights to a fair trial and judicial protection, specifically the right to a competent, independent and impartial authority, pursuant to Articles 8.1 and 25.1 of the American Convention in conjunction with Articles 1.1 and 2 of that instrument, to the detriment of the family members of Gilberto Jiménez Hernández.

Cases in the Court

Application of the Inter-American Commission on Human Rights to the IAHR Court against the Bolivarian Republic of Venezuela, Case 11.663. Oscar Barreto Leiva

123. The Commission considers, and specifically requests the Court to find, that the fact that Mister Barreto Leiva was tried by the Supreme Court of Justice, even though that competence had not been established by law, also implied, in his case, the impossibility of appealing the judgment against him, which in addition to violating the guarantee of a trial by a competent tribunal, violated the right enshrined in Article 8.2(h) of the American Convention with regard to the obligations established in Article 1.1 thereof.

124. Lastly, the Commission considers that this situation implied that, although the ordinary proceedings legally established Mr. Barreto Leiva's right to appeal a judgment against him, in practice and as a

⁸⁹ The case relates to the international responsibility of the United Mexican States for the extrajudicial execution of Gilberto Jiménez Hernández, a Tzeltal indigenous man and member of La Grandeza community.

result of the extension of the special privilege, he did not enjoy any judicial protection whatsoever and was left with no defense in a situation that could not be appealed. In that sense, the Commission requests that the Court find that the State, to its detriment, also violated the right enshrined in Article 25.1 of the American Convention with regard to the obligations established in Article 1.1 of the same instrument.

Annual Report

IACHR. Annual Report 2018. Chapter V. Follow-up on recommendations made by the IACHR in its country and thematic reports (Mexico)

115. As for the recommendation on reform of the Military Justice Code, the State indicated that it reiterated its statements in earlier reports. Here, the Commission points out that, according to the 2017 Annual Report, the reform of the Code was still pending and that current legislation has still not been aligned in part with inter-American standards, as the IAHR Court stated during its monitoring of compliance with certain judgments handed down against Mexico. Thus, the Commission reiterates the need for the State to comply with said recommendation, which is still pending, in order to establish that the military criminal justice system does not apply to human rights violations, regardless of whether the perpetrator is a civilian or a member of the military.

B. With Respect to Amnesty Laws and Provisions

55. The Commission has consistently expressed in its jurisprudence that amnesty laws or provisions are incompatible with the obligations to investigate and punish serious human rights violations, as contained in various inter-American instruments, in the cases of Argentina, Chile, El Salvador, Guatemala and Uruguay, among others.
56. Cases related to amnesty laws and provisions constitute sources of international responsibility due to the incompatibility of this legislation with the inter-American instruments and due to the fact that judicial authorities fail to make adjustments to bring domestic legislation in line with said instruments. Below are some relevant extracts from published reports covering this matter.

Country Reports

*Third Report on the Human Rights Situation in Colombia*⁹⁰

345. Also relevant to this discussion is a letter sent in 1995 by a representative of the International Committee of the Red Cross to the Prosecutor of the Yugoslav Tribunal on the subject of amnesty for violations of Protocol II. In that letter, the ICRC clarified that Article 6.5 of Protocol II, which provides for the widest possible amnesty at the conclusion of hostilities, cannot be interpreted as supporting impunity for violations of international humanitarian law.(159) Over the years, this Commission has had the opportunity in several key cases to state its views and crystalize its doctrine on the subject of amnesties. These decisions have uniformly found that amnesty laws and comparative legal measures that preclude or terminate the investigation and prosecution of state agents who may be responsible for serious violations of the American Convention or Declaration violate multiple provisions of these instruments.(160) These views have been confirmed by the Inter-American Court on Human Rights. The Court has established that States Parties have the duty “to investigate human rights violations, prosecute those responsible and avoid impunity”(161) and has defined impunity as the lack of investigation, pursuit, detention, prosecution and punishment of those responsible for human rights violations. The Court has stated that States have the obligation to employ all available legal means in order to avoid this kind of impunity which allows for the chronic repetition of human rights violations and leaves the victims and their families powerless.(162) States Parties to the American Convention cannot invoke the application of their domestic law, in this case amnesty laws, in order to disregard their obligation to ensure the full and proper functioning of justice for the victims.(163)

Annual Reports

*Annual Report 1992-1993. Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 v. Argentina, Report No. 28/92 October 2, 1992*⁹¹

37. The laws and the Decree sought to and effectively did obstruct the exercise of the petitioners’ right under Article 8.1 cited earlier. With enactment and enforcement of the laws and the Decree, Argentina has failed to comply with its duty to guarantee the rights to which Article 8.1 refers, has abused those rights and has violated the Convention.

⁹⁰ IACHR. [Third Report on the Human Rights Situation in Colombia](#). OAS/Ser.L/V/II. 102, doc. 9 rev. 1, February 26, 1999, chapter IV, para. 345.

⁹¹ IACHR. Annual Report of the IACHR 1992-1993 [Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 v. Argentina](#), Report No. 28/92 October 2, 1992.

40. When interpreting the scope of Article 1.1, the Inter-American Court of Human Rights stated that “(t)he second obligation of the States Parties is to ‘ensure’ the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction (...) As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention...” [2] What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible...” [3] The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. [4] If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. [5] As for the obligation to investigate, it states that the investigation “must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[6]”

*Annual Report 1992-1993. Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 v. Uruguay, Report No.29/92 October 2, 1992*⁹²

31. As for the domestic legitimacy and the “approval of the Amnesty Law by a popular referendum,” it should be noted that it is not up to the Commission to rule on the domestic legality or constitutionality of national laws. However, the application of the Convention and the examination of the legal effects of a legislative measure, either judicial or of any other nature, insofar as it has effects incompatible with the rights and guarantees embodied in the Convention or the American Declaration, are within the Commission's competence.

32. That competence follows from the Convention itself, when it gives the Commission (and the Inter-American Court of Human Rights as well) competence “with respect to matters relating to the fulfillment of the commitments made by the States Parties to this

⁹² IACHR. Annual Report of the IACHR 1992-1993 [Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 v. Uruguay](#), Report No.29/92 October 2, 1992.

Convention” (Article 33). In other words, the Commission “takes action on petitions and other communications pursuant to its authority under the provisions of Articles 44 and 51 of this Convention” (Article 41.f). Furthermore, Article 2 stipulates that the States Parties are obliged to adopt “such legislative or other measures as may be necessary to give effect to those rights or freedoms” (Article 2). A fortiori, a country cannot by internal legislation evade its international obligations. Therefore, the Commission and the Court are authorized to examine, in light of the Convention, even domestic laws which allegedly abrogate or violate rights and freedoms embodied therein.

*Annual Report 1996, Chapter V, section on Guatemala*⁹³

31. The Commission has received information that the Presidential Coordinating Commission for Executive Policy in Human Rights Matters (COPREDEH) and MINUGUA have taken some steps to inform judges of the relationship between the provisions of this law and Guatemala's international treaty obligations. Members of the Alliance against Impunity filed a constitutional challenge to the law which remained pending as of the end of February 1997. The Commission is informed that, as of the end of February 1997, requests for amnesty under the law have been denied in the cases initiated with respect to the killings of Myrna Mack and Jorge Carpio Nicolle.[21] In this regard, the Commission has, in a variety of specific cases, articulated criteria concerning the interrelationship between impunity and laws which grant amnesty and comparable measures. [22]

*Annual Report 1992-1993 Case 10.287. El Salvador. Report No. 26/92, September 24, 1992*⁹⁴

The application of the Salvadoran amnesty decree constitutes a clear violation of the obligation of the Salvadoran Government to investigate and punish the violations of the rights of the Las Hojas victims, and to provide compensation for damages resulting from the violations.

The application of the amnesty decree in the instant case renders nugatory the obligations imposed by Article 1.1 of the Convention, and thus constitutes a violation of this article of the Convention. The present amnesty law, as applied in these cases, by foreclosing the possibility of judicial relief in cases of murder, inhumane treatment and absence of judicial guarantees, denies the fundamental nature of the most basic human rights. It eliminates perhaps the single most

⁹³ IACHR. [Annual Report 1996](#). Chapter V. Human Rights Developments in the Region, section on Guatemala.

⁹⁴ IACHR. Annual Report of the IACHR 1992-1993 [Case 10.287](#). El Salvador. Report No. 26/92, OAS/Ser.L/V/II.83 Doc. 14, September 24, 1992.

effective means of enforcing such rights, the trial and punishment of offenders.

Reports on Merits

*Report No. 133/99 Case 11.725. Carmelo Soria Espinosa v. Chile. November 19, 1999*⁹⁵

70. As established above, precluding the possibility of judging those responsible for the illegal detention, forced disappearance and extrajudicial execution of Carmelo Soria, perpetrated by agents of the State during the past military regime, violates the right to access to justice and judicial protection enshrined in the Convention. This denial of justice stems from the enactment and application of the Amnesty Law that the military government issued for the benefit of its own members. The State has maintained this law in force after its ratification of the American Convention and it has been ruled as constitutional by the State's Judicial Branch, which has applied it in a continuous manner. The Commission has already had the opportunity on earlier occasions to declare its opinion on the incompatibility of this law and its application by domestic courts in particular cases with the international obligations of the Chilean State under the American Convention.

*Report No. 47/00 Case 10.908. Manuel Pacotaype Chaupin, Martín Cayllahua Galindo, Marcelo Cabana Tucno and Isaías Huamán Vilca v. Peru, April 13, 2000*⁹⁶

76. With respect to Peru's allegation that the amnesty laws are consistent with the Peruvian Constitution, the Commission recalls that the Peruvian State, on ratifying the American Convention on Human Rights on July 28, 1978, contracted the obligation to respect and ensure the rights set forth in it. In this regard, and in keeping with Article 27 of the Vienna Convention on the Law of Treaties, the Peruvian State cannot invoke its internal laws as justification for failure to comply with the obligations it assumed on ratifying the

⁹⁵ Mr. Carmelo Soria Espinoza, of dual Spanish and Chilean nationality, was working as chief of the Editorial and Publications Section of the Latin American Demographic Center (CELADE) in Chile. On July 14, 1976, as he was leaving work, he was kidnapped by security agents of the National Office of Intelligence and subsequently murdered. The Chilean courts determined that state agents participated in the crime and their identities were established. However, pursuant to Decree Law No. 2.191 from 1978, known as the "self-amnesty law", criminal prosecution was dismissed, allowing the crime committed by these agents to go unpunished. IACHR. [Case 11.725. Carmelo Soria Espinosa](#). Report No. 133/99 Chile. November 19, 1999.

⁹⁶ The case relates to the violation by the Peruvian State of the human rights Manuel Pacotaype Chaupín, Martín Cayllahua Galindo, Marcelo Cabana Tucno, and Isaías Huamán Vilca, when they were detained on March 14, 1991, by police staff and subsequently disappeared. IACHR. Report No. 47/00 [Case 10.908](#). Peru, April 13, 2000, paragraph 76. IACHR. Report No. 44/00 [Case 10.820](#). Peru, April 13, 2000, paragraph 68. See also IACHR. Report No. 55/99, [Cases 10.815; 10.905; 10.981; 10.995; 11.042, and 11.136](#). Peru, April 13, 1999, paragraph 140.

American Convention on Human Rights. Over the years, this Commission has adopted reports in several key cases in which it has had the opportunity to express its point of view and crystallize its doctrine with respect to the application of amnesty laws, establishing that such laws violate several provisions of both the American Declaration and the American Convention.[22] These decisions, which are in agreement with the criterion adopted by other international human rights bodies regarding amnesties,[23] have declared uniformly that both the amnesty laws and comparable legislative measures that impede or that determine the conclusion of the investigation and trial of State agents who may be responsible for serious violations of the American Convention or the American Declaration violate several provisions of those instruments.[24] This doctrine has been confirmed by the Inter-American Court of Human Rights, which has established that the States Parties have the duty “to investigate human rights violations, prosecute the persons responsible, and prevent impunity.”[25] The Court has defined impunity as the failure to investigate, pursue, arrest, try, and sentence persons responsible for human rights violations, and has affirmed that the States have the duty to combat this situation by all legal means available, since impunity fosters the chronic repetition of such human rights violations, and the total defenselessness of the victims and their families.[26] The States Parties to the American Convention cannot invoke provisions of domestic law, such as amnesty laws, to fail to carry out their obligation to guarantee the complete and correct functioning of the justice system.[27]

57. After these foundational statements on the matter, the IACHR established that the provisions of full, absolute and unconditional amnesty are incompatible with the inter-American obligations of the States because they enshrine impunity in cases of serious human rights violations and hinder the effective investigation, prosecution and punishment of the offenders, and constitute an obstacle in the search for justice for the victims of serious human rights violations and their families. The Commission has stated that the provisions that seek to prevent the investigation and punishment of those responsible for serious human rights violations are inadmissible. These provisions, which eliminate the possibility of prosecution and punishment of the offenders, violate the most effective measure for the enforcement of human rights.⁹⁷ A series of relevant extracts are presented hereunder concerning paradigmatic reports published by the IACHR in this subject matter.

⁹⁷ IACHR. Annual Report 1992-1993 [Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 v. Argentina](#). Report No. 28/92. October 2, 1992 and IACHR. Annual Report 1992-1993 [Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375 v. Uruguay](#). Report No.29/92 October 2, 1992.

*Report No. 177/10 Case 10.720. The Massacres of “El Mozote” and Nearby Places. El Salvador, November 3, 2010*⁹⁸

314. The Commission and the Inter-American Court have repeatedly held that it is not acceptable to apply an amnesty in the case of crimes against humanity. In the case of *Almonacid Arellano v. Chile*, the Court recounted the international consensus on this issue in the following terms.

330. In light of these findings, it is clear that the General Amnesty Law for Consolidation of the Peace and its application in the present case are incompatible with the international obligations of the State of El Salvador under the American Convention. As it has been mentioned before, the facts of this case are of extreme gravity and constitute crimes against humanity whose impunity openly contravenes the Convention. The Commission therefore concludes emphatically that the amnesty law can have no legal effect and cannot continue to be an obstacle to investigation of the massacres in El Mozote and nearby places, nor to the identification and punishment of those responsible.

318. For decades the Commission has been expressing its concern over amnesty laws that impede the prosecution of crimes against humanity, and are incompatible with the American Convention.

319. For example, with respect to Laws 23.492 and 23.521 and Decree No. 1002 (known as the “due obedience” and “deadline” rules) in Argentina, the Commission found that they sought to and effectively did obstruct the exercise of the petitioners’ right under Article 8.1. With the enactment and enforcement of the laws and the decree, Argentina failed to comply with its duty to guarantee the rights set forth under Articles 8.1, 25.1 and 1.1 of the Convention.⁹⁹ Similarly, examining the Uruguayan amnesty law (*Ley de Caducidad de la Pretensión Punitiva del Estado*), the Commission concluded that it obstructed access to justice and therefore constituted a violation of the rights enshrined in Articles 8.1, 25.1 and 1.1 of the Convention.¹⁰⁰ Likewise, with respect to Chile’s Decree Law 2.191, known as the “self-amnesty law”, the Commission found it incompatible with Articles 8.1, 25.1, 1.1 and 2 of the American Convention.¹⁰¹

⁹⁸ The case relates to the international responsibility of the State for a military operation in seven towns in the north of the department of Morazán, in which approximately a thousand people lost their lives, as well as for the absence of an investigation of the facts and lack of punishment of those held responsible.

⁹⁹ IACHR. [Report No. 28/92. Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311](#). Argentina. October 2, 1992. Paragraphs 37, 39 and 41.

¹⁰⁰ IACHR. [Report No. 29/92. Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375](#). Uruguay. October 2, 1992. Paragraphs. 45, 46, 49 and 51.

¹⁰¹ IACHR. [Report No. 34/96. Cases. 11.228, 11.229, 11.231 and 11282](#). Chile. October 15, 1996. Paragraphs 104 and 107.

334. On the basis of the arguments to this point, the Commission concludes that the existence and the application of the General Amnesty Law for Consolidation of the Peace in this case constitute a violation of the rights enshrined in Articles 8.1 and 25.1 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 thereof, to the detriment of the next of kin of the victims listed in the Annex to this report. The Commission emphasizes that this violation is ongoing and will persist until such time as the State of El Salvador annuls the General Amnesty Law for Consolidation of the Peace and pursues its investigations into the facts of the case.

Cases in Court

*Report No. 71/15 Case 12.879 Report on the Merits. Vladimir Herzog et al. v. Brazil OAS/Ser.L/V/II.156 Doc. 24 October 28, 2015*¹⁰²

224. The Commission appreciates the initiatives mentioned by the State. However, in terms similar to those expressed in the case of *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, the Commission concludes that, in this case, the judges validated the interpretation of Law No. 6.683/79 (Amnesty Law), which has no legal effect for serious human rights violations in the above terms. To that extent, the judicial authorities who have known about the investigation of the arbitrary detention, torture and murder of Vladimir Herzog have prevented the identification, trial and punishment of those responsible, and have not exercised proper control of conventionality to which they were obliged, once the American Convention was ratified, in accordance with the international obligations of Brazil under international law.

The IACHR recommends the State to:

2. Take all necessary measures to ensure that Law No. 6.683/79 (Amnesty Law), as well as other criminal law arrangements, such as statutes of limitations, *res judicata*, the principles of non-retroactivity and *ne bis in idem*, do not continue to represent an obstacle for the criminal prosecution of serious human rights violations, as such of the instant case.

¹⁰² The case relates to the failure to investigate, prosecute and punish those responsible for the torture and murder of Vladimir Herzog, which was committed in a systematic and generalized context of attacks on the civilian population, and to the application of Amnesty Law No. 6683/79 and other exemptions from liability prohibited by international law in cases of crimes against humanity.

C. With Regard to Regulations on Death Penalty

58. The Commission has paid special attention to the application of the death penalty. The American Convention on Human Rights does not prohibit the application of the death penalty in the States that maintain it, but limit it to a series of express restrictions and prohibitions. Notwithstanding the foregoing, the IACHR considers that the application of the death penalty presents concerns about the discriminatory and inhumane treatment that characterizes the prolonged confinement on death row, the risk of executing innocent people and the arbitrariness and injustice in the application of the conviction. The IACHR considers that every person has the inalienable right to have their life respected without this right being suspended for any reason; and it has observed that the trend in the American States is in favor of the abolition of the death penalty and that the application of the death penalty produces irreparable consequences that impede the correction of the judicial error and the elimination of any possibility of amendment and rehabilitation of the accused. Thus, the IACHR holds that the abolition of the death penalty contributes to ensuring a more effective protection of the right to life.
59. A series of relevant extracts are presented hereunder to demonstrate the approach the IACHR has had with respect to the obligation to adapt domestic legislation to the inter-American standards in cases involving death penalty.

Admissibility and Merits Reports

*IACHR, Report No. 211/20 Case 13.570 Report on Admissibility and Merits (Publication) Lezmond C. Mitchell United States of America*¹⁰³

88. Since its first case on indigenous peoples rights, decided under the American Declaration, the IACHR has established that international

¹⁰³ The case alleged the international responsibility of the United States of America for the violation of the rights of Lezmond M. Mitchell, a U.S. citizen and member of the Navajo Nation, who was the only Native American on federal death row.

72. Before embarking on its analysis of the merits in the case Lezmond C. Mitchell the Inter-American Commission reiterates its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a sine qua non for the enjoyment of all other rights.

105. Further, when interpreting and applying the provisions of the American Declaration to a member of an indigenous community, the Commission should consider compliance with the State's obligations regarding the right to a fair trial. These obligations, in turn, should respect the autonomy and cultural identity of the indigenous peoples. In the instant case, Mr. Mitchell's right to be sentenced in accordance with the general understanding of the Navajo Nation that the commission of a murder by a Navajo on tribal territory should not lead to the death penalty, is a component of the right to a fair trial and to the protection against the arbitrary imposition of a penalty. Therefore, in the absence of a justification to override this decision of the Navajo Nation, the State also infringed Mr. Mitchell's rights to a fair trial.

106. Therefore, the IACHR concludes that the United States, by circumventing the Navajo Nation's rejection, as a sovereign nation, of the death penalty and without any justification, violated the right to autonomy and cultural identity of the Navajo Nation in relation to Mr. Mitchell's fair trial under Article XXVI of the American Declaration.

law “recognizes the right of ethnic groups to special protection” regarding “all those characteristics necessary for the preservation of their cultural identity.” The Commission notes that States must ensure the full exercise and enjoyment of the rights of members of indigenous communities who are under its jurisdiction. Therefore, in interpreting and applying their domestic legislation, States must take into consideration the specific characteristics that differentiate members of the indigenous peoples from the general population and that shape their cultural identity.

142. On the basis of determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles I, XVIII, XXV and XXVI of the American Declaration.

2. Review its laws, procedures, and practices at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and, in particular that:

a. the sovereign decision of the Navajo Nation, and other Native American Nations, against the use of the death penalty in their territory, are respected; and

b. court-appointed counsel provide adequate legal representation in death penalty cases and, in the case of Native American/indigenous defendants, represent specific considerations that might involve issues of indigenous self-determination, jurisdiction, culture and religion.

3. Review its laws, procedures, and practices to ensure that the persons sentenced to the death penalty have access to effective judicial remedies to challenge the possible impact of the method of execution on their fundamental rights in accordance with the standards set forth in this merits report.

4. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it abolishes the federal death penalty¹⁰⁴.

¹⁰⁴ IACHR, Report No. 211/20 Case 13.570 Report on Admissibility and Merits (Publication) Lezmond C. Mitchell United States of America, para. 141.

On September 24, 2020, the IACHR condemned the execution of Lezmond Mitchell through a press release in which it stated:

On August 24, 2020, the Commission adopted Admissibility and Merits Report No. 211/20 in which it concluded that the United States is responsible for the violation of Lezmond Mitchell's rights to

Annual Report

IACHR. Annual Report 2013. Chapter IV. Developments of Human Rights in the Region

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

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

life, to a fair trial, to protection against arbitrary arrest, and to due process of law, in connection with the criminal proceedings that culminated in the imposition of the death penalty. The crimes for which Mr. Mitchell was convicted were committed on Indian territory and involved members of the community. The Navajo Nation and the families of the victims expressed their opposition to the application of the death penalty as contrary to their cultural beliefs and traditions. Despite this, and the recommendation of the local prosecutor's office not to seek the death penalty, the Attorney General instructed the Department of Justice to seek the death penalty.

The IACHR concluded that the criminal proceedings that culminated in Mr. Mitchell's conviction and sentence to death violated the rights to cultural identity and undermined the right of indigenous peoples to self-determination, in addition to violating Mr. Mitchell's right to a fair trial. In its report, the IACHR recommended that the United States provide Mr. Mitchell with an effective remedy, including a review of his trial and sentence in accordance with fair trial and due process guarantees.

The Inter-American Commission declares that the United States, by executing Lezmond Mitchell in accordance with the criminal procedure followed, has committed a grave and irreparable violation of the fundamental right to life enshrined in Article I of the American Declaration. The IACHR deplores the failure of the United States to comply with Recommendation No. 1 of the Admissibility and Merits Report No. 211/20, an act that constitutes a violation of the State's international human rights obligations under the Charter of the Organization of American States (OAS) and related instruments as a member state of the OAS.

IACHR, Press Release of September 24, 2020: [IACHR Condemns Execution of Lezmond Mitchell, Only Indigenous Person on Federal Death Row in the United States.](#)

human rights violations committed by the forces of law and order in that decade of Suriname's recent history, spent under a dictatorial regime.

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

Thematic Reports

The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition, OAS/Ser.L/V/II Doc.68I December 31, 2011

11. As it has been indicated in the present compilation of standards, the kinds of deficiencies that have been identified by the Commission as rendering an execution arbitrary and contrary to Article I of the American Declaration include failing to limit the penalty to crimes of exceptional gravity set forth in pre-existing law, the failure to provide strict due process guarantees and the existence of demonstrably diverse practices that result in the inconsistent application of the penalty for the same crimes.

72. In a case regarding the mandatory imposition of the death penalty in Jamaica, the Commission held:¹⁰⁵

In previous cases involving the application of capital punishment under the Offenses Against the Person Act in Jamaica, the Commission has evaluated the mandatory nature of the death penalty under that legislation in light of Article 4 (right to life), Article 5 (right to humane treatment) and Article 8 (right to a fair trial) of the Convention and the principles underlying those provisions. It has also considered the mandatory death penalty in light of pertinent authorities in other international and domestic jurisdictions, to the extent that those authorities may inform the appropriate standards to be applied under the American Convention. Based upon these considerations and analysis, the Commission has reached the following conclusions:

¹⁰⁵ IACHR. Report No. 76/02, Case 12.347. Dave Sewell v. Jamaica, December 27, 2002, paragraphs 80-84, 87, 90-102; See also IACHR. Report No. 58/02, Merits, Case 12.275. Denton Aitken v. Jamaica, October 21, 2002, paragraphs 96, 99, 103-114; IACHR. Report No. 49/01 Case No. 11.826 Leroy Lamey *et al.* v. Jamaica, April 4, 2001, paragraphs 104-143; IACHR. Report No. 127/01 Case 12.183. Joseph Thomas v. Jamaica, December 3, 2001, paragraphs 91-112; IACHR. Report No. 41/00 Case 12.023. Desmond McKenzie *et al.* v. Jamaica, April 13, 2000, paragraphs 172-211.

In the context of these interpretive rules and principles, the Commission has evaluated mandatory death penalty legislation under Articles 4, 5 and 8 of the Convention and has concluded that imposing the death penalty through mandatory sentencing, as Jamaica has done with regard to the crime of capital murder, is not consistent with the terms of Articles 4.1, 5.1, 5.2, 8.1 and 8.2 of the Convention and the principles underlying those provisions.[79] The Commission observes in this regard that since its determination in the case of *Haniff Hilaire v. Trinidad and Tobago*[80] in 1999 that the mandatory death penalty was inconsistent with the rights protected in the inter-American system, other international and regional tribunals have reached similar conclusions.

77. With respect to Trinidad and Tobago the Inter-American Court has indicated:¹⁰⁶

The Commission added that the use of the “mandatory death penalty” by Trinidad and Tobago results in its imposition on all persons convicted of murder, without taking into account the mitigating and aggravating circumstances of the case or the varying degrees of culpability. In the Commission’s opinion, the foregoing contravenes the inherent dignity of the human being and the right to humane treatment protected in Article 5.1 and 5.2 of the American Convention. The Commission added that the “mandatory imposition of the death penalty,” that is, where the death penalty is the only imposable punishment for murder cases, eliminates the possibility of determining individualized sentences and prevents a rational and proportional relation between the offender, the crime and the punishment imposed, and does not allow judicial review of the judgement, according to the terms of the American Convention. In light of this, the Inter-American Commission pointed out in its final allegations that the imposition of the “mandatory death penalty” for all persons convicted of murder, without analyzing the individual characteristics of the offender and the crime and without considering whether the death penalty was the appropriate punishment for that case, renders it an inhuman and unjust punishment, constituting a violation of Articles 4.1, 4.2, 5.1, 5.2, and 8.1 in relation to Article 1.1 of the American Convention.

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IAHR Court. Case *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgement of June 21, 2002. Series C No. 94, paragraphs 85-92, 101-108. The case relates to the criminal proceedings of all or some of the victims, as a result of their conviction for the crime of intentional murder in Trinidad and Tobago.

CHAPTER 4
CONCLUSIONS

CONCLUSIONS

60. The Inter-American Commission, in compliance with the mandate set forth in Article 41 of the ACHR and in Article 106 of the OAS Charter regarding the provision of advice to States on human rights matters, has decided to prepare this document, the main objective of which is to provide States with a technical cooperation instrument aimed at improving and strengthening the legislation, policies and practices of States in order to achieve the fullest protection of human rights.
61. This compendium is an updated and easily accessible instrument of reference for state actors, civil society, academia and other international organizations on a subject of great relevance for the region. These instruments of cooperation are developed by the Inter-American Commission to promote a greater knowledge and use of the inter-American human rights standards. At the same time, the Commission seeks to provide a practical tool to advance on the strengthening of the capacities of actors both locally and at the level of the international system for the protection of human rights. Consequently, the collection of standards and jurisprudence contained in this compendium is aimed at improving the design of interventions and public policies. In this way, the IACHR underscores the importance of States adopting diligent efforts to apply the legal standards of the inter-American system on human rights.
62. The permanent training and updating, mainly of the judicial authorities, is among the main challenges presented by the obligation to adapt domestic legislation to the inter-American human rights standards. Carrying out this type of capacity-building activities helps understand the origin and the development of international obligations, their scope and interpretation, and the essential elements needed for their application.
63. The Inter-American Commission reiterates its commitment to collaborating with the States in the Americas through technical assistance and cooperation as an instrument for institutional strengthening aimed at helping States guarantee the real and objective conditions required to materialize efforts and initiatives of public policies that promote the enjoyment of human rights.
64. The IACHR considers this compendium a technical cooperation tool designed to improve and strengthen the legislation, policies and practices of the States, and to guarantee that the human rights of all persons and groups of persons are duly respected and protected. That is why, through this compendium, the IACHR offers the users of the system, public policy state operators, judges, parliamentarians and other state officials, civil society, social movements, academia, experts, among other relevant actors in the region, an updated and easily accessible technical cooperation instrument on the use and implementation of this relevant subject matter.

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