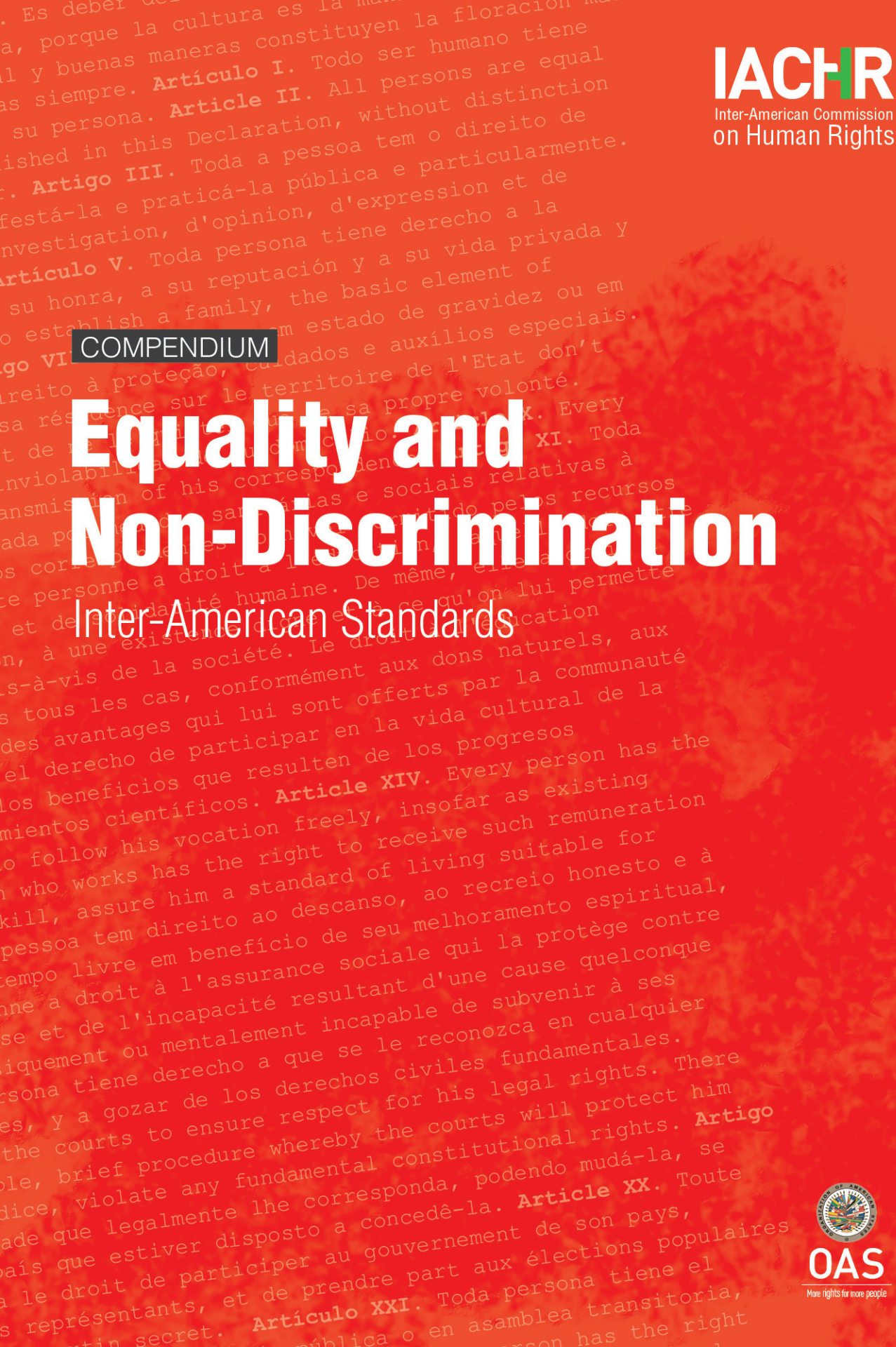
IACHR
Inter-American Commission on Human Rights

COMPENDIUM

Equality and Non-Discrimination

Inter-American Standards



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INTRODUCTION

INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the IACHR or the Commission) has repeatedly stated that the principle of non-discrimination is one of the pillars of any democratic system and that it is one of the fundamental bases of the human rights protection system installed by the Organization of American States (hereinafter the OAS).[1] Both the American Declaration of the Rights and Duties of Man (hereinafter the ADRDM or the American Declaration) and the American Convention on Human Rights (hereinafter the ACHR or the American Convention) were inspired by the ideal that "all men are created free and equal in dignity and rights."[2]

2. In this regard, international human rights law has clearly recognized that it is a core, key, and guiding principle for the progressive advancement of human rights protection. In the Inter-American system, this recognition is enshrined in the contents of Article II of the American Declaration, in Article 1 and Article 24 of the American Convention on Human Rights, and in Article 3 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter the Protocol of San Salvador or the Additional Protocol), as well as in the text of various key instruments of the Inter-American human rights protection system such as, for example, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the Convention of Belém do Pará); the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; the Declaration on the Rights of Indigenous Peoples; the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; the Inter-American Convention on Protecting the Human Rights of Older Persons; and the Inter-American Convention against All Forms of Discrimination and Intolerance.

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1 See, among others, IACHR. Annual Report of the Inter-American Commission on Human Rights, 1999, Chapter VI. The same can be said, in general, in the United Nations, as established by the Human Rights Committee: "Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights" (UN. Human Rights Committee. General Comment No. 18. Non-discrimination. CCPR/C/37, 10 November 1989, para. 1).

2 American Declaration of the Rights and Duties of Man, Preamble.

3. Concretely, the American Declaration sets forth, in Article II, that: "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." As for Article 1.1 of the American Convention, it highlights the general obligation of States to respect and guarantee the rights recognized therein, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. Furthermore, Article 24 of the American Convention establishes that: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." Article 17 of the American Convention recognizes equality of rights among spouses during marriage and in the event of its dissolution.

4. Since the inter-American system's earliest jurisprudence, it has highlighted, regarding the principle of equality, that this notion is drawn directly from human nature and is inseparable from a person's key dignity, because of which it is incompatible with any situation where a given group is deemed superior, leading it to being treated as a privileged group, or inversely, because a group is deemed inferior it is treated with hostility or in any way that might discriminate against its enjoyment of rights which are indeed recognized for those who are not included in said situation of inferiority.

5. As for the concept of *discrimination*, although the American Convention and the International Covenant on Civil and Political Rights do not contain any definition of this term, the Commission, the Court, and the United Nations Human Rights Committee have taken, as their reference, the definitions appearing in the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the ICERD) and in the CEDAW to establish that discrimination constitutes: […] any distinction, exclusion, restriction or preference based on any reason such as race, color, sex, language, religion, political or any other kind of opinion, national or social origin, economic status, birth, or any other social condition which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

6. In the framework of the United Nations human rights system, Articles 1 and 2 of the Universal Declaration of Human Rights declare that: "All human beings are born free and equal in dignity and rights" and that everyone must enjoy these recognized rights "without distinction of any kind" because of "property […] or other status."

7. The Commission has highlighted the various concepts of the right to equality and non-discrimination. One concept is related to the prohibition

of arbitrary differentiated treatment—in the understanding that differentiated treatment encompasses all distinction, exclusion, restriction, or preference—and the other is related to the obligation of creating real equality conditions for groups that have been historically excluded and who have a higher risk of being discriminated. The Commission understands that, although in certain cases both perspectives can be present, each one merits a separate response from the State and a distinct treatment in light of the American Convention. To this must be added that, in the various concepts of the right to equality, the State's actions or omissions can be associated with rights enshrined in the American Convention or can refer to any State action that has no effects on the exercise of convention-based rights.

8. From the above it can be concretely concluded that States are obliged to refrain from carrying out actions that might in any way be aimed to create, whether directly or indirectly, situations of discrimination and must adopt positive measures to reverse or change discriminatory situations in their societies, on the basis of the idea of equality and the principle of non-discrimination.

9. Furthermore, the Commission considers that, in light of the principle of equality and non-discrimination and in the context of protecting the rights of all persons under the jurisdiction of States, it is essential to focus attention on persons, communities, and groups who have been historically subject to discrimination and exclusion.[3] Regarding this, the IACHR deems it is important to stress that the identification of "groups in a situation of vulnerability" or "groups in a situation of historical discrimination" vary in each society. In other words, not all societies discriminate against the same persons. In certain societies, there are situations of discrimination with respect to certain ethnic, religious, or political groups that are fully integrated by other societies. There are also groups that have become targeted by some form of discrimination that did not exist before (for example, persons living with HIV/AIDS or older persons). Because of that, at each historical moment, every State must identify those groups in order to draw up suitable policies of inclusion that would guarantee the full exercise of their rights.[4]

10. The Commission has contended as well that, in light of the principles of nondiscrimination and equality of opportunity recognized, the State must

[3] IACHR. Strategic Plan 2017-2021, p. 9.

[4] IACHR. Access to Justice for Women Victims of Violence in the Americas, para. 118.

"ensure that the policies it adopts do not place a disproportionate burden on the marginalized and most vulnerable sectors of society."[5]

A. Objective

11. The Inter-American Commission's principal mandate is promoting and defending human rights in the Americas. It fulfills these duties by means of various mechanisms such as visiting the 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, processing and reviewing petitions through the system of individual cases, and providing States with technical advisory and cooperation services.

12. On the basis of this mandate, the Inter-American Commission has continued to constantly monitor the human rights situation in all countries of the Hemisphere, especially on the reality of various persons and groups of persons in situations of vulnerability and historical discrimination.

13. Through its various mechanisms, the IACHR has been able to observe the development of best practices, compliance with recommendations, and a series of breakthroughs in the States in connection with the obligations relative to the principle of equality and non-discrimination. Domestically, this is evident by means of the recognition by the States of the constitutional and legal regulatory framework and as well as the adoption of a series of public policies, among many other initiatives of the utmost importance for the issue. Nevertheless, it must be stressed that there still are major challenges and, in some areas, serious setbacks regarding the effective protection and guarantee of the principle of equality and non-discrimination, leading to impacts on, and violations of, the human rights of persons and groups, especially those in situations of vulnerability and historical discrimination. Because of this, the IACHR reaffirms that the legal development of standards within the Inter-American system must be matched by a series of efforts and initiatives by States to put those standards into practice.[6]

14. In this context, the Commission deems it is essential to expand and strengthen the promotion, dissemination, and application of the principle of equality and non-discrimination, by the drafting of the present

5 IACHR. Report on the Situation of Human Rights in Ecuador 1997, Chapter II. B, Judicial and Institutional Guarantees in the Republic of Ecuador.

6 IACHR. Considerations related to the Universal Ratification of the American Convention and other Inter-American Human Rights Treaties, OEA/Ser.L/V/II.152 Doc.21, August 14, 2014, para. 4

compendium of Inter-American standards developed by the IACHR regarding these guarantees.

15. As a result, the IACHR has prepared the present compendium for the purpose of providing a technical cooperation tool to be made available to users of the system, State agents of public policies, judges, members of parliament, and other civil servants of the State, as well as civil society, social movements, the academic community, and experts, among other relevant stakeholders, in fulfillment of its mandate and in view of the programming of its Strategic Plan for 2017-2021.

B. Structure

16. The present compendium is divided into four substantive chapters presenting aspects that are relevant to the subject. Chapter I refers to the basic concepts relative to the principle of equality and non-discrimination. This first section compiles information about the progressive development of these principles, as well as their scope, for the purpose of updating key notions in the sphere of the Inter-American system, thus facilitating a conceptual understanding of the principle of equality and non-discrimination.

17. Chapter II of the compendium is structured around the contents of State obligations to respect the principle of equality and non-discrimination. This section also systematizes the standards adopted for reviewing cases on the States' violations of their duties to respect and guarantee equality and non-discrimination. Among other elements, Inter-American standards used to examine cases are compiled, in particular regarding the application of the phased judgment of proportionality and the suspect categories referred to in Article 1 of the ACHR, also reflecting the inclusion of new categories. Finally, considerations are included about the obligation of States to adopt affirmative actions to reverse or eliminate situations of discrimination.

18. Chapter III presents the specificities and characteristics of discrimination in connection to persons or groups in situations of vulnerability or historical discrimination. In this section, the IACHR identifies the obligations of States with respect to these population groups. In particular, it stresses the need to render visible the various forms of stigmatization, discrimination, and violence to which these groups are subjected, with special attention focusing on those that are inter-related under various identities, as well as the risks that aggravate their situation of inequality.

19. Finally, Chapter IV tackles questions relative to the various contexts in which these standards for the principle of equality and non-discrimination are to be enforced.

C. Methodology

20. The compendium on the principle of equality and non-discrimination was prepared by the IACHR on the basis of the revision, systematization, and analysis of the Inter-American standards developed by the Commission in this matter.

21. For the purpose of presenting an up-to-date and complete instrument, the compendium was prepared on the basis of the review of the reports published by the IACHR since 2000 up to the year 2018. In particular, the thematic and country reports were examined during the period identified, as well as the substantive decisions taken in cases submitted to the Inter-American protection system, among which reports published by the IACHR pursuant to Article 51 of the ACHR and reports relative to cases remitted to the Inter-American Court pursuant to Article 61 of the ACHR and Article 45 of the IACHR's Rules of Procedure. Thus, the Inter-American Commission attempts to describe how this principle has been understood, applied, and developed in the system of individual cases, as well as in the merits and country reports published.

22. The present compendium brings together the work carried out by the Commission in fulfillment of its mandate and includes certain excerpts that are relevant to the case law developed by the Inter-American Court and by other bodies of the universal human rights protection system that have been referred by the IACHR.

23. The inter-American standards developed around the principle of equality and non-discrimination were systematized exhaustively so that the compendium could become a tool to ensure their promotion, dissemination, and technical cooperation. Nevertheless, the systematized information is not exhaustive; rather the case law being quoted has been deemed relevant for the purposes of the intended objective, because of which, in addition, citations are included to allow for further information consultation in this regard. .

CHAPTER 2

THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION

THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION

24. In this first section of the compendium, the IACHR describes the scope of the principle of equality and non-discrimination, as well as the key basic concepts that relate to it.

25. In the present chapter, the IACHR intends to provide a general overview of the principle of equality; the linkage between the American Declaration and the American Convention when interpreting the rights and guarantees set forth in these documents; and the distinction between the protection granted by Article 1.1 and Article 24 of the ACHR. Likewise, the IACHR identifies the paragraphs that point out the criteria that a differentiated treatment must meet so that it cannot be viewed as a discriminatory act; and describes the development regarding formal equality and material equality. As indicated, the Inter-American system not only enshrines a formal notion of equality, confined to stipulating objective and reasonable distinction criteria and therefore forbidding differentiated treatment that is unreasonable, capricious, and arbitrary, but also advances toward a concept of material or structural equality based on the recognition that certain sectors of the population require the adoption of affirmative action measures to ensure a level playing field. This entails the need for differentiated treatment when, because of the circumstances affecting a disadvantaged group, the equality of treatment presupposes suspending or limiting the access to a service or good or the exercise of a right.

26. In addition, the IACHR will present the evolution of the principle of equality and non-discrimination and its entry into the domain of *ius cogens*. The IACHR has referred to *ius cogens* as "the designation of certain protections related to the person as peremptory norms (*ius cogens*) and obligations *erga omnes*, in a vast set of treaty law, in principles of customary international law, and in the doctrine and practice of human rights bodies like this Commission".[7] The rules of *ius cogens* generate the legal obligation of the States and constitute the absolute limit to their will.

[7] CIDH. Report Nº 109/99. Case 10.951 COARD Y OTROS vs ESTADOS UNIDOS. September 29th, 1999, para. 39.

27. Afterwards, the IACHR refers to the criteria provided with respect to groups in a situation of vulnerability and concepts such structural discrimination, indirect discrimination, and multiple or intersectional discrimination.

28. Finally, this chapter presents general considerations about how stereotypes are used as a form of discrimination and how the principle of equality and non-discrimination is connected to the States' fulfillment of their obligations in the area of economic, social, cultural, and environmental rights (ESCER).

A. Scope of the Principle of Equality and Non-Discrimination

29. Below, the evolution of the contents of the principle of equality and non-discrimination is presented, as well as its location and importance in international law. Regarding this, it must be stressed that the IACHR understands equality and non-discrimination as a guiding principle, as a right, and as a guarantee, that is, it involves a principle whose importance impacts all the other rights enshrined in domestic and international law.

Merits reports published by the IACHR

Report No. 04/01. Case 11.625. Merit. María Eugenia Morales de Sierra. Guatemala. January 19, 2001

36. The Commission observes that the guarantees of equality and non-discrimination underpinning the American Convention and American Declaration of the Rights and Duties of Man reflect essential bases for the very concept of human rights.[8] […]

Report No. 51/01. Case 9.903. Merit. Rafael Ferrer-Mazorra et al. United States of America. April 4, 2001

238. The notion of equality before the law set forth in the Declaration relates to the application of substantive rights and

[8] The IACHR has also understood that the principle of equality and non-discrimination is "*the backbone of the universal and regional systems for the protection of human rights.*" See: IACHR. Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016, para. 72. See also: IACHR. Report No. 04/01. Case 11.625. Merits. María Eugenia Morales de Sierra. Guatemala. January 19, 2001, para. 36; IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.189. Dilcia Yean and Violeta Bosico. Dominican Republic. July 11, 2003, para. 103.

to the protection to be given to them in the case of acts by the State or others.[9] […]
Report No. 40/04. Case 12.053. Merit. Maya indigenous community of the Toledo district. Belize. October 12, 2004

163. […] [T]he principle of non-discrimination is a particularly significant protection that permeates the guarantee of all other rights and freedoms under domestic and international law and is prescribed in Article II of the American Declaration and Articles 1(1) and 24 of the American Convention.[10]

Report No. 80/15. Case 12.689. Merits. J.S.C.H y M.G.S. Mexico. 28 October 2015

80. With regards to the concept of "discrimination," although the American Convention and the International Covenant on Civil and Political Rights do not contain a definition of this term, the Commission, the Court and the United Nations Human Rights Committee have used as a basis the principles of Articles 24 and 1.1 of the American Convention, along with the definitions contain: […] any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.[11]

Report No. 48/16. Cae 12.799. Merit. Miguel Ángel Millar Silva et al (Radio Estrella del Mar Melinka). Chile. November 29, 2016

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9 IACHR. Report No. 75/02. Case 11.140. Merits. Mary and Carrie Dann. United States of America. December 27, 2002, para. 143; IACHR. Report No. 176/10. Cases 12.576, 12.611, and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010, para. 164; IACHR. Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016, para. 73; IACHR. Report No. 8/16. Case 11.661. Merits. Manickavasagam Suresh. Canada. April 13, 2016, para. 87.

10 IACHR. Report on Terrorism and Human Rights. OEA/Ser.L/V/ll.116. Doc. 5 rev. 1 corr. October 22, 2002, para. 35.

11 See: IACHR. Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016, para. 75; and IACHR. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011, para. 16. In the text quoted for the Case of Nadege Dorzema et al., the IACHR adds the phrase: *"in the political, economic, social, and cultural spheres or in any other sphere of public life."* [IACHR. Report No. 174/10. Case No. 12.688. Merits. Nadege Dorzema et al. (Guayubín Massacre). Dominican Republic. February 11, 2011, para. 199].

59. The principle of equality is one of the guiding principles of all international human rights law.[12] Indeed, the right to be treated with equal consideration and respect, to not receive discriminatory treatment, and for the State to foster the conditions for equality to be real and effective, is front and center throughout the international *corpus iuris,* given that it is essential for the effective and universal enjoyment of all other human rights.

60. Accordingly, in international law, equality has the dual character of guiding principle and fundamental right.

Cases in the Court

Report No. 64/11. Case 12.573. Merit. Marino López et al. (Operation Genesis). Colombia. March 31, 2011

359. As regards the contents of the concept of equality, the Inter-American Court has explained that this springs directly from the single nature of the human family and it is inseparable from the essential dignity of the individual in regard to which any situation is impermissible which considers a certain group as being inferior, leads to treating them with hostility or in any other way discriminates against them in the enjoyment of rights which are accorded to others not so classified.[13] […] On the principle of equality reposes the judicial framework of national and international public policy and that permeates all laws.[14]

Report No. 5/14. Case 12.841. Merit. Ángel Alberto Duque. Colombia. April 2, 2014

60. […] Even more, the Court has indicated that at the present stage of development of international law, the fundamental

12 IACHR. Report No. 67/06. Case 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 228; IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 130; and IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015, para. 422.

13 See also: IACHR. Report No. 81/11. Case 12.776. Merits. Jeffrey Timothy Landrigan. United States of America. July 21, 2011, para. 47; and IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 13, 2015, para. 188.

14 See IACHR. Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para. 144; and IACHR. Report No. 130/17. Case 13.044. Merits. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017, para. 142.

principle of equality and non-discrimination has entered the realm of *jus cogens*.[15]

Report No. 75/15. Case 12.923. Merit. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015

144. In regard to the principle of equality and non-discrimination established in Articles 24 and 1.1 of the Convention, the Commission and the Inter-American Court have repeatedly held that it constitutes the central and fundamental axis of the Inter-American human rights system.[16] Also, it has been established that it "entails *erga omnes* obligations of protection that bind all States and generate effect with regard to third parties, including individuals."[17] […]

Thematic Reports

Indigenous People, Afro-Descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities. OEA/Ser.L/V/II. Doc. 47/15. December 31, 2015

241. […] The IACHR has repeatedly established that the principle of non-discrimination is one of the pillars of any democratic system and one of the foundations of the human rights system established by the OAS[18]. In fact, both the American Declaration and Convention where inspired that the

15 See also: IACHR. Report No. 64/11. Case 12.573. Merits. Marino López et al. (Operation Genesis). Colombia. March 31, 2011, para. 359; and IACHR. Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para. 144.

16 See: IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 107. See also: IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 59; IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 617; and IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 13, 2015, para. 340.

17 See also: IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 74; IACHR. Report No. 81/13. Case 12.743. Merits. Homero Flor Freire. Ecuador. November 4, 2013, para. 88; IACHR. Report No. 130/17. Case 13.044. Merits. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017, para. 142.

18 See also: IACHR. The Road to Substantive Democracy: Women's Political Participation in the Americas. OEA/Ser.L/V/II. Doc. 79. April 18, 2011, para. 12; IACHR. Fifth Report on the Situation of Human Rights in Guatemala. OEA/Ser.L/V/II.11. Doc. 21 rev. April 6, 2001. Chapter XIII, para. 13; IACHR. Report on the Situation of Human Rights in Venezuela. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003, para. 411; and IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 614.

ideal of "[a]ll men are born free and equal, in dignity and in right." […]

B. Specific Considerations on the ADRDM and ACHR

30. As a starting point with regards to the regulatory framework, the American Declaration of the Rights and Duties of Man was adopted in 1948. This document, according to the jurisprudence of the Inter-American system, constitutes a source of obligations to be fulfilled by all Member States of the OAS, without any exception.[19] The Declaration sets forth a series of rights, including the right to equality before the law, among others.[20]

31. In 1969, the American Convention on Human Rights was adopted. It pointed out in its preamble that "the ideal of free men […] can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights."[21]

32. Thus, both instruments refer to the obligations of respecting and guaranteeing the human rights that Member States of the OAS have pledged to protect. Below are some of the most important examples:

Technical Reports

Indigenous people, Afro-descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities. OEA/Ser.L/V/II. Doc. 47/15. December 31, 2015

43. Similarly, the IACHR has noted that the obligation to respect and guarantee human rights is enshrined in specific provisions of the American Declaration.[22] The Commission reiterates that the American Declaration is a source of international obligations for all the Member States of the OAS. These obligations emanate from the commitments of the

19 IACHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L./VII.110 doc. 52, March 9, 2001, para. 17, quoting the I/A Court H.R. Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10-89 of June 14, 1989, Series A, No. 10.

20 American Declaration of the Rights and Duties of Man.

21 Both treaties reiterate what is provided for the United Nations Universal Declaration of Human Rights.

22 See, for example: IACHR. Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District, Belize. October 12, 2004; IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011, para. 117; and IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 107.

member States with regards to human rights pursuant to the OAS Charter. Member States have agreed that the content of the general principles of the OAS Charter is contained in and defined by the American Declaration, as well as the customary legal status of the rights protected under many of this instrument's core provisions.[23]

45. As it has previously been established, the American Convention is an expression of the principles contained in the American Declaration. [24] In this regard, although the Commission does not apply the American Convention to Member States that are not a party to said treaty, its provisions are relevant to inform the interpretation of the provisions of the Declaration.[25]

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

88. […] [T]he IACHR interprets and applies the relevant provisions of the American Declaration "in light of the evolution of international law within the context of human rights. as reflected in treaties, custom and other sources of international law," including the American Convention on Human Rights, "which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration."[26]

23 IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States. July 21, 2011, para. 115.

24 IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 110.

25 IACHR. Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System. OEA/Ser.L./V/II.106. Doc. 40, rev. February 28, 2000, para. 38.

26 IACHR. Report No. 52/01. Case 12.243, Juan Raúl Garza. United States. April 4, 2001, paras. 88-89; IACHR. Report No. 75/02, Case 11.140, Mary and Carrie Dann. United States. December 27, 2002, paras. 96, 97 and 124; and IACHR. Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System. OEA/Ser.L./V/II.106. Doc. 40. February 28, 2002, para. 38.

C. Difference between the Duty to Respect and Guarantee without Discrimination the Rights Contained in the ACHR and the Right to Equal Protection of the Law (Article 1.1 and Article 24 of the ACHR)

33. In the framework of the Inter-American human rights system (hereinafter the IAHRS), it has been claimed "that Article 1(1) of the Convention is a general norm whose content extends to all the provisions of the treaty, because it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatever the origin or the form it takes, any conduct that could be considered discriminatory with regard to the exercise of any of the rights guaranteed in the Convention is per se incompatible with it."[27]

34. As for Article 24, it establishes the principle of equal protection of the law and the prohibition of discrimination. This provision is applicable to the entire legal system of the States Parties. Excerpts that are relevant for this legal distinction are presented below:

Merits reports published by the IACHR

Report No. 80/15. Case 12.689. Merit. J.S.C.H y M.G.S. Mexico. October 28, 2015

> 82. The Inter-American Court has resorted to differentiation between autonomous and subordinate provisions of the American Convention, establishing early on in its case law that Article 1(1) includes a prohibition of discrimination in the exercise and application of the rights enumerated in that instrument, while Article 24 prohibits said discrimination in respect not only of the rights established in the Convention but also "with regard to all the laws that the State adopts and to their application." […][28]
>
> 88. Article 1.1 of the American Convention has been used to interpret the word "discrimination" as contained in Article 24

[27] I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations, and Costs. Judgment of October 24, 2012 Series C No. 251, para. 224; I/A Court H.R. Case of Atala Riffo and Daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, para. 78; and I/A Court H.R. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53.

[28] Also see in: IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 79.

of the same instrument.[29] In particular, in the analysis of reasonability habitually used to determine whether a State is internationally responsible for violating Article 24 of the American Convention, the invocation of the "categories" specifically listed in Article 1.1 has certain effects.[30]

[29] IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 64.

[30] Also see in: IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 78; and IACHR. Report No. 81/13. Case 12.743. Merits. Homero Flor Freire. Ecuador. November 4, 2013, para. 95.

Cases in the Court

Application to the Inter-American Court on Human Rights. Case 12.387. Alfredo López Álvarez. Honduras. 7 July 2003

172. The Court has explained that, more specifically, Article 24 of the American Convention enshrines the principle of equality before the law. Thus, the general prohibition against discrimination set forth in Article 1(1) "extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations." […][31]

Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merit. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010

159. As the Inter-American Court has explained, "Article 1(1) of the Convention, a rule general in scope which applies to all the provisions of the treaty, imposes on the States Parties the obligation to respect and guarantee the free and full exercise of the rights and freedoms recognized therein 'without any discrimination.' […]"[32]

160. The Court has explained the scope of Article 24 of the Convention, which recognizes the right to equality before the law and to equal protection of the law, without discrimination, as follows: "Although Articles 24 and 1(1) are conceptually not identical, (…) Article 24 restates to a certain degree the principle established in Article 1(1). In recognizing equality before the law, it prohibits all discriminatory treatment originating in a legal prescription.[33] […]

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31 IACHR. Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010, para. 160.

32 IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.387. Alfredo López Álvarez. Honduras. July 7, 2003, para. 176; IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.189. Dilcia Yean and Violeta Bosico. Dominican Republic. July 11, 2003, para. 107; IACHR. Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para. 145; IACHR. Towards the Closure of Guantánamo. OEA/Ser.L/V/II. Doc. 20/15. June 3, 2015, para. 242; and IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 150.

33 IACHR. Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres. OEA/Ser.L/V/II.134. Doc. 63. March 27, 2009, para. 34.

Thematic reports

Report on the Rights of Women in Chile: Equality in the Family, Labor, and Political Spheres. OEA/Ser.L/V/II.134. Doc. 63. March 27, 2009

34. The Inter-American Court of Human Rights has established that there is an "inseparable connection" between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination.[34]

D. Differentiated Clarifications between Objective and Reasonable Distinction and Discrimination

35. The IACHR has categorically established the difference between distinctions and discriminations. Case law has also established that the American Convention does not forbid all distinctions of treatment. "Distinctions" are differences that are compatible with the American Convention because they are reasonable and objective, whereas discriminations are arbitrary differences that are detrimental to human rights.

36. Regarding this matter, the IACHR has stressed that distinctions based on factors explicitly mentioned in international human rights instruments, such as the American Convention, among others, and statutory categories such as sex and race, are subject to an especially strict degree of scrutiny. As a result, for a distinction to be deemed objective and reasonable, it must pursue a legitimate end and use means that are proportional to the intended goal of the distinction, otherwise it is incompatible with the Convention and international law. Some relevant examples that have been selected to elucidate these differences are provided below.

Merits reports published by the IACHR

Report No. 04/01. Case 11.625. Merit. María Eugenia Morales de Sierra. Guatemala. January 19, 2001.

[34] See, among others: IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 61; IACHR. Report No. 80/15. Case 12.689. Merits. J.S.C.H and M.G.S. Mexico. October 28, 2015, para. 81; IACHR. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011, para. 17; and IACHR. Indigenous Women and Their Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, para. 54.

> 31. […] Differences in treatment in otherwise similar circumstances are not necessarily discriminatory. A distinction which is based on "reasonable and objective criteria" may serve a legitimate State interest in conformity with the terms of Article 24. It may, in fact, be required to achieve justice or to protect persons requiring the application of special measures. A distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought.
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> *Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016*
>
> 74. The Commission has previously recognized that while Article II does not prohibit all distinctions in treatment in the enjoyment of protected rights and freedoms, it does require that any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, "regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought." […]
>
> ***Cases in the Court***
>
> *Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015*
>
> 169. […] The Court made the difference between "distinction" and "discrimination" so that the first are compatible with the American Convention as they are reasonable and objective, while the latter are arbitrary differences that lead to the detriment of human rights.[35]

E. About Formal Equality and Material Equality

37. The IACHR has distinguished formal equality from real equality, as distinct meanings, in order to understand human rights protection and enjoyment in the region. In other words, the Inter-American system not only enshrines

[35] Also see: IACHR. Report No. 110/09. Case 12.470. Merits. Ricardo Israel Zipper. Chile. November 10, 2009, para. 78; IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 85; IACHR. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011, para. 19; and IACHR. Towards the Closure of Guantánamo. OEA/Ser.L/V/II. Doc. 20/15. June 3, 2015, para. 222.

a formal notion of equality, confined to requiring objective and reasonable distinction criteria and therefore to prohibiting unreasonable, capricious, or arbitrary differences in treatment, but is also advancing toward a concept of material or real equality based on the acknowledgment that certain sectors of the population require the adoption of affirmative action measures that make it possible to have a more level playing field. This requires the need for differentiated treatment when, because of circumstances, equality of treatment involves suspending or restricting access to a service or else the exercise of a right.[36]

38. It must be stressed that the concept of material, real, or substantive equality is relevant in order to steer public policymaking that can contribute to guaranteeing the recognition of rights and freedoms regarding certain sectors of the population. Concretely, in this section, the IACHR presents relevant excerpts to understand that distinction and usefulness.

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

99. While the Inter-American system espouses a formal notion of equality in the sense of requiring that any difference in treatment be based on reasonable and objective criteria, thus precluding any unreasonable, capricious or arbitrary differences in treatment, it is also moving toward a concept of material or structural equality that is premised upon an acknowledgement of the fact that for certain sectors of the population, special equalizing measures have to be adopted. The circumstances of the disadvantaged group might necessitate a difference in treatment because equal treatment could have the effect of limiting or encumbering their access to some service or good or the exercise of a right.[37]

Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14. July 19, 2008

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36 IACHR, Access to Justice for Women Victims of Violence in the Americas, paras. 89-99.

37 IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 137; IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 160; and IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, para. 70.

> 54. The concept of material equality provides a tool with enormous potential for examining not only standards that recognize rights, but also public policies that can serve to ensure them or, on occasion, potentially impair them.
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> *Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014*
>
> 136. Furthermore, the IACHR has previously maintained that while formal legal equality does not guarantee the elimination of instances of discrimination in practice, the recognition of formal legal equality makes it possible to encourage transformations in society that reinforce respect for legal equality. The commitment to equality must not be limited to achieving legal equality, but must also encompass all social institutions, such as the family, the market, and political institutions. […]

F. Structural Discrimination

39. The concept of structural discrimination has been highlighted by the IACHR with particular emphasis on the need to undertake a broad appraisal of the historical, temporal, and geographic context in cases where patterns of discrimination appear.

40. In this regard, when verifying whether or not there is a situation of structural discrimination, the Commission understands that the State must take suitable measures to reduce and eliminate the situation of inferiority or exclusion against a given person or group of persons. The following paragraphs refer to this assessment and present notions about its scope and conceptualization.

> ***Thematic Reports***
>
> *The Situation of People of African Descent in the Americas, OEA/Ser.L/V/II. Doc. 62. December 5, 2011*
>
> 46. [T]he situation of structural discrimination is verified in the indicators of access to housing, loans, quality health care and education, life expectancy and nutrition rate, and in the difficulties in using public facilities or accessing certain places of recreation.

57. On the other hand, the structural discrimination is not only observed in statistics or indicators, but it is also reflected in the collective mindset and the continuity of Afro-descendants stereotyping, depicted with pejorative and disrespectful adjectives towards their personal dignity.[38] […]

Country Reports

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

368. The Inter-American Commission realizes that, while there are multiple ways in which discrimination may be expressed, structural or systemic discrimination refers to the set of norms, rules, routines, patterns, attitudes, and standards of behavior, both *de jure* and *de facto*, that give rise to a situation of inferiority and exclusion against a group of persons in a generalized sense, with these traits perpetuated over time and even generations. In other words, these are not isolated, sporadic, or episodic cases; rather it is discrimination that emerges from a historical, socioeconomic, and cultural context.[39] Its generalized nature refers to its quantitative aspect, i.e., the large-scale nature of the problem, whereas it's systemic nature refers to the way decisions, practices, policies, and the culture of a society are adopted. From this viewpoint, structural discrimination does not have a strict or narrow definition.

369. In view of the foregoing, the Commission considers that in cases involving structural patterns or practices, an overall assessment must be made of the proposed situation in terms of the historical, material, temporal, and spatial circumstances surrounding it. […].

G. Indirect Discrimination

41. The IACHR has also established that the examination of norms and policies on the basis of the principle of effective equality and non-discrimination

38 IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 13, 2015, para. 367.

39 IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 393.

also encompasses the possible discriminatory impact of these measures, even when they might seem neutral in their wording or involve measures with a general and non-differentiated scope. On the basis of excerpts from case law presented below, it is possible to identify the potentially discriminatory and disproportionate impact that seemingly neutral norms, actions, or policies can exert on a group of persons.[40]

Cases in the Court

Report No. 85/10. Case 12.361. Merits. Gretel Artavia Murillo et al ("In vitro fertilization") Costa Rica. July 14, 2010

125. […] [I]ndirect discrimination or the disproportionate impact of laws, measures, policies and so forth, which appear neutral but affect certain groups differently.[41]

131. [T]he Commission observes that the technique of in vitro fertilization is a procedure that more directly concerns the woman's treatment and body and hence women bear the brunt of the impact of the Costa Rican Constitutional Chamber's decision. […] It is in this sense that the absolute ban on the procedure will take a heavier toll on women. In effect, while infertility is a condition that can affect both men and women, the use of assisted reproductive technologies places greater demands on the woman's body. Therefore, the prohibition of in vitro fertilization has a direct effect on women's free will with regard to their bodies.

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

91. If the effect of a law or regulation is direct discrimination, all that need be done to prove the discrimination is to show that the legal distinction uses a prohibited factor or that the positive action mandated by law was not taken. If the effect is one of indirect discrimination, the disproportionately prejudicial effect or result that the provision has on a group

40 Both the Inter-American Convention against All Forms of Discrimination and Intolerance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance define both in their respective Article 1.2.

41 IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78. July 13, 2011, para. 103; IACHR. Towards the Effective Fulfillment of Children's Rights: National Protection Systems. OEA/Ser.L/V/II.166 Doc. 206/17. November 30, 2017, para. 300.

has to be shown. In such cases, empirical data must be produced showing that the alleged "invisible" or "neutral" bias in the adoption of decisions has a disparate effect on some group or groups.

The work, education and resources of women: the road to equality in guaranteeing economic, social and cultural rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011

20.[…] The Committee on Economic, Social and Cultural Rights (hereinafter the "ESCR Committee") has defined indirect discrimination as "laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination."[42] […]

H. Multiple and Inter-Sectional Discrimination (Intersection of Identities and Risks)

42. Case law of the Inter-American system uses the concept of "intersectionality" to examine discrimination, taking into consideration those cases where there is a cross-cutting convergence of many factors of vulnerability and risk of discrimination associated with a series of specific conditions, such as, for example, the condition of children, women, and persons living in poverty and persons living with HIV.

43. An intersection of identities and risks can aggravate human rights violations against persons, groups, and communities living in situations of historical vulnerability and discrimination in the Hemisphere.[43] Below this section provides excerpts of case law relative to this notion of highlighting the special situation of discrimination that appears when it is caused by multiple factors or intersectionality; in other words, if one of those factors had not existed, the discrimination would have been different in nature.

Cases in the Court

Report No. 64/11. Case 12.573. Merit. Marino López et al (Operation Genesis). Colombia. March 31, 2011

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42 IACHR. Report No. 85/10. Case 12.361. Merits. Gretel Artavia Murillo et al. ("In vitro fertilization") Costa Rica. July 14, 2010, para. 123; and IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, para. 58.

43 IACHR, *Strategic Plan 2017-2021*. OEA/Ser.L/V/II.161, Doc. 27/17, March 20, 2017, p. 31

363. […] [The Committee for the Elimination of the Racial Discrimination (CERD) in its General Commentary XX] It indicated that the reasons for discrimination are understood in practice by the notion of "intersection" in which "the Committee refers to situations of double or multiple discrimination based on origin or religion—when the discrimination appears to exist in combination with another cause or causes listed in Article 1 of the Convention."

379. […] In this sense, the notion of intersectionality applies to this group of victims, in view of the fact they suffer from many kinds of discrimination from a combination of causes, among which are: their displaced status, their gender, ethnicity and status as children.

Thematic Reports

Indigenous Women and their Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017

38. […]The Commission has reaffirmed that "intersectionality is a basic concept for understanding the scope of the general obligations of State parties, […] the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity."[44] This overlapping of various layers of discrimination—or intersectionality—leads to a form of deepened discrimination which manifests itself in substantively different experiences from one indigenous woman to another.

Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017

168. Intersectional and structural discrimination have a major impact on the exercise of human rights in the area of economic, social, and cultural rights. […].

44 IACHR. The Situation of Persons of African Descent in the Americas, OEA/Ser.L/V/II. Doc.62, December 5, 2011, para. 60.

I. Using Stereotypes as a Form of Discrimination

44. This section presents the case law relative to discriminatory treatments based on the use of stereotypes, preconceived ideas, or prejudices about persons or groups of persons because of their attributes, characteristics, and social condition, among other conditions.

45. Regarding this, the system's case law has consistently ruled for reparations aimed at transforming said situation, so that these reparations will exert an impact that is not only restorative but also corrective, geared to making structural changes that dismantle those stereotypes and practices that perpetuate discrimination against persons or population groups who have historically been discriminated against or who live in situations of vulnerability.

Thematic Reports

Access for Justice for Women Victims of sexual Violence in Mesoamerica. OEA/Ser.L/V/II. Doc. 63. December 9, 2011

> 56. […] [The gender stereotype] refers to a preconception of the attributes, characteristics or roles that men or women either play or are expected to play. They are socially dominant and socially persistent stereotypes, which are implicitly or explicitly expressed, and are both a cause and consequence of gender violence against women.[45]

Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15. November 11, 2015

> 123. The Commission has also drawn attention to the stigmatization of certain groups of children and adolescents based on their socioeconomic status, ethnic origin, and the vulnerability they may be experiencing, and stereotypes and subjective judgments regarding their appearance or behavior, among other factors. […].
>
> 176. […] There are a number of prejudices based on ethnic origin, skin color, and other stereotypes relating to clothing, tattoos, and physical presence in a particular place, language, and adolescent codes of communication. […] These

[45] IACHR. Report No. 33/16. Case 12.797. Merits. Linda Loaiza López Soto and relatives. Venezuela. July 29, 2016, para. 269; IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, para. 56.

stereotypes expose all children living in areas affected by violence to controls, abuse, violence, and discrimination.

Towards a Comprehensive Policy to Protect Human Rights Defenders. OEA/Ser.L/V/II. Doc. 207/17. December 29, 2017

146. Stereotypes also contribute to increasing the vulnerability of certain specific groups such as women human rights defenders and those who defend LGBTI persons, indigenous peoples, and Afro-descendants, among others. Therefore, States must take the necessary measures over the short, medium, and long term to eliminate discrimination, which is both the cause and the consequence of the violence they are facing. […]

J. The Principle of Equality and Non-Discrimination and the Indivisible and Interdependent Nature of Human Rights

46. The IACHR reaffirms the universal, indivisible, and interdependent nature of all human rights. Thus, civil and political rights, as well as economic, social, cultural, and environmental rights (ESCER), are part of the plexus of rights which must be interpreted in light of the principle of equality and non-discrimination.[46] In the area of economic, social, cultural, and environmental rights, the IACHR has stressed that the first obligation with immediate effect stemming from this group of rights consists of guaranteeing their exercise on an equal footing and without discrimination. The following paragraphs bring together certain examples relative to this principle.

Cases in the Court

Report No. 5/14. Case 12.841. Merit. Ángel Alberto Duque. Colombia. April 2, 2014

68. [V]arious instruments and pronouncements underscore the indivisibility and interdependence of civil and political rights on the one hand, and economic, social and cultural rights on the other, and the duty of nondiscrimination and equality in the protection of these rights. […].

73. […] [T]he IACHR has already established that "the first obligation 'with immediate effect' arising from economic, social, and cultural rights consists of ensuring that those

[46] IACHR, *Strategic Plan 2017-2021*. OEA/Ser.L/V/II.161, Doc. 27/17, March 20, 2017, p. 31.

rights shall be exercised in conditions of equality and without discrimination". That is to say that, while implementation of the ESCR involves an obligation of "progressive realization", the latter cannot be discriminatory [...].

Thematic Reports

Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14. July 19, 2008

48. The first obligation "with immediate effect" arising from the progressive development of economic, social, and cultural rights consists of ensuring that those rights shall be exercised in conditions of equality and without discrimination, which entails prevention of different treatment based on factors expressly prohibited in the Protocol.[47] The foregoing requires that States recognize and ensure the rights contained in the Protocol equally to the entire population, basing difference in treatment on reasonable and the objective criteria, and preventing arbitrary discrepancies in treatment, in particular on the basis of expressly prohibited factors, such as race, religion, or social origin. However, it also requires that States recognize that there are groups that face disadvantages in the exercise of social rights, and that they should adopt affirmative action measures and policies to ensure their rights.

Universalization of the Inter-American System of Human Rights. OEA/Ser.L/V/II.152 Doc. 21. August 14, 2014

7. [T]he Inter-American Commission bears repeating that all human rights are universal, indivisible and interdependent and interrelated. This implies, on the one hand, that the protection of civil and political rights is closely linked to the protection of economic, social, and cultural rights. On the other hand, it creates an obligation incumbent upon States, which is to devote particular attention to those social sectors and individuals that have historically suffered forms of exclusion or have been victims of persistent prejudice. States must also take immediate steps to prevent, reduce, and

47 See also: IACHR. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011, para. 59; IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 148.

eliminate the conditions and attitudes that either generate or perpetuate discrimination in practice.[48] […]

K. Preliminary Considerations on Groups in Situations of Vulnerability

47. Through its various mechanisms, the IACHR has identified certain groups or sectors of society who suffer from discriminatory treatment because of a specific condition or situation of historical discrimination. Some of them, such as indigenous peoples, women, migrants, refugees, stateless persons, victims of human trafficking, and internally displaced persons, children and adolescents, human rights defenders, Afro-descendants, persons deprived of liberty, lesbian, gay, bisexual, transgender, and intersex persons (hereinafter LGBTI), persons with disabilities, and older persons, were identified as priority groups in the Strategic Plan for 2017-2021.

48. Regarding this, the Commission believes it is essential to apply the standards developed in the matter and that are systematized throughout Chapter III of the present compendium. Nevertheless, before moving forward in that regard, it is necessary to recognize certain considerations for their identification.

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

118. Not all societies discriminate against the same groups. Some societies discriminate against certain ethnic, religious or political groups that other societies assimilate and absorb. Then, too, over the course of history, new targets of discrimination have emerged that did not exist before (for example, carriers of HIV-AIDS). Groups that are in a vulnerable situation will vary from one society to the next and from one point in history to another. Therefore, every State has a duty to determine who those groups are and to devise inclusive policies suited to each group and capable of ensuring to them the free and full exercise of their rights […].

[48] IACHR. Indigenous Women and Their Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, para. 46.

Guidelines for Preparation of Progress Indicators for Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14. July 19, 2008

55. [T]he Commission considers it appropriate that States ascertain which groups require priority or special assistance in the exercise of social rights at a particular historical moment, and that they adopt concrete protection measures for those groups or sectors in their plans of action. […] Accordingly, in addition to identifying these sectors that have traditionally suffered discrimination in access to certain rights, the State, before formulating its social plans and policies, should determine which sectors need priority assistance […] and, in implementing its social policies and services, establish special or differential measures to uphold and ensure the rights of those sectors.

Country Reports

Report on the Situation of Human Rights in Venezuela. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003

412. The exclusion of any sector of society from exercising the rights guaranteed by the Convention hinders the broad development of democratic, pluralistic societies and exacerbates intolerance and discrimination. […]

Preliminary Observations of the Inter-American Commission on Human Rights on its visit to Honduras, May 15 to 18, 2010. OEA/Ser.L/V/II. Doc. 68. June 3, 2010

87. Human rights violations affect with particular strength those sectors of the population that have historically been marginalized, discriminated and are the most vulnerable, such as children, the LGBT community, women and the indigenous and Garifuna peoples.

CHAPTER 3

GENERAL OBLIGATIONS OF STATES WITH RESPECT TO THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION

ENERAL OBLIATIONS OF STATES WITH RESPECT TO THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION

49. In this second chapter, the IACHR presents the standards developed in the context of the substantive obligations of States with respect to the guarantees of equality and non-discrimination.

50. The first part of the chapter brings together considerations about the general obligations with respect to the principle of equality and non-discrimination. Afterwards, a selection of paragraphs is presented on the obligation to respect and guarantee for the purpose of identifying differentiated treatment in light of the American Convention, as well as recommendations for its implementation under domestic law. Thus, the chapter is aimed at describing the IACHR's work on Inter-American standards for the review of cases, in particular regarding the application of the judgment of proportionality on the categories set forth in Article 1.1 of the ACHR,[49] as well as other especially identified categories.

51. Likewise, with respect to the obligation of guaranteeing the validity of the principle of equality and non-discrimination, the IACHR presents excerpts that highlight the emerging obligation of creating conditions of material equality, as well as the obligation of adopting special measures aimed at groups that have been historically excluded and that are at a higher risk of being discriminated against.

[49] Article 1.1 "(…) without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." American Convention on Human Rights (ACHR)

Merits reports published by the IACHR

Report No. 80/11. Case 12.626. Merit. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011

109. The Commission has clarified that the right to equality before the law does not 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.[50] 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 in their face or in practice; and to combat discriminatory practices.[51] The Commission has underscored that laws and policies should be examined to ensure that they comply with the principles of equality and non-discrimination; an analysis that should assess their potential discriminatory impact, even when their formulation or wording appears neutral, or they apply without textual distinctions.[52]

Report No. 80/15. Case 12.689. Merit. J.S.C.H y M.G.S. Mexico. October 28, 2015

81. […] States are obliged to respect and guarantee the full and free exercise of rights and freedoms without any discrimination. Non-compliance by the State with the general obligation to respect and guarantee human rights, owing to any discriminatory treatment, gives rise to its international responsibility.[53]

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50 See: IACHR. Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District, Belize. October 12, 2004, para. 166; IACHR. Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016, para. 73; and IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OEA/Ser.L/V/II. Doc. 68. December 31, 2011, para. 126.

51 IACHR. Report No. 86/10. Case 12.649. Merits. Community of Rio Negro of the Maya Indigenous People and its Members. Guatemala. July 14, 2010, para. 351; IACHR. Indigenous Women and Their Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, para. 54; and IACHR. Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres. OEA/Ser.L/V/II.134. Doc. 63. March 27, 2009, para. 36.

52 Also see: IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 61; IACHR. Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017, para. 124; and IACHR. The Road to Substantive Democracy: Women's Political Participation in the Americas. OEA/Ser.L/V/II. Doc. 79. April 18, 2011, para. 14.

53 See IACHR. Report No. 80/15. Case 12.689. Merits. J.S.C.H and M.G.S. Mexico. October 28, 2015, para. 78; IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala

Cases in the Court

Report No. 81/13. Case 12.743. Merit. Homero Flor Freire. Ecuador. November 4, 2013

92. [T]he development of the right to equality and non-discrimination makes it possible to identify several conceptions of it. For example, one conception is related to the prohibition of an arbitrary difference in treatment—understanding difference of treatment to mean a distinction, exclusion, restriction, or preference—and another is that related to the obligation to create conditions of actual equality vis-à-vis groups that have historically been excluded and are at greater risk of suffering discrimination. Although in certain cases both perspectives may also be present, each merits a different State response and different treatment in light of the American Convention.[54] To this is added that in the different conceptions of the right to equality the acts or omissions of the State may be related to rights enshrined in the American Convention or may refer to any State action that does not have effects on the exercise of the rights established in the Convention.[55]

Thematic Reports

Access to Justice for Women victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

88. Reforming laws, practices and public policies that establish sex-based differences in treatment is a duty incumbent upon the various institutions of the State, the

and daughters. Chile. September 17, 2010, para. 77; and IACHR. Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para. 145.

54 IACHR. Report No. 110/09. Case 12.470. Merits. Ricardo Israel Zipper. Chile. November 10, 2009, para. 79; IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 59; IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 617; IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 13, 2015, para. 340; IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 89.

55 See also: IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 617; IACHR. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011, para. 18; and IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 148.

judicial branch, the executive branch, the parliament and the legislative bodies, all with a view to bringing the domestic legal system and the functioning of the State into compliance with the human rights treaties in force. At the same time, it is up to the States to make adequate and effective judicial recourses available so that individual citizens, national institutions for the protection of human rights, ombudsman's offices, general human rights prosecutors, nongovernmental organizations and other social actors can turn to the policy-making bodies and the courts to demand that the lawfulness of these norms, practices and polices be scrutinized. The adoption of discriminatory laws and the failure to comply with the positive obligations that a law or regulation imposes are *direct* manifestations of discrimination.

Towards the Closure of Guantanamo. OEA/Ser.L/V/II. Doc. 20/15. June 3, 2015

226. [...] Equal protection before the law and non-discrimination are among the most basic human rights. States are required to ensure that their laws, policies and practices respect those rights. The IACHR reiterates that "international human rights law not only prohibits policies and practices that are deliberately discriminatory in nature, but also those whose effect is to discriminate against a certain category of persons, even when discriminatory intent cannot be shown."[56]

Country Reports

Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015

394. The Commission has underscored that laws and policies must be assessed to ensure that they are compatible with the principles of equality and nondiscrimination.[57] This analysis must assess the potential discriminatory impact stemming from the laws and policies being examined, even when their

[56] IACHR. Report No. 174/10. Case No. 12.688. Merits. Nadege Dorzema et al. (Guayubín Massacre). Dominican Republic. February 11, 2011, para. 205; IACHR. Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 358; and IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 13, 2015, para. 560.

[57] See IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 132.

drafting or wording appear to be neutral and their text does not openly establish a discriminatory application.[58]

A. Inter-American Standards relative to the Obligation of Respect[59]

52. In connection with the obligation to respect, appearing in Article 1.1 of ACHR, a selection of substantive paragraphs is presented below. They refer to Inter-American standards developed in cases where States fail to fulfill their obligation to refrain from or prevent, whether directly or indirectly, the enjoyment of rights on an equal footing. The Commission also describes the progressive development of the contents of categories for which discrimination is prohibited.

1. Legal Standards Used to Review Cases

53. The system of petitions and individual cases is one of the mechanisms whereby the IACHR fulfills its mandate of protecting human rights. In cases reviewed by the Commission, on the basis of the petitions submitted by the victims to the system, it was possible to develop standards that are applicable to cases of violation of the obligation to abide by the principle of equality and non-discrimination. Pursuant to that, when a petition is submitted, the IACHR assesses the case and ascertains whether or not there is a differentiated treatment between two persons or groups of persons, and then it examines whether or not the above-mentioned treatment is objectively and reasonably justified in conformity with the judgment of equality.

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58 See also IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 132; and IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015, para. 424.

59 The Commission has insisted that the obligation to respect:

Is defined by the State's duty not to interfere with, hinder or prevent access to the enjoyment of the object of the right. [...] Therefore, in the words of the Inter-American Court, "the notion of limitations to the exercise of the power of the State is necessarily included in the protection of human rights." See, for example, IACHR. Indigenous Peoples, Afro-Descendant Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/Ser.L/V/II. Doc. 47/15. December 31, 2015, para. 39.

54. In this section, there are examples about the situations in which the attribution of international responsibility has been examined on the basis of these assumptions.

Merits reports published by the IACHR

Report No. 73/00. Case 11.784. Merit. Marcelino Hanríquez et al. Argentina. October 3, 2000

36. […] In interpreting Article 24 of the Convention, the Inter-American Court of Human Rights has held the following:

(…) there would be no discrimination in differences in treatment of individuals by a State when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.

37. Based on the foregoing, a distinction involves discrimination when:

a) The treatment in analogous or similar situations is different;
b) The difference has no objective and reasonable justification;
c) The means employed are not reasonably proportional to the aim being sought.

Report No. 48/16. Case 12.799. Merit. Miguel Ángel Millar Silva et al (Radio Estrella del Mar de Melinka). Chile. November 29, 2016

63. First, in alleging a violation of the right to equality, it is necessary to establish whether, in fact, there is disparate treatment with respect to similarly situated persons or groups of persons. […]

64. In defining the above, it is necessary to identify the relevant comparison factor. Indeed, two people or groups of people can have similar and dissimilar characteristics simultaneously. In this regard, it is essential to establish the relevant criterion for making the comparison (*tercium*

comparationis). In other words, at this initial step, we must define the relevant point of view that makes it possible to determine whether, in a given situation, two or more persons who receive disparate treatment from the State are in fact similarly situated. […]

65. Once it has been determined that the State grants disparate treatment to two similarly situated people or groups of people, the question that must be answered is whether there is sufficient reason to justify or maintain such treatment. […]

66. Under these conditions, the Commission must establish whether the disparate treatment is, in fact, reasonable and proportionate—that is, whether it is based on objective criteria and does not entail an unnecessary or disproportionate infringement of a fundamental right.

67. In order to identify whether there are objective reasons to justify the disparate treatment, and to prevent the disproportionate infringement of other rights enshrined in the Convention, the assessment of equality requires determining, first of all, whether the disparate treatment pursues a legitimate aim, and whether it is useful, necessary, and strictly proportionate to the accomplishment of that aim.[60]

Cases in the Court

Application submitted to the Inter-American Court of Human Rights. Case 12.387. Alfredo López Álvarez. Honduras. July 7, 2003.

176. [A]ny distinction that undermines the full exercise of one of the rights in human rights treaties must exceed the standard itself in order to be compatible with the international obligations of the States. […] So that the distinctions that are established for the respect and guarantee

[60] IACHR. The Road to Substantive Democracy: Women's Political Participation in the Americas. OEA/Ser.L/V/II. Doc. 79. April 18, 2011, para. 43; IACHR. Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application. Updates from 2011 to 2014. Update approved on January 26, 2015, para. 151.

of fundamental basic rights, to the extent that they constitute an exception to the basic rule, must be applied restrictively.

Application submitted to the Inter-American Court of Human Rights. Case 12.189. Dilcia Yean and Violeta Bosico. Dominican Republic. July 11, 2003.

108. The Commission upholds that the progressive development of international law standards requires a detailed examination of the following factors in order to ascertain whether or not there is a discriminatory situation that is contrary to the Convention: 1) the contents and scope of the standard that discriminates between categories of persons; 2) the consequences of this discriminatory treatment for persons at a disadvantage because of the State's policies or practices; 3) possible justifications that are provided for this differentiated treatment, especially in connection with a legitimate interest of the State; 4) the rational connection between that legitimate interest and the discriminatory practice or policy; and 5) the existence or absence of means or methods that might be less damaging to persons for achieving the same legitimate ends.

Report No. 176/10. Cases 12.576, 12.611 y 12.612. Merit. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010

163. The Inter-American system does not prohibit every distinction in treatment in the enjoyment of fundamental rights and freedoms; nevertheless, to be permissible, any such distinction must have an objective and reasonable justification, must serve a legitimate purpose, must respect the prevailing principles in democratic societies, and must be established by reasonable means and proportional to the end sought.[61]

Thematic Reports

[61] IACHR. Report No. 51/01. Case 9.903. Merits. Rafael Ferrer-Mazorra et al. United States of America. April 4, 2001, para. 239; IACHR. Report No. 75/02. Case 11.140. Merits. Mary and Carrie Dann. United States of America. December 27, 2002, para. 143; IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 62; IACHR. Report No. 53/16. Case 12.056. Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016, para. 139; IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78. July 13, 2011, para. 99; IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II.Doc. 62. December 5, 2011, para. 90; and IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 83.

Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78. July 13, 2011

104.[…] [T]he IACHR has insisted that although certain criteria may be used as a basis, the applicable Convention provisions must be determined on a case-by-case basis by means of an analysis that takes into account the individual or group of people affected, the reasons behind the alleged discrimination, the rights or interests at stake, the actions or omissions that gave rise to the discrimination, and other considerations.[62]

2. Phased Judgment of Proportionality

55. On the basis of its working mechanisms, the IACHR has developed tools that make it possible to review and provide contents to the State's obligations, as well as the rights guaranteed in the ADRDM and ACHR. Judgment of proportionality is one of the tools making it possible to identify situations where there is a failure to fulfill the obligation enshrined in Article 1.1.

56. This mechanism makes it possible to verify whether or not there is a differentiated treatment and then to assess whether or not the distinction applied in each case is reasonable and objective. To undertake this assessment, the IACHR uses the judgment of proportionality. It is comprised of four elements that must exist concurrently in every situation. These elements are as follows: i) the existence of a legitimate end, ii) suitability, iii) necessity, and iv) proportionality in the strict sense of the word. Examples of its use are provided below.

Cases in the Court

Report No. 53/16. Case 12.056. Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016.

139. […] In order to ascertain whether or not a distinction is "objective and reasonable," as well as whether or not the

62 IACHR. Report No. 110/09. Case 12.470. Merits. Ricardo Israel Zipper. Chile. November 10, 2009, para. 80; and IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 82; IACHR. Report No. 81/13. Case 12.743. Merits. Homero Flor Freire. Ecuador. November 4, 2013, para. 94; and IACHR. Report No. 80/15. Case 12.689. Merits. J.S.C.H and M.G.S. Mexico. October 28, 2015, para. 84.

restriction on the exercise of a right is acceptable in accordance with the Convention, both the Commission and the Court have resorted to a phased judgment of proportionality that includes the following elements: (i) the existence of a legitimate end; (ii) suitability, that is, ascertaining whether or not there is a logical relationship of causality from the means to the end between the distinction and the end it is pursuing; (iii) necessity, that is, ascertaining whether or not there are alternatives that might be less restrictive but equally suitable; and (iv) proportionality in the strict sense of the word, that is, striking a balance between the interest that is at stake and the extent to which one is being sacrificed for the other.[63]

Thematic Reports

Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78. July 13, 2011

99. Article 24 of the American Convention recognizes the principle of equality, which includes the prohibition of any arbitrary difference in treatment, such that any distinction, restriction or exclusion by the State that, even though provided by law, is neither objective nor reasonable would be a violation of the right to equality before the law, notwithstanding any violations of other Convention-protected rights when the difference in treatment is applied in practice. […] In determining whether a difference in treatment is arbitrary, the Commission has used four criteria: legitimate end, suitability, necessity and proportionality.[64] […]

3. Difference in Treatment Based on a Suspect Category

57. The IACHR, in fulfillment of its mandate to protect human rights in the region, has established the contents and scope of the reasons for prohibiting discrimination as established in Article 1.1 of the ACHR

63 Regarding the elements of this judgment, see: IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 86; IACHR. Report No. 80/15. Case 12.689. Merits. J.S.C.H and M.G.S. Mexico. October 28, 2015, para. 89; IACHR. Report No. 81/13. Case 12.743. Merits. Homero Flor Freire. Ecuador. November 4, 2013, para. 97; IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 74.

64 Also see in: IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 13, 2015, para. 201.

regarding the State's duty to respect. Thus, in the face of a petition on discriminatory treatment based on the real or perceived belonging of a person or group of persons to any of the "suspect categories," the Commission has established that there is a presumption of incompatibility with the American Convention.

58. In these cases, strict scrutiny must be applied and the burden of proof must be reversed and rests with the State. In the present section, the IACHR presents certain paragraphs referring to covert discrimination when there is an implicitly distinctive treatment in one of the prohibited reasons for discrimination.

Cases in the Court

Application submitted to the Inter-American Court of Human Rights. Case 12.387. Alfredo López Álvarez. Honduras. July 7, 2003.

175. The Commission has contended that distinctions based on factors explicitly mentioned in the American Convention are subject to a degree of scrutiny that is especially strict, on the basis of which the States, so that these distinctions are not viewed as discriminatory, must show an especially important interest or an overriding social need and a strict justification for the distinction, as well as show that the measure being used is the least restrictive possible.[65] In any case, the Commission contends that any distinction based on one of those cases mentioned in Article 1 of the Convention has a strong presumption of incompatibility with the treaty, including the one relative to discrimination based on language.

Report No. 64/12. Case 12.271. Merit. Benito Tide Méndez et al. Dominican Republic. March 29, 2012

227. […] Distinctions based on grounds explicitly enumerated under pertinent articles of international human rights instruments are subject to a particularly strict level of

65 IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.189. Dilcia Yean and Violeta Bosico. Dominican Republic. July 11, 2003, para. 107; and among others, IACHR. Report No. 48/16. Case 12.799. Merits. Miguel Ángel Millar Silva et al. (Radio Estrella del Mar de Melinka). Chile. November 29, 2016, para. 71.

scrutiny whereby States must provide an especially weighty interest and compelling justification for the distinction.[66]

Report No. 81/13. Case 12.743. Merit. Homero Flor Freire. Ecuador. November 4, 2013

98. When distinctions are based on certain categories expressly mentioned in the non-discrimination clauses of international human rights treaties there is a consensus that the analysis that is used to measure the reasonableness of the difference in treatment is especially strict. This is because, by their nature, such categories are considered "suspect" and therefore it is presumed that the distinction is incompatible with the American Convention. In that regard, only "overriding or urgent" considerations that must be analyzed in detail may be invoked as a justification. This strict analysis is precisely the guarantee that the distinction is not based on prejudices and/or stereotypes that generally surround suspect categories of distinctions.[67]

Report No. 5/14. Case 12.841. Merit. Ángel Alberto Duque. Colombia. April 2, 2014

63. [T]he IACHR has considered that a restriction must be based on very compelling reasons and that the burden of proof rests with the State. Hence, when a restriction is premised on a "suspect category," the Commission accepts the "reversal of the burden of proof" and the "presumption of invalidity." In effect, the close scrutiny that must be done in the case of distinctions based on "suspect categories" serves to guarantee that the distinction is not based on the prejudices and/or stereotypes that generally surround suspect categories of distinction. In practical terms, this means that after presenting such a distinction, the burden of proof falls on the State, and the general criteria must be subject to close scrutiny wherein it is not enough for the State

66 IACHR. Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010, paras. 174 and 177; IACHR. Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014, para. 62; IACHR. Report on Terrorism and Human Rights. OEA/Ser.L/V/ll.116. Doc. 5 rev. 1 corr. October 22, 2002, para. 338 and 355; IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 13, 2015, para. 205.

67 IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, para. 88; IACHR. Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, para. 85.

to argue the existence of a legitimate goal; instead, the goal sought through the distinction must represent a particularly important purpose or a pressing social need. Furthermore, it is not enough for the measure to be suitable or for a logical causal relationship to exist between it and the goal sought; instead, it must be strictly necessary to attain that goal, meaning that no other less harmful alternative exists. Finally, to meet the proportionality requirement, the existence of an appropriate balance of interests in terms of the level of sacrifice and the level of benefit, must be argued.[68]

68 IACHR. Report No. 112/12. Case 12.828. Marcel Granier et al. Venezuela. November 9, 2012, para. 160; IACHR. Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, para. 87; IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78. July 13, 2011, para. 102; IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 91.

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

80. [W]hen those suspect factors are the basis for treating an individual or group differently, they have to be more closely scrutinized to determine whether they are reasonable.

83. For its part, the Commission has repeatedly maintained that any restriction based on criteria such as those listed in Article 1.1 of the American Convention—namely, race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition—must be closely scrutinized and analyzed, because those factors qualify as so-called "suspect categories." The restriction must be shown to be necessitated by some overriding or urgent stated objective, adequate or proportional to the end sought, and the least restrictive of the protected right.[69] When the restriction cannot be credibly shown to satisfy these requirements, it will be invalid as it will be motivated solely by prejudice.

4. Suspect Categories as a Basis for Implicit Sanctioning

Cases in the Court

Report No. 75/15. Case 12.923. Merit. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015

151. Given the argument of the petitioners according to which the real motivation of the contract termination with the alleged victims was to punish them for their political expression in the petition for referendum, the analysis of the Commission cannot be based solely on the motivation formally declared in the preceding paragraphs. It is up to the Commission to evaluate all available evidence to determine whether the termination was a misuse of power, understood as the use of formally valid procedures to conceal an illegal practice. […].

69 IACHR. Towards the Closure of Guantanamo. OEA/Ser.L/V/II. Doc. 20/15. June 3, 2015, para. 222.

164. The Commission recalls that there are formally valid decisions which can be used not as legitimate means of administering justice, but as mechanisms for achieving undeclared ends that were not evident at first sight and seek to impose an implicit sanction with a purpose other than those for which they have been prescribed by law.

166. The Commission considers that all these elements are consistent with each other and allow to reach the conviction that the termination of contracts of Rocío San Miguel Sosa, Magally Chang Girón, and Thais Coromoto Peña, constituted an act of misuse of power in which the existence of a discretional power was used in the contracts as a veil of legality for the true motivation to punish the victims for their expression of political opinion by signing the petition for the recall referendum. This implicit sanction constituted a violation of political rights and an indirect restriction on freedom of expression.

Report No. 130/17. Case 13.044. Merit. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017

143. In their jurisprudence, both the IACHR and the Court have made reference "abuse of power" as the mechanism through which legitimate resources of the administration of justice are used with non-declared and non-evident objectives that, at first sight, establish an "implicit" sanction with an aim different to that provided by law. [70] Under certain circumstances, abuse of power may constitute a violation of the principle of equality in cases of covert discrimination. When alleging covert discrimination, some experts propose inverting traditional rules of evidence in three ways: 1) applying a presumption that discrimination exists where alleged. In other words, in these cases, there should not be a presumption of the legality of an administrative act; 2) imposing the burden of proof on the defendant to demonstrate that there was no discrimination; and 3) expanding the means of proof, such as the indications of the

[70] Also see, with respect to "implicit" sanction and abuse of power: IACHR. Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, paras. 151, 164 and 166; and IACHR. Report No. 112/12. Case 12.828. Merits. Marcel Granier et al. Venezuela. November 9, 2012, para. 147 and ss.

alleged discrimination, taking into consideration that in such cases it is incredibly difficult to obtain direct evidence.

5. Categories Developed throughout the Progressive Evolution of Standards[71]

59. The bodies of the Inter-American system, when progressively developing human rights protection, have included new reasons for prohibiting discrimination.

60. Thus, it provides below a compilation of the development of the scope and contents of the categories that have expanded as a result of the progressive interpretation of the Inter-American instruments by the bodies of the system. In that regard, the IACHR points out the following categories that have expanded the previous list: sexual orientation; political opinions; social condition and poverty; national origin; and the condition of a person living with HIV/AIDS.

> *Report No. 5/14. C*ase 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014
>
> 64. […] The Court has written that the specific criteria by virtue of which discrimination is prohibited do not constitute an exhaustive or limitative list, but merely illustrative. Consequently, the expression "any other social condition" in Article 1(1) of the Convention should be interpreted in the context of the most favorable option for the human being and in light of the evolution of fundamental rights in contemporary international law.[72]

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71 As a result of the development of the Inter-American Court's jurisprudence, it has recently included age as a protected category in view of the situation of vulnerability of older persons. In that respect, the Court has described that:

122. […] [T]he wording of [Article 1.1 of the American Convention], by including the term "other social condition," leaves the criteria open to incorporate other categories that might not have been explicitly spelled out." Thus, the Court has pointed out that age is also a category protected by this norm. In that respect, the prohibition of discrimination based on age when dealing with older persons is safeguarded by the American Convention. This includes, among other things, the application of inclusive policies for the entire population and easy access to public services. See: Inter-American Court of Human Rights. Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349.

72 IACHR. Report No. 112/12. Case 12.828. Merits. Marcel Granier et al. Venezuela. November 9, 2012, para. 160; and IACHR. Report No. 75/15. Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para. 171. IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 153.

i. Sexual orientation as a protected category

Application before the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010

91. The Commission notes that sexual orientation does not explicitly appear in the text of the nondiscrimination clause contained in Article 1.1 of the American Convention. The language used in the clause does, however, indicate that it is an open provision, allowing the inclusion of additional categories under the wording "other social condition."

92. Both the European Court and the Human Rights Committee have ruled on a series of cases alleging different treatment on the basis of sexual orientation. Those cases have dealt both with the application of criminal and disciplinary sanctions and with the failure to recognize rights that do accrue to heterosexual people both individually and in their lives as couples. In those cases, both bodies have consistently held that sexual orientation is covered by the prohibited forms of discrimination in the corresponding international treaties. They have also established that strict scrutiny must apply when the distinction is based on sexual orientation.

95. [T]he Commission states that sexual orientation is covered by the phrase "other social condition" contained in Article 1.1, with all the consequences that this implies with respect to the other rights enshrined in the American Convention, including Article 24. Therefore, a difference in treatment based on a person's sexual orientation is suspect; it is presumed to be incompatible with the American Convention; and the corresponding State is obliged to prove that it passes the strict scrutiny test described above.

96. […] [T]he Commission underscores that a person's sexual orientation as a prohibited criterion for discrimination and a suspect category under Article 1.1 of the American Convention is not restricted to homosexuality per se, but also includes its expression and its necessary consequences on people's life plans. […]

Report No. 81/13. Case 12.743. Merit. Homero Flor Freire. Ecuador. November 4, 2013

100. Based on the evolutionary interpretation of treaties as "living instruments" whose interpretation has to accompany the evolution of the current times and living conditions, and also considering international standards, case-law of the European Court of Human Rights and comparative law, the IACHR already established that sexual orientation is a suspect category of discrimination under the criteria of non-discrimination contained in Article 1(1) of the American Convention and as such any distinction based on it should be examined with strict scrutiny. […]

114. In summary, the Commission deems that the considerations set forth in the case-law indicated make it possible to establish that provisions that punish a given group of persons for engaging in a consensual sexual act or practice with another person of the same sex are not admissible, for this is directly at odds with the prohibition on discrimination based on sexual orientation. This prohibition should be understood as described above, i.e. that such provisions ought not to be used to repress or sanction a person due to his or her actual or perceived sexual orientation.

119. In addition, the Commission notes that the prohibition on discrimination based on actual or perceived sexual orientation requires that no one be discriminated against in accessing and keeping his or her employment based on this aspect. Along these lines, the Committee on Economic, Social and Cultural Rights has indicated that any discriminatory treatment based on a person's sexual orientation in "access to the labour market or to means and entitlements for obtaining employment" constitutes a violation of the international obligations of the State on these matters. […]

Report No. 5/14. Case 12.841. Merit. Ángel Alberto Duque. Colombia. April 2, 2014

65. Similarly, the organs of the Inter-American system have concluded that sexual orientation is a category protected by the ACHR. Accordingly, the following has been established: [b]earing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention, the interpretation criteria set forth in

Article 29 of that Convention, the provisions of the Vienna Convention on the Law of Treaties, and the standards established by the European Court and the mechanisms of the United Nations […], the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person's sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by State authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.

67. Therefore, The IACHR defines discrimination based on sexual orientation as any distinction, exclusion, restriction or preference made against a person on the grounds that they are lesbian, gay or bisexual—or perceived as such—, which has the effect or the purpose—whether de jure or de facto—of impairing or nullifying the recognition, enjoyment or exercise, on the basis of equality, of human rights and fundamental freedoms, taking into account the social and cultural attributes that have been associated with those persons. […]

Thematic Reports

Violence against Lesbian, Gay, bisexual, Trans and Intersex persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015

39. Regional and international human rights organizations and experts have developed the concept of non-discrimination based on sexual orientation and gender identity. Notwithstanding these developments, the IACHR notes that under international law, with a few exceptions, the concepts of "sexual orientation" and "gender identity" are not expressly included in international human rights treaties as prohibited grounds for discrimination. Consequently, when these rights began to come to the fore, international and regional human rights bodies analyzed these two categories under two long-standing prohibited grounds for discrimination, namely: discrimination by reason of "sex"; and the open-ended clause prohibiting discrimination on the basis of "any social condition". […]

ii. Political opinions as a prohibited reason for discrimination

Merits reports published by the IACHR

Report No. 67/06. Case 12.476. Merit. Oscar Elías Biscet et al. Cuba. October 21, 2006

229. The American Declaration, for its part, prohibits discrimination by reason of race, gender, language, creed or any other factor, thereby disallowing any other form of discrimination, which would include discrimination based on political persuasion or some other factor.

Cases in the Court

Report No. 112/12. Case 12.828. Merit. Marcel Granier et al. Venezuela. November 9, 2012

124. From a substantive perspective, the Commission recalls that article 1.1 of the American Convention prohibits any discrimination in the enjoyment of the rights enshrined therein based on, inter alia, "political or other opinion". In addition, the Inter-American Commission and Court have consistently held that speech on matters of public interest enjoys heightened protection under article 13 of the Convention. Nonetheless, freedom of expression is not absolute, and in rare circumstances such as those contemplated in article 13.5 of the Convention, restrictions may be deemed permissible even if the speech in question is political in nature.

141. […] [S]tates have a series of substantive obligations destined to prevent the occurrence of the actions proscribed by the aforementioned Article 13.3 as well as other guarantees in the Convention such as those stemming from Article 1.1. This latter norm prohibits discrimination in the enjoyment of the human rights enshrined in the Convention on grounds, inter alia, of the "political or other opinion" of the person affected. In this regard, any content-based decision by the State regarding the allocation or renewal of a broadcasting license should be subjected to the strictest of scrutinies by this Commission. […].

Report No. 75/15. Case 12.923. Merit. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015

172. In practical terms this means that, having established a difference in treatment based on political opinion, the same is presumed incompatible with the American Convention, reversing the burden of proof for the State, which must give reasons of much weight to support a distinction of this nature in light of the judgment of proportionality and its sub-principles of legitimate aim—that in the case of a strict judgment must be a pressing social need—suitability, necessity and proportionality in strict sense.

173. In the present case the Commission notes that the State has denied that the dismissal had taken place as a result of the political views of the victims expressed by signing the petition for the recall referendum. Consequently, the State has not attempted to justify the difference in treatment based on political opinions, because their argument has been based on objecting that this was the real reason for the dismissal, which has already been undermined by the Commission throughout this report.

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174. In these circumstances and considering the presumption of unconventionality of any difference in treatment based on political opinion and subsequent burden of proof breached by the State in the present case, the Commission concludes that the State violated the principle of equality and nondiscrimination established in Articles 24 and 1.1 of the American Convention to the detriment of Rocío San Miguel Sosa, Magally Chang Girón, and Thais Coromoto Peña.

iii. Social condition as a protected category

Thematic Reports

Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017

152. Article 1(1) of the American Convention contains an express prohibition against discrimination for reasons of "economic status" or "any other social condition." Thus, the Commission considers that based on the above provision and

the advances in the case law of the Inter-American System, the poverty or extreme poverty of a person, group, or collective may be regarded as a prohibited category of discrimination. Such an evolving interpretation is consistent with the general rules of interpretation recognized in Article 29 of the American Convention.

iv. National origin as a protected category

Thematic Reports

Towards the Closure of Guantanamo. OEA/Ser.L/V/II. Doc. 20/15. June 3, 2015

223. […] The IACHR notes that national origin is not expressly referenced in the text of the nondiscrimination clause contained in the American Declaration, although it falls under "any other factor." National origin is expressly defined as a prohibited ground in the nondiscrimination clauses of many international human rights treaties, including the International Covenant on Civil and Political Rights to which the United States is a party. As is clear from the object and purpose of the ICCPR, and as the Commission has express with respect to the American Declaration, one of the fundamental objectives of these instruments "was to assure in principle "the equal protection of the law to nationals and aliens alike in respect to the rights set forth."" While international human rights standards recognize that there may be legitimate differences in treatment between citizens and non-citizens for such limited purposes as entry at borders and nationality, or for the purpose of residence or voting, these standards do not recognize or permit distinctions in respect for other fundamental rights, including the rights to life, personal integrity, equal protection of and before the law, and due process.

Condition of a person living with HIV/AIDS as a protected category

Merits reports published by the IACHR

Report No. 80/15. Case 12.689. Merit. J.S.C.H y M.G.S. Mexico. October 28, 2015

91. The IACHR notes that internationally it has been established that the general prohibition of discrimination includes a ban on discriminating based on infection with HIV or AIDS. Thus, the United Nations Commission on Human Rights maintained repeatedly that the expression "other status" contained in provisions on nondiscrimination in international human rights instruments must be construed to include state of health, including HIV and AIDS.75 Accordingly, it has maintained that: […]discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in nondiscrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS.

92. […] According to the ECSR Committee, given that the nature of discrimination varies according to context and evolves over time, a flexible approach to the ground of "other status" is needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2.2 of the International Covenant on Economic, Social and Cultural Rights. In the Committee's opinion these additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. Thus, "state of health" was recognized by the ESCR Committee as one of those additional discrimination criteria. […]

B. Inter-American Standards relative to the Obligation of Guarantee[73]

61. Inter-American standards relative to the obligation of guarantee by the States were developed for the bodies of the IAHRS with special emphasis on the obligation of guaranteeing material equality and the implementation of affirmative action measures.

62. Through these standards, the IACHR stresses the need to guarantee conditions of material and real equality in the region. In that respect, the Commission recommends the priority adoption of measures to prevent and reverse situations of discrimination or risk of discrimination to the detriment of certain groups of persons, as detailed in the selection below.

Merits reports published by the IACHR

Report No. 26/09. Case 12.440. Merit. Wallace de Almeida. Brazil. March 20, 2009

137. […] [T]he States are obligated to guarantee that all persons under their jurisdiction are effectively equal before the law. Given that it is based on recognition of that prerogative that the prohibition on discriminatory treatment is achieved.

Cases in the Court

Report No. 86/13. Cases No. 12.595, 12.596 y 12.621. Merit. Ana Teresa Yarce et al (Comuna 13). Colombia. November 4, 2013

218. Both the Court and the Commission have established that this duty to protect and prevent can be applicable in certain circumstances to acts perpetrated by State actors, third parties, or private individuals. Said international responsibility is contingent upon knowledge of a situation of

73 The Commission reiterates that:
The second general obligation of State Parties is to "ensure" the free and full enjoyment of the rights recognized by the Convention to all individuals that are subject to their jurisdiction. […] As part of their duty to act with due diligence, States have a legal obligation to reasonably prevent human rights violations, and to seriously investigate with the means at their disposal any violations that have been committed within their jurisdiction in order to identify those responsible, to impose on them the appropriate punishment, and to ensure the victims adequate reparations. […]". See, for example, IACHR. Indigenous Peoples, Afro-Descendant Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/Ser.L/V/II. Doc. 47/15. December 13, 2015, para. 40.

real and immediate risk—to an individual or a group of particular individuals—and on a reasonable chance of preventing or avoiding said risk. Even though an act, omission, or event of a private individual may have the legal consequence of violating specific human rights of another private individual, such a violation is not automatically attributable to the State, rather it must be viewed in light of the particular circumstances of the case, and the fulfillment of said obligations to ensure rights.

Report No. 4/16. Case 12.690. Merit. V.R.P y V.P.C. Nicaragua. April 13, 2016

130. […] States are obliged to take affirmative action in order to reverse or change any discriminatory situations in their societies that prejudice a specific group of persons. This involves the special obligation of protection that the State must exercise with regard to the actions and practices of third parties who, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.[74]

Thematic Reports

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

68. The Commission has established that whenever persons identified as members of vulnerable groups are injured and there is a general pattern of negligence and lack of effectiveness to process and punish the perpetrators, the State not only fails to comply its obligation to clarify an offence but also to comply with its duty to prevent degrading practices. […]

The Situation of People Afro Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011

74 IACHR. Report No. 48/16. Case 12.799. Merits. Miguel Ángel Millar Silva et al. (Radio Estrella del Mar de Melinka). Chile. November 29, 2016, para. 58; IACHR. The Inter-American Legal Framework regarding the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, para. 238; and IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 163.

92. As regards the obligation to create conditions of real equality, the IACHR has established that the examination of laws and policies based on the principle of effective equality and non-discrimination also includes their potential discriminatory impact, even when their formulation seems neutral, or they apply to everyone, without distinction.[75]

Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013

377. For the duty to prevent, the Commission considers that in the face of systematic discrimination and violence that jeopardizes the effective exercise of human rights, the measures that States must adopt and put into practice must be of two kinds: 1) general measures and 2) specific measures. Where a State is aware of a widespread problem of discrimination and violence against a specific group, its obligation to prevent demands that it have a comprehensive strategy of prevention aimed at avoiding the occurrence of the risk factors and at the same time strengthening the institutions that can effectively respond to cases of discrimination and violence against a specific group. The general measures of prevention include all those legal, political, administrative and cultural measures that serve to protect human rights, such as a suitable body of protective laws by which to carry out the actions necessary to ensure that it is effectively enforced, and prevention policies and practices that enable it to respond effectively to complaints, and awareness campaigns. In those cases where it is obvious that certain persons are at real and imminent risk of falling victim to violence and discrimination, the State has an obligation to take specific measures with respect to those individuals, to prevent those threats from materializing.[76]

Violence against Lesbian, Gay, Trans and Intersex persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015

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75 See IACHR. Report No. 85/10. Case 12.361. Merits. Gretel Artavia Murillo et al. ("In vitro fertilization") Costa Rica. July 14, 2010, para. 123; IACHR. Report No. 64/12. Case 12.271. Merits. Benito Tide Méndez et al. Dominican Republic. March 29, 2012, para. 230; and IACHR. Towards the Effective Fulfillment of Children's Rights: National Protection Systems. OEA/Ser.L/V/II.166 Doc. 206/17. November 30, 2017, para. 301.

76 IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 13, 2015, paras. 160-161.

> 422. […] States are not only obligated to provide equal protection under the law for persons subject to the State's actions, but they must also adopt the legislative, public policy, and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration, and under the American Convention.[77]
> […]
>
> 423. […] These obligations apply to both States that have ratified the American Convention and States that have yet to ratify the American Convention.

[77] IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 108; IACHR. Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016, para. 72; IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 131.

Country Reports

Gross human Rights Violations in the connect of Social Protests in Nicaragua. OEA/Ser.L/V/II. Doc.86. June 21, 2018

257. Regarding this, the State has the obligation to adopt measures to promote and protect the human rights of everyone, ensuring the right to diversity, preventing and combating acts of discrimination, violence, and intolerance.

1. Affirmative Actions

63. Affirmative actions are adopted to guarantee, on an equal footing, the enjoyment or exercise of one or more basic human rights and freedoms of persons or groups that need it, as long as said measures do not entail upholding separate rights for distinct groups and are not perpetuated after achieving their goals.

64. In effect, affirmative actions are aimed at mitigating or eliminating conditions that cause discrimination against certain groups. Likewise, they are aimed at ensuring the complete and equitable enjoyment of basic human rights and freedoms for groups in situations of vulnerability and/or historical discrimination.

65. The IACHR has stressed, through its work, the need to undertake affirmative actions, as well as the recommendation to draw up public policies that make it possible to prevent structural situations of discrimination. To conclude Chapter II, the selection of paragraphs below is provided to identify examples of the above.

Merits reports published by the IACHR

Report No. 26/09. Case 12.440. Merit. Wallace de Almeida. Brazil. March 20, 2009

147. From this perspective, the failure to take affirmative measures to reverse or change *de iure* or *de facto* discriminatory situations harmful to a specific group produces international responsibility on the part of the State.[78]

[78] IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 231; and IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 161.

Thematic Reports

Report on Terrorism and Human Rights. OEA/Ser.L/V/ll.116. Doc. 5 rev. 1 corr. October 22, 2002

338. […]The principle of equality may also sometimes require Member States to take affirmative action as a temporary measure in order to diminish or eliminate conditions which cause or help to perpetuate discrimination, including vulnerabilities, disadvantages or threats encountered by particular groups such as minorities and women.[79]

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

100. Occasionally, the special measures of protection and measures to promote equality –including affirmative action- are measures to provide the guarantees necessary to ensure that certain sectors that are victims of structural equality or long-standing exclusion have access to and are able exercise certain rights. […]

107. This type of protection considerably magnifies the State's obligations to protect the principle of equality before and under law. It requires a State to craft preventive policies, especially with regard to widespread discriminatory practices or structural discriminatory situations, even when those practices and situations are attributable to private persons. […]

109. "*Special measures"* is the phrase that international human rights instruments use to refer to temporary measures whose purpose is to ensure that certain groups are able to advance. The committees that oversee international treaties, and the States Parties as well, have used terms such as "affirmative action," "positive action," "positive measures," "reverse discrimination" and "positive antidiscrimination." They have justified measures of this type as corrective, compensatory and promotional.

[79] Also see: IACHR. Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District, Belize. October 12, 2004, para.166; IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 83.

112. […] [T]he term "measures" encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programs; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames, and quota systems. The choice of a particular "measure" will depend on the context in which […] is applied and on the specific goal it aims to achieve.

The Road to a Substantive Democracy: Women's Political Participation in the Americas. OEA/Ser.L/V/II. Doc. 79. April 18, 2011

36. Human rights instruments of the international and Inter-American systems have recognized the need for temporary special measures to remedy or compensate for the effects of past situations of structural discrimination against certain groups, and to avoid the perpetuation of such discrimination. Regardless of the terminology used to describe such measures at the international level […], international treaty monitoring bodies have recognized the need for these measures as a means of guaranteeing substantive equality and the enjoyment of fundamental rights of people and social groups that been at a disadvantage historically or victims of ongoing prejudices.[80]

37. Such measures are qualified as "special" in that they have a specific objective, while their "temporary" nature is conditioned on the results they achieve and sustain for a period of time. Furthermore, international human rights instruments consider such measures to be legitimate "to the extent that they represent reasonable, objective, and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved."[81]

40. The Inter-American system has emphasized the obligation of States to adopt special temporary measures to ensure real and legal equality among people and to combat long-standing

80 IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 227.

81 IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 239.

or the facto discrimination against a number of different social groups.[82] The Commission has established that the implementation of special measures of protection and measures to promote equality—including affirmative action—are necessary to ensure that certain sectors that are victims of structural inequality or long standing exclusion. […][83]

The Situation of People of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011

231. As regards the principle of equal and effective protection before the law, the IACHR stated that under the American Convention and in order to guarantee the right to non-discrimination, the States are required to adopt positive measures by establishing, for such purposes, distinctions based on *de facto* inequities for the protection of those who must be protected.[84] […]

237. The concept of affirmative action measures refers to specific or general legislation, plans, programs and any initiative which is designed to ensure the complete and egalitarian enjoyment of human rights and fundamental freedoms by disadvantaged groups. In this way, affirmative action measures represent legitimate instruments to reduce historical inequalities produced by prejudices and patterns of discrimination and exclusion.

Report on poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017

164. The Commission has also said that in light of the above principles of non-discrimination and equality of opportunity, that a State must ensure "that the policies it adopts do not place a disproportionate burden on the marginalized and

82 IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 203

83 IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 203

84 IACHR. Report No. 26/09. Case 12.440. Merits. Wallace de Almeida. Brazil. March 20, 2009, para. 145; IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 68; and IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 161.

most vulnerable sectors of society, particularly those disadvantaged by poverty."

CHAPTER 4

THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION AND THE STRENGTHENED OBLIGATION OF STATES TO PROTECT GROUPS IN SITUATIONS OF VULNERABILITY

THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION AND THE STRENTHNED OBLIATION OF STATES TO PROTECT ROUPS IN SITUATIONS OF VULNERABILITY

66. The present chapter is aimed at highlighting the content developed by the IAHRS on the principle of equality and non-discrimination, in particular about the scope of the obligations of States with respect to persons and groups who are in a situation of vulnerability or historical discrimination.

67. Although the IACHR asserts that not all societies involve situations of discrimination against the same persons or groups and that it is incumbent on the States to identify the features of the socio-historical context in which these situations are inserted, it is possible to recognize a series of persons, groups, or peoples living in situations of historical discrimination or vulnerability, who have been identified as priority persons and populations in the IACHR's Strategic Plan for 2017-2021 and who display similar characteristics throughout the region. In particular, the Commission refers to the situation of persons belonging to these priority groups because of the discrimination or marginalization in which they are living throughout the Hemisphere, which prevents, impairs, undermines, or violates the exercise of their human rights on an equal and non-discriminatory footing.

68. The first section of the present chapter provides a compilation of case law excerpts referring to the reinforced contents of the obligations of States regarding the link between discrimination and violence, access to justice, and the importance of transformative reparations for priority groups.

69. Immediately thereafter, it presents each one of the criteria developed with respect to the specific discrimination against women; indigenous peoples; Afro-descendants; persons in a situation of human mobility; children and adolescents; LGBTI persons; human rights defenders; persons deprived of liberty; persons with disabilities; persons living with HIV/AIDS; and older persons. Thus, with respect to each group, it is possible to specifically identify the risk situation and the impact stemming from the forms of discrimination against them, the intersection of risk factors, as well as the reinforced obligations of States to prevent and reverse said situations.

Cases in the Court

Report No. 174/10. Case No. 12.688. Merit. Nadege Dorzema et al (The Guayubin massacre). Dominican Republic. February 11, 2011

202. [T]he IACHR emphasizes that the close link between violence, discrimination and human rights violations is widely recognized in international instruments for the protection of the rights of groups in situations of special vulnerability to violations of their human rights. Thus, violence against those groups constitutes a form of discrimination that greatly prevents the members of the groups from enjoying the rights and freedoms in equal footing with all other individuals. The Commission also notes that there is a close link between violence, discrimination and due diligence. In that regard, the Inter-American Court has maintained that the lack of due diligence that leads to impunity reproduces the violence that it intends to attack, without prejudice to the fact that it alone constitutes discrimination regarding access to justice and respect of the right to guarantees.

Thematic Reports

The Situation of People of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011

184. [I]t has been established that it is an established fact that offences involving members of stigmatized or marginalized groups are more severely punished and that whatever the legal and procedural system in force in a given country, the structural inequalities, stereotypes and prejudices are mirrored in the criminal justice system.

185. This situation has often been described as a downward spiral from social discrimination to marginalization, incurring frustrations which may lead to criminal behavior, in its turn a source of collective stigma. In addition, such stigmatization perpetuates structural inequalities and engenders differences in treatment that amount to direct or indirect discrimination. […]

Universalization of the Inter-American System of Human Rights. OEA/Ser.L/V/II.152 Doc. 21. August 14, 2014

62. One of the fundamental challenges in the consolidation of democracy in the hemisphere is the historic discrimination and

the situation of exclusion that has been and continues to be endured by various communities, groups, and persons in the Americas based on various factors such as their sex, gender, race, ethnicity, age, and other factors. This problem is reflected in the number of Inter-American and international instruments that the States have adopted to protect persons at particular risk of having their human rights violated. Ratification of the Inter-American instruments has been a fundamental factor in promoting the development of standards and jurisprudence directed to the protection of sectors historically subject to discrimination, thus establishing legal guidelines for the development of legislation, policies, and programs and the justice system's response to cases involving these sectors.

Indigenous Women and Their Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017

167. Reparations aimed at remedying a human rights violation by restoring the situation, to the extent possible, to what it was before are considered insufficient and limited in societies that were already characterized by exclusion and inequality, and where the victims are members of discriminated and marginalized sectors. A merely restorative approach to reparations does not address structural factors and, therefore, does not guarantee non-repetition of human rights violations. Transformative reparations must be distinguished from the actions taken by the State to fulfill its obligations vis-à-vis society in general in the area of social, economic and cultural rights.[85]

Country Reports

Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia. OEA/Ser.L/V/II.Doc. 34. June 28, 2007

414. In addition to a guarantee of access to justice allowing all Bolivians to have their claims vindicated through the courts, the Commission reiterates the need for the State to adopt other kinds of preventive and protective measures to address continuing human rights violations against sectors of society that are especially at risk and/or in vulnerable situations. […]

85 See also: IACHR. Guidelines for a Comprehensive Reparations Policy. OEA/Ser/L/V/II.131 Doc. February 19, 2008, para. 15.

> *Report on the situation of human rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 31, 2015*
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> 415. The organs of the Inter-American System have observed that under the principle of non-discrimination recognized in Article 1(1) of the American Convention, members of at-risk groups must be guaranteed access to justice, making it imperative "that States offer effective protection that considers the particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions."

A. Women

70. The Commission has identified women as a sector that has traditionally been discriminated against in terms of the full enjoyment and exercise of human rights. It has highlighted the importance and urgent need for States to adopt new and diverse actions to promote and protect equality in order to guarantee this enjoyment and exercise of rights without any discrimination whatsoever.

71. In that regard, the IACHR stresses that discrimination against women substantially and widely interrupts and undermines the enjoyment of human rights. In fulfillment of its mandate and on the basis of its various working mechanisms, the IACHR has developed Inter-American standards on the basis of the ADRDM, the ACHR, and the principal universal and regional instruments for the protection of gender equality, such as the Convention of Belém do Pará.

72. This section compiles certain case law precedents on the right of women to equality and the corresponding obligations of States, amongst which the obligations to prevent and eliminate violence and discrimination, and to act with due diligence, as well as the obligations to guarantee the effective exercise of economic, social, cultural, and environment rights (ESCER), in particular those referring to the right to health and employment. The obligations with respect to women living in poverty are also noteworthy, because their condition is especially important for the protection of economic rights. Finally, the obligations of States regarding the intersection of discrimination risk factors are also important.

73. It must be underscored that the work of IAHRS bodies regarding this priority group has been extensive and broad. Nevertheless, the present compendium provides a weighted selection of more relevant definitions in that area for the purpose of identifying basic and essential criteria when providing specific

content to the obligations of States regarding the principle of equality and non-discrimination for women. In that respect, the Commission refers and points to various published papers that examine the content more in-depth, for the purpose of facilitating and promoting additional analysis.

Merits reports published by the IACHR

Report No. 51/13. Case 12.551. Merit. Paola Angélica Escobar Ledezma et al. Mexico. July 12, 2013

118. [T]he Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes that discrimination against women denotes "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." According to the Committee of the CEDAW, that definition includes violence based on sex, i.e. violence directed against women because they are women, or that affects them disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats to commit such acts, coercion, and other forms of deprivation of liberty.[86]

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

74. The narrow concept of the principle of non-discrimination, associated with classic liberal thinking, is not sufficient to justify affirmative action measures –a man rejected in a selection process that favors women can claim unfair treatment, too- nor does it adequately call into question those systems that appear neutral in principle –such as a meritocracy- but that in fact serve to perpetuate long-standing discrimination. Nor is it useful in challenging deeply rooted social concepts about women's role in society, which make them the primary care-givers and

[86] IACHR. Report No. 04/01. Case 11.625. Merits. María Eugenia Morales de Sierra. Guatemala. January 19, 2001, para. 32; IACHR. Report No. 74/15. Case 12.846. Merits. Mariana Selvas Gomez et al. Mexico. October 28, 2015, para. 353; IACHR. Report No. 4/16. Case 12.690. V.R.P and V.P.C. Nicaragua. April 13, 2016, para. 131; IACHR. Violence and Discrimination against Women in the Armed Conflict in Colombia. OEA/Ser.L/V/II. Doc. 67. October 18, 2006, para. 32; and IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, para. 9.

homemakers while excluding them from public spheres such as the workplace, education and politics.

75. A broader concept of non-discrimination is associated with the idea of ending the subordination of women as a group. This concept (which some call the principle of anti-subordination) condemns practices that have the effect of creating or perpetuating society a subordinate position for certain disadvantaged groups, such as women. By this definition of nondiscrimination, discrimination against women is unacceptable not just because it presupposes unfair treatment for some individual women, but also because its function is to subordinate women as a group and to thereby create and perpetuate a gender hierarchy. Discrimination is regarded as one of a number of social factors responsible for the hierarchy of the sexes that leaves women at the bottom of the pyramid.

The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011

24. The CEDAW Committee has defined gender equality as the concept that "all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices." States are called upon to pursue this objective by means of an immediate, comprehensive and multi-sector policy aimed at eliminating discrimination against women.

Country Reports

Second report on the situation of human rights in Peru. OEA/Ser.L/V/II.106. Doc. 59 Rev. June 2, 2000

2. The promotion and protection of women's rights is very much related to the question of discrimination against women in the enjoyment of human rights. While gender discrimination persists, women cannot fully enjoy their human rights. For this reason, international legislation bases the protection of women's rights mainly on the principle of non-discrimination and on the principle of the equality of men and women.

1. Violence, Discrimination, and Access to Justice

Merits reports published by the IACHR

Report No. 72/14. Case 12.655. Merit. IV. Bolivia. August 15, 2014

172. [T]he IACHR reiterates that the States have a duty to guarantee appropriate access to justice for women when any of their human rights are violated, including those relating to their sexual and reproductive health.[87] There are two dimensions associated with this duty. The first is criminal sanctions when acts occur that may constitute a form of violence against women […]. A second dimension has to do with the need to address the causes and systemic flaws that gave rise to the human rights violation under review. [...].

173. Consequently, in the instant case, the Commission notes that the denial of justice for I.V. derived from procedural deficiencies during the criminal trial proceedings, and the fact that the violations of her human rights, including her reproductive rights, went unpunished, constitute a form of discrimination against the exercise of her rights to judicial guarantees and judicial protection.

178. The IACHR has established, as one of the most important principles, that the obligation of States in cases of violence against women includes the duties to investigate, prosecute, and convict those responsible, along with the duty to "prevent these degrading practices."[88] […]

182. In light of the link between violence and discrimination, the Commission notes that the lack of punishment of an act of violence against women may also constitute a form of discrimination. On that principle, the Commission and the Inter-American Court have held that the lack of due diligence that leads to impunity "reproduces the violence that it claims to be

87 Application submitted to the Inter-American Court of Human Rights. Case 12.579. Valentina Rosendo Cantú et al. Mexico. August 2, 2009, para. 141.

88 IACHR. Report No. 54/01. Case 12.051. Merits. Maria Da Penha Maia Fernandes. Brazil. April 16, 2001, para. 56; IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.580. Inés Fernández Ortega. Mexico. May 7, 2009, para. 176; IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.496, 12.497 and 12.498. Merits. Ivette González et al. (Cotton Field). Mexico. November 4, 2007, para. 144; IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 126; IACHR. The Road to Substantive Democracy: Women's Political Participation in the Americas. OEA/Ser.L/V/II. Doc. 79. April 18, 2011, para. 111.

trying to counter, without prejudice to the fact that it alone constitutes discrimination regarding access to justice."[89]

Cases in the Court

Report No. 33/16. Case 12.797. Merit. Linda Loaiza López Soto and relatives. Venezuela. July 29, 2016

275. The Inter-American Commission has indicated that the codification of sexual crimes as protective of values such as honor, social modesty, and good customs represents a failure of the State to provide due legal protection to the victims of these crimes.[90] […] Elements such as a requirement to prove the victim resisted physically and the analysis of the victim's prior sexual conduct are factors that leave victims unprotected and constitute discrimination in regard to their right to access to justice.

277. […] These laws likewise contain mentions of discriminatory stereotypes and prejudices that have consequences for the classification of the offense and even establish mitigating circumstances based on the personal circumstances of the victim: for example, if she is a "prostitute," "single," "widow," or an "honest" woman.

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007

155. The influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on

89 IACHR. Report No. 170/11 Case 12.578. Merits. María Isabel Véliz Franco et al. Guatemala. November 3, 2011, para. 140; IACHR. Report No. 53/13. Case 12.777. Merits. Claudina Isabel Velásquez Paiz et al. Guatemala. November 4, 2013, para. 159; IACHR. Report No. 4/16. Case 12.690. Merits. V.R.P and V.P.C. Nicaragua. April 13, 2016, para. 135; IACHR. Report No. 33/16. Case 12.797. Merits. Linda Loaiza López Soto and relatives. Venezuela. July 29, 2016, paras. 160, 232 and 267; IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, paras. 180 and 184; and IACHR. Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, para. 32.

90 IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, para. 122.

complaints of violence. These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.[91]

The Right of Women in Haiti to be Free from Violence and Discrimination. OEA/Ser.L/V/II. Doc. 64. March 10, 2009

44. […] [T]he Commission has repeatedly found that violence against women is a manifestation of social customs and practices, which relegate women to a position of subordination and inequality and consequently places them in a disadvantaged position, compared to their male counterparts.[92]

86. According to this precedent, the responsibility of the State to act with due diligence to prevent the infringement of women's human rights in times of peace and conflict has a comprehensive nature.[93]

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

47. […] Given that not all breaches of human rights committed against women necessarily implicate a breach of the provisions of the Convention of Belém do Pará, it must be determined in a particular case whether the acts of violence have been

91 IACHR. Report No. 74/15. Case 12.846. Merits. Mariana Selvas Gomez et al. Mexico. October 28, 2015, para. 403; IACHR. Report No. 4/16. Case 12.690. Merits. V.R.P and V.P.C. Nicaragua. April 13, 2016, para. 135; and IACHR. Report No. 33/16. Case 12.797. Merits. Linda Loaiza López Soto and relatives. Venezuela. July 29, 2016, para. 268.

92 IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 95; IACHR. Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application. Updates from 2011 to 2014. Update approved on January 26, 2015, para. 50. The IACHR has also recognized that gender violence is *"a manifestation of the historically unequal power relations between women and men"* [See IACHR. Report No. 04/01. Case 11.625. Merits. María Eugenia Morales de Sierra. Guatemala. January 19, 2001, para. 52; IACHR. Report No. 53/13. Case 12.777. Merits. Claudina Isabel Velásquez Paiz et al. Guatemala. November 4, 2013, para. 156; IACHR. Situation of the Rights of Women in Ciudad de Juárez, Mexico: The Right to be Free from Violence and Discrimination. OEA/Ser.L/V/II.117 Doc. 1 rev. March 17, 2003, para. 7; and IACHR. Fifth Report on the Situation of Human Rights in Guatemala. OEA/Ser.L/V/II.11. Doc. 21 rev. April 6, 2001. Chapter XIII, para. 46].

93 Regarding women in a context of armed conflict, review the following: IACHR. Violence and Discrimination against Women in the Armed Conflict in Colombia. OEA/Ser.L/V/II. Doc. 67. October 18, 2006, para. 46; IACHR. Report on the Situation of Human Rights in Jamaica. OEA/Ser.L/V/II.144. Doc. 12. August 10, 2012, para. 229; IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 877 and IACHR. Indigenous Women and Their Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. April 17, 2017, para. 88.

influenced by a context of discrimination against women.[94] In cases where it has been determined that acts of violence against a woman fall within the obligations undertaken by the State party to the Convention of Belém do Pará, it is necessary to examine whether the authorities have fulfilled their duty to guarantee the rights affected […].

Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights system: Development and Application. Updates from 2011 to 2014. Update approved on January 26, 2015

28. The Commission has also begun to highlight […] the duty of States to take special account of the inextricable link between the factors that expose women to discrimination along with their sex, such as their age, race, ethnicity, and economic position, among others.[95] […]

47. […] [T]he IACHR emphasizes the duty of the States to act with the due diligence required in the face of acts of violence against women whether committed by state agents or private persons [96]; the duty to conduct a prompt and effective investigation into acts of violence; the obligation to eradicate discriminatory sociocultural patterns that may influence the work of prosecutors, judges, and other judicial officers in the prosecution of cases of violence against women;[97] the duty to ensure that the action of the justice system is impartial, independent, and free from discrimination; and the duty to ensure that the victims' family members are treated with dignity in the justice system.

Country Report

94 IACHR. Access to Justice for Women Victims of Sexual Violence in Mesoamerica. OEA/Ser.L/V/II. Doc. 63. December 9, 2011, para. 56; IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, para. 56.

95 IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 127; IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, paras. 43 and 294; and IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 159.

96 IACHR. Report No. 74/15. Case 12.846. Merits. Mariana Selvas Gomez et al. Mexico. October 28, 2015, para. 353; and IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 135. Especially with respect to responsibility for acts of violence perpetrated against third parties, see: The Right of Women in Haiti to be Free from Violence and Discrimination. OEA/Ser.L/V/II. Doc. 64. March 10, 2009, para. 86; and IACHR. Report No. 51/13. Case 12.551. Merits. Paola Angélica Escobar Ledezma et al. Mexico. July 12, 2013, para. 120].

97 IACHR. Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, para. 151

Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015

115. [T]he Commission has repeatedly stated that gender-based violence is one of the most extreme and perverse forms of discrimination, and severely undermines and nullifies the enjoyment of human rights of women.[98] Specifically, the Commission has stressed that discrimination against women is a major cause of both the violence in itself and the lack of response to it.[99] To cope with the discrimination that underlies violence against women, its root causes in all its principal manifestations must be tackled.

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

185. […] The IACHR has established among the most important principles, that the obligations of the States in cases of violence against women, includes the duty to investigate immediately. In addition, in order to conduct an investigation effectively, it should be directed at exploring all investigative lines, including indicia of gender-based violence, informing the family about the status and progress in the investigations. The IACHR has also found that the influence of discriminatory socio-cultural patterns can affect adversely the investigation of a case and the evaluation of the evidence gathered, for which reason it is crucial not to apply and not to permit the application of stereotypes based on the character of the victim instead of the crime.[100] Stereotypes in investigations are the result of the

98 IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 110; IACHR. Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators. OEA/Ser.L/V/II. CIDH/RELE/INF. 12/13. December 31, 2013, para. 253; and IACHR. Situation of Human Rights in Mexico. OEA/Ser.L/V/II.Doc. 44/15. December 31, 2015, para. 430. Regarding this, the IACHR has repeatedly recognized that *"violence against women and its root, discrimination, […] constitutes an impediment to the recognition and enjoyment of all their human rights, including the respect of their lives and their physical, mental and moral integrity."* [See, for example: Violence and Discrimination against Women in the Armed Conflict in Colombia. OEA/Ser.L/V/II. Doc. 67. October 18, 2006, para. 29; IACHR. Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, para. 12; and IACHR. Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres. OEA/Ser.L/V/II.134. Doc. 63. March 27, 2009, para. 43.]

99 IACHR. Violence and Discrimination against Women in the Armed Conflict in Colombia. OEA/Ser.L/V/II. Doc. 67. October 18, 2006, para. 43.

100 IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, paras. 181, 347 and 348; IACHR. Access to Justice for Women Victims of Sexual Violence in Mesoamerica. OEA/Ser.L/V/II. Doc. 63. December 9, 2011, para. 181; and IACHR. Violence against Journalists and Media Workers: Inter-American Standards and National Practices on

current situation of inequality and discrimination that many women face due to multiple factors interrelated to gender, such as race, age, ethnicity, socioeconomic conditions, among others.[101]

Prevention, Protection and Prosecution of Perpetrators. OEA/Ser.L/V/II. CIDH/RELE/INF. 12/13. December 31, 2013, paras. 254 and 268.

101 IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014, para. 175; and IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 186.

Democratic Institutions, the Rule of Law and Human Rights in Venezuela. OEA/Ser.L/V/II. Doc. 209. December 31, 2017

343. […] The IACHR reiterates that the obligation to act with due diligence applies to the whole of the State apparatus and encompasses the legislative framework, public policies, and the bodies responsible for public order, such as the police and the judiciary, with a view to preventing and responding appropriately to human rights violations, such as violence against women, and it includes the obligation to ensure access to appropriate and effective judicial remedies for victims and their next of kin.[102]

2. Economic, Social, Cultural, and Environmental Rights

Cases in the Court

Report No. 72/14. Case 12.655. Merit. IV. Bolivia. August 15, 2014

97. […] Protection of women's right to personal integrity in the area of maternal health entails for the States the obligation to guarantee that they have access on an equal footing to the health care services they require for particular necessities relating to pregnancy and post-natal care, as well as other services, as well as to information regarding maternity and reproductive matters throughout their lives. In this context, guaranteeing the right to personal integrity has implications for women's equality, autonomy, privacy, and dignity.

100. […] Accordingly, the IACHR has stated that States have an obligation to take positive steps to ensure the accessibility, availability, acceptability and quality of maternal health services, as a part of its obligations under the principle of equality and non-discrimination[103]. […] It follows from these principles that the lack of full respect of women's right to personal integrity in the reproductive sphere, in turn, may violate their right to live free from all forms of discrimination under article 1.1 of the American Convention.

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102 IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 130.

103 In the area of health and gender, review also the following: IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, paras. 26, 32, 37 and 76; and IACHR. Access to Information on Reproductive Health from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 61. November 22, 2011, para. 92.

131. […] [T]hese gender stereotypes come from individual and collective preconceptions about women's social roles and capacities, which are institutionalized through laws, public policies, judgments, and practices. Moreover, the persistence of gender stereotypes in health services results in women being denied certain abilities—such as the capacity to autonomously make decisions concerning their health—or in the imposition of certain burdens—such as the requirement to have third party authorization in order to obtain medical care.[104] This all results in the unequal and discriminatory treatment of women, and constitutes an impediment to the full exercise of their reproductive autonomy.[105]

162. […]Accordingly, the Commission considers that the presence of these kinds of gender stereotypes in the actions of health personnel has a different impact on women than on men and leads to the former being discriminated against in health services and especially in the delivery of sexual and reproductive health care services.[106] On this, the Commission has previously highlighted that ongoing gender stereotypes in the health sector act as an obstacle to women's access to maternal health services, which also amounts to discrimination in women's access to health.

Thematic Reports

The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011

84. Proper observance and the guarantee of women's rights to work—free of any form of discrimination and as men's equals—is a critical factor in eradicating poverty, empowering women, and ensuring their autonomy. The constraints on the exercise of women's right to work have repercussions on their exercise of their other human rights, including their economic, social and cultural rights in general. It is important that the States not only abstain from discriminating or tolerating discrimination of any

104 IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, paras. 38 and 75.

105 IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, para. 29; and IACHR. Access to Justice for Women Victims of Sexual Violence: Education and Health. OEA/Ser.L/V/II. Doc. 65. December 28, 2011, para. 144.

106 IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, para. 36.

kind in labor-related matters, but also honor their obligation to create the conditions that will better enable women to join the workforce and remain on the job.

176. Indeed, of all the barriers that still persist in the region, the education that is imparted may itself be the main obstacle to achieving an education under conditions of equality. The persistence of an education based on "hidden curricula," where those who teach are imparting stereotyped images of women's role in society as compared to men's, merely perpetuates social discrimination.[107] […] This serves to perpetuate the gender inequality that education is supposed to correct. […]

255. States must adopt immediate, deliberate and concrete measures to eliminate the obstacles that restrict women's access to and control over economic resources, particularly the problem of discrimination and the need to take steps to ensure women's true equality in this area. Women's access to and control of both economic and financial resources have important implications for women's economic roles in sustaining household livelihoods, in labor markets and in the wider economy […].

260. […] [T]he Inter-American system regards the procreation of women's rights-free of any form of discrimination – as being element to the eradication of poverty, the general protection of human rights, and the consolidation of democratic regimes.

Country Report

Democratic Institutions, the Rule of Law and Human Rights in Venezuela. OEA/Ser.L/V/II. Doc. 209. December 31, 2017

420. […] [T]he IACHR has already noted that although poverty affects everyone, its impact is decidedly different for women because of the gender-based discrimination they have historically faced.[108] […] The situation requires the adoption of public policies to do away with discriminatory and exclusionary stereotypes associated with poverty in society. The gender perspective is a core criterion in evaluating the implementation

107 Regarding the obligation to guarantee education for pregnant teenagers on an equal footing, see paragraph 232 of the present report.

108 IACHR. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights. OEA/Ser.L/V/II.143 Doc. 59. November 3, 2011, para. 247.

of poverty alleviation measures for the realization of economic, social, and cultural rights.

3. Intersection of Risk Factors

Merits reports published by the IACHR

Application to the Inter-American Court of Human Rights. Case 12.579. Valentina Rosendo Cantú et al. Mexico. August 2, 2009

160. The Convention of Belém do Pará requires that States, in acting with due diligence in connection with acts of violence, take special account of the vulnerability of women to violence and discrimination by reason of their minority age and other risk factors.[156] The IACHR has established that the reason for this provision is that discrimination, in its different manifestations, does not always affect all women to the same degree: there are women who are particularly exposed to the infringement of their rights and to suffer acts of violence and discrimination.[109]

Thematic reports

Access to Justice for Women Victims of Sexual Violence: Education and Health. OEA/Ser.L/V/II. Doc. 65. December 28, 2011

93. In its study of the problem of violence against women, the IACHR has reiterated in a consistent fashion that certain groups of women are at a particular risk of these acts, due to historical factors of discrimination on the basis of their sex, race, economic position, and sociopolitical context, among others. Some examples are the particular exposure to acts of violence against women of girls, indigenous women, women who have disabilities, and women living in zones affected by armed conflicts.[110] Poverty, race, ethnicity, sexual diversity and living in rural zones as well could be risk factors. Due to this noteworthy

109 IACHR. Access to Maternal Health Services from a Human Rights Perspective. OEA/Ser.L/V/II. Doc. 69. June 7, 2010, para. 87; IACHR. Report No. 80/11. Case 12.626. Merits. Jessica Lenahan (Gonzales) et al. United States of America. July 21, 2011, para. 113; and IACHR. Democratic Institutions, the Rule of Law and Human Rights in Venezuela. OEA/Ser.L/V/II. Doc. 209. December 31, 2017, para. 256.

110 On the issues of indigenous and/or Afro-descendant women: 1) See: Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015, para. 13; 2) and impacts on access to justice, see: IACHR. Access to Justice for Women Victims of Violence in the Americas. OEA/Ser.L/V/II. Doc. 68. January 20, 2007, para. 195 and IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 111; and 3) women impacted by armed conflicts, see: IACHR. Violence and Discrimination against Women in the Armed Conflict in Colombia. OEA/Ser.L/V/II. Doc. 67. October 18, 2006, para. 102.

history of discrimination based on an intersection of factors, it is key for States to take special account of the increased risk to acts of sexual violence confronted by these groups of women in the spheres of education and health. […]

Missing and Murdered Indigenous Women in British Columbia, Canada. OEA/Ser.L/V/II. Doc. 30/14. December 21, 2014

142. [T]he Commission has consistently recognized that certain groups of women face discrimination on the basis of more than one factor during their lifetime, such as their young age, race, and ethnic origin, and that this multi-faceted discrimination increases their exposure to acts of violence […].

B. Specific Impacts Stemming from Racial or Ethnic Discrimination

74. The IACHR has stressed that, in the Americas, the Afro-descendant population is comprised of more than 150 million persons. Nevertheless, Afro-descendant persons and communities continue to encounter many obstacles gaining due access to quality public services in health, education, and justice, as well as participating effectively in the formal labor market, having access to a decent job, and in general exercising their rights on an equal footing.

75. It has been pointed out that institutional racism continues to be deeply rooted in State bodies and institutions, which can be observed, for example, in the discriminatory and racist practices in national justice systems. Nevertheless, the effort made by the region's various countries to develop regulatory frameworks and draw up public policies aimed at combating racism, discrimination, and other forms of intolerance has been recognized. Despite these efforts, racial disparities persisting in the region are far from achieving a minimum acceptable level of equality.

76. Regarding this, the IACHR has understood that these situations of discrimination cannot be examined without taking into consideration the structural and historical factors that led to them. This section is comprised of three subsections whereby it is possible to identify a selection of excerpts relative to: i) the general considerations developed by the IACHR to address ethnic or racial discrimination; ii) the specific impacts and various forms of discrimination that have been borne by indigenous peoples; and iii) the various forms of discrimination and distinctive impacts suffered by Afro-descendants and persons of other races.

77. The IACHR believes it is important to recall that the selection of paragraphs indicated here has been included for the purpose of presenting key criteria relative to the principle of equality and non-discrimination. Nevertheless, the Commission and the Inter-American Court have developed extensive and detailed work on this matter. In that regard, in this section the Commission refers and points to various papers published by the IACHR that examine in greater depth the contents, for the purpose of facilitating and promoting additional review.

Cases in the Court

Report No. 86/10. Case 12.649. Merit. Community of Rio Negro of the Maya Achi People and its members. Guatemala. July 14, 2010

352. One specific manifestation of the right to equality is the right of all persons not to be the victims of racial discrimination. This form of discrimination infringes the equality and dignity inherent in all human beings, and has been unanimously condemned by the international community and is expressly prohibited under Article 1(1) of the American Convention.[111]

354. Thus, under the applicable international law, persons have a fundamental right not to be victims of discrimination based on their ethnic or racial origin, and States are internationally obligated to refrain from committing any acts of racial discrimination and to prohibit the commission of discriminatory acts. Furthermore, as a manifestation of the international obligation incumbent upon States to investigate acts that violate human rights and then to punish those responsible, States have an international duty to provide persons with effective judicial remedies that protect them from discriminatory acts and to provide just compensation when such acts have been consummated.[112]

Thematic Reports

Access to Justice for Women Victims of Violence in the Americas. OAS/Ser.L/V/II. Doc. 68. January 20, 2007.

111 IACHR. Report No. 174/10. Case No. 12.688. Merits. Nadege Dorzema et al. (Guayubín Massacre). Dominican Republic. February 11, 2011, para. 195; and IACHR. Report No. 125/12. Case 12.354. Merits. Merits. Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members. Panama. November 13, 2012, para. 286.

112 IACHR. Report No. 174/10. Case No. 12.688. Merits. Nadege Dorzema et al. (Guayubín Massacre). Dominican Republic. February 11, 2011, para. 201; and IACHR. Report No. 125/12. Case 12.354. Merits. Merits. Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members. Panama. November 13, 2012, para. 288.

196. Racism is commonly thought of as the basis of one form of *discrimination*, a difference in behavior dictated by a person's origin. It manifests itself over and over again in everyday interpersonal relations. Racism permeates all social behavior, personal as well as institutional. By varying degrees and in different ways, it is part of the ideological construct that spawned the dominance and inequality and that helps keep it alive.

Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OAS/Ser.L/V/II.132 Doc. 14. July 19, 2008.

52. Ethnic/racial discrimination cannot be understood in isolation from the structural and historic factors from which it arose. Thus, the colonial domination and slavery to which indigenous peoples and Afro-descendants were subjected form a backdrop that helps to understand the latter-day processes of economic, political, and social exclusion in a historical perspective.[113]

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

93. […] In the Commission's view, while many of the manifestations of discrimination and racism that Afro-descendants and indigenous peoples still encounter in the American hemisphere can be traced to the above-mentioned historical facts, they are also attributable to the fact that they were never acknowledged or addressed by the States that emerged from the independence movement and have to a large extent been rendered invisible until recent years. […]

258. […] Along these lines, the Commission deems it is necessary to reiterate that the basic right to equal protection before the law and nondiscrimination requires States to have policies, laws, and practices aimed enforcing the law which are not unjustifiably aimed at certain individuals only on the basis of their ethnic or racial features such as skin color, accent, ethnic

113 See, regarding this: IACHR. Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco. OEA/Ser.L/V/II. Doc. 58. December 24, 2009, para. 29; IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 31, 2015, para. 92.

group or area of residence well-known for having a specific ethnic population.

Country Reports

Situation of Human Rights in Honduras. OAS/Ser.L/V/II. Doc. 42/15. December 31, 2015.

420. [...] About this specific matter, the IACHR points out that prevailing attitudes of discrimination involving race contribute to the vulnerability of the indigenous peoples. On occasion, these attitudes are the reasons behind acts of violence, as they contribute to stereotypical and discriminatory perceptions against the indigenous and Afro-descendant peoples. On other occasions, these attitudes are evident in the disdainful responses from State authorities and society in general and in the omissions made when providing assistance when it is needed, which renders the indigenous peoples more vulnerable and therefore more prone to becoming potential victims.

1. Indigenous and Tribal Peoples

78. In this section, the IACHR presents the most noteworthy precedents with respect to the distinct and specific forms of discrimination to which the indigenous peoples have been subject. This subsection compiles key excerpts relative to the protection of the indigenous peoples and the obligations of States.

79. In particular, these standards refer to the analysis of the impact of violence and discrimination; access to justice and judicial protection; the exercise of community property, ownership of lands, and land use; the use of their own language; and there is also a reference to the intersection of discrimination risk factors.

Merits reports published by the IACHR

Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District. Belize. October 12, 2004.

169. This Commission has echoed these requirements in its studies of indigenous peoples of the Americas, indicating that

[w]ithin international law generally, and Inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and

cultural survival—a right protected in a range of international instruments and conventions.[114]

Cases in the Court

Report No. 86/10. Case 12.649. Merits. Community of Río Negro of the Maya Achi People and its Members. Guatemala. July 14, 2010.

355. Indigenous persons and peoples are also the *titulaires* of the fundamental rights to equality and to live free of all forms of discrimination –especially any form of racial discrimination based on their ethnic origin-. These rights take on an added and specific meaning in the case of indigenous peoples […].[115]

Thematic Reports

Indigenous Peoples, Communities of African Descent, Extractive Industries. OAS/Ser. L/V/II. Doc. 47/15. December 31, 2015.

149. The organs of the Inter-American System have underscored repeatedly that States have specific obligations in relation to indigenous peoples, given that these are original and pre-existing societies to colonization, or the establishment of current State borders. The recognition of specific rights for these peoples is also linked to the respect and appreciation of different cultural views, understandings of wellbeing and development, and ultimately, of their right to exist as ethnic and culturally differentiated peoples. However, the cultural differences in the region have not always been understood in terms of recognition and protection, instead these peoples have historically been subjected to marginalized conditions and discrimination. The historical exclusion which they have and still suffer and the practices of assimilation and dispossession have solidified gaps

114 IACHR. Report on the Situation of Human Rights in Ecuador. OEA/Ser.L/V/II.96 Doc. 10 rev. 1. April 24, 1997. Chapter IX. See also: IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.388. Yatama. Nicaragua. June 17, 2003, para. 115; and IACHR. IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. OEA/Ser.L/V/II. Doc. 56/09. December 30, 2009, para. 48.

115 IACHR. Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010, para. 176; IACHR. Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010, para. 176; and IACHR. Report No. 125/12. Case 12.354. Merits. Merits. Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members. Panama. November 13, 2012, para. 289. Likewise, regarding the investigation and prosecution of acts of racism, see paragraphs 359, 362, and 363 of Report No. 86/10. Case 12.649. Merits. Community of Rio Negro of the Maya Indigenous People and its Members. Guatemala. July 14, 2010.

of a social, economic and human rights nature between indigenous peoples and the rest of the population.[116]

Country Reports

Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. OAS/Ser.L/V/II. Doc. 43/15. December 31, 2015.

70. Historical discrimination against the indigenous peoples is evident in the lack of respect for and enforcement of human rights of which they are the holders, places them in a situation of poverty and extreme poverty, and situates them among the majority of the population in the departments with the highest rates of social exclusion. This exclusion can be observed in various areas, including land ownership, access to basic services, working conditions, access to the formal economy, participation in decision making and State institutions, and representation in the media and public debates. […].

77. […] Discrimination is one of the factors increasing social inequality and furthering the conditions of poverty affecting the indigenous population. Beyond the constitutional recognition of the principle of equality and gains in some aspects, de facto exclusion of the indigenous peoples continues as regards access to and effective and egalitarian enjoyment of rights in the economic and social spheres. […].

79. This persistence of the correlation between the social map of poverty and the marginalization of the indigenous peoples evidences the deep roots of structural discrimination. […]

104. Eliminating every form of discrimination and intolerance as well as promoting and protecting the human rights of the indigenous peoples and respect for ethnic and cultural diversity contribute to strengthening democracy and citizen participation. […]

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

377. The violence faced by indigenous peoples is closely connected to the situation of discrimination and exclusion they experience. This exclusion can be seen in spheres such as land

116 IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. OEA/Ser.L/V/II. Doc. 56/09. December 30, 2009, para. 49.

ownership, access to basic services, working conditions, access to the formal economy, participation in decision-making and in the institutions of the State, representation in the media and public debate, and the lack of access to justice. […]

i. Violence

Cases in the Court

Application submitted to the Inter-American Court of Human Rights. Case 11.763. "Plan de Sánchez Massacre." Guatemala. July 31, 2002.

186. The Commission has established that, since the colonial era, Guatemala has maintained racist and discriminatory practices to the detriment of the indigenous peoples, "which are evident in a system of violent and dehumanizing relationships, traditionally combined with State actions aimed at ensuring this social exclusion by the perpetuation of conditions marked by the concentration of power and productive wealth and opportunities of access to social services for the benefit of privileged and limited sectors of the population."

188. Ongoing threats to personal integrity, in both the individual and collective dimension, the denial of access to justice, and the impunity benefiting the masterminds and perpetrators of the massacre up to now ultimately meant a continuation of a social system that has involved discriminatory actions against the victims of the massacre. […]

Report No. 6/14. Case 12.788. Merits. Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal. Guatemala. April 2, 2014.

322. The Commission considers that because of the racism and structural exclusion prevailing at the time of the armed conflict in Guatemala, the Maya people were the most cruelly affected sector of the Guatemalan population. It is the Commission's view that racial discrimination was the basis both of the State policy of stigmatizing and then exterminating the Maya people, and of the "demonization" of the Maya people in order to de-sensitize the aggressors. It also explains the brutality with which the massacres and persecution were conducted, the enslavement of

some surviving children and the authorities' subsequent failure to react to these events.[117]

325. The Commission also considers that the failure of the State authorities charged with investigating and prosecuting the crimes committed in this case to respond swiftly and effectively to the events, also constituted a violation of those articles. Both the occurrence of acts constituting genocide and confirmation of a pattern of racial discrimination in the form of the stigmatization and persecution of members of the Maya people as sympathizers of the insurgency, demanded special diligence of Guatemala in its investigation and prosecution of the perpetrators. The Commission observes that this degree of special diligence was glaringly absent in the Guatemalan courts' response […].

ii. Access to justice and judicial protection

Thematic Reports

Missing and Murdered Indigenous Women in British Columbia, Canada. OAS/Ser.L/V/II. Doc. 30/14. December 21, 2014.

118. The Commission has also given special attention to the right of indigenous peoples to judicial protection and guarantees under the American Declaration. Effective access to such protection is especially important given the context of historical, structural discrimination. Further, it is essential that such protection be available in consonance with indigenous peoples' culture and traditions, and provided in a way that ensures against discrimination.

Country Reports

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

256. When members of an indigenous people are involved in legal proceedings as victims, accused or witnesses, the entrenched discrimination interferes with the respect for judicial guarantees to ensure full respect for their due process

117 IACHR. Report No. 86/10. Case 12.649. Merits. Community of Rio Negro of the Maya Indigenous People and its Members. Guatemala. July 14, 2010, para. 357.

rights, such as the lack of interpreters and of intercultural training for justice operators.[118] […]

260. In this regard, the Commission recalls that the States have the obligation to investigate all crimes with due diligence, and when indigenous people are involved, that obligation calls for the inclusion of the appropriate cultural perspective. In practice, this means that the authorities must take into account the context giving rise to the violence, take procedural steps with the victim and the families in a way sensitive to the surrounding social and cultural situation, take into account possible discrimination due to their status as members of indigenous peoples, consider not just the individual but also the collective aspect produced by the offense or offenses, ensure that access to justice for the victim(s) and their families is effective and timely, and to consider the support of interpreters, translators, as well as other tools to ensure the full participation of all parties according to the needs of the case.[119]

iii. Land ownership, possession, and use

Merits reports published by the IACHR

Report No. 40/04. Case 12.053. Merits. Maya Indigenous Community of the Toledo District. Belize. October 12, 2004.

167. With regard to indigenous peoples in particular, various international studies have concluded that indigenous peoples historically have suffered racial discrimination, and that one of the greatest manifestations of this discrimination has been the failure of State authorities to recognize indigenous customary forms of possession and use of lands. […].

Thematic Reports

Indigenous Peoples, Communities of African Descent, Extractive Industries. OAS/Ser.L/V/II. Doc. 47/15. December 31, 2015.

118 See regarding this: IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. OEA/Ser.L/V/II. Doc. 56/09. December 30, 2009, para. 368; and IACHR. Indigenous Peoples, Afro-Descendant Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/Ser.L/V/II. Doc. 47/15. December 13, 2015, para. 139.

119 IACHR. Report No. 86/10. Case 12.649. Merits. Community of Rio Negro of the Maya Indigenous People and its Members. Guatemala. July 14, 2010, para. 359.

244. The Commission also recalls that the rights to equality before the law, to equal treatment and non-discrimination mandate that States establish the necessary legal mechanisms to clarify and protect the right to collective property of all indigenous and tribal peoples, just as they protect the rights to property in general under the domestic legal system. States violate the rights to equality before the law, to equal protection of the law and non-discrimination when they fail to grant indigenous and tribal peoples, "the protections necessary to exercise their right to property fully and equally with other members of the population."[120]

245. The lack of equal protection to indigenous and tribal property can be exemplified by the preferential treatment afforded to individual property, in contrast to the unprotected nature of the lands and territories historically occupied by indigenous and tribal peoples. Furthermore, to maintain and incorporate norms or policies even when the indigenous and tribal peoples at issue have opposed the implementation of an extractive of development project represents a serious violation of the principle of non-discrimination. It is also incompatible with the right of indigenous and tribal peoples to belong to a distinct ethnic group with its own social, economic and cultural characteristics. It can lead instead to their disintegration or assimilation.[121]

iv. Use of one´s own language

Thematic Reports

The Inter-American Legal Framework regarding the Right to Freedom of Expression. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009.

54. The case law of the Inter-American system has addressed this point expressly in reference to the use of language by ethnic or minority groups. It has held that the use of one's own language is one of the most important elements of the identity of an 81 I/A Court H.R., Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment

120 IACHR. Report No. 125/12. Case 12.354. Merits. Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members. Panama. November 13, 2012, para. 303; and IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. OEA/Ser.L/V/II. Doc. 56/09. December 30, 2009, para. 61.

121 On this matter, see also: IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. OEA/Ser.L/V/II. Doc. 56/09. December 30, 2009, paragraphs 90, 269, 359, and 391.

of November 20, 2009. Series C No. 207. para. 83. 20 ethnic group, because it safeguards the expression, dissemination and transmission of its culture. It has further held that it is one of the elements that distinguishes the members of indigenous groups from the general population, and shapes their cultural identity. As such, it has concluded that the prohibition on use one's own language, insofar as it is an expression of belonging to a cultural minority, is especially serious and violates the personal dignity of its members, and is also discriminatory.[122]

v. Intersection of risk factors

Cases in the Court

Application to the Inter-American Court of Human Rights. Case 12.579. Valentina Rosendo Cantú et. al. Mexico. August 2, 2009.

150. The IACHR has noted that the obstacles such women face in securing access to suitable and effective judicial remedies to redress violations can be even more daunting because they suffer from a combination of various forms of discrimination: as women, because of their ethnic or racial origin, and/or by virtue of their socioeconomic status.[123]

Thematic Reports

Indigenous Women. OAS/Ser.L/V/II. Doc. 44/17. April 17, 2017. [124]

7. This political, social, and economic marginalization of indigenous women contributes to a continuous situation of structural discrimination and makes them particularly susceptible to a variety of acts of violence prohibited by the Inter-American Convention on the Prevention, Eradication and Punishment of Violence against Women (hereinafter, "Convention of Belém do Pará") and other Inter-American instruments. […] Violence against indigenous women is a fixture during armed conflicts, during the execution of major development, investment, and extractive projects, the militarization of indigenous lands, and in the context of their work as human rights defenders. […]

122 IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.387. Alfredo López Álvarez. Honduras. July 7, 2003, para. 179.

123 See paragraph 151 of the same report.

124 See also paragraphs 57, 83, 88, 118, and 139 of the same report.

40. On the other hand, it is crucial to understand that the sex and gender of indigenous women places them at an even higher risk of exposure to forms of discrimination and inferior treatment, as is the case for women in general. This multidimensional nature of the identity of indigenous women requires an understanding of the intersection of the historical and structural forms of discrimination which have been and are inflicted on indigenous women on the basis of the combination of their ethnicity, race, gender, and situation of poverty. To these most common factors of discrimination can also be added others, such as their age, disability, or pregnancy, their status as a displaced person, their deprivation of liberty, or their living in zones affected by armed conflicts, as well as their sexual orientation or gender identity.

Violence against LGBTI Persons. OAS/Ser.L/V/II.rev.2. Doc. 36. November 12, 2015.

265. The Commission underscores that indigenous persons with non-conforming sexual identities suffer from multiple and intersecting forms of violence and discrimination due to their indigenous identity and sexuality, sexual orientation and/or gender identity. The Commission notes how both the American Convention and the American Declaration protect the right of every person to be free from all forms of discrimination, and that indigenous peoples in particular are protected from discrimination based on their ethnic background, race, national origin, traditions and customs. The right of indigenous peoples to live free from all forms of discrimination is further protected under the universal system of human rights.

2. Afro-descendants and other Persons Impacted by Racial Discrimination

80. The present subsection systematizes the relevant case law excerpts referring to those specific standards relative to the protection of the equality of Afro-descendants. It specifically identifies State obligations with respect to violence and discrimination; access to justice and judicial protection, and the intersection of discrimination risk factors.

Thematic Reports

Situation of People of African Descent in the Americas. OAS/Ser.L/V/II. Doc. 62. December 5, 2001.

202. The IACHR stresses that the States are bound to carry out comprehensive reviews of their domestic systems in order to: i) identify and abolish regulations that imply direct or indirect discrimination; and ii) adopt laws that expressly and comprehensively punish racial discrimination. This law reform is not just an obligation but also an important tool to visualize the situation of Afro-descendants and contributes to the raising of awareness and modification of historical patterns of segregation and exclusion.

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2. Doc. 36. November 12, 2015.

358. In the context of geographic areas where the afro-descendant population is not a minority, like the Caribbean, the IACHR also considers how persons of African descent can face discrimination depending on the darkness of the person's skin -a concept referred to as "colorism." The Commission notes how the darker the person's skin is, the fewer opportunities of personal and economic development they may have, reflecting the impact of the colonial past. Thus, in areas like the Caribbean, racial discrimination towards afro-descendant people is linked to the darkness of the skin, poverty, and the control of economic resources […].

Indigenous People, Communities of African Descent, Extractive Industries. OAS/Ser.L/V/II. Doc. 47/15. December 31, 2015.

246. The Commission also highlights with concern the situation of deeply entrenched structural discrimination that exists against Afro-descendent communities. It reiterates its alarm in the sense that "the principles of equality and nondiscrimination are still not guaranteed for Afro-descendants in the Americas," even in the context of extractive or development activities that could affect their collective rights. The Commission emphasizes that these communities face important obstacles in the exercise of their civil, political, economic, social and cultural rights, which perpetuates their situation of poverty, exclusion and violence.[125]

[125] IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 102, and IACHR. Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15. November 11, 2015, para. 228.

Country Reports

Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia. OAS/Ser.L/V/II. Doc. 49/13. December 31, 2013.

618. The Commission has maintained that the information available reveals a pattern of racial discrimination and historical and systematic exclusion that has and continues to harm the Afro-descendant population. Indeed, the result of slavery and the subsequent failure to take positive measures to neutralize and reverse its consequences had the effect of further entrenching the forms of direct and indirect discrimination toward the Afro-descendant population.[126]

625. The Afro-descendant population has itself pointed out that three specific factors have to be taken into account when examining their situation: (i) the historical role that structural racial discrimination – a legacy of slavery - plays in perpetuating the economic, social and political gaps that explain the next differential factor that has to be considered with respect to Afro-descendant communities; (ii) the unequal treatment and inequity that persist in the areas where the black, palenquera, and raizal communities live, both rural areas and urban areas, and (iii) the disproportionate impact that the social and armed conflict has had on black and palenquera communities, and the less extensive but just as serious impact it has had on the raizal community, and which has placed the very socio-cultural survival of the Afro-Colombian ethnic communities in jeopardy.

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

341. As for Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, it stipulates that the term "racial discrimination" shall mean any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.

126 IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 97.

601. […] the Commission must underscore the fact that it has defined the use of racial profiling as a repressive tactic taken supposedly for the sake of public safety or protection but that is based in fact on stereotypes of race, color, ethnicity, language, descent, religion, nationality, or place of birth, or a combination of these, not on objective suspicions. Because this policy or practice may be based on discrimination and stereotypes, the Commission believes that it violates the principle of equal protection recognized in Article 24 of the American Convention.[127]

i. Violence

Merits reports published by the IACHR

Report No. 66/06. Case 12.001. Merits. Simón André Diniz. Brazil. December 21, 2006.

97. The Commission already held that every victim of a human rights violation must be assured of a diligent and impartial investigation, and, if there are indicia as to who committed the crime, the pertinent action should be initiated so that a judge with jurisdiction, in the context of a fair trial, can determine whether the crime occurred, as with every crime brought to the attention of the authorities.

98. As this has not happened with the complaints of racial discrimination lodged by Afro-descendants in Brazil, the Brazilian State has flagrantly violated the principle of equality enshrined in the American Declaration and the American Convention, which it undertook to respect, and which dictates

127 IACHR. Report No. 26/09. Case 12.440. Merits. Wallace de Almeida. Brazil. March 20, 2009, para. 143; IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights. OEA/Ser.L/V/II.132 Doc. 14. July 19, 2008, para. 143; and IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 31, 2015, para. 204.

The IACHR has observed that the State's public employees use of racial profiling for selective migratory detention and migratory control operations, as well as when investigating and processing criminal proceedings. The IACHR has repeatedly established that these actions are contrary to the principle of equality and non-discrimination because it is a selective and discretionary mechanism based on the phenotypical features or skin color of persons. In this regard, the IACHR notes that "*it is essential for States to accept that they are using these practices, abolish the rules that establish them, design behavioral protocols for security forces which take into account ethnic and racial diversity, and implement proper mechanisms to follow-up and control the activity of State agents in order to identify and eliminate these practices in security agencies. For that purpose, the Commission considers it essential to modify the institutionalized stereotypes towards Afro- descendant people and to take proper disciplinary measures against those security agents who use racial profiling*" [see IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 162].

that all persons are equal before the law and have the right to equal protection of the law, without discrimination.

99. First, the Commission understands that excluding a person from access to the labor market on grounds of race is an act of racial discrimination. […].

100. The IACHR understands that Article 24 of the American Convention is violated, in conjunction with Article 1(1), if the State allows such conduct to remain in impunity, validating it implicitly or giving its acquiescence. Equal protection before the law requires that any expression of racist practices be dealt with diligently by the judicial authorities.

Report No. 26/09. Case 12.440. Merits. Wallace de Almeida. Brazil. March 20, 2009.

139. […] When there are suspicions that racial attitudes led to a violent act, it is particularly important that an official investigation be conducted vigorously and impartially, considering the need to continuously reaffirm society's condemnation of racism, and to retain minorities' trust in the ability of the authorities to protect them from the threat of racial violence.[128] […]

140. On the same point, the European Court maintained that when violent incidents, particularly deaths at the hands of government agents, are being investigated, government authorities have an additional duty to take all reasonable steps to expose any racist motive and to establish whether any racial hatred or prejudice could have played a role in what happened. The failure to do so by treating violence and brutality due to racial motives on a par with cases with no racist overtones would be to turn a blind eye to the special nature of actions that are considered particularly destructive of basic rights. […]

ii. Access to justice and judicial protection

Merits reports published by the IACHR

Report No. 78/15. Case 12.831. Merits. Kevin Cooper. United States of America. October 28, 2015.

128 On the lack of trust in authorities, see also: IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 121.

143. According to the decision of the IACHR, "the international standard on the issue of 'judge and juror impartiality' employs an objective test based on "reasonableness, and the appearance of impartiality." The United Nations Committee to Eliminate Racial Discrimination (CERD) has held that a reasonable suspicion of bias is sufficient for juror disqualification.

146. Given the accepted existence of statistical disparities based on race at all stages of the criminal justice process, based on both the race of the defendant and the race of the victims, and given that the Cooper case presents both of the variables cited in such disparities, that is, an African American defendant, and white victims, the Commission considers that the courts were on notice of this context and had the obligation to complete a full and fair inquiry into the possibility of evidence tampering and failure to fully investigate other hypotheses that pointed to the perpetrators having been white. While the Commission does not have before it the elements necessary to establish that racial discrimination in fact produced a tainted investigation, it does have before it elements sufficient to determine that this possibility was not fully investigated. The Commission must make clear that the questions of due process and possible racial discrimination cannot be considered in isolation; it is precisely the deficiencies in due process that have left the possibility of racial discrimination unresolved. It is on that basis that the United States is responsible for failing to fully respond to the allegations, information and proof concerning possible racial discrimination raised throughout this process pursuant to its obligations under Article II of the American Declaration.

Thematic Reports

The Situation of People of African Descent in the Americas. OAS/Ser.L/V/II. Doc. 62. December 5, 2011.

138. The Commission observes that there is a close link between poverty, racial discrimination and the obstacles to have access to justice, which affect the Afro-descendant population, especially Afro-descendant women. Moreover, the impossibility to have access to complaint and remedy mechanisms, (administrative or judicial ones) is a factor that contributes to the persistence of racism in the region.

139. Additionally, the lack of judicial guarantees and the lack of sensitivity by the justice operators as regards racial

discrimination contribute to the deepening of the resignation of discriminated groups, and to the perpetuation of segregation and exclusion patterns.

iii. Intersection of risk factors

Thematic Reports

The Situation of People of African Descent in the Americas. OAS/Ser.L/V/II. Doc. 62. December 5, 2011.

64. The Inter-American Commission has considered that the Afro-descendant community, as a whole, lives in the poorest regions and has the lowest paid jobs, the burden of discrimination is even heavier for Afro-descendant women because their multiple roles both inside and outside the home are not adequately reflected in their social status, employment and wages.

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2. Doc. 36. November 12, 2015.

359. The IACHR has noted how, given the close link between race, socio-economic class, and poverty, the Afro-descendant population is adversely affected by multiple levels of discrimination. Additionally, the Commission has expressed concern about the special vulnerability of Afro-descendant women, who have suffered triple historical discrimination based on their sex, gender, extreme poverty, and race. In this respect, the IACHR points out how afro-descendant women face discrimination within their own communities based on their sex. The Commission received information referencing the phenomena of "hypermasculinity" or "reinforced male chauvinism" by some Afro-descendant men. Such attitudes can result in the limitation of Afro-descendant women's access to education and work and perpetuate the subordination of women, which is exacerbated in the case of afro-descendant women with non-normative sexual orientations and gender identities[129]. […]

[129] IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para. 69.

Country Reports

Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia. OAS/Ser.L/V/II. Doc. 49/13. December 31, 2013.

648. The Commission is concerned about the multiple levels of discrimination that Afro-descendant women experience; they continue to be overrepresented among the displaced population and are vulnerable to violence, especially sexual violence. The Commission is urging the State to adopt an intersectional approach when examining the specific situation of Afro-descendant women, one that takes into account the factors caused by their gender and by the fact that they are Afro-descendants, in addition to the poverty in which the majority of them live.

C. Persons in a Situation of Human Mobility

81. For the purposes of the present compendium, the Commission deems it is necessary to specify that human mobility encompasses both international and internal migration. International migration involves one person or a group of persons crossing an internationally recognized State border from their country of origin for the purpose of settling for a period of time or permanently in another country of which they are not nationals, whereas internal migration is when a person or group of persons move from place to another in the country of which they are nationals in order to settle there for a period of time or permanently.

82. The Commission has identified that one of the major human rights challenges encountered by persons in the context of migration in the region is the persistence of a large number of State policies, laws, and practices, as well as actions and omissions by non-state players and individual persons, who refuse to recognize persons in the context of migration as subjects of law and who violate their human rights and the principle of equality and non-discrimination.

83. This subsection presents the precedents that IACHR has developed and that refer to the protection of the above-mentioned group of persons, as well as the obligations of States in the matter. In particular, it focuses on those aspects involving violence and criminalization, the exercise of economic, social, cultural, and environmental rights, and the intersection of discrimination risk factors.

Merits reports published by the IACHR

Report No. 8/16. Case 11.661. Merits. Manickavasagam Suresh. Canada. April 13, 2016.

88. In the context of immigration management, the Commission recognizes that under certain circumstances it may be appropriate for States to treat non-residents or foreigners differently from citizens or legal residents within the State's jurisdiction. Under international law, States have the right to establish their immigration policies, laws and practices, which may include provisions for the control of their borders and the requirements for entering and remaining in their territory, and the right to expel or deport foreign nationals. Differential treatment may, for example, be justified in controlling the entry in and residence of foreigners in their territory. Nonetheless, such immigration policies, laws, and practices must be respectful of and guarantee the human rights of all persons, including migrants and other non-nationals, including persons in an irregular migratory situation. Specifically, and consistent with the principles underlying Article II of the Declaration, any such distinctions must be shown by the State to be objective, reasonable, and proportionate to the objective sought in the circumstances.[130]

Report No. 64/12. Case 12.271. Merits. Benito Tide Méndez et. al. Dominican Republic. March 29, 2012.

261. The Commission recalls that when immigration laws are enforced, the fundamental right to equal protection by the law and non-discrimination require that a State's policies and practices not unfairly target certain individuals based solely on their ethnic or racial characteristics, such as skin color, accent, ethnic origin or area known to be home to a particular ethnic population.[131] […]

130 IACHR. Report No. 51/01. Case 9.903. Merits. Rafael Ferrer-Mazorra et al. United States of America. April 4, 2001, paras. 239 and 242; IACHR. Report No. 64/12. Case 12.271. Merits. Benito Tide Méndez et al. Dominican Republic. March 29, 2012, para. 260; and IACHR. Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America. OAS/Ser.L/V/II.155 Doc. 16. July 24, 2015, para. 44.

131 IACHR. Report No. 174/10. Case No. 12.688. Merits. Nadege Dorzema et al. (Guayubín Massacre). Dominican Republic. February 11, 2011, para. 209; IACHR. Report on Immigration in the United States: Detention and Due Process. OEA/Ser.L/V/II. Doc. 78/10. December 30, 2010, para. 95; IACHR. Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, paras. 358 and 485; and IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 31, 2015, para. 560.

Thematic Reports

Report on Terrorism and Human Rights. OAS/Ser.L/V/ll.116. Doc. 5 rev. 1 corr. October 22, 2002.

411. Migrants, asylum seekers and other non-nationals are especially vulnerable to discrimination in emergency situations resulting from terrorist violence. This risk is particularly prevalent where terrorist violence is considered to emanate from foreign sources and where, as a consequence, asylum and other measures of protection for non-nationals may be perceived as providing refuge for terrorists. […]

412. States must therefore remain vigilant in ensuring that their laws and policies are not developed or applied in a manner that encourages or results in discrimination, and that their officials and agents conduct themselves fully in conformity with these rules and principles. This requires in particular that States refrain from applying their immigration control operations in a discriminatory manner.[132] […].

Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OAS/Ser. L/V/II. Doc. 48/13. December 30, 2013.

82. Migrants in an irregular situation are even more vulnerable. The Commission has recognized that the extreme vulnerability of migrants in an irregular situation' extreme vulnerability exposes them to the danger of being victims of abuses and violations of their human rights. In the Commission's view, migrants in an irregular situation face a structural vulnerability […].[133]

581. […] In general, the rights recognized in the Inter-American instruments apply to all persons, regardless of their nationality, their immigration status, Statelessness or any other social condition. […] Protection of the rights of migrants, foreign nationals, non-nationals, and Stateless persons follows from the general obligation prohibiting discrimination in the exercise of rights.

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132 IACHR. Report on Immigration in the United States: Detention and Due Process. OEA/Ser.L/V/II. Doc. 78/10. December 30, 2010, para. 94.

133 IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 31, 2015, para. 540; IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 31, 2015, para. 9.

1. Violence

Thematic Reports

Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OAS/Ser. L/V/II. Doc. 48/13. December 30, 2013.

246. In the Commission's view, the obligation to guarantee equality and nondiscrimination is inherently related to the prevention of violence and discrimination against migrants. […].

247. […] In the Commission's view, the fact that the organs of the State routinely tolerate the judicial systems' inadequate performance merely serves to perpetuate and reinforce the root causes and psychological, social and historical factors that maintain and feed the violence against migrants. The lack of due diligence to investigate, prosecute and punish these crimes and prevent their repetition is a reflection of the fact that they are not considered a serious problem. […].

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

16. […] The mere fact of being a migrant often means that the individual will suffer multiple forms of discrimination and violence in his or her countries of origin, transit, destination and return. At the same time, the Commission has learned of the abuses to which migrants are subjected to in the countries of transit and destination and of the obstacles, they grapple with in their countries of origin before their departure or upon their return.

2. Criminalization

Thematic Reports

Report on Immigration in the United States: Detention and Due Process. OAS/Ser.L/V/II. Doc. 78/10. December 30, 2010.

427. Finally, the IACHR urges federal and local authorities to refrain from passing laws that use criminal offenses to

criminalize immigration, and from developing administrative or other practices that violate the fundamental principle of nondiscrimination and the immigrants' rights to due process of law, personal liberty, and humane treatment. […]

Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OAS/Ser. L/V/II. Doc. 48/13. December 30, 2013.

81. In recent decades migrants have become even more vulnerable because the policies adopted by many States to address international migration have focused more on protecting national security than on protecting the human rights of the migrants. This is evident in immigration policies that criminalize migration; the laws and policies developed are a combination of criminal law and immigration law.

225. The Commission has learned of various situations in which migrants are stereotyped and stigmatized. For example, they tend to be blamed for crime. In many cases, once they arrive in certain communities, migrants tend to be blamed for any increase in crime and accused of begging, drug addiction, alcoholism and the commission of crimes. Implicitly or explicitly, these stereotypes are reflected in policies and practices, particularly in the reasoning and language of the authorities. Once created and in use, stereotypes become one of the principal causes and consequences of violence against migrants.

233. The Commission therefore concludes that the violence besetting migrants is a form of discrimination by virtue of their status as migrants […].

3. Economic, Social, Cultural, and Environmental Rights

Merits reports published by the IACHR

Report No. 50/16. Case 12.834. Merits. Undocumented Workers. United States of America. November 30, 2016.

76. Regarding employment of undocumented workers, the Commission deems it pertinent to state at the outset that neither the State nor individuals in a State are obligated to offer employment to undocumented workers. In other words, the State and individuals, such as employers, can abstain from

establishing an employment relationship with migrants in an irregular situation. However, upon assuming an employment relationship, the Commission considers that the protections accorded by law to workers, with the range of rights and obligations covered, must apply to all workers without discrimination, including on the basis of documented or undocumented status.

90. The Commission therefore considers that the State has failed to ensure that the protections in the law for workers, including remedies for labor rights violations, are recognized and applied without discrimination to every worker. The Commission […] emphasizes that such prosecution [for social security fraud] is irrelevant to and in no way should affect the right of an undocumented injured worker to receive and enjoy labor rights, such as to workers' compensation, once the person has assumed an employment relationship in the U.S.

Thematic Reports

Human Rights of Migrants and other persons in the Context of Human Mobility in Mexico. OAS/Ser.L/V/II. Doc. 48/13. December 30, 2013.

599. […] While the principle of non-discrimination and equal protection under the law requires that the State guarantee observance of migrant workers' labor rights, the fact of being a migrant in practice means not being recognized as a person before the law; the situation is even worse in the case of migrants in an irregular situation.[134]

134 IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 31, 2015, para. 574.

4. Intersection of Risk Factors

Thematic Reports

Human Rights of Migrants and other persons in the Context of Human Mobility in Mexico. OAS/Ser.L/V/II. Doc. 48/13. December 30, 2013.

83. The Commission has confirmed how the structural vulnerability of migrants is compounded by other factors such as discrimination based on race, color, national or social origin, language, birth, age, sex, sexual orientation, gender identity, economic position, religion or any other social condition. On the subject of migrant women, the Commission has frequently observed that they "suffer an intersection of forms of discrimination combined with their sex and their condition as migrants, such as their age, nationality, educational and economic level, among others; dimensions that should be examined by States in the design of interventions with the goal of better protecting their human rights in the realm of justice."[135] […]

352. The Commission has previously expressed concern over the grave situation that migrant women face. As a group, women are particularly at risk of having their human rights violated because of the discrimination and violence that women have historically endured by virtue of their gender.[136] […]

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

9. Commonly, migrants often face interrelated forms of discrimination, based on which they are discriminated against, not only because of their national origin or more broadly, because of being foreign, but also because of factors such as age, gender, sexual orientation, gender identity, ethnic-racial, disability status, poverty or extreme poverty, among others [...].

135 IACHR. Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 13, 2015, para. 541.

136 In that regard, see paragraph 353 of the same report; and IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 13, 2015, para. 32.

> 27. Over the course of the years, the Inter-American Commission has witnessed firsthand the extreme vulnerability in which migrant children in the region find themselves. That vulnerability is the consequence of a combination of multiple factors like age, the fact that they are not nationals of the State in which they find themselves and, in the case of girls, their gender […].
>
> 34. In this same vein, groups such as LGBT people are also extremely vulnerable to violence and discrimination. In many cases, discrimination and violence that LGBT people face because of their sexual orientation and gender identity is forcing them to migrate, which in turn can lead to various forms of discrimination against them in countries of transit and destination. In many areas of the world, including America, LGBT people experience serious human rights abuses and other forms of persecution because of their sexual orientation and/or gender identity, actual or perceived.[137]

D. Children and Adolescents

84. As for the collective group comprised of children and adolescents, the IACHR has developed specific standards focusing on the conditions of children. Regarding this group, the obligations of States in situations of discrimination or inequality are subject to a specific intersection of conditions, which enlarges the discrimination risk factors.

85. This means that public policies developed by States must particularly focus on eliminating the use of prejudices and stigmas suffered by children and adolescents because of their condition. It is also the duty of States to identify those groups of children and adolescents who are in a situation of vulnerability with regard to their rights and who require interventions addressing their protection needs for the purpose of effectively enforcing their rights. The selection of cases and reports presented below provides an account of these standards.

137 IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015, para. 285.

Thematic Reports

Report on Corporal Punishment and Human Rights of Children and Adolescents. OAS/Ser.L/V/II.135. Doc. 14. August 5, 2009.

118. The Commission believes that under the principles of nondiscrimination and equal protection of the law, States cannot tolerate social practices that allow children to be victims of corporal punishment.

119. The IACHR notes that although States have a margin of discretion in regulating laws applicable to families and institutions, that obligation must be met in accordance with principle of the indivisibility and interdependence of human rights and the principles that govern children's affairs—such as the child's best interests and nondiscrimination—in order to ensure that children's rights are respected in relations among private citizens. […]

Juvenile Justice and Human Rights in the Americas. OAS/Ser.L/V/II. Doc. 78. July 13, 2011.

52. Another matter of concern for the Commission is that some States have two minimum ages of criminal responsibility or "minimum age ranges," which means that children who fall between the two minimum ages can be held criminally responsible if they are deemed to be sufficiently mature. Here, the Commission concurs with the position taken by the Committee on the Rights of the Child, which is that the system of two minimum ages is often not only confusing, but leaves much to the discretion of the court or judge and may result in discriminatory practices.

109. The fact that treating children and adolescents differently from adults may not be discriminatory per se does not mean that any differentiated treatment of children and adults is justified. […] In this report's discussion of the principle of legality, the Commission pointed out that subjecting children to the juvenile justice system for "status offenses", i.e., types of behavior that do not constitute either crimes or misdemeanors when committed by an adult, is a violation of the principle of legality. But it may also be a violation of the principle of non-discrimination if the difference in treatment is not based on some objective and reasonable justification.

579. Any program or service whose purpose is to assist children deprived of their liberty with their re-assimilation into the community must make every effort to fight the discrimination and stigmatization that these children tend to suffer for having been offenders. […].

The Rights of Boys and Girls to a Family: Alternative Care. Ending Institutionalization in the Americas. OAS/Ser.L/V/II. Doc. 54/13. October 17, 2013.

91. […] The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States, […] [but] the non-discrimination principle does not prevent the taking of special measures to diminish discrimination". […].

187. The Commission is especially concerned about those cases in which the grounds or reasons that permit special measures of protection to be taken might, themselves, constitute discriminatory treatment based on socio-economic or other reasons. […].

Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America. OAS/Ser.L/V/II.155. Doc. 16. July 24, 2015.

56. Finally and importantly, the Commission has established that the best interests of the child cannot be used in an attempt to justify decisions that: (a) may be against a child's rights; (b) discriminate against other persons and their rights; and/or (c) are based on nothing more than social stereotypes, preconceptions, and prejudices regarding certain behaviors or groups of people.[138]

Violence, Children and Organized Crime. OAS/Ser.L/V/II. Doc. 40/15. November 11, 2015.

123. The Commission has also drawn attention to the stigmatization of certain groups of children and adolescents based on their socioeconomic status, ethnic origin, the vulnerability they may be experiencing, and stereotypes and subjective judgments regarding their appearance or behavior, among other factors. Children and adolescents run much greater

138 IACHR. The Right of Boys and Girls to a Family: Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, para. 160.

risk of being subjected to various kinds of violence and to violations of their rights, either by private individuals or the State itself and its agents. Children and adolescents—males in particular—who live in the areas, districts, and communities hardest-hit by violence and the lack of security are seen as "potential risks and are frequently discriminated against by State agents, the media, and society as a whole.[139]

176. […] There are a number of prejudices based on ethnic origin, skin color, and other stereotypes relating to clothing, tattoos, physical presence in a particular place, language, and adolescent codes of communication. In some environments, the mere presence of groups of adolescents in public spaces, such as parks, squares, or other open surroundings, at certain hours, leads to them being regarded by the community and by police as a "potential source of problems" or as a "danger." These stereotypes expose all children living in areas affected by violence to controls, abuse, violence, and discrimination.

457. […] The Commission underscores the obligation of States to eliminate all norms and practices that involve arbitrary differences in treatment or discrimination and violation of the human rights of children and adolescents. […]

536. States should ensure that education and schools do not reproduce stereotypes based on gender, socioeconomic background, ethnic origin, or other factors, or perpetuate exclusion and discrimination, abuse, or violence. On the contrary, States should encourage the educational process to be inclusive and foster the human rights of, and protection for, children. […]

Towards the Effective Fulfillment of Children's Rights: National Protection Systems. OAS/Ser.L/V/II.166 Doc. 206/17. November 30, 2017.

81. In keeping with the principle of equality and non-discrimination, States must actively identify those groups of children and adolescents, who live in a situation of vulnerability of their rights and require interventions, which are targeted to their protection needs, in order for them to be able to realize their rights. The principle of non-discrimination does not preclude special measures from being implemented in order to

139 IACHR. Juvenile Justice and Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 78. July 13, 2011, paras. 114 and 118.

defuse situations of inequality or discrimination. In fact, said principle may require implementation of proactive measures as a response to said situations. For this purpose, it is essential for the policy to provide for mechanisms to identify such groups and situations. One suitable measure for this purpose is to collect data and properly disaggregate it to be able to identify groups in particular situations of vulnerability, whose rights are not being ensured, as well as situations of discrimination. Another useful measure is direct consultation with civil society organizations, experts and members of academia. The task of identifying these vulnerable groups can be particularly difficult when a group has not been traditionally identified as vulnerable and, consequently, goes unnoticed as if it were invisible, as is often the case of minor children of mothers or fathers deprived of liberty.

293. Addressing discrimination may require changes in legislation, administration, policies, programs, services, and resource allocation, as well as educational measures to change attitudes and perceptions. It should be highlighted that applying the principle of nondiscrimination and equality in access to rights does not mean that all children and adolescents should be treated the same […].

1. Intersection of Risk Factors

Thematic Reports

Juvenile Justice and Human Rights in the Americas. OAS/Ser.L/V/II. Doc. 78. July 13, 2011.

120. The Commission also observes that girls in the Americas are frequent targets of discrimination by the juvenile justice system because of their gender. Girls are often incarcerated for having committed acts that do not constitute crimes if committed by an adult or acts for which boys, unlike girls, are rarely punished, such as alcohol consumption and smoking, running away from home or having sexual relations, due to gender stereotypes associated with a concept of women's subordination to men […].

121. […] In some States of the region, children face the juvenile justice system for engaging in certain sexual behavior, especially having sexual relations with members of the same sex. […] Then,

too, in some States children become special targets of police brutality and violence by detention facility personnel because of their sexual orientation and gender identity. In the Commission's view, while criminalization of sexual orientation is discriminatory for anyone, it can involve a more severe violation of rights in the case of children and adolescents because of the particularly harmful psychological effects it has on youngsters whose sexual identity is still in the process of maturing and who are extremely vulnerable as a result.

122. The juvenile justice systems in the Americas have also traditionally discriminated against children with disabilities, especially those with mental disabilities. […] While developmental disorders and a limited cognitive capacity can sometimes cause children to violate the law, their mental capacity should be one factor considered when deciding whether to enforce punishment or refer them to specialized mental health systems. The Commission points out that custodial sentences take a particularly heavy toll on children with mental disabilities, and their vulnerability frequently makes them the target of violence and exploitation by personnel of the juvenile criminal justice systems.

638. […] The Committee on the Rights of the Child has on various occasions voiced its concern about the impacts of discrimination based on disabilities which have been especially severe in education and vocational training; in addition, the Committee has voiced its concern about the cycle of discrimination, marginalization, and segregation to which children with some kind of disability are being exposed: (Please note: Excerpt doesn't appear to be available in the English Version of this report)

"[D]iscrimination in the provision of services excludes them from education […]. The absence of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fear, overprotection, negative attitudes, mistaken ideas, and prevailing prejudices against children with disabilities continue to be strong in many communities and lead to marginalization and alienation of children with disabilities." Children and adolescents with disabilities who are in a residential institution and are not guaranteed their right to an adapted education and training for autonomous living in their community, will have

difficulties to carry out their life's ambitions and leave the institution.

Access to Justice for Women Victims of Sexual Violence: Education and Health. OAS/Ser.L/V/II. Doc. 65. December 28, 2011.

52. The problem of sexual violence involving minor-aged girls is largely due to the fact that in addition to facing discrimination on account of their gender, they are also relegated in importance because they are considered mere objects of protection on account of their minor status. Thus, "the lower credibility of children places them at a disadvantage when sexual violence is reported, since the world of children is associated with wild imagination, and so their accusations and statements are used to reduce the punishments imposed on their assailants."

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015.

301. Children and adolescents who are lesbian, gay, bisexual, transgender, or intersex, or who are seen as such, face stigmatization, discrimination and violence because of their perceived or actual sexual orientation and gender identity, or because their bodies differ from typical definitions of female or male. […] In the previous chapter, the Commission also made reference to the situation of violence against children and adolescents in centers that attempt to "modify" their sexual orientation and/or gender identity […].

310. As in the case of adults, LGBT children may be targeted either because they have publicly assumed their sexual orientation or their gender identity, or simply because they are perceived to defy traditional standards of masculinity or femininity. In other words, children suffer from discrimination and marginalization based on their gender expression, even before they have become fully aware of their sexuality or identity […].

E. LGBTI Persons

86. The Inter-American Commission recognizes that case law development of decisions taken by international and regional human rights bodies regarding situations of discrimination based on sexual orientation and gender identity is wide-ranging and consistent.

87. As a result, it was possible to develop applicable standards relative to the situation of specific discrimination and violence to which LGBTI persons are subjected. Nevertheless, despite the broad promotion and development of these standards, the practices by States regarding obligations to be fulfilled in terms of equality and non-discrimination continue to be incomplete or limited. In particular, they fail to address the conditions leading to discriminatory treatment that in turn results in criminalization and violence against LGBTI persons and groups, with a special impact in cases of intersection of discrimination risk factors.

88. Thus, the IACHR presents below a selection of case law paragraphs that specify the work developed by the IACHR to tackle this subject, relative to LGBTI persons and groups.

Cases in the Court

Report No. 81/13. Case 12.743. Merits. Homero Flor Freire. Ecuador. November 4, 2013.

121. The IACHR also notes that the sanction imposed was implemented in keeping with the military provisions regarding sexual acts between persons of the same sex. The Commission considers that said regulation was not only incompatible with the obligations of the State to respect and ensure the fundamental rights of persons without discrimination and to adapt its domestic legislation in this regard, but that through this regulation the military legal order institutionalized a discriminatory treatment that is of particular important in the realm of the armed institutions, for the deeply-rooted view that homosexuality has a negative impact on the very existence of the military institutions in a State is reinforced in such provisions, consolidating the stigma that attributes a supposed lack of capacity or aptitude of a person to belong to the Armed Forces due to the fact that he or she is gay, lesbian or bisexual or perceived as such. […]

Report No. 5/14. Case 12.841. Merits. Ángel Alberto Duque. Colombia. April 2, 2014.

77. In this vein, the Commission notes that the reasons to exclude the alleged victim from the right to a survivor's right, which were given both by administrative and judicial authorities, stemmed from the need to "protect the family". Preliminarily, the Commission considers that such purpose could, in the abstract, constitute legitimate goals that the State could pursue when restricting rights.

78. However, as for the suitability requirement, the Commission finds that the reasoning offered by administrative and judicial authorities works only if one assumes a narrow and stereotyped understanding of the concept of family, which arbitrarily excludes diverse forms of families such as those formed by same-sex couples, which are deserving of equal protection under the American Convention. […] The Commission considers that there is no causal relationship between the means used and the goal pursued, failing to satisfy the suitability requirement. […]

Thematic Reports

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015.

243. […] the Inter-American Commission has expressed its concern over public officials in different States of the region promoting harmful stereotypes of, and expressing discriminatory views regarding LGBTI persons. […]

248. The Commission and its Office of the Special Rapporteur for Freedom of Expression reaffirm that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted. As previously stated by the Office of the Special Rapporteur on Freedom of Expression, these types of measures strike at the cultural root of systematic discrimination. As such, they can be valuable instruments in identifying and refuting hate speech and encouraging the development of a society based on the principles of diversity, pluralism and tolerance.

254. […] In this regard, the IACHR has expressed its concern over the use of discriminatory language and harmful stereotyping by media outlets, which disregard the humanity or dignity of LGBTI persons. […]

Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164 Doc. 147. September 7, 2017.

187. With respect to LGBTI persons, especially trans gender persons and trans gender persons from racial minority groups, the IACHR has found that they are immersed in a cycle of

exclusion and poverty that makes them more vulnerable to violence[140]. […]

440. There is a strong link between poverty, exclusion and violence based on prejudice. […] Structural discrimination against lesbian, gay, bisexual, trans and intersex (LGBTI) persons in the region may also significantly contribute to their vulnerability to situations of poverty, which in turn subjects them to further discrimination.[141]

Country Reports

Report on the Situation of Human Rights in Jamaica. OAS/Ser.L/V/II.144. Doc. 12. August 10, 2012.

287. Although many members of the LGBTI community in Jamaica experience discrimination based on sexuality, gender identity, and gender expression, the IACHR understands that discrimination and violence affect different members of the LGBTI community differently. […]

1. Violence

Thematic Reports

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015.

1. […] The information received indicates that LGBTI persons, or those perceived as such, are subject to various forms of violence and discrimination based on the perception of their sexual orientation, their gender identity or gender expression, or because their bodies differ from the socially accepted standard for female and male bodies. These situations of violence and discrimination are in clear violation of their human rights as recognized in Inter-American and international human rights instruments.

140 IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015, para. 371.

141 IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015, para. 370.

30. […] the IACHR has determined that in some situations it is "not so much whether a person recognizes himself or herself as [gay], but rather whether he or she is 'perceived' as such by third persons or is identified as a member of a given social group" that leads to acts of discrimination or violence motivated by prejudices against LGBT persons. […]

84. The Commission takes the view that the historical discrimination against LGBT persons compels States to be particularly vigilant to adopt measures to ensure the interruption of cycles of violence, exclusion and stigma. States must protect lesbian, gay, bisexual, and trans persons from violence exerted against them, in view of the principle of non-discrimination. States have an obligation to adopt measures to protect against and respond to the forms of violence directed against LGBT persons, as a direct consequence of the principle of non-discrimination.

388. In complying with its obligation of due diligence, States must take into account the different and intersecting forms of violence experienced by LGBTI persons, which are based on multiple forms of discrimination. As examined in the previous chapter, LGBTI persons are more likely to experience violence, and are more vulnerable to certain types of violence, when their non-normative sexual orientation and/or gender identity is combined with other factors such as ethnicity, sex, gender, migration status, age, work as human rights defenders, race, socioeconomic status and deprivation of liberty. States are urged to be aware of these multiple factors, and are called on to include these perspectives in all State measures aimed at preventing, investigating, prosecuting, and providing reparations regarding acts of violence against LGBTI persons.

Country Reports

Truth, Justice and Reparation: Fourth Report on Human Rights Situation. OAS/Ser.L/V/II. Doc. 49/13. December 31, 2013.

73. The IACHR observes that lesbian, gay, bisexual, trans and intersex persons have historically been subject to discrimination and violence based on their sexual orientation and gender identity in Colombia; this situation was exacerbated by the armed conflict, as manifested primarily in two aspects: acts of violence (assassinations, attacks, and threats) by armed groups,

who turn them into military targets, and forced displacement.[142] […]

2. Criminalization

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015.

85. […] the Inter-American Commission is of the opinion that laws that criminalize same-sex intimacy between consenting persons of the same sex in private are incompatible with the principles of equality and non-discrimination according to international human rights law. Thus, and taking into account their impact on violence against LGBT persons, the IACHR urges the States of the region that have laws criminalizing consensual sex between adults of the same sex, "serious indecency" and "gross indecency" laws, and legislation criminalizing crossdressing, to repeal those laws, and, in the meantime, to impose an explicit and formal moratorium on enforcement of those laws […].

3. Intersection of Risk Factors

Thematic Reports

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015.

147. Discrimination against persons deprived of liberty on the grounds of their gender identity or sexual orientation is not justified under any circumstance.[143] […]

160. […] Sexual orientation and gender identity should not be used as criteria in subjecting persons to unduly prolonged solitary confinement. Persons deprived of liberty must not be penalized or punished due to prejudice and discrimination based

142 Regarding this, see: IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 188; and IACHR. Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015, para. 371.

143 IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 1105.

on perceived or actual sexual orientation or gender identity. Even where the intent is to protect LGBT persons deprived of liberty from other inmates, the methods used must not subject LGBT persons deprived of liberty to harmful situations such as prolonged solitary confinement.

293. The Commission has expressed its concern over the repeated acts of violence and discrimination that LGBTI people, or those perceived as such, may face when deprived of freedom in the region, whether in prisons, detention cells, or police lock-ups and immigration detention centers. […] The IACHR has held that the decision on where to house trans persons should be done on a case-by-case basis, with due respect to their personal dignity, and whenever possible, with prior consultation of the person concerned.

270. […] Acts of violence against women, including lesbian, bisexual and trans women, are experienced by women as manifestations of the structural and historical sexism and inequality between men and women. As a result, the Commission notes how acts of violence against women can often take gender-specific forms, such as sexual violence or intrafamily violence. When examining the intersection of gender with sexuality, sexual orientation and/or gender identity, the Commission has found that such acts of violence are manifestations of the combined structural and historical sexism and prejudice towards non-normative sexual orientations and gender identities and, therefore, can take specific forms, such as rape aimed at punishing those orientations or identities, the puncturing of silicone implants, and genital mutilation, among others.

282. The IACHR emphasizes that States have the obligation to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, trans, and intersex women, as per the Belém do Pará Convention. The Commission highlights that the right of every woman to be free from violence, including lesbian, bisexual trans and intersex women, includes the right to be free from discrimination. This includes the right to be valued and to receive an education that rejects behaviors and social and cultural practices that are based on stereotypes and concepts of inferiority and subordination. […]

F. Human Rights Defenders

89. The Inter-American Commission, as a key part of its mandate to protect and promote and on the basis of its various mechanisms, has been monitoring the situation and risks being encountered by human rights defenders.

90. The IACHR brings together, in this section, the development of case law excerpts relative to the various forms of discrimination to which persons promoting the defense of human rights are subject.

91. As a result, the IACHR has compiled, in the present document, the standards for equality and non-discrimination with respect to the protection of human rights defenders and the work they do in the region's various States.

Thematic Reports

Criminalization of the Work of Human Rights Defenders. OAS/Ser.L/V/II. Doc. 49/15. December 31, 2015.

159. The misuse of criminal law affects the defenders of these rights in particular because in some countries the activities they promote may be prohibited, which exposes them to a greater risk of discrimination and retaliation and generates a deterrent and chilling effect in defending these rights. […].

Toward a Comprehensive Policy to Protect Human Rights Defenders. OEA/Ser.L/V/II. Doc. 207/17. December 29, 2017 (Please note: English version of this Report is currently unavailable online at cidh.org)

146. Stereotypes also contribute to increasing the vulnerability of certain specific groups such as women defenders and those who defend LGBTI persons, indigenous peoples, and Afro-descendants, among others. Therefore, the States must take all necessary measures over the short, medium, and long term to eliminate discrimination, which is both the cause and consequence of the violence they are facing.

191. The Special Rapporteur [of the United Nations on the Situation of Human Rights Defenders] also drew attention to the fact that most of the criminalized and discriminated groups of human rights defenders are those who defend the rights to land, water, and a healthy environment for the indigenous peoples and communities; those who fight for the rights of migrants within a particularly complicated geopolitical context in Mexico;

those who defend the rights of LGBTI persons; those who promote economic, social, and cultural rights, such as the right to education; as well as those who fight for the rights of disappeared persons and their next of kin.

269. […] The defense of groups who have historically been subject to patterns of structural discrimination may entail additional risks and require the State to adopt a differentiated approach when analyzing the context. […] In contexts such as these, the risk assessment conducted by the State must include discrimination and historical gender stereotypes and how they aggravate the risks of violence and intimidation.

300. Although the risk situation analysis must respond to the particular circumstances of each defender, certain groups have specific protection needs because of their specific circumstances of special vulnerability or historical discrimination in which they are living because of various factors. The above requires the adoption of a differentiated approach both in the assessment of the risk and in the implementation of protection measures.

1. Intersection of Risk Factors

Cases in the Court

Report No. 83/13. Cases No. 12.595, 12.596 and 12.621. Merits. Ana Teresa Yarce and others (Comuna 13). Colombia. November 4, 2013.

219. In this sense, the State's duty to prevent and protect takes on special meaning in the case of women human rights defenders. In addition to the risk inherent to the work of human rights defense is the history of discrimination that women have suffered based on their sex, stemming from stereotyped concepts and sociocultural patterns of behavior that have promoted their treatment as inferiors.[144] […] The IACHR has established how women human rights defenders continue in several countries of the hemisphere, including Colombia, being

144 See also: IACHR. Toward a Comprehensive Policy to Protect Human Rights Defenders. OEA/Ser.L/V/II. Doc. 207/17. December 29, 2017, paras. 43 and 146; and IACHR. Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017, para. 161.

exposed to a special situation of risk of suffering human rights violations compared to other groups of defenders.[145]

220. Accordingly, the inherent link between discrimination and violence against women is relevant to the scope of the duty of protection of a State with respect to the activities of women human rights defenders, and entails special obligations of prevention for the same. When a State does not adopt reasonable measures to prevent acts of violence against women human rights defenders, or remedy a known context of discrimination that promotes the repetition of these acts, not only does it violate the right to humane treatment, but also its obligation not to discriminate against women, contained in Article 1(1) of the American Convention.

Thematic Reports

Report on the Situation of Human Rights Defenders in the Americas. OAS/Ser.L/V/II.124. Doc. 5 rev. 1. March 7, 2006.

229. The Commission also recognizes the vulnerability of women who specifically work to defend women's human rights. The IACHR recognizes that by promoting and protecting the rights of other women, these women defenders increase their own risk and are exposed to yet another factor of discrimination among the many forms of discrimination suffered by women.

231. The Commission also finds that the situation of ingenuous and afro-descendent women, including those women who lead the campaigns demanding rights, is particularly critical, as they are victims of multiple forms of discrimination because of their race, ethnic group and by the virtue of being women; A situation that is aggravated in those countries that suffer from social tensions or armed conflict. Indigenous and afro-descendent women face two layers of discrimination since they are born: for belonging to their racial and ethnic group and because of their sex. Being exposed to two forms of discrimination historically, they are doubly vulnerable to abuse and mistreatment. The Commission has had knowledge that the champions of the rights of indigenous and afro-descendent women, in addition to the other forms of discrimination already indicated, are habitual victims of acts of racism, stultification and stigmatization on the

145 IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 283.

part of the majority communities and, in some cases, of public authorities and people from within their own communities.[146]

Indigenous Women and their Human Rights in the Americas. OAS/Ser.L/V/II. Doc. 44/17. April 17, 2017.

124. Women human rights defenders face additional forms of discrimination. The IACHR has received information regarding the particularly grave risk to women human rights defenders in the context of armed conflicts, often targeted for harassment, threats and attacks in order for the armed groups to exercise "social control" over territories. Moreover, indigenous women human rights defenders are exposed to additional disrespect and harassment by State authorities and armed actors when they work to promote and defend women's rights, exacerbating the dual discrimination they already face based on their gender and race. […]

G. Persons Deprived of Liberty

92. This subsection provides a sample of paragraphs referring to the protection of the guarantees of equality and non-discrimination for persons deprived of liberty and the obligations of States in that respect. In particular, it highlights the need to mainstream a gender perspective, in view of the discriminatory socio-cultural patterns and stereotypes that particularly expose persons deprived of liberty to human rights violations.

93. Likewise, the compiled standards include the specific need for respect and guarantee of equality and non-discrimination for a variety of persons belonging to groups in a situation of risk and vulnerability in the context of deprivation of liberty. This includes Afro-descendants; indigenous peoples; LGBTI persons; older persons; and persons with disabilities, among others. The IACHR stresses its continued emphasis on the conditions of confinement in which persons on death row are being held.

Thematic Reports

Report on the Human Rights of Persons Deprived of Liberty in the Americas. OAS/Ser.L/V/II. Doc. 64. December 31, 2011.

146 IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 286; and IACHR. Criminalization of the Work of Human Rights Defenders. OEA/Ser.L/V/II. Doc. 49/15. December 13, 2015, para. 52.

513. […] The IACHR reaffirms that all persons deprived of liberty must receive humane treatment, in accordance with respect for the dignity inherent to them. In this regard, the duties of the State to respect and ensure the right to humane treatment of all persons under their jurisdiction apply regardless of the nature of the conduct for which the person in question has been deprived of his liberty. This means that the conditions of imprisonment of persons sentenced to death must meet the same international norms and standards that apply in general to persons deprived of liberty. In particular, they must have access on an equal footing to the health care services of the jail; to education, job and training programs; to work shops and reading materials; and to cultural, sports and religious activities; and to contact with the outside world and their family members.

514. Death row inmates' access to these activities is essential in order to help these individuals to better endure the mental anguish that is typical of their status, and because, in the final analysis, to exclude them from such activities would amount to a form of discriminatory treatment.

Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas. OAS/Ser.L/V/II. 163 Doc. 105. July 3, 2017.

91. […] In particular, the IACHR indicated that in no case may the law provide that any type of offense is excluded from the regime established for ending pretrial detention, nor that certain offenses receive different treatment with respect to others when it comes to pretrial release, without any basis in objective and legitimate criteria for discriminating, merely because they answer to standards such as "social alarm" ("alarma social"), "social repercussion" ("repercusión social"), "dangerousness" ("peligrosidad"), or any others.

215. The Inter-American Commission has stated that the array of negative consequences arising from pretrial detention has a much greater impact on people who belong to groups in vulnerable circumstances and that the impact is even more severe when they belong to economically at-risk groups, since they are also victims of other forms of social exclusion. In this regard, considering that pretrial detention has a differential and disproportionate effect on persons belonging to groups at special risk, States should adopt special measures that include a differentiated approach with respect to persons of African

descent, indigenous persons, LGBTI and older persons, people with disabilities, and children and adolescents. A differentiated approach entails considering the particular vulnerabilities and factors that may increase the risk of acts of violence and discrimination in pretrial detention contexts, such as race, ethnicity, age, sexual orientation, gender identity and expression, and disability. It is also important to bear in mind the frequent intersectionality of the factors mentioned, which may heighten the situation of risk to which persons in pretrial detention are exposed.[147]

H. Persons with Disabilities

94. The Commission has focused special attention on the condition of persons with disabilities since the decade of the nineties. In follow-up on this matter, in 2017, the Unit of Persons with Disabilities was established; it is in charge of monitoring and following up on this situation, with special emphasis on working on public policies to achieve the effective protection of this population in the States of the region.

95. The paragraphs that were compiled below refer to the specific situations of discrimination to which persons with disabilities are subjected. In addition, it is possible to recognize the scope and development of the obligations that States have to guarantee and promote the enforcement of equality and non-discrimination for persons with disabilities. The IACHR stresses the urgency of adopting public policies so that persons with disabilities can exercise their rights without any discrimination and thus avoid and prevent situations in which they are subjected to exclusion, impairment, marginalization, or violent treatment because of their condition.

Thematic Reports

Impact of the Friendly Settlement Procedure. OAS/Ser.L/V/II. Doc. 45/13. December 18, 2013.

204. Full exercise of the rights protected under the American Declaration, the American Convention, and other instruments of the Inter-American system must be guaranteed without discrimination of any kind. The Commission has observed that persons with physical or mental disabilities are particularly vulnerable to discrimination and other human rights violations,

147 See paragraph 229 from the same Report.

such as arbitrary restriction of personal liberty and inhumane and degrading treatment.

205. The Commission has recommended to the Member States to take the legislative or other measures necessary to enable persons with disabilities to exercise their civil and political rights without discrimination and to ensure, in furtherance of the commitments undertaken in the Protocol of San Salvador, special protection of their economic, social, and cultural rights enjoy.

Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164 Doc. 147. September 7, 2017.

432. The Commission observes that having a disability increases the likelihood of living in poverty because the discrimination that comes with living with this condition may lead to social exclusion, marginalization, a lack of schooling, and unemployment, in addition to the fact that all of these factors increase the risk of poverty. […].

I. Specific Impacts on Persons Living with HIV/AIDS

96. Regarding the enlarged categories, in fulfillment of its mandate, the IACHR has identified persons living with HIV/AIDS as a group requiring special attention. Because of their chronic illness, these persons have suffered from discrimination and impacts on the exercise of their rights. That is why the IACHR has identified practices referring to the obligations of States aimed at preventing and punishing discriminatory treatments by both State agents and private individuals.

97. In that respect, the Commission has highlighted, for example, the importance of undertaking a specific and prior evaluation of the medical condition of the person in particular and his or her capacities and eliminating all content based on stereotypes and stigmas, when making any distinction in the treatment for persons living with HIV/AIDS.

Merits reports published by the IACHR

Report No. 27/09. Case 12.249. Merits. Jorge Odir Miranda Cortez et al. El Salvador. March 20, 2009.

70. Generally speaking, it should be mentioned that persons living with HIV/AIDS very often suffer discrimination in a

variety of forms. This circumstance magnifies the negative impact of the disease on their lives and leads to other problems, such as restrictions on access to employment, housing, health care, and social support systems. There can be no doubt that the principle of nondiscrimination must be very strictly observed to ensure the human rights of persons affected by HIV/AIDS.[148] Public health considerations must also be taken into account since the stigmatization of, or discrimination against, a person who carries the virus can lead to reluctance to go for medical controls, which creates difficulties for preventing infection.

74. […] Beyond question, the State not only has the right to adopt the measures necessary to avert the propagation of the virus, but also the duty to do so as part of its obligation to protect the health of the persons subject to its jurisdiction. However, the means used are utterly unreasonable and demeaning for Mr. Jorge Odir Miranda Cortez and constitute unnecessary stigmatization.

Report No. 80/15. Case 12.689. Merits. J.S.C.H and M.G.S. Mexico. October 28, 2015.

97. The IACHR recognizes that persons living with HIV constitute a group in a particular situation of vulnerability subject historically to discrimination.88 It is well-known that since the HIV/AIDS epidemic appeared, people affected by it have been victims of stereotypes and stigma associated with ignorance regarding the ways the disease is spread and with social inequalities related especially to gender, race, ethnic origin, and sexuality, reinforced by stigma. […]

108. The IACHR notes that in the instant case there was no health assessment or accurate scientific evidence to determine that the alleged victims, because of the development of the disease, had to be discharged from the Armed Forces because they could not go about their work effectively. […] In short, instead of evaluating the individual capacity of the alleged victim to perform the duties assigned to him in his work, he concluded that the alleged victim, because he had HIV, should automatically be retired from the Armed Forces.

148 See also: Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, para. 176.

109. In the Commission's opinion, said interpretation is a product of the stereotypes and stigmas surrounding that disease. […]

Cases in the Court

Report No. 2/16. Case 12.484. Merits. Luis Rolando Cuscul Pivaral et al. HIV/AIDS. Guatemala. April 13, 2016.

110. The IACHR has held that persons living with HIV/AIDS have historically been subjected to discrimination inasmuch as "HIV/AIDS-related stigma is rampant in the Americas, which not only hinders an effective response to the epidemic but also negatively impacts on the exercise and enjoyment of human rights.

111. In light of that situation, the IACHR has noted that States must maximize efforts so that all persons living with HIV/AIDS have access to the care they require, 100 including universal access to prevention and treatment services.

Thematic Reports

Report on the Human Rights of Persons Deprived of Liberty in the Americas. OAS/Ser.L/V/II. Doc. 64. December 31, 2011.

568. The IACHR urges States to adopt any legislative, institutional, or other measures needed to prevent and eliminate discrimination against inmates with HIV/AIDS. Prisoners discriminated against by reason of their gender, sexual orientation, religion, or race can be victims of multiple discrimination when they are also HIV-positive.654 Particular attention should be paid to the question of sexual orientation-based discrimination against HIV-positive prisoners. […].

J. Specific Impacts on Older Persons

98. The IACHR observes with the utmost concern that, every day, older persons encounter various forms of discrimination. Older persons are usually excluded from the job market, face many obstacles to gaining access to public and private services, are presented in the media on the basis of stereotypes, and are victims of various specific forms of violence, which contributes to their situation of vulnerability, exclusion, and invisibility in society.

99. In that respect, among the principal challenges facing older persons in the region there is the ongoing improvement in laws, as well as in the implementation of protection mechanisms and programs for the effective enjoyment of their human rights, such as the regulation and administration of social services, health, and long-term and palliative care services; and the intersectional discrimination against older persons, because of their age but also because of their gender, sexual orientation, gender identity, ethnic or racial belonging, disability condition, poverty, extreme poverty, or social marginalization, nationality, religion, deprivation of liberty, migratory situation, or Statelessness. In that context, during the 162 Period of Sessions held on May 21 to 26, 2017, and in line with what was set forth in the Strategic Plan for 2017-2021, the IACHR created the Unit on the Rights of Older Persons.

100. Regarding this, the IACHR is in the process of expanding the standards and doing work on this group for whom there are still many challenges to tackle. Owing to this innovative course taken by the IACHR, the present section highlights the precedents developed by the Inter-American Court relative to the rights of older persons in health and their particular situation of risk to discriminatory treatment.

Judgments of the Inter-American Court

I/A Court H.R. Case Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349. [PLEASE NOTE: ENGLISH VERSION OF THE JUDGEMENT IS CURRENTLY NOT AVAILABLE ONLINE]

127. […] [I]nternational instruments recognize a minimum catalogue of human rights, respect for which is indispensable for the highest development of older persons in all aspects of their life and in the best conditions possible, highlighting in particular the right to health. Older persons also have the right to reinforced protection and, therefore, require the adoption of differentiated measures. Regarding the right to health, whether in the private or public sector, the State has the duty to ensure all the necessary measures within its reach in order to guarantee the highest level of health possible, without discrimination. […]

131. The Court notes that, in many situations, older persons are especially vulnerable to the issue of access to health. Regarding this, it stresses various factors such as physical constraints, restrictions on mobility, economic conditions, or the severity of an illness and possibilities for recovery. In certain situations, this vulnerability has also been increased by the imbalance of power

prevailing in the doctor-patient relationship, so that it is indispensable to guarantee for the patient, in a clear and accessible fashion, the necessary information and understanding of his or her diagnosis or specific situation, as well as the measures or treatments to tackle said situation.

132. In view of the above, the Court stresses the importance of viewing older persons as subjects of rights to special protection and therefore to integral care, regarding their autonomy and independence […]. Therefore, this Court considers that, with respect to older adult persons as a group living in a situation of vulnerability, there is a reinforced obligation to respect and guarantee their right to health. […] As a result, the failure to fulfill this obligation arises when they are denied access to health or their protection is not guaranteed, which can also lead to a violation of other rights.

CAPÍTULO V

APPLICATION OF THE STANDARDS RELATIVE TO THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION IN OTHER AREAS

APPLICATION OF THE STANDARDS RELATIVE TO THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION IN OTHER AREAS

101. In addition to the categories expressly mentioned in Article 1.1 of the ACHR, as well as those expanded categories based on the situation of special vulnerability in which persons or groups in situations of historical discrimination are living, the IACHR has identified other issues that have earned differentiated attention because they tend to establish discrimination or differentiated treatment.

102. This chapter is aimed at illustrating the concrete scope of the obligations of States with respect to the application of the principle of equality and non-discrimination in connection with situations relative to nationality, freedom of expression, the administration of justice, and the guarantees of due process, the application of pre-trial detention, public security, the fight against terrorism, and poverty.

A. Nationality

103. The IACHR has indicated that, although States have the prerogative to grant nationality, they must refrain from adopting discriminatory measures that prevent nationality from being obtained or, on the contrary, removing a person's nationality. In particular, the IACHR has understood that measures leading to the loss or removal of nationality for discriminatory reasons violate the right to nationality and are viewed as arbitrary.

Country Reports

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

231. Within the States' prerogative to grant nationality, States must refrain from taking discriminatory measures and from enacting or keeping on the books any laws that arbitrarily deprives persons of their nationality by reason of race, color, sex, language, religion, political or other opinion, national or

> social origin, economic condition, birth or any other condition, especially when those measures and laws have the effect of converting an individual into a Stateless person. Laws or measures that cause a person to lose or be deprived of his or her nationality on discriminatory grounds (i.e., for reasons of race, color, sex or religion, for example) are arbitrary and therefore represent a violation of the right to nationality.[149]
>
> 232. […] Measures of this kind are disproportionate when other less intrusive measures are not adopted to achieve a legitimate end sought by the State. Deprivation of nationality is arbitrary when the measure used to deprive a person of his or her nationality is adopted without observing the guarantees of due process, such as denying the affected person the opportunity to challenge the measure, or if the measure is illogical given the circumstances.
>
> 247. The Commission also deems relevant to point out that one limit on the State's authority to determine who its nationals are is its duty to provide all individuals equal and effective protection before the law without discrimination […].

B. Freedom of Expression

104. The Inter-American Commission has reiterated the fundamental importance of the right to freedom of expression for the full enforcement of human rights, especially with respect to the right to equality for groups who have historically been discriminated against. In particular, in the face of situations reporting an incident involving the violation of freedom of expression, the IACHR has understood that, although there are limits to the exercise of the freedom of expression, they are subject to the principle of equality and non-discrimination. Inter-American standards developed in this matter include an interpretation of Article 13 of the ACHR, which is presented below.

105. Likewise, the IACHR has stressed that the States have the obligation to adopt measures of all kinds for the purpose of avoiding and eliminating discriminatory treatments and guaranteeing that everyone, especially

149 IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 31, 2015, para. 396; and IACHR. Report No. 64/12. Case 12.271. Merits. Benito Tide Méndez et al. Dominican Republic. March 29, 2012, paras. 223 and 249.

those who belong to groups living in a situation of historical discrimination, can disseminate contents and opinions on an equal footing.

Merits reports published by the IACHR

Report No. 48/16. Case 12.799. Merits. Miguel Ángel Millar Silva et al. (Radio Estrella del Mar de Melinka). Chile. November 29, 2016.

73. […] when it is alleged that the origin of differential treatment of media outlets that, in principle, in equal circumstances, it is based on the content of the speech expressed through the medium, the State's evidentiary burden increases. […]

76. In short, the effective allocation of a scarce public good or resource that affects the ability of the media to operate is limited by the right to freedom of expression on equal footing. The abuse of State power in this regard with the objective of pressuring and punishing or rewarding and favoring journalists and media outlets based on the content of their information is an indirect restriction to freedom of expression prohibited by Article 13.3 of the American Convention and a violation of the principle of equality expressed in Article 24 therein.[150]

96. The IACHR understands that indirect restrictions are particularly difficult to demonstrate. Therefore, when the arbitrary and discriminatory use of State power to infringe upon the full exercise of the right to freedom of expression is alleged, we must seek access to all evidence necessary to identify whether, in fact, there has been any kind of misuse of power contrary to Articles 13.3 and 30 of the Convention […].

Cases in the Court

Report No. 112/12. Case 12.828. Merits. Marcel Granier et al. Venezuela. November 9, 2012.

150. […] the Commission considers that when the State adopts a decision regarding the allocation of a frequency, the decision

150 IACHR. Democracy and Human Rights in Venezuela. OEA/Ser.L/V/II.Doc. 54. December 30, 2009, paras. 504 and 509.

should be based on a law that establishes quotas, procedures and sufficient reasons to support this action[151]. […]

Thematic Reports

A Hemispheric Agenda for the Defense of Freedom of Expression. OAS/Ser.L/V/II IACHR/RELE/INF. 4/09. February 25, 2009.

27. The IACHR has maintained that the State incurs responsibility not only by placing arbitrary limitations on the right to freedom of expression but also by failing to remove any barriers to the free and nondiscriminatory exercise of this right. […]

107. […] It is indispensable to remove all disproportionate or discriminatory restrictions that prevent radio and television operators of all kinds to fully accomplish the commercial, social or public mission they undertake. It is fundamental that the allocation of frequencies processes be open, public and transparent, and that they be submitted to clear, pre-established rules and requirements that are strictly necessary, fair and equitable. It is necessary for this process to guarantee that disproportionate or unequal barriers to access to the media are not imposed, and that the arbitrary or discriminatory allocation. […]

The Inter-American Legal Framework regarding the Right to Access to Information. OAS/Ser.L/V/II. CIDH/RELE/INF. 2/09. December 30, 2009.

90. […] [B]y virtue of Article 13, it has been established that certain types of limitation are contrary to the American Convention: Imposed limitations cannot be equivalent to censorship—because of which they have to be established by means of subsequent responsibilities for the exercise of the right—; they cannot be discriminatory nor can they produce discriminatory effects; nor can they be imposed through indirect mechanisms such as those prohibited by Article 13.3 of the American Convention; and they must be an exception.

[151] IACHR. A Hemispheric Agenda for the Defense of Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 4/09. February 25, 2009, para. 79; and IACHR. Freedom of Expression Standards for Free and Inclusive Broadcasting. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, para. 58.

93. Imposed limitations on freedom of expression "must not 'perpetuate prejudices nor foster intolerance'." Because of this, such limitation cannot be discriminatory or produce discriminatory effects because that would be also contrary to Article 24 of the American Convention. […]

Freedom of Expression and the Internet. OAS/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013.

21. When it comes to the Internet, the obligation of nondiscrimination means that in addition to the duties of access and pluralism mentioned above, steps need to be taken by all appropriate means to guarantee that all persons—especially those belonging to vulnerable groups or who express criticism with regard to matters of public interest—are able to disseminate content and information under equal conditions.[152][…]

30. Traffic over the Internet should not be discriminated against, restricted, blocked or interfered with unless strictly necessary and proportional in order to preserve the integrity and security of the network; to prevent the transmission of online content at the express request—free and not incentivized—of the user; and to temporarily and exceptionally manage network congestion. […].

Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas. OAS/Ser.L/V/II.rev.2 Doc. 36. November 12, 2015.

218. The rights to equality and freedom of expression are "mutually supportive" and have an "affirmative relationship," as they make a "complementary and essential contribution to the securing and safeguarding of human dignity." In this regard, the Inter-American Commission and the Inter-American Court have systematically reiterated the importance of the right to freedom of expression in guaranteeing the right to equality of members of groups that have suffered from historical discrimination. This importance stems from the role of freedom of expression both in its own right and as an

152 IACHR. Standards for a Free, Open, and Inclusive Internet. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017, para. 9; and IACHR. Freedom of Expression Standards for Free and Inclusive Broadcasting. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, para. 35; and IACHR. Standards for a Free, Open and Inclusive Internet. OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017, paras. 59, 60, 65, and 66.

essential tool for the defense of all other rights, and as a core element of democracy.

C. Administration of Justice and the Due Process Guarantees

106. The principle of equality and non-discrimination must be guaranteed under all circumstances. In particular, the IACHR has recognized situations in which this principle has not been respected for the parties when judicial proceedings are conducted. In that respect, the IACHR provides the following paragraphs that point out how structural inequalities and social stereotypes exert an impact on the criminal system and in the entire judicial sector as a whole.

Merits reports published by the IACHR

Report No. 24/17. Case 12.254. Merits. Víctor Saldaño. United States of America. March 18, 2017.

185. The Commission has indicated that, in general and regardless of the legal and procedural system in force in countries, "structural inequalities, stereotypes, and prejudices are reflected in the criminal system." […]

186. The Commission has indicated that allegations relating to the right to equality in the context of a criminal process imply an analysis of the fair trial requirements which include the requirement that the tribunal concerned is impartial and affords a party equal protection of the law, without discrimination of any kind. In systems that employ a jury system, these requirements apply both to judges and to juries. In this regard, the Commission has recognized that the international standard on the issue of "judge and juror impartiality" employs an objective test based on "reasonableness and appearance of impartiality." According to this standard, "it must be determined whether there is a real danger of bias affecting the mind of the relevant juror or jurors."[153]

153 IACHR. Report No. 1/05. Case 12.340. Merits. Roberto Moreno Ramos. United States of America. January 28, 2005, para. 66; IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OEA/Ser.L/V/II. Doc. 68. December 31, 2011, para. 126; IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 13, 2015, para. 196.

187. The IACHR has indicated that where this bias may relate to a prohibited ground of discrimination, such as race, language, religion, or national or social origin, it may also implicate a violation of the principle of equality and non-discrimination. […][154]

194. In light of the foregoing considerations, the Commission concludes that in the instant case there was a violation of the right to equality before the law as part of the right to a fair trial, because Víctor Saldaño's race and national origin played a central part in the imposition of the death penalty in the first trial, a situation that was resolved with delay and after severe harm had been done to Victor Saldaño.

Cases in the Court

Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010.

170. One specific manifestation of the right to equality and non-discrimination is in the courts, w here this right to equal protection combines with the guarantees of due process that are crucial to a fair trial.[155] In the words of the Human Rights Committee: The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.

Thematic Reports

Access to Justice as a Guarantee of Economic, Social and Cultural Rights. OAS/Ser.L/V/II. 129 Doc. 4 September 7, 2007.

20. […] The Inter-American Commission has also noted that the particular circumstances of a case may determine that guarantees additional to those explicitly prescribed in the pertinent human rights instruments are necessary to ensure a

154 IACHR. Report No. 1/05. Case 12.340. Merits. Roberto Moreno Ramos. United States of America. January 28, 2005, para. 66; and IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 46/15. December 31, 2015, para. 196.

155 IACHR. Application submitted to the Inter-American Court of Human Rights. Case 12.502. Karen Atala and daughters. Chile. September 17, 2010, paras. 148 and 149.

fair hearing. For the IACHR this includes recognizing and correcting any real disadvantages that the parties in a proceeding might have, thereby observing the principle of equality before the law and the prohibition of discrimination.

Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164 Doc. 147. September 7, 2017.

510. It is common for the unequal economic or social situation of litigants to be reflected in an unequal possibility of defense at trial. A first element in connection with the scope of the right of access to justice are the economic or financial obstacles in gaining access to the courts, and the positive obligation of the State to remove those obstacles in order to ensure an effective right to a hearing by a court. The obligation to provide free legal counsel is thus fundamental in ensuring due process guarantees and equality before the courts to persons living in poverty.

D. Pre-trial Detention

107. The IACHR has understood that the pre-trial detention measure constitutes a tool of exceptional application by the States. This means that, in every concrete case, imposition of this detention must be strictly necessary and justifiable. In that respect, the Commission has pointed out that qualifications such as "social alarm" or "dangerousness" violate the principle of equality and non-discrimination, because distinctive treatment to impose the pre-trial detention measure is based on negative social criteria regarding certain crimes and not on objective criteria, such as the possible obstruction of proceedings or clues of flight risk, among others. Relevant case law about this is provided below.

Merits reports published by the IACHR

Report No. 86/09. Case 12.553. Merits. Jorge, José and Dante Peirano Basso. Uruguay. August 6, 2009.

140. If a pre-trial detention during proceedings can only be used for precautionary purposes and not as sanction, then the severity of the eventual sentence should not necessarily justify a longer period of preventive detention.

141. Regarding this type of relation, under no circumstance, may the law stipulate that some type of offence be exempted from the established regime for the cessation of pre-trial detention or that some offences receive a different treatment regarding the possibility of release during the proceedings, if the reasons to do so are not grounded on objective and legitimate discrimination criteria; that is to say, merely indicating the existence of a "social alarm", "social repercussion", "dangerousness" or the like, should not be accepted.[156] These judgments are based on material criteria, which impair the nature of the preventive measure, converting it into a real anticipated sanction, because the statement that all accused be sentenced precisely indicates the prior declaration of their culpability.

142. This type of classifications violates the principle of equality, since the different treatment is grounded on the reproachable nature or the negative social consequences of a specific type of offence. Such criteria cannot, therefore, be taken into account to deny the release during the trial. Some people will be automatically excluded from the right to liberty, although having been accused of offences with minor sanctions, in virtue of the social perceptions, which, besides being improvable, are illegitimate to determine the fairness of a pre-trial detention.

186. The legal discrimination to deny liberty during the process, based on the reprehensive nature of certain types of offenses, also violates the principle of equality, which states that those persons in a similar situation must be treated equally. This type of legal distinction is not based on any of the admissible findings to justify the preventive detention.

Country Reports

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

401. [...] the IACHR reiterates that pretrial detention should be justified in each specific case and that legislation that provides for the use of non-custodial measures based on the

156 IACHR. Report No. 131/17. Case 11.678. Merits. Mario Montesinos Mejía. Ecuador. October 25, 2017, para. 87; and IACHR. Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017, para. 401.

> type of offense, stands at odds with the governing principles of the use of pretrial detention. […] On this issue, the IACHR determined in its recent jurisprudence that when a legal provision is in force allowing as sole grounds for pretrial detention preclusion from release during the case proceedings—and it is not determined based on an assessment of the evidence of risk of flight or hampering the case—the differential treatment leading to restriction of personal liberty is arbitrary and, therefore, a violation of the principle of equality and non-discrimination and of the right to personal liberty.[157]

E. Public Security

108. The IACHR has contended that the full validity of the principle of equality and non-discrimination is especially relevant regarding the use of force by State agents when public security issues are involved.

109. In this section, the Commission recalls the positive obligation of the States to adopt measures that ensure the application of the principle of non-discrimination, as well as to refrain from using discriminatory treatments or behaviors based on a person's socio-economic condition or because of his or her political opinions. Likewise, the IACHR has stressed the cross-cutting nature of mainstreaming the principle of equality and non-discrimination for public policymaking in regards to public safety.

Merits reports published by the IACHR

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

> 116. In the matter under examination, the Commission notes, firstly, as it has recognized in the past, that the restoring of domestic order vis-à-vis illegal actions of a subversive group is a legitimate aim. […]
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> 118. The Commission recalls that said operation in La Grandeza took place as part of the implementation of the "Chiapas Campaign Plan," which was the basis for the Mexican Army's counterinsurgency actions at the time of the events. The Commission notes that said Plan did not constitute an

[157] IACHR, Report No. 53/16, Case 12.056. Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016, paras. 147-149.

adequate legal framework to deter possible threats to the right to life, but on the contrary provided guidelines, with the objective of "breaking the relationship of support […] between the population and the law breakers," to attack the segments of the population regarded as "enemy forces," among which were expressly included "ethnic and peasant" […] organizations. Likewise, the Plan did not instruct Army members to respect the fundamental principles of distinction, necessity and proportionality, but on the contrary to indiscriminately target segments of the civilian population. Thus, beginning with the very design of the plan, the grounds were set to use excessive force, endanger the civilian population or individuals, who at that particular point in time were not taking part in the hostilities. Additionally, the grounds were set for said abuses to be committed with a bias, clearly discriminating against the ethnic origin of certain groups […].

120. Therefore, based on the available information, the Commission concludes that in the context of the operation in which Mr. Jiménez Hernández was killed, not only was there no minimal plan of operations in place or any regulations of these aspects, which pursuant to the legal precedents of the Inter-American Court, are essential to the use of lethal force, but on the contrary there was an official plan in place that made conditions ripe for arbitrary and discriminatory actions of the security forces with a view toward accomplishing the intended purpose.

121. This situation, in and of itself, is incompatible with the duty to ensure the right to life as established in Articles 4.1 and 24 of the American Convention in conjunction with the obligations set forth in Articles 1.1 and 2 thereof.

Thematic Reports

Report on Citizen Security and Human Rights. OAS/Ser.L/V/II. Doc. 57. December 31, 2009.

51. The design, implementation and evaluation of policies on citizen security in the region have to be defined within the frame of reference that the international principles of human rights provide, especially the principles of participation, accountability and non-discrimination. […].

228. The Commission recognizes that in order to fulfill the obligations referred to in the preceding paragraphs, the Member States may occasionally have to limit or restrict the exercise of certain rights. These limitations or restrictions comply with internationally accepted standards on human rights only when they are informed by the principles of necessity, lawful purpose, proportionality, rationality and nondiscrimination.

Violence, Children and Organized Crime. OAS/Ser. L/V/II. Doc. 40/15. November 11, 2015.

86. […] The IACHR draws attention to the potential unequal and discriminatory application of such laws and to the fact that they legitimize a "shoot first" mentality based on perceptions and prejudices. These types of laws could contravene the State's duty to protect peoples' lives and safety and should be revised so they adhere to the principles of need and proportionality in the use of lethal force in self-defense and prevent situations of impunity in cases of lethal force used by individuals.

237. The Commission is worried about stereotyped perceptions in society that lead to certain social groups being blamed for the insecurity and violence. Such perceptions exacerbate social exclusion and discrimination against those groups. The existence of possible cases of victimization of members of one social group by members of another, especially when they receive broad media coverage, may make divisiveness based on social class and ethnic origin worse, which in turn reinforces those perceptions and generalizations regarding those "responsible" for the insecurity and violence. Both factors replicate and reinforce the vicious circle of exclusion and violence.

444. […] patterns of discrimination can be identified in policing in several countries of the region, which often gives rise to arbitrary detentions of adolescents, which are inconsistent with the principle of legality and non-discrimination. […]

Country Reports

Democratic Institutions, the Rule of Law and Human Rights in Venezuela. OAS/Ser. L/V/II. Doc. 209. December 31, 2017.

376. The Commission likewise emphasizes that citizen security policies and the use of force by State agents must abide by accountability and nondiscrimination principles. […] The Commission reiterates that in a case on patterns of discrimination and violence by the Police against youths belonging to an especially vulnerable social group due to their social condition, the State must adopt positive measures in their favor and refrain from making distinctions based on discriminatory grounds, especially socioeconomic status or political views.

F. Fighting Terrorism

110. The fight against terrorism is yet another one of the issues for which the IACHR has developed appreciations about the validity of the principle of equality and non-discrimination. In particular, the Commission's work highlights the importance of having anti-terrorist norms and actions that abide the principle of equality and non-discrimination.

111. The Commission has recognized that investigating individuals or groups who identify themselves with certain political, ideological, or religious movements must be based on an objective and reasonable justification, so as not to be deemed discriminatory according to the standards of interpretation of the American Convention.

Merits reports published by the IACHR

Report No. 8/16. Case 11.661. Merits. Manickavasagam Suresh. Canada. April 13, 2016.

89. A context of counter-terrorism measures may give rise to particular considerations. […] States must therefore remain vigilant in ensuring that their laws and policies are not developed or applied in a manner that encourages or results in discrimination; that their officials and agents conduct themselves fully in conformity with these rules and principles; and that policies and practices are prohibited upon a showing

that they discriminate against a certain category of persons, even when lacking proof of discriminatory intent.

90. […] The Commission acknowledges that differential treatment of persons suspected of terrorist acts may legitimately be utilized by States to protect their security where such treatment meets the abovementioned requirements.

Cases in the Court

Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Aniceto Norin Catriman, Juan Patricio Marileo Saravia, Victor Ancalaf Llaupe et al. Chile. November 5, 2010.

174. The right to equality and non-discrimination are among those rights most profoundly and deeply affected by States' anti-terrorist initiatives. […] Of particular relevance to the instant case is the Commission's analysis of the risk of discrimination to which members of certain political, ideological, or religious groups are exposed in the fight against terrorism, particularly in the case of criminal proceedings: The Commission recognizes in this connection that the effective investigation of terrorist crimes may, owing to their ideological motivation and the collective means by which they are carried out, necessitate the investigation of individuals or groups who are connected with particular political, ideological or religious movements or, in the case of State-sponsored terrorism, the governments of certain States. The Commission must also emphasize, however, that anti-terrorist initiatives that incorporate criteria of this nature, in order not to contravene the absolute prohibition against discrimination, must be based upon objective and reasonable justification, in that they further a legitimate objective, regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought.[158] […]

201. […] when a person's membership of an ethnic group is taken into consideration to classify an act as a terrorist offense, with the consequences attendant thereon under the country's domestic system of laws, one is faced with a

158 IACHR. Report on Terrorism and Human Rights. OEA/Ser.L/V/ll.116. Doc. 5 rev. 1 corr. October 22, 2002, paras. 353 and 355.

possible act of racial discrimination which, as has been said, must be scrutinized with the utmost care by the organs of the Inter-American system inasmuch as it is a "suspect category." This is so, regardless of whether or not in the domestic decisions other grounds were considered in reaching the respective conclusions.[159]

Thematic Reports

Report on Terrorism and Human Rights. OAS/Ser. L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002.

351. Also non-derogable under international human rights law and international humanitarian law is the requirement that States fulfill their obligations without discrimination of any kind, including discrimination based upon religion, political or other opinion or national or social origin. This applies not only to a State's commitment to respect and ensure respect for fundamental rights in the context of terrorist threats, but also limits the measures that States may take in derogating from rights that may properly be suspended in times of emergency by prohibiting any such measures that involve discrimination on such grounds as race, color, sex, language, religion, or social origin. The principle of non-discrimination also applies to all aspects of a State's treatment of individuals in connection with anti-terrorist initiatives, including their treatment when in detention.[160]

363. In the context of these rules and principles, […] these protections similarly require States to ensure that laws or methods of investigation and prosecution are not purposefully designed or implemented in a way that distinguishes to their detriment members of a group based upon a prohibited ground of discrimination, such as religious beliefs, and to guarantee that methods of this nature are closely monitored and controlled to ensure against human rights infringements.

159 See paragraphs 186 and 187 of the same merits report.

160 IACHR. Report No. 8/16. Case of 11.661. Merits. Manickavasagam Suresh. Canada. April 13, 2016, para. 95.

G. Poverty

112. To conclude this chapter, the Commission describes the different ways in which discriminatory treatment of people living in poverty is manifested. The IACHR has recognized that the situation of exclusion, disadvantage, and discrimination in which poor people live can be aggravated by norms and practices that restrict certain actions, conducts, or activities in public spaces because they are deemed to be "undesirable" or contrary to public order, as would be the case of activities involving begging, sleeping, and loitering in the streets, among others.

113. Punishing or criminalizing these actions or behaviors, coupled with the obstacles that people living in poverty often encounter to gain access to justice on an equal footing, contributes to aggravating their exclusion and stigmatization.

Thematic Reports

Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164 Doc. 147. September 7, 2017.

177. Frequently, rules and practices restricting undesirable conduct and activities considered "undesirable" or contrary to public order- such as begging, sleeping or loitering in the streets, among others – aggravate the situation of exclusion, disadvantage and discrimination faced by persons living in poverty.

178. The sanctioning or criminalization of such acts and behavior coupled with the obstacles faced by the poor when seeking access to justice on equal terms with others contribute to their heightened exclusion and stigmatization. […].

302. […] The IACHR emphasizes that in the light of these obligations, States must pay special attention to the social sectors and individuals who have suffered from the various manifestations of historic exclusion or are victims of persistent prejudice, and must immediately adopt the necessary measures to prevent, reduce, and eliminate the conditions and attitudes that create and perpetuate discrimination.

544. In particular, the Commission observes that such obstacles are exacerbated in the case of groups that have historically been discriminated against, such as women, children, and adolescents, indigenous peoples, Afro-descendent populations, migrants, persons deprived of liberty, persons with disabilities, the LGBTI population, and older persons.

CHAPTER 6
CONCLUSIONS

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114. The IACHR reiterates the need for States to adopt measures promptly and without delay to tackle the obstacles and barriers to exercise, respect, and guarantee the principle of equality as a cross-cutting issue for the full enjoyment and exercise of human rights.

115. The IACHR considers this compendium to be a technical cooperation tool, aimed at improving and strengthening legislation, policies, and practices of States, as well as addressing the problem of discrimination and guaranteeing that the human rights of all persons and groups of persons, in particular those living in situations of vulnerability and historical discrimination, shall be duly respected and protected.

116. Because of this, with the present compendium, the IACHR is providing users of the system, State operators in charge of public policymaking, judges, members of parliament, and other State´s civil servants, civil society, social movements, the academic community, and experts, among other relevant stakeholders of the region, an up-to-date technical cooperation tool that is easy to access for use and implementation regarding a cross-cutting and structural issue, that is, the principle of equality and non-discrimination.

117. The Inter-American Commission stresses that international obligations regarding the principle of equality and non-discrimination constitute obligations to be fulfilled immediately and which States must take into consideration when adopting relevant public measures and policies for persons, groups, and communities in situations of historical discrimination or vulnerability.

118. The Inter-American Commission strives to promote greater awareness and use of Inter-American human rights standards. At the same time, it provides a tool for moving forward with capacity building of both local stakeholders and those working with the international human rights protection system. As a result, the compilation of standards and case law contained in the present compendium intends to improve the design of interventions and public policies which are aimed at guaranteeing the exercise of human rights on an equal footing and without any form of discrimination.

119. The Inter-American Commission reiterates its commitment to cooperate with the States of the Americas, using assistance and technical cooperation as an institutional capacity-building tool, so as to contribute to guarantee, in the States, real and objective conditions in order to concretize the efforts and initiatives of public policies under conditions of equality and non-discrimination.