

Corruption and Human Rights



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Approved by the Inter-American Commission on Human Rights on December 6, 2019

TABLE OF CONTENTS

INTRODUCTION	11
<i>A. Methodology</i>	13
<i>B. Structure</i>	14
CHAPTER 1 CONVERGENCE OF CORRUPTION AND HUMAN RIGHTS	19
<hr/>	
<i>A. General Background</i>	19
<i>B. International Response: International Anti-corruption Initiatives</i>	21
1. Inter-American System	21
2. Universal System	24
<i>C. Domestic Responses: Initiatives of American States in the Fight against Corruption</i>	26
<i>D. Convergence from the Perspective of International Human Rights Bodies</i>	31
CHAPTER 2 THE PHENOMENON OF CORRUPTION AND HUMAN RIGHTS	41
<hr/>	
<i>A. The Phenomenon of Corruption in the Americas</i>	41
<i>B. Factors that Facilitate or Foster Corruption</i>	48
<i>C. Principles in the Fight against Corruption</i>	50
<i>D. The Negative Impact of Corruption on Democracy and the Rule of Law</i>	52
<i>E. The Negative Impact of Corruption on Human Rights</i>	55
<i>F. Dynamics of the Interaction between Human Rights Protection and the Fight against Corruption</i>	56
<i>G. Affections and Impact of Corruption on Economic, Social, Cultural, and Environmental Rights (ESCER)</i>	58
1. Maximum Resources Available	61
2. Discrimination	63
3. Impact and Materialization of Corruption in ESCER	64
4. Poverty	71

<i>H. Affections and Impact of Corruption on Freedom of Expression</i>	73
1. Freedom of Expression	73
2. Investigations and Complaints of Corruption as a Matter of Great Public Interest	76
3. Protection of Journalists' Sources and of the Media	81
4. Access to Information	83
5. New Technologies and Their Role in Combating Corruption	89
6. Pluralism and Diversity in the Media	90

**CHAPTER 3 | OBLIGATIONS OF STATES IN CASES OF HUMAN RIGHTS VIOLATIONS
DUE TO ACTS OF CORRUPTION** **95**

<i>A. Obligations of States under the American Convention on Human Rights</i>	96
1. Obligation to Respect Human Rights	96
2. The Obligation to Adopt Measures to Prevent Rights Violations Related to Acts of Corruption	97
3. The Obligation to Investigate Acts of Corruption	99
4. The Obligation to Guarantee the Exercise of Rights on an Equal Footing, without Discrimination	102
5. The Obligation to Make Reparation to Victims of Corruption	103
<i>B. States' Obligations under the American Declaration of the Rights and Duties of Man</i>	104

**CHAPTER 4 | STRENGTHENING OF PUBLIC INSTITUTIONS: THE PART
PLAYED BY ADMINISTRATION OF JUSTICE AND THE
ELECTORAL APPARATUS** **109**

<i>A. Administration of Justice</i>	109
1. The Role of Administration of Justice	109
a. Guarantees of Independence	115
2. Due Process as a Limit on Discretion	118
a. Impartiality	118
b. The Guarantee of a Reasonable Time	120
c. The Duty to Investigate	121

d.	The Right to Defense	123
e.	The Duty to State Reasons	124
f.	System of Judicial Remedies	125
3.	The Effectiveness of the Institutional Response in Criminal Investigation	128
a.	Due Process Guarantees for Persons Accused of Corruption	130
<i>B.</i>	<i>Electoral Institutions and Corruption</i>	135
1.	Electoral Oversight Bodies	139
2.	Relevant Actors: Political Parties, Citizen Movements, and Candidacies	140
CHAPTER 5 PERSONS AND GROUPS OF SPECIAL CONCERN		145
<hr/>		
<i>A.</i>	<i>Human Rights Defenders, Judicial Officers, and Environmentalists</i>	145
<i>B.</i>	<i>Journalists and Others Who Work in Communications Media</i>	151
<i>C.</i>	<i>Whistleblowers and Witnesses of Acts of Corruption</i>	152
1.	Differential Impacts on Whistleblowers and Witnesses	154
<i>D.</i>	<i>Differentiated Impact on Groups Facing Vulnerability and Discrimination</i>	157
1.	Persons Deprived of Liberty	157
2.	Indigenous and Tribal Peoples	160
3.	Persons in Human Mobility	163
4.	Children and Adolescents	165
5.	Women, LGBTI Persons, Persons of African Descent, Persons with Disabilities, and Older Persons	167
CHAPTER 6 THE HUMAN RIGHTS APPROACH TO PUBLIC POLICIES FOR FIGHTING CORRUPTION		175
<hr/>		
CONCLUSIONS		187
RECOMMENDATIONS		193

INTRODUCTION

INTRODUCTION

1. The principle role of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) is to promote and protect human rights in the Americas. It exercises these functions through a variety of mechanisms, in accordance with the provisions of Articles 106 of the OAS Charter¹ and 41 of the American Convention on Human Rights² (hereinafter “the American Convention,” the “Convention,” or the “ACHR”).
2. In exercise of its mandate and in response to the regional situation revealed through its various mechanisms, the IACHR presents, with this thematic report, an analysis of the phenomenon of corruption from a human rights perspective. The Commission also provides, herein, an analysis of the progress made and challenges encountered, as well as the initiatives that have helped consolidate regional, national, and local strategies for addressing the need to fight and eradicate the phenomenon of corruption in the hemisphere. Along these lines, the IACHR’s aim with this report is to show the multidimensional impact of corruption on democracy, the rule of law, and, in particular, on the enjoyment and exercise of human rights on the continent. Thus, the report includes a series of recommendations for States on combating corruption from a human rights perspective.
3. The starting point for the drafting of this document is Resolution 1/18 of the Inter-American Commission. Therein, the IACHR found corruption to be a phenomenon characterized by the abuse or misuse of the power entrusted, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that damages democratic institutions and the rule of law, and affects access to human rights. In this regard, with this report, the IACHR provides a tool for moving forward in addressing corruption from a human rights approach that enables the coordination of effective strategies for eradicating this regional scourge; that dialogues with the actions taken by other mechanisms of the OAS or

¹ OAS Charter. Article 106: There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters. An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

² American Convention on Human Rights. Article 41: The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers: b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights; c. to prepare such studies or reports as it considers advisable in the performance of its duties; e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request.

the universal system; and that, in particular, strengthens cooperation with Member States and civil society on initiatives to fight corruption.

4. Among the most important impacts of corruption in the region, the IACHR puts special emphasis on harm to State institutions particularly in the administration of justice and elections systems, with the resulting impacts on the exercise of political rights. Institutional impacts can include concentration of power, discretionary acts, a lack of public administration oversight, and impunity, as well as cultural elements such as tolerance of corruption. Corruption also has a crosscutting effect on everyday actions and can produce structural systems of corruption or macrocorruption, which in some cases can amount to complex forms of State capture, the co-opting of State structures, and even diversion of institutions for criminal purposes.
5. In addition, with regard to impacts on the administration of justice, the IACHR finds that administration of justice itself can be the subject of acts of corruption affecting its independence, and at the same time transforming it into an agent of corruption harming the proper administration of justice. Therefore, the effective implementation of due process guarantees is a safeguard for preventing and controlling judicial corruption, limiting opportunities for discretion and guaranteeing forms of control.
6. It is also important to highlight the differentiated impact of corruption on the situation of freedom of expression in the Americas, as well as its relationship to the enjoyment and exercise of the economic, social, cultural, and environmental rights (ESCER) of the residents of the hemisphere.
7. Effectively, the IACHR observes that corruption has a differentiated impact on those who report acts of corruption, who often become victims of threats, harassment, and in some cases, grave violations, such as of the right to life. Therefore, determining what obligations States have to effectively protect them from the threats arising from their reports and testimony is a crucial strategic part of the fight against corruption.
8. Along these lines, the exercise of the right to freedom of expression, publication of information by the media, and dissemination of the work of journalists are all instruments that are effective for citizen control of the authorities in the fight against corruption. In particular, it is worth emphasizing the role of instruments associated with freedom of expression, including access to public information, the protection of sources, the use of technology, and others as key strategies in this fight.
9. Corruption has a direct impact on States' obligation to dedicate as much of their available resources as possible to human rights, particularly to guarantee the enjoyment and exercise of ESCER. Corruption has a particular effect on people experiencing poverty who, due to their vulnerability, suffer the consequences of corruption to a greater degree. Effectively, generally speaking, corruption has a differentiated impact on the enjoyment and exercise of human rights for the various groups that are vulnerable or have experienced historical discrimination.

10. The Commission emphasizes with concern the situation of people who are at risk as a result of their work to fight corruption. It is particularly worth highlighting the situation of human rights defenders who face threats and violence in retaliation for their investigations of and reporting on corruption. Also affected are the judicial and security officials in charge of carrying out strategies for fighting corruption due to a lack of measures of protection, particularly in situations of organized crime and drug trafficking.
11. To tackle the scourge of corruption, the IACHR emphasizes the importance of developing and implementing, at all levels of government, a series of public policies aimed at consolidating a comprehensive strategy for the fight against corruption using a human rights approach. The objective of these measures is institution building; oversight and tightening spaces for acting with discretion; accountability; and monitoring of public activities.
12. Consequently, considering the phenomenon of corruption in relation to international human rights obligations, in this report, the Inter-American Commission has established a series of fundamental principles that will make it possible to develop these anticorruption public policies from a human rights perspective. These principles are: the centrality of the victims of corruption and the need for adequate measures of reparation; the strengthening of the rule of law and democratic institutions; guaranteeing equal protection and nondiscrimination; participation and social inclusion; reporting mechanisms and access to justice; production of and access to information; transparency and accountability; and the inclusion of gender and diversity perspectives. All these principles must be present in any strategy for fighting corruption if it is to be comprehensive, effective, and efficient.

A. *Methodology*

13. Regarding the methodology for drafting this report, first, the IACHR held an event on corruption and human rights in the framework of the first edition of the Forum on the Inter-American System, held on December 4-5, 2017, in Washington, DC. The event was organized jointly with the regional offices of the United Nations High Commissioner of Human Rights for South America and Central America.³ Also, in 2018, in the framework of the 167th Period of Sessions of the IACHR, a consultation meeting was held in Colombia that included the participation of staff from the United Nations, State representatives, civil society, and international experts.⁴
14. To follow-up on the activities to collect information for drafting this report, the IACHR held a public hearing in February 2019 on "Human Rights and Corruption," in the framework of the 171st Period of Sessions in Sucre, Bolivia. There, civil society organizations stated that the phenomenon of corruption is extensive and includes bribes, the buying of judges, influence peddling in the appointment of authorities,

³ IACHR. [Annual Report 2017](#). Chapter 1, page 43.

⁴ IACHR. Press Release 41/18. [IACHR Wraps Up 167th Session in Colombia](#). March 2, 2018.

judicial oversight, and stigmatization campaigns. The IACHR was asked to address due process for appointing, protecting, and removing officials; evaluate the criteria for applying precautionary measures to officials in charge of cases of corruption; evaluate the possibility of establishing a Rapporteurships on corruption and human rights; and consider the severe corruption of the justice system as an element of gravity when deciding on how to classify countries in the annual report. The Commission thanked civil society for its contributions to the thematic report.⁵

15. Likewise, with a view to obtaining information on the main progress made and challenges encountered in the countries of the Americas with regard to corruption, in March 2019, the Commission sent a request for information in the form of a questionnaire to OAS Member States and published it in order to ensure broad access by civil society organizations and other stakeholders. The Commission appreciates the comments offered by the States of Argentina, Bolivia, Colombia, and Ecuador, as well as the contributions from throughout the region that were received through the Commission's website.
16. Additionally, in order to gain an understanding of the different regional experiences, a series of meetings were held with civil society and State representatives. The ability to call on and receive support from a number of regional and national organizations (REDLAT, DPLF, Konrad Adenauer, Fundar, Universidad San Martín, Universidad de Chile) has been essential for this process. Approximately 150 organizations and institutions that work on related issues participated in this report. The meetings took place in Argentina, Bolivia, Colombia, El Salvador, Mexico, and Peru.
17. The Commission values and expresses appreciation for the information contributed by States and by civil society organizations, private individuals, and academics through the responses to the questionnaire, as well as for the comments and suggestions from international experts. These inputs were invaluable for the drafting of this report.

B. Structure

18. This report is divided into six subject-matter chapters, followed by a series of conclusions and specific recommendations. In Chapter I, the IACHR addresses the process of convergence between the protection of human rights and the background of efforts to address corruption at the universal and regional level.
19. Chapter II describes the corruption phenomenon and particular features of it in the region. The Commission illustrates the multiple forms of corruption and the complex criminal structures underlying them. In addition, the Commission analyzes the dynamics of the interaction between protection of human rights and efforts to combat corruption and assesses the impact of corruption on democratic institutions

⁵ IACHR, Public Hearing, "[Corruption and Human Rights: The role of justice systems in Latin America](#)," 171st Period of Sessions, February 15, 2019.

and the rule of law. The Commission likewise analyzes areas of particular concern involving situations in which corruption greatly impairs the enjoyment and exercise of rights in the region. Thus, the Chapter addresses the impact of corruption on the exercise of freedom of expression and access to information, as well as on economic, social, cultural, and environmental rights.

20. In Chapter III, the Commission analyzes States' obligations to investigate, prosecute, and punish cases of corruption that impair the enjoyment and exercise of human rights. Those obligations are analyzed in light of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man.
21. Chapter IV addresses strengthening public institutions, particularly with an analysis of the role of administration of justice and election systems. Here, the IACHR reflects on due process guarantees such as limits on discretion, and on the actions of electoral oversight bodies and other relevant actors, such as political parties and candidates.
22. In Chapter V, the IACHR gives a detailed analysis on the individuals and groups requiring special attention. This includes human rights defenders, justice officials, environmentalists, those reporting misconduct, and witnesses to acts of corruption. The Commission also looks at the differentiated impacts of corruption on individuals and groups in situations of vulnerability and that face historic discrimination. These include individuals deprived of liberty; women; lesbian, gay, bisexual, trans, and intersex (LGBTI) persons; children and adolescents; persons of African descent; indigenous peoples and tribes; older persons; persons facing situations of human mobility; and persons with disabilities.
23. In Chapter VI, the IACHR addresses the human rights approach for public policies on the fight against corruption. In this chapter, the Commission develops a series of principles for orienting the design, implementation, evaluation, and monitoring of these public policies to ensure they are comprehensive and effective. The Commission likewise highlights the importance of international cooperation and the challenges posed by transnational corruption.
24. Lastly, conclusions are presented that have been reached based on the issues discussed throughout the report. As a corollary to this report, the IACHR presents a series of specific recommendations for States to address the phenomenon of corruption from a human rights approach.

CHAPTER 1
CONVERGENCE OF CORRUPTION
AND HUMAN RIGHTS

CONVERGENCE OF CORRUPTION AND HUMAN RIGHTS

A. *General Background*

25. The Commission stated in its Resolution 1/18 that corruption is a complex phenomenon that affects human rights in their entirety—civil, political, economic, social, cultural and environmental—as well as the right to development; weakens governance and democratic institutions, promotes impunity, undermines the rule of law and exacerbates inequality. In view of these characteristics, the phenomenon of corruption is not new in the region. For decades, countless cases of corruption have been documented that have impacted multiple governments throughout the Americas. Corruption has also become a common practice that has affected the living conditions of the hemisphere’s population.
26. Effectively, the IACHR observes that in recent years, with the return of democracy and the beginning of peace processes and consolidation of the rule of law in the region, cases of corruption have not only not declined but have proliferated, to an extremely concerning degree.
27. Figures on corruption are approximate, as by its nature, it is very difficult to quantify. However, it is worth noting that according to the figures provided by the World Economic Forum, the cost of corruption amounts to 5% of global gross domestic product (GDP).⁶ This phenomenon in the region mobilizes resources in a way that seriously affects States’ abilities to perform their functions of guaranteeing and protecting rights, in particular ESCER, while also effecting a series of human rights of individuals and populations, especially individuals facing situations of vulnerability and historic discrimination.⁷
28. Also, according to information from Transparency International’s Corruption Perceptions Index, the region sits around the middle of the global corruption rankings. A detailed analysis of the countries of the hemisphere finds that with few exceptions, the international corruption rankings of the States of the Americas are cause for concern.⁸

⁶ World Economic Forum, [Anti-corruption Report](#). 2012.

⁷ In view of this, it is no wonder that people are increasingly concerned about corruption. According to recent estimates, people see corruption as one of the top three problems authorities should be addressing.

⁸ Transparency International, [Americas: Weakening democracy and rise in populism hinder anti-corruption efforts](#), January 29, 2019.

29. The information available indicates that starting in the 90s, when the economic agenda put the internationalization of business at the center of the discussion, a need arose to guarantee that businesses would be able to compete efficiently at the local and international level. This same model set the stage for corruption—now no longer just at the national level, but the international level as well. Indeed, the liberalization of markets and the privatization of public enterprises and utilities laid the groundwork for new illicit entities and acts of corruption in the region.⁹
30. One of the consequences of this is that discussion of corruption began to have a place on the public agenda, and corruption was viewed as an impediment to the normal flow of business in the Americas, which, consequently, had a significant effect on development. Thus, the ones who led the initial efforts in the fight against corruption were multilateral financial institutions like the World Bank, the International Monetary Fund, and, in the region, the Inter-American Development Bank. One characteristic of this approach has been an emphasis on administration of justice, and thus projects were developed that focused on modernizing the administration of justice at the regional level. Likewise for reforming and strengthening procedural institutions, intellectual property laws, and systems of international arbitration, all as part of an international modernization agenda that took root in the States of the Americas.¹⁰
31. Parallel to this, the region was increasingly strengthening its understanding of the centrality of human rights and the need to provide international protection as an essential condition for human development, the exercise of liberties, and social justice. Likewise, peace processes in armed conflicts and transitional justice processes were aiming to consolidate democracy with a pro-human rights agenda as one of their priorities.
32. During those years, the human rights agenda and the fight against corruption developed progressively and in parallel to each other. At both the national and international level, the movement for the effective protection of human rights was growing stronger, while at the same time, serious efforts were being deployed to fight corruption. For its part, civil society began coordinating efforts to implement oversight mechanisms on these issues, particularly through accountability. Although these two agendas clearly shared areas of concern, such as the resources that were diverted because of corruption, its impact on administration of justice, and the risks involved in investigating and reporting corruption, these initial efforts continued to view corruption and human rights as two separate issues that interconnected only indirectly or marginally.¹¹
33. The more substantive process of convergence is a recent development. At the beginning of the 21st century, an understanding emerge that issues of human rights and the fight against the corruption could not be addressed without linking them

⁹ United Nations, Sub-Commission on the Promotion and Protection of Human Rights. Preliminary report of the Special Rapporteur, *Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights*, Ms. Christy Mbonu, E/CN.4/Sub.2/2004/23, July 7, 2004.

¹⁰ Morris & Blake, "Corruption and Democracy in Latin America" Pitt Latin American Series, 2009.

¹¹ Zalaquett, J. "Transparencia, rendición de cuentas y lucha contra la corrupción en América." School of Law of the Universidad de Chile, Santiago, 2005.

together. Thus, especially over the last decade, it has become more clear that efforts to build solid democracies that fully respect human rights are not possible without addressing the corruption that affects different aspects of State institutions. Thus, it is the Commission's view that the starting point of this convergence is precisely the strengthening of the rule of law, as something that is affected by both human rights violations and by corruption.

34. This process of convergence is taking shape internationally through a series of instruments and declarations. Thus, for the purposes of this report, it will be important to review some of these instruments, both from the inter-American system in the framework of the Organization of American States (OAS) and in the universal system, in the framework of the United Nations (UN).

B. International Response: International Anti-corruption Initiatives

35. The Commission observes that, in order to attack the phenomenon of corruption, a series of important laws and initiatives have been adopted in response to the international situation. Worth noting as an initial relevant experience in the region is the Foreign Corrupt Practices Act (1977), passed in the 70s in the United States.¹² The law is an indication of the importance of dealing with the issue of corruption that is international in scope. Subsequently, starting the 90s, the phenomenon of corruption was fully incorporated as an issue on the international agenda leading to the production of multilateral instruments for addressing it, both at the Inter-American level in the Organization of American States (OAS) and at the universal level, in the United Nations (UN).

1. Inter-American System

36. One of the first international instruments to be mentioned is the Inter-American Convention against Corruption (IACC), adopted in the framework of the OAS on March 29, 1996.¹³ It entered into force on June 3, 1997, and to date, it has been ratified by all Member States, save for Cuba. Two issues from the process to adopt this convention are worth noting. First, this inter-American instrument has a high number of ratifications and therefore took effect quickly, which is evidence of the priority and relevance of this issue for the States of the region. Second, the preamble of the Convention against Corruption indicates that it is based on the need to strengthen and protect democracy, an essential condition for stability, peace and

¹² US Department of State. [The Foreign Corrupt Practices Act](#), 1977. This law was enacted with the aim of punishing certain individuals and entities that make payments to foreign government officials with the goal of getting or keeping business.

¹³ OAS. [Inter-American Convention against Corruption](#), adopted in Venezuela on March 29, 1996.

development of the region.¹⁴ It should be noted that it focuses on regulating acts of State corruption, thus it does not cover private corruption.¹⁵

37. As regards State obligations (established in Article III), the convention establishes general standards of conduct and mechanisms for making it effective; it enshrines, among other things, the obligation to establish systems for whistleblower protection, the need for mechanisms to encourage civil society participation; and the need to adopt criminal procedural measures for prosecuting these crimes. Regarding jurisdiction (Article V), it establishes forms of territorial, individual, and universal jurisdiction. Regarding temporal application, it establishes the non-retroactivity, and the prescription (Article XIX, second part).
38. In Article VI, the IACC sets forth the acts of corruption to which it is applicable. Subparagraph 1 sets forth forms of illicit enrichment (part a), bribes (part b), illicit benefits (part c) fraud and concealment of property (part d), and conspiracy (part e); along with other acts, as codified in the domestic legislation of each State (subparagraph 2).¹⁶ States also commit to establishing a criminal offense (Article VII), making illicit enrichment a criminal offense (Article IX), and adopting progressive measures (Article XI). It also establishes the obligation to adopt measures against international crimes, such as by establishing the offense of transnational bribery (Article VIII); measures on extradition (Article XIII) and to ensure the crime is not classified as a political one (Article XVII); international

¹⁴ Preamble to the Inter-American Convention against Corruption:

“CONSIDERING that representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance;

“PERSUADED that fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society's moral fiber [...]”

¹⁵ Article II(2) of the Inter-American Convention against Corruption: To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

¹⁶ Article VI of the Inter-American Convention against Corruption:

1. This Convention is applicable to the following acts of corruption:

a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party; d. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and e. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein.

assistance and cooperation (Article XIV); and through unencumbered international cooperation (Article XX).

39. In sum, the IACHR observes that the Inter-American Convention against Corruption puts a strong emphasis on preventing transfers that enable national and transnational bribery. To do so, it emphasizes the need to strengthen democracy through judicial institutions.
40. As part of the efforts made within the inter-American system, the States Parties to the IACC agreed to create and establish the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (FMIACC). The objective of this mechanism is to promote the implementation of the IACC; follow up on the commitments made by the States Parties to the IACC and analyze the way in which they are implemented; facilitate exchange of information, experiences, and best practices; and harmonize the legislation of States Parties. It should also be underscored that although the FMIACC is nongovernmental in nature, it can collect comment from civil society.¹⁷
41. This way, the FMIACC is developed in the framework of the objectives and principles set forth in the OAS Charter. The Committee of Experts of the FMIACC carries out a process of reciprocal or mutual evaluation among the States comprising it, with successive "rounds" analyzing the way in which these States are implementing the IACC provisions selected for each round, in accordance with rules of procedure.
42. The mechanism has developed a series of model laws, providing tools for cooperation that contain the highest international standards on the subjects they address so States can use them to draft their own anticorruption laws. They include laws on assets and interests declarations and whistleblower protection. The FMIACC also offers legislative guidelines containing the basic elements that, according to the review carried out by the Committee and recommendations formulated, States should take into account when drafting laws on matters to which the Convention refers.¹⁸ Lastly, through the Anticorruption Portal of the Americas, the Mechanism includes the good practices that States employ to effectively implement the provisions of the Inter-American Convention against Corruption.
43. Mitigating corruption requires paradigmatic and structural change to the traditional ways in which governments operate and how they interact with citizens. With regard to the efforts made by the OAS to innovate on State structures, something worth mentioning in this section is the Open Government Program, established through the Department of Effective Public Management (DEPM). This initiative is developed as a new paradigm or model based on the values and principles of

¹⁷ On June 4, 2001, in the framework of the General Assembly of the OAS, held in San Jose, Costa Rica, the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (FMIACC) was adopted, pursuant to the terms set forth in the [Buenos Aires Document on the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption](#)," which took effect in January 2002.

¹⁸ The legislative guidelines available are: Conflict of Interest, Obligation to Report Corrupt Acts, Oversight Bodies, Consultation Mechanisms, Monitoring of Public Affairs, Government Hiring, Public Resources, Disclosure of Assets, Access Information, Participation in Public Affairs, Assistance and Cooperation, Whistleblower Protection. OAS. [Anticorruption Portal of the Americas](#)

transparency, participatory democracy and citizen empowerment, accountability, the use of new technology, and the use of governments as platforms to promote collaboration and interaction. It comprises a strategy for design, implementation, and oversight, as well as for processes to modernize public administration by placing citizens at the center of attention and making them a priority, thereby offering an alternative public administration.¹⁹ It therefore offers a window of opportunity to limit practices such as corruption that can affect democratic institutions and the guarantee of human rights.

2. Universal System

44. Meanwhile, in the universal system, the United Nations Convention against Corruption (UNCC) was adopted on October 31, 2003, and entered into force on December 14, 2005. Currently, 186 UN Member States have ratified it.
45. The Convention against Corruption focuses on the threat corruption poses to democracy, security, justice, sustainable development, and the rule of law. Also, its preamble points to the links between corruption and other forms of crime, especially organized crime. It also expresses the States' concern over the assets that are diverted and the threat this poses to political stability and sustainable development.²⁰ The IACHR observes that, in contrast to the IACC, the United Nations text takes a broad approach to the responsibility to prevent and eradicate cases of corruption, extending it beyond States to include support from and participation of organizations, individuals, and communities.²¹ The objectives proposed in the document are prevention, fostering international cooperation, promoting integrity, accountability, and proper management of public affairs and public property (Article 1).
46. The UNCC is divided into eight sections: the first is on general provisions; the second, preventative measures; the third, criminalization and law enforcement; the fourth, international cooperation; the fifth, asset recovery; the sixth, technical assistance and information exchange; the seventh, mechanisms for implementation; and the eighth, final provisions.

¹⁹ Organization of American States (OAS), [Department of Effective Public Management: Toward open government, a toolkit](#), OEA/Ser.D/XX SG/SAP/III.33, p. 7.

²⁰ The preamble states: "Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law, Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering, Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States."

²¹ The preamble of the United Nations Convention against Torture states: "Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective."

47. It is the IACHR's view that although this Convention—like the Inter-American Convention against Corruption—does not contain provisions linked directly to human rights, it does include a series of provisions on relevant issues. Article III of the Inter-American Convention against Corruption, on preventative measures, establishes that State systems for hiring and procurement of goods and services must assure openness and equity, guaranteeing the principles of efficiency and transparency. Likewise, part 11 of that article sets forth the need for mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.²² For its part, for example, Article 7 of the United Nations Convention—on the public sector—refers to hiring that is based on principles of efficiency, transparency, and objective criteria such as merit, equity and aptitude (7, section 1, part a); these same principles are echoed in Article 9, on procurement of goods and services. Article 13, on participation of society, addresses the conditions that make this participation possible, mainly pointing to conditions such as transparency, access to information, and freedom of expression; the measures set forth therein also include respect for other rights, such as the right to reputation. In Article 30, on prosecution, adjudication, and sanctions, the Convention establishes measures to stiffen the criminal treatment of crimes of corruption. However, the measures establish as limits some due process guarantees, such as the right to defense (section 4) and the presumption of innocence (section 6). Lastly, Articles 32 (Protection of witnesses, experts and victims) and 33 (Protection of reporting persons) refer to measures aimed at the physical protection of witnesses, experts, and their families (identity protection, relocation, etc.); protection is also extended to victims insofar as they are witnesses (32, section 4), allowing them also to participate in the processes (32, section 5). With regard to reporting persons, it describes protection from “unjustified” treatment (33). Under all circumstances, it points to the rights of the accused and the right to due process (32, section 2).
48. A series of other instruments has emerged that are also relevant to the fight against corruption. Examples include the United Nations Convention against Transnational Organized Crime, adopted on November 15, 2000;²³ and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Co-operation and Development’s (OECD) Ministerial Council of the on November 21, 1997.²⁴

²² Article III of the Inter-American Convention against Corruption:

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.

11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.

²³ United Nations. United Nations Convention against Transnational Organized Crime. Resolution 55/25 of the General Assembly of November 15, 2000.

²⁴ OECD. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Adopted by the Ministerial Council on November 21, 1997.

49. Consequently, the IACHR observes that, although at the international level, corruption has been linked to the stability of democratic systems, the international instruments developed so far have not made explicit the link between corruption and human rights. Likewise, neither the regional nor the universal human rights instruments have explicitly addressed corruption.
50. It is therefore important to explore how the agendas of the fight against corruption and the push to guarantee and respect human rights have developed in recent decades as they have increasingly converged.

C. Domestic Responses: Initiatives of American States in the Fight against Corruption

51. In recent years, the countries of the region have implemented legislative reforms, legal frameworks, and public policies aimed at preventing and eliminating corruption within State structures. In this section, the IACHR provides an overview of some of these initiatives. Note that what is included hereinafter are some relevant examples to illustrate the efforts made by some countries of the region, and this analysis does not seek to be exhaustive.
52. The Commission observes that States have been occupied in recent years with producing new laws or amending existing ones to implement anticorruption policies, with the issue of corruption being made a priority on the public agendas of the countries of the region. The efforts made have demonstrated a commitment by States to the need to update and amend laws governing public policies on corruption.
53. The implementation of comprehensive plans for combating corruption is vital because such plans serve to establish goals, deadlines, and those responsible for advancing anti-corruption measures transparently and with citizen participation. In that area, the Commission draws attention to the National Plans developed in Peru²⁵ and Argentina²⁶; and to the Commissions or special Agencies created to fight corruption in Bolivia²⁷ and Suriname²⁸, as well as other countries.
54. Also noteworthy is Mexico's National Anti-Corruption System.²⁹ That National System seeks to establish, articulate, and evaluate anti-corruption policy to ensure coordination among authorities at every level of government and to oversee and audit the use of public resources. The System includes a Citizen Participation

²⁵ Supreme Decree N° 044/2018 adopting the "2018-2021 National Integrity Plan to Combat Corruption."

²⁶ Decree 258/2019. National Anti-Corruption Plan (2019 - 2023).

²⁷ Resolution N° 002/2017 establishing the National Council against Corruption, Illicit Enrichment, and Money-Laundering.

²⁸ Law N°85 on preventing and combating corruption, 2017.

²⁹ Law No.18-07-2016 General Law of the National Anti-Corruption System.

Committee charged with ties to social and academic organizations and comprised of citizens who have made outstanding contributions to transparency.

55. With respect to strengthening criminal justice, the establishment of special courts and public prosecutors' offices is another development worth highlighting. In Peru, the Public Prosecutors' Office (Ministerio Público) has 42 Public Prosecutors specializing in Corruption Offenses by Government Officials/Official Corruption³⁰; in Mexico, the Office of the Attorney General of the Republic (FGR) also established a Specialized Public Prosecutor's Office in March 2019.³¹
56. Noteworthy in Bolivia is the implementation of the Unit for Transparency and Combating Corruption³² as a specialized unit in all government entities and enterprises. Those offices have been vested with new powers, such as filing complaints that used to be centralized via the Ministry of Justice and Institutional Transparency. Finally, at the regional level, another notable initiative was the setting up of the Anti-Corruption Public Prosecutors' Network within the framework of the Ibero-American Association of Public Prosecutors' Offices (AIAMP).³³
57. As regards legal frameworks, the Commission observed that a significant number of States have moved forward in implementing framework laws for addressing corruption and/or promoting integrity in the exercise of public functions. Likewise, with a view to preventing improper conduct in the performance of public office, some countries have taken steps to strengthen and promote regulatory frameworks that foster commitment to ethics in public office. Some examples include laws passed in Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Guatemala, Haiti, Jamaica, Mexico, Peru, Surinam, Uruguay, and Venezuela³⁴. In some cases, such

³⁰ The Special Prosecutors on Crimes of Official Corruption were created to prosecute crimes of corruption involving two agents (the corrupter and the corrupted) whose illegal conduct affects the proper functioning of the government. The Office of the Public Prosecutor has 34 prosecutorial districts, with 42 provincial prosecutors under this specialized subsystem operating throughout the country in a total of 117 provincial offices. Only 14 districts have superior specialized prosecutors, with a total of 20 superior prosecutors. The Specialized Prosecutors on Crimes of Public Corruption receive complaints and investigate crimes codified under sections II, III, and IV, Articles 382 to 401 of Chapter II of Title XVIII of the Penal Code, and in the event of related crimes, in accordance with the provisions of Law 29,574. Office of the Public Prosecutor. The Office of the Attorney General (PGR)

³¹ Ver <https://www.gob.mx/fgr>

³² Bolivia Law N° 974, Law on Units for Transparency and Combating Corruption.

³³ See Asociación Iberoamericana de Ministerios Públicos.

³⁴ Argentina Law 27,401 de Criminal Liability of Juridical Persons (2017); Argentina Law 25,188, Law on Ethics in the Exercise of Public Functions; Belize Law 21, Prevention of Corruption Act (2007); Bolivia Law 004 Marcelo Quiroga Santa Cruz Fight against Corruption, Illicit Enrichment, and Wealth Investigation Act, Brazil, Law 12,846, Anticorruption Act (2013); Chile Law 21,121 Amendment to the penal code and other legal provisions to prevent, detect, and prosecute corruption (2018); Colombia Law 1,474 Administrative Anticorruption Act (2011); Costa Rica Law 8,422, Corruption and Illicit Enrichment Through Public Service Act (2004); Guatemala Law 31-2012, Anticorruption Act; Haiti Law CL-2014-008 Preventing and repressing corruption (2014); Jamaica Corruption Prevention Act (2001); Mexico Law 18-07-2016, General National Anticorruption System Act; Peru: Law 29,976 Establishing the High-level Anticorruption Commission; Peru Government Code of Ethics Act; Surinam Law 85 Law on Preventing and Fighting Corruption (2017); Uruguay Law 17,060, Laws on the Improper Use of Public Authority; Venezuela Official Gazette 6,155 Decree with rank and force of law against corruption. (2014)

as Chile³⁵ and the Dominican Republic,³⁶ consideration has been given to establishing national public ethics commissions. The rules and regulations designed to foster integrity in public servants make specific mention of declaration of assets and of conflicts of interest, in Mexico³⁷ and Chile,³⁸ as well as other countries. Those rules and regulations likewise address particular prohibitions, disqualifications, and incompatibilities for exercising public office.

58. At the same time, the Commission underscores that most countries have regulations regarding transparency and access to public information.³⁹ The generation of public information and interaction between governments and citizens via data generation strategies and various forms of open government is becoming increasingly widespread in the region, potentially increasing the ability of citizens to practice oversight and participate by exercising their right of access to information and thereby keeping an eye on public actors.
59. The Commission takes note of the proliferation of these kinds of specific regulations on access to public information and also stresses that this right has been instrumentalized through a variety of tools and specific public policies, such as transparency portals, open data, government e-procurement, and other mechanisms. Examples include: Chile's open platform for government procurement "Chile Compra"⁴⁰ and Uruguay's Government Procurement Agency web portal,⁴¹ which seeks to promote improvements in the management and transparency of the public sector procurement and hiring system. In Mexico, a National Transparency Platform⁴² is up and running that, by law, entails setting up an information portal in all the country's public institutions, at the federal, state, and municipal level. The same portal can also be used to file complaints and requests for access to information. Bolivia has created the Transparency, Prevention, and Anti-Corruption Information System - SITPRECO,⁴³ which operates in the Ministry of Justice and Institutional Transparency and contains information on transparency and efforts to prevent and combat corruption. In the same vein, in Jamaica, the Access to

³⁵ Decree No. 423 of 1994. National Public Ethics Commission.

³⁶ Decree No. 310 of 2005. Ethics and Anti-Corruption Commission.

³⁷ General Law on Administrative Responsibilities. New Law published in the Official Gazette of the Federation, November 19, 2019

³⁸ Law N° 20.880 of 2016 on Probity in Public Office.

³⁹ Argentina Law N° 27.225 Right of Access to Public Information; Brazil Law N° 12.527, Law on access to public information; Chile Law N° 20.285, Law on access to public information; El Salvador Decree N° 534, Law on access to public information; Guatemala Decree N° 57-2008, Law on access to public information of Guatemala; Mexico Law N° 09-05-2016, Federal Law on access to public information; Dominican Republic: Law N° 200-04, General Law on free access to public information; Uruguay: Law N° 18.381, Law on access to public information.

⁴⁰ See the "Chile Compra" program at ChileCompra.cl

⁴¹ See the State of Uruguay's procurement and hiring program at: www.gub.uy/agencia-comprascontrataciones-estado

⁴² See www.plataformadetransparencia.org.mx/web/guest/inicio

⁴³ See Law N° 974, Article 18.

Information Unit in the Prime Minister's Office works with civil society and the media to increase citizens' awareness of their right to request information.⁴⁴

60. The IACHR has indicated that a fundamental element of the fight against corruption is protecting reporting individuals and witnesses. In this regard, the Commission welcomes the initiatives, laws, and programs intended to protect witnesses. For example, Peru has a specific law establishing measures of protection for witnesses to acts of corruption.⁴⁵ Also, in Argentina in 2016, the Cooperating Witness in Cases of Corruption Act was approved,⁴⁶ which extends the status of cooperating witness (arrepentido) that was an option in cases of kidnapping, human trafficking, drug trafficking, and money laundering to cases of corruption and conspiracy. Another major aspect with respect to protection of whistleblowers in corruption cases is the boosting of public prosecutors' offices and their coordination with services to attend to and assist citizens reporting acts of corruption, as has been the practice in Chile, Colombia, and Peru.
61. The IACHR also observes recent implementation of comprehensive National Plans establishing goals, strategies, and actions for preventing and combating corruption. In these cases, the Commission underscores initiatives involving a variety of actors, such as the public sector, the private sector, and civil society. Notable, in this regard, are Peru's 2018-2021 National Integrity Plan to Combat Corruption,⁴⁷ Argentina's National Anti-Corruption Plan 2019-2023,⁴⁸ and Mexico's National Program to Combat Corruption and Impunity and Improve Public Administration 2019-2024.⁴⁹
62. Peru's 2018-2021 National Integrity Plan to Combat Corruption includes the public and the private sector in the scope of its action. One facet involves the implementation of national measures aimed at building institutions to guarantee comprehensive actions to prevent, detect, investigate, and punish corruption, including the participation of entities such as the Judicial Branch, the Office of the Public Prosecutor, the Office of the Comptroller General of the Republic, the National Council of the Magistrature, the National Police of Peru, and the Office of the Special Prosecutor on Crimes of Corruption. A second facet involves the participation of private entities, enterprises, social organizations, and the citizenry in general through the implementation of models of prevention and policies aimed at guaranteeing transparency and accountability, as well as mechanisms of oversight and supervision.⁵⁰ With regard to Argentina's National Anticorruption Plan 2019-2023,⁵¹ one of the initiatives it includes is the preparation of practical guidelines to

⁴⁴ Transparency International Citizens' Views and Experiences of Corruption 2019.

⁴⁵ Decree 1,327 Establishes measures of protection for witnesses to acts of corruption and punishes reports made in bad faith.

⁴⁶ Law 27,304, Amendment to the Penal Code. CooperatingWitnessAct. 2016

⁴⁷ Supreme Decree N° 044/2018 adopting the "2018-2021 National Integrity Plan to Combat Corruption."

⁴⁸ Decree 258/2019. National Anti-Corruption Plan (2019 - 2023).

⁴⁹ DOF (Official Gazette/Diario Oficial de la Federación): 8/30/2019.

⁵⁰ Peru Executive Decree 044-2018-pcm approving the National Plan on Integrity and the Fight against Corruption 2018-2021.

⁵¹ Decree 258/2019. National Anticorruption Plan (2019-2023)

enable companies to develop and apply a methodology for analyzing the risk of potential adverse human rights impacts resulting from acts of corruption.⁵²

63. As for Mexico, the first call made in General Axis 1 of the 2019-2024 National Development Plan, on Politics and Government, is to eradicate corruption.⁵³ That was the institutional framework for the National Program to Combat Corruption and Impunity and Improve Public Administration 2019-2024, which took into consideration the findings of the citizen participation and consultation exercises conducted with a variety of social sectors during the drawing up of the 2014-2024 National Development Plan (PND).⁵⁴
64. The IACHR also takes note of the creation of special commissions or agencies on the fight against corruption. For example, Bolivia created the National Council on the Fight against Corruption, Illicit Enrichment, and Laundering of Illicit Income.⁵⁵ Surinam created the Anticorruption Commission,⁵⁶ while Mexico established the Coordinating Committee of the State Anticorruption System.⁵⁷ The objective of these bodies is to design and promote comprehensive anticorruption policies, and in some cases, they are made up of both representatives from the different branches of government and representatives of civil society.
65. Additionally, in the countries of the Northern Triangle, the IACHR highlights the creation of special commissions—with the cooperation of international bodies—to support the fight against corruption. In Guatemala, the International Commission against Impunity in Guatemala (ICIG), supported by the United Nations, operated for 16 years, until September 2019; in Honduras, the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) was established with OAS support; and in El Salvador, the International Commission against Impunity in El Salvador was established, also with OAS assistance.
66. The IACHR also takes note of initiatives to punish acts of corruption between private parties. In 2018, a decree⁵⁸ was issued in Peru to amend the Penal Code to criminally sanction acts of corruption committed between private parties that affect the normal course of trade relations and fair competition between businesses.

⁵² See [National Action Plan on Business and Human Rights](#).

⁵³ The three main axes of the Plan are: Justice and the Rule of Law, Welfare, and Economic Development. In addition, the PND is aligned with the 2030 Agenda and the Sustainable Development Goals, addressing economic, social, and environmental concerns. Finally, mention should be made of the PND's cross-cutting themes, mainstreamed into the substance of the Plan: gender equality, nondiscrimination and inclusion, efforts to combat corruption and enhance public administration, regional and local development (*territorio*), and sustainable development.

⁵⁴ National Program to Combat Corruption and Impunity and Improve Public Administration 2019-2024.

⁵⁵ Resolution 002/2017 [Council on the Fight against Corruption, Illicit Enrichment, and Laundering of Illicit Income](#).

⁵⁶ Law 85 [Law on Preventing and Fighting Corruption](#) (2017).

⁵⁷ Law 18-07-2016, [General Law on the National Anticorruption System](#).

⁵⁸ Legislative Decree 1385 [sanctioning private corruption](#). (2018).

Meanwhile, a law was promulgated in Chile to change the Penal Code in a similar way.⁵⁹

67. The Commission also observes that in some countries there have been moves to introduce regulatory amendments specifically geared to limiting or eliminating parliamentary and presidential prerogatives, based on the view that such prerogatives foster impunity in corruption cases. In the case of Brazil, in 2018, the Supreme Court restricted parliamentary powers; in December of that same year a bill was presented in Mexico aimed at eliminating the presidential prerogative; in Peru debate began about the need to eliminate congressional immunity; while in Uruguay a bill to curtail parliamentary powers has been presented on several occasions.⁶⁰
68. Thus, the IACHR views it as relevant to highlight the initiatives States have developed thus far—without attempting an exhaustive analysis—and reiterate the call to continue, through the mobilization of institutional efforts, perfecting the tools and instruments that enable development of a comprehensive and coordinated strategy to fight corruption using a human rights approach.

D. Convergence from the Perspective of International Human Rights Bodies

69. The following is a series of standards and statements of international bodies on the connection between corruption and human rights.
70. In the inter-American system, there is a particularly diverse range of instruments and resolutions directly addressing the link between human rights and corruption. First, there is the Democratic Charter, signed on September 11, 2001, by the General Assembly of the OAS. Although the instrument does not draw a direct link between corruption and human rights, its preamble does assert a direct relationship between protecting human rights and consolidating democracy in the region. From there, in 2018, the OAS General Assembly followed up on the Inter-American Democratic Charter by issuing a resolution deciding to “continue promoting democratic cooperation in order to support member states, at their request, in their efforts to strengthen democratic institutions, values, practices, and governance; fight corruption; enhance the rule of law; bring about the full and effective enjoyment and exercise of human rights, and reduce poverty, inequality, and social exclusion.”⁶¹

⁵⁹ Chile, Law 21,121 *Amends the Penal Code and other legal provisions to prevent, detect, and prosecute corruption* (2018).

⁶⁰ Calderon Castillo and Bárbara Ester. *Fueros parlamentarios y presidenciales en Latinoamérica*. [Parliamentary and presidential prerogatives in Latin America] Latin American Strategic Center for Geopolitics (CELAG), January 2019.

⁶¹ General Assembly. AG/RES. 2927 (XLVIII-O/18), *Strengthening Democracy* p. 151. November 16, 2018.

71. Also, at the Summit of the Americas in 2018, the States signed the Lima Commitment on “Democratic Governance against Corruption,” which states:

[...] “that the prevention of and fight against corruption are fundamental to strengthening democracy and the rule of law in our States, and that corruption weakens democratic governance and citizens’ trust in institutions, in addition to having a negative impact on the effective enjoyment of human rights and the sustainable development of the peoples of our Hemisphere as well as other regions of the world.”⁶²

72. The Inter-American Commission has been addressing corruption since 2001. An initial approach to the issue was general in scope and consisted of establishing a link between corruption and democratic stability,⁶³ as well as revealing how the weakening of government institutions caused by corruption impacts the effective exercise of human rights of people in general.⁶⁴ The IACHR has subsequently continued to address the issue in a number of reports, precautionary measures, and merits reports.⁶⁵
73. Without prejudice to this, the IACHR’s most systematic development of the issue has been in recent years, through two resolutions. The first resolution was issued on September 12, 2017,⁶⁶ and addressed the decision of the Government of Guatemala to declare the head of the Commission against Impunity in Guatemala *persona non grata* and order his expulsion from the country. In that resolution, the IACHR not only highlighted the ICIG’s work to combat impunity and corruption but offered several general considerations on the issue of corruption and its impact in the region. Therein, the IACHR linked impunity to corruption and underscored the State’s duty to establish effective mechanisms to eradicate it; it describes the role that the fight against corruption has in the framework of the OAS; it observed with concern how the scourge of corruption was affecting countries in the region; and it reaffirmed the importance of human rights in the fight against corruption so as to guarantee the effective enjoyment of human rights, especially ESCER. Also at that time, it recalled that the Commission had observed that the corruption not only affected the legitimacy of those governing and the rights of the individuals being governed, but also damaged the national coffers with negative consequences on the State’s ability to fulfill the population’s rights. It consequently concluded that corruption, impunity, organized crime, intolerance, political violence, and social exclusion of various sectors presented a serious danger of regression in the rule of

⁶² Summit of the Americas. [Lima Commitment on democratic governance against corruption](#), OEA/Ser.E CA-VIII/doc.1/18rev.1, April 14, 2018.

⁶³ IACHR. [Third Report on the Human Rights Situation in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 41.

⁶⁴ IACHR. [Third Report on the Human Rights Situation in Paraguay](#), OEA/Ser./L/VII.110 doc. 52, March 9, 2001, para. 45. In this regard, see: IACHR. Annual Report of the Inter-American Court of Human Rights, 2005. Chapter IV, “Human Rights Developments in the Region – Ecuador,” OEA/Ser.L/V/II.124 Doc. 7, February 27, 2006, para. 130 and 131.

⁶⁵ The main ones are cited in IACHR. Resolution 1/18 “[Corruption and Human Rights](#),” March 2, 2018 (hereinafter “Resolution 1/18”).

⁶⁶ IACHR. Resolution 1/17 - “[Human Rights and the Fight against Impunity and Corruption](#)”, September 12, 2017.

law and restricted the full enjoyment of the human rights that the American Convention guarantees. Lastly, the IACHR highlighted the negative impact that corruption has on persons, groups and collectives historically excluded, in particular those who live in poverty and extreme poverty in the country.

74. The second IACHR resolution that should be mentioned due to its relevance is the resolution on Corruption and Human Rights from March 2018.⁶⁷ Until the approval of this report, this resolution was the Commission's most comprehensive effort to address the issue of corruption and its impact on human rights. In the introduction of the resolution, the Commission broadly characterizes corruption as “the abuse or misuse of power, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that weakens both administrative and judicial oversight institutions.” It indicates that there are widespread and grave corrupt practices that impact human rights, especial the rights of vulnerable groups. It takes a broad view of the causes and actors involved, indicating that “corruption has multiple causes and consequences and that numerous actors, both state and private entities and companies, participate in its development, and therefore, the establishment of effective mechanisms to eradicate it in order to guarantee human rights is required.” In the resolution, the IACHR also highlights some areas of particular concern with regard to corruption, such as the independence, impartiality, autonomy and capacity of judicial systems; transparency, access to information, and freedom of expression; economic, social, cultural, and environmental rights; and international cooperation. In compliance with its mandate to provide support to States in each of these areas, the Commission made the corresponding recommendations.
75. For its part, the Inter-American Court of Human Rights (hereinafter the Inter-American Court) has ruled on this subject since 2009, finding that “the fight against corruption is of great importance, and it will keep in mind such circumstance when in it is presented with a case wherein it has to rule on such matter.”⁶⁸
76. In the case of *Andrade Salmón vs. Bolivia* (2016), related to the criminal proceedings against the victims of the case for alleged illegal conduct linked to the administration of public funds, the Inter-American Court referred to the reasonable time in proceedings related to corruption. In this regard, said that:

Although the principle of equality requires that the reasonable time of the process and the consequent limitation of rights based on precautionary measures be of a couple's requirement on the part of any person, cases involving public officials must be especially taken care of. The healthy fight against corruption and the desirable prosecution of crimes against the public administration, it is not permissible for them to pervert by diverting themselves into an injurious resource to democracy, by submitting to an indefinite procedural situation uncertain to politically active people, with the

⁶⁷ IACHR. Resolution 1/18 "[Corruption and Human Rights](#)," March 2, 2018.

⁶⁸ I/A Court H.R., *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233.

result to exclude them from the democratic political struggle. The very objective of combating corruption, in situations that could make zeal for transparency in the management of public things an antidemocratic instrument, demands that care be taken and even the term that is usually considered reasonable time for the process is abbreviated. , in defense of the democratic health of every rule of law”⁶⁹.

77. In the *Ramírez Escobar v. Guatemala* case (2018) related to the irregular adoption of the victim of the case and his brother, the Inter-American Court made some general assessments on the issue of corruption that are unpublished in its jurisprudence, as well as the impact that it has in human rights The Court stated that:

(...) The Court reiterates that these adoptions occurred in the context in which institutional weakness and regulatory flexibility facilitated the formation of organized crime networks and structures dedicated to the business of irregular adoptions. As highlighted by several experts before this Court and by CICIG, in Guatemala the adoptions did not respond to the best interests of the child, but shelters, notaries and judicial authorities responded largely to economic interests. In addition, this Court remarks how these networks of illegal adoptions geared within the structures of the State not only took advantage of the institutional and legal weaknesses of the Guatemalan State but also of the situation of vulnerability of mothers and families living in poverty in Guatemala.

In this regard, this Court highlights the negative consequences of corruption and the obstacles it represents for the enjoyment and effective enjoyment of human rights, as well as the fact that corruption of state authorities or private providers of public services affects a particular way to vulnerable groups. In addition, corruption not only affects the rights of individually affected individuals, but also has a negative impact on the entire society, to the extent that “the confidence of the population in government is broken and, over time, in the democratic order and the rule of law.” In this sense, the Inter-American Convention against Corruption establishes in its preamble that “representative democracy, an indispensable condition for the stability, peace, and development of the region, by its nature, requires combating all forms of corruption in the exercise of public functions, as well as acts of corruption specifically linked to such exercise”.

The Court recalls that States must adopt measures to prevent, punish and eradicate corruption effectively and efficiently. However, as previously mentioned, the child protection system and the adoption mechanisms in force in Guatemala at the time of the events, far from

⁶⁹ I/A Court H.R., Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. (Only in Spanish).

fulfilling these obligations, provided spaces for it to take place and allowed the formation and maintenance of networks of illegal adoptions in Guatemala. The present case could reflect a materialization of this context. The Court emphasizes that international adoptions took place within a framework of corruption, in which a group of public and private actors and institutions operated under the protection of the best interests of the child, but with the real purpose of obtaining their own enrichment. In this sense, the machinery that was mounted and tolerated around illegal adoptions, which particularly affected poor sectors, had a strong negative impact on the enjoyment of the human rights of children and their biological parents⁷⁰.

78. On the other hand, in the Merits Report of the Morales Díaz vs. Colombia case related to a series of death threats followed by an attack on the life of the alleged victim and the continuity of these threats, until the alleged victim decided to leave the country for security reasons. These events took place in the context of allegations of corruption made by Mr. Morales Díaz against three officials of the state entity Urban Development Institute, the IACHR considered that:

(...) Mr. Morales Díaz denounced alleged acts of corruption and, to that extent, he had the status of witness to a case that should be investigated by the State with the utmost seriousness and diligence. The Inter-American Court has indicated the obligation of the States to protect people who may be at risk in different qualities within during a criminal process, including witness. Specifically, it has indicated that “to comply with the obligation to investigate within the framework of the guarantees of due process, the State must provide all the necessary means to protect justice operators, investigators, witnesses and relatives of victims of harassment and Threats that are intended to hinder the process, avoid clarifying the facts and cover up those responsible for them.” For its part, the IACHR, in its Resolution 1/18 on Corruption and Human Rights, highlighted the need to “create a threat-free environment (...) for those who investigate, report and report acts of corruption and that the safety of the people who getting involved in allegations against corruption (...) is essential to “eradicate it.

In sum, the Commission considers that the Colombian State was aware of the situation of risk to the life and personal integrity of Mr. Morales Díaz, including the fact that said risk could come from state agents accused of corruption, since June 30, 2000. With this knowledge and taking into account the nature of the elements presented, a duty of immediate response of prevention and protection was activated following its duty to guarantee the aforementioned rights. (...) Based on the foregoing considerations,

⁷⁰ I/A Court H.R., Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351. (Only in Spanish), p. 240-242.

the Commission concludes that the Colombian State is responsible for the violation of the rights to life, personal integrity and freedom of movement and residence, established in Articles 4.1, 5.1, and 22.1 of the American Convention, in relation to the duty of guarantee in its prevention and protection component, to the detriment of Oscar Morales Díaz⁷¹.

79. The United Nations system has a series of instruments that refer to issues of corruption and have been establishing direct links to the protection of human rights.
80. In the preface of the United Nations Convention against Corruption, the Secretary General of the United Nations made a direct link between corruption and human rights. He stated that:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.[...] Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment.⁷²

81. In the United Nations process of convergence, the former Commission on Human Rights played an important role, and had been raising the issue since 1992.⁷³ Thus, toward the beginning of the century, through the Sub-commission on the Promotion and Protection of Human Rights, the Commission on Human Rights had established a Rapporteurship on "Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights,"⁷⁴ headed by Ms. Christy Mbonu. She issued three reports (in 2003, 2004, and 2005) that developed central aspects of the link between corruption and human rights.⁷⁵

⁷¹ IACHR. Report No. 62/18, Caso 12.936. Merits. Oscar Alfonso Morales Díaz. Colombia. May 8, 2018, p. 67 y ss.

⁷² United Nations. United Nations Convention against Transnational Organized Crime and its protocols. Resolution 55/25 of November 15, 2000, preface by Secretary General Kofi A. Annan.

⁷³ United Nations, Commission on Human Rights. *Resolution adopted by the Commission on Human Rights 1992/50. Fraudulent enrichment of top State officials Prejudicial to the Public interest, the factors responsible for it, and the agents involved in all countries in such fraudulent enrichment*, E/CN.4/RES/1992/50, Resolution adopted March 3, 1992.

⁷⁴ United Nations, Sub-Commission on the Promotion and Protection of Human Rights. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, document E/CN.4/2003/2.

⁷⁵ United Nations, Economic and Social Council. Sub-Commission on the Promotion and Protection of Human Rights. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, E/CN.4/Sub.2/2003/18, May 14, 2003; United Nations, Economic and Social Council. Sub-Commission on the Promotion and Protection of Human Rights. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, E/CN.4/Sub.2/2004/23, July 7, 2004; United Nations, Economic and Social Council. Sub-Commission on the Promotion and Protection of

82. For its part, the Human Rights Council has also explicitly expressed concern over the issue of the relationship between corruption and human rights. It has issued a series of resolutions on the “negative impact of corruption on the enjoyment of human rights” that explore the different ways in which corruption is linked the full exercise of human rights.⁷⁶ Since its first resolution on the subject's (2012), the Council has expressed its concern at the “increasing negative impact of widespread corruption on the enjoyment of human rights” and recognized that “corruption constitutes one of the obstacles to the effective promotion and protection of human rights, as well as to the achievement of the Millennium Development Goals and other internationally agreed development goals.”⁷⁷ In its 2017 resolution on the same topic, the Council emphasized the complementarity of international legal frameworks on the fight against corruption and human rights, and also issued a series of recommendations to States at different levels for addressing the impact of corruption on human rights.⁷⁸
83. In December 2018, the General Assembly of the United Nations adopted a resolution on “Preventing and combating corrupt practices and the transfer of proceeds of corruption,” which, in its preamble, reaffirmed the different aspects of the link between corruption and human rights, a demonstration of the process of increasing convergence between concern for human rights and the fight against corruption.⁷⁹
84. Also worth highlighting is the report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of

Human Rights. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights,” E/CN.4/Sub.2/2005/18, June 22, 2005.

⁷⁶ United Nations, General Assembly. Resolution 35/25 of the Human Rights Council. The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/35/25, July 14, 2017; United Nations, General Assembly. Resolution 32/22 of the Human Rights Council. The negative impact of corruption on the enjoyment of human rights. April 15, 2016. A/HRC/32/22; United Nations, General Assembly. Resolution 29/11 of the Human Rights Council. The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/29/11, July 22, 2015; United Nations, General Assembly. Resolution 26/115 of the Human Rights Committee. The negative impact of corruption on the enjoyment of human rights, A/HRC/DEC/26/115, July 10, 2014; United Nations, General Assembly. Resolution 23/9 of the Human Rights Committee. The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/23/9, June 20, 2013. United Nations, General Assembly. Resolution 21/13 of the Human Rights Committee. The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/21/13, October 9, 2012.

⁷⁷ United Nations, General Assembly. Resolution 21/13 of the Human Rights Council. Panel discussion on the negative impact of corruption on the enjoyment of human rights, A/HRC/RES/21/13, October 9, 2012.

⁷⁸ United Nations, General Assembly. Resolution 35/25 of the Human Rights Council. The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/35/25, July 14, 2017.

⁷⁹ Reaffirming the importance of respect for human rights, the rule of law at the national and international levels, the proper management of public affairs and democracy in the fight against corruption, Acknowledging that good governance, at the national and international levels, has a role in the prevention of and fight against corruption, Recognizing that improvements in the promotion and protection of human rights at the domestic level have a role to play in the prevention of and the fight against corruption at all levels, Realizing that the fight against corruption at all levels, including by facilitating international cooperation to achieve the purposes enshrined in the Convention, including on asset recovery and return, plays an important role in the promotion and protection of all human rights and in the process of creating an environment conducive to their full enjoyment and realization.” United Nations, General Assembly. Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption, A/RES/73/190, Resolution adopted on December 17, 2018.

human rights (2015), which performs a full analysis of the definition of corruption as relevant to human rights, the categories of corruption, the way in which corruption affects the enjoyment of human rights, the value of linking corruption with its negative impact on the enjoyment of human rights, the experiences of integrating human rights perspective into the fight against corruption, corruption and raising awareness about “non-victims,” and a full section of recommendations.⁸⁰

85. Finally, it should be noted that corruption has been of particular concern to the Office of the High Commissioner for Human Rights for many years.⁸¹ A report from 2016 highlights the best practices for combating the negative consequences of corruption on the enjoyment of human rights, with significant participation from Latin American States.⁸²
86. It is the Commission's view that the links between the fight to eradicate corruption and efforts to effectively protect human rights are being formed because of the potential that both agendas together have to more effectively address the phenomenon of corruption so as to transform hemispheric realities and guarantee the enjoyment and exercise of human rights. Effectively, while the fight against corruption can have a positive effect on the enjoyment and exercise of human rights, the promotion of human rights reduces the chances of corruption. This convergent approach makes it possible to design effective strategies to prevent and eradicate corruption from a human rights perspective. It is the Commission's view that interpreting the content and scope of human rights with an approach that links it to the fight against corruption makes it possible to develop Inter-American standards on changing structures to benefit these efforts and to define the measures needed to eradicate corruption, as well as to prevent the chronic repetition of corruption to the detriment of the human rights of persons and communities, especially those facing vulnerability.⁸³

⁸⁰ United Nations, General Assembly. [Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights](#), A/HRC/28/73, January 5, 2015.

⁸¹ United Nations, General Assembly. [Note by the United Nations High Commissioner for Human Rights transmitting to the Human Rights Council the report on the United Nations Conference on anti-corruption, good governance and human rights](#), A/HRC/4/71, February 12, 2007.

⁸² United Nations, General Assembly. Report of the United Nations High Commissioner of Human Rights, [Best practices to counter the negative impact of corruption on the enjoyment of all human rights](#), A/HRC/32/22, April 15, 2016.

⁸³ In the same sense, the report of the Human Rights Council Advisory Committee states: “Combining strategies for fighting corruption and for promoting human rights can bolster both objectives. On the one hand, human rights can form a part of an anti-corruption strategy via the use of human rights mechanisms. On the other hand, fighting corruption is, in itself, a way of preventing human rights violations. By promoting the necessary elements of good governance (such as civil and political rights, transparency, and accountability), human rights and anti-corruption efforts can be mutually reinforcing.” United Nations, General Assembly. [Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights](#), A/HRC/28/73, January 5, 2015, para. 33.

CHAPTER 2
THE PHENOMENON OF
CORRUPTION AND HUMAN
RIGHTS

THE PHENOMENON OF CORRUPTION AND HUMAN RIGHTS

87. In this chapter, the Commission will analyze the impact of corruption on democracy, the rule of law, and human rights in the region. Thus, the IACHR will describe the phenomenon of corruption and its particular characteristics in the region, illustrating the multiple forms of corruption and complex criminal structures behind it. In addition, in this section, the Commission analyzes the dynamics of the interaction between protection of human rights and efforts to combat corruption. The Commission likewise analyzes areas of particular concern involving situations in which corruption greatly impairs the enjoyment and exercise of rights in the region. Thus, the Chapter addresses the impact of corruption on the exercise of freedom of expression and access to information, as well as on economic, social, cultural, and environmental rights.

A. The Phenomenon of Corruption in the Americas

88. Although the IACHR does not in this report aim to arrive at a polished conceptual understanding of the phenomenon of corruption, it does view it as important to specify the elements it has taken into consideration in establishing its convergence with the enjoyment and exercise of human rights. As indicated previously, in Resolution 1/18, the Commission presented a broad view of that phenomenon,⁸⁴ describing corruption as characterized by the abuse or misuse of the power entrusted, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that damages democratic institutions, the rule of law, and human rights.

89. In this chapter, the IACHR will offer a series of initial considerations to highlight that in the relevant areas of international human rights law, corruption is not limited only to actions defined as criminal offenses, but also includes practices that entail the abuse or diversion of public power for private benefit. Next, it will look at the various actors with the above-mentioned characteristics who actively participate in corruption, including looking at the involvement, in some cases, of organized crime networks. Lastly, the IACHR will describe the different forms corruption takes in the Americas and their different scopes.

⁸⁴ It stated: “corruption is characterized by the abuse or misuse of power, which may be public or private, that displaces the public interest for a private benefit (personal or for a third party) and that weakens both administrative and judicial oversight institutions.” IACHR. Resolution 1/18 “Corruption and Human Rights,” March 2, 2018.

90. **It would be useful here to set forth a series of initial considerations.** First, corruption is characterized by actions that produce some form of abuse or diversion of power. Consequently, corruption is directly associated with positions of power. It is the IACHR's view that for the purposes of determining the impact of corruption on a democratic society, the essential characteristic to consider is the position of power delegated to a government authority. Although there are different sources of power—private, corporate, economic—they are relevant to the extent that they are linked to the public interest; that is, that they transcend the private sphere. Second, the abuse or diversion of the power bestowed is an issue that unites human rights and corruption, as in both cases, the central concern is the control, limitation, and legitimacy of government authority. Third, the displacement of the public interest for personal benefit is an element that defines corruption as a specific form of eroding trust in the delegation of authority that transcends the individual committing the acts of corruption. Fourth, the benefits obtained by abusing or diverting government authority are not solely financial. They can include all different kinds, including social, moral, family, political, and others, and not only to the direct benefit of the individual committing the corrupt act: They can also benefit third parties. Lastly, as the abuse or diversion breaks the law, the impact is institutional and not limited to financial consequences. Effectively, the IACHR reiterates that the damage caused by corruption impacts democratic institutions, the rule of law, and human rights.
91. It is the Commission's view that the broad characterization of corruption set forth in its 2018 resolution enables the performance of a complete diagnostic of the forms that corruption takes in the region; places emphasis on its negative institutional impact; and makes it possible to design strategies for eradicating it using a human rights approach.
92. An adequate description of the phenomenon of corruption in the region must go beyond a broad characterization and list of practices, and it is important to focus on the forms corruption takes regionally, as this is the only way to fully understand its scope and impact, and devise strategies to address it using a human rights approach.
93. **Regarding the actors involved in corruption,** the Commission notes that although the description of corruption focuses on government authority delegated to State officials, the problem of corruption is not one that concerns only State agents. Non-State agents also play a key role in corruption.⁸⁵With regard to the different actors that can participate in corruption, hereinafter is an overview of some of the ways in which non-State sectors take part in corruption, focusing on situations that are relevant in consideration of their impacts on human rights.

⁸⁵ Resolution 1/18 stated: “Emphasizing that corruption has multiple causes and consequences and that numerous actors, both state and private entities and companies, participate in its development, and therefore, the establishment of effective mechanisms to eradicate it in order to guarantee human rights is required.” For its part, the United Nations Human Rights Council has acknowledged that “the State should protect against any adverse human rights impacts arising from acts of corruption involving non-State actors, including the private sector, through effective regulatory and investigative mechanisms, with a view to holding perpetrators to account, recovering assets of illicit origin derived from acts of corruption and providing redress to victims.” IACHR. Resolution 1/18 “[Corruption and Human Rights](#),” March 2, 2018.

94. It is clear that a variety of private agents actively participate in the phenomenon of corruption, including businesses, corporations, conglomerates, and others. Effectively, sole proprietorships, companies, and domestic and international corporations can take part in corruption when they obtain benefits from a State authority that is abusing or diverting the authority granted to it.⁸⁶ The Commission observes that the widespread practice of bribes is the most obvious way that a person—either juridical or an individual—takes part in an action that is by definition corrupt.
95. There are also cases in which private actors can be the end beneficiaries of acts of corruption by State agents without necessarily having originated them. The Commission notes that in many cases, the corrupt action aims to benefit a group (social, political, etc.) without that group necessarily actively participating in it. One example of this type of corruption can be the illicit financing of political campaigns.
96. Another example where private agents can actively take part in corruption is when they are in charge of public services that are essential for the fulfillment of human rights, such as education, health, social security, and others.⁸⁷ When these acts of corruption are committed, they can have a direct impact on a public interest that remains the responsibility of the State, even though the immediate fulfillment of such responsibilities has been delegated to private agents.
97. Lastly, acts of corruption between private parties are also relevant in terms of human rights when they have a social impact. Although these may be forms of corruption in which the actors are private agents, the impact they can have on the public interest justifies State concern.⁸⁸ As will be discussed later on, in approaching

⁸⁶ “Corruption constitutes one of the major obstacles to the effective promotion and protection of human rights, particularly as regards the activities of businesses. It also undermines a State’s ability to mobilize resources for the delivery of services essential for the realization of economic, social and cultural rights. It leads to discriminatory access to public services in favour of those able to influence authorities, including by offering bribes or resorting to political pressure. Therefore, whistle-blowers should be protected, and specialized mechanisms against corruption should be established, their independence should be guaranteed and they should be sufficiently well resourced.” Committee on Economic, Social and Cultural Rights, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, August 10, 2017, para. 20.

⁸⁷ “The increased role and impact of private actors in traditionally public sectors, such as the health or education sector, pose new challenges for States parties in complying with their obligations under the Covenant. Privatization is not per se prohibited by the Covenant, even in areas such as the provision of water or electricity, education or health care where the role of the public sector has traditionally been strong. Private providers should, however, be subject to strict regulations that impose on them so-called “public service obligations”: in the provision of water or electricity, this may include requirements concerning universality of coverage and continuity of service, pricing policies, quality requirements, and user participation. Similarly, private health-care providers should be prohibited from denying access to affordable and adequate services, treatments or information. For instance, where health practitioners are allowed to invoke conscientious objection to refuse to provide certain sexual and reproductive health services, including abortion, they should refer the women or girls seeking such services to another practitioner within reasonable geographical reach who is willing to provide such services.” Committee on Economic, Social and Cultural Rights, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, August 10, 2017, para. 21.

⁸⁸ “Whether in the developed or developing countries, the consequences of private sector corruption are devastating. It hurts the most vulnerable group, the poor, making them poorer.” United Nations, Sub-Commission on the Promotion and Protection of Human Rights, Preliminary report of the Special Rapporteur,

the phenomenon of corruption, cultural elements—and therefore the State’s passive response to corruption with a public impact—are relevant, as in the IACHR’s view, this is an issue of great relevance to guaranteeing human rights.

98. The IACHR also notes the role that other non-State actors can play in preventing corruption, including international institutions, through cooperation, providing financing, and other means. These institutions—particularly the ones financing large State projects—play a direct role in preventing and controlling corruption. These institutions have a duty to implement all necessary safeguards to prevent international cooperation resources from being diverted as a result of corruption.
99. Another way that non-State agents can take a leading role in corruption—and that is extremely concerning to the IACHR—is through organized crime.⁸⁹ According to the information available, organized crime uses the corruption of State agents to facilitate or permit illicit actions. These corrupt practices by organized crime generally add an additional element to private forms of corruption, which is the use of violence.⁹⁰ As will be discussed in subsequent sections of this report, situations have been documented throughout the region in which organized crime has not only individually corrupted State officials but captured institutions and placed them at the service of their illicit interests. The Commission highlights this as a particularly damaging form of corruption, as it involves the State’s very institutions, completely diverting them from complying with their constitutional objective of seeking the common good and the rule of law.⁹¹
100. Additionally, as regards organized crime, other forms of relating to the State have been documented in which corrupt officials have joined criminal conspiracies with criminal organizations. Once these complex forms of relationships between State institutions and organized crime have been established, corruption becomes part of the day-to-day, completely diverting the State from fulfilling its purpose. The

Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights, Ms. Christy Mbonu, E/CN.4/Sub.2/2004/23, July 7, 2004.

⁸⁹ For the purposes of this report, and following the report of the United Nations Special Rapporteur on the independence of judges and lawyers, “organized crime” means the concurrence of the following elements: a) Activities are carried out over a sustained period, as opposed to being executed by individuals who come together from time to time to carry out a specific action; b) organizations have an identifiable structure and hierarchy, which may take various forms: pyramidal, corporate, public or private, among others; c) organizations commit serious crimes in order to make a profit; d) criminal organizations use corruption or violence to carry out their activities and protect themselves from the consequences. United Nations. Report of the Special Rapporteur on the independence of judges and lawyers A/72/140, July 25, 2017, para. 35.

⁹⁰ “Undue interference in the judiciary may also be of a violent nature, in particular when it comes directly from members of organized criminal groups. Such interference is intended to secure specific outcomes, such as the dropping of a particular case or the acquittal of a specific individual. It is frequently accompanied by threats, intimidation and/or extortion.” United Nations. Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, July 25, 2017, para. 57.

⁹¹ “Criminal networks attempt to extend their reach into the democratic legal system, imposing their power and influence on the basis of their own rules, thereby creating spheres of immunity and impunity within the State system itself. An important element of their organization is the penetration of institutions in the justice sector, in particular by using corruption as a means of gaining access to the judicial administration. All of this creates an enormous challenge for judicial systems, which may be affected by corruption and threats while also bearing a fundamental responsibility to combat such crime.” United Nations. Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, July 25, 2017, para. 39.

process of following up on the precautionary measures granted by the IACHR in the case of the disappearance of the 43 students in Ayotzinapa, Mexico, has revealed the extremes that associations between State agents and organized crime have reached,⁹² with extremely grave consequences for the human rights of individuals, their families, and society as a whole.

101. Elsewhere, the Commission has stated previously that drug trafficking produces a situation of "violence and corruption" that can reach intolerable levels and threaten to destroy a country's social, political, and economic fabric, either because of the violence perpetrated against State agents or the corruption that takes root in policing bodies.⁹³ In its 2009 report on Citizen Security and Human Rights, the IACHR established that corruption and impunity have enabled criminal organizations to develop and establish parallel power structures; and that the sense of impunity is linked to "high levels of corruption, which is an obstacle to the proper administration of justice;"⁹⁴ for which reason it recommends "[i]mplement[ing] the mechanisms necessary to prevent, investigate and punish any form of corruption that prevents the system of administration of justice from functioning correctly."⁹⁵
102. **Regarding the different forms that corruption can take**, the IACHR notes that internationally, the conventions and other instruments have not provided a precise definition of corruption. They have, however, pointed to certain conduct that should be punished as acts of corruption. Hereinafter are examples of some of that conduct. It should be noted that these acts are not limited to criminal offenses, but also include as corruption other types of actions that are not punished criminally.⁹⁶
103. The UNCC⁹⁷ is an international instrument that, in its chapter III (criminalization and law enforcement), provides a complete list of illicit conduct associated with corruption. The forms of corruption that this document says must be punished criminally by States include bribery of national and international public officials; embezzlement, misappropriation, or other diversion of property; trading in influence; abuse of functions; and illicit enrichment. It also holds that bribery in the private sector; embezzlement of property in the private sector; laundering of proceeds of crime, and concealment and obstruction of justice must be criminalized. Lastly, it asserts the need to regulate liability of legal persons, set long statute of

⁹² IACHR Ayotzinapa Report. Research and initial conclusions of the disappearances and homicides of the normalistas from Ayotzinapa. Interdisciplinary Group of Independent Experts (GIEI). Executive Summary

⁹³ IACHR. Third Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II.102. Doc. 9 rev. 1, February 26, 1999, paras. 50 and 51. Already in its report on Brazil from 1997, the Commission had noted for the record that some deaths of alleged criminals at the hands of military police were a result of a lack of trust in the civil police, and what the military police wanted was to provide "effectiveness" in fighting crime and thereby avoid the impunity that was resulting from civil police corruption. IACHR. Report on situation of human rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 rev. 1, September 29, 1997.

⁹⁴ IACHR. Report on Citizen Security and Human Rights. OEA/SER.L/V/II. Doc. 57, December 31, 2009, paras. 33 and 167.

⁹⁵ IACHR. Report on Citizen Security and Human Rights. OEA/SER.L/V/II. Doc. 57, December 31, 2009. Specific recommendation 16(f).

⁹⁶ Zalaquett, J. "Transparencia, rendición de cuentas y lucha contra la corrupción en América," School of Law of the Universidad de Chile, Santiago, 2005.

⁹⁷ United Nations, United Nations Convention against Corruption (UNCC). Adopted on October 31, 2003, and entered into force on December 14, 2005. Currently, 186 UN Member States have ratified it.

limitations periods, and provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

104. Without question, the most commonly-recognized form of corruption is bribery: public and private, domestic and international. Likewise, embezzlement of public funds is another form of corruption that is well defined and that has grave impacts on the public coffers. Linked to both of these forms of corruption is money laundering, as in order for the monetary fruits of corruption to be utilized, they must be worked into legal financial spaces, and processes are therefore needed to accomplish this. The existence of tax havens, the growing industry of offshore companies without adequate regulation and oversight, and the more recent development of cryptocurrencies are all illustrative of this aspect of corruption.
105. Other forms of corruption, like trading in influence and illicit enrichment, have a significant impact on the region, as does the abuse of public functions. This type of corruption is placed in a generic category by international instruments, with the other types of corruption classified as specific forms of corruption within it. Other forms of corruption with significant impact in the Americas include nepotism, unregulated circulation between the public and private sectors, and conflicts of interest.
106. **Regarding the scope and magnitude of the different forms of corruption,** traditional definitions of corruption and their classification are fundamentally descriptions of scale and the actors involved, focusing on forms of individual and isolated corruption, and only exceptionally on forms of mass corruption originating in criminal structures. Analysis of the characteristics of corruption, the agents involved, and the measures that must be adopted is based on this. When corruption is viewed this way, the general tendency is to think of it in terms of criminal law. This traditional approach also tends to distinguish between national and international corruption. In fact, the international conventions on corruption are structured based on this distinction. For its part, in its 2015 report, the Advisory Committee of the United Nations Human Rights Council emphasized the consequences of corruption, putting forward a classification with three levels: a) direct and indirect impact; b) impact on specific groups; c) impact on society at large (at the national and international level).⁹⁸
107. The distinction traditionally used is the one developed by Transparency International that distinguishes between “petty corruption” and “grand corruption.”⁹⁹ The first, petty corruption, takes place in the direct relationship between public officials and citizens; in its most common forms, it includes payments to avoid a penalty, for healthcare, for a spot in the educational system, and many other forms. This form of corruption is extensive throughout the region and has a disproportionate effect on sectors already affected by socioeconomic inequality, poverty, or extreme poverty, who find themselves required to pay for

⁹⁸ United Nations, General Assembly. [Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights](#), A/HRC/28/73, January 5, 2015, para. 20.

⁹⁹ Transparency International [Plain Language Guide](#) 2009.

State services or to not be subjected to force by State agents. In the vast majority of cases, if they are not able to make the payment, their exclusion worsens.

108. Meanwhile, grand corruption, according to Transparency International's categories, takes place at a high level of government and involves large sums.¹⁰⁰ This form of corruption is also present in the region, and it is here is where national and international bribery, embezzlement of public funds, trading in influence, conflicts of interest, and other forms of corruption are strongest. Nevertheless, it is the IACHR's view that although this category accurately pinpoints the problem, it is not capable of fully describing the scope of corruption in the region.
109. For this, it would be worthwhile to first look at what has been described as "State capture."¹⁰¹ State capture is a form of corruption that requires a reassessment of the traditional concept of corruption, as in State capture, it is private actors who have the power to influence the decision-making of State authorities and obtain a benefit from those decisions, producing a situation of dependence.¹⁰² For example, the illegal financing of politics gives the financial actors disproportionate influence, to the detriment of the population as a whole, thus breaking with the concept of equality in a democratic society based on the principle of representation.¹⁰³
110. A second approach puts the emphasis on forms of macrocorruption.¹⁰⁴ Under this term can be categorized systemic forms of corruption in which the illegal schemes are carried out independent of individuals and under criminal structures that are not necessarily hierarchical, in which licit and illicit actions coexist and multiple agents—both state and nonstate—operate in a complex structure without clear territorial limits. Various forms of illicit trafficking of goods on the continent use these types of corruption structures as forms of macrocorruption.
111. A third form involves aggravated cases of macrocorruption, such as institutional cooptation. In this form of corruption, a State institution is captured using both licit and illicit acts and made to serve the interests of State and non-State actors, distorting its normal functions.¹⁰⁵ The Commission recalls that the region has seen cases like this, including the capture of customs, social security, and public works institutions, that have involved not only embezzlement of large amounts of public funds but the prevention of these institutions from serving their purposes.
112. A final form of macrocorruption worth noting is the capture of government by criminal groups. These cases involve the coopting for illicit purposes of not just

¹⁰⁰ Transparency International [Plain Language Guide](#) 2009.

¹⁰¹ Hellman, J. And Kaufmann, D. [Confronting the Challenge of State Capture in Transition Economies](#). Finance & Development September 2001, pp. 31-35.

¹⁰² Lawrence Lessig has described the situation as "dependence corruption," in which the representatives of the people no longer depend on their voters and instead depend on those who provide them with the funding so they can hold onto their offices. Lessig, L. [Institutional Corruption](#). Harvard Edmond J. Safra Lab seminar 2011-2012.

¹⁰³ Dawood, Y. [Classifying Corruption](#). Duke Journal of Constitutional Law & Public Policy, (9), 111-120. February 25, 2014.

¹⁰⁴ Garay, Luis, et. al., *Macrocorrupción y Cooptación Institucional*. Fundación Vortex, Colombia. 2018.

¹⁰⁵ Garay, Luis, et. al., *Macrocorrupción y Cooptación Institucional*. Fundación Vortex, Colombia. 2018.

discrete State institutions or sectors but of the full government. One example of this form of corruption is the Fujimori regime in Peru, in which the coopting of the State was carried out from the highest reaches of government, with ramifications for all State authorities that placed the government at the service of a large-scale network of corruption. In its 2000 report, the IACHR describes the grave human rights impacts of this distortion of the rule of law by the Fujimori administration.¹⁰⁶

113. In its aforementioned Resolution 1/18, the Commission calls these forms of corruption “criminal schemes” to capture the State. Not only do these forms of corruption cause damage to the public purse, they fundamentally undermine the State and its purpose. These mechanisms are especially dangerous because they enable organized crime to capture the State and employ it for its purposes.
114. In view of these multiple forms of corruption and their existence in the Americas—from isolated or sporadic cases to widespread and everyday practices, from individual to systematic, from diversions of power to State capture by criminal groups—it is the Commission’s view that corruption is a structural problem in the region. Structural corruption affects how certain institutions function and operate through power networks whose principle aim is to protect and maintain impunity for acts of corruption that are useful to them.¹⁰⁷ This institutional approach to corruption enables and promotes it using cultural elements of tolerance for it. Addressing it requires coordinating action by State mechanisms, citizens, the international community, businesses, and corporations.

B. Factors that Facilitate or Foster Corruption

115. Following this complex description of corruption in the region, it is necessary to analyze the collection of factors that facilitate acts or situations of corruption. Structural corruption means a decision is made based on a cost-benefit analysis to weigh the possibilities and consequences of illicit actions.¹⁰⁸ Thus, determining the factors involved in this decision is crucial for providing a proper diagnostic of the phenomenon in order to devise and adopt adequate measures for the eradication of the forms of corruption present in the region.
116. It is the IACHR’s view that the main factors facilitating corruption are institutional and cultural in nature. The institutional factors that foster corruption are:

¹⁰⁶ IACHR, Second Report on the Situation of Human Rights Situation in Peru. June 2, 2000, final reflections, para. 2.

¹⁰⁷ Author Irna Sandoval has defined “structural corruption” as a specific form of social domination based on a structural power differential characterized by abuse, impunity, and illicit appropriation of the people’s resources. Sandoval, Irma. Enfoque de la corrupción estructural: poder, impunidad y voz ciudadana. Rev. Mex. Sociol. 2016, vol.78, n.1, pp.119-152. ISSN 2594-0651.

¹⁰⁸ In her third report, the Rapporteur on ESCER stated: “Corruption is inherently an activity that thrives on secrecy; it takes advantage of unequal access to information by parties to a transaction and thus becomes widespread, especially where the cost of corrupt conduct is low and the profit high.” United Nations, Sub-Commission on the Promotion and Protection of Human Rights. Preliminary report of the Special Rapporteur, Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, Ms. Christy Mbonu, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 10.

a) institutional weakness of the State, defined by an inability to cover its territory and by institutions that are not capable of fully performing their functions;¹⁰⁹ b) a monopoly or concentration of power in areas with significant economic or social impact (where resources are managed or decisions taken that have political and social impact); c) broad leeway for discretion in decision-making by State agents;¹¹⁰ d) lack of oversight of government actions, as a result of a lack of transparency and accountability surrounding the decisions made by authorities and the secretive nature of corruption;¹¹¹ e) high rates of impunity, making it possible for corrupt acts or systems to persist thanks to guarantees that the cost of corruption is comfortably outstripped by the benefits obtained therefrom.¹¹² Impunity is guaranteed when actions are not investigated, or if they are investigated, are not punished, or if they are punished, the consequences are not proportional to the benefit obtained. This broad discretion without proper oversight and accountability is a source of potential acts of corruption. Discretion has two facets: *ex ante* (reasonableness of the measures to adopt) and *ex post* (oversight of these decisions)

117. Additionally, there are cultural factors that permit and promote corruption in our countries, associated with a culture of tolerance of corruption and, particularly, of illegality,¹¹³ in which respect for laws, institutions, and citizen trust is socially devalued. The IACHR observes that as long as multiple forms of corruption are normalized and its extreme criminal forms only rejected formally, eradicating corruption will be extremely difficult. There is no question that when corruption is seen to be uncontrollable, it fosters social tolerance of it.
118. The Commission notes that any strategy to fight corruption must address these facilitating factors. Consequently, in order to deal with structural corruption, activities must be coordinated across State institutions, with precise diagnostics, adequate targets, formal oversight systems, periodic evaluation, and adequate mechanisms of transparency and publicity.
119. Eradicating corruption is an obligation of means. Therefore, determining the criteria for evaluating the seriousness of a States response to national circumstances requires criteria for assessing and determining the nature of these institutional and cultural elements.

¹⁰⁹ Newman and Angel, "Sobre la corrupción en Colombia, marco conceptual, diagnóstico y propuestas de política" 2017, p. 20.

¹¹⁰ There have been grave reports in the region of cases of corruption associated with "reserve funds" or "secret budgets," in which those managing the funds can do with them what they choose without effective oversight of the use of public resources.

¹¹¹ Letters a), c), and d) correspond to Robert Klitgaard's classic formula on the factors that facilitate corruption, Klitgaard, *International Cooperation Against Corruption. Finance and Development*. March 1998.

¹¹² Jain, A.K. *Corruption: a review*. Journal of Economic Surveys. February 2001.

¹¹³ Some call it the "culture of disrespect," an expression with origins in colonial Americas, where a common expression regarding orders from the Spanish crown was "they are respected, but not obeyed" ("*Se acata, pero no se cumple*"). García Vellegas, Normas de Papel. La Cultura del Incumplimiento. Siglo del Hombre Editores, Colombia 2009.

C. Principles in the Fight against Corruption

120. To combat corruption, a number of principles have been put forward that make it possible to establish the first links to a human rights approach in the fight against corruption. Specifically, using the principles set forth in international instruments and case law as the foundation of any policy against corruption, the IACHR highlights the following: non-discrimination, transparency, accountability, and participation.

a) Corruption is linked closely to discrimination. On one hand, corruption tends to divert public resources, making distribution of goods and services arbitrary or discriminatory. On the other, and as noted previously, corruption most acutely impacts those suffering discrimination for reasons including their race, sex, ethnic or national origins, sexual orientation, political opinion, or socio-economic condition. The right to equal protection and prohibition of discrimination are central to international human rights law (IHRL). States have a general and immediately-enforceable obligation to disallow any legal provision holding otherwise.

b) In terms of transparency, it is clear that when States, enterprises, and organizations disclose information on their regulations, plans, processes, and activities, they reduce space for committing acts of corruption. This is also true when public access to this information is facilitated, as it allows watchdog organizations and citizen groups to scrutinize these entities. IHRL protects access to public information as part of the right to freedom of expression. Access to complete, updated, and understandable information is also a prerequisite for the exercise of other rights. It should be noted that the Commission's Resolution 1/18 stated "that the lack of transparency in public management facilitates corruption and impedes citizen oversight and scrutiny of the press on critical issues such as public procurement and budget management, in particular about expenses in infrastructure and social programs; lobbying activities; conflict of interests and public employment systems, as well as the financing of political parties and political campaigns."

c) As regards accountability, those who perform public functions must answer to those who have entrusted them with their authority and who are affected by their activities. This makes it possible to prevent, detect, and punish corruption. Under IHRL, States assume international responsibility for breach of their duties of respect and guarantee of human rights. The right to effective remedy, as a mechanism for alleging the violation of a right and obtaining reparations, can be employed as a form of accountability. When judicial remedies as provided for by the State are exhausted and prove illusory, inadequate, or impractical, IHRL provides for global and regional accountability mechanisms. One of the reasons a State's judicial remedies may prove illusory or impractical is the existence of corruption in the administration of justice.

d) As regards citizen participation, this mechanism can reduce the chances of incurring acts of corruption,¹¹⁴ while also providing a means of oversight that is beneficial to States, as it enables the prevention and detection of abuses.¹¹⁵ When States lack trustworthy oversight institutions, citizen participation is crucial. Exercise of participation is enforceable through the right to assembly, association, expression, information, and access to public office on equal footing. When participation is approached as a right, the emphasis is placed on the scope, depth, and legitimacy of the participatory process.¹¹⁶ The principle of participation implies the determination of effective mechanisms to involve the most disadvantaged groups and the groups most affected by corruption, the question is how to ensure they understand the purpose of their participation, how their opinions will be used, and what their concrete impact will be on decision-making. It is also important to provide guarantees that the participatory processes will not be co-opted by formal or informal power structures.¹¹⁷

121. The Commission has indicated as a crosscutting aspect of the aforementioned principles that victims of corruption should be kept at the heart of the fight against this phenomenon and form part of the analysis, diagnostic assessment, design and implementation of mechanisms, practices, policies, and strategies to prevent, punish and eradicate corruption, bearing in mind the principles of non-discrimination and equality, accountability, access to justice, transparency and participation.
122. The universal system has also emphasized the convergence between these principles of the fight against corruption and the advancement of human rights, indicating that: “there are parallels between the main anti-corruption principles (such as participation, transparency, access to information, and accountability) and the scope of human rights (such as freedom of expression and freedom of the media, access to information, and the principle of non-discrimination). Therefore, strengthening the enjoyment of human rights in general, and of specific political rights and the principle of non-discrimination in particular, is a valuable instrument in combating corruption. Whereas combating corruption through criminal law and

¹¹⁴ Inter-American Convention against Corruption, Article 3, No. 11; United Nations Convention against Corruption, Article 13; UNODC and UNICRI, Technical Guide to the United Nations Convention against Corruption, 2009, pp. 4-5.

¹¹⁵ “The role of an engaged civil society in the fight against corruption is a crucial one. Substantial achievements in bringing awareness of corruption in the society, and therefore curbing it, can be attributed to a large degree to a viable civil society, including an independent media.” United Nations, Sub-Commission on the Promotion and Protection of Human Rights. Preliminary report of the Special Rapporteur. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, Ms. Christy Mbonu, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 53.

¹¹⁶ Consejo Internacional de Políticas de Derechos Humanos, La Integración de los Derechos Humanos en la Agenda Combate a la Corrupción: Retos, Posibilidades y Oportunidades, Geneva, 2011, pp. 2-6.

¹¹⁷ International standards on the right to consultation of indigenous peoples and environmental impact can provide some guidance as to the particular utility of participation. See Inter-American Court, Case of the Kichwa de Sarayaku Indigenous People v. Ecuador, judgment of June 27, 2012, para. 177.

private law means taking repressive and remedial measures, the promoting and strengthening of human rights is a preventative anticorruption measure.”¹¹⁸

123. For its part, the United Nations Office of the High Commissioner for Human Rights (OHCHR) has stated “that corruption violated the core human rights principles of transparency, accountability, non-discrimination and meaningful participation and that, conversely, those principles, when upheld and implemented, were the most effective means to fight corruption.”¹¹⁹
124. Based on this broad concept of corruption and the various actors involved; a definition of the different forms of corruption comprising a structural phenomenon, with institutional and cultural factors that encourage and permit it; and the principles that must guide its struggle, the IACHR will, in the following section, address the aspects in which structural corruption has a material impact on democracy, the rule of law, and human rights in the region.

D. The Negative Impact of Corruption on Democracy and the Rule of Law

125. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them, and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning.¹²⁰
126. In view of this substantive link between a democratic system and the rule of law, it is the IACHR’s view that corruption affects democratic institutions. Democratic societies must prevent and repress the corrupt practices—both individual and/or structural— that affect the guarantee of human rights under the rule of law.¹²¹
127. One of the initial impacts of corruption is on democratic stability, in that it clearly has an institutional dimension, as well as an economic dimension. In this regard, in 2001, the IACHR found that “Corruption is an important element to be taken into account in analyzing the democratic institutional framework of a state, since various member states of the OAS [...] have recognized that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples and that fighting corruption

¹¹⁸ United Nations, General Assembly. [Progress report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights](#). May 14, 2014. A/HRC/26/42, para. 21.

¹¹⁹ United Nations, Human Rights Council, [Summary report of the Human Rights Council panel discussion on the negative impact of corruption on the enjoyment of human rights](#), A/HRC/23/26, April 18, 2013, para. 5.

¹²⁰ I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 191. The original quote is from: Advisory Opinion. OC-8/87, para. 26.

¹²¹ Lutz, R. [On combating the culture of corruption](#). *Southwestern Journal of Law and Trade in Americas*, (263), 2004 pp. 263-265.

strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society's moral fiber.”¹²²

128. Corruption also has a direct impact on citizen trust in democratic institutions. Corruption effectively has a dual impact. On one hand, it sends the wrong message to society when people see government officials using the State to secure private benefits, diverting it from complying with its purpose, accompanied in many cases by broad impunity in cases of corruption. Large-scale acts of corruption also affect the State's financial ability to fulfill its human rights obligations, delegitimizing its reason for existence in the eyes of society. As regards impunity and the lack of citizen trust in institutions, the Commission has indicated that "impunity and corruption erode citizen trust in the authorities, which also leads to impunity that exacerbates the climate of violence. The problem permeates the police, the courts, and many public prosecutors' offices, producing a generalized perception of impunity.”¹²³
129. More recently, the Commission indicated in general terms that “states are unable to meet their human rights obligations when corruption is widespread. On the contrary, the denial of rights such as the rights to health, food, education and housing are some of the terrible consequences that corruption in Latin American countries causes. Corruption also encourages discrimination and deprives historically excluded and discriminated-against persons of income, which also prevents them from exercising their rights, whether civil and political rights, or ESCER.”¹²⁴
130. Regarding this, in 2017, the United Nations Human Rights Council noted “the weakening of institutions and the erosion of public trust in government, and through the impairment of the ability of Governments to fulfil all their human rights obligations and to realize, within the maximum available resources, the Sustainable Development Goals.”¹²⁵
131. Corruption also has a significant impact on the rule of law. Effectively, corruption has three negative consequences as regards three principles worth highlighting. First, it affects the principle of legality; second, it causes harm to the ideal that

¹²² IACHR. Third Report on the Human Rights Situation in Paraguay. March 9, 2001. OEA/Ser./L/VII.110 doc. 52
In this same regard, in the United Nations, the Rapporteur on corruption stated in 2003 that “Corruption poses a serious threat to sustainable democracy. The political stability of a country is eroded when the institutional framework for the installation of a democratic government is not in place due to corruption. Dictatorship is enthroned with all its negative impact on the enjoyment of human rights. There would neither be transparency nor accountability; the law enforcement agents can easily be bought over while the independence of the judiciary is sacrificed. The sum total is a society that loses its self-esteem, with little or no integrity.” United Nations, Economic and Social Council. Sub-Commission on the Promotion and Protection of Human Rights. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights. E/CN.4/Sub.2/2003/18. May 14, 2003.

¹²³ IACHR. Situation of Human Rights in Mexico. OEA.Ser.L/V/II. Doc 44/15, December 31, 2015.

¹²⁴ IACHR. Democratic Institutions, the Rule of Law and Human Rights in Venezuela. Information by country: OEA.Ser.L/V/II. Doc 209/17. December 31, 2017.

¹²⁵ United Nations, General Assembly. Resolution 35/25 of the Human Rights Committee. The negative impact of corruption on the enjoyment of human rights. A/HRC/RES/35/25, pg. 2, June 23, 2017.

authorities' legitimacy is based on their pursuit of the common good; and third, it affects authorities' independence.

132. Effectively, committing these illicit acts of corruption gravely affects the principle of legality, which is part of the rule of law. This is in view of the fact that those committing these illicit acts are precisely the authorities in charge of dictating the laws, executing them, and overseeing other branches of government, as well as those who form part of the government bureaucracy. The negative effect of this on institutional legitimacy and citizen trust in the rule of law is clear, and it does harm to democracy.¹²⁶ Corruption also has an impact on the principle of principle of the common good, which is the legitimate aspiration of a democratic society.¹²⁷ Corruption impacts a State's duty to make decisions based on the good of the majority and not the good of a minority for the sole fact that it is through corruption that the corrupted authority is in a position to divert collective interests into individual interests. It also causes a break with the principle of the independence of authorities, who, through a variety of illegitimate mechanisms, become beholden to private interests.
133. Actions that divert decisions from seeking the common good to benefiting private parties damage the very foundation of democratic coexistence by providing privileged access to decision-making based on the power generated by the acts of corruption.¹²⁸ This has a direct impact on the democratic ideal and the rule of law as a system of commonly-held rules in which power is controlled by institutions governed by laws. For example, when the balance of power is changed by corruption, elections are manipulated, or the role of judicial institutions is altered, it severely affects the foundation of democracy, which is supposed to provide equal treatment to all individuals under its jurisdiction.
134. In addition to its direct impact on formal equality, corruption also impacts substantive equality. The capture of the State, co-opting of institutions, trading in influence, and bribery affects the States duty to make decisions that may run contrary to private interests. This can have an impact on public policy intended to protect human rights.¹²⁹
135. The Commission has expressed deep concern at the reports¹³⁰ of corruption of this nature in its 2017 Report on Venezuela, as such corruption has severely restricted

¹²⁶ García, J. *Dinero y Política: La cuadratura del círculo de la democracia en América Latina*. Revista IIDH. Vol 34-35. 2001-2002. Pgs. 523-550. The author has indicated that it is this context that produces "the appearance of outsiders, spontaneous movements, nostalgia for the authoritarian exercise of power, an increase in voter absenteeism, disenchantment, confusion, and grave governability crises, which are symptoms of a more general disorder that feeds into a rejection of political parties, political participation, and politics in general, all of which contribute to eroding democracy."

¹²⁷ Dworkin, R. *Virtud Soberana*. La teoría y la práctica de la igualdad, Grupo Paidós. Barcelona. 2003, pp. 206-230.

¹²⁸ Dawood, Y. *Classifying Corruption*. Duke Journal of Constitutional Law & Public Policy, (9), 2014, pp. 103-133.

¹²⁹ Hellman, J. And Kaufmann, D. *Confronting the Challenge of State Capture in Transition Economies*. Finance & Development September of 2001.

¹³⁰ These reports include: (i) the purported diversion of 1,040 crates of beef from MERCAL, a company attached to the Ministry of Food; (ii) the alleged illegal demand for payment by public officials in return for processing bills of lading for agricultural producers; (iii) the apparent theft of money intended for the purchase of goods

the access to and enjoyment of human rights. In this context, the IACHR reiterates that States are not complying with their human rights obligations when there is extensive corruption. The violation of rights such as the rights to food, health, housing, and education are some of the terrible consequences of corruption in Latin American countries. Consequently, corruption also encourages discrimination and deprives historically excluded and discriminated-against persons of income, which also prevents them from exercising their rights, whether civil and political rights, or ESCER.¹³¹

E. The Negative Impact of Corruption on Human Rights

136. Given the structural nature of corruption in the region, it is the Commission's view that its impacts are profound and differentiated. On the one hand, acts of corruption may in themselves constitute human rights violations; and, on the other, corruption in its various guises may impair the enjoyment and exercise of human rights.
137. The first group of situations concerning to the Commission involve acts of corruption that lead directly to the State failing to comply with its human rights obligations.¹³² A State has committed a human rights violation and is therefore internationally responsible when a corrupt action or situation constitutes or is the basis for a failure to comply with an international obligation and the illicit act is attributable to the State. Pursuant to the principles of international human rights law,¹³³ the State is required to provide redress to the victims of human rights violations.
138. A second aspect that must be clarified is the contextual relationship between corruption and human rights violations—that is, the different ways in which corruption presents itself in the region and its link to different types of human rights violations. It is clear that not only does corruption violate human rights directly, but the way in which different contexts of corruption facilitate and/or foster the

distributed by Local Supply and Production Committees (CLAPs); (iv) the suspected misappropriation of medical supplies at the University Hospital in Falcón State; (v) the alleged diversion of more than 18 tons of rice; (vi) the refusal to sell CLAP food bags to anyone who did not vote in the ANC elections; (vii) the failure of a company to build 161 homes in Carora, Lara State, as part of the Gran Misión Vivienda Venezuela housing program; (viii) the alleged collection of fees for processing the allocation of units under that same program; and (ix) the purchase at overstated prices (by 55 percent) of food from Mexico for the CLAP. It is also troubling that a 2016 study by Transparency International found that the bribery index for hospital admissions between 31 percent and 40 percent, while the index for accessing public services is between 41 percent and 50 percent. IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc. 209, December 31, 2017, para. 411.

¹³¹ IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc. 209, December 31, 2017, paras. 410/411.

¹³² In this sense, see: United Nations, General Assembly. Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73, January 5, 2015, para. 29. This principle is also applicable when the human rights violation is the result of an act of corruption.

¹³³ IACHR. Principle Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131 Doc. 1, February 19, 2008.

violation of human rights must be considered. This is relevant for determining the adequate measures to be adopted by States to eradicate corruption in the region.

139. It is the Commission's view that the clearest link is between mass and systemic violations of human rights and cases of corruption, these understood as co-opting the State and institutional diversion. The dictators and the administrations that become authoritarian despite their democratic origins are characterized by illegitimate concentration of State power, broad space for discretion, an absence of institutional and social oversight mechanisms, general assurance of impunity, and a normalization of illegality. As the IACHR has observed in the region, these contexts of grave and systemic human rights violations are clearly intimately linked to conditions that foster corruption, in a feedback loop. Both individual acts of corruption and systemic acts of corruption have multiple impacts on rights through acts of corruption including embezzlement of funds, impunity, transfer of public enterprises to groups connected to political power, violence, and State repression of citizen oversight and the press, all of which are common practices in authoritarian systems. In these cases, the fight for human rights is also a fight against corruption, and vice versa. One illustrative case is the State repression in Nicaragua.¹³⁴
140. In the case of structural human rights violations, the connection with corruption is less obvious but equally there. The cases of structural human rights violations correspond to situations in which the rights violations that affect certain historically-vulnerable groups in the enjoyment and exercise of their rights are directly linked to complex institutional and cultural structures that foster, permit, or directly produce the impact on rights and the resolution of which requires action that is coordinated throughout the apparatus of the State.¹³⁵ These cases involve a variety of manifestations of corruption in the region. One hand, in these contexts, isolated corruption has an enhanced effect on disadvantage sectors that may be subject to different types of extortionate practices. On the other hand, cases of grand corruption and macrocorruption also have an impact on these groups, as the funds diverted from the public coffers are often precisely those allocated to the priority sectors of State social policy. Even more seriously, cases in which institutions are co-opted have a disproportionate effect on these groups, increasing their vulnerability and leading to a number of forms of violence and impunity, particularly when the co-opting is linked to organized crime.¹³⁶

F. Dynamics of the Interaction between Human Rights Protection and the Fight against Corruption

141. The relationship between corruption and human rights is not limited to the negative effects that the different forms of corruption have on the full enjoyment and exercise

¹³⁴ IACHR. [Serious Human Rights Violations in the Context of Social Protests in Nicaragua](#), OEA/Ser.L/V/II. Doc. 86 June 21, 2018 (Available in Spanish only).

¹³⁵ Nash, Claudio; Aguiló, Pedro & Bascur, María Luisa. [Corrupción y Derechos Humanos: una mirada desde la jurisprudencia de la Corte Interamericana de Derechos Humanos](#). Centro de Derechos Humanos. 2014.

¹³⁶ IACHR. [Report on Poverty and Human Rights in the Americas](#), OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017

of human rights, and therefore on States' compliance with their international obligations to guarantee and respect those rights. An additional dimension that is increasingly relevant is the dynamics of the interaction between human rights protection and the fight against corruption.

142. Effectively, the Commission considers the dynamics of the interaction to be the confluence between the agendas of the anticorruption movement and the pro-human rights movement. Both agendas have the potential to impact each other: while the fight against corruption can have a positive effect on the enjoyment and exercise of human rights, the promotion of human rights reduces opportunities for corruption and enhances public policies for its eradication.
143. First, a variety of international bodies have highlighted the ethical and legal contributions that international human rights law makes to the fight against corruption. Based on these moral values and legal elements, fighting corruption is a public policy that is supported by a State's international obligations, which require it to comply, in good faith, with Article 26 of the Vienna Convention on the Law of Treaties. Thus, fighting corruption been added to the repertoire of competencies of international human rights bodies, and society is becoming empowered to demand its eradication. Second, the contributions of the human rights approach to the fight against corruption include centering victims, the duty to prevent, and new causality criteria, as described above. Third, the human rights movement has a long history implementing international standards domestically along with standards on national and international protection, experience that can be very useful for the anticorruption movement, particularly with regard to prosecution. Lastly, it is through the use of the institutional human rights protection mechanisms developed internationally that the fight against corruption can substantially improve its results.
144. The Commission notes that in order for the measures aimed at combating corruption to be effective, pursuant to international obligations, it is crucial for them to take into account the contexts in which States must guarantee human rights by including a diagnosis of the situation of corruption threatening the full enjoyment and exercise of human rights.
145. This synergy translates into some specific issues. One is the impact that contexts of corruption have on the adoption of international measures of protection: for example, the precautionary measures granted by the Commission and the provisional measures granted by the Inter-American Court. In this regard, one example from the Commission are the precautionary measures adopted to the benefit of Judge Gloria Porras of the Court of Constitutionality of Guatemala.¹³⁷ The resolution granting the precautionary measure explicitly referred to the background of the context of violence against members of the judiciary who were investigating cases of corruption in Guatemala,¹³⁸ as well as the judge's own

¹³⁷ IACHR. [Resolution on Precautionary Measure 431/17](#) Gloria Patricia Porras Escobar and Family regarding Guatemala, August 29, 2017.

¹³⁸ IACHR. [Resolution on Precautionary Measure 431/17](#) Gloria Patricia Porras Escobar and Family regarding Guatemala, August 29, 2017. 19, 20, and 21.

personal situation.¹³⁹ On this basis, the IACHR concluded that Judge Porras faced a risk to her life and integrity and that of her family,¹⁴⁰ that the measures were urgently needed, and that the potential damage was irreparable because it affected their rights to life and integrity. This impacted her ability to do her work as a judge under conditions of “independence, free from threats, attacks, or harassment.”¹⁴¹ Another similar case was that of Miguel Angel Gálvez and his family. Mr. Gálvez was, as a judge, investigating cases of high-profile corruption¹⁴², which, given his country’s context¹⁴³ and the investigations of which he was in charge,¹⁴⁴ placed him in a situation of serious threat to his rights.¹⁴⁵ The bodies of the system have likewise considered the context of corruption when evaluating the content and scope of State obligations and, in particular, pertinent measures of reparation. In this same regard, the Commission will continue to consider corruption as part of the contextual background in its State supervision work in the framework of its functions and mandate.

146. In conclusion, the convergence of the human rights movement and the fight against corruption produces a series of possibilities for feedback that, while bearing in mind the specific characteristics of each, suggests complementarity and ensuring the efficiency of public policies on the fight against corruption, which will be developed in the chapter on the human rights approach in the aforementioned anticorruption public policies.

G. Affectations and Impact of Corruption on Economic, Social, Cultural, and Environmental Rights (ESCER)

147. The subject of economic, social, cultural, and environmental rights (ESCER) has long been an area in which the human rights agenda coincides with efforts to combat corruption. Undoubtedly, the weight now attached to human rights in international circles has posed some major challenges for oversight bodies. Determining what is meant by the obligation to dispose of “maximum resources,” their impact on the

¹³⁹ IACHR. [Resolution on Precautionary Measure 431/17](#) Gloria Patricia Porras Escobar and Family regarding Guatemala, August 29, 2017, para. 22.

¹⁴⁰ “Taking into consideration the specific characteristics of this matter and its unique context, the IACHR finds that it has been prima five CA establish that Ms. Gloria Patricia Porras Escobar is facing risk to her life and personal integrity. Based on the nature of this matter, and in the framework of possible retaliation for the work done by Ms. Gloria Patricia Porras Escobar, the members of her nuclear family share the same risk factors.” IACHR. [Resolution on Precautionary Measure 431/17](#) Gloria Patricia Porras Escobar and Family regarding Guatemala, August 29, 2017.

¹⁴¹ IACHR. [Resolution on Precautionary Measure 431/17](#) Gloria Patricia Porras Escobar and Family regarding Guatemala, August 29, 2017.

¹⁴² IACHR. [Resolution on Precautionary Measure 351-16 and 366-16](#) Miguel Ángel Gálvez and Family regarding Guatemala, August 21, 2016.

¹⁴³ IACHR. [Resolution on Precautionary Measure 351-16 and 366-16](#) Miguel Ángel Gálvez and Family regarding Guatemala, August 21, 2016, para. 11.

¹⁴⁴ IACHR. [Resolution on Precautionary Measure 351-16 and 366-16](#) Miguel Ángel Gálvez and Family regarding Guatemala, August 21, 2016, para. 10.

¹⁴⁵ IACHR. [Resolution on Precautionary Measure 351-16 and 366-16](#) Miguel Ángel Gálvez and Family regarding Guatemala, August 21, 2016. 12, 13, and 14.

progressive realization of rights, and the possibility of demanding them directly or via civil and political rights are points at which the human rights agenda comes up against corruption. That explains why the first United Nations special rapporteurship devoted to the subject of corruption was linked directly to that of ESCER.¹⁴⁶

148. In resolution 1/17 the IACHR said: "The Commission notes with concern how the scourge of corruption affects different countries in the region. The Commission thus reaffirms the importance of the fight against corruption to ensuring the effective enjoyment of human rights, especially economic, social, cultural and environmental rights, the effectiveness of which depends on public policies and budgets."¹⁴⁷
149. For its part, Resolution 1/18 states: "Corrupt management of public resources jeopardizes the capacity of governments to meet their obligations with respect to social rights, including health care, education, water, transport, and sanitation, which are essential for the realization of economic, social, cultural, and environmental rights, especially in populations and groups in situations of greatest vulnerability. Among those groups, women, community leaders, land rights defenders, Afro-descendent communities, and indigenous peoples are the worst affected. In addition corruption has a very serious impact when it comes to ensuring the rights of persons deprived of liberty, migrants, and LGBTI persons."¹⁴⁸
150. Likewise, in its report on Venezuela (2018), the IACHR provided a broad appraisal of this impact on the region: "In that context, [the Commission] reiterates that states are unable to meet their human rights obligations when corruption is widespread. On the contrary, the denial of rights such as the rights to health, food, education and housing are some of the terrible consequences that corruption in Latin American countries causes. Corruption also encourages discrimination and deprives historically excluded and discriminated-against persons of income, which also prevents them from exercising their rights, whether civil and political rights, or ESCER."¹⁴⁹
151. In the same vein, the Human Rights Council voiced its concern "about the increasing negative impact of widespread corruption on the enjoyment of all human rights,

¹⁴⁶ The Sub-Commission on the Promotion and Protection of Human Rights established a mandate of a Special Rapporteur on corruption and its impact on the full enjoyment of all human rights, in particular economic, social and cultural rights, through resolution 2003/2 of 13 August 2003. That mandate was subsequently endorsed by the Commission on Human Rights in its decision 2004/106. The Sub-Commission appointed Ms. Christy Mbonu as the Special Rapporteur with the task of preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, based on her working paper E/CN.4/Sub 2/2003/18 and the opinions expressed during the debate on the issue during the discussions that took place at the fifty-eighth [Tr. fifty-fifth?] session of the Sub-Commission.

¹⁴⁷ IACHR. Resolution 1/17 Corruption. September 12, 2017.

¹⁴⁸ IACHR. Resolution 1/18 [Corruption and Human Rights](#), N° 3, letter b.

¹⁴⁹ IACHR. [Report on the Situation of Human Rights in Venezuela](#), OEA/Ser.L/V/II, doc, December 31, 2017, para. 412.

including by reducing the resources available for all sectors in development, thereby hampering the realization of all human rights."¹⁵⁰

152. The Advisory Committee went further and underscored the impacts that corruption has for society as a whole, emphasizing precisely the issue of the resources available for satisfying human rights: "[...] corruption can concern society at large (general negative impact). This means that, in addition to the effect that corruption has on individuals or groups, there is also a negative impact upon society at large, whether this is in a national or an international sense. There are two main aspects that are frequently mentioned in discussions of the negative impact of corruption on human rights. The first aspect relates to the financial and economic resources that are affected by corruption. Corrupt practices divert funds from development and therefore imply a reallocation of funds that may interfere with the effective enforcement of human rights, especially for vulnerable people. Corruption reduces the resources available for the progressive realization of economic, social and cultural rights (and therefore undermines States' obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights). The second aspect relates to the realization of democracy and to implementation of the rule of law. If the authorities of a State are pervaded by corruption, the people's confidence in the government, and eventually in the democratic order and the rule of law, is undermined."¹⁵¹ The IACHR also stresses that the United Nations Committee on Economic, Social and Cultural Rights has stated its concern at the persistently high levels of corruption and impunity still found in several States in the Hemisphere and their devastating impact on effective enjoyment of ESCER. Thus, in its concluding observations on the periodic reports submitted by several States in the region, it has called for attention to the underlying causes of corruption, improving transparency frameworks, participation, and accountability, as well as actions to boost the judiciary's capacity to respond to corruption in an independent manner.¹⁵²
153. The objective of this Section is to analyze the multidimensional and cross-cutting impact of corruption on ESCER. To that end, it will establish the part played by ESCER in the fight against corruption and provide some concrete examples of rights severely impaired by corruption. Finally, reference will be made to two issues

¹⁵⁰ United Nations General Assembly. Resolution 29/11 adopted by the Human Rights Council. [Final report of the United Nations Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights](#), A/HRC/RES/29/11, 22 July 2015.

¹⁵¹ United Nations General Assembly. Final report of the United Nations Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights. January 5, 2015. A/HRC/28/73, para. 20, letter c).

¹⁵² Committee on Economic, Social and Cultural Rights, Concluding Observations (Paraguay), United Nations document, E/C.12/PRY/CO/4, 20 March 2015, para. 11; Committee on Economic, Social and Cultural Rights, Concluding Observations (Venezuela), United Nations document, E/C.12/VEN/CO/3, 7 July 2015, para. 12; Committee on Economic, Social and Cultural Rights, Concluding Observations (Guyana), United Nations document E/C.12/GUY/CO/2-4, 28 October 2010, paras. 18 and 19. Committee on Economic, Social and Cultural Rights. Concluding Observations (Honduras), United Nations document, E/C.12/HND/CO/2, 11 July 2015, paras. 17 and 18; Committee on Economic, Social and Cultural Rights. Concluding Observations (Colombia), United Nations document, E/C.12/COL/CO/6, 19 October 2017, paras. 21 and 22; Committee on Economic, Social and Cultural Rights. Concluding Observations (Mexico), United Nations document, E/C.12/MEX/CO/5-6, 17 April 2018, paras. 16 and 17.

closely related to this subject: corruption in government procurement and ESCER; and the relation between corruption and poverty.

1. Maximum Resources Available

154. The IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA/SRESCER) underscore that economic and financial resources are needed to realize both civil and political rights and ESCER. The State needs funds both to operate its justice system or elect political authorities and to implement its educational and health systems. Particularly as regards ESCER, the lack or diversion of public funds due to acts of corruption affects not only the immediate obligation of States to realize such rights. They also, and particularly, obstruct States' ability to fulfill their obligation to progressively achieve their full realization. In fact, they may even cause a regression in the enjoyment of those rights. For that reason, a first approximation to the issue of corruption and ESCER is achieved by looking at compliance with the duty of States to allocate a "maximum amount of available resources" to the realization and satisfaction of such rights.¹⁵³ The connection has become obvious because when corruption entails the illicit diversion of public funds in order to benefit private interests, or when the exercise of power is manifested in obstacles to those resources being collected, made available, and used to realize rights, the result is that the State is prevented from meeting its human rights obligations in general as it has fewer resources at its disposal.
155. The IACHR and its REDESCA/SRESCER have identified four different situations in this regard. The first is when, due to acts of corruption, funds allocated to realize ESCER are diverted. In that case, corruption will pose an obstacle to the State's ability to fully meet its obligations in this regard.¹⁵⁴ That is to say, the impairment of said rights is a result of public funds being siphoned off, leaving fewer resources available for effective realization of ESCER. These cases must be investigated and punished, and measures need to be adopted to ensure restitution of the diverted funds.
156. A second scenario is when a public service designed to realize ESCER is impaired by macro-corruption, as a result of which so many public funds are diverted that it is no longer possible to adequately satisfy the rights of the citizens who depend on those services. Examples of this are when funds are diverted on a large scale away from social security, health, housing, education, pension, and other systems. In such cases, the State must prosecute those responsible, recover the assets, and do

¹⁵³ "Corruption reduces the resources available for the progressive realization of economic, social and cultural rights (and therefore undermines States' obligations under Article 2 of the International Covenant on Economic, Social and Cultural Rights)." United Nations General Assembly. Final. 5 January 2015. A/HRC/28/73, para. 20. c.

¹⁵⁴ "Corruption has also been a part of post-conflict administrations, not only undermining the legitimacy of the country's rulers and the rights of the ruled, but also deeply eroding the State's coffers, which are already insufficient to meet the basic needs of the citizenry in terms of decent living standards, health, work, education, and justice." IACHR, *Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, para. 53.

whatever it takes to restore the services hit by corruption. Here distinct groups can be made out, to whom reparation must be made, inasmuch as they victims of violation of their rights caused by large-scale acts of corruption.

157. A third scenario is when a public service or social program intended to give effect to ESCER is co-opted by private interests, that cause it to deviate from its proper functions or goal. In such cases, we are up against not just illicit acts siphoning off huge sums of money, but criminal practices as well that directly impair the core content of ESCER. One example of this is when health care services are not only decimated but also deliver poor quality medicines or outright placebos, or when medical equipment or inputs are used that are ill-suited for complex treatments (dialysis, surgery). These are human rights violations directly triggered by acts of corruption. In these cases the State's response is more complex, because it has to make sure that it disbands the criminal structures involved, restore proper service for the public, while, at the same time identifying and compensating the direct victims of those criminal acts as well as those affected by not being able to access the goods and services needed for the enjoyment of their ESCER.¹⁵⁵
158. The fourth scenario is when authorities find themselves under pressure from private interests to unduly trim the ability of the State to access the sources of funding needed to realize ESCER. In this regard, it is vital that fiscal and tax policies be designed and implemented with a human rights perspective, espousing principles upholding participation, accountability, transparency, and access to information. Low levels of tax revenue collection, on top of tax deductions, exemptions and tax evasion practices all have a negative effect on, or pose an obstacle to, the funding of ESCER policies and programs. For that reason, the competent authorities to resolutely combat the misuse of a privileged position to induce the authorities to water down tax provisions or weaken the regulatory and oversight capabilities of the State vis-a-vis ESCER and human rights in general.¹⁵⁶
159. Under all those scenarios, States are duty-bound to implement the mechanisms needed to restore legality, reform the institution involved, and put an end to the violation of ESCER. It is important also to bear in mind the responsibility of the State for ensuring the provision of services, regardless of whether it provides them directly or outsources them to private sector providers. Social services are there to comply with a duty of the State, so that their concession to private sector providers does not exempt the State from its responsibility.¹⁵⁷ Inter-American case law has clearly drawn attention to specific obligations of States in such contexts, as when,

¹⁵⁵ In a 2001 report on Paraguay, the Commission was already focusing on this issue due to information it had received: "It has also been pointed out, with regard to the relation between corruption and economic, social, and cultural rights, that when a Minister's decision is "bought", the decision he takes is primarily influenced by how much personal enrichment he can derive from it. For example, a government obliged to take deliberate, concrete steps designed to achieve the highest and most stable level of employment possible may be persuaded, through corruption, to choose a more capital-intensive, rather than labor-intensive, project.." [Tr. Own translation from the Spanish]. IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110, doc. 52, March 9, 2001, para. 152.

¹⁵⁶ IACHR, *Report on Poverty and Human Rights in the Americas*, OEA/Ser./L/V/II.164, Doc. 147, September 7, 2007, paras. 493-502.

¹⁵⁷ I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, para. 184.

for instance, the I/A Court of H.R. stated that: "the provision of public services implies protecting public rights. Even when the health service is provided by a private entity, the State maintains the obligation to provide public services and to protect the respective public right."¹⁵⁸ Consequently, States have a duty to regulate, monitor, and protect people from non-observance of their human rights due to acts of corruption or corrupt situations in social services, be they administered directly or outsourced to private businesses and agents.

2. Discrimination

160. A second approximation to the issue of corruption and ESCER is achieved by looking at discrimination. Prohibition of discrimination is common to all categories of rights and entails both refraining from actions that in any way are geared, directly or indirectly, to creating discriminatory environments and requiring the adoption of affirmative measures and pro-active steps by States to revert or change already existing biases in their societies. In general, the IACHR and its REDESCA/SRESCER note that acts of corruption have a disproportionately negative impact on the enjoyment of ESCER by persons who have historically been discriminated against and excluded, including those living in poverty and extreme poverty, given they have fewer ways in which to defend themselves and confront misuse of power by both the State and private enterprises and entities. By exacerbating the concentration of resources, blurring the public purposes of State institutions, and diverting power to private vested interests, corruption helps shore up discrimination and social exclusion. In other words, corrupt practices generally prevent the vulnerable from enjoying "accessibility, availability, quality, and acceptability" when it comes to ESCER; substantially reduce their ability to realize their right to development; and directly jeopardize their chances of living a decent life.
161. One manifestation of the relation between corruption and the realization of ESCER is the practical necessity, when requesting provision of a State service, to pay a bribe or come up with a perk for the government official involved. Those who do not oblige are excluded or forced to wait for enjoyment of social rights that in most cases are guaranteed by States' regulatory frameworks. On the other hand, those who pay to gain access to a public service or get better service obtain an illegitimate privilege. Such treatment is neither objective nor reasonable; nor can it be deemed to pursue a legitimate purpose. It is in fact a human rights violation, creating an obligation for the State in question to put a stop to such practices and improve the provision of public services. Obviously, in cases in which they constitute the only way to access public services, the chief responsibility lies with the person demanding payment, not the person forced to acquiesce to it. Whenever these forms of corruption arise, the State needs tact to put an end to them and punish those responsible. In other cases of discrimination (of co-option by institutions), discrimination also occurs when the State fails to counter them by providing preferential access to public services for vulnerable segments of society. In those cases, too, there may be discrimination based on corruption, which needs to be rectified by adopting

¹⁵⁸ I/A Court H.R., Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 96.

corrective measures to ensure that preferential measures on behalf of those individuals or segments achieve their purpose.

162. One form of corruption that the Commission finds particularly worrisome is patronage (cronyism) and its impact on equality. Treating people differently based on their political views is a form of discrimination. Thus, when access to public services is made to depend on affinity with a particular political, religious, or other sector, such differentiation violates international human rights obligations, given that public goods are being used to secure a private (political, religious, or other) benefit. Thus, the IACHR and its SRESCER have voiced their concern at the practice of making access to services protecting the rights to health and food conditional upon possession of a document accrediting support for the ruling party in Venezuela.¹⁵⁹ They have also condemned the denial of emergency health care for persons identified as opponents of the Government of Nicaragua, in connection with the social protests and State repression in 2018, as well as the workplace reprisals by the State against medical personnel and teachers, based on their political opposition to the Government.¹⁶⁰

3. Impact and Materialization of Corruption in ESCER

163. The IACHR and its SRESCER note that economic, social, cultural, and environmental rights may be seriously and negatively impacted by corruption, both directly and indirectly. An act of corruption directly impairs a right when it is used as a means to prevent its effective realization and enjoyment; for instance, when a person has to make unlawful payments to study or gain access to health care, when a company exerts political pressure and improper influence on State authorities in order to exploit indigenous lands and resources, when funds allocated for social programs and public policies are diverted into private hands, or when, in order to benefit private vested interests, the exercise of a State's regulatory and oversight functions, in environmental or workplace settings, is weakened or annulled, and so on. In such instances, corruption is used directly to impair protected rights, be it by obstructing direct access to their full enjoyment or by reducing the resources specifically required to secure those rights.
164. In other situations, on the other hand, acts of corruption take the form of a condition contributing indirectly or in a more subtle or covert manner to the commission of a violation of ESCER, as when, for instance, the authorities find themselves pressured to prioritize private interests in their fiscal policy, thereby reducing the overall

¹⁵⁹ IACHR. [Democratic Institutions, the Rule of Law and Human Rights in Venezuela](#). OEA/Ser.L/V/II. Doc. 209, December 31, 2017, pars. 411, 412, and 444; IACHR. [IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health](#), Press Release of February 1, 2018.

¹⁶⁰ IACHR. [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), OEA/Ser.L/V/II. Doc. 86, June 21, 2018, paragraphs 141 to 153; IACHR. [SRESCER views with serious concern information about arbitrary dismissals and harassment against medical personnel, university professors and students in Nicaragua](#), Press Release of September 10, 2018; IACHR. [REDESCA of the IACHR expresses profound concern about discrimination for political reasons in the exercise of the rights to work and health in Nicaragua](#), Press Release of August 21, 2019.

availability of public resources; when they fail to take pro-active steps to recover resources diverted by acts of corruption; when they inflate prices in procurement processes or prioritize private interests in public tenders for jobs in the education or health sectors, thereby jeopardizing quality in educational and health care services, and so on and so forth... In these cases, even if there is no direct link to a concrete rights violation, corruption plays an important part by paving the way for deeds that may well impair those rights and prevent their realization. In what follows, the IACHR and its SRESCER provide examples of how acts of corruption can impact the content of specific rights. In many of these cases, they observe with concern the extent and degree of the damage they can do to enjoyment of ESCER.

165. Health care is one of the public services with a disproportionately large share of the most serious corruption cases in the region. As the Committee for the International Covenant on Economic, Social and Cultural Rights has pointed out, there are several dimensions to the right to health (availability, accessibility, acceptability and good quality),¹⁶¹ and corruption may greatly impact each of them.¹⁶² Following are examples of a few such impairments. Medical and health care services require, inter alia, huge investment of public funds, which makes it a sector replete with possibilities for corruption. Likewise, by diverting public resources, corruption makes it difficult or impossible for the State to allocate "the maximum amount of available resources" to this area.¹⁶³
166. One form of corruption that affects people in the region directly and on a daily basis is the need to make payments to access health care services or else be derived from public to private health care services, with a view to generating personal economic benefits rather than guaranteeing the right to health. These daily and widespread forms of corruption have a direct bearing on access to public services. In addition, corruption impairs the quality of health care services. The constant diversion of resources ends up undermining the State's ability to ensure that infrastructure and

¹⁶¹ United Nations General Assembly. Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/72/137, 14 July 2017.

¹⁶² "Three main characteristics make the health sector particularly vulnerable to corruption: (a) power asymmetries or an imbalance of information, inter alia, between health-care provider and patient and between government, the private sector and rights holders; (b) uncertainty inherent in selecting, monitoring, measuring and delivering health-care services; and (c) the complexity of health systems: the large number of parties involved makes it more difficult to generate and analyse information in a transparent manner. A fourth problem, sometimes termed "provider moral hazard", is that health professionals, public officials or private actors may choose to act in their own interests rather than in the interests of the rights holders towards whom they bear duties. Moreover, where health systems lack transparency, participation and accountability, a fertile breeding ground is created for corruption. United Nations General Assembly. Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/72/137.14, 14 July 2017, para. 16.

¹⁶³ In his 2017 report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pointed out that "Corruption undermines the State's obligation to realize the right to health "to the maximum of its available resources". Notably, embezzlement diverts financial resources from their intended purpose. C Corruption also reduces the ability of governments to generate maximum resources, including through international cooperation, in the first place by making countries less attractive to donors and investment, and may support tax evasion. Measures to prevent and protect against corruption offences are therefore an essential component of this obligation." United Nations General Assembly. Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/72/137, 14 July 2017, para. 25.

equipment are properly maintained. Likewise, access to quality medicines may be severely impaired by corruption. Pharmaceutical companies, for instance, may offer bribes or illegitimate perks of various kinds to prioritize the purchase of their products or they exert pressure on authorities with a view to eluding a regulatory framework that prioritizes access to medicines as an inherent part of the right to health, for instance by obstructing the application of exceptions to patent rights and delaying use of generic medicines. The authorities may also establish illicit mechanisms to enable them to benefit financially from transactions between the State and health sector enterprises. In any case, the public Treasury, which is vital for the effective and full realization of ESCER, is diminished by such schemes, making it harder for individuals and the population as a whole to exercise their right to health. The worst forms of corruption are found when criminals alter medical products or services or deliver poor quality products or products lacking the right components for the medical treatments for which they are intended.

167. Thus, by way of example, the IACHR and its SRESCER observe, based on public information, that in the Guatemalan health system one of the instances in which corruption impaired realization of the right to health is when the Guatemalan Social Security Institute entered into health service contracts with companies lacking the technical qualifications to provide them, an action that allegedly harmed several patients. Corruption was reportedly also involved in the manipulation of procurement processes with a view to profiting from medical services and medical inputs transactions that allegedly lowered the quality and supply of certain essential medicines in Guatemala.¹⁶⁴
168. Generally speaking, health sector corruption occurs in three broad scenarios: the administration of public funds allocated to the sector (budget allocations, for instance to build clinics and hospitals); the handling and distribution of installations and goods (inputs, medicines, medical equipment) and services designed for health care; and in connection with relations between health care personnel and patients. These same scenarios may also be replicated with regard to the obligation to observe and guarantee other social rights, such as education.
169. Especially serious forms of corruption are also found in the region with respect to the right to education. As with health, the huge volume of resources associated with the right to education at all levels makes it an area that needs to be watched closely, because the impact of corruption may be felt in the long term and is often not perceptible when it is occurring and wreaking havoc. The need for infrastructure, materials, and personnel to be able to provide educational services requires the State to devote huge resources to the sector. When those funds are diverted, the quality of education declines, as the State finds itself unable to pay teachers' salaries, invest in appropriate infrastructure, and, above all, develop long-term public policies for the sector. Likewise, access to education may be curtailed when people are forced to pay for a place in a school or higher education institution, or when the authorities in charge of educational establishments or teaching staff ask for covert bribes as "collaboration" for ensuring a pass in a given subject. Asking for informal

¹⁶⁴ SIPSE. [Escándalo en el Seguro Social de Guatemala](#), May 20, 2015; Prensa Libre. [Cae gerente del IGSS por caso Negociaciones de la Salud](#), June 15, 2016.

payments, be it in return for the use of certain public education facilities, installations, or services or to add private lessons, or asking for extra payment for services that the State is supposed to provide; the lack, too, of regulation or supervision of the handing out of scholarships and educational certificates, of the authorization of educational establishments that turn out to be fictitious or of dismal quality; of the provision of school materials, or of the selection and financing of research and academic publications: all of these seriously impair or violate realization of the right to education. Furthermore, when corruption systematically permeates teacher hiring procedures and the regime and regulatory framework governing the teaching profession, that, too, substantively undermines the quality of that right and the level of education students should receive declines.

170. The IACHR and its SRESCER note that education is a right especially vulnerable to acts of corruption, because it is imparted in a sector receiving huge sums of money handled and administered through complex public systems, in which private companies or suppliers also play a part. Hence the key importance of devising accountability and control mechanisms to ensure effective realization of the right to education. Accordingly, States have an immediate obligation to take effective steps to root out corruption and the lack of transparency in that sector. In particular, the Commission points out that it is children and young people who are disproportionately hard-hit by corruption in the educational sector, when they are left out of it or have only limited and poor quality access to it. That, in turn, makes it difficult to break the vicious circle of poverty and inequality and generates risks to, and impairment of, other rights, too, such the right to health or decent, fair, and equitable working conditions. More broadly, corruption in the educational sector has detrimental effects on society because of the shortcomings and lack of skills of persons educated in that context when it comes to their exercising their trades or professions, and because it instills that type of behavior from an early age and treats dishonest conduct as normal, when in fact it threatens the very bases of democracy. Thus the Commission and its SRESCER conclude that the right to education also constitutes an indispensable tool for combating corruption.¹⁶⁵
171. As regards the right to housing, this is an area that is also susceptible to a variety of forms of corruption. Especially important here are relations between the State and private sector providers, such as construction companies and banks or mortgage financing cooperatives, since housing construction and financing in the region is normally entrusted to the private sector. In any event, regardless whether housing construction and finance is provided through public or State mechanisms or, in general, by private enterprises and agents, the State has regulatory and oversight obligations to ensure realization of the right to a home. Given the scarcity of resources in the region, housing, too, is an area that lends itself to the offering and taking of bribes. This is an aspect worth reviewing and addressing with care, because here, too, corrupt practices may arise (payments for work permits, diversion of funds or illicit manipulating of housing programs, payments for illegal certificates, or irregularities in bidding, selection, and hiring procedures for the

¹⁶⁵ In that connection, the IACHR and its SRESCER underscore the importance of such initiatives as “ETICO” supported by the UNESCO International Institute for Educational Planning (IIEP), which seek to fight corruption in educations by providing specialized analysis and knowledge and capacity-building in this field and by encouraging information sharing.

companies involved) that not only affect the quality of homes but may also violate other rights, such as people's rights to life, integrity, and health.

172. The IACHR and its SRESCER note, in particular, the existence of acts of corruption related to access to and concentration of land that may seriously and disproportionately impair the right to housing and self-determination of indigenous and Afro-descendent or tribal peoples. Bearing in mind that corruption in those contexts undermines security of tenure and collective ownership of those territories, States have strict obligations to guarantee effective mechanisms for prior consultation and prior free and informed consent channels for such populations, particularly with regard to projects, rules, or policies that generate or may trigger impacts on their way of life and their particular cultural conceptions regarding enjoyment of the right to housing. The Commission and its SRESCER observe with special concern cases in which acts of corruption lead to forced displacements of these persons, which directly impair their right to housing, among other rights. Such acts of corruption occur, for instance, when companies and private agents pay authorities to gain access to concessions or projects that affect those peoples' territories or unlawfully sell those lands;¹⁶⁶ there may even be cases of indigenous leaders themselves being bribed as a way for outsiders to get at their land and homes, breaking up community ties in the process.
173. Corruption may also take the form of putting pressure on and influencing the taking of both political and technical decisions by competent authorities in order to relax regulations, prioritize certain economic activities and project in certain areas, or steer land-use planning toward private uses that have adverse effects on ESCER. In such a context, for instance, those populations' rights to food and water may also be threatened by restricting the availability and quality of the food products or water sources they depend on through discriminatory allocation of land, unlawful expropriation of land, corruption -- be it respect of access to seeds, the use of water resources, or the supply of water -- or by allowing damage to their crops and water sources. In general, systems having to do with the handling of ownership and use of land and natural resources, combined with the huge demand for those assets by a variety of industries and business interests generate opportunities for corruption, which, if it is not effectively reined in, tends to spread and do grave harm to the people and communities involved.
174. In all those examples, the social damage wrought by corruption is evident. State are therefore under an obligation to make every effort to identify the direct victims and ensure they receive full reparation, as well as the sectors affected, in order to accord priority to satisfaction of their rights, starting, in particular, with the planning and

¹⁶⁶ In connection with its monitoring functions, the IACHR has, for instance, ascertained that "The situation of indigenous and Afro-descendant peoples is aggravated by conflicts over territory, whether because of mining or tourism projects or other projects aimed at developing natural resources [...]. The situation of the Garifuna community of Barra Vieja, which the IACHR visited, is an example of a land-related conflict associated with tourism investment. The members of this community, in the city of Tela, were reportedly victims of orders evicting them from their lands to clear the way for tourism investment projects. This eviction order issued by the First Court of Appeals of La Ceiba, had been the result of an alleged irregular appropriation of part of Garifuna territory in the Bahía de Tela area by the Honduran National Port Authority [...]. Later, these lands were illegally sold on to San Pedro Sula businessmen." IACHR. IACHR, The Human Rights Situation in Honduras, OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015, paras. 80 and 81.

implementation of State budgets. Generally speaking, the IACHR and its SRESCER consider that corruption, in the broad sense, also has to do with "Business and Human Rights" issues, because those private sector players are a key determinant when it comes to getting a grip on efforts to combat corruption and its effects on human rights. Thus, for example, according to the commentaries on the Guiding Principles on Business and Human Rights, States "should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed."¹⁶⁷ Accordingly, the Commission and its SRESCER deem it necessary to underscore the importance of applying, whenever they are relevant to a combating corruption context, the standards that have been set and the content of the obligations of States identified at both the inter-American and universal level addressed by research into "Business and Human Rights".

175. It transpires from the foregoing analysis of rights that, as regards ESCER, the corruption prompted by diverting public funds to private purposes or influence exerted to divert authorities away from public goals undermines the State's ability to comply with its international obligations. One of the activities at highest risk of such diversions of funds is government procurement,¹⁶⁸ where it is therefore important to highlight aspects that are especially worrisome for this Commission.¹⁶⁹ There are a number of cases in the region of large-scale and macro-corruption related to government procurement. The huge sums involved and weak institutional controls facilitate a variety of illicit acts. Thus, it is possible to find forms of corruption involving the bribing of government officials and cases in which it those officials who extort companies wishing to do business with the State. In several countries in the region complex macro-corruption schemes have been uncovered relating to government procurement. Here we find not rudimentary forms of corruption, but complex system for capturing government contracts, associated with veritable cartels of enterprises that, in conspiracy with public authorities, decide on who gets which piece of the pie (public works), the time frames, amounts, and even the bribes to be paid. Even though direct procurement mechanisms are usually selected for these practices, given that they are subject to less oversight, other more sophisticated forms of government procurement are also used for corruption due to the large sums of money at stake. These include, for example,

¹⁶⁷ United Nations, Human Rights Council. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. A/HCR/17/31, 21 March 2011, commentary to Principle 26.

¹⁶⁸ Government procurement worldwide accounts for approximately 15% of global GDP. According to the United Nations Office on Drugs and Crime (UNODC) and the Organisation for Economic Co-operation and Development (OECD), between 10% and 25% of the value of government contracts is lost through corruption. World Economic Forum. How transparency can help the global economy to grow. 10 October 2018. According to the OECD, 57% of bribes are related to government contracts. OECD. Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials. OECD Publishing, Paris. December 2, 2004.

¹⁶⁹ This issue was already addressed from a human rights perspective in the report of the Rapporteur on Economic, Social and Cultural Rights, 2005: United Nations, Economic and Social Council, Sub-Commission on the Promotion and Protection of Human Rights. Progress report submitted by the Special Rapporteur. Progress report of the Special Rapporteur. Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights Rapporteur Christy Mbonu, E/CN.4/Sub.2/2005/18, 22 June 2005, paras. 32 to 37.

public tenders, concession contracts, public-private partnerships, permits for specific economic and productive activities, the privatization of public services that are essential for guaranteeing ESCER, or procurement of goods and services, including consultancy and technical assistance services.

176. The Commission observes that business groups with enough clout may even get to organize or directly manage presentations of bids and procurement and concession processes, distorting the notion of free competition and capturing competent government entities. These corrupt agreements resort frequently to revisions or amendments to contracts, in which the procurement price is changed at will or alterations made to the company's obligations vis-a-vis the State. Interventions can also happen earlier on with alteration of the terms of reference, modification of schedules, or, more broadly, changes to regulations that favor private interests. In all these scenarios, the existence of weak institutions exacerbates the systematic use of such tricks, whereby the discretionary and obscure nature of the operations permits illicit arrangements at the Treasury's expense and definitely detrimental to the State's ability to comply with its human rights obligations. The IACHR notes with the utmost concern that these arrangements may involve the most senior government officials and huge amounts of money. There are also cases in which government procurement is used for criminal deviation of resources. Here, we are dealing not just with bribes or misappropriation of funds, but often with major fraud relating to unnecessary works, works that never materialize, products that no one buys, as well as other criminal practices. In short, the corrupt practices employed in such contexts do not just diminish available funds; they also open up opportunities for a whole range of illegal deeds. Linked to such acts of corruption are ties between government agents and organized crime, money laundering, acts of political pressure, the co-opting of other strata to guarantee impunity, and so on.
177. Therefore, these procurement issues, including procedures governing concessions and government purchases, are directly related to various human rights violations. That puts States under an obligation to take all necessary steps to prevent acts of corruption, thwart corrupt conspiracies, punish those responsible, recover diverted assets, and undertake the regulatory and institutional reforms needed to strengthen the framework and options open to the State to respond to such cases or correct the regulations enacted as a consequence of the corruption or undue influence exerted by private interests. For instance, the United Nations Special Rapporteur on corruption and its impact on the full enjoyment of human rights stressed more than 10 years ago that in order to avoid these forms of corruption, procurement processes need to be transparent, open to competition, provide ample information, incentives, and clear and strictly enforced rules and regulations, with effective sanctions for non-compliance.¹⁷⁰ It is likewise important to point out that the so-called "Lima Commitment" states that one line of action for promoting democratic governance when faced with corruption needs to address issues relating to public works, and government procurement and hiring. As for transparency, it mentions the importance of making government procurement and hiring systems for services

¹⁷⁰ United Nations, Economic and Social Council, Sub-Commission on the Promotion and Protection of Human Rights. Progress reports submitted by the Special Rapporteur [Progress Report of the Special Rapporteur. Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights](#). Rapporteur Christy Mbonu, E/CN.4/Sub.2/2005/18, 22 June 2005, para. 36.

and public works transparent, including public-private partnerships; of keeping records of individuals and legal entities associated with corruption and money laundering cases; and of managing infrastructure and public resources assigned to ensuring resilience to disasters and keeping a close eye on the government's issuance of permits.¹⁷¹

178. Finally, the IACHR and its SRESCER wish to underscore the importance of evaluating the international human rights obligations of States in connection with privatization processes and the granting of public services concessions that are vital for guaranteeing ESCER and human rights in general. Given the interests and huge sums of money involved, these frameworks are fertile ground for corruption and may blunt public functions and both State and private obligations to ensure enjoyment of specific rights, such as the right to water, health, education, social security, or housing, thereby directly affecting persons and communities. Accordingly, the State must adopt whatever measures are needed to prevent corruption or exposure to it, from the very start of such processes and throughout the provision of those services, once they have been privatized or outsourced. The State must also pay special heed to protecting the rights of the most vulnerable sectors that depend on those services, both when designing the concession or privatization mechanism and when the entrepreneurs involved are operating and managing them. In such contexts, it is vital to enforce strict standards of transparency, access to information, effective participation, and access to justice, inasmuch as the threat to ESCER tends to be more latent and close at hand.

4. Poverty

179. The poverty and extreme poverty experienced by much of the population in the region renders individuals vulnerable with respect to the enjoyment and exercise of their rights. Where institutions are weak and corruption rampant, the poor are exposed to various forms of violence and to risks that threaten the exercise of their economic, social, cultural, and environmental rights.¹⁷² Thus poverty renders them susceptible to corrupt practices, such as cronyism, bribes to gain access to social services and goods, and so on. The IACHR has stressed that State corruption directly impacts the poor, for instance in terms of budget allocations for public works project. Such acts thus have a specific impact on effective enjoyment of human rights, especially for persons living in poverty.¹⁷³
180. Corruption—in both its day-to-day and more systemic manifestations—directly affects persons living in poverty. The problems that give rise to corruption and manipulation of Treasury funds affect the volume of funds allocated to transfer

¹⁷¹ Eighth Summit of the Americas, [Lima Commitment “Democratic Governance against Corruption,”](#) April 2018, paragraphs 27, 29, 31, and 32. Other noteworthy initiatives focusing on specific areas include [The Extractive Industries Transparency Initiative](#) and the [Open Government Partnership](#).

¹⁷² IACHR, [Report on Poverty and Human Rights in the Americas](#), OEA/Ser.L/V/II.164, Doc. 147, September 7, 2017, par. 337.

¹⁷³ IACHR, [Report of the Office of the Special Rapporteur for Freedom of Expression. 2002. Chapter IV “Freedom of Expression and Poverty”](#), OEA/Ser.L/V/II.117, doc. 1 rev. 1, March 7, 2003, par. 21.

programs.¹⁷⁴ That being so, the Commission calls for a pooling of efforts to ensure transparency in government actions, in such a way as to consolidate effective oversight.¹⁷⁵ Furthermore, as regards public policies for eradicating poverty, the State has recommended that States vigorously combat impunity and corruption,¹⁷⁶ and has stressed the need for effective accountability with citizen participation.¹⁷⁷

181. Corruption has different ways of impacting the most vulnerable, who end up being victims of fraudulent practices by the authorities. The misappropriation of public funds has a disproportionate impact on the poor, impairing their impact on access to basic public services. For example, at times they are required to make unofficial payments to receive an essential or emergency service.
182. The Commission is deeply concerned about corruption relating to social programs directed at sectors living in poverty.¹⁷⁸ Social programs are public policies designed to satisfy human rights, so that the State is not just obliged to create such programs but also to see to it that those resources are properly administered and pursue the goals they are intended to achieve.¹⁷⁹ Social programs must be designed to address the population's serious problems with accessing basic services, home loans, basic and higher education, and health care on an equal footing. Therefore, States need to avoid those programs failing to meet the goals they were intended to meet due to corruption in the form of fraudulent practices or patronage. Such programs must be implemented in a technical, efficient, and transparent manner. To ensure that, there have to be accountability mechanisms and access to information. These have to be inclusive and provide an opportunity for both citizens in general and the target population in particular to participate in decisions regarding them. Particularly important are citizen watchdog mechanisms and periodic evaluations of the social programs to ensure prompt detection of corruption. The use of state-of-the-art

¹⁷⁴ IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, December 7, 2017, par. 484.

¹⁷⁵ IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression. 2002. Chapter IV "Freedom of Expression and Poverty", OEA/Ser.L/V/II.117, doc. 1 rev. 1, March 7, 2003, par. 23.

¹⁷⁶ IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, December 7, 2017, Recommendation No. 4 (Accountability).

¹⁷⁷ IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, December 7, 2017, para. 485, 487 and 491.

¹⁷⁸ In its report on Poverty and Human Rights, the IACHR emphasized "the need for public poverty reduction policies to include a comprehensive human rights approach at every stage: design, planning, implementation, and evaluation. For that, it is vital to strengthen institutional, legal, and regulatory frameworks by recognizing economic, social, cultural, and environmental rights, with its institutionality and the transparent determination of its specific scope." IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, December 7, 2017, para. 485.

¹⁷⁹ In its report on Guidelines for Preparation of Progress Indicators in the Area of ESCR, the IACHR already highlighted this area: "An important aspect for measuring state capabilities is the existence of oversight, monitoring, and evaluation agencies for social services and programs within the State structure, as well as the capacity of the State to implement policies to combat corruption and patronage in the use of funds allocated to the social sector. The idea is also to collect information on the accessibility of social programs and services organized by the State by examining, for example, physical access, disclosure, and cultural pertinence." 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. 40.

information and communication technology may be a useful tool for such citizen oversight.

H. Affectations and Impact of Corruption on Freedom of Expression

183. The idea in this section is to analyze the impact of corruption on freedom of expression and access to public information. To that end, it will establish the role of freedom of expression, the press, and journalists in the fight against corruption, as an effective tool for citizen oversight of authorities. It will also establish the role of instruments relating to freedom of expression that are important for combating corruption, such as access to public information, protection of sources, the use of technology, and so on. Also analyzed is the Commission's stance on the scope of freedom of expression and strict testing of legitimate limits to the exercise of freedom of expression: in this case, with a particular focus of issues relating to efforts to combat corruption.

1. Freedom of Expression

184. Freedom of expression has a key role to play in a democratic society.¹⁸⁰ It is an autonomous right with both an individual and a collective dimension. In its collective dimension, it is a right that enables the public to access information from diverse sources to assess a government's performance and it performs a vital function for the exercise of other rights. Thus, it is tied in with political rights, freedom of the press, freedom of conscience, freedom of association, the right of assembly, and so on. Related to the core role of freedom of expression, it is also a right that can be negatively impacted by corruption. Those who engage in illicit conspiracies need secrecy, so that one of their priorities is to hide their illicit acts from the public eye. That is why freedom of expression is a right that irks and is regularly undermined by those who direct or are involved in acts of corruption.
185. One of the principal functions of freedom of expression is to facilitate and make it possible for individuals and social actors of various kinds to exercise social oversight of government and other powers that be. As the IACHR has stated: "freedom of expression is one of the most effective ways to denounce corruption,"¹⁸¹ and it enables citizens to participate not only in making decisions that affect them but also in the oversight of government.¹⁸² Therefore, the exercise of freedom of

¹⁸⁰ United Nations. International Covenant on Civil and Political Rights. Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression. UN Doc. CCPR/C/GC/34. 12 September 2011, para. 3; IACHR. Annual report for 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, para. 33.

¹⁸¹ IACHR. Annual report for 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, para. 34.

¹⁸² IACHR. Special Rapporteur for Freedom of Expression, A Hemispheric Agenda for the Defense of Freedom of Expression. OEA/Ser.L/V/II/CIDH/RELE/INF.4/09. February 25, 2009, para. 54.

expression plays a fundamental role for investigating and reporting corruption.¹⁸³ Hence, the State's duty to create "an environment free from intimidation for the exercise of freedom of expression by those who investigate, report and denounce acts of corruption."¹⁸⁴

186. While the right to freedom of expression is not an absolute right, it is subject to a strict system of legitimate restrictions pursuant to Article 13.2 of the American Convention on Human Rights. Thus, according to the established rules, to be legitimate, all limitations on freedom of expression must pass a strict three-part test, which requires that sanctions: (1) be clearly and precisely defined by a pre-existing formal and material law;¹⁸⁵ (2) be geared to achieving legitimate objectives authorized by the Convention ("respect for the rights or reputations of others" or "the protection of national security, public order, or public health or morals"); and (3) be necessary in a democratic society (for which they must meet the requirements of suitability, necessity, and proportionality¹⁸⁶) This test is applied especially strictly when the prohibitions are established by criminal law.¹⁸⁷ Likewise, the IACHR and the Court have consistently maintained that the necessity test for restrictions must be more strictly applied when it is a question of expressions to do with the State, matters of public interest, government officials in the performance of their functions, or candidates to elective office, or private individuals voluntarily engaged in public matters, as well as to political discourse and debate.
187. This, subsequent liabilities may be a legitimate way to restrict freedom of expression to avoid excesses or abuses in the exercise of it and to protect a limited set of legitimate interests established in the aforementioned article. For that reason, the subsequent liabilities rule for freedom of expression is a critical factor that may constrain or inhibit the investigation and dissemination of acts of corruption. The Inter-American Court found that protecting honor via a criminal law was not compatible with the American Convention when it is obviously used against democratic pluralism, although it may be legitimate in other cases.
188. In this regard, the Inter-American Court in resolving the case of Tulio Álvarez Ramos v. Venezuela, concerning an activist that was criminally convicted in the context he was criticized about the management of public funds in the National Assembly of the

¹⁸³ IACHR. Resolution 1/17. Human Rights and the Fight against Impunity and Corruption. September 12, 2017.

¹⁸⁴ IACHR. Resolution 1/18. Corruption and Human Rights. March 2, 2018.

¹⁸⁵ I/A Court H.R., *The word "Laws: in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A, No. 6, pars. 35 and 37; and *Case of Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013, Series C. No. 265. para. 130.

¹⁸⁶ I/A Court H.R., *Case of Tristán Donoso v. Panama*, *supra*. para. 56, and *Case of Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013, Series C. No. 265. para. 130.

¹⁸⁷ I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74; *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004, Series C. No. 107; *Case of Ricardo Canese v. Paraguay*. Merits, Reparation, and Costs. Judgment of August 31, 2004, Series C. No. 111; *Case of Palamara Iribarne v. Chile*, Merits, Reparation, and Costs. Judgment of November 22, 2005. Series C. No. 135; *Case of Kimel v. Argentina*. Merits, Reparation, and Costs. Judgment of May 2, 2008 Series C No. 177; IACHR, Annual Report for 1994, Chapter V: Report on the Compatibility of 'Desacato' Laws with the American Convention on Human Rights. OEA/Ser. L/V/II.88, doc. 9 rev. February 17, 1995.

country. The Court determined that in the case of a speech protected by his public interest, such as the behaviors of public officials, the response through criminal law is not conventionally appropriate to protect honor¹⁸⁸. In this sense, the Court highlighted:

The use of criminal law to disseminate news of this nature would directly or indirectly produce an intimidation that, in short, would limit freedom of expression and prevent submitting to public scrutiny behaviors that violate the legal system, such as corruption acts, abuse of authority, etc. For a fact, this would weaken public control over the powers of the State and would damage democratic pluralism. In other words, the protection of honor through criminal law that may be legitimate in other cases is not under the Convention in the previously described hypothesis¹⁸⁹

189. The use of criminal laws is incompatible with the investigation and publication of information regarding acts of corruption. Corruption, in all its shapes and sizes, is a matter of the greatest public interest and investigations into that type of inappropriate conduct, which harms society as a whole, ought not to be inhibited by the threat of criminal prosecution.¹⁹⁰ The offenses of defamation, libel, calumny, and contempt of public authority (*desacato*) are those most invoked in the region by those alleged to be under suspicion of corruption take journalists and public whistleblowers to court. Here it is to be noted that criminal law is the most restrictive and severe mechanism at the State's disposal for addressing possible misuse in the exercise of freedom of expression and should therefore be reserved for the most exceptional cases, such as incitement to hate and violence.
190. On the other, when legislation establishes a subsequent civil responsibility in order to settle conflicts between freedom of expression and the reputation of persons affected by the publication of journalists' investigations, the IACHR Declaration of Principles establishes that in those cases it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news. In those cases, moreover, any fines that may be imposed must be proportionate so as not to inhibit investigative journalism. The I/A Court of H.R. has reiterated that "the fear of a civil penalty...may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of

¹⁸⁸ I/A Court H.R., Case of Álvarez Ramos v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C No. 380. (Only in Spanish), p. 121.

¹⁸⁹ I/A Court H.R., Case of Álvarez Ramos v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C No. 380. (Only in Spanish), p. 122

¹⁹⁰ The tenth principle in the IACHR Declaration of Principles on Freedom of Expression is quite clear on that: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." OAS, Declaration of Principles on Freedom of Expression. Adopted by the Commission at its 108th regular session, held from October 2 to 20, 2000.

expression than a criminal punishment, since it has the potential to attain the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official."¹⁹¹

191. In the same vein, the IACHR ascertained that in extreme cases some States resort to censorship, and the blocking or taking down of websites or social media accounts, in both traditional media and on the Internet, of media investigation government corruption. In Nicaragua, the State has taken to both direct and indirect censorship and interfering, using both State agents and violence by private individuals against independent media.¹⁹² Likewise, the IACHR has shown that a large number of journalists and media became victims of censorship in Venezuela after they published reports of corruption and documented that country's internal crisis.¹⁹³
192. When State institutions have been infiltrated by corruption, that process also triggers an erosion of guarantees for freedom of expression and consequent violence against journalists -- including extreme violence and murder -- as a way to silence those investigating organized crime, misuse of power, or corruption.¹⁹⁴

2. Investigations and Complaints of Corruption as a Matter of Great Public Interest

193. Denunciations of acts of corruption and discussions regarding the management and handling of public funds fall within categories of discourse that are especially protected by the right to freedom of expression in inter-American case law. There are three categories of such discourse: i. Political discourse and discussion of matters of public interest; ii. Discussion about government officials and candidates to public office, and iii. Discourse regarding matters inherent to the dignity of persons.
194. The IACHR has emphasized in no uncertain terms that the three-part test mentioned earlier in the analysis of restrictions on political discourse and discussion of matters of public interest, and regarding government officials and candidates to public office must be applied as rigorously as possible.¹⁹⁵

¹⁹¹ I/A Court H.R., Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 129; I/A Court H.R., Case of Fontevecchia and D'Amico v. Argentina. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, para. 74.

¹⁹² IACHR. [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#), OEA/Ser.L/V/II. Doc. 86, June 21, 2018, paras. 196 and 197.

¹⁹³ IACHR, [Democratic Institutions, the Rule of Law and Human Rights in Venezuela](#), Country Report. OEA/Ser.L/V/II. Doc. 209, December 31, 2017, para. 292.

¹⁹⁴ IACHR. [Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression](#). Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF.16/17. March 15, 2017, par.7; IACHR. June 2018, paras. 5 and 20.

¹⁹⁵ IACHR. [Report No. 4/17](#). Case of Tulio Alberto Álvarez, Venezuela. Case 12.663, Merits. January 26, 2017, paras. 83 and 85.

195. The IACHR and its Office of the Special Rapporteur have pointed out that applying criminal law to curtail debate of matters of public interest and about government officials inhibits investigation and debate about corruption cases. That was highlighted by the IACHR in its report on the merits in the *Tulio Álvarez v. Venezuela* case, with respect to the use of criminal law characterizations designed to protect honor¹⁹⁶ to inhibit the reporting of cases of corruption, as well as in the report on the merits in the case of *Vladimiro Roca Antúnez et al. v. Cuba* on legal characterizations intended to protect public order and national security.¹⁹⁷
196. Through the monitoring mechanism, the IACHR and its Special Rapporteurship for Freedom of Expression have pronounced on the use of various vaguely and ambiguously drafted criminal characterizations designed to curtail public debate. The Commission has drawn attention to this phenomenon in Venezuela, Cuba, Ecuador, Honduras, Nicaragua, Brazil, Peru, and Guatemala.¹⁹⁸ It remains an ongoing issue. The Special Rapporteurship has found that applying criminal law in Venezuela in order to restrict the free dissemination of ideas and opinions regarding matters of public interest is still going on via "traditional"¹⁹⁹ restrictions, exacerbated by the establishment of provisions such as the so-called "Anti-Hate Law," which provides for severe prison sentences for using language that meets a very broad definition of hate, discrimination, and terrorism.²⁰⁰
197. Likewise, the Special Rapporteurship has drawn attention to the application of the judicial defamation law against a journalist who had reported the possible commission of crimes against humanity by the then President of Ecuador;²⁰¹ the repeated convictions for defamation of journalists in Peru working to disseminate

¹⁹⁶ IACHR. [Report No. 4/17](#). Case of Tulio Alberto Álvarez, Venezuela. Case 12.663, Merits. January 26, 2017, para. 79.

¹⁹⁷ IACHR, [Report No. 27/18](#). Case of Vladimiro Roca Antúnez et al., Cuba. Case 12.127, Merits. February 24, 2018, para. 99.

¹⁹⁸ Office of the Special Rapporteur for Freedom of Expression. Press release R44/15. [On World Press Freedom Day, the Office of the Special Rapporteur Calls on States to Refrain from Using Criminal Laws to Silence Voices of Criticism](#). May 3, 2015.

¹⁹⁹ Office of the Special Rapporteur for Freedom of Expression. Press Release R93/15, [IACHR and the Special Rapporteur Express Deep Concern over the Stigmatization and Judicial Harassment against Three Media Outlets in Venezuela](#). 24 August 2015, IACHR, Press Release R34/16. Office of the Special Rapporteur Expresses Concern over Defamation Conviction in Venezuela. March 14, 2016, Office of the Special Rapporteur for Freedom of Expression of the IACHR and the United Nations. Joint Press Release R51/17. [Venezuela/Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists](#), April 26, 2017. Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release R109/17. [The Office of the Special Rapporteur for Freedom of Expression of the IACHR condemns arbitrary restrictions on freedom of expression and assembly in Venezuela](#). July 29, 2017.

²⁰⁰ Office of the Special Rapporteur for Freedom of Expression. Press release R62/19. [Freedom of Expression Experts of the UN and the IACHR Express Alarm over Expansion of Censorship Measures in Venezuela](#). March 8, 2019. IACHR. Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release No. 179/17. [Office of the Special Rapporteur for Freedom of Expression Expresses Serious Concern over the Enactment of the "Anti-Hate Law" in Venezuela and Its Effects on Freedom of Expression and Freedom of the Press](#). November 10, 2017.

²⁰¹ Office of the Special Rapporteur for Freedom of Expression. Press release R5/14. [Office of the Special Rapporteur Expresses Concern over Confirmation of Criminal Sanctions for Defamation In Ecuador](#). January 24, 2014.

matters of public interest;²⁰² the application of "desacato" (contempt of authority) laws in Cuba;²⁰³ and the institution of criminal proceedings in Chile against those investigating alleged acts of corruption.²⁰⁴

198. Inter-American case law has made abundant reference to the extra protection to be afforded to information and opinions regarding "opinions and statements on matters of which society has a legitimate interest to be informed, in order to be aware of anything that bears on the performance of the State or impacts on general interests or rights, or of anything having significant consequences."²⁰⁵ The disclosure and discussion of acts of corruption is a matter of public interest and, therefore statements regarding such acts must enjoy special protection and careful thought must be given to imposing restrictions on those statements.²⁰⁶
199. Likewise, inter-American jurisprudence has repeatedly held that information and opinions with regard to government officials, persons exercising public office, or candidates to public office enjoy special protection.²⁰⁷ Such people have voluntarily submitted to a different threshold when it comes to protection of their rights and are consequently subjected to greater scrutiny and criticism by the public.²⁰⁸ At the

²⁰² Office of the Special Rapporteur for Freedom of Expression. Press Release R50/17, [IACHR Deplores Deaths and Injuries at Youth Education Center in Paraguay](#). May 6, 2014. Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press Release R52/16, [The Office of the Special Rapporteur expresses concern over the criminal conviction for defamation of a journalist in Peru](#). April 25, 2016. Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release R62/16, [Office of the Special Rapporteur Expresses Concern over a New Criminal Conviction for Defamation against a Journalist in Peru](#). May 6, 2016.

²⁰³ Office of the Special Rapporteur for Freedom of Expression. Press release R152/18, [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba](#). July 17, 2018

²⁰⁴ IACHR. [2016 Special Report on the Right to Freedom of Expression in Chile](#). OEA/Ser.L/V/II/CIDH/RELE/INF.16/17, March 15, 2017, para. 36.

²⁰⁵ I/A Court H.R., Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 121 [Tr.]; I/A Court H.R., Case of Fontevecchia and D'Amico v. Argentina. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, para. 121 [Tr.]; I/A Court H.R., Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, para. 145.

²⁰⁶ I/A Court H.R., Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, para. 146.

²⁰⁷ IACHR. [Annual report for 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, para. 40.

²⁰⁸ I/A Court H.R., Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, paras. 86-88; I/A Court H.R., Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 83; I/A Court H.R., Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 69; I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paras. 152 and 155, I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 83; I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 125 to 129; I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 87; I/A Court H.R., Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 115.

same time, their greater ability to influence society and ease of access to the media afford them greater opportunity to respond to questioning and criticism.²⁰⁹

200. Although this different protection threshold does not entirely deprive those persons of guarantees for their rights, it does entail the possibility of inquiries into private matters that would not be acceptable for private individuals who are not of public interest.²¹⁰ Along the same lines, the Inter-American Court has held that in the case of the official holding the highest elective office in his country, the level of scrutiny allowed to citizens extends beyond his official activities or performance of functions to encompass aspects that, "in principle, could be linked to his private life but revealed matters of public interest."²¹¹
201. From this it may be concluded that the different threshold of protection of such people permits criticism or the disclosure of facts that reflect flaws in the performance of their post of misuses of power. Thus, the Inter-American Court established in the case of *Tristán Donoso v. Panama* that Mr. Tristán Donoso's statements regarding the manner in which a public servant performs the functions assigned by law and whether or not he discharges them in accordance with the law are of public interest.²¹²
202. This different level of protection applies also to persons who, even if they do hold a public office, are public figures of interest to society, such as candidates standing for elective office.²¹³ In the facts examined by the Inter-American Court in the judgment handed down in the *Ricardo Canese v. Paraguay* case, there were references to denunciations by one presidential candidate of a company paying dividends to former dictator Stroessner, when the president of that company was another candidate.²¹⁴ In that case, although the statements made did not directly involve public funds, they touched on questionable actions by a private person that could impact the electoral debate.
203. According to Inter-American case law, democratic debate presupposes free circulation of ideas and information about candidates and political parties stemming from the media, the candidates themselves, and anyone interested in expressing an opinion.²¹⁵ In the same vein, that implies the possibility of everyone must be allowed to "question and investigate the competence and suitability of the candidates, and

²⁰⁹ I/A Court H.R., Case of *Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 122.

²¹⁰ I/A Court H.R., Case of *Fontevicchia and D'Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, para. 62.

²¹¹ I/A Court H.R., Case of *Fontevicchia and D'Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, para. 60.

²¹² I/A Court H.R., Case of *Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 121.

²¹³ I/A Court H.R., Case of *Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paras. 91-94, and 97.

²¹⁴ I/A Court H.R., Case of *Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 91.

²¹⁵ I/A Court H.R., Case of *Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 90.

also to disagree with and compare proposals, ideas and opinions, so that the electorate may form its opinion in order to vote."²¹⁶ These distinctions regarding the various levels of protection of the private life of certain persons engaged in matters of public interests play a key role in the context of efforts to combat corruption. Corruption is not limited to bad practices of persons holding senior government positions. It also involves officials at every level, as well as private persons handling public resources or seeking access to such functions, such as contractors or bidders in government procurement tenders.

204. Thus, information and opinions regarding public figures, including various levels of private persons and legal entities, or government officials, in relation to acts of corruption, must enjoy special protection under Article 13 of the American Convention, because there is no commanding social interest warranting reinforced protection, such as that afforded by criminal law. On the contrary, such stepped-up protection would be unnecessary and disproportionate, and could turn into an indirect censorship mechanism because of its tendency to intimidate and inhibit public debate.²¹⁷ This interpretation coincides with the position taken by other international courts and tribunals.²¹⁸
205. Similarly, the dissemination of information and opinions regarding acts of corruption enable social narratives to be built regarding such acts and express society's disapproval (*reproche social*). Here mention could be made of what happened in the *Kimel v. Argentina* case, where a journalist reported the facts surrounding a massacre during Argentina's last military dictatorship and, based on the information gathered, issued a value judgment on the performance of the Judiciary in the investigation and punishment of what happened.²¹⁹
206. This category of especially protected discourse fulfills a vital function in efforts to combat corruption because of the existence of, or obligation to adopt, State policies that seek to overcome discrimination and social divides. The free flow of information concerning such policies with a view to preventing, denouncing, or debating bad practices or irregularities fulfills an essential purpose for oversight of the execution of resources that are crucial for society. Furthermore, acts of corruption can trigger the loss of resources that are sorely needed for the realization of rights of groups historically have borne the brunt of discrimination.²²⁰ Indeed, the IACHR has ascertained that the impacts of corruption are exacerbated when those affected are vulnerable groups and segments of the population, such as women,

²¹⁶ I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 90.

²¹⁷ IACHR, [Report No. 4/17. Case of Tulio Alberto Álvarez v. Venezuela](#). Case 12.663, Merits. January 26, 2017, para. 84.

²¹⁸ United Nations, International Covenant on Civil and Political Rights. Human Rights Committee, [General comment No. 34 Article 19: Freedoms of opinion and expression](#). UN Doc. CCPR/C/GC/34. September 12, 2011.

²¹⁹ I/A Court H.R., Case of *Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 92.

²²⁰ IACHR. [Resolution 1/18](#). Corruption and Human Rights. March 2, 2018.

social leaders, defenders of land rights, Afro-descendant peoples, indigenous peoples, persons deprived of their liberty, migrants, and LGBTI.²²¹

3. Protection of Journalists' Sources and of the Media

207. Journalism, especially investigative journalism, requires sources that need to be protected if they are to provide information of public interest. In many cases, persons involved or witness to acts of corruption would be interested in informing the press, but that could jeopardize their job, life, bodily integrity, and freedom. Likewise, journalism in general -- and investigative journalism in particular -- also require confidentiality in communications that, in today's digital world, can be illegally traced; confidentiality for documents that journalists receive and which may contain information and content; and confidentiality for physical or digital archives and other inputs used in journalist's investigations.
208. Regarding that vital tool for the work of the press, the IACHR has also documented the fact that in a number of States restrictions have been posed on the right of journalists investigating corruption to keep their sources secret, due to complaints filed by officials or private individuals implicated in denunciations, and also, even, by members of the judiciary or legislators seeking to obstruct an investigation, thereby violating a fundamental principle and prerequisite for investigative journalism.²²²
209. The "Declaration of Principles on Freedom of Expression" of the IACHR establishes that "Every social communicator has the right to keep his/her source of information, notes, and personal and professional archives confidential." The IACHR has considered that this right helps protect their lives as potential witnesses and, thereby, prevent journalists from being victims of violence for fear of a source being identified.²²³ In zones in which violence against the press is especially intense, disclosure of a source may place journalists at greater risk of reprisals either by the source or that source's "enemies."²²⁴
210. As the Special Rapporteurship has underscored on other occasions, the importance of the right to keep sources secret stems from the fact that, in connection with their work and in order to provide the public with the information need to satisfy its right to be informed. Journalists provide an important service to the public when they garner and disseminate information that would not be disclosed if the secrecy of sources were not protected. Therefore, confidentiality is essential for journalists'

²²¹ IACHR. [Resolution 1/18](#). Corruption and Human Rights. March 2, 2018.

²²² Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release R151/18; Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press Release R23/19; IACHR, Special Report on the Situation of Freedom of Expression in Mexico. June 2018, para. 53.

²²³ Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression](#). OEA/Ser.L/V/II CIDH/RELE/INF.16/17. March 15, 2017, para. 163.

²²⁴ Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression](#). OEA/Ser.L/V/II CIDH/RELE/INF.16/17. March 15, 2017, para. 164.

work and for their role in society as providers of information concerning matters of public interest.

211. In addition, in the course of its monitoring, the Rapporteurship has encountered cases of authorities attempting to force journalists to reveal their sources.²²⁵ The Office of the Special Rapporteur for Freedom of Express of the IACHR has maintained that journalists must not be summoned as witnesses by judicial bodies and authorities must respect their right to keep their sources of information confidential. Their material and tools of trade must be neither destroyed nor confiscated.
212. Technological changes have created a new momentum and enable journalists to access tools for gathering and storing confidential information. Journalists use technology to cultivate sources and safely communicate with them in a way that protects their identity, and to establish secure mechanisms for the delivery of information, such as encrypted in boxes or locations in the cloud for virtual storing of information. At the same time, technological change also poses risks, such as digital spying by State and non-State agents using malware and other technology to violate the confidentiality of sources.
213. Recently, States have expressed interest in increasing their surveillance of activities conducted via the Internet. That poses risks for citizens' privacy and for protecting the confidentiality of journalists' sources. The IACHR has drawn attention to the case of Mexican, where it was reported that the Mexican Government and the governments of several federative entities had bought or used software for monitoring people via cellphones.²²⁶The spying program, produced by the NSO group based in Israel, is called "Pegasus" and was used in Mexico to infect the telephones and other devices of journalists, human rights defenders, lawyers, public health and anti-corruption experts, and even members of the international organization set up to investigate the mass disappearance of students in Iguala in 2014."²²⁷
214. The Special Rapporteurship has also drawn attention to several governments in the Hemisphere that have acquired similar mass surveillance programs, with no concern for transparency or accountability, Surveillance program must respect human rights in a digital environment and allow access to public information regarding them. Their operations also need to be regulated by laws that clearly establish the goals they pursue.²²⁸ The IACHR has maintained that not every activity

²²⁵ Office of the Special Rapporteur for Freedom of Expression. Press release R151/18. [Office of the Special Rapporteur Expresses Concern over Measures Forcing Journalists in Peru to reveal their sources and materials](#). July 12, 2018.

²²⁶ IACHR. [Special Report on the Situation of Freedom of Expression in Mexico](#). June 2018, para. 52.

²²⁷ IACHR. [Special Report on the Situation of Freedom of Expression in Mexico](#). June 2018, paras. 52 and 54.

²²⁸ Office of the Special Rapporteur for Freedom of Expression. Press Release R80/15, [The Office of the Special Rapporteur Expresses Concern Over the Acquisition and Implementation of Surveillance Programs by States of the Hemisphere](#). April 21, 2015; Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release R50/15. [The Office of the Special Rapporteur of the IACHR Calls on the United States to Introduce Strong Reforms to the NSA Telephone Metadata Collection Program](#). May 14, 2015; United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the

of this kind is illegitimate and exceptional scenarios exist "that justify different levels of interference depending on the circumstances."²²⁹ To determine that Internet surveillance is admissible, it must be legal, in both the formal and material sense, necessary, and proportionate.²³⁰

215. The use of surveillance technology has profound implications for freedom of expression, since it undermines "the ability of individuals to share or receive information and establish contacts with others. It creates incentives for self-censorship and directly undermines the ability of journalists and human rights defenders to conduct investigations and build and maintain relationships with sources of information."²³¹
216. Accordingly, both anonymity and encryption are fundamental for privacy and the exercise of freedom of expression on the Internet.²³² That being so, States are obliged not to demand full identification of Internet users except in exceptional cases in connection with judicial investigation, in which a proportionality test is applied.²³³ Furthermore, States are obliged not to restrict encryption, which consists of "converting messages, information, or data into a form unreadable by anyone except the intended recipient,"²³⁴ so that they should only exceptionally, and when legal, necessary, and proportional, adopt measures to limit or ban private encryption, automatic encryption, or "default" privacy, or the imposition of centralized key registries or the creation of back doors to enable collection of communication even from encrypted devices.²³⁵

4. Access to Information

217. Article 13 of the American Convention protects not only the right to express and impart ideas and opinions, but also to "seek" and "receive" "information."²³⁶ The Inter-American Court has underscored that this is a fundamental tool for avoiding abuse of authority by government officials, fostering accountability and transparency, permitting public debate, and facilitating actions by citizens to

Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. [Joint declaration on surveillance programs and their impact on freedom of expression](#). June 21, 2014.

²²⁹ IACHR. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17, March 15, 2017, para. 215.

²³⁰ IACHR. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17, March 15, 2017, para. 216.

²³¹ IACHR. [Special Report on the Situation of Freedom of Expression in Mexico](#). June 2018, para. 53.

²³² IACHR. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17, March 15, 2017, para. 227.

²³³ IACHR. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17, March 15, 2017, para. 229.

²³⁴ United Nations, Human Rights Council, Report. UN Doc. A/HRC/29/32, 22 May 2015. par. 6.

²³⁵ IACHR. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17, March 15, 2017, para. 231.

²³⁶ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

question, investigate, and examine whether public functions are being properly discharged.²³⁷ That right is also upheld in Article 10 of the United Nations Convention against Corruption.

218. It transpires from the above that inter-American case law regards access to public information as a fundamental mechanism for people to be able to exercise democratic oversight through public opinion.²³⁸ States in the region, in several countries, have inherited a deeply embedded culture of public sector secrecy and confidentiality.²³⁹ Accordingly, the permanent monitoring by the Rapporteurship for Freedom of Expression of implementation of the right to access public information in the region shows that many of the controversies arising among citizens, organizations, and journalists requiring information from the State have to do with such sensitive issues for combating corruption as government tenders and contracts, the wages and benefits of civil servants, the use made of State resources, and other matters that ought to be subject to maximum accountability.
219. The IACHR has pointed out that access to public information plays a key role in access to justice, especially for persons who have been traditionally been victims of discrimination such as women.²⁴⁰ Along those same lines, it underscores that this right plays an essential part in the investigation and punishment of acts of corruption by disseminating knowledge of whistleblowing mechanisms and facilitating the gathering of proof to support complaints.
220. In an inter-American juridical framework, implementation of the right of access to public information must be governed by the principles of maximum disclosure and good faith. From the first of these two principles, it follows that: i. Curtailments of this right must be established in a limited framework of exceptions to be interpreted restrictively that supports the right to access to information; ii. Grounds for any restriction must be stated and it is up to the State to prove the reasons prompting denial; and iii. Doubts or legal lacunae must be interpreted in favor of the right of access to information.²⁴¹
221. The importance of access to public information means that a culture of secrecy is acceptable "only in very exceptional cases, when confidentiality may be essential" for the effectiveness of the work of public authorities.²⁴² From this it follows that any restriction of the right to seek and receive information must meet the

²³⁷ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 86 and 87.

²³⁸ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 87.

²³⁹ UN Special Rapporteur for Freedom of Opinion and Expression, the Representative of the Organization for Security and Cooperation in Europe (OSCE) on Freedom of the Media, and the OAS Rapporteur for Freedom of Expression. Joint. December 6, 2004.

²⁴⁰ IACHR. Access to Information, Violence against Women, and Administration of Justice in the Americas, OAS/Ser.L/V/II.154, Doc. 19, March 27, 2015, para. 110.

²⁴¹ IACHR. Annual report for 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, para. 10.

²⁴² United Nations. General Assembly, Promotion and protection of the right to freedom of opinion and expression. Note by the Secretary-General. A/68/362. 4 September 2014.

requirements of the three-part test embodied in Article 13.2 of the American Convention on Human Rights.²⁴³ Otherwise, fertile ground is created for the State to act in a discretionary and arbitrary manner and declare information to be secret, reserved, or confidential.²⁴⁴

222. The good faith principle, for its part, requires as a guarantee of the right to access information that the persons obliged to provide access to the information interpret the law in such a way as to allow for fulfillment of that right; that they ensure strict application of it, provide any necessary assistance to those exercising that right; foster a culture of transparency; help ensure transparency in public administration; and go about their work diligently, professionally, and with loyalty to their institution.²⁴⁵
223. The importance of this right also entails a duty of the State to be governed by the principles of openness and transparency in public administration.²⁴⁶ This implies a State duty to be pro-active in releasing information and in providing easy, quick, effective, and practical access to it.²⁴⁷ Such principles were implemented by the Permanent Council of the Organization of American States when it drafted the Inter-American Model Law on Access to Information, reflections of which can be found in the domestic legislation of many countries in the Hemisphere.²⁴⁸
224. The IACHR has also made mention of the State duty to guarantee the widest possible access to qualitative and quantitative information relating to violence and discrimination against women, as well promote discussion and public scrutiny of policies pursued in that area.²⁴⁹
225. The scope and content of the right to truth forms part of the responses devised by international law to address the failure by States to throw light on, investigate, prosecute, and punish grave violations and breaches of human rights.²⁵⁰ This right is closely tied to the right to seek and receive information pursuant to Article 13 of the American Convention, as well as to the rights to access judicial guarantees and judicial protections established in Articles 8 and 25 of the American Convention on

²⁴³ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 88.

²⁴⁴ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 98.

²⁴⁵ IACHR. Annual report for 2008. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, para. 15.

²⁴⁶ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 86.

²⁴⁷ United Nations. International Covenant on Civil and Political Rights. Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34. 12 September 2011

²⁴⁸ Permanent Council of the Organization of American States. Model₂ OEA/Ser.G CP/CAJP-2840/10 corr. 1. April 29, 2010.

²⁴⁹ IACHR. Access to Information, Violence against Women, and Administration of Justice in the Americas, OAS/Ser.L/V/II.154, Doc. 19, March 27, 2015, par. 87, citing IACHR Access to Justice and Social Inclusion: The Path to Strengthening Democracy in Bolivia, June 28, 2007, para. 357.

²⁵⁰ IACHR. Right to the Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 47.

Human Rights.²⁵¹ This right plays an essential part in forging democracy, because "Only people who have the right to fully acknowledge their past can be truly free to define their future."²⁵²

226. The Inter-American Court has established that both victims and society have, without restricting themselves to just judicial channels, a right to access everything to do with human rights violations for the purpose of establishing the truth of what occurred.²⁵³ The IACHR has considered that just as the "duty to remember" serves, as a corollary to the right to the truth, as a guarantee that human rights violations are not repeated, so, too, does access to information, play an essential role, in connection with grave human rights violations, in getting rid of authoritarian enclaves. It is a prerequisite for State accountability and transparency as well as for preventing corruption and authoritarianism.²⁵⁴
227. The right to the truth may also be construed as related to the notion of the "social damage" wrought by corruption. The Office of the Procurator-General of the Republic of Costa Rica has used this concept to underpin a reparation mechanism whereby government officials involved in crimes have to pay compensation money for harm done to a society that has no reason to tolerate acts of corruption by its public servants.²⁵⁵ This is in line with Article 35 of the United Nations Convention against Corruption, which establishes that people are entitled to seek compensation for damage caused by third parties' acts of corruption. As it damages society, corruption calls for different types of reparation, one of which involves the right to truth.
228. According to the I/A Court H.R.,²⁵⁶ full exercise of the right of access to information is necessary in order to create the conditions needed for transparency, accountability, and a "sound and informed" debate to prevent corruption. In that sense, it is not access to information in itself that may prevent corruption, but rather accountability, transparency and robust, informed debate. Nevertheless, those conditions are only possible if there are effective guarantees for the exercise of the right to access information.
229. In connection with the fight against corruption and promotion of integrity, access to information practices need to be geared toward fostering informed debate and accountability as a way to prevent it. Accordingly, access to information must be governed by the principles upheld in the inter-American human rights system of

²⁵¹ I/A Court H.R., Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, par. 201. See also, IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 69.

²⁵² United Nations. General Assembly. Report of the Special Rapporteur of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, A/68/362. 4 September 2014.

²⁵³ I/A Court H.R., Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 15, 2018. Series C No. 353. (Only in Spanish), para. 321.

²⁵⁴ IACHR, [Right to the Truth in the Americas](#), OEA/Ser.L/V/II.152. Doc. 2, August 13, 2014, para. 109.

²⁵⁵ Office of the Procurator-General of the Republic of Costa Rica. [Presentación de buena práctica: implementación del daño social](#).

²⁵⁶ I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

maximum disclosure, good faith, and the application of strict and limited exceptions.²⁵⁷ Thus, access to information will only prove useful for promoting the fight against corruption if the State delivers "timely, complete, and accessible" information²⁵⁸ and in a "straightforward and expeditious" manner,²⁵⁹ because incomplete and tardy information prevents proper accountability and informed debate.

230. The Lima Commitment of the Eighth Summit of the Americas states that one of the mainstays of democratic governance in the fight against corruption is "Transparency, Access to Information, Protection of Whistleblowers, and Human Rights, including Freedom of Expression."²⁶⁰ That is because transparency, informed public debate, and accountability are factors that help prevent corruption, while at the same time encouraging investigation and promoting sanctions.
231. In short, transparency must be understood as a necessary condition for promoting public debate and at the same time as a prerequisite for accountability and public responsibility in combating corruption, both by preventing it and by investigating and punishing those kinds of illicit acts against public administration and fundamental rights.
232. Access to public data is in itself not enough, when it comes to combating corruption. Eliciting data and information of public interest will only matter if access is timely and complete and fosters accountability. Key factors there are those that the Lima Commitment focused on as ways to strengthen democratic governance: the justice system; government employee selection processes; sworn statements of net worth; and financial information.²⁶¹
233. Another issue is the responsibility of non-State actors in large-scale corruption. According to the Financial Action Task Force (FATF-GAFI),²⁶² large-scale corruption, involving a huge volume of assets, usually relies on the participation of specialized professional services. Accordingly, anti-money-laundering laws have been devised, along with State units, to interact with the private sector, especially the financial sector and economic sectors at high risk of being caught up in money-laundering crimes. The latter are labeled Designated Non-financial Activities and

²⁵⁷ See http://www.oas.org/en/iachr/expression/basic_documents/declarations.asp [Tr. CHECK: English link]

²⁵⁸ OAS General Assembly, Model Inter-American Law on Access to Information. OEA/Ser. CP/CAJP-2840/10 Corr.1. April 29, 2010. Article 2.

²⁵⁹ Joint statement by the United Nations Special Rapporteur on Freedom of Opinion and Expression; the OSCE Representative on Freedom of the Media; and OAS Special Rapporteur on Freedom of Expression. Joint. December 6, 2004.

²⁶⁰ Lima Commitment. Democratic Governance against Corruption. Lima, April 14, 2018. The other mainstays are: "Reinforcement of Democratic Governance"; "Financing of Political Organizations and Election Campaigns"; "International Legal Cooperation; the Fight against Bribery, International Corruption, Organized Crime, and Money Laundering; and Asset Recovery"; "Strengthening of Inter-American Anti-Corruption Mechanisms."

²⁶¹ Eighth Summit of the Americas, Lima Commitment "Democratic Governance against Corruption," April 2018, paras. 2, 9, 10.

²⁶² The FATF is an intergovernmental entity founded in 1989 to set standards and promote effective implementation of legal, regulatory, and operational measures to combat money laundering, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction, and other threats to the integrity of the international financial system.

Professions,²⁶³ and include real estate agents, precious stone dealers, attorneys, notaries, other independent legal professionals, and accountants.

234. Even though large-scale corruption, macro-corruption, and corporate transparency are emerging topics, regarding which information is still being gathered, access to information itself, as this Chapter showed, has been widely addressed in international case law, with by now internationally recognized principles and increasingly consolidated practices. Those principles and practices will therefore help support implementation of tools for accessing the corporate information needed to prevent and punish cases of large-scale corruption and money-laundering, as well as tools for accessing the information possessed by the State, for monitoring large-scale corruption and money laundering.
235. Since access to information is a fundamental right and bearing in mind the principle of maximum disclosure, all the information that the State has is, in principle, public. That being so, the main challenge with implementing an access to information policy is to establish the rules governing exceptions.²⁶⁴
236. In an anti-corruption context, social oversight of the classification of information on which the application of exceptions is base is crucial for ensuring that the principle of maximum disclosure is followed and enabling social actors and journalism to help prevent and control corruption. Given the large volume of information handled by State, principles and laws cannot spell out all the limits or circumstances of exceptions, so that information classification policies are key when it comes to bidding by the principle of maximum disclosure.
237. Accordingly, as already mentioned in this report, the types of information that matter for State oversight, such as government procurement, hiring, budget and other data, need to be pro-actively disclosed, rather than classified. Another way to establish admissible grounds for a concrete case of denial of information is an obligation derived from Article 13.2 of the American Convention²⁶⁵ ad is stipulated in most national access to information laws: proof of damage and public interest.
238. At the same time, it is important to point out that, in anti-corruption contexts, risks to the safety of the citizens requesting information have to be considered, for example when it comes to identifying or meeting them face-to-face. Protection of citizens requesting information is a new, emerging topic. In Brazil, for example, since

²⁶³ According to the FATF, activities like running casinos, precious stone trading, and so may be used for money laundering, which may also be practiced by independent professionals, legal advisors, accountants, real estate agents, and others.

²⁶⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression of the IACHR. [The Right to Public Information in the Americas. Inter-American Standards and Comparison of Legal Frameworks](#). OEA/Ser.L/V/II. IACHR/RELE/INF.7/12 December 30, 2011. See the Section on "Limitations to the Right of Access to Information."

²⁶⁵ Article 13.2 of the American Convention states that the exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals. American (Pact of San José). 1969.

November 2018,²⁶⁶the electronic tool used to apply for access to information allows citizen to opt whether to store their identity in the system, based on the law for the protection and defense of users of public services.²⁶⁷

239. Likewise, personal data laws should, in the one hand, serve to protect citizens from State abuse and, on the other, should not be activated to protect politically exposed persons and/or candidates to public office.

5. New Technologies and Their Role in Combating Corruption

240. New technologies play a key role in combating corruption. Accordingly, States have developed rules and regulations that address the progress made with new information and communication technologies²⁶⁸. For instance, Article 8 of Brazil's access to information law establishes that State bodies must promote the disclosure of public interest in their facilities, both physically and on-line. It also requires government websites to allow the recording of reports in a variety of different formats, including open and non-proprietary formats; to allow automated access by external systems in formats that are open, structured, and can be read by devices; and to disclose information in the formats used to structure the information.²⁶⁹
241. Thus, as part of a proactive and supplementary trend in transparency policies, States should publish data and information in specific formats tailored to new technologies that can quickly use them for inference and analyses that are useful and informative for society. In this way, transparency and access to information systems can be boosted through the use of new technologies, to bolster the fight against corruption.
242. In connection with the Open Government Partnership, an initiative bringing governments and civil society together in an effort to promote transparency, accountability, and citizen participation, the countries of the Americas entered into substantive commitments between 2014 and 2018, to publish open data, partly in order to get a grip on corruption.²⁷⁰ Honduras, for example, has committed to opening up public works data; Uruguay undertook to adopt Open Procurement standards; the Dominican Republic has committed to publishing municipal government data so that society can access public data in open formats, and so on.

²⁶⁶ Monnerat, A. [Solicitar dados públicos anonimamente se torna mais fácil no Brasil com novos mecanismos do governo e da sociedade civil](#). Knight Center for Journalism in the Americas. The University of Texas at Austin November 21, 2018.

²⁶⁷ Law No. 13,460. [Dispõe sobre participação, proteção e defesa dos direitos do usuário dos serviços públicos da administração pública](#). June 26, 2017.

²⁶⁸ G20. [Introductory Note to the g20 Anti-Corruption Open Data Principles](#). Toronto, 2015.

²⁶⁹ 12,527/2011. Article 8, par. 3.II, III, and IV. http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm

²⁷⁰ Law No. 12.52. [Regula o acesso a informações](#) contemplated in sub-paragraph XXXIII of Art. 5, sub-paragraph II of § 3º of Art. 37 and in § 2º of Art. 216 of the Federal Constitution; amends Law No. 8.112, of December 11, 1990; revokes Law No. 11.111, of May 5, 2005, and provisions of Law No. 8.159, of January 8, 1991; and other measures. Article 8, par. 3.II, III, and IV. November 18, 2011.

6. Pluralism and Diversity in the Media

243. Inter-American jurisprudence has established that the right to freedom of expression has two sides to it: on the one hand, it has its individual dimension, which encompasses everyone's right to express and impart information and opinions; on the other, it has its collective dimension, whereby society has a right to receive information and opinions of every kind.²⁷¹ Both dimensions enjoy the same level of protection and must be guaranteed simultaneously.²⁷²
244. The dual dimension of freedom of expression also entails guaranteeing a plurality of media and information, i.e. a State obligation to support the balanced participation of the different stances or positions found in society.²⁷³ In the same vein, the dual dimension of freedom of expression also implies an obligation to avoid constituting private or public monopolies designed to shape public opinion in accordance with just one point of view.²⁷⁴
245. Media diversity and pluralism in the media is essential for achieving more openness and the participation of different interest groups in society. Along the same lines, as some regional examples have shown, creating monopolies or oligopolies in the media, be they public or private, may induce collusion between private interests and candidates or officials to hide information about misuses of authority and alleged corruption from the public, and to agreements to shore up/keep certain groups in

²⁷¹ I/A Court H.R., Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 53; I/A Court H.R., Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 75; I/A Court H.R., Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 163; IACHR. Arguments before the Inter-American Court of Human Rights in the Case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 101.1 a) and para. 108; I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 146; I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 77; I/A Court H.R., Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 64; I/A Court H.R., Compulsory membership in an association prescribed by law for the practice of journalism (Articles.13 and 29 American Convention on Human Rights). Advisory opinion OC-5/85 of November 13, 1985, Series A, No.5., para. 30.

²⁷² I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 80; I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 149; I/A Court H.R. Chile, Judgment of February 5, 2001, Series C. No. 73, para. 67; IACHR. Arguments before the Inter-American Court of Human Rights in the Case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 101.1 a).

²⁷³ I/A Court H.R., Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. (Only in Spanish), para. 142.

²⁷⁴ I/A Court H.R., Compulsory membership in an association prescribed by law for the practice of journalism (Articles.13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985 Series A, No. 5. 33

power. Likewise, excluding certain groups from public debate has an impact on the treatment of corruption-related matters.²⁷⁵

²⁷⁵ IACHR. Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86, June 21, 2018, para. 201.

CHAPTER 3
OBLIGATIONS OF STATES
IN CASES OF HUMAN RIGHTS
VIOLATIONS DUE TO
ACTS OF CORRUPTION

OBLIGATIONS OF STATES IN CASES OF HUMAN RIGHTS VIOLATIONS DUE TO ACTS OF CORRUPTION

246. The Commission deems it important to analyze corruption and its links to noncompliance with the State's general human rights obligations. On the one hand, acts of corruption may in themselves constitute human rights violations; and, on the other, corruption in its various guises may impair the enjoyment and exercise of human rights.
247. The OAS member states have committed to respecting and guaranteeing the fundamental rights of all persons under their jurisdiction pursuant to the norms set forth in the OAS Charter, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, and the other instruments of the inter-American system.²⁷⁶ Respect for human rights is a fundamental principle of the Organization and one that guides the actions of each of its member states.²⁷⁷ According to Article 3(1) of the OAS Charter, "the American states proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex." Mention is also made of the fundamental rights of the human person, *inter alia*, in the preamble to the Charter, in Articles 17, 45, 47, and 49, and in the articles of the Charter that refer to the role of the Commission as the principal organ responsible for promoting and protecting human rights in the Hemisphere.²⁷⁸
248. In the present Chapter, the Commission analyzes general standards with respect to the prevention, investigation, and punishment of acts of corruption, as well as the State's duty to respect and guarantee the full enjoyment and exercise of human rights without discrimination²⁷⁹ in light of the State's obligations in the inter-American human rights system. Within that framework, the Commission embarks on a series of considerations as to how the State's compliance with its international obligations is updated in line with the reiterated case law of the inter-American system's organs for the protection of human rights, with a view to preventing impunity for instances of corruption that directly and indirectly impair the enjoyment and exercise of human rights. The aforementioned standards will be

²⁷⁶ 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.

²⁷⁷ 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.

²⁷⁸ 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.

²⁷⁹ On the impact of applying a human rights perspective to acts of corruption by State and non-State agents, see United Nations, General Assembly. Final report of the United Nations Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights. A/HRC/28/73, 5 January 2015, paras. 28 and 29.

examined in light of the Charter, the American Declaration, and the American Convention on Human Rights.

A. Obligations of States under the American Convention on Human Rights

249. The American Convention on Human Rights establishes the rights and guarantees needed to grasp the scope of states' obligations with respect to human rights violations resulting from acts of corruption. In this section, the Commission elucidates the scope of what those obligations under the Convention entail for addressing such violations. One especially noteworthy right under the Convention (Article 1.1) is the obligation to respect and guarantee recognized rights, which implies an obligation to prevent and investigate cases in which those rights are violated. Others are the rights to judicial guarantees and judicial protection, embodied in Articles 8, and 25, respectively.

1. Obligation to Respect Human Rights

250. Under Article 1(1) of the American Convention, States Parties are obliged to respect the rights and freedoms recognized therein and to ensure the free and full exercise to all persons subject to their jurisdiction, without any discrimination. The Commission reiterates 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."²⁸⁰

251. Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. Indeed, this article imposes on States Parties the fundamental obligation to respect and guarantee rights, so that any violation of that set of human rights established in the Convention may be attributed, according to the rules of international law, to the act or omission of any public authority and constitute a fact attributable to the State, which involves its international responsibility. It is a principle under international law that the State is responsible for the acts and omissions of its agents carried out in their official capacity even if they act outside the limits of their sphere of competence.²⁸¹ The international responsibility of the State is based on acts or omissions of any of its powers or organs, irrespective of their rank, which violate the American Convention,

²⁸⁰ See, for example, IACHR. Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. OEA/Ser.L/V/II. Doc. 47/15. 31 December 2015, para. 39.

²⁸¹ I/A Court HR. Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005 Series C No. 134, para. 108; Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006, Series C No. 140, para. 111.

and is generated immediately with the international illegal act attributed to the State. In these conditions, in order to establish whether a violation of the human rights established in the Convention has been committed, it is not necessary to determine, as it is in domestic criminal law, the guilt of the perpetrators or their intention; nor is it necessary to identify individually the agents to whom the acts that violate the human rights embodied in the Convention are attributed. It is sufficient that a State obligation exists and that the State failed to comply with it.²⁸²

252. Thus, an international illegal act in the area of human rights will consist, first, of noncompliance with the obligation to observe the regulatory mandate. In corruption cases, it is possible that the noncompliance with that commitment is linked to an act of corruption that involves state authorities acting in a manner opposed to the obligation or omitting an act they are obliged to perform. The nature of the state obligation may relate to a means or a result, so that determining whether noncompliance was a consequence of an act of corruption will depend on the causal link in each concrete case. For instance, the ESCR Committee has pointed out that the obligation to respect those rights "is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights."²⁸³ These forms of noncompliance are directly related to acts of corruption as the source of these illegal acts by States and entail a violation of rights upheld in inter-American instruments.

2. The Obligation to Adopt Measures to Prevent Rights Violations Related to Acts of Corruption

253. The guarantee obligation consists of a set of measures that the State must adopt to ensure the full enjoyment and exercise of human rights. The Commission reiterates that the second general obligation of States Parties is to guarantee the free and full exercise of the rights recognized in the Convention for anyone under their jurisdiction. [...] As part of that duty to act with due diligence, States have a legal duty to take reasonable steps to prevent human rights violations and to use the means at their disposal to carry out a serious investigation of violations committed within their jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure adequate reparation for victims. [...]."²⁸⁴
254. Failure to comply with this duty to guarantee may also constitute an international illegal act that, if it is attributable to the State, triggers international responsibility

²⁸² IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para.39.

²⁸³ Committee on Economic, Social and Cultural Rights. General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities of August 10, 2017. E/C.12/GC/24, para. 12.

²⁸⁴ See, for example, IACHR. [Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities](#). OEA/Ser.L/V/II. Doc. 47/15. December 31, 2015, para. 40.

and the obligation to make reparation for harm done. The duty to guarantee has various facets which may be directly tied to corruption.

255. First, the guarantee obligation presupposes a duty on the part of States to adopt all necessary and appropriate measures to prevent acts of corruption that may constitute human rights violations.²⁸⁵ The duty to prevent includes all those means of a legal, political, administrative, and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.”²⁸⁶
256. Under international law, States have a fundamental duty to safeguard rights by establishing effective domestic legal provisions to dissuade the commission of deeds that may impair the enjoyment and exercise of such rights. Such provisions must be backed by the enforcement of laws to ensure prevention, repression, and punishment for failures to comply with those provisions. Accordingly, States must take the necessary steps, via laws and through bodies, agencies, procedures, and so on, to establish the institutional arrangements needed to eradicate corruption in the State apparatus. They must also adopt such measures as are needed to encourage the cultural changes required to overcome the factors fostering and permitting corruption. State also have to do whatever is necessary to train public servants and instill in them a sense of their duties to practice integrity in public administration.
257. The duty to prevent also encompasses a positive obligation on the part of authorities to take pro-active steps to protect individuals or groups who, as whistleblowers and witnesses of acts of corruption, run the risk of criminal attacks on their lives or bodily integrity. That positive obligation must be established as of the time that the authorities knew or ought to have known of the existence of a real and immediate risk to those persons or groups from the criminal acts of third parties and they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avert that risk.
258. Accordingly, States must adopt institutional measures, such as laws, effective remedies, and rapid and accessible procedures, along with organizational measures, such as early warning systems and risk assessment, to guarantee proper protection of all those affected by structurally embedded corruption, whether in terms of its impacts, or because they report and fight it. Those measures range from specific

²⁸⁵ This aspect was underscored in the report of the United Nations Human Rights Council Advisory Committee, which states "by looking at corruption from a human rights perspective, the need for preventive measures becomes even more apparent. By integrating a human rights perspective into anti-corruption strategies, the implementation of preventive policies relating to matters such as transparency, affidavits, laws on access to public information, and external controls, becomes an obligation." United Nations General Assembly. Final report of the United Nations Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights. A/HRC/28/73, 5 January 2015, para. 28.

²⁸⁶ I/A Court HR. Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988, Series C No. 4; Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 149 and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202 par.63; Case of González et al. ("Cotton Field") v. Mexico. Judgment of November 16, 2009. Series C No. 205, para. 252.

actions taken to protect an individual whose enjoyment and exercise of rights is threatened to public policy measures designed to create environments that can help protect human rights, as in the case of human rights defenders, for instance. The Commission regards such protection measures as essential to prevent the corruption practiced by private or non-State individuals from impairing human rights.

259. There are cases in which rights may be impaired without that actually constituting a human rights violation, as when we are confronted with a legitimate limit or curtailment. Here, it needs specifying that corruption itself may never be cited as a justification for restricting rights. Nevertheless, by international standards, it is possible to consider it legitimate to curtail rights in order to pursue the objective of combating corruption. In that sense, for a State to legitimately restrict the enjoyment and exercise of human rights, a number of provisos are required: i) legality; ii) the existence of a legitimate goal; iii) suitability, that is to say, the determination of a logical means-to-end relationship between the goal sought and the distinction in treatment; iv) necessity, i.e., the determination of whether less restrictive and equally appropriate options are available; and v) proportionality in the strict sense of the word, that is to say, a balance between the interests at stake and the level of sacrifice required.²⁸⁷
260. If those factors are not in fact given, the restrictions on human rights invoked as necessary for combating corruption effectively will lose their legitimacy and render the State internationally responsible. These criteria apply fully to policies curtailing social rights. Therefore, curtailing rights shall not be legitimate when the situation prompting regressive measures is the result of corruption, as in the misappropriation of public funds.

3. The Obligation to Investigate Acts of Corruption

261. The Inter-American Court has defined impunity as the “failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention”²⁸⁸ and has stressed that “the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human right violations, and total defenselessness of victims and their relatives.”²⁸⁹

²⁸⁷ IACHR. IACHR, Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters, September 17, 2010, para. 86; I/A Court H.R. Case of Atala Riffo and Girls. v. Chile, Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, para. 164.

²⁸⁸ See, *inter alia*, I/A Court H.R., Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court H.R. Case of the Constitutional Court v. Peru. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R. Case of Bámaca Velásquez v. Guatemala. Judgment of November 25, 2000. Series C No. 70, para. 211.

²⁸⁹ See, *inter alia*, I/A Court H.R., The “Panel Blanca” Case (Paniagua Morales et al.) v. Guatemala. Judgment of March 8, 1998. Series C No. 37, para. 173; I/A Court H.R. Case of Blake v. Guatemala. Judgment of January 22,

262. The obligation of States to investigate conduct impairing human rights protected under the American Convention derives from the general obligation to guarantee ("to ensure to all persons subject to their jurisdiction the full and free exercise of those rights and freedoms") established in Article 1.1 thereof, in conjunction with the substantive right to be upheld, protected, or ensured.²⁹⁰ In addition, as for the relationship between the right upheld in Article 25 of the Convention and the obligations contained in Articles 1.1 and 2 thereof, the Court has established that:

Article 25 of the Convention is intimately linked to the general obligation of Article 1(1) of the same, which attributes duties of protection of the domestic law of the States Parties, from which it can be concluded that the State has the responsibility to design and through instruments enshrine an effective remedy, as well as guarantee the correct application of that remedy by its judicial authorities. At the same time, the State's general duty to adapt its domestic law to the stipulations of said Convention in order to guarantee the rights enshrined in it, established in Article 2, includes the enactment of regulations and the development of practices that seek to achieve an effective observation of the rights and liberties enshrined in it, as well as the adoption of measures to suppress the regulations and practices of any nature that imply a violation to the guarantees established in the Convention.²⁹¹

263. In light of that duty, whenever State authorities are cognizant of a conduct that has impaired rights protected under the American Convention and can be prosecuted *ex officio*, it must promptly begin a serious, impartial, and effective investigation, using all available legal means and geared to ascertaining the true facts and trying and, where applicable, punishing the perpetrators. During the investigative and judicial processes, the victims of human rights violations [...] must have ample opportunity to participate and be heard, both regarding elucidation of the facts and punishment of those responsible, and in seeking fair compensation.²⁹² The investigation must be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victims, or plaintiffs, or private offer of proof, without an effective search for the truth by the public authority.

1999. Series C No. 48, para. 64; *Loayza Tamayo Case v. Peru*. Judgment of November 27, 1998. Series C No. 170.

²⁹⁰ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 142; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186; *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 298.

²⁹¹ See, *inter alia*, I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 60; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207.

²⁹² I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005, Series C, No. 134, para. 219; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005, Series C, No. 124, para. 147; *Case of the Serrano Cruz Sisters v. El Salvador*. Judgment of March 1, 2005, Series C No. 120, para. 63.

264. The obligation of States to investigate conduct violating rights protected under the American Convention persists regardless of the agents who may eventually be charged with committing the violation. In cases in which the conduct in question may be attributed to private individuals, failure to conduct a serious investigation renders the State internationally responsible for noncompliance with its duty to act and investigate with due diligence. In cases in which the conduct in question may involve the participation of state agents, States have a special obligation to elucidate the facts and bring those responsible to trial.²⁹³
265. The Commission reiterates that States must adopt such measures as are required to facilitate access by victims and whistleblowers reporting acts of corruption to appropriate and effective channels and remedies for both reporting the commission of those acts and achieving reparation for the harm done, thereby contributing to the prevention of a recurrence of those acts. The Court has also pointed out that, in accordance with the principle of non-discrimination upheld in Article 1.1 of the American Convention, in order to ensure access to justice for persons and groups in situations of risk and vulnerability, "it is essential that the States grant effective protection that takes into account their particularities, their [economic and social] characteristics, and also their situation of special vulnerability."²⁹⁴
266. In corruption cases, the obligation to investigate entails the duty to direct the efforts of the state apparatus toward getting to the bottom of the structures that made those violations possible, their causes, beneficiaries, and consequences, and not just to discover, try, and, where applicable, punish those directly involved. In other words, protecting human rights must be one of the core objectives governing the State's response in any kind of investigation of corruption cases.
267. Furthermore, although the Inter-American Court has established that the duty to investigate is an obligation of means and not results,²⁹⁵ it has also determined that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."²⁹⁶

²⁹³ I/A Court H.R., *Barrios Altos Case v. Peru*. Judgment of March 14, 2001, Series C No. 75, par. 41; *Case of Almonacid Arellano et al. v. Chile*, Judgment of September 26, 2006 Series C No. 154, para. 112; *Case of the Ituango Massacres v. Colombia*. Preliminary objection, merits, reparations and costs, Judgment of July 1, 2006, Series C No. 148, para. 402.

²⁹⁴ See I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 184; *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 200.

²⁹⁵ See, *inter alia*, I/A Court H.R., *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations, and Costs. Judgment of April 27, 2012. Series C No. 241, para. 129, *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177.

²⁹⁶ See, *inter alia*, I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012, Series C No. 250, para. 192; I/A Court H.R. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations, and Costs. Judgment of September 1, 2010, Series C No. 217, para. 153; I/A Court H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary

268. Thus, States have a duty to adopt effective measures for investigating and punishing acts of corruption by both state agents and private persons, entities, or organizations. Here, the Commission issues a reminder that one of the factors that turn corruption into a structural phenomenon is impunity for those who perpetrate it. For that reason, States must adopt legislative measures to prohibit acts of corruption, establish proportionate punishments for it, and, above all, adjust oversight and punishment systems in such a way as to enable said state bodies and agencies to effectively investigate corruption cases, especially the most heinous, thereby revealing the true facts, convicting perpetrators, enforcing their punishments, and recovering the illicit proceeds of corruption.
269. Accordingly, considering the importance of investigating grave cases of human rights violations and corruption, the Commission has highlighted the international mechanisms that lend support to national systems, such as the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH); the International Commission against Impunity in Guatemala (CICIG) and the International Commission against Impunity in El Salvador (CICIES), regarding the duty of States to strive for the eradication of corruption, and urging them, to that end, to bolster administration of justice mechanisms and guarantee the independence and impartiality of justice operators.²⁹⁷

4. The Obligation to Guarantee the Exercise of Rights on an Equal Footing, without Discrimination

270. Finally, it is important to mention the general principle of equality and nondiscrimination. International human rights law has clearly recognized this principle as one that is a central, fundamental, guiding principle for progressively protecting human rights. In the inter-American system, that recognition can be found in the content of Article II of the American Declaration, in Articles 1 and 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, as well as in the text of several other key instruments of the inter-American system for the protection of human rights.
271. From its earliest case law onwards, the Inter-American Court has stressed, with regard to the principle of equality, that the very notion of equality derives directly from the human nature and is inseparable from the essential dignity of the person, which precludes any situation in which some group receives privileged treatment because it is deemed superior to another or, conversely, any situation in which one group, because it is deemed to be inferior, is treated with hostility or in any way deprived of the enjoyment of rights recognized for others not in that situation.

Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

²⁹⁷ IACHR. Resolution 1/18 "Corruption and Human Rights" Of March 2, 2018. No. 4, letter c).

272. As already pointed out, corruption affects the principle of equality in both of its dimensions, impairing both formal and material equality. On the one hand, it illegitimately impairs the formal equality principle because, based on corrupt acts or situations, a person or social sector receives privileged treatment. On the other, corruption also erodes material equality and, in particular, the obligation to adopt affirmative action measures to overcome the structural inequalities embedded in our region.

5. The Obligation to Make Reparation to Victims of Corruption

273. When international responsibility is incurred due to noncompliance with general obligations in respect of some right and that illegal act is attributable to the State, the obligation arises to make comprehensive reparation to the victims of corruption entailing human rights violations.²⁹⁸ Reparation consists of assuming the consequences of that illegal act or omission, by adopting measures affording restitution, satisfaction, compensation and non-repetition guarantees for the direct and indirect victim and society as a whole. The obligation to make reparation is important in corruption cases because "from a human rights perspective, States are required not only to prosecute such crimes, but also to take measures to address the negative impact of corruption."²⁹⁹ In order to make reparation for the harm done to direct and indirect victims, it is necessary to properly ascertain the origin of state agents' illegal acts. That is the only way States can make comprehensive reparation for the damage done and prevent its recurrence. For that reason, regardless of whether the corrupt act or situation constitutes, prompts, or contributes to the commission of the illegal act, it is important to establish that link to ensure compliance in good faith with inter-American human rights obligations.
274. Therefore, given the impact that these corrupt acts and situations have on human rights, there is a collective interest in eradicating them, which constitutes non just an economic, moral, or political duty, but an international obligation incumbent upon States. The Commission considers that when corruption takes on these structural proportions as it does in the region, it becomes an obligation of States to undertake all coherent, coordinated, adequate, and effective measures needed to eradicate it. If States fail to do everything in their power to eradicate the corruption pandemic, they are failing in their duty to respect and guarantee human rights and thereby failing to comply with their international obligations in this field. They therefore are duty-bound to make reparation for the damage wrought.

²⁹⁸ Article 63.1 of the American Convention on Human Rights.

²⁹⁹ United Nations General Assembly. Final report of the United Nations Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights. A/HRC/28/73, 5 January 2015, para. 28

B. States' Obligations under the American Declaration of the Rights and Duties of Man

275. Pursuant to the case law and practices established in the inter-American human rights system, the American Declaration is regarded as a source of legal obligations for OAS member states, especially those that are not Parties to the American Convention on Human Rights.³⁰⁰ Those obligations are deemed to arise from the human rights obligations assumed by member states under the OAS Charter.³⁰¹ The States Parties have agreed that the content and general principles of the OAS Charter are contained in and defined by the American Declaration,³⁰² and on the customary law nature of the rights protected by many of the core provisions of the Declaration.³⁰³
276. The Court and the Inter-American Commission have even held that the Declaration is an international source of obligations for all OAS member states, including those that have ratified the American Convention.³⁰⁴ The American Declaration is part of the human rights framework established by the OAS member states that refers to the obligations and responsibilities of States and requires them to abstain from committing, supporting, tolerating, or consenting to acts or omissions that contravene its commitments to human rights.³⁰⁵
277. The American Declaration of the Rights and Duties of Man recognizes a wide range of fundamental rights, including, inter alia: the right to life, liberty, and personal security (Article I); the right to equality before law and to enjoyment of the rights and duties established in the Declaration, without distinction as to race, sex, language, creed or any other factor (Article II); and the right to resort to the courts to ensure respect for legal rights, through a simple, brief procedure whereby the

³⁰⁰ See I/A Court H.R., Advisory Opinion OC-10/89, "Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989. Ser. A Nº 10 (1989), paras. 35-45; IACHR. Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, par. 115; James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, September 22, 1987. Annual Report of the IACHR 1986-87, paras. 46-49.

³⁰¹ Charter of the Organization of American States, Articles 3, 16, and 51.

³⁰² See, for example, OAS, General Assembly resolution, AG/RES. 314 (VII-O/77), June 22, 1977 (recommending to the Inter-American Commission that it prepare a study "set forth their [the States'] obligation to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man"); OAS, General Assembly, resolution 371, AG/RES (VIII-O/78), July 1, 1978 (reaffirming its commitment "to promote observance of the American Declaration of the Rights and Duties of Man"); OAS, General Assembly, resolution 370, AG/RES. 370 (VIII-O/78), July 1, 1978 (in reference to the "international commitments" of OAS member states to respect the rights recognized in the American Declaration of the Rights and Duties of Man).

³⁰³ IACHR. Report No. 19/02, Case 12.379, Lare-Reyes et al. (United States), February 27, 2002, para. 46.

³⁰⁴ See I/A Court H.R., Advisory Opinion OC-10/89, "Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989. Ser. A Nº 10 (1989), par. 45 (The Court established that for the member states of the Organization, "the Declaration is the text that determines which human rights are referred to in the Charter"). IACHR. Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, para. 113.

³⁰⁵ IACHR. Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. 54, July 21, 2011, para. 113.

courts will protect from acts of authority that violate any fundamental constitutional rights (Article XVIII).

278. Given that it is a source of legal obligations, States must effectively implement the rights established in the American Declaration within their jurisdiction.³⁰⁶ The Commission has pointed out that the obligation to respect and guarantee human rights is established, in particular, in certain provisions of the American Declaration.³⁰⁷ In general, international instruments require their States Parties not only to observe the rights contained in those instruments, but also to guarantee that the individuals under their jurisdiction are able to exercise those rights. The ongoing nature of human rights obligations subsists not just negatively (i.e., in respect of what must not be done); it also requires positive actions on the part of States.³⁰⁸
279. In keeping with this principle, in its decisions the Commission has repeatedly held that the American Declaration obliges States to adopt measures to effectively implement the rights upheld in that Declaration.³⁰⁹ The Commission has not only required States to refrain from committing human rights violations that contravene the stipulations of the American Declaration;³¹⁰ it has also insisted on the adoption of affirmative measures to ensure that the individuals under their jurisdiction can exercise and enjoy the rights proclaimed in the American Declaration.³¹¹
280. International human rights law is a dynamic body of norms that evolve in order to confront the challenge of ensuring that all persons can fully exercise their fundamental rights and freedoms. Combating corruption is a challenge that requires updating this interpretation of international instruments. Here, in many respects,

³⁰⁶ See, by way of reference, Article 1 of the Statute of the Inter-American Commission on Human Rights (1979) which states the Commission was created "to promote the observance and defense of human rights" and that human rights are understood to be those set forth in the American Declaration and in the American Convention. See also Article 29(d) of the American Convention on Human Rights, which establishes that no provision of the Convention shall be interpreted as "excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have"; see also Articles 51 and 52 of the Rules of Procedure of the Inter-American Commission on Human Rights, which authorize the Commission to receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the member states of the Organization that are not parties to the American Convention on Human Rights.

³⁰⁷ IACHR. Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, para. 117; IACHR. Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002, para. 339. As examples, the report cites Articles XVIII and XXIV of the American Declaration.

³⁰⁸ IACHR. Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, par. 117.

³⁰⁹ IACHR. Report 40/04, Case 12.053, the Maya Indigenous Community (Belize), October 12, 2004, par. 162; IACHR. Report No. 67/06, Case 12.476, Oscar Elías Biscet et al. (Cuba), October 21, 2006, paras. 227-231.

³¹⁰ Or see, for example, IACHR Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, para. 118; IACHR. Report 63/08, Case 12.534, Andrea Mortlock (United States), July 25, 2008, paras. 75-95; IACHR. Report 62/02, Case 12.285, Michael Domingues (United States), October 22, 2002, paras. 84-87.

³¹¹ See, for example, IACHR. Report 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, par. 118; IACHR. Report No. 81/10, Case 12.562, Wayne Smith, Hugo Armendariz et al. (United States), July 12, 2010, paras. 61-65; IACHR. IACHR, Report 40/04, Case 12.053, the Maya Indigenous Community (Belize), October 12, 2004, paras. 122-135, 162, and 193-196; IACHR. Report N° 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paras. 124-145.

the American Convention constitutes an authorized expression of the fundamental principles established in the American Declaration. While it is clear that the Commission does not apply the American Convention in respect of member states that have not yet ratified it, its provisions help shape an interpretation of the principles set forth in the Declaration.³¹²

281. Thus, the inter-American human rights system has established the obligation of States to act with due diligence in response to human rights violations.³¹³ This duty encompasses four principal obligations: the obligation to prevent; the obligation to investigate; the obligation to punish; and the obligation to make reparation for human rights violations.³¹⁴
282. This obligation to act with due diligence entails the duty of States to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full exercise of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish any violation of human rights and attempt to provide compensation for damages resulting from the violation.³¹⁵
283. That is why the Commission considers that the principal obligations derived from the duty to act with due diligence within the framework of the American Declaration extend to cases of investigation into acts of corruption occurring and impairing the human rights of persons under the jurisdiction of the States in the region.

³¹² 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.

³¹³ See I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, para. 172.

³¹⁴ See I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, par. 172.

³¹⁵ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C No. 4, par. 166.

CHAPTER 4
STRENGTHENING OF PUBLIC
INSTITUTIONS: THE PART
PLAYED BY ADMINISTRATION OF
JUSTICE AND THE ELECTORAL
APPARATUS

STRENGTHENING OF PUBLIC INSTITUTIONS: THE PART PLAYED BY ADMINISTRATION OF JUSTICE AND THE ELECTORAL APPARATUS

284. In this Chapter, the IACHR addresses the strengthening of public institutions, analyzing, in particular, the parts played by justice administration and the electoral apparatus. To that end, the IACHR looks at guarantees of due process, such as restrictions on discretionary decision-making; the challenges involved in getting institutions to respond effectively in criminal investigations; guarantees of due process for persons accused of corruption; and the performance of electoral oversight bodies and other major actors, such as political parties and candidacies.

A. Administration of Justice

285. The idea in this section is to analyze the impact of corruption on the administration of justice sector in the broad sense, i.e., including both the Judiciary itself and justice-related bodies outside it, such as public prosecutors' offices (*ministerios públicos*), ombudspersons' offices, procurators' offices, the police, experts, notaries, lawyers, and so on. Within that framework, the IACHR proposes to analyze the role of the Judiciary in combating corruption and its duty to enforce the law and oversee the activities of other State authorities in a democratic society. In particular, in this regard, the IACHR will analyze guarantees of independence in the performance of judicial functions.

286. The IACHR further notes that the administration of justice may itself become corrupted, whereby its necessary independence and impartiality are impaired, along with the justice it is supposed to administer to the citizens who turn to it. In that sense, this section will analyze guarantees of due process as key factors for combating judicial corruption.

1. The Role of Administration of Justice

287. Ensuring rights and freedoms in a democratic society requires a legal and institutional order in which the law prevails over the will of the rulers and of private individuals, and in which there are judicial controls on the constitutionality and legality of the exercise of public power. With that in mind, the Inter-American Commission has underscored the fundamental role of administration of justice and

the part played by justice operators in preserving the rule of law, by ensuring that any complaint is properly channeled through the jurisdictional mechanisms provided by the State, and, in cases involving human rights violations, making sure that they are investigated, the perpetrators punished, and that victims receive reparation. At the same time, they guarantee due process for anyone facing the punitive power of the State.³¹⁶

288. The Commission has further noted that there are still functional or organizational factors within justice system entities that undermine their independence, such as shortages of material and logistical resources, and factors external to those entities that impair the independence of justice operators, such as corruption and the lack of protection from pressures exerted by, for instance, organized crime.³¹⁷ A judicial system fraught with corrupt practices prevents the authorities from treating everyone subject to their jurisdiction on an equal footing, which is a prerequisite for due and fair process.³¹⁸ Corruption induces judicial authorities to violate the principles of "equality of arms" and the right to adversarial proceedings, which should be the hallmark of judicial proceedings;³¹⁹ in other words, it impairs the right to an effective remedy to protect rights and the right to be tried with guarantees of due process.³²⁰
289. As a branch of government, the Judiciary has a second core function in a constitutional State governed by the rule of law, which is to oversee the other

³¹⁶ IACHR. Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas. OEA/Ser.L/V/II. Doc. 44, December 5, 2013, para. 1.

³¹⁷ IACHR. Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas. OEA/Ser.L/V/II. Doc. 44, December 5, 2013, para. 3.

³¹⁸ Langseth, P. Strengthening Judicial Integrity Against Corruption. United Nations Global Programme Against Corruption. March 2001.

³¹⁹ "66. Different actors are subject to higher risks of corruption at different stages in the process. Before a case goes to trial, lawyers and prosecutors are at risk of being exposed to political pressure and bribes seeking to convince them to manipulate the evidence and/or charges brought before the competent courts. During judicial proceedings, judges, lawyers and court clerks can be contacted to influence the ruling of a case, to expedite or delay proceedings, to drop charges or to alter the final verdict. Once proceedings have been concluded, lawyers can also be compelled not to appeal or contest a judgement. Judges, prosecutors and administrative and support staff can also be persuaded to disclose confidential information on the development of criminal investigations (corrupt court or prosecution staff members could theoretically provide information regarding ongoing investigations to suspects or defendants)." United Nations, General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, 25 July 2017, para. 66.

³²⁰ "There are various ways in which judges and other actors in the judicial system may participate or be complicit in corrupt transactions. Individual judges, for instance, may accept or solicit bribes in exchange for influencing the outcome of a case or providing access to legal services that would not otherwise be offered. Prosecutors may request bribes or be subject to external pressure to delay or accelerate legal proceedings. Lawyers may request "additional fees" in order to further the interests of their clients by bribing other legal professionals. In many countries, court staff are often poorly remunerated, or at least paid significantly less than judges and lawyers, which increases the incentive to engage in this type of unethical conduct. For example, court officials may request money in exchange for intentionally misplacing or altering court records, influencing the administration of a case or providing access to court decisions before they are made public." United Nations, General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, 25 July 2017, para. 60.

(Executive and Legislative) branches.³²¹ That being so, corruption in the Judiciary has a direct impact on the democratic system because systems based on the separation of powers and checks and balances rely on inter-agency oversight, in which those organs mandated to monitor the constitutionality and legality of acts must abide by the rules and not be guided by private or corporate interests bent on obtaining illegitimate personal benefits of one kind or another. In more complex cases of judicial corruption, co-optation of the Judiciary, influence peddling, and large-scale bribery³²² impair the ability of State to meet its obligation to take decisions that may run counter to private vested interests, which in turn may have an impact on public policies designed to guarantee the full effect and observance of human rights. As the Special Rapporteur for the independence of judges and lawyers has pointed out, one aspect that should worry States is political influence on the Judiciary.³²³ Especially worrisome are attempts by organized crime to co-opt judicial authorities³²⁴ through a variety of illicit mechanisms.³²⁵

290. In addition, it is worth underscoring the fact that in a democratic society administration of justice plays an essential part in the fight against corruption.³²⁶ Establishing responsibilities derived from acts of corruption is a function delegated precisely to judicial systems, which is why the Commission deems that it is necessary to guarantee the conditions needed for them to effectively prosecute corruption, especially in its more complex manifestations in our region."³²⁷

³²¹ Lösing, N. (2011). *Independencia y función del Poder Judicial en el Estado democrático de derecho*. Anuario de Derecho Constitucional Latinoamericano.(Yearbook of Latin American Constitutional Law). XVII, Montevideo. 2011, pp. 413-427.

³²² Hellman, J. and Kaufmann, D. *La captura del Estado en economías en transición*. [State capture in Transition Economies] Finance & Development. September 2,001. p. 31

³²³ "Political influence over the courts is a key element of judicial corruption, in particular in countries with high levels of political corruption. Decision-making processes become compromised when judges face potential reprisals, such as losing their post or being transferred to a remote area, if they hand down unpopular judgments. Undue influence and interference can take various forms. In some countries, criminal groups can exercise undue influence over the judiciary through closed, informal networks, such as social or professional networks." United Nations, General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, 25 July 2017, para. 55.

³²⁴ In light of the above, it is easy to understand why judiciary staff are a priority target for criminal organizations. The judicial system is an essential link for the successful execution of the activities of organized crime. Judges, magistrates and lawyers constitute the filter through which the activities of these organizations come to be deemed legal or otherwise according to the rule of law." United Nations, General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, 25 July 2017, para. 51.

³²⁵ "The most common means of applying pressure on judicial officers consist mainly of threats, blackmail, political influence, corruption, bribery, favours (including through nepotism and family relations) and meddling in their social and family relationships." United Nations, General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, 25 July 2017, para. 72.

³²⁶ "(...) All three branches of the State should create mechanisms to implement national and international legislation, but police, prosecutors and judges are in the best position to tackle corruption by adequately investigating, prosecuting and placing sanctions on acts of corruption, whether through the criminal, civil or administrative justice systems." United Nations General Assembly. Report of the Special Rapporteur on the independence of Judges and Lawyers, Ms. Gabriela Knaut, A/67/305, 13 August 2012, para. 13.

³²⁷ Accordingly, the United Nations Human Rights Council has underlined "the importance of an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution and the integrity of the judicial system to prevent and fight corruption and to address its negative impact on human rights, in

291. In the inter-American system, in the case of *Gutiérrez and Family v. Argentina*, the Inter-American Court examined corrupt acts by authorities in its analysis of the facts and subsequently established that the State had violated rights.³²⁸ That case addresses the murder of an Argentine policeman allegedly by another policeman, when the former was investigating a case of corruption, drug trafficking, and illicit association of public servants. In the investigation of that homicide, the Court considered it proven that several irregularities and obstructions had taken place, including, in particular, threats and intimidation of witnesses and judicial officers, and including the murder of the police captain in charge of the investigation since it began. In its analysis of substance, the Court also established that the denunciations of bribery and theft of evidence constituted irregularities that impaired the investigation and amounted to violations of due process.³²⁹
292. At the same time, the Special Rapporteur on the Independence of Judges and Lawyers specifically focused on the impact of organized crime and corruption on justice systems and pointed out that "the judicial system is an essential link for the successful execution of the activities of organized crime. Judges, magistrates and lawyers constitute the filter through which the activities of these organizations come to be deemed legal or otherwise according to the rule of law."³³⁰
293. Therefore, whereas the Judiciary is responsible for investigating and punishing corruption cases, that same phenomenon may also impair administration of justice in such a way as to prevent it from complying with its core task of prosecuting corruption,³³¹ either because it disqualified itself due to corrupt acts or systems or because its agents form part of those corrupt schemes. Thus, corruption in the administration of justice is intimately linked with failure to comply with the obligation to investigate and punish corruption and other illicit acts, generating chronic impunity in the region, which is one of the factors that must be addressed in order to get to grips with the structural corruption besetting the region.
294. In the IACHR's view, corruption in the Judiciary may be construed as a distortion of judicial functions by the judicial authority or other justice operator in order to obtain a material or other benefit for oneself or for third parties.³³² To the extent that it distorts constitutional and legal mandates, it may have a serious impact on

line with rule of law and the right to a fair trial, to access to justice and to an effective remedy, without discrimination." United Nations, General Assembly. Resolution 35/25 adopted by the Human Rights Council. A/HRC/RES/35/25, 14 July 2017, pp. 2-3.

³²⁸ I/A Court H.R., Case of *Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271.

³²⁹ I/A Court H.R., Case of *Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, par. 121.

³³⁰ United Nations, General Assembly, Report of the Special Rapporteur on the independence of Judges and Lawyers. Resolution A/72/140, 25 July 2017, par. 51.

³³¹ Langseth, P. Strengthening Judicial Integrity Against Corruption. United Nations Global Programme Against Corruption. March 2001.

³³² The Special Rapporteur on the independence of Judges and Lawyers construes judicial corruption ,to mean "any action intended to influence the impartiality and independence of judges and other actors involved in the administration of justice, including prosecutors, judiciary staff and jurors." United Nations, General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Resolution A/72/140, 25 July 2017, para. 47.

citizen's trust in the Judiciary and in the rule of law.³³³ The co-optation of administration of justice by other branches of the State, by private interests, or by organized crime translates into an absence of cross-cutting oversight, manifested in a failure to meet inter-agency monitoring obligations, the facilitation of systemic forms of corruption, and the perpetuation of criminal conspiracies, among other evils.

295. Among other forms of corruption in judicial proceedings, there are judgments at variance with the merits of the case, unwarranted delays, losses of documents, unequal treatment, and other acts detrimental to the rights of the Parties. Impunity in corruption cases may also stem from failure to investigate, delays in investigation, the hiding of evidence, termination of investigations without completing necessary procedures, and from protecting senior authorities involved in corrupt acts or systems.
296. The Commission also attaches crucial importance to the part played by other institutions in fighting corruption. In the United Nations system, it has been pointed out that "it is simply not feasible to wage a successful campaign against corruption with institutionalized corruption among the law enforcement agencies."³³⁴
297. The institutions making up the security forces are a cause of concern for the Commission because of the impact they may have on the corruption phenomenon. In various country reports, the IACHR has commented on the corruption and violence of State agents. Indeed, in its 2003 report on Venezuela, the Commission found a very serious problem of violence, "with a direct impact on human rights" generated and explained by "lack of police professionalism, widespread impunity, and rampant corruption."³³⁵ Likewise, in its 2005 report on Mexico, the IACHR pointed out that abuses of authority, high-handed behavior, and corruption in police stations trigger mistrust of the judicial police, some of it the product of their scant training, bad working conditions, and meager wages.³³⁶ In the same vein, in its 2005 Report on Haiti, the Commission found that the Haitian security forces are tainted by "acts of corruption and other illicit activities, including human rights violations."³³⁷ Earlier on, in its 1999 report on Colombia, the IACHR warned that drug trafficking had spawned "violence and corruption" on an intolerable scale that threatened to destroy the country's social, political, and economic fabric. In particular, the IACHR voiced its concern at the "extreme levels of corruption" in the

³³³ Dakolias, M., and Thachuk, K. (2000, Spring). The Problem of Eradicating Corruption from the Judiciary: attacking corruption in the judiciary: a critical process in judicial reform. *Wisconsin International Law Journal*, 18(353), 353-406.

³³⁴ United Nations, Economic and Social Council, Economic, Social, and Cultural Rights. Progress report of the Special Rapporteur. Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights Rapporteur Christy Mbonu, E/CN.4/Sub.2/2005/18, 22 June 2005, para. 19.

³³⁵ IACHR, Report on the Situation of Human Rights in Venezuela. OEA/Ser.L/V/II.118. Doc. 5 rev. 1, par. 560, December 29, 2003.

³³⁶ IACHR. Report on the Situation of Human Rights in Mexico, OEA/Ser.L/V/II.00, Doc. 7 rev. 1, September 24, 1998. paras. 388 and 693.

³³⁷ IACHR, Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community, OEA/Ser./L/V/II.123 doc. 6 rev. 1. October 26, 2005, par. 119.

State entities responsible for controlling illicit activity, such that "the State is affected, either through violence against its agents or through their corruption."³³⁸

298. Other key institutions are the Public Prosecutors' or Attorney Generals' offices. To the extent that those institutions are responsible for bringing lawsuits, and are supposed to guide investigations, file charges, gather evidence, they play a central part in combating corruption. Hence the need for them to enjoy the independence required for their work. Given the nature of the functions they perform, the Commission considers that in a constitutional State governed by the rule of law, institutional arrangements are needed to avoid political interference or subservience to government and to guarantee both financial autonomy and accountability. How these institutions' authorities are appointed is a key factor for safeguarding their independence. They must also be ideally suited to perform such high-level functions. To ensure that, transparent and informed appointment procedures, with citizen oversight, are a must.³³⁹
299. A well-known case is that of the Attorney General of El Salvador, Douglas Arquímedes Meléndez Ruiz, who is said to have conducted investigations of former senior government officials, businessmen, members of the security forces and several criminal groups, for which he was subjected to threats and harassment, attributed to groups and individuals whose interests resented such investigations. The Commission highlights the key role of an Attorney General in a State with high levels of violence and reiterates the importance of guaranteeing independence for prosecutors in general, so as to ensure that they can perform their functions of fighting corruption and providing access to justice, without being singled out for acts of violence or other reprisals against them.³⁴⁰
300. Here it is important to stress that the IACHR has pointed out that the goal of any justice operator selection and appointment process must be to choose candidates based on their merits, abilities, suitability, and honesty, and in keeping with international human rights standards in this field, so as to ensure their independence. Accordingly, the Commission has pointed out that States need to establish safeguards to preclude discretionary biases on the part of those taking part in the selection and so as to ensure that the selection is not based on private and/or party interests, which would mean that the person selected is not necessarily the most qualified and capable.³⁴¹ The IACHR reiterates that every selection process must abide by the principles of openness and transparency and be open to social sector scrutiny and participation.
301. An independent and impartial justice system is also indispensable for combating corruption effectively, whereby it should be borne in mind that corruption is one of

³³⁸ IACHR, [Third Report on the Situation of Human Rights in Colombia](#), OEA/Ser.L/V/II.102. Doc. 9 rev. 1, paras. 50 and 51, February 26, 1999.

³³⁹ IACHR. [Guarantees for the Independence of Justice Operators](#). Towards strengthening access to justice and the rule of law in the Americas. OEA/Ser.L/V/II.Doc.44, December 5, 2013, paras. 56-82.

³⁴⁰ IACHR. [Press Release No. 38/18](#). IACHR Grants Precautionary Measure to Attorney General of El Salvador, February 28, 2018.

³⁴¹ IACHR. [Press release 131/18. IACHR Urges Honduras to Guarantee International Standards for Independence and Impartiality in the Process of Appointing the Country's New Attorney General](#). June 21, 2018.

the greatest obstacles to democracy and the promotion, protection, and effective enjoyment of human rights in the region. The IACHR considers it vital that OAS member states take steps to strengthen and consolidate the independence of the judiciary.³⁴²

a. Guarantees of Independence

302. The IACHR considers it essential that the authorities responsible for prosecuting corruption cases provide guarantees of independence. To that end, measures need to be adopted to avoid conflicts of interest, influence peddling, and access by prosecutors to post dependent upon the ruling party or powers that be, at least for a prudent length of time. Given the crucial part that justice administration plays in a democratic society, State must adopt institutional measures that enable them to perform their function with guaranteed independence. Those guarantees must be geared to protecting the work of both the judicial authorities and all relevant institutions, especially public prosecutors' and ombudspersons' offices.
303. Inter-American case law on the subject of independence with a human rights perspective has focuses on two facets of it: institutional independence and personal independence.³⁴³ These two dimensions reflect the need to guarantee that in a society founded upon the separation of powers the Judiciary is in fact in a position to exercise its jurisdictional work and at the same time monitor political power of both the Executive and the Legislature.³⁴⁴
304. As regards institutional independence, the Commission reiterates what it said in its 2013 Thematic Report on the subject, namely, that despite the international community's widespread acknowledgment of the work done by judges, prosecutors, and public defenders, as essential actors for guaranteeing access to justice and due process, in several States in the region they go about their work bereft of guarantees safeguarding their independence, that is to say, their own and that of the institutions in which they work. That fragility is reflected in a series of interferences by both public authorities and non-State agents who erect *de iure* or *de facto* barriers against those seeking to access justice associated with the absence of institutional structures capable of withstanding the pressures that may be exerted by other public authorities or State institutions. It is also reflected in the absence of proper appointment and selection procedures and of proper guarantees in disciplinary

³⁴² IACHR. Press release 137/17. [IACHR Concludes Extraordinary Period of Sessions in Mexico](#), September 8, 2017.

³⁴³ In this regard, the Inter-American Court has held "that one of the main purposes of the separation of powers is to guarantee the independence of judges. The autonomous exercise of that function must be guaranteed by the State both in its institutional facet, i.e., in relation to the judiciary as a system, and in its ramifications for the individual, i.e., for a specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or appellate functions." I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55.

³⁴⁴ Dakolias and Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*. Regents of the University of Wisconsin. 2000, p. 353.

proceedings. The Commission has further noted that there are still functional or organizational factors within justice system entities that undermine their independence, such as shortages of material and logistical resources, and factors external to those entities that impair the independence of justice operators, such as corruption and the lack of protection from pressures exerted by, for instance, organized crime.³⁴⁵

305. Institutional independence refers to the independence of the administration of justice system comprising judges, prosecutors, and defense counsel, vis-a-vis other branches of government, which should translate into concrete measures related to the most sensitive aspects of the way the judiciary (*judicatura*) is organized.³⁴⁶ With respect to institutional independence, the position taken by the Inter-American Court reflects a broad view of the scope of judicial independence as a component of the rule of law, and not just as a right under the Convention. The Inter-American Court has established that the institutional dimension is tied in with key factors for the rule of law, such as the separation of powers principle and the important part played by the judiciary in a democracy. For that reason, this institutional dimension transcends the figure of the judge and has a collective impact on the whole of society. There is also a direct relationship between the institutional dimension of judicial independence and the right of judges to accede to and stay in their positions on generally equal terms, as a reflection of a guarantee of stability.³⁴⁷
306. Based on the above, the IACHR observes that there are some minimal independence safeguards in institutional designs of a judicial system to avoid the Judiciary being co-opted (or "captured"). The first is the importance of embodying the independence of the Judiciary in the very design of the institution and for that it is to be recommended that said independence be enshrined in the Constitution. Second, the institution's budgetary autonomy needs to be assured and its administration kept within the Judiciary itself, thereby avoiding political pressures via the budget and its execution. In any event, that autonomy entails an obligation to engage in transparent management and accountability for the use of public funds. Third, there is a fair amount of consensus that appointments and designations of judicial authorities and prosecutors should not depend on political actors and that preference should be given to mechanisms involving majority participation of the Judiciary itself, based on objective criteria and transparent procedures. Undoubtedly, a Judiciary whose members are appointed by the political authorities is more exposed to various kinds of outside controls and therefore more vulnerable to political co-option; at the same time, purely internal appointment and designation

³⁴⁵ IACHR. [Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II, Doc.44, December 5, 2013 par. 3.

³⁴⁶ United Nations General Assembly. [Report of the Special Rapporteur on the independence of judges and lawyers](#), Leandro Despouy, A/HRC/11/41, 24 March 2009; United Nations, General Assembly. [Report of the Special Rapporteur on the independence of Judges and Lawyers](#), Gabriela Knaul. HRC/23/43/Add.4, 2 April 2013; United Nations, General Assembly. [Report of the Special Rapporteur on the independence of Judges and Lawyers](#), Gabriela Knaul. HRC/26/32, 28 April 2014; I/A Court HR, [Case of the Constitutional Court \(Camba Campos et al.\) v. Ecuador](#). Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C No. 268.

³⁴⁷ I/A Court H.R., [Case of López Lone et al. v. Honduras](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 194.

procedures run the risk of fostering autocratic forms of control by the upper echelons of the whole judicial apparatus. For that reason, appointment and designation procedures need to be transparent, merit-based, and accompanied by citizen oversight guarantees. Fourth, with regard to election of authorities by the courts themselves, those authorities must be protected from forms of political control and control by power groups in the upper ranks of the Administration of Justice, so that it would be preferable to have an appointments system in which judges participate directly. Fifth, with respect to assignment of cases, objective mechanisms need to be implemented to prevent assignments being manipulated to serve outside interests.

307. In the Commission's opinion, institutional independence constitutes an institutional measure to prevent political authorities from controlling or exerting improper pressure on judicial authorities via appointments, designations, budgets, election of authorities, and assignment of cases.
308. As for personal independence, what is particularly important is that a judge be independent vis-a-vis higher authorities within national justice systems.³⁴⁸ One issue, to start with, is the mobility of authorities within the justice system (promotions and transfers). In order to avoid their becoming a tool for curtailing the independence of judges, objective criteria for deciding such matter need to be built into the design or architecture of the institution. Again, procedures need to be transparent and avoid not just arbitrary but also illegal situations. Second, an immunities system needs to be established that guarantees independence³⁴⁹ and is limited to checking for acts that are illegal (under civil and criminal law) committed by the judicial authorities;³⁵⁰ whereby the content and substantiation of judicial rules shall be excluded from these controls (except in cases of extreme prevarication). Penalty systems for judges and prosecutors must meet certain minimal criteria with respect to the independence, impartiality, and competence of the disciplinary authority, in the sense that sanctions need to abide by the principle of no crime or punishment without a prior law (*principio de la legalidad*). There needs to be clarity as to what conduct was sanctioned that restricts illegitimate use of the penalty system to influence judges' decisions or remove them from hearing cases involving vested interests of third parties or of members of the Judiciary. The right to defense must be assured by means of a procedure that meets the minimum requirements of due process when imposing penalties or punishment. Resolutions imposing punishments on judges also have to be properly substantiated in order for there to be absolute transparency regarding the grounds for a punishment and certainty that due process was observed. Finally, there must be a right to have

³⁴⁸ "There are also some internal factors in the judiciary, for instance exchanging favours between judges at different levels of jurisdiction, nepotism, lack of objective criteria and transparency in the administration of justice (judges' careers, fund and personnel management, case assignments) and lack of accountability, which can all facilitate corruption in the judiciary." United Nations General Assembly, Independence of judges and lawyers, Note by the Secretary-General, A/67/305, August 13, 2012, para. 24.

³⁴⁹ I/A Court H.R., Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2013. Series C No. 266. paras. 147-155.

³⁵⁰ United Nations, General Assembly, Report of the Special Rapporteur on the independence of Judges and Lawyers, Gabriela Knaul. HRC / 26 / 32, 28 April, 2014 Knaul, G. (2014, April 28). para. 60.

punishments reviewed by higher judicial authorities.³⁵¹ Third, it is necessary that in performing their functions judges be able to exercise their rights as citizens (freedom of expression, association, and so on) and that the law establish restrictions only when the exercise of those rights comes into conflict with the independence of their functions.³⁵²

309. Thus it is important to bear in mind that the greater its independence, the greater the ability of justice administration to monitor the other branches of State, fight corruption effectively, and guarantee equality in judicial proceedings. The IACHR is of the opinion that a system that respects judicial independence guarantees that judicial rulings are not manipulated from outside and leaves judges ample room to exercise their discretion.³⁵³

2. Due Process as a Limit on Discretion

310. Due process guarantees are not only individuals rights of the persons involved in a judicial proceeding, but may also be a mechanism for preventing judicial corruption. In this regard, the IACHR considers that the guarantee of impartiality constitutes a barrier to prevent situations of corruption.

a. Impartiality

311. The standard on impartiality is enshrined in Article 8(1) of the American Convention when it establishes that every person has the right to be heard, with due guarantees, by an impartial court.³⁵⁴ To this end, the Inter-American Court has defined the guarantee of impartiality as the criterion that “... demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and

³⁵¹ IACHR. Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas, OEA/Ser.L/V/II,Doc.44, December 5, 2013 paras. 192-239.

³⁵² IACHR, Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas, OEA/Ser.L/V/II, Doc.44, December 5, 2013 paras. 168-183.

³⁵³ “69. When attempting to corrupt the judiciary, criminal organizations primarily seek to conceal or confer legitimacy on the criminal activities they have undertaken, either through inaction or a flawed interpretation of the law by key actors in the judicial system. The margin of discretion available to judges and prosecutors when interpreting and resolving issues that fall within their purview means that these individuals are some of the most targeted by criminal organizations.” United Nations, General Assembly, Independence of Judges and Lawyers. Note by the Secretary-General. Resolution A/72/140, 25 July 2017, para. 69.

³⁵⁴ The IACHR has indicated that impartiality “requires that said authority approach the facts of the case objectively, without any preconceived notions or bias, and that it offer sufficient objective guarantees to dispel any doubt that the accused or the community might harbor with respect to the absence of impartiality.” IACHR. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser. L/V/II, doc.44, December 5, 2013, para. 200.

also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.”³⁵⁵

312. The subjective facet, therefore, requires that judges ensure that their rulings are not influenced by personal prejudices or biases, and that they not harbor preconceived ideas regarding the matter submitted to them³⁵⁶; such impartiality “is presumed unless there is evidence to the contrary, for example proof that a member of a court or the judge has shown personal prejudice or partialities against the parties, the so-called objective evidence consists in determining whether the questioned judge provided convincing elements that would dispel any legitimate fears or well-based suspicions of prejudice regarding their conduct.”³⁵⁷ Objective impartiality is related to the appearance of their acts, and not to the subjective mindset of the judge; the Court has noted that “the so-called objective evidence consists in determining whether the questioned judge provided convincing elements that would dispel any legitimate fears or well-based suspicions of prejudice regarding their conduct.”³⁵⁸ in addition, it is important that states offer mechanisms that make it possible to file a grievance when these conditions of impartiality do not obtain, but without that impeding the work of the respective organ. Accordingly, a claim of lack of impartiality goes to the person, not to the judicial body.³⁵⁹
313. In cases in which a judge may be committed to interests other than those of the administration of justice, the Commission considers that the possibility of seeking recusal of a judge who has shown that he or she has lost the necessary impartiality may be a tool for preventing corrupt acts. The Inter-American Court has indicated that challenging is a mechanism to protect the right to be judged by an impartial body that give to the parties the right to move for the exclusion of a judge when, regardless of the personal conduct observed by the questioned judge, there are facts that can be proven or elements of conviction that may not warrant elimination of grounds for misgivings or legitimate suspicions of partiality regarding his person, thus preventing his decision from being seen as made by reasons alien to the Law and, therefore, the operation of the Judicial System to appear distorted. The institution of challenging has a twofold purpose; on one hand, it works as a

³⁵⁵ I/A Court H.R., Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 56.

³⁵⁶ Human Rights Committee (HRC), General Comment No. 13, Administration of justice (Article 14) 21st Session. Doc. HRI/GEN/Rev.9. 1984, para. 21

³⁵⁷ I/A Court H.R., Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 56. Along the same lines: 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, paras. 189 and 234.

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. 189.

³⁵⁹ “... In this regard, recusal is a procedural instrument that makes it possible to protect the right to be tried by an impartial organ. The guarantee of impartiality implies that the members of the court do not have a direct interest, have not taken a position, do not have a preference for any of the parties, and are not involved in the dispute and that they inspire the necessary trust in the parties to the case, and to citizens in a democratic society.” I/A Court H.R., Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 117.

guarantee for the parties to the proceedings, and on the other hand, it aims at providing credibility to the role performed by the Jurisdiction. Challenging should not necessarily be seen as putting on trial the moral rectitude of the challenged official, but rather as a tool to build trust in those turning to the State in quest for action by bodies that are and appear to be impartial³⁶⁰.

b. The Guarantee of a Reasonable Time

314. A second general requirement, common to any type of proceeding, is that of a reasonable time, set forth at Article 8(1) of the American Convention. The Commission observes that the duration of proceedings has repercussions on judicial corruption, seeing as a delay in a proceeding may be an end in itself, or may be associated with attaining impunity.
315. The inter-American standard in this regard establishes the right to be heard with due guarantees in a reasonable time. As there is no objective parameter for establishing when a given time is reasonable, the supervisory organs have adopted criteria for performing that evaluation. Following the parameters of the European Court of Human Rights, the Inter-American Court has considered four elements for evaluating the reasonableness of the time: (a) the complexity of the matter; (b) the procedural activity of the interested person; (c) the conduct of the judicial authorities; and (d) the impairment of the legal situation of the person involved brought about by the duration of the proceeding.³⁶¹
316. In the area of judicial corruption there are two especially relevant requirements. First, the element relating to the conduct of the judicial authorities goes directly to an evaluation of the judge's activity. A judicial authority unlawfully committed to one of the parties to the proceeding, interested in drawing out a trial or producing situations of impunity, in guaranteeing a reasonable time, encounters a limit that can be pointed to by the parties involved as a guarantee of due process.³⁶²
317. The second relevant element is the impact on the rights of third persons.³⁶³ In those proceedings in which injunctive measures are adopted (be they personal or material), there is an impairment of rights that may be legitimate, but that requires of the authorities stricter scrutiny of the duration not only of the measures but of

³⁶⁰ I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 63.

³⁶¹ I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 155; I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 156.

³⁶² In the case of the Serrano sisters, the I/A Court HR established that in a criminal investigation a prolonged period without procedural activity could not be explained I/A Court H.R., Case of Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 71.

³⁶³ I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 155.

the entire proceeding. Hence this element may constitute an important limit to prevent acts of judicial corruption from continuing indefinitely, ensuring that they can be subject to review.³⁶⁴

318. The Inter-American Court has explicitly indicated that in cases involving corruption of public servants the evaluation of a reasonable time must be stricter, since these proceedings may be used for an illegitimate end, such as removing a contender from competition or tarnishing his or her public image. Accordingly, the Court has noted:

... The healthy struggle against corruption and the desirable prosecution of crimes against the public administration must not be allowed to be perverted, becoming harmful to democracy by subjecting politically active persons to an uncertain indefinite procedural situation, with the result of excluding them from the democratic political contest. The very objective of fighting corruption, given situations susceptible of converting the zeal for transparency into antidemocratic management of public funds, requires great care and even abbreviating the time usually considered reasonable for the procedure for the sake of a healthy democracy in any state under the rule of law.³⁶⁵

319. Therefore, reasonable time, as a judicial guarantee, is a good indicator of situations of risk that may occur due to discretionary actions by the judicial authority whose foundation is in acts or a situation of judicial corruption. In the view of the Commission, control over the time, both internal and external, constitutes a useful tool for limiting the discretion of the authority in the conduct of a judicial proceeding.

c. The Duty to Investigate

320. Judicial corruption may entail a breach of the obligations of those involved in the administration of justice. In particular, the agents of the judicial administration may commit breaches by abusing legitimate mandates that they exercise such that they end up constituting acts violative of human rights.
321. The duty to investigate may correspond to the judge or to institutions entrusted with guiding the investigations, such as prosecutorial authorities, depending on the type of procedure that governs in each state. The Inter-American Court has established, in its consistent case-law³⁶⁶, that while the duty to investigate is an obligation of means and not of results, that does not imply that the authority can

³⁶⁴ I/A Court H.R., Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. (Only in Spanish), para. 164.

³⁶⁵ I/A Court H.R., Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. (Only in Spanish), para. 178.

³⁶⁶ I/A Court HR. Cuadernillo de Jurisprudencia de la Corte Interamericana de Derecho Humanos no. 12: Debido Proceso. 2017.

undertake such an investigation at its own discretion. The Court has established, in this connection, some criteria for determining when investigations are effective, depending on the nature of the facts investigated.³⁶⁷ One of these criteria to be considered has to do with the lines of investigation; another is showing the truthfulness of the versions or hypotheses regarding what happened. As regards lines of investigation, the Court has noted that one must “exhaust all the lines of investigation in order to discover the truth,”³⁶⁸ including those that imply investigating systematic patterns of violations involving high-level state authorities.³⁶⁹ Accordingly, the IACHR considers that it is crucial to have judicial oversight mechanisms that make it possible to verify the legitimacy of the investigative actions carried out by the authorities in charge of them.

322. Accordingly, due process guarantees make it possible to place a check on judicial authorities, for it prevents them, who have an obligation of means and not of results, from taking the liberty to exclude evidence, investigate responsibilities, or involve and/or exclude authorities when their involvement is not conducive to the interests of those who investigate and those who exercise oversight of the judge. When the judge does not have control of the investigation and it is undertaken by organs with respect to which there are suspicions of lack of independence and impartiality, the court is obligated to verify the adequacy of the means of investigation, its speediness, the participation of those involved, and the independence of the investigation.³⁷⁰
323. Clearly, when the authorities deviate from acting diligently it may be due to an illegitimate commitment regarding the results of the investigation. If such a deviation has as its aim a private interest, either of oneself or third persons, it may be considered a form of judicial corruption; in other cases, it may be considered a distinct unlawful act, such as aiding and abetting. In this sense, oversight of indirect infractions of due process should be aimed at avoiding such discretion as is particular to obligations of means, such as the obligation to investigate an act that has the characteristics of a criminal offense.
324. The possibility of evaluating the activity of the judicial authorities and of the ancillary organs constitutes a legitimate limit to their independence. The Court has indicated that for an investigation to be effective, the persons in charge of it must be independent, both hierarchically and institutionally, as well as in practice, from

³⁶⁷ “For an investigation to be effective in the terms of the Convention, it must be carried out with due diligence, which requires that the organ that investigates carry out all those procedures and pursue all inquiries necessary to obtain the result sought. In other words, all legal means available and geared to determining the truth should be substantiated.” I/A Court H.R., Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334. (Only in Spanish), para. 136.

³⁶⁸ I/A Court H.R., Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 234.

³⁶⁹ I/A Court HR. *Case of Rochac Hernández et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 154.

³⁷⁰ I/A Court H.R., Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C No. 333. (Only in Spanish), para. 190.

those persons implicated in the facts investigated.³⁷¹ In this regard, in keeping with the relevant inter-American standards, it is essential that investigations into human rights violations be conducted immediately and exhaustively, with guarantees of independence and impartiality.³⁷²

325. Therefore, the IACHR considers that it is necessary to verify, *inter alia*, whether the authority in charge has followed all the lines of investigation conducive to clarifying the facts, and whether the hypotheses that stem from the facts investigated have been developed. Scrutiny of the minimum aspects one may demand of an investigation makes it possible to limit the discretion of the judicial authorities, and in this way limits the possibilities of acts of corruption associated with the way in which a judicial investigation is conducted.

d. The Right to Defense

326. Every judicial proceeding must guarantee the two structural principles of due process: equality of arms and adversarial procedure. The exercise of the right to defense guarantees that those principles are meaningful in practice.
327. The American Convention regulates the right to defense in a criminal proceeding, though its standards are applicable to any judicial proceeding governed by the principles of equality of arms and adversarial procedure.³⁷³ For the Court “the right to defense is a central component of due process that requires that the state treat the individual, at all times, as a true subject in the proceeding, in the broadest sense of this concept, and not merely as an object.”³⁷⁴ The content of the right finds very concrete expressions such as the right of the accused an interpreter, to have the accusation communicated to him or her with more complete and in-depth contents as the investigation goes forward, and the rights to be given the means and time to prepare one’s defense, to have the assistance of counsel, to be informed of the evidence and the identity of the witnesses, and to present evidence to establish the facts (enshrined in the Convention itself, Article 8(2)), as well as the right to consular

³⁷¹ I/A Court H.R., Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, para. 227

³⁷² I/A Court H.R., Case of Cantoral Huamani and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paras. 132 and 133. Among other international instruments, *Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment*, Article 12; *International Convention for the Protection of All Persons from Enforced Disappearance*, Article 12(1); and *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, recommended by the Economic and Social Council in its resolution 1989/65, of May 24, 1989, principle 9.

³⁷³ I/A Court H.R., Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 125; I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 103; I/A Court H.R., Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 142.

³⁷⁴ I/A Court H.R., Case of Ruano Torres et al. v. El Salvador. Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 303. (Only in Spanish), para. 153.

assistance³⁷⁵ and the right to coherence between the accusation and the judgment.³⁷⁶

328. A procedure that guarantees the right to defense for the parties involved reduces the possibility of the judge engaging in acts that divert judicial activity, since the opportunities for discretion are limited.
329. As corruption is a deviation from the obligations entailed in judicial endeavors to obtain an illegitimate benefit, in a procedure in which the parties involved are not treated equally, and in which the principle of adversarial procedure is not respected, the opportunities for such deviation are greater. Limiting discretion entails ensuring that the parties may make the submissions they deem relevant, which become part of what the judge is obligated to assess and resolve.

e. The Duty to State Reasons

330. The duty to state reasons is one of the “due guarantees” included at Article 8(1) to safeguard the right to due process.³⁷⁷ The Inter-American Court has noted that the grounds “are the exteriorization of the reasoned justification that allows a conclusion to be reached”³⁷⁸ and constitutes a right to ensure that the decisions adopted by domestic organs that may affect persons’ rights or interests are duly explained, for otherwise they would be arbitrary decisions.³⁷⁹ That duty “is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.”³⁸⁰
331. The IACHR considers that the obligation to state the reasons for decisions is key to keeping tabs on judicial activity. To the extent that the authority states the reasons for its decisions, that state function gains legitimacy; plus there can be social oversight of such decisions. Although the motivation has differences depending on

³⁷⁵ I/A Court HR, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 124.

³⁷⁶ I/A Court H.R., Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, para. 126.

³⁷⁷ I/A Court H.R., Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 78.

³⁷⁸ I/A Court H.R., Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 107.

³⁷⁹ I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 144. On this point, the Inter-American Court relies on the following cases from the European Court: *García Ruiz v. Spain* [GC], No. 30544/96, § 26, European Court of Human Rights 1999-I; and *Case of H. v. Belgium*, Judgment of November 30, 1987, Series A No. 127-B, para. 53. In addition the European Court has noted that judges should indicate with sufficient clarity the reasons that are the basis for their decisions. See European Court of Human Rights, *Case of Hadjianastassiou v. Greece*, Judgment of December 16, 1992.

³⁸⁰ I/A Court H.R., Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2011. Series C No. 227, para. 118.

whether it is a criminal sentence or an administrative sanctioning process or determination of rights, it is particularly important to avoid arbitrary decisions. The Inter-American Court has said that in the context of criminal sentences, to distort the presumption of innocence, the motivation must “express the sufficiency of proof of charge to confirm the accusatory hypothesis; the observance of the rules of sound criticism in the assessment of the evidence, including those that could generate doubt of criminal responsibility; and the final judgment that derives from this assessment”.³⁸¹

332. The requirement that the reasons for judicial decisions be stated in a complete and adequate manner becomes a limit on discretion considering the possibility of such reasons being subject to scrutiny by the parties and by the public. As we have indicated, corruption benefits from opacity; accordingly, such transparency as allows for oversight by civil society and the media requires knowing the reasons why the judge decided one way or the other. Knowing the reasons not only makes possible the right to defense³⁸² and judicial oversight³⁸³, but is essential to ensuring the legitimacy of judicial decisions³⁸⁴ and at the same time diminishing discretion without affecting independence.

f. System of Judicial Remedies

333. In the American Convention, within this set of requirements for criminal proceedings (Article 8(2)) is the right of persons to appeal the verdict to a higher court. Likewise, under the Article 25.1 of American Convention of Human Rights Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights (Art. 25.1), which must be substantiated following the rules of due process (Art 8.1) .for an effective recourse to exist, it is not enough for it to be established by the Constitution or law, or be formally admissible; rather it needs to be truly appropriate for establishing whether there has been a human rights violation and for providing whatever is necessary to repair this³⁸⁵.

³⁸¹ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), p. 147.

³⁸² I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), para. 157.

³⁸³ “... Regarding this point, the Court reiterates that the motivation demonstrates to the parties that they have been heard and, in cases where decisions may be appealed, it provides the possibility to contest the resolution and make a new examination of the matter before higher authorities.” I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 148.

³⁸⁴ “The duty to state grounds is a guarantee linked to the proper administration of justice, protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.” I/A Court H.R., Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 77.

³⁸⁵ I/A Court H.R, Caso Trabajadores Cesados del Congreso (Aguado Alfaro y otros). Preliminary objections, merits, reparations and costs. Judgment of November 24, 2006. C Series No. 158. p. 125; I/A Court H.R, Caso

334. In the concept of the Inter-American Court, the right to appeal a judgment is aimed at to correct the jurisdictional decisions that are not in keeping with the law³⁸⁶. Likewise, the Inter-American Court has indicated that this right ratifies the grounds and provides more credibility to the judicial acts of the State and, at the same time, offers more security and protection to the rights of the accused.³⁸⁷
335. As the IACHR has expressed, the remedy provided in domestic legislation have to comply with this guarantee:
- it must constitute an appropriate means for attempting to correct a wrongful conviction. This requires it to analyze questions of fact, evidence, and law upon which the contested judgment is based, since in judicial activity there is interdependence between the factual determinations and the application of law in such a way that an erroneous finding implies a wrong or improper application of law. Consequently, the reasons for which the remedy is admissible should allow for extensive control of the contested aspects of the sentence³⁸⁸.
336. This right cannot be analyzed in isolation from the set of guarantees of due process, nor concerning other rights protected in the ACHR. Specifically, about the right to defense, the case-law of this Court has emphasized that the aim of the right to appeal a judgment is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors unduly prejudicial to a person's interests, from becoming final³⁸⁹. The right to appeal a judgment is part of a set of procedural guarantees that ensures the due process of law (not only criminal), which are inextricably inter-linked³⁹⁰.
337. This form of oversight and consequent limitation on the discretion of the authorities is clearly reflected in the considerations of the Inter-American Court in the case of *Acosta v. Nicaragua*, in terms of what happens when such oversight fails. Specifically, the Court indicates:

Comunidad Indígena Yakye Axa. Judgement of June, 17, 2005. Series C No. 125. P..61; I/A Court H.R, Caso "Cinco Pensionistas". Judgement of February 28, 2003. C Series No. 98. P.. 136.

³⁸⁶ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, p. 161.

³⁸⁷ I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, p. 89; I/A Court H.R., Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, p. 97.

³⁸⁸ I/A Court H.R., Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, p. 100.

³⁸⁹ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, p. 158; I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, p. 88; I/A Court H.R., Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, p. 98.

³⁹⁰ I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No.16, p. 120.

Accordingly, the irregular procedures were clearly not corrected or cured subsequently by the higher-level bodies. The motions for annulment and recusals did not have any effect or did not receive specific responses on the part of the higher-level bodies and disciplinary oversight was not effective.... That decision, even upheld by a judgment of last resort by the Supreme Court of Justice, sought to eliminate, domestically, the specific possibility of curing irregularities detected and of criminally prosecuting persons with respect to whom there are compelling indicia of participation in the homicide of Mr. García Valle. In this regard, the responsibility of the State has been established.³⁹¹

338. While judicial oversight of rulings through a system of appeals to higher authorities is a very useful tool to avoid acts of judicial corruption, this possibility vanishes when the higher courts are affected by personal acts or systems of corruption. Therefore, it is necessary to establish clearly, in each legal system, the grounds for modifying a ruling by a lower court, the personal characteristics (independence and impartiality) of the higher organ, the need to guarantee the principle of adversarial process, and the necessary statement of the reasons for the rulings by the reviewing bodies.
339. Another way to restrict the space for corruption in the administration of justice is by establishing systems of accountability to prevent judicial corruption. For the Rapporteurship on the independence of judges and lawyers, accountability is “inherent to the rule of law” and basically consists of accepting responsibility or answering for one’s own acts.³⁹² Said Rapporteurship has established with great clarity that it is a mistake to consider accountability a threat to judicial independence, since accountability and judicial independence should operate hand-in-hand. Accountability is based on anti-corruption principles. For there to be accountability certain requirements must be met: recognition of the legitimacy of the standards set, clear mechanisms established by law, and precise provisions on the supervisory authorities. The forms for implementing accountability may be personal and/or institutional. The personal ones are related to complying with rules of extrajudicial conduct and activities insofar as they may compromise judges’ independence or impartiality in relation to goals, tasks, and objectives of judicial activity, for which there should be clear rules and even codes of conduct for adapting the conduct of the judiciary; the institutional ones encompass the institutional organization of the judicial system. To be able to implement these forms of accountability one must implement monitoring indicators and mechanisms.³⁹³
340. To perform effective oversight of the possibilities of acts of corruption through processes of accountability it is important to have data on the assets of judges

³⁹¹ I/A Court HR. *Case of Acosta et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334, para. 169.

³⁹² United Nations, General Assembly. *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul. HRC/26/32, April 28, 2014, p. 6.

³⁹³ United Nations, General Assembly. *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul. HRC/26/32, April 28, 2014, pp. 6-14.

through declarations of assets that should be filed as part of the process of preventing corruption. The transparency of such declarations is part of the exercise of oversight and scrutiny of their work; thus they constitute a legitimate limitation on the right to privacy. Social oversight of judicial independence is key for the oversight systems to be effective. To this end, the systems of accountability and oversight must assign a significant role to civil society, and particularly to the communications media.³⁹⁴

341. The existence of systems of accountability, social oversight, and transparency of the activity of judges – but not of the contents or bases of their judgments – reduces discretion and therefore the possibility of acts of corruption is also limited. The absence of effective systems for the oversight of judicial activity and of the members of the judiciary facilitates actions on the basis of bribery, influence-peddling, and more complex forms of corruption such as the capture of the judiciary by private interests.
342. In the case of *CuyaLavi v. Peru*, the IACHR ruled on the then-current process of ratification of prosecutors and judges in Peru. The Commission recalled that in addition to the problematic that discretion may result in a re-election or ratification system, a justice operator who intends to be re-elected or ratified in his functions, compromises behaving in such a way that he obtains the support of the authority responsible for such decision, or that their behavior is perceived in this way by the justiciable. Likewise, the Court said that these processes should be exclusively aimed at ensuring accountability by such officials and determining their suitability with objective criteria and, by the materially sanctioning nature and their impact on judicial independence, in accordance with the guarantees of due process recognized in the American Convention, through previously established grounds and in accordance with the principle of legality.³⁹⁵
343. In summary, the right to due process presupposes an independent judicial system. Accordingly, it is necessary to ensure its independence vis-à-vis other branches of government (institutional) and vis-à-vis authorities and public servants in the face of illegitimate influences or external pressures. This guarantees that the institutional design of separation of powers is respected and also ensures the right to due process of law for the parties involved. In order for independence not to give rise to spaces of corruption, measures of transparency, accountability, and social oversight of judicial activity must be implemented, but also seeing to it that judicial independence not be unduly limited.

3. The Effectiveness of the Institutional Response in Criminal Investigation

³⁹⁴ Dakolias and Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*. Regents of the University of Wisconsin. 2000. 18(353), 366-368.

³⁹⁵ IACHR, Report No. 159/18. *Caso 12.992 Merit*. Jorge Luis Cuya Lavy y otros. Peru. December, 7, 2008, p.77.

344. In this section the Inter-American Commission proposes to analyze the issues that should be considered for an effective fight against corruption with a human rights approach. The IACHR will analyze, in particular, the use of the right sanctioning instruments, particularly the criminal law, to determine which issues should be taken into consideration for the search for effective measures not to entail a violation of human rights. To that end, the IACHR distinguishes two aspects: first, the criminal legislations that pose the greatest risks of being at odds with inter-American human rights standards, and second, the standards on due process for persons accused of acts of corruption.
345. One challenge for an effective response to corruption in a democratic society, in terms of both policy and punishment, is that such a response be carried out pursuant to standards that respect human rights.³⁹⁶ Without abiding by this requirement the response loses legitimacy and ends up undermining the rule of law that one is seeking to protect.³⁹⁷ Three aspects receive special attention in terms of criminal justice: the criminal justice policy for confronting corruption; the conditions for regulating criminal justice in corruption cases; and due process.
346. As for the conditions for prosecuting acts of corruption, the criminal legislation is key, since it must meet minimum requirements such as strictly abiding by the principle of legality. This implies the *a priori* existence of written and formal criminal statutes.
347. A good example of this complex relationship among the criminal law, the anti-corruption struggle, and human rights is the use of legislation on illicit enrichment. No doubt this type of legislation may be a useful instrument for detecting situations of corruption when there are assets that cannot be justified, but the investigation and punishment of such situations must be associated with due process guarantees.³⁹⁸ In particular, the states should guarantee that the laws on illicit enrichment are compatible with the principle of the presumption of innocence and with the principle of legality. Another example is the use of incentives to report such situations, or rewarded denunciations. In this case, the legislation should satisfy the principle of the presumption of innocence and be compatible with rules of evidence that satisfy the right to defense.
348. Sanctions for acts of corruption should be in keeping with the principle of proportionality of the punishment, mindful of the economic and social harm caused, so that it is, in effect, a mechanism to discourage such acts. Similarly, the states should adopt legislative and other measures so that criminal punishments are

³⁹⁶ “Persons suspected of having committed a criminal offence relating to corrupt behaviour have rights as part of the criminal proceedings being taken against them. Even if effective criminal prosecution is an important tool against corruption, the rights of accused individuals must be guaranteed.” United Nations, General Assembly, Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73, January 5, 2015, para. 43.

³⁹⁷ I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233.

³⁹⁸ OAS, Model Law: Law on the Illicit Enrichment of Public Servants.

effectively implemented as a way to avoid creating situations of impunity that foster such practices, always fully observing due process.

349. In effect, for the criminal prosecution of corruption not to lose its legitimacy is important that the judicial organs entrusted with judging such unlawful acts comply with the requirements enshrined in Article 8(1), 8(2) and 25(1) of the American Convention. These judicial organs must satisfy the principles of being competent, independent, and impartial. It is also important that these organs are previously established in the justice system of the states so that they are not constituted on an *ad hoc* basis as special courts, which is incompatible with the states' international obligations in respect of due process. Setting up specialized courts or a special system for prosecuting corruption cases is compatible with the states' obligations only to the extent that they meet these basic principles of independence and impartiality.

a. Due Process Guarantees for Persons Accused of Corruption

350. Criminal due process guarantees must be observed in corruption cases to ensure the rights of the persons accused. In this respect, special mention should be made of the right to be tried in a reasonable time. For an investigation to be considered to satisfy this standard one must analyze the aforementioned elements to determine that reasonableness, i.e. the complexity of the case, the activity of the parties, the conduct of the authority, and the consequences for the rights of the person or persons investigated. In corruption cases these elements must be analyzed mindful of the need for such investigations to be resolved promptly, considering the social need to know the truth of the acts of corruption being investigated. The Inter-American Court, in the case of *Andrade v. Bolivia*,³⁹⁹ made explicit reference to the impact on the analysis of reasonable time of an investigation of the fact that it is directed against a public servant for alleged acts of corruption, and the impact it has on political rights, as well as the misuse that may be made of such allegations for purposes other than fighting corruption.⁴⁰⁰
351. When it comes to corruption, as in any criminal proceeding, the principle of the presumption of innocence applies⁴⁰¹; it is binding not only on the judge and the

³⁹⁹ I/A Court H.R., Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. (Only in Spanish).

⁴⁰⁰ "... It is not permissible for the healthy struggle against corruption and the desirable prosecution of crimes against the public administration to be perverted becoming a resource harmful to democracy, by submitting persons who are politically active to a to an indefinite uncertain procedural situation, with the result of excluding them from the democratic political struggle. The very objective of fighting corruption, in the face of situations susceptible of turning the zeal for transparency in the management of public funds into an anti-democratic instrument requires extreme care and even that the terms usually considered reasonable for the procedure be abbreviated to defend a healthy democracy in any state under the rule of law." I/A Court H.R., Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. (Only in Spanish), para. 178.

⁴⁰¹ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), paras. 136-145.

investigative authorities, but on all branches of government.⁴⁰² For example, publicizing trials is significant given its deterrent effect⁴⁰³, so long as there is full observance of due process in the judicial proceeding. According to the judgment of the I/A Court HR in *Zegarra v. Peru*⁴⁰⁴, regarding the accusation made by the victim that he was part of a corruption network involved in the fraudulent issuance of passports, the Court upheld the standards on the principle of the presumption of innocence, which requires that no one be convicted unless there is full evidence or evidence beyond a reasonable doubt of his or her guilt, after a proceeding conducted in keeping with the due guarantees. The legal condition of innocence is projected in various obligations that guide the development of any criminal proceeding. Accordingly, the irrefutable showing of guilt is an essential requirement for criminal punishment such that the burden of proof is borne by the accusing party.⁴⁰⁵

352. In addition, the guarantees at Article 8(2) of the American Convention – particularly the right to defense – apply to corruption trials. The Court has established that the statements by co-defendants as a means of evidence may only be considered indicia, not as conclusive proof, and therefore the facts must be corroborated by other evidence.⁴⁰⁶ This is very relevant in the struggle against corruption since a key part of the strategies for investigating major corruption cases is securing testimony from those who participated in the criminal conduct in question. Along the same lines, as regards the shifting of the burden of proof, the Court reiterated the general principle that the burden of proof lies with the state. It is the authorities who have the duty to prove the hypothesis of the accusation and criminal liability, thus there is no obligation on the part of the accused to show his or her innocence or to produce evidence on his or her own behalf.⁴⁰⁷
353. Finally, as regards stating the reasons for the judgment, the Court has indicated that it is the duty of the state authority to rebut the presumption of innocence that covers individuals who have been charged with a crime.⁴⁰⁸ It adds that the failure to

⁴⁰² “The right to presumption of innocence, as it is understood from Article 8(2) of the Convention, requires that the State should not convict an individual informally or emit an opinion in public that contributes to forming public opinion, while the criminal responsibility of that individual has not been proved.” I/A Court HR. *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, para. 160.

⁴⁰³ On the scope of due process and other international conventions and its relationship with corruption cases, see: Nash, Claudio; Aguiló, Pedro & Bascur, María Luisa. *Corrupción y Derechos Humanos: una mirada desde la jurisprudencia de la Corte Interamericana de Derechos Humanos*. Centro de Derechos Humanos, Universidad de Chile. Chile, 2014.

⁴⁰⁴ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish).

⁴⁰⁵ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), paras. 121-126.

⁴⁰⁶ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), paras. 127-135.

⁴⁰⁷ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), para. 140.

⁴⁰⁸ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), para. 147.

adequately state reasons has a negative impact on the right to defense and the effectiveness of the right to a judicial remedy.⁴⁰⁹

354. Therefore, the seriousness of accusations of corruption is subject to the principles that guide due process. The states should also conduct an effective investigation, always heeding the inter-American standards on human rights.
355. The right to appeal judgment in corruption cases is an effective guarantee to check the authorities in charge of prosecuting them. Accordingly, it is important that in those cases in which acts of corruption are investigated access be guaranteed to a judicial remedy that makes possible review of the factual and legal antecedents by a higher-ranking judicial organ that enjoys guarantees of independence and impartiality in keeping with what is established at Article 8(2) of the American Convention.
356. In addition, due process guarantees also apply in administrative proceedings on acts of corruption. In the case of *López Mendoza v. Venezuela*⁴¹⁰, on an administrative sanction imposed on a mayor that entailed a restriction on his political rights, the Court analyzed the due process standards that should be followed in cases in which administrative sanctions are applied that have an impact on the exercise of human rights. To this end, the Court set standards applicable to administrative investigations of acts of alleged corruption; for example, that administrative organs that apply sanctions are subject to the due process guarantees established at Article 8 of the American Convention and, therefore, that the person's right to be heard as well as the right to defense and the duty to state the reasoning of the sanction-imposing decision must be respected. As regards the duty to state reasons, the Court set a standard that is very relevant when it comes to administrative sanctions for acts of corruption, since it established that the argument of a judgment and of certain administrative acts must make it possible to know the facts, reasons, and provisions on which the authority relied in reaching its decision, so as to rule out any indication of arbitrariness.⁴¹¹ In particular, it established that the final decision of the administrative authority in this type of corruption case should be based on a concrete analysis of the seriousness of the facts and the negative impact on the community, public ethics, and administrative morality.⁴¹²
357. In the struggle against corruption the states have a duty to act effectively in responding to a complex phenomenon for which the traditional investigative techniques appear to be insufficient. The Inter-American Commission reaffirms that those accused of corruption lose none on their human rights. In addition, it reiterates that it is a duty of the state to seriously investigate corruption cases, establish the truth, and punish those responsible. This presupposes that the states

⁴⁰⁹ I/A Court H.R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331. (Only in Spanish), para. 157.

⁴¹⁰ I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233.

⁴¹¹ I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 141.

⁴¹² I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 146.

have the obligation to respect the full enjoyment and exercise of all rights, in particular of those that allow no restriction, such as the prohibition on torture.⁴¹³

358. The Commission notes that with respect for those rights that do allow for some restrictions it is important that the requirements for that restriction to be considered legitimate be satisfied. For example, in the area of pretrial detention, this restriction must be an exceptional measure and any decision that restricts personal liberty through the application of pretrial detention must contain sufficient and individualized motivation. to assess whether such detention meets the necessary conditions for its application, such as reasonable evidence linking the accused, legitimate purposes, exceptional application, and criteria of necessity, reasonableness, and proportionality, among others⁴¹⁴.
359. The Court has established that, in order to restrict the right to personal liberty using measures such as remand in custody, there must be sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation⁴¹⁵. Nevertheless, “even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but [...] based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice⁴¹⁶”.
360. Judicial remedies and the possibility of moving to annul procedures are procedural institutions that the legislation guarantees for safeguarding the rights of persons investigated by the justice system and the legitimacy of the measures adopted by the authorities. These remedies may not be used to thwart investigations or indefinitely draw out cases in search of procedural benefits, for example prescription.
361. In those cases in which the rights of persons accused of corruption are not respected and ensured the state may end up violating rights enshrined in international instruments, provoking a harm that must be repaired; and requiring it to adopt measures to re-establish the full exercise of the rights violated.

⁴¹³ Among other international instruments, *Inter-American Convention to Prevent and Punish Torture; Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment*.

⁴¹⁴ I/A Court H.R. Caso Chaparro Álvarez y Lapo Íñiguez. Vs. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. C Series No. 170, p. 93.

⁴¹⁵ I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, p. 111; quoting CasoChaparroÁlvarez y LapofñiguezVs. Ecuador. I/A Court H.R. Caso Chaparro Álvarez y Lapo Íñiguez. Vs. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. C Series No. 170, p.101 y Caso Servellón García y otros Vs. Honduras. , merits, reparations and costs. Judgment of September 21, 2006. C Series No. 152, p. 90.

⁴¹⁶ I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, p. 111; quoting CasoChaparroÁlvarez y Lapofñiguez Vs. Ecuador. I/A Court H.R. Caso Chaparro Álvarez y Lapo Íñiguez. Vs. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. C Series No. 170, p.101 y Caso Servellón García y otros Vs. Honduras. , merits, reparations and costs. Judgment of September 21, 2006. C Series No. 152, p. 90.

362. On the other hand, processes in matters related to corruption must comply with the principle of legality. The Inter-American Court has referred regarding the principle of criminal legality that:

The correct elaboration of the criminal types must always take care of clear definitions of the incriminated behaviors, which fix their objective and subjective elements in a way that allows them to be separated from non-punishable behaviors or other illegal behaviors punishable by non-criminal measures. The scope of each type must be defined as clearly and clearly as possible, expressly, precisely, and previously. The classification of an act as illicit and the determination of its legal effects must be preexisting to the conduct of the subject to whom it is considered an offender because, if not, people could not guide their behavior following a current and true legal order expresses in social reproach and its consequences⁴¹⁷.

363. The Court has also referred that it is up to the judge, at the time of the application of the criminal law, to strictly abide by the provisions of the latter and to observe the greater rigor in the adequacy of the conduct of the person accused of the criminal type, in a manner such that it does not incur the criminalization of acts not punishable in the legal system, that is, that does not proceed to an analog integration⁴¹⁸.

364. On the other hand, the Inter-American Court has also referred that Article 9 of the Convention applies to administrative sanctioning matters, in addition to being, of course, criminal matters. The Court has indicated that administrative sanctions are an expression of the punitive power of the State and that they are sometimes similar in nature to criminal sanctions. Both involve impairment, deprivation or alteration of the rights of persons, as a result of illegal conduct. Therefore, in a democratic system it is necessary to take precautions so that such measures are adopted with strict respect for the basic rights of individuals and after a careful verification of the effective existence of illegal conduct. Likewise, for the sake of legal certainty it is essential that the sanctioning norm exists and is known, or can be known, before the action or omission occurs that contravene it and that is intended to be sanctioned. The precision of a sanctioning norm of a disciplinary norm may be different from that required by the principle of legality in criminal matters, due to the nature of the conflicts that each one is destined to resolve⁴¹⁹.

365. The IACHR considers that disciplinary authorities as well as administrative or criminal jurisdictional bodies must comply with the standards indicated under the principle of legality in corruption-related processes. In conclusion, the restrictions on the exercise of the sanctioning power of the State must be established in compliance with judicial guarantees, the principle of legality and the right to judicial

⁴¹⁷ I/A Court H.R., Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs. Judgment of October 21, 2016. Series C No. 319. (Only in Spanish), p. 219 y 221.

⁴¹⁸ I/A Court H.R., Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs. Judgment of October 21, 2016. Series C No. 319. (Only in Spanish), p. 219 y 221.

⁴¹⁹ I/A Court H.R., Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311. (Only in Spanish), p. 89.

protection. The object and purpose of fighting corruption is legitimate in view of the social interest that is involved; that points to the common good, in keeping with the requirements of Article 30 the American Convention. The measures must be necessary to achieve an imperative interest such that there is no measure available other than the restriction of rights. In this case, in fighting corruption one must establish the truth of the act of corruption and determine whether systems of corruption exist and who the leaders are. All of the measures must be suitable for attaining the aim pursued. In this way, measures that make it possible to attain the objective of achieving justice take on meaning, while those that have other aims, such as imposing a social sanction, must be condemned. Finally, the measures must be proportional and in keeping with judicial guarantees to attain the purposes of an investigation to impose sanctions for corruption.

B. Electoral Institutions and Corruption

366. In the next part the IACHR discusses the relationship among the electoral apparatus, its oversight bodies, and the relevant actors in election-related matters, such as political parties, and their ties to corruption. In that regard, the objective of this section is to analyze the multidimensional impact of corruption on election-related institutions, and particularly on political-electoral rights, oversight bodies, political parties, and other relevant actors in this area.
367. The concern over the relationship between corruption and politics is very much present in the region. The exercise of political rights, associated with democratic participation, is a very sensitive subject from the point of view of both a democratic institutional framework and the guarantee and enjoyment of human rights. Democracy is part of the political agreement of the inter-American system⁴²⁰; therefore, the states must adopt all measures necessary to ensure democracy in its fullest sense. Hence the problem of corruption cannot be addressed solely in terms of the unlawful benefits that a public servant or private person may obtain from different ways of exercising power.⁴²¹ Corruption also has a detrimental impact on democracy, the rule of law, and the observance and enjoyment of human rights.
368. The rule of law implies a system of common rules in which power is controlled by institutions regulated by law. In a democratic society subject to the rule of law political corruption corrodes the principle of equality⁴²² and has a negative impact on the guarantees and observance of human rights.⁴²³ Acts of corruption divert

⁴²⁰ The Inter-American Democratic Charter is the best expression of this political agreement regarding representative democracy in the region. OAS. [Inter-American Democratic Charter](#). 2011.

⁴²¹ Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy*. New York: Cambridge University Press, 2006. Along the same lines: United Nations Office on Drugs and Crime (UNODC). [The Global Program against Corruption](#). Vienna, February 2004.

⁴²² On the discussion of corruption and equality in a democratic society, see: Dawood, Y. [Classifying corruption](#). *Duke Journal of Constitutional Law & Public Policy*, February 25, 2014.

⁴²³ Lutz, R., "On combating the culture of corruption," *Southwestern Journal of Law and Trade in Americas*. No. 263, 2004, pp. 263-265.

decisions from the common good to private benefits, at the same time fragmenting the bases of democratic coexistence, creating privileges both in access to decision-making and in the ultimate destination of resources and benefits.⁴²⁴ This dynamic alters checks and balances, the operation of the public institutions, and therefore the rule of law.

369. Corruption is aggravated when, through fraudulent maneuvers, organized crime succeeds in controlling the public institutions. In 2015, the International Commission Against Impunity in Guatemala (CICIG) noted that the ties of criminal structures engaged in drug trafficking with politics answered to the need for political protection, information, and freedom to act in the zones in which they operate. In addition, these groups finance election campaigns, contributing resources to the parties at different levels. By financing political campaigns the criminal structures seek not only to benefit from certain degrees of protection and information, but also to hold key positions in the state and control the public institutions.⁴²⁵
370. The most common forms of corruption related to political rights are to be found in the political-electoral arena; these are fraudulent political financing, vote-buying, and political clientelism. Acts of corruption interfere in the political will of persons, providing money or other benefits to get voters to vote for a given candidate. These practices constitute unlawful interference in the democratic form of government. Another fraudulent practice occurs through clientelist structures. In these cases the state apparatus is used, along with public resources, to capture the decision-making of broad social sectors, particularly those with the greatest social and economic vulnerabilities.
371. The United Nations Special Rapporteur on corruption noted: “Civil societies in many countries, especially the developing democracies, have undertaken to sensitize citizens on the effect of selling their votes. In some countries, voters expect presents and gifts from political parties and candidates and make their decisions on the basis of the amount and quality of gifts....”⁴²⁶
372. In this area, a complex form of corruption entails the illegal financing of political campaigns and even the operation of political party organizations. First, the financing of partisan politics generates wide-ranging debates on equality, the basis

⁴²⁴ Dawood, J. Y. [Classifying corruption](#). *Duke Journal of Constitutional Law & Public Policy*, February 25, 2014, pp. 108-109. Casas-Zamora and Zovatto note three impairments: equality among parties and their candidates to convey their message to the citizens, the possibility of certain sectors disproportionately influencing collective decision-making creating conditions for trading favors, and ongoing conflict of interest situations. Casas-Zamora, K, & Zovatto, D., “The cost of democracy: Campaign finance regulation in Latin America,” July 2015. Latin America Initiative Foreign Policy at Brookings. Policy Brief, July 2015.

⁴²⁵ IACHR. [Situation Of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#). OEA/Ser.L/V/II. Doc. 43/15 December 31, 2015, para. 52.

⁴²⁶ United Nations, Subcommittee for Promotion and Protection of Human Rights. [Preliminary Report of the Special Rapporteur. Corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights](#). Special Rapporteur, Ms. Christy Mbonu, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 25.

of the democratic form of government, and the rule of law.⁴²⁷ In effect, the fraudulent financing of partisan politics not only leads to institutional distortions, it also generates networks of corruption among political actors and private and/or criminal economic interests.⁴²⁸ In this way it may give rise to a distortive relationship between political power and the sector that finances it, altering the foundations of representative democracy.⁴²⁹

373. These forms of corruption, which may give rise to other illicit acts, may substantially impact the principle of the primacy of the law that is essential to the rule of law. In particular, representative democracy is negatively impacted due to the fragility of the electoral system, by which persons are elected to positions in the executive and legislative branches, i.e. those who are going to adopt the laws, carry them out, and oversee other branches of government.⁴³⁰ The legitimacy of the institutions and citizen trust may be impacted as a result of the fraudulent operation of the electoral and representative system, essential in a democracy under the rule of law.⁴³¹
374. In effect, political-electoral rights, as regulated in the Convention, have a broad scope and take in three dimensions: (a) participating in the conduct of public affairs, directly or through representatives; (b) voting and being elected in genuine periodic elections held with universal and equal suffrage and by secret ballot; and (c) acceding to public positions in equal conditions.⁴³² Exercising political-electoral

⁴²⁷ One of the most interesting discussions on the matter has unfolded in the Supreme Court of the United States. See: Hasen, R. Buckley is Dead, Long Live Buckley: The New Campaign Finance Incoherence of McConnell v. Federal Election Commission. 153 U. Pa. L. Rev. 31 (2004). Rose-Ackerman, S. Political corruption and democracy. Yale Law School. Faculty Scholarship Series. 592. 1999, pp. 368-372.

⁴²⁸ On September 12, 2019, the representative for Barranquilla for the Senate for the Conservative Party, Aída Merlano, was convicted of aggravated criminal conspiracy (*concierto para delinquir agravado*), corruption of voters, and possession of firearms. The judgment against her reflects a much more complex panorama. Merlano headed up an “organization made up of businesspersons, private citizens, and politicians in the department of Atlántico, seeking to have a permanent impact, and with the aim of committing indeterminate crimes so as to perpetuate their political hegemony in different elective offices, national, departmental, and municipal.” El Espectador, Aída Merlano apeló su condena a 15 años de prisión el mismo día que se fugó, October 1, 2019.

⁴²⁹ Lessig, L. *Republic, Lost: how money corrupts congress and plan to stop it*. Hachette Book Group USA. 2011, *op. cit.*, pp. 125-171.

⁴³⁰ “The oversight function of parliamentarians is an important tool in checking corruption and corrupt practices in the executive, the civil service, the judiciary, etc. However, where Parliament itself is corrupt and is not monitored by an independent and vibrant media, corruption thrives,” United Nations, Economic and Social Council. Economic, social, and cultural rights. Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights. Special Rapporteur Christy Mbonu, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 31.

⁴³¹ “However, when corruption among political parties and parliamentarians is endemic, it erodes public trust and confidence in leadership.” (United Nations, Economic and Social Council. Economic, social, and cultural rights. Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights. Special Rapporteur, Christy Mbonu, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 23).

⁴³² I/A Court H.R., Case of Argüelles et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of November 20, 2014. Series C No. 288. (Only in Spanish), para. 221. See also: I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, paras. 195 to 200; I/A Court H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 106.

rights presupposes conditions of equality and non-discrimination⁴³³, which should be guaranteed by the state so that all persons have a genuine opportunity to exercise them.⁴³⁴ In addition, the Inter-American Court has noted that Article 23 of the American Convention refers to the rights of a person as a citizen, i.e., as the principal in the process of making decisions on public matters, as a voter through the vote, as a public servant, in other words the right to be elected by popular vote or selected by designation or appointment to hold a public position. In that regard, the Court has held that it is essential for the state to put in place optimal conditions and mechanisms to make it possible to exercise political rights effectively, respecting the principle of equality and non-discrimination.⁴³⁵ It is necessary the existence of institutional and procedural mechanisms that allow and ensure the effective exercise of the law, preventing or hindering legal or de facto situations or practices that suggest forms of stigmatization, discrimination or reprisals for those who exercise it⁴³⁶.

375. Representative democracy materializes in the holding of elections. All peoples have the authority to deliberate to make a collective decision. To reach a certain result election campaigns need to be regulated by law. In this phase of the exercise of democracy the various candidates can expound upon and disseminate their ideas to inform the citizens, who make the decision by voting. The fraudulent financing of partisan politics has a negative impact on the enjoyment and exercise of this political right, for it alters the conditions of equality among the candidates and at the same time has a negative impact on the communication and with that the information the voters receive when they are to decide by casting a vote.
376. The IACHR has noted its concern regarding the financing of partisan politics in Guatemala, where an investigation carried out by the Office of the Attorney General and the International Commission Against Impunity in Guatemala (CICIG) revealed a corruption scheme to finance the election campaign of the Partido Patriota. The unlawful activities aimed at getting funds for the Partido Patriota had been carried out from 2008 to 2011 and continued during the Partido Patriota administration from 2012 to 2015.⁴³⁷
377. As a result of fraudulent financing candidates who receive those funds have an unlawful sum of resources for waging the political campaign and making their party platforms known. In addition, these candidacies distort or hide the origin of the

⁴³³ Fernando Ojesto has noted that there should be a principle of equity in electoral contests that consists of “establishing parameters and mechanisms for generating minimum levels of equal opportunity to pursue political or electoral competition. This equity does not seek to maximize rights of vulnerable groups, but to allow competition without unfair advantages.” To which end measures should be adopted on campaign financing so as to allow such electoral equity. Ojesto, F. Derechos políticos, equidad e igualdad en la contienda electoral. *Revista Derecho Electoral*, SecondSemester 2016, No. 22, San José, Costa Rica, 2016, p. 11.

⁴³⁴ I/A Court H.R., Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 145.

⁴³⁵ I/A Court H.R., Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 145.

⁴³⁶ I/A Court H.R., Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348. (Only in Spanish), para. 111.

⁴³⁷ IACHR. Situation of Human Rights in Guatemala. OEA/Ser.L/V/II., Doc. 208/17, December 31, 2017, para. 309.

funds used to carry out their political campaigns. If this were known to the voters it could affect their party preferences. Accordingly, corruption by means of fraudulent campaign financing has an impact on the enjoyment and exercise of the human right to participate in elections and to exercise the right to vote in conditions of equality and non-discrimination.

1. Electoral Oversight Bodies

378. In the next section the Commission develops the particular role that electoral oversight bodies play in fighting corruption, as well as the weaknesses that affect the conditions in which they perform their functions.
379. The role of the organs in charge of organizing and overseeing elections is an area of concern for the Inter-American Commission due to the impairments on the exercise of political-electoral rights. In this area corrupt maneuvers to alter the voter rolls, impede democratic participation, and change the results of elections should be eradicated from the region and if they occur should be investigated and punished.
380. The measures taken by the oversight bodies may mean restrictions on political rights. So such measures must be applied strictly and in keeping with the laws that regulate how they work. It is also essential that the oversight bodies with the power to issue decisions and impose sanctions guarantee due process in the matters that come before them.
381. It is important to note that the election authorities in the states of the region have institutionalized channels that seek to guarantee the transparency of the elections and tools and mechanisms necessary to ensure the impartiality and oversight of the process adapted to their political system.
382. In this regard the member states have different models of electoral authorities; these organs can be distinguished depending on the competences, functions, and reach they have in relation to elections, and their capacity to monitor the election process. There are autonomous models of electoral authorities such as the [National Electoral Council of Colombia](#), the [National Electoral Council of Ecuador](#), and the [National Electoral Institute of Mexico](#), among others. Nonetheless, their areas of competence are differentiated. Accordingly, some of these bodies have exclusively administrative powers, associated with organizing, overseeing, and monitoring the electoral process, while others also have powers to resolve judicial disputes arising from the voter rolls. In addition, some states have a subsidiary authority of another department or ministry, as is the case of Argentina, where the National Elections Directorate ([Dirección Nacional Electoral](#)) is a technical organ of the Executive branch.
383. Corruption affects the operation of these certain oversight bodies, altering the meaning and scope of these measures and/or restrictions on the exercise of political rights. In particular, one should avoid prevent arbitrary acts that impede the taking of office or exercise of positions by those who have been democratically elected.

384. The United Nations Special Rapporteur on corruption has stated her concern over these practices, since corruption can be used to persuade the administrators of the election process to interfere so as to favor a particular party, for example, in registering voters, the voting documents, the ballot box, and the final protocol for the recount process.⁴³⁸ Accordingly, the impact of corruption on the oversight bodies can thwart the democratic will and be used as a system for excluding persons who have been lawfully elected.
385. For example, in Venezuela the IACHR has verified the lack of independence of the National Electoral Council. This situation is due, among other factors, to the reiterated breach of the procedure established in the Constitution for the election of its members. According to the Constitution the candidates are proposed by the Committee for Electoral Nominations, made up of members of civil society, and are elected by vote of two-thirds of the National Assembly. Nonetheless, on four occasions (in 2003, 2005, 2014, and 2016) they were designated by the Constitutional Chamber of the Supreme Court of Justice, which arrogated that function to itself due to an omission on the part of the Legislative branch. On two other occasions (2006 and 2010) the members of the Constitutional Chamber were elected by the National Assembly, which refused to allow the participation of the Committee on Electoral Nominations, effectively made up of civil society representatives. Moreover, there are no institutional or legal controls over the action of the electoral authority, the Poder Electoral. In this context, the Commission has highlighted the importance of the electoral authorities for the exercise of political rights, and recalls that to guarantee those rights these institutions must perform their functions with impartiality and independence.⁴³⁹
386. Accordingly, the IACHR emphasizes the need to have systems for the administration of justice and electoral oversight that are independent, impartial, and legitimate, and that adequate financing for their operations be guaranteed, as well the technical capacity to oversee elections.

2. Relevant Actors: Political Parties, Citizen Movements, and Candidacies

387. The Inter-American Commission highlights the need to eradicate corruption from the political sphere as a challenge that involves all actors engaged in democratic political processes. Accordingly, states must guarantee that the exercise of political rights, and in particular the right to democratic participation and the principle of representation, are not affected by acts of corruption. Along the same lines, it is a responsibility of nonstate actors, candidates, political movements, and the citizenry in general to see to it that political decisions are not altered by acts of corruption.

⁴³⁸ United Nations, Economic and Social Council. Subcommittee on the Promotion and Protection of Human Rights. *Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights*, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 24.

⁴³⁹ IACHR. *Democratic Institutions, the Rule of Law and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 209 December 31, 2017, paras. 127 to 131.

388. Ensuring citizen participation in the oversight of elections is fundamental for greater transparency and the legitimacy of representative democracy. Such participation can help limit opportunities for fraudulent and corrupt maneuvers. Accordingly, the possibilities of oversight are fundamental for preventing corruption in the political sphere. The IACHR recognizes a clear trend⁴⁴⁰ on the part of the states of the hemisphere to regulating the activities of nongovernmental organizations in light of the important role they play in a democracy.⁴⁴¹ Similarly, political parties are also subject to an array of transparency provisions on the financing of their activities including election campaigns, and of their activities with other political organizations.
389. The provisions that regulate the financing of political parties pose a challenge to the strengthening of democracy and democratic transparency. Along these lines, recently many of the countries have seen bills with such provisions introduced in the legislatures, as in Uruguay. Another recent example is the adoption of a law in Chile⁴⁴² that imposes 21 criteria of active transparency on political parties. In 2019 Argentina regulated the Law on Party Financing, which establishes a mixed model by which the political parties will obtain their resources through public and private financing to carry out their activities and election campaigns. One of the key points introduces banking and traceability of contributions, and allows companies to contribute to election campaigns.⁴⁴³ In addition, in August 2019 Peru promulgated the Law that amends the Criminal Code and incorporates the Crime of Prohibited Financing of Political Organizations. This law seeks to propose an appropriate way to channel the economic resources of political organizations and election campaigns, and to reduce inequalities in resources obtained, and the risks of the vulnerability of political organizations to illicit money. In addition, an effort is made to create more effective mechanisms for supervising party funds, increasing and expanding sanctions against organizations that violate the Law.⁴⁴⁴
390. The political parties, as key actors in a democracy, require special regulation of their operations. This holds, in particular, for access to information and political party financing, due to the use of public funds to which they have access, and the impact that private financing could have on the exercise of power.
391. Another aspect of special concern due to the impact of corruption on political rights has to do with access to public office in conditions of equality and non-discrimination (Article 23(1)(c) of the American Convention). The Inter-American

⁴⁴⁰ See, for example: OAS. First Workshop: [Model Law on Access to Public Information 2.0](#). Sixth Module: Political Parties, Trade Unions, and other Mandated Persons. Working Paper. 2018.

⁴⁴¹ Extra-state organs that play a role in democratic life may include trade unions, juridical persons of private law that receive public funds or engage in political lobbying, new forms of state management (such as PPPs), professional associations, and notaries. See: OAS. Second Workshop: [The Gender Perspective in the Model Law of Access to Public Information 2.0](#). Working Papers: Compilation of recommendations made during the workshop in Santiago, Chile (April 16 and 17, 2018).

⁴⁴² Law No. 20,915. [Strengthens the public and democratic nature of the parties and facilitates their modernization](#). Of April 11, April 2016, TITLE VI, On Access to Information and Transparency, Article 36 bis.

⁴⁴³ Law No. 27,504 of 2019. [Law on Financing of Political Parties. Law 26,215 Modifications](#).

⁴⁴⁴ Law No. 30,996. [Law that modifies the Organic Law on elections with respect to the national electoral system](#).

Court has developed extensive case-law on access to public office and has called attention to the need for the state to guarantee such access on conditions of equality and also guarantee that persons elected will serve out the term for which they were elected. The Court has established that the right to have access to public office in equal conditions protects access to a form of direct participation in determining state policy. Therefore, it is essential that the state put in place optimal conditions and mechanisms to ensure that those political rights can be exercised effectively, respecting the principle of equality and non-discrimination.⁴⁴⁵

392. For its part, the IACHR has emphasized that the right to be elected to a position of popular election, as well as to complete the respective mandate, constitutes one of the essential attributes that integrate political rights, so that the restrictions on the right must be aimed at protecting fundamental legal assets, so they must be analyzed carefully and under strict scrutiny. In cases related to persons elected to a position of popular election, it should be taken into account that a restriction on the right to active suffrage may affect not only the person in question but also the free expression of the will of the electors through suffrage⁴⁴⁶. In this way, an arbitrary restriction of political rights that impacts the right of a person to be popularly elected and to complete his or her mandate does not only affect the political rights of the person in question but also implies an affectation in the collective dimension of these rights and, significantly impacts the democratic game⁴⁴⁷.
393. Corruption may seriously impair this right to the extent that, through acts such as bribes, influence-peddling, and the capture of institutions, among others, it alters access to public office and the possibility of serving out the full term. Acts of political favoritism and clientelist networks or nepotism also impair the right to access positions in conditions of equality and non-discrimination. As regards access to public office in conditions of equality and non-discrimination, corruption not only affects those who are excluded from access to those positions, but also affects society as a whole, as those who do access such positions do so as the result of corruption.
394. The IACHR reiterates its concern over the impairments of the exercise of political rights that may derive from the manipulation of the electoral apparatus as the result of acts of corruption. Accordingly, it is fundamental for the states to renew their commitment to pursue comprehensive initiatives to fight corruption, with special emphasis on the institutional sphere of the electoral apparatus, and that ensure adequate protection for the relevant actors of this key mechanism of representative democracy, particularly the political parties and their candidacies.

⁴⁴⁵ I/A Court H.R., Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 139.

⁴⁴⁶ TEDH, Case of Hirst v. The United Kingdom, Grand Chamber, October 6, 2005, p.62; See also Article 3 of The Inter-American Democratic Charter.

⁴⁴⁷ IACHR. Report No. 130/17, Caso 13.0444.Merit. Gustavo PetroUrrego. Colombia. October 25, 2017, p. 116 y ss.

CHAPTER 5
PERSONS AND GROUPS OF
SPECIAL CONCERN

PERSONS AND GROUPS OF SPECIAL CONCERN

395. In this chapter the IACHR describes the situation of persons who, because of their role in the anti-corruption struggle, have been impacted in the enjoyment and exercise of their human rights or are victims of violence, threats, or other acts of harassment. Such persons include human rights defenders, environmentalists, and journalists; public servants entrusted with the anti-corruption struggle; and whistleblowers and witnesses of corruption. The obligation of the state to protect persons who are at risk because of their role in the struggle against corruption is especially important. This chapter will analyze specific aspects related to protection and effective response.
396. The Commission will also address the situation of persons and groups in situations of historical vulnerability whose human rights are affected in a disproportionate and differentiated manner.

A. Human Rights Defenders, Judicial Officers, and Environmentalists

397. The struggle against corruption and the defense of human rights in many cases converge in the activities of human rights defenders and judicial officers. The Commission has established that the determination of whether a person is a human rights defender depends on that person's activities.⁴⁴⁸ In effect, the Commission considers that every person who in any way promotes or seeks the attainment of human rights and fundamental freedoms recognized nationally or internationally will be considered a human rights defender.⁴⁴⁹ This concept also applies to judicial officers as defenders of access to justice for thousands of victims whose rights have been violated.⁴⁵⁰ Accordingly, the Commission has recognized persons who investigate, report, and denounce acts of corruption as human rights defenders.⁴⁵¹

⁴⁴⁸ IACHR, Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II. Doc. 207/17 December 29, 2017, para. 21.

⁴⁴⁹ IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev.1, March 7, 2006, para. 13; reiterated in IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 12; United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, March 8, 1999, Articles 1, 6, 8(2); 9(3)(4) and 12(2).

⁴⁵⁰ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015, para. 19.

⁴⁵¹ IACHR, Resolution 1/18, Corruption and Human Rights, March 2, 2018.

398. The IACHR has pointed out that corruption is one of the leading causes of violence against those who defend human rights in the region. Its generalized presence in society undermines the independence of the judicial institutions and the rule of law, allowing for the advancement of manifestly illegally and unfounded cases against human rights defenders. Corruption also causes uneven access to justice, as well as discrepancies and delays in considering reports of corruption; all of which often creates an adverse environment for human rights defenders.⁴⁵² Hence human rights defenders who investigate and report acts or situations of corruption are often the target of threats and violence.⁴⁵³ In the case of *Fleury et al. v. Haiti*, the Inter-American Court identified corruption as one of the causes that led to the serious violation of rights of Mr. Lysias Fleury, a human rights defender with the Commission épiscopale Justice et Paix (Bishops' Commission for Justice and Peace). The Court noted that the serious acts of arbitrary arrest and torture the victim suffered took place in a context of public insecurity and institutional shortcomings of the National Police of Haiti, which was implicated in cases of corruption, abuse of authority, drug trafficking, and other criminal activities, in addition to having committed illegal detentions, torture, and abusive treatment of detainees during arrests and in the course of the detentions.⁴⁵⁴
399. In addition to the unfavorable context for the defense of human rights fostered by corruption, the Commission observes that human rights defenders who report it are at an aggravated risk of suffering threats, harassment, and assassination. In this respect, the Commission has learned about reprisals against human rights defenders for reporting acts of corruption by public servants. When the complaints prosper and the public servants accused are removed, on occasion reprisals follow, carried out by criminal groups that operate with the tolerance of the state agents affected by the reports.⁴⁵⁵ Human rights defenders are also victims of criminalization after lodging reports against public servants for purported acts of corruption.⁴⁵⁶ The Commission has also learned of the use of injunctive measures such as the prohibition on public assembly or protest as a strategy in the context of the illegal use of the criminal law to keep human rights defenders from participating in public demonstrations in which social causes are promoted or public complaints of corruption are lodged.⁴⁵⁷
400. The Commission is especially concerned that defenders of the environment who report corruption cases associated with activities that have a detrimental impact on the environment are especially vulnerable to threats that jeopardize and affect their human rights, in particular the rights to life, humane treatment, and freedom of

⁴⁵² IACHR, Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/.Doc. 207/17, December 29, 2017, para. 148.

⁴⁵³ IACHR, Resolution 1/18, Corruption and Human Rights, March 2, 2018.

⁴⁵⁴ I/A Court H.R., Case of Lysias Fleury et al. v. Haiti. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, para. 76.

⁴⁵⁵ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 295.

⁴⁵⁶ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015, para. 47.

⁴⁵⁷ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015, para. 210.

expression. In this respect, the Commission has observed the growing number of socio-environmental conflicts and the failure to adopt and implement effective measures to recognize and protect those who defend and promote the rights to the territory and to the environment, and rights associated with access to the land. This has made these defenders more exposed to assassination, assault, threats, or criminalization because of the causes they defend or the content of their grievances opposing extractive activities and reports on the negative impacts of those projects.⁴⁵⁸ In the case of *Luna López v. Honduras*, the Inter-American Court took cognizance of the assassination of environmental defender Carlos Luna López, because of his struggle and denunciation of corruption in extractive and environmental projects. From his position as a local council member (*regidor municipal*), Mr. Luna regularly reported purported cases of corruption and illegal logging to the competent judicial authorities and the media. In this respect, the Court found that the State had a duty to implement a public policy to protect human rights defenders, including environmental defenders, to reduce the risk and promote and protect the right to defend rights.

401. In this respect, the case of the assassination of environmental defender Berta Cáceres, in March 2016, when armed persons entered her home, where they shot her and she died immediately. One week before being assassinated Berta Cáceres had denounced the falsification of documents, abuses of authority, and other irregularities to obtain contracts to make use of waters of the Gualcarque river, as well as to perpetrate the assassinations of four leaders of her community, and activities directed against her and other human rights defenders. Berta was a defender of the territory and of the rights of the Lenca people in Honduras. She had taken part in the campaign to defend the Gualcarque river, in the department of Santa Bárbara, where there were plans to install a hydroelectric dam. The movement against installation of the dam of which Berta Cáceres was a part denounced that there was no prior, free, and informed consultation with the local communities affected. In that regard, the IACHR reiterates its recommendation to implement, on a priority basis, a comprehensive policy of protecting human rights defenders and adopting an effective and exhaustive strategy of prevention with the aim of preventing attacks directed against human rights defenders.⁴⁵⁹
402. That protection policy expressed by the Inter-American Court must cover at least the following aspects: a) The participation of human rights defenders, civil society organizations and experts in the formulation of the standards that could regulate protection for the collective in question; b) The protection program should address the problem in a comprehensive and inter-institutional manner, according to the risk of each situation; and adopt measures to immediately address the complaints made by defenders; c) The creation of a risk analysis model that allows for the effective assessment of the risk and protection needs of each defender or group; d) The creation of an information management system on the situation of prevention and protection of human rights defenders; e) The design of protection plans that

⁴⁵⁸ IACHR. [IACHR issues call for OAS States to Protect Defenders of the Land and Environment](#), June 5, 2017.

⁴⁵⁹ [IACHR Condemns the Killing of Berta Cáceres in Honduras](#); IACHR, Resolution 16/2016 Precautionary Measure No. 112-16, [Expanding Beneficiaries Members of COPINH and Family Members of Berta Cáceres with respect to Honduras](#), March 23, 2016; IACHR, Resolution 8/2016 Precautionary Measure No. 112-16, [Members of COPINH and Family Members of Berta Cáceres with respect to Honduras](#), March 5, 2016

respond to the specific risk faced by each defender and the characteristics of their work; f) The promotion of a culture that legitimates and protects the work of human rights defenders, and g) The allocation of sufficient human and financial resources to respond to the real needs for protection of human rights defenders⁴⁶⁰.

403. In addition, the Commission notes that judicial officers are exposed to a series of specific risks due to their role in the justice system and their ability to report corruption. The Commission has stated its concern over attacks, assassinations, threats, and intimidation of judicial officers involved in proceedings related to corruption cases against state agents and authorities.⁴⁶¹ Judicial officers who conduct such proceedings have been attacked by their own authorities or their peers verbally, with insults and threats, the use of special judicial proceedings (*antejuicios*), filing complaints, and even harassment of their family members.⁴⁶² These acts of violence vis-à-vis efforts to advance in the struggle against impunity and corruption by these judicial officers, are used as instruments of control and intimidation as they pursue their work, especially those who participate in high-impact corruption cases or those in which major economic interests are at stake.⁴⁶³
404. The Commission is concerned about the persistence of patterns of threats and even direct attacks on the lives of judges and prosecutors in Guatemala. The IACHR has received information alleging that the mechanisms of protection that the State offers are ineffective, and in some cases the National Police is said to be directly involved in the attacks on judicial officers. In this context, there were attacks on the judicial independence of judicial officers from the highest levels of the judiciary; it should be noted that that Office of Supervision of Courts, which has disciplinary functions, is used as a tool to pressure public servants.⁴⁶⁴
405. In recent years the Commission has granted various precautionary measures in favor of judicial officers at risk because of their involvement investigating and denouncing acts of corruption. Among others, on February 24, 2018 the IACHR granted precautionary measures to Douglas Arquímides Meléndez Ruíz, at the time the Attorney General of El Salvador. According to the information received by the Commission, the prosecutor is in a situation of risk due to his investigations of numerous acts of corruption by high-level political officials, former public servants, businesspersons, members of the armed forces and police, and various criminal groups, which is likely why he received several threats against his life and integrity.⁴⁶⁵ On August 29, 2017, the IACHR granted precautionary measures in favor of Ms. Gloria Patricia Porras Escobar, who was said to face a situation of risk and harassment due to her performance as principal judge on the Constitutional

⁴⁶⁰ I/A Court H.R. *Caso Luna López vs. Honduras*. Merits, reparations and costs. Judgment of October 10, 2013. C Series no 269, p. 243.

⁴⁶¹ IACHR. [Towards Effective Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/.Doc. 207/17, December 29, 2017, para. 93.

⁴⁶² IACHR. [Report on the Situation of Human Rights in Guatemala](#), December 31, 2015, para. 226.

⁴⁶³ IACHR. [Report on the Situation of Human Rights in Guatemala](#), December 31, 2015, para. 199.

⁴⁶⁴ IACHR. 164th Special Period of Sessions in Mexico, Public hearing: [Reports of threats to judicial independence in Guatemala](#), September 7, 2017.

⁴⁶⁵ IACHR. [Resolution 11/2018, Precautionary Measure No. 917-17, Douglas Arquímides Meléndez Ruíz and family with respect to El Salvador](#), February 24, 2018.

Court of Guatemala in relation to various high-impact corruption cases and serious human rights violations.⁴⁶⁶ Previously the IACHR had granted a precautionary measure to the former Attorney General of Guatemala, Thelma Aldana. In its resolution granting the measure the IACHR noted that her rights to life and integrity could be in danger as a result of the investigations she was pursuing related to several high-impact cases looking into crimes related to corruption and in which persons implicated held high-level positions in the government and in private companies.⁴⁶⁷

406. In this context the Commission underscores the importance of creating a propitious and safe environment for human rights defenders and judicial officers to denounce acts of corruption. In this regard, it recalls that the states must tackle the most profound structural problems that lead to violence against those who defend human rights, such as corruption and impunity. In this respect, the Commission considers that in implementing their duty of prevention the states should start by implementing a serious policy enabling them to identify the possible patterns of attacks, assaults, and obstacles faced by human rights defenders, considering the action of illegal armed groups and organized crime entities, as well as companies that might be involved in attacks on and intimidation of human rights defenders, community leaders, and leaders of indigenous and Afro-descendent peoples.⁴⁶⁸ The Commission also considers that the states should have mechanisms that allow them to resolve reports of corruption independently and with the celerity necessary to mitigate its effects on the cases brought by human rights defenders, and to punish those public servants who turn out to be responsible.⁴⁶⁹
407. In this regard the state should protect, through integral policies, the life and integrity of those who defend human rights when they find themselves in situations of risk, even when the risk stems from the action of a non-state agent. This obligation takes on particular importance when human rights defenders find themselves in a situation of risk because the cases they bring affect gangs or criminal or illegal groups, and persons associated with large business sectors, among other actors.⁴⁷⁰ When designing a comprehensive protection policy states should evaluate corruption as one of the factors originating violence against those who work to defend human rights as well as considering the differentiated risk faced by those who investigate and denounce it. This analysis of risk should also consider the aggravated risk faced by defenders of the environment, particularly those who investigate and denounce acts of environmental corruption. The Commission has pointed to the special risk faced by defenders of the right to land and the environment by peasant, indigenous, and Afro-defendant leaders, especially those

⁴⁶⁶ IACHR. [Resolution 34/2017, Precautionary Measure No. 431-17, Gloria Patricia Porras Escobar and family with respect to Guatemala](#), August 29, 2017.

⁴⁶⁷ IACHR. [Resolution 40/2016, Precautionary Measure No. 497-16, In the matter of Thelma Esperanza Aldana Hernández and family with respect to Guatemala](#), July 22, 2016.

⁴⁶⁸ IACHR. [Towards Effective Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/.Doc. 207/17, December 29, 2017, para. 143.

⁴⁶⁹ IACHR. [Towards Effective Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/.Doc. 207/17, December 29, 2017, para. 148.

⁴⁷⁰ IACHR. [Towards Effective Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/.Doc. 207/17, December 29, 2017, para. 149.

who oppose extractive activities and denounce the negative impacts of such projects on the environment, health, community relations, and the enjoyment of other rights.⁴⁷¹

408. As regards judicial officers, the states have the obligation to protect them and to create adequate conditions for them to be able to carry out their work of investigating and punishing acts of corruption, guaranteeing their security. In this regard, the states should ensure that judicial staff, prosecutors, investigators, and other judicial officers have an adequate system for security and protection, taking into account the circumstances of the cases they are in charge of and where they work.⁴⁷² In particular, when judicial officers investigate corruption cases the state should consider the particular risk they face in that work and should evaluate adequate and suitable measures of protection. The IACHR reiterates that if the states do not guarantee the security of their judges, prosecutors, defenders, and all other judicial officers in the face of all sorts of external pressures, including reprisals directly aimed at attacking them and their family members, the exercise of the judicial function may suffer serious detriment, eating away at judicial independence and thwarting the free development of the judicial function and access to justice for the victims of human rights violations.
409. The IACHR reiterates the importance of ensuring the right of access to information for human rights defenders as an essential tool for fighting corruption. By exercising this right, human rights defenders are allowed to participate in the social oversight of the conduct of public affairs, which is fundamental for controlling corruption and, in general, for attaining other human rights, particularly of the most vulnerable groups.⁴⁷³
410. Finally, the Commission has noted that the work done by human rights defenders is fundamental for the full existence of the rule of law, and is an essential pillar for strengthening and consolidating democracy, for they exercise the necessary citizen oversight of public servants and democratic institutions.⁴⁷⁴ Through their activities human rights defenders effectively help eliminate violations of human rights and fundamental freedoms and help improve social, political, and economic conditions.⁴⁷⁵ In particular, in their activities of oversight, reporting, disseminating, and educating they assist in observing human rights conditions, for they struggle to fight impunity and corruption. Human rights defenders are irreplaceable for

⁴⁷¹ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015, para. 5; IACHR, IACHR issues call for OAS States to Protect Defenders of the Land and Environment, June 5, 2017.

⁴⁷² IACHR, Guarantees for the independence of justice operators : Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 146.

⁴⁷³ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 191.

⁴⁷⁴ IACHR, Criminalization of the Work of Human Rights Defenders, OEA-Ser.L/V-II. Doc. 49-15, December 31, 2015, para. 13; IACHR, Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II. Doc. 207/17 December 29, 2017, para. 24.

⁴⁷⁵ United Nations General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 1999, Art. 1.

building a solid and lasting democratic society.⁴⁷⁶ Therefore, when one person is impeded from defending human rights the rest of society suffers a direct impact.⁴⁷⁷

B. Journalists and Others Who Work in Communications Media

411. Journalists and persons who work in communications media constitute another group of special concern to the IACHR because of their contribution to a democratic society. In a pluralist and democratic society the role of the communications media is fundamental for supporting access to information by citizens and to contribute to transparency in the conduct of public affairs.
412. Accordingly, journalists and others who work in the media are a group that suffers a variety of situations of threats and attacks because of their work checking and denouncing corruption.⁴⁷⁸ This has been a subject the IACHR has addressed. In the case of *Héctor Félix Miranda v. Mexico*, on the failure to carry out an effective investigation into the assassination of a journalist, the Commission recalled the State's duty to punish the persons responsible for the crime; the victim was a journalist who was investigating acts of corruption.⁴⁷⁹
413. The Commission ruled similarly in the case of *Víctor Manuel Oropeza v. Mexico*, concerning the assassination of a journalist who had reported acts of corruption, in which it recommended to the State of Mexico that it send society a firm message that there will be no tolerance for those who commit such serious violations of the freedom of expression.⁴⁸⁰ In a similar case, on the assassination of a journalist who had reported acts of corruption by public servants in Brazil, the IACHR was more explicit on establishing the tie between the reports and the assassination; thus it ruled that the State was responsible for violations of Articles 4(1) and 13 of the American Convention.⁴⁸¹

⁴⁷⁶ IACHR, Criminalization of the Work of Human Rights Defenders, OEA-Ser.L/V-II. Doc. 49-15, December 31, 2015, paras. 20-26.

⁴⁷⁷ IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 34.

⁴⁷⁸ "Journalists reporting on cases of corruption or promoting human rights as part of their work play a crucial role in the dissemination of information, in awareness-raising, and in the realization of human rights and the fight against corruption. They often discover grievances and bring them to the attention of the public. The information that they provide is an essential precondition for transparency and responsibility. In its established case law, the European Court of Human Rights has emphasized the function of journalists as a 'public watchdog.' Journalists frequently come under pressure because of their reporting. They may be prosecuted, defamed, harassed or even attacked. States are obliged to guarantee freedom of expression but also any other human rights that may be violated by means of threats or attacks against journalists." United Nations, General Assembly, Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73, January 5, 2015, para. 45.

⁴⁷⁹ IACHR, Report No. 50/99. Case 11,739. Héctor Félix Miranda. Mexico. April 13, 1999, para. 52.

⁴⁸⁰ IACHR, Report No. 130/99. Case No. 11,740. Víctor Manuel Oropeza. Mexico. November 19, 1999, para. 58.

⁴⁸¹ IACHR, Report No. 7/16. Case No. 12,213. Aristeu Guida da Silva and Family. Brazil. April 13, 2016, paras. 171 and 172.

C. *Whistleblowers and Witnesses of Acts of Corruption*

414. The Commission observes with concern that the phenomenon of corruption also has an impact on those who report acts of corruption and those who are witnesses in corruption cases. The actions of those persons who report irregularities or fraudulent practices may give rise to injuries, such as threats or harassment, which are aimed at keeping fraudulent practices in institutions called into question from being discovered and fought.
415. The Commission notes that reports of acts of corruption are valuable for fighting this phenomenon in both public and private institutions. Whistleblowers may make a major contribution in these cases since they succeed in bringing potentially incriminatory acts to the attention of the authorities. In particular, when a whistleblower has knowledge of the internal workings of the administration he or she can unveil the fraudulent scheme.
416. A whistleblower is any person who, in good faith, reports facts related to acts or situations of corruption to the competent authorities. This report may come from a person without there being an employment relation between the whistleblower and the person or agency on which the whistle is blown, or may happen in the context of an employment relationship. In this latter case whistleblowers are those workers or employees in the public or private sector who disclose information of public interest on corrupt, illegal, fraudulent, or dangerous activities that are committed in public or private organizations to agencies or persons considered to be in a position to act in response to such phenomena. Whistleblowers may be persons outside of the scope of the traditional employer-employee relationship, such as consultants, contractors, interns, volunteers, temporary workers, or former employees.⁴⁸²
417. The Commission has noted the role of those whistleblowers who, being government workers, disclose information on corruption; and it has indicated that there is a duty to protect them from legal, administrative, or labor sanctions so long as they have acted in good faith.⁴⁸³ To that end, good faith is presumed in any whistleblower who reports acts of corruption. Those who knowingly lodge a false report or simulate evidence to initiate an investigation into a third person act in bad faith and are not covered by the protection accorded good-faith whistleblowers. Nor are those who have obtained the information by violating fundamental rights covered by such protection.⁴⁸⁴ To the contrary, the purported participation of the whistleblower in the unlawful acts reported should not lead to denying him or her any form of

⁴⁸² See Transparency International. [International Principles for Whistleblower Legislation](#). November 5, 2013, principles 3 and 4; Latimer and Brown. [Whistleblower Laws: International Best Practice](#). University of New South Wales Law Journal, Vol. 31(3), 165 January 2009, p. 768.

⁴⁸³ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2011](#). Volume II: "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser.L/V/II. Doc.69, v.2, December 30, 2011, para. 244. Along similar lines, see: IACHR. [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc 42/15, December 31, 2015, para. 494; IACHR. [Silenced zones: Highly dangerous areas for the exercise of freedom of expression](#), OEA/Ser.L/V/II.164. CIDH/RELE/INF. 16/17, March 15, 2017, para. 151.

⁴⁸⁴ OAS. [Model Law of the OAS](#), Article 2. 2010 (j); OAS. [Documento Explicativo del Proyecto de Ley Modelo para Facilitar e Incentivar la Denuncia de Actos de Corrupción y Proteger a sus denunciantes y testigos](#), p. 6.

protection. This is without prejudice to the determination of any criminal or civil liabilities arising from such participation.⁴⁸⁵

418. The Commission understands that witnesses are those who testify before a court or other competent authority on facts of which they are knowledgeable and that are relevant for resolving an investigation or judicial proceeding. Accordingly, witnesses and whistleblowers are different categories. A whistleblower's involvement is limited to revealing the information about a corrupt act, which may or may not give rise to an administrative or criminal investigation. By way of contrast, a witness actively participates in those procedures and therefore is more exposed, which makes him or her more vulnerable.⁴⁸⁶
419. The Commission remarks that the defense of human rights and the denunciation of corruption may coincide, such as when it comes to activities to strengthen the rule of law and the fight against impunity. Without protection witnesses would not agree to testify before the courts. The whistleblower and witness protection regimes, nonetheless, have several coincidences. In some cases a whistleblower who also serves as a witness may require witness protection measures.
420. The information that whistleblowers reveal is useful and important for public life. Those who report acts of corruption activate alerts to adopt measures and rectify possible irregularities or abuses. In this way whistleblowers and their families generally face various forms of retaliation for turning over this information. Such reprisals may include isolation or social reproach, threats, or harassment, inside or outside the workplace, downgraded working conditions, unwarranted transfers, dismissal, marginalization from an area of work, persecution or silencing by means of administrative investigations and sanctions, civil or criminal actions, harm to his or her property, and even attacks on integrity and life. The Commission considers that such situations endanger or violate the rights of whistleblowers and their families, at the same time as they harm the interests of the community. The Commission recalls that the states are under an obligation to ensure the rights to life, integrity, and freedom of expression of whistleblowers and witnesses of acts of corruption.⁴⁸⁷
421. In this respect, the Commission observes the progressive development of legal frameworks and programs in the region aimed at protecting witnesses. For example, in Peru a specific law has been adopted that establishes measures of protection for

⁴⁸⁵ OAS. [Documento Explicativo del Proyecto de Ley Modelo para Facilitar e Incentivar la Denuncia de Actos de Corrupción y Proteger a sus denunciantes y testigos](#), p. 8.

⁴⁸⁶ OAS. [Documento Explicativo del Proyecto de Ley Modelo para Facilitar e Incentivar la Denuncia de Actos de Corrupción y Proteger a sus denunciantes y testigos](#), pp. 6 and 9.

⁴⁸⁷ This is reflected in the recommendation of the Council of Europe Committee of Ministers on the protection of whistle-blowers, which was adopted on April 30, 2014. The Committee of Ministers recommends that member States have in place a normative, institutional and judicial framework to protect individuals who, in the context of their work-based relationship, report or disclose information on threats or harm to the public interest. United Nations, General Assembly. [Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights](#), A/HRC/28/73, January 5, 2015, para. 46.

whistleblowers reporting acts of corruption.⁴⁸⁸ In Argentina the Law on Repentance for Corruption Cases was adopted in 2016⁴⁸⁹; it extends the concept of repentance (which existed for crimes such as kidnapping, human trafficking, drug trafficking, and money laundering) to cases of corruption and criminal association.

1. Differential Impacts on Whistleblowers and Witnesses

422. Often whistleblowers of corruption face a series of adverse consequences in the wake of their complaints. Many of these consequences may stem from the absence of regulatory frameworks, inadequate application of the law, irregular administrative procedures, or lawsuits brought by employees against employers. Some constitute a human rights violation and, as such, should be addressed in light of the standards and mechanisms of the inter-American human rights system.
423. The criminal prosecution of whistleblowers who offend public servants or private persons who perform public functions with their statements, or make them uncomfortable, violates their freedom of expression. The application of criminal statutes on *desacato* (contempt), defamation, and slander, and other analogous provisions, produces self-censorship and inhibits the expression of critical ideas on matters of public interest.⁴⁹⁰ These restrictions on freedom of expression generally pose difficulties from the standpoint of their legality or proportionality.⁴⁹¹
424. According to Article 2 of the American Convention, “the State must adopt the necessary measures to guarantee the rights protected by the Convention, which entails the elimination of norms and practices that result in the violation of such rights, as well as the enactment of laws and the development of practices leading to the effective respect for these guarantees.” Accordingly, laws on contempt or defamation protect select groups and institutions such as politicians, public servants, and other authorities vis-à-vis public criticism, making it possible to silence ideas or opinions that are unfavorable to these groups. This constitutes a barrier to reporting acts of corruption and to the exercise of the freedom of expression. Accordingly, the states should repeal and replace them, as the case may be, by laws that establish civil liability. In addition, one should avoid the laws on slander taking the place of those provisions, since one should rule out criminal punishment when the one affected by the statements is a public servant or a private person involved in a matter of public interest. These persons’ honor may be protected by civil actions and laws and regulations appropriate for exercising the right to rectification or response.

⁴⁸⁸ Decree No. 1327, which [Establishes measures of protection for whistleblowers and punishes reports lodged in bad faith.](#)

⁴⁸⁹ Law No. 27,304 Amendment to the Criminal Code. [Law on repentance.](#) (2016)

⁴⁹⁰ In this regard, I/A Court H.R., Case of Uzcátegui et al. v. Venezuela. Merits and reparations. Judgment of September 3, 2012. Series C No. 249, para. 189.

⁴⁹¹ See, for example, I/A Court H.R., Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, paras. 88-92.

425. Confidentiality clauses or rules on secrets that impose a general prohibition on revealing information on public servants may be a barrier to reporting corruption⁴⁹² and a restriction on the freedom of expression of those public servants. This risk is intensified when the infraction of these duties is punished by the criminal law. The most sensitive cases are those related to the security and international relations of states. States should establish accessible and effective channels for lodging specific complaints, and for determining what is classified information, in a prior, clear, and precise manner as well as measures for fighting corruption.
426. Laws on secrets or confidential information may compromise the right of access to information both for one who is in a position to denounce and for the rest of the community, which is kept from learning information about corruption and effectuating adequate oversight of the conduct of public affairs.
427. Another form of impact is unjustified dismissal in response to reporting a corrupt act. The IACHR reiterates that it is essential to guarantee labor rights so that other rights can be enjoyed, and to be able to lead a dignified life.⁴⁹³ While international human rights law does not establish an absolute and unconditional right to have a job, it does recognize that each person should have an opportunity to have a job that is freely chosen or accepted, and the state should adopt measures to guarantee that right. Such measures include ensuring that persons are not deprived of their work unjustly and that they not suffer discrimination in accessing the labor market or in the conditions of their employment. The State must not only respect this right, but also protect persons from conduct that undermines their right to work, such as the measures commonly taken against whistleblowers.⁴⁹⁴ Workers have the right not to be dismissed without justification and reporting an act of corruption is not just cause for ending the employment relationship.
428. In the case of public servants dismissals, removals, or decisions on promotions and suspensions that are unwarranted, such as those adopted in response to a report of corruption, may violate this right to job stability.⁴⁹⁵ The Inter-American Court has indicated that Article 23(1) of the American Convention does not establish the right to accede to public office, but to do so in general conditions of equality. Accordingly this right is respected and guaranteed when the criteria and procedures for the appointment, promotion, suspension, and removal are reasonable and objective; the

⁴⁹² In this regard, see Council of Europe, [The Protection of Whistleblowers. A Study on the feasibility of a legal instrument on the protection of employees who make disclosures in the public interest](#), Strasbourg, December 20, 2012, para. 5.33.

⁴⁹³ I/A Court H.R., [Juridical Condition and Rights of the Undocumented Migrants](#). Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 158.

⁴⁹⁴ United Nations, Committee on Economic, Social and Cultural Rights. [General Comment No. 18. The Right to Work](#), approved November 24, 2005, Article 6 of the International Covenant on Economic, Social and Cultural Rights, para. 35.

⁴⁹⁵ In this regard, see United Nations, HRC, [General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service](#), approved July 12, 1996, para. 23.

Court also indicated that persons are not subject to discrimination in the exercise of this right.⁴⁹⁶

429. Moreover, in the case of *Lagos del Campo vs. Peru*, the Inter-American Court determined that Article 26 of the American Convention protects the right to job security. Specifically, the Court remarks that the right to job stability in the private sphere implies at least the following state duties: a) adopt appropriate measures for the proper regulation and supervision of the right; b) protect the worker, through their competent bodies, against unjustified dismissal; c) in case of unjustified dismissal, remedy the situation, either through reinstatement or, where appropriate, through compensation and other benefits provided for in national legislation. Therefore, d) the State must have effective grievance mechanisms in the face of an unjustified dismissal situation, to guarantee access to justice and effective judicial protection of such rights⁴⁹⁷. Furthermore, the State must provide the necessary resources for the protection of this right in case it is threatened or affected. Likewise, the Court highlights that the guarantee of protection covers both the access and the continuance in equal conditions and non-discrimination with regard to the suspension and dismissal procedures. The access in equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of the continuance in what is accessed⁴⁹⁸.
430. Criminalization of whistleblowers is another type of violation observed by the IACHR. Whistleblowers have the right to a speedy and effective remedy for protecting their rights in the event that they are subject to threats or harassment, in keeping with Article 25(1) of the American Convention. Whistleblowers who are investigated for crimes or disciplinary or administrative breaches have the right for those proceedings not to be used to discredit or stigmatize them. To prevent that from happening, it is especially important to ensure the presumption of innocence and a reasonable time for the proceeding and for pretrial detention. On occasion investigations or trials are conducted for repressive purposes to distract attention from the fraud or abuse that the whistleblower has identified. Trying or convicting a person, alone, does not violate the right to honor. Nonetheless, the inter-American system has recognized that the consequences of a criminal trial may affect the honor and reputation of an individual when carried out without respecting the presumption of innocence and due process guarantees.
431. The Commission considers that the duties of diligence studied in light of the obligation to guarantee the rights to life, integrity, and liberty also apply to other rights when there are circumstances that allow one to demand of the state that it reinforce the measures of prevention and protection, whether the threat is from state agents or private persons.⁴⁹⁹ This may apply to whistleblowers. The Inter-

⁴⁹⁶ I/A Court H.R., Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 206.

⁴⁹⁷ I/A Court H.R., Case of *Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340. (Only in Spanish), p. 149.

⁴⁹⁸ I/A Court H.R., Case of *Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 19, p. 138.

⁴⁹⁹ See, among others, I/A Court H.R., Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 243-284.

American Court has understood that every person who is in a situation of vulnerability is entitled to special protection in light of the special duties whose performance by the state is necessary to satisfy the general obligations to respect and ensure human rights. In that connection, the Commission invites the states of the region to adopt positive measures in light of the particular needs of protection of whistleblowers or witnesses of corruption, either because of their personal status or because of their specific situation.⁵⁰⁰

D. Differentiated Impact on Groups Facing Vulnerability and Discrimination

432. In this section the Commission analyzes the differentiated impact of corruption on different groups in vulnerable situations and on the enjoyment and exercise of their rights, whether because of historical discrimination, such as women, LGBTI persons, children and adolescents, Afro-descendants, and indigenous and tribal peoples; or due to particular situations in which they have rights, such as persons in situations of poverty and human mobility, persons with disabilities, older persons, and persons deprived of liberty.⁵⁰¹

1. Persons Deprived of Liberty

433. Persons deprived of liberty constitute one of the groups that are in one of the situations of greatest vulnerability to acts of corruption and this has been a matter of special concern to the IACHR. In particular, the IACHR has analyzed this phenomenon in light of the following issues: self-government, lack of transparency in the handling of prison resources, and disproportionate impacts with respect to persons at special risk who are deprived of liberty.

434. As regards persons in the context of deprivation of liberty, the Commission has found that corruption and abuse of authority are not absent in the prison environment, and that indeed corruption is one of the causes of the phenomenon of prison self-government.⁵⁰² It has also noted that this phenomenon finds expression in different ways depending on the specific context in question, and that authorities at different levels may be involved.⁵⁰³ Accordingly, the state has a duty to investigate

⁵⁰⁰ I/A Court H.R., Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257, para. 292.

⁵⁰¹ IACHR. Resolution 1/18, "[Corruption and Human Rights](#)," of March 2, 2018.

⁵⁰² IACHR. [Report on the Situation of Human Rights in Mexico](#), OEA/Ser.L/V/II.100. Doc. 7 rev. 1, September 24, 1998, paras. 262 and 264.

⁵⁰³ IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 183.

allegations of corruption and influence-peddling in prisons, as well as to punish those responsible and adopt measures needed to correct this problem.⁵⁰⁴

435. The Commission has also indicated that patterns of corruption and illegality occur most often in systems of self-government or shared governance.⁵⁰⁵ The Commission has recently observed this phenomenon in Brazil. During its onsite visit in November 2018 the IACHR noted that the situation in the Brazilian prisons is also affected by the control of criminal factions, which constitute organized groups with hierarchies and discipline, most of which are related to drug trafficking.⁵⁰⁶
436. Extreme overcrowding and the lack of sufficient personnel make it impossible for the prison authorities to exercise adequate official control in the prisons. This has resulted in authority being delegated to the inmates and the prevalence of illegal structures of control. The Subcommittee on Prevention of Torture has observed that in some Brazilian states prisoners known as “turnkeys” (“*chaveiros*”) have the power to open and close the entry gates, supervise and maintain *de facto* control over their cellblocks, assign other inmates to tasks related to cleaning and preparing food⁵⁰⁷, and discipline and punish “less powerful” inmates.⁵⁰⁸ These structures of control increase the possibility of persons detained being subject to systematic mistreatment and torture, or even killed, and the perpetrators of these acts enjoying impunity.⁵⁰⁹
437. Similarly, the lack of control by the prison authorities was observed by the Commission during its visit to the Monte Cristo Agricultural Prison, in Roraima (Brazil). In particular, that facility is practically governed by a criminal faction that even prevents the prison authorities and guards from entering the cellblocks where the inmates live; it is the inmates who open and close the locks to their cells. This situation has also been noted by the Prison Council of the state of Roraima and by the National Preventive Mechanism against Torture.⁵¹⁰ Due in large measure to the

⁵⁰⁴ IACHR. [Report on the Situation of Human Rights in Mexico](#), OEA/Ser.L/V/II.100. Doc. 7 rev. 1, September 24, 1998, para. 289. IACHR. [Situation of Human Rights in Mexico](#), OEA/Ser.L/V/II. Doc 44/15, December 31, 2015, paras. 334 and 335. IACHR. [Situation of Human Rights in Venezuela](#), OEA/Ser.L/V/II. Doc. December 31, 2017, para. 389.

⁵⁰⁵ IACHR. [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 184.

⁵⁰⁶ These factions include: PCC (Primeiro Comando da Capital), FDN (Família do Norte), Comando Vermelho, and Crime Comércio União. Mattos Filho, *Report of the rights of people deprived of liberty in Brazil*, October 2018, p. 37.

⁵⁰⁷ Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to Brazil, October 19 to 30, 2015: Observations and Recommendations, CAT/OP/BRA/3, February 16, 2017, para. 41. See also, Human Rights Watch, [The State let Evil Take Over, The Prison Crisis in the Brazilian State of Pernambuco](#), October 15, 2015.

⁵⁰⁸ Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to Brazil, October 19 to 30, 2015: Observations and Recommendations, CAT/OP/BRA/3, February 16, 2017, para. 41.

⁵⁰⁹ Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to Brazil, October 19 to 30, 2015: Observations and Recommendations, CAT/OP/BRA/3, February 16, 2017, para. 41.

⁵¹⁰ Prison Council of the State of Roraima, Official Note No 003/2018. Boa Vista, Roraima, November 7, 2018, and National Preventive Mechanism against Torture, [Relatório de missão a unidades de privação de liberdade no estado Roraima](#), 2017, para. 121.

lack of control by the authorities, there is a notable deterioration in the physical structure of the unit, as well as deplorable basic sanitation and inadequate access to water. Similarly, the IACHR noted that the situation described affects the inmates' possibility of having access to any program for social reinsertion. In addition, the IACHR observed that the State's lack of control over these facilities, their consequent self-government, and the deplorable conditions of detention in Brazil's prisons have led to confrontations and tensions stemming from the high levels of violence and serious violations of the rights to life and integrity.

438. In addition, the IACHR has established that one of the most serious and widespread problems in the region is the corruption and lack of transparency in prison administration, where the centers for deprivation of liberty lack monitoring and oversight, and where arbitrariness, corruption, and violence have prevailed.⁵¹¹ This happens especially when the authorities do not effectively control the prisons, and dangerous circles of corruption form.⁵¹²
439. In this context the Commission, through the documentation work of the Rapporteurship on the Rights of Persons Deprived of Liberty, has received information that indicates that on many occasions the financial resources earmarked for the prison system become a source of various forms of corruption. One of the Commission's concerns has to do with the inadequate management of the resources earmarked for prison systems. In general, the diversion of resources earmarked for social programs has a disproportionate impact on the prison system. This happens because in the context of budgetary restrictions the prison system is not a priority for any country in the region. Moreover, the diversion of funds earmarked directly for the prison system has a direct impact on the living conditions of the imprisoned population, and on the personnel in charge of such facilities. Mindful of the foregoing, states should take the necessary measures so that contracts for building and maintaining prisons are also subject to oversight and accountability measures.
440. Similarly, the IACHR notes that in prisons permeated by corruption one finds an increase in real inequalities in terms of resources, accentuating the vulnerability of persons at special risk, and provoking an imbalance in the distribution of the scarce resources available.⁵¹³ One expression of these differentiated impacts is directly related to living conditions; oftentimes prisoners must pay bribes to gain access to minimal living conditions such as security and food, among others. In the case of *Tibi v. Ecuador*, the Court considered the victim's integrity violated, among other reasons, because he was kept in quarantine and because he had to pay to get food.⁵¹⁴ Accordingly, the Inter-American Court considered being confined in these

⁵¹¹ IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, paras. 2 and 4.

⁵¹² IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 14.

⁵¹³ IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, paras. 185 and 186.

⁵¹⁴ This is a system of payments for spaces in which inmates and the personnel in charge of the prisons are in complicity with one another. See I/A Court HR. *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004 Series C No. 114, para. 76(f).

conditions, insofar as it implied living standards incompatible with human dignity, to constitute a human rights violation.⁵¹⁵

441. With respect to the Mexican State, the Commission has noted that persons deprived of liberty are subject to unlawful charges by prison staff in order to be provided basic services and goods such as food and water, and health care. Those persons are also required to pay money to avoid being beaten and abused in prisons.⁵¹⁶ According to experts, high levels of corruption exist in large measure due to insufficient prison staff who work in very precarious conditions and do not have the elements required to perform their functions. Civil society organizations informed the Commission that even though serious acts of corruption by prison officials were publicly denounced, no criminal investigations were undertaken with due diligence, and the acts remained in impunity.⁵¹⁷
442. Based on the analysis in the previous section, the IACHR concludes that corruption in prisons is always an obstacle to carrying out the essential aims of prison sentences, in particular when it affects those mechanisms designed to promote the social reinsertion of persons deprived of liberty.⁵¹⁸ Accordingly, the Commission recommends to the states that they monitor the activities and decisions of the administrative and judicial authorities when it comes to assignment of jobs, training, and study; granting prison benefits; and adopting other decisions particular to the phase of enforcing the sentence, all with a view to preventing, investigating, and punishing possible irregularities and acts of corruption.⁵¹⁹

2. Indigenous and Tribal Peoples

443. The situation of indigenous and tribal peoples has been a matter of concern to the Commission for decades. Throughout the region these communities face vulnerabilities and historical discrimination.
444. Among the many ways in which violence is brought to bear against indigenous peoples one can recognize forms of corruption that have a differentiated and aggravated impact on the rights of the indigenous communities of the region. In particular, the embezzlement of funds from the state and those earmarked directly for satisfying the human rights of the indigenous communities has an aggravated impact in light of many indigenous communities' dependency on public resources.
445. One of the first differentiated ways in which corruption affects indigenous and tribal peoples is in relation to the obligation of the state authorities to adopt special

⁵¹⁵ I/A Court H.R., Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 151.

⁵¹⁶ IACHR, Situation of Human Rights in Mexico, OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015, para. 333.

⁵¹⁷ IACHR, Situation of Human Rights in Mexico, OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015, para. 335.

⁵¹⁸ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 191.

⁵¹⁹ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 630(5).

measures to guarantee the rights of indigenous communities in keeping with their cultural identity. Often such measures are not implemented since unlawful payments are demanded. Or, in many cases such measures are not adopted because there are third persons who, by bribery, influence-peddling, or the capture of certain institutions, block the adoption of these measures, which would allow for the effective exercise of human rights. For example, in Venezuela several obstacles have been identified that affect recognition of property rights in the land. Among these obstacles, the IACHR has received information on the purported ineffectiveness, sluggishness, and lack of a political will on the part of the agencies in charge of resolving land conflicts; the vulnerability of state agencies to pressure brought to bear by landowners, ranchers, military officers, and mining companies, all with an interest in the lands; resource limitations; lack of information and clarity in the awarding of titles, which could take the form, for example, of the existence of two titles to the same land; complexity in the procedures established; as well as the lack of understanding of the indigenous peoples' culture and conceptions of land.⁵²⁰

446. One critical aspect related to corruption and indigenous and tribal peoples has to do with the exercise of the right to prior consultation. These procedures, which make it possible to implement the right to participation of indigenous and tribal peoples in matters of interest to them, can be blocked or gravely distorted as a result of corruption.⁵²¹ Through bribes, influence-peddling, or institutional capture the right to consultation can be blocked, for example when it does not take place or is subject to unwarranted delay. In addition, the acts of corruption identified may mean that those processes of consultation be undermined and end up being a mere formality and not an exercise of rights. In this regard, the Commission noted that implementation of indigenous consultation in good faith is incompatible with practices such as the corruption of community leaders or the establishment of parallel leadership structures. In addition, it is possible that private actors will attempt to thwart the meaning of the consultation by coopting the leadership. While this may appear to be a problem as between private persons, on not allowing for the exercise of a fundamental human right in a democratic society it becomes a matter of public interest in which the state must guarantee that the consultation is carried out without these unlawful forms of interference.
447. As for territorial rights, some situations are presented that are of concern to the Commission. First, the forms of dispossession of their territories of which indigenous and tribal peoples of the region are victims of, through corruption⁵²². An aggravated form of such dispossession occurs in communities exposed to the violence of organized crime. These communities are in territories with great mining,

⁵²⁰ IACHR. Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region, OAS/Ser.L/V/II. Doc. 176, December 29, 2019, para. 70

⁵²¹ "States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired." Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on the obligations of states under the International Covenant on Economic, Social, and Cultural Rights in the context of business activities, para. 12.

⁵²² Committee on Economic, Social and Cultural Rights, General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, August 10, 2017, para. 12.

forestry, or tourism potential, thus private companies foster violence against them to dispossess them of their territories. In many cases the state not only fails to act to protect such communities from the violence, but its agents end up legalizing such episodes of dispossession and/or authorizing investment or extraction projects.

448. In this respect, the case of the Kichwa Sarayaku people is noteworthy. The dispute arose in the 1990s in Pastaza, a province of the Ecuadorian Amazon, with the granting by the State of a concession to a private oil company to extract the hydrocarbon resources in the indigenous territory, without the community having been consulted, and without respecting its right to judicial guarantees and judicial protection. A 2012 judgment of the Inter-American Court found the State internationally responsible yet, according to information received by the IACHR, in the context of the 9th Oil Round, a new concession was granted that was said to cover 16 blocks in the province of Pastaza, impacting 91% of the Sarayaku territory. In addition is the failure to remove, deactivate, and neutralize the pentolite buried in the same people's territory, for of the 1,433 kg, only 14 kg was removed. Nor were legislative, administrative, or other measures adopted to guarantee full enjoyment of the right to prior consultation.⁵²³
449. In other cases forms of dispossession occur by which indigenous territories are accessed unlawfully through acts of corruption. Such maneuvers make it possible for third persons to manipulate indigenous territory, in some cases through private actors, in others directly by public servants. In the case of Peru, the IACHR obtained information on the Amazonian Waterway project, whose purpose is to improve navigability along the Huallaga, Marañón, Ucayali, and Amazon rivers, and support large-scale commerce, even though it would be necessary to carry out dredging operations. According to the information provided, such dredging would be harmful, for due to the pollution caused by oil activity in the past, the sediments, which contain heavy metals, would be stirred up. After announcing this project it was reported that the Asociación Cocama de Desarrollo y Conservación San Pablo de Tipishca (Acodecospat), which represents 63 native communities, filed an *amparo* action to have the courts order the Peruvian State to annul that competitive bidding and first carry out the prior consultation with the Kukama people and all those who would be impacted. This action culminated in 2017, producing 70 agreements with 14 indigenous peoples. Nonetheless, according to information received by the IACHR, dissociative mechanisms were used to get indigenous organizations to support the project.⁵²⁴
450. Ancestral territories are also impacted through acts of corruption that hinder claims to them when they are in the hands of third persons. Accordingly, the I/A Court HR identified an unwarranted delay in the process of territorial claims making that the petitioner community had initiated pursuant to the domestic legislation.⁵²⁵ The system for restitution of lands suffered from dishonest practices in the

⁵²³ IACHR, *Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region*, OAS/Ser.L/V/II. Doc. 176 September 29, 2019, para. 89

⁵²⁴ IACHR, *Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region*, OAS/Ser.L/V/II. Doc. 176 September 29, 2019, para. 80

⁵²⁵ I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146.

determination of prices and the selection of lands, resulting in the purchase of lands not claimed and the over-invoicing of others.⁵²⁶ In addition, dishonest practices were found on the part of the company, which had obtained signatures from community members fraudulently to discredit the restitution process.⁵²⁷ In another case the Court established the direct link between the corrupt practices of a company, through efforts to disintegrate the social cohesion of the communities by corrupting community leaders or establishing parallel leaderships or individual negotiations, and violation of the right to free consultation that vests in the indigenous communities, which the State must guarantee insofar as it is responsible for the process of community participation.⁵²⁸

451. All of these are forms of violence and other human rights violations directed against indigenous and tribal peoples that are associated with various expressions of corruption and that have, as a common element, that they have a differentiated impact on those communities.

3. Persons in Human Mobility

452. Corruption can have a serious negative impact on the rights of persons in human mobility in all its forms, including asylum-seekers. Their vulnerability exposes them to different forms of corruption, which the states must eradicate.
453. This situation has been of concern to the IACHR. In the 2003 Report on Mexico it collected reports of impunity in Mexico in relation to the services in charge of interacting with migrants and various incidents of corruption that had occurred there.⁵²⁹ In addition, in a report on the Dominican Republic, it recommended “Strengthen the mechanisms to combat corruption and promote accountability” and “apply ... sanctions to the officials ... found to be responsible for the commission of crimes and human rights violations against migrants.”⁵³⁰ Recently the IACHR has found that corruption is one of the structural causes of forced displacement.⁵³¹
454. Corruption has differentiated impacts on persons in human mobility. For example, in some cases corruption is associated with the process of leaving a country. Paying bribes to obtain migration papers is one clear example. There may also be forms of corruption in the process of being received in the state to which one migrates, in

⁵²⁶ I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 34.

⁵²⁷ I/A Court H.R., Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 73.31.

⁵²⁸ I/A Court H.R., Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paras. 186, 194, and 203.

⁵²⁹ 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. 98, 104, 124, 235, 246, 257, 263 and 279.

⁵³⁰ IACHR. Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II. Doc. 45/15, December 31, 2015, para. 653.

⁵³¹ IACHR. Internal Displacement in the Northern Triangle of Central America: Public policy guidelines, OEA/Ser.L/V/II. Doc.101/18, July 27, 2018, para. 49.

light of the vulnerability of those who migrate, where forms of bribery may operate to allow entry. In these cases the authority who extorts is the person who should be sanctioned, and not those who are exposed to such practices. Along the same lines, the IACHR has taken note of situations in which persons in human mobility have been subjected to acts of corruption such as paying bribes to be able to access social services, the documentation needed to work, or the documentation for being able to remain, among others. In addition, one may encounter forms of corruption that affect the processes of returning to countries of origin. The need to pay bribes to avoid being expelled from the countries of residence, in particular, when there is a risk if deported to the country of origin, is worrisome.

455. The Commission has been concerned about the working conditions of persons in mobility. In view of their vulnerable status they may often be affected by forms of abuse and discrimination, and also forms of modern slavery with a strong link to corruption. Accordingly, the IACHR noted that as regards the human trafficking of persons kept in slavery there was a direct link to acts of corruption of the authorities in the destination country either because they are implicated in the business or because, despite situations in which certain persons are subjected to these terrible abuses, they do not do anything.⁵³²
456. Similarly, in migration cases persons in a vulnerable situation because they are asylum-seekers or because of their refugee status may become victims of corruption at various stages of the process. There may be forms of corruption in the process of leaving the country in which one is at risk, in the process of being received in the state in which one applies for asylum, and in the stay of the asylum-seeker or refugee in the host country. In these cases corruption is aggravated because the vulnerability of one seeking refugee status is greater due to the threats to their rights, considering the conditions that led them to leave the country of origin.
457. The situation in the region is especially complex when it comes to the relationship between human trafficking⁵³³ and corruption. State authorities must be involved in order for human trafficking to take place. This means that corruption is closely linked to fraud in human trafficking.⁵³⁴ Such situations are of concern to the Commission, particularly when corruption allows state authorities to collaborate with human trafficking, whether by facilitating documentation, refraining from

⁵³² 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. 73.

⁵³³ The Court has held that the elements that make up the crime of trafficking in persons are: “(i) the recruitment, transportation, transfer, harboring or receipt of persons; (ii) by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. For persons under 18 years of age these requirements are not a necessary condition for characterizing trafficking; (iii) for any exploitative purpose.” I/A Court HR. Case of Workers of the Brasil Verde Estate v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 290.

⁵³⁴ United Nations. International Covenant on Civil and Political Rights. Human Rights Committee. Consideration of reports submitted by states parties under Article 40 of the Covenant, CCPR/C/BRA/CO/2, December 1, 2005, para. 15.

making checks at border crossings, or not investigating suspected situations of trafficking.⁵³⁵

458. Corruption and trafficking are also closely associated with money laundering. The money from human trafficking is introduced to the illicit markets through various acts that can foster corruption. In this regard, when the state does not investigate various forms of money laundering or the flow of money in international transactions, among other things, it is facilitating violence against the victims of human trafficking in the region.
459. Finally, an even more serious situation ensues when the trafficking⁵³⁶ and/or smuggling⁵³⁷ of persons is organized from the state apparatus. For state agents to be the ones leading the criminal groups engaged in illicit commerce, including the trafficking of persons, individual or isolated acts of corruption do not suffice; rather, one needs institutional cooptation, with a complex mix of legal and illegal acts by state actors, private actors, and organized crime. When such situations occur the state's responsibility is aggravated and it is obligated to dismantle these criminal systems, prosecute and punish those responsible, and take institutional measures to ensure that such acts not recur.

4. Children and Adolescents

460. One group about which the Commission is especially concerned with respect to corruption is children and adolescents. This population has historically encountered various forms of discrimination and has been dealt with as a target of protection, not as a subject of rights. At present, the series of rules that make up international human rights law establishes that children and adolescents are not only subjects of

⁵³⁵ "Another serious threat posed by corruption among law enforcement agencies is the facilitation of the nefarious activities of cross-border crimes, i.e. trafficking of human beings and narcotic substances and financial crimes.... Some of the most frequently targeted institutions are the law enforcement agencies, including Customs, the Police, passport-issuing officials and, of course, the judiciary and financial institutions." United Nations, Economic and Social Council. Economic, social and cultural rights. [Progress report submitted by the Special Rapporteur. Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights.](#) Special Rapporteur, Christy Mbonu, E/CN.4/Sub.2/2005/18, June 22, 2005, para. 20.

⁵³⁶ Trafficking of persons: the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs; United Nations, *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which complements the Convention against Transnational Organized Crime*, Article 3.

⁵³⁷ Smuggling of migrants: the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident. United Nations, *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime*.

rights, but also the object of special and reinforced protection by states as the principal guarantor of rights but also by other important social stakeholders.

461. The American Convention on Human Rights establishes, in Article 19, these special protection measures and indicates that the responsibility must be shared by the family, society, and the state. Recognizing that the protection measures must enforce the principle of comprehensiveness, both the Committee on the Rights of the Child and the Commission have reiterated that the state must adopt a system whose nature requires a series of elements to design, coordinate, plan, implement, monitor, and evaluate public policies for promoting and protecting rights. These systems must constitute the basic scaffolding and operational structures needed to guarantee the effective enforcement of the rights of children and adolescents, above and beyond their legal recognition.⁵³⁸
462. Regarding the design of public policies promoting and protecting the rights of children and adolescents, the IACHR has indicated emphatically that states must adopt modern management and good governance measures that include the quality of the planning of programs and actions, the adequate allocation of resources, the compilation of data and information, the development of systems for performance assessment and indicators, professionalization and quality standards, the establishment of social participation mechanisms, and the fight against corruption. In addition, regarding the fight against corruption, the Commission stresses that policymaking must strengthen the public debate on the basis of the principle of transparency, proactively disseminating information and ensuring accountability on the results obtained.⁵³⁹
463. In that regard, in view of the key role played by states in implementing special and reinforced protection measures and the role of public policies in ensuring the effectiveness of these measures, it can be said that the consequences of corruption exert a serious impact on guaranteeing the rights of children and adolescents. Forms of corruption such as the embezzlement of public treasury resources affect the programs aimed at childhood, obstructing the enjoyment of rights that are substantially relevant in that stage of life, such as the rights to health education, and food.⁵⁴⁰
464. As pointed out in this report, in the education sector various forms of corruption prevent the adequate allocation and earmarking of resources, hampers the building of schools, or lead to shortages in the supply of materials or in construction. As for

⁵³⁸ 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. 10.

⁵³⁹ IACHR. [Towards the Effective Fulfillment of Children’s Rights: National Protection Systems](#), OEA/Ser.L/V/II.166 – Doc. 206/17, November 30, 2017, paras. 413 and 441.

⁵⁴⁰ Regarding the impact of corruption on the right to food, the IACHR, in a report on Guatemala (2017), indicated the following: “Guatemala has become the country most affected by chronic malnutrition in Latin America, and is one of the countries with the highest rates of chronic malnutrition worldwide. This dire situation is framed in a weak State structure, institutions with insufficient resources, and a persistent problem of corruption and high levels of violence. The low levels of tax collection in Guatemala hinders the State’s ability to provide basic public services and adopt public policies that guarantee the rights of the most resource-strapped sectors.” IACHR. [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, para. 4.

health, it harms the provision of specialized care and, as a serious consequence, it can lead to low-quality services and medicines. These and other practices may create long-term damages and undermine the integral development of children and adolescents.

465. Furthermore, the Commission observes that there are differentiated ways that corruption exerts its impact on the systems of criminal liability aimed at adolescents. There is a close relationship between corruption and the violation of rights, especially with regard to the inhuman and degrading conditions which juvenile offenders are subjected to. Embezzlement of public resources and poor management prevents adolescents from receiving adequate rehabilitation services in order to prepare them for reinsertion in society. On the contrary, this context exposes them to a climate of violence, insecurity, torture, and abuse.⁵⁴¹
466. Moreover, the impacts of corruption on adoption processes have also been identified. In a recent case, the Court was explicit in recognizing the context of corruption in which illegal adoption practices are developed in the country and pointed out that the states must adopt measures to effectively and efficiently prevent, punish, and eliminate this context of illegality.⁵⁴² In this particular case, the Court underscored that international adoptions took place in a framework of corruption, where a series of stakeholders and public and private institutions operated for the real purpose of enriching themselves, thus affecting in particular persons living in poverty.⁵⁴³
467. Regarding this, the IACHR reiterates the importance of recognizing the right of children and adolescents to live as a family; nevertheless, it stresses that all of the special protection measures for children and adolescents deprived of family care must be adopted in strict compliance with international standards in the matter, focusing on the higher interest of the child. In particular, procedures must be transparent, must meet procedural guarantees and judicial protection requirements, and prevent illegal profiting by intervening individuals or organizations.⁵⁴⁴

5. Women, LGBTI Persons, Persons of African Descent, Persons with Disabilities, and Older Persons

⁵⁴¹ I/A Court H.R., Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 170.

⁵⁴² I/A Court H.R., Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351. (Only in Spanish).

⁵⁴³ The Committee on the Rights of the Child also drew attention to the issue of adoption and corruption in its report on Guatemala. Convention on the Rights of the Child. [Exámen de los informes presentados por los Estados partes en virtud del artículo 22 de la Convención](#). [Consideration of reports submitted by States Parties under Article 22 of the Convention], CRC/C/GTM/CO/3-4, October 25, 2010, para. 61.

⁵⁴⁴ 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, paras. 54 and 228.

468. With respect to corruption, the Commission is concerned about the situation of women, LGBTI persons, persons of African descent, persons with disabilities, and older persons. Regarding these persons and groups, the impact of corruption can lead to disproportionate harm, establishing an aggravated form of discrimination.
469. Regarding **women**, the impacts from corruption are not only associated with forms of disproportionate harm, but rather there are also forms of corruption that affect them in a differentiated way, aggravating situations of violence of which they are victims in societies marked by traditionalism and exclusion. In these cases we are finding differentiated impacts because of their status as women, establishing forms of gender-based violence that is aggravated by corruption.
470. In that regard, the situation of mothers who are heads of household is noteworthy because the various systemic forms of corruption which divert social resources are disproportionately affecting women who, in many cases, rely more heavily on these resources for themselves and their families. Likewise, cases of political cronyism through social policies also affect them directly because of the direct relationship with the management of the basic needs of their families.⁵⁴⁵
471. In the region complaints are frequently filed for violence inflicted upon women sex workers. This is a sector that is exposed to various forms of violence and some of them are linked to the tactics of corruption. Thus, the need to pay bribes to the police or other civil servants to carry out the activity is a practice affecting women who are engaged in sex work. Other forms of peddling influence are also associated with the tactics of corruption to permit the exercise of that activity
472. Human trafficking affects women in a differentiated way as they are its main victims. So that human trafficking can be conducted, the cooperation of state authorities is required, which is why corruption is an instrument which criminal gangs habitually resort to. In some cases, the situation is even more complex when the human trafficking is managed from the government sector itself. So that this practice can take place, certain sectors of the state have to be pulled in, especially in border areas, migration checkpoints, the police, customs, among others. Regarding this, at the consultation meetings held by the Commission to receive information to draft this report, constant reports have been submitted about forms of sexual extortion, where the payment of bribes that are required of women is not only money, but also sex.
473. The Commission is also concerned about the impacts of corruption on **LGBTI** persons. The IACHR has pointed out repeatedly that LGBTI persons are impacted by

⁵⁴⁵ “Other challenges relating to the conception of transfer programs relate to lack of effective participation in their design and implementation; the differentiated impact of the transfer conditionality for women; alleged corruption and political manipulation of public funds earmarked for these programs; difficulties associated with maintaining the programs due to budgetary constraints; the need to extend coverage; administrative expenses of verifying compliance with the conditions; the effect of possible consequences of sanctions for failure to comply with conditions; and the lack of statistics and information regarding the programs, among others.” IACHR. *Poverty and Human Rights in the Americas*, OEA/Ser.L/V/II.164. Doc 147, December 7, 2017, para. 484.

various forms of violence.⁵⁴⁶ Police brutality is one of the gravest forms of violence disproportionately impacting them in many countries of the region. This violence is oftentimes associated with various forms of corruption, especially the need to pay bribes in order to avoid more serious acts of violence or arbitrary detentions or deprivation of liberty. In many cases, these forms of violence and discrimination also involve social policies, which LGBTI persons resort to in order to gain access to public services or social programs.

474. Regarding the right to gender identity⁵⁴⁷ in many cases exercise of this right is affected by the illegitimate requirement to engage in the payment of bribes. Another differentiated form affecting mainly the transgender population engaged in prostitution, are forms of corruption associated with payments or sexual extortion by authorities in order to allow them to exercise this activity. In many situations there is more than one motivation for discrimination based on sexual orientation and gender identity, to which are added poverty and social exclusion. This intersectionality aggravates the violence and also forms of corruption which persons belonging to LGBTI communities in the region can be victims of.
475. The various forms of racial discrimination affecting persons and groups of persons, in particular the **population of African descent**, has been a matter of growing concern for the Inter-American Commission. The IACHR has recognized how the impact of reports of corruption affect the municipalities preventing them from enforcing the rights of the population of African descent.⁵⁴⁸ In addition, the Commission has observed that reports of police corruption leads to victimizing and re-victimizing the population of African descent in the region.⁵⁴⁹
476. This situation of historical discrimination means that corruption exerts a great impact on the population of African descent. Social programs aimed at these communities are affected when corruption diverts resources earmarked for funding them. When acts of corruption divert these funds it is the right to life, health, education, housing, among others, that is directly impacted.
477. The population of African descent is not only impacted disproportionately because of the lack of resources to implement policies aimed at enforcing their rights, but also corruption affects them in a differentiated way. One way in which the vulnerability of the population of African descent to corruption is aggravated is the racial violence that daily affects this community. Daily discrimination is added to

⁵⁴⁶ 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.

⁵⁴⁷ I/A Court H.R. [Opinión Consultiva OC-24/17](#) Advisory Opinion OC-24/17 of November 24, 2017. Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State obligations in connection with change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18, and 24, in connection with Article 1 of the American Convention on Human Rights). Series A No. 24.

⁵⁴⁸ IACHR. [Preliminary observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the rights of Afro-descendants and against racial discrimination to the Republic of Colombia](#), OEA/Ser.L/V/II.134 Doc. 66, March 27, 2009, para. 115.

⁵⁴⁹ IACHR. [The Situation of People of African Descent in the Americas](#), OEA/Ser.L/V/II. Doc. 62, December 5, 2011, para. 172.

daily corruption such as the payment of bribes to avoid being the target of violence by police authorities, among others; they are frequent challenges for these communities in the region.

478. The situation regarding corruption for **persons with disabilities** is a matter of concern as well because of the conditions of vulnerability that many of them are encountering in the region. On the one hand, daily discrimination especially affects them, because many persons with disabilities depend on social services to live adequately and thrive. Because of this, any form of corruption involved in gaining access to said support services directly impact the quality of living of these persons. On the other hand, the various systemic forms of corruption, which divert social resources have a disproportionate impact on persons with disabilities in view of the high cost of treatment and other service mechanisms.
479. Likewise, corruption differentially affects persons with disabilities. The Commission is particularly concerned about their vulnerability to corruption when exercising rights such as the civil capacity of persons with mental disabilities. In these cases, there can be forms of corruption associated with the exercise of rights, such as bribes to process paperwork or other legal or commercial actions, as well as corruption mechanisms associated with the seizure of property of these persons by persons or institutions responsible for safeguarding them.
480. Regarding the relationship between corruption and **older persons**, the IACHR is concerned about both the direct and indirect impacts that corruption exerts on the violation of their human rights. State agendas that should provide greater inclusion of groups at special risk into their public policies are curtailed by the various forms of corruption prevailing in the region, owing to the diversion of public resources which should be aimed at social programs and public policies for older persons. This situation affects them disproportionately because older persons depend, to a greater extent, on these programs in order to exercise their civil and political rights and, in particular, their economic, social, cultural, and environmental rights.
481. Indeed, corruption in competitive government procurement affects the institutional framework and adversely impacts the assistance programs for older persons by undermining, for example, the quality and amount of services provided in terms of food and health, hospices and shelters, palliative care, among other basic goods and services for older persons. In public institutions such as social security, corruption may have the consequence of omitting older persons from coverage or providing deficient health services to older persons who have contributed to the social security system throughout their working lives. This situation exerts a disproportionate impact on older persons, because they are at a stage in their lives when their quality of life, dignity in old age, independence, autonomy, personal integrity, and even life depend directly on social security.
482. Furthermore, corruption in state institutions can undermine resources and prevent the development of national plans that include awareness-raising and personal development programs for older persons in society and comprehensively tackle the

issue of old age and ageing, as well as the enactment of laws for the benefit of older persons and to facilitate their access to social security systems.⁵⁵⁰

483. The disproportionate impact of corruption on older persons regarding their access to justice must also be stressed, for example, in cases of unwarranted delays in enforcing the judgments involving them. This requires taking into account their special need for protection because of their age and the importance of timely justice, which does not allow for delays.⁵⁵¹ In that regard, when restricting the rights and creating *de facto* exclusion, corruption also fosters discrimination against older persons and obstructs their full and effective participation, integration, and inclusion in society. State agendas giving priority to the issue of ageing in public policies must ensure strict monitoring and adopt measures to dismantle structures of corruption and prevent them from interfering in the enjoyment of rights by older persons.
484. Corruption has a series of disproportionate and aggravated consequences regarding the various communities that are in a situation of vulnerability regarding their rights. We have seen how each one of these sectors of society are the direct and indirect victims of corruption. In this matter it is important to highlight that, as indicated in the present report, corruption tends to have an aggravated impact on the principle of equality and nondiscrimination. The Commission is especially concerned about situations of intersectionality, where corruption exerts a disproportionate impact on certain bearers of human rights where various forms of vulnerability and discrimination converge⁵⁵². That is why states have the obligation to combat corruption and adopt public policies needed to effectively combat corruption and thus eliminate differentiated and aggravated impacts on more vulnerable groups and those living in situations of historical discrimination which corruption produces in the region.

⁵⁵⁰ Compare with: I/A Court H.R. Case of Poblete Vilches et al. v. Chile, Judgment of March 8, 2018, para. 127; and I/A Court H.R. Case of Muelle Flores v. Peru, Judgment of March 6, 2019, para 147.

⁵⁵¹ Compare with: I/A Court H.R. Case of Muelle Flore v. Peru, Judgment of March 6, 2019, para. 147.

⁵⁵² Concerning intersectionality concept and its effects in a specific case, see for example: I/A Court H.R., Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298. p.290

CHAPTER 6
THE HUMAN RIGHTS APPROACH
TO PUBLIC POLICIES FOR
FIGHTING CORRUPTION

THE HUMAN RIGHTS APPROACH TO PUBLIC POLICIES FOR FIGHTING CORRUPTION

485. In this chapter, the Inter-American Commission reviews the principles that must steer a human rights approach to tackle corruption. As indicated by the IACHR, the human rights approach calls upon states to adopt, as a frame of reference for its actions, the principles and standards recognizing the basic rights enshrined in both international instruments and domestic constitutions and statutes. In that regard, the IACHR intends to translate some of its standards and recommendations into practical guidelines that states and other stakeholders can use to undertake the adjustments needed on the basis of a human rights approach to these practices, institutions, policies, and laws. In addition, the IACHR analyzes the role of international cooperation in state efforts to fighting corruption and preventing human rights violations, as well as the impact of and approach to transnational corruption.
486. The IACHR is convinced that the principles set forth herein must serve as a guide for actions by those who are responsible for managing and organizing the state's machinery at its different levels and from its various areas to eliminate corruption, as well as responsible for managing anti-corruption programs and mechanisms.
487. One of the principal contributions of a human rights-based perspective to combat corruption is a solid body of principles that must steer public policymaking aimed at eliminating corruption in the region's countries. In that framework, the guiding principle and point of departure for all public policies combating corruption is requires taking into consideration the key role to be played by the victims of corruption. Indeed, corruption adversely affects persons, communities, and society as a whole, with specific impacts on persons and groups who have been historically discriminated against. As previously indicated, the victims of corruption must be at the very heart of the fight against corruption and become an integral part of the analysis, diagnosis, design, and implementation of mechanisms, practices, policies, and strategies to prevent, punish, and eradicate corruption, taking into consideration the principles of nondiscrimination and equality, accountability, access to justice, transparency, and participation.⁵⁵³ Because of that, it is impossible to view corruption as a victimless illegal activity; when cases and/or systems of corruption appear, it is necessary for states to make the utmost efforts to identify the victims, ascertain the damage caused, and take adequate measures to remedy it.
488. It must be stressed here that, when state agents engage in acts of corruption and, as a result, human rights are violated, there is the obligation to provide comprehensive reparations to the victims of said acts. In connection with the adverse consequences for human rights involving corruption, states must adopt comprehensive reparation measures for the direct victims, the indirect victims, and society as a whole, and

⁵⁵³ IACHR. Resolution 1/18. [Corruption and Human Rights](#). March 2, 2018.

therefore it is essential to ascertain the effective damage that has been caused and that can be causally linked to the act or situation of corruption.

489. One public policy with a human rights approach is the series of decisions and actions that the state designs, implements, monitors, and evaluates—on the basis of a permanent process of effective social inclusion, deliberation, and participation—for the purpose of protecting, promoting, respecting, and guaranteeing the human rights of all persons, groups, and communities that constitute society under the following principles:⁵⁵⁴

a) Equality and non-discrimination

Since it is the cornerstone of all democratic systems, this principle must prevail precisely when a problem in which the state must intervene is identified. Indeed, enforcement of this principle requires paying attention to the situations of inequality and the presence of rifts between various social groups in terms of access to human rights. The Commission points out that, in terms of public policymaking, it has three dimensions that must be taken into consideration. On the one hand, it means that the state must adopt measures based on the recognition of the dignity and rights of all persons on an equal footing and without any distinction; second, it indicates that it is necessary to design mechanisms and tools based on a differentiated approach which takes into account the specific conditions of certain persons, groups, or populations, in order to guarantee sufficient protection to achieve substantive equality. Finally, this notion of equality requires the active participation of persons, groups, and populations who historically have been living situations of discrimination with respect to the public policies concerning them.

490. The Commission also deems that enforcement of this principle shall have a direct impact on the strategy and design to tackle reparations policies in cases of corruption. The IACHR deems that the focus should be on giving priority, in these policies, to groups who are at a disadvantage in terms of access to rights.⁵⁵⁵ Likewise, the design of these measures must take into account the various situations of the persons and groups affected who must be served in order to restore conditions of equality in those actions aimed repairing the damages caused by acts of corruption that divert public resources from implementing actions for the general interest. The same occurs at the time of implementing the policy: the IACHR reiterates that the strategy and mode of implementation must once again focus on the situations that lead to or foster inequality and place emphasis on ensuring that the actions that are established achieve the goals proposed for ensuring access to rights and bridging gaps.

⁵⁵⁴ IACHR. [Public Policy with a Human Rights Approach](#). OEA/Ser.L/V/II. Doc. 191, September 15, 2018.

⁵⁵⁵ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, para. 195, 7, and 2017.

b) The principle of participation and social inclusion

It is important to guarantee the effective involvement of civil society and the private sector in the diagnosis, design, implementation, monitoring, and evaluation of public policies against corruption. The Commission states that participation of the citizenry in the cycle of public policies makes it possible for the perspectives and viewpoints of persons and groups who are the bearers of the rights target for the safeguarding to be incorporated into identifying problems, as well as designing, implementing, and evaluating policies,⁵⁵⁶ which become all the more relevant in anti-corruption policies in view of the impact that said corruption directly exerts on human rights. For the Commission, this is especially relevant in the case of the populations or groups that historically have lived in a situation of discrimination. The participation must not be confused with the will of the majority; on the contrary, using a human rights perspective, it requires, in particular, emphasizing meeting the needs and perspective of the groups that historically have been discriminated against, as well as adjusting them in line with the international obligations acquired by the state concerned.⁵⁵⁷

491. As a good practice in this regard, the Commission highlights Mexico's National Anti-Corruption System. That National System seeks to establish, articulate, and evaluate anti-corruption policy to ensure coordination among authorities at every level of government and to oversee and audit the use of public resources. The System includes a Citizen Participation Committee charged with ties to social and academic organizations and comprised of citizens who have made outstanding contributions to transparency. Among the powers vested in the Committee is the possibility of submitting national policy proposals and improving social participation mechanisms for reporting acts of production, as well as other options.

C) Mechanisms for filing claims and gaining access to justice

Access to suitable and effective judicial resources constitutes the first line of defense for human rights. The duty of states to provide judicial remedies is not confined to formal availability, but rather that said remedies must be suitable to tackle the human rights violations.

492. In that regard, the IACHR observes that recognition and enforcement of the power to file complaints play a key role when designing, implementing, and evaluating public policies on the basis of a human rights approach. This capacity not only places persons in an active capacity in terms of management of the state, but also makes it possible to have information about the quality of the measures adopted, that is, to be able to identify deficits, obstacles, omissions, failures, among many other matters

⁵⁵⁶ MERCOSUR Institute of Public Policies for Human Rights (IPPDH), *Ganar Derechos: lineamientos para la formulación de políticas públicas basadas en derechos* [Earning Rights: Guidelines for public policy making based on human rights], p. 105.

⁵⁵⁷ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, para. 196, September 7, 2017.

that sound the alarm about the need to correct or adopt measures that have not even been designed and/or implemented.⁵⁵⁸

493. To that end, the IACHR is emphatic in pointing out that one of the key elements for public policies combating corruption with a human rights approach is that the state machinery must guarantee the existence of, access to, and effectiveness of both the judicial and the administrative procedures for filing complaints.

d) The production of and access to information as a guarantee of transparency and accountability

Responsibility and the principle of accountability are indispensable to guarantee processes of transparency and access to information so that society can monitor the state's actions. All public policies combating corruption must consider these basic principles of the human rights approach.

494. As for public policymaking, the IACHR stresses that access to information starts with the stage prior to designing the policies themselves, during the assessment stage. This is mainly because the correct development of mechanisms to guarantee human rights requires the gathering of sufficient, high-quality quantitative and qualitative information. To the same extent, it is not possible to implement and evaluate the impact of a public policy if the state itself does not gather the information needed for that purpose.⁵⁵⁹
495. For effective monitoring of the state's activity and the impact of corruption, it is indispensable for states to gather disaggregated data on this impact regarding sectors in a situation of historical vulnerability and discrimination, such as women, indigenous peoples, migrants, persons of African descent, persons deprived of liberty, persons with disabilities, children and adolescents, older persons, LGBTI persons, among other groups. For effective accountability, it is necessary to establish effective monitoring and oversight mechanisms for activities in critical areas, such as the justice and security system, private-sector enterprises involved in extractive industries, systems related to essential public services such as health, education, and transportation, as well as competitive public bidding processes, among others.

⁵⁵⁸ IACHR. [Public Policy with a Human Rights Approach](#). OEA/Ser.L/V/II. Doc. 191, September 15, 2018. See also MERCOSUR Institute of Public Policies for Human Rights (IPPDH), *Ganar Derechos: lineamientos para la formulación de políticas públicas basadas en derechos* [Earning Rights: Guidelines for public policymaking based on human rights], p. 93.

⁵⁵⁹ IACHR. [Public Policy with a Human Rights Approach](#). OEA/Ser.L/V/II. Doc. 191, September 15, 2018. See also MERCOSUR Institute of Public Policies for Human Rights (IPPDH), *Ganar Derechos: lineamientos para la formulación de políticas públicas basadas en derechos* [Earning Rights: Guidelines for public policymaking based on human rights], p. 91.

e) Priority protection of groups that historically have been discriminated against

The IACHR has been reiterating, through its various mechanisms, the obligation of states to provide special and priority protection to groups who, for various circumstances, have historically been discriminated against. In addition, for more than three decades, the IACHR has been giving priority to focusing on these groups by establishing rapporteurships and thematic units, which has been reinforced by the drafting of guidelines of the Strategic Plans for 2011-2015 and 2017-2021. In this effort, the emphasis has been put on ensuring the visibility of the situation of groups in a situation of historical discrimination.

496. In that respect, the Commission has indicated that “it believes it is important to highlight that this duty entails for the states an obligation to focus special attention on the social sectors and persons who historically have suffered from exclusion or are victims of persistent prejudices and to immediately adopt the measures needed to prevent, reduce, and eliminate the conditions and attitudes that create or perpetuate discrimination in practice. These principles have been enshrined in the instruments governing the actions of the inter-American system of human rights.”⁵⁶⁰

f) The inclusion of the gender and diversity perspective

This principle is based on dismantling the imbalance between men and women, which has prevailed as a result of historical, social, cultural, political, economic, and legal constructs based on patriarchal models and deeply rooted gender stereotypes.

497. The IACHR stresses that the principles defined herein must serve as a guide for the actions of those who are in charge of managing and organizing the state machinery and its various levels. These principles are based on the view that rights can only be fully realized if the state adopts comprehensive measures which require dialogue, coordination, and joint work in the various sectors and levels of the state’s machinery, which must provide responses that are coordinated on the basis of the various dimensions that the challenges of combating corruption present.
498. In that respect, the inclusion of the human rights approach in public policies aimed at eliminating corruption necessarily exerts an impact on government institutions. The link between the institutions and public policies is absolutely interdependent and indivisible because all policies are structured in the framework of a specific; and every state institution is made up of the policies that it drafts, implements, and/or monitors and evaluates.⁵⁶¹ Therefore, the inclusion of the human rights approach in public policies to combat corruption must necessarily be aimed at institutional

⁵⁶⁰ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, p. 62, September 7, 2017.

⁵⁶¹ IACHR. Public Policy with a Human Rights Approach. OEA/Ser.L/V/II. Doc. 191, September 15, 2018.

capacity building.⁵⁶² Along the same line, the IACHR notes that the human rights approach is not confined to one specific institution for the development of the fight against corruption but rather it permeates the entire machinery of the state and actions in various sectors, levels, and branches of government.

499. Institutional capacity building, monitoring spheres of power that have a high capacity for yielding private benefits, the reduction of discretionary power, and the principle of accountability for public activities and the development of a culture of honesty, must be enshrined in preventive measures aimed at overcoming the factors facilitating, promoting, and giving rise to cases and situations of corruption.⁵⁶³
500. In that regard, benefiting from relevant, pertinent, and sufficient information about the situation of corruption and the concrete definition of the impacts and damages that corruption has on institutions, as well as the damage inflicted upon concrete victims, both individually and collectively, is essential to implement institutional capacity-building measures, monitor the allocation and management of reparation resources or mechanisms. Among them the following are noteworthy: the drafting of studies that make it possible to detect the main risks of corruption, the economic impact of corruption, the related social damage, and the identification of the most impacted sectors. To this end, it is necessary to have systems of indicators that systematize and provide disaggregated data that make analyses possible by area and relevant group, in particular the persons or groups in situations of vulnerability and historical discrimination.
501. Likewise, the implementation of public policies with a human rights approach must introduce and apply, in the fiscal regulatory framework, the budgetary principles of transparency, effectiveness, efficiency, equity, sustainability, accountability, participation, and in general adhere to the principle of sound management of public affairs, in addition to coordinating measures against corruption at all levels.⁵⁶⁴
502. Likewise, the Commission states that both national human rights institutions and civil society organizations are key stakeholders in monitoring and calling upon the state to ensure the budget and protect human rights, demanding participation, transparency, accountability, and access to information as democratic components of public policies,⁵⁶⁵ as well as in anti-corruption policies.

⁵⁶² “The second largest group of actions involve institutional capacity-building activities, which is another of the key purposes of the recommendations of MESICIC, because it is not enough to only have laws, it is also indispensable for the institutions in charge of enforcing them to do so effectively.” OAS. MESICIC. [Informe Hemisférico](#) [Hemispheric Report]. Fourth Round of Review, Committee of Experts. SG/MESICIC/doc.441/15 rev. 1, April 16, 2015, para. 8

⁵⁶³ “Calls for the strengthening of preventive measures at all levels, and underlines that one key aspect of preventive measures is to address the needs of those in vulnerable situations who may be the first victims of corruption.” United Nations, General Assembly. Resolution 35/25 of the Human Rights Council. [Las consecuencias negativas de la corrupción en el disfrute de los derechos humanos](#) [The negative impact of corruption on the enjoyment of human rights], A/HRC/RES/35/25, 14 July 2017.

⁵⁶⁴ IACHR. [Public Policy with a Human Rights Approach](#). OEA/Ser.L/V/II. Doc. 191, September 15, 2018.

⁵⁶⁵ IACHR. [Public Policy with a Human Rights Approach](#). OEA/Ser.L/V/II. Doc. 191, September 15, 2018.

503. As a result, the measures adopted by states must allow institutional capacity building in order to create capacities to prevent and control corruption.⁵⁶⁶ Because of that, it is necessary for states to examine the establishment of monitoring mechanisms and inter-agency coordination, with sufficient powers to guarantee public participation, providing the budget resources and autonomy needed to enable them to carry out their duties effectively. Self-evaluation mechanisms must also be developed to make it possible to identify, inside the institutions themselves, potential risks of corruption.⁵⁶⁷ One area that must be especially regulated and monitored is competitive public bidding, with the establishment of transparent, competitive systems with independent control, accountability, and effective and proportional sanctions in the event of noncompliance, as can be observed, for example, in Chile,⁵⁶⁸ Uruguay,⁵⁶⁹ and Ecuador.⁵⁷⁰
504. In that context, it must be recalled here that the IACHR has indicated that intersectoriality and comprehensiveness require both horizontal and vertical coordination in order to avoid overlapping functions or programs and to guarantee the combined efforts of government agencies and levels.⁵⁷¹ Phenomena such as corruption needed to be tackled by comprehensive and effective actions. The implementation of comprehensive plans makes it possible to set goals, determine time-limits, and identify those responsible for moving forward with anti-corruption measures in a transparent fashion and with the participation of the citizenry. In the region, it is possible to observe the experiences of National Plans in Peru⁵⁷² and Argentina,⁵⁷³ the National Anticorruption System in Mexico,⁵⁷⁴ and the establishment of special commissions and agencies on the matter in Bolivia⁵⁷⁵ and Suriname,⁵⁷⁶ among others.
505. Furthermore, in all anti-corruption policies using a comprehensive human rights approach the cultural aspect must be taken into consideration. In that regard, states

⁵⁶⁶ See: Johnston, Michael. *Syndromes of Corruption: Wealth, Power, and Democracy*. New York: Cambridge University Press, 2006; Rose-Ackerman, S. *Political corruption and democracy*. Yale Law School. Faculty Scholarship Series. 592. 1999, pp. 368-372.

⁵⁶⁷ "Third, the Committee notes that, in its Response, the country under review singles out as another best practice the adoption of the Integrity Self-Assessment System (SAINT), which is "a tool that enables institutions to identify, analyze, evaluate, and respond to events that could affect an institution's compliance with its objective, with particular emphasis on safeguarding integrity, probity, and public ethics." MESICIC. [Chile, Informe Final](#) [Chile. Final Report]. SG/MESICIC/doc. 489/16 rev. 4, March 17, 2017, para. 448

⁵⁶⁸ [ChileCompra.cl](#)

⁵⁶⁹ [www.gub.uy/agencia-compras-contrataciones-estado](#)

⁵⁷⁰ [Compraspublicas.gob.ec](#)

⁵⁷¹ IACHR. [Public Policy with a Human Rights Approach](#). OEA/Ser.L/V/II. Doc. 191, September 15, 2018.

⁵⁷² Supreme Decree N 044/2018 adopting the National Plan for Integrity and the Fight against Corruption 2018-2021, [Plan Nacional de Integridad y Lucha contra la Corrupción 2018-2021](#).

⁵⁷³ Decree 258/2019, National Anti-Corruption Plan, [Plan Nacional Anticorrupción \(2019 - 2023\)](#)

⁵⁷⁴ Law No. 18-07-2016, General Law on the National Anti-Corruption System, [Ley General del Sistema Nacional Anticorrupción](#)

⁵⁷⁵ Resolution No. 002/2017, National Council for the Fight against Corruption, Illicit Enrichment, and Laundering of Illicit Profits, [Consejo Nacional de Lucha Contra la Corrupción, Enriquecimiento Ilícito y Legitimación de Ganancias Ilícitas](#)

⁵⁷⁶ Law No. 85, Law on Preventing and Combating Corruption, [Ley de prevención y combate de la corrupción](#) (2017)

must adopt all necessary measures to eliminate the culture of tolerance towards corruption. This situation is evident in its invisibility and even in its social prestige.⁵⁷⁷ Because of that, states must foster ways of monitoring and self-monitoring both in the public sphere and in the business or private sphere. Among them, it is essential to draw up educational policies with a human rights approach based on respect for democratic values.⁵⁷⁸ Likewise, the importance of developing public policies with emphasis on the respect for legality must be underscored, and the observance of standards must be considered a priority aspect. Inside public administration, strengthening the commitment to public service is relevant as a result of the democratic exercise of civic duty. Knowledge about cases of corruption and the related sanctions are important parts of a culture that has no tolerance for corruption. In that respect, it is of the utmost relevance to gather information on a timely basis from whistleblowing reports and investigations into corruption and the measures adopted as a result of the outcomes.

Importance of international cooperation and of addressing transnational corruption

506. Any public policy with a human rights approach to combat corruption needs to adopt a broad and multidisciplinary stance toward preventing and combating the phenomenon, based on more robust cooperation mechanisms between and among States for facilitating investigation of transnational corruption cases.
507. The Commission has shown how acts of corruption in the Hemisphere may form part of more complex webs crossing state borders, so that they are, in effect, transnational. In that way, commercial ties could trigger an internationalization of corrupt practices, which means that public policies to track and combat them also need to cater to that transnational dimension.
508. International cooperation mechanisms may turn out to be an effective tool when it comes to keeping track of international transactions and may boost communication and collaboration when illicit movements are detected. In addition, given the particular features of complex, decentralized, and swiftly adaptable transnational interactions, international cooperation initiatives may be implemented in order to support investigation and prosecution proceedings and the recovery of assets. In particular, measures could be promoted to help recover government assets, along

⁵⁷⁷ “Given that corruption is partly due to moral decay, moral regeneration is therefore required. This moral regeneration should take place at the spiritual, cultural and political levels. There should be campaigns in places of worship, schools and even at youth meetings.” United Nations, Economic and Social Council. Sub-Commission on the Promotion and Protection of Human Rights. [La corrupción y sus repercusiones en el pleno disfrute de los derechos humanos, en particular los derechos económicos, sociales y culturales](#) [Corruption and its impact on the full enjoyment of human rights, in particular, economic, social and cultural rights], E/CN.4/Sub.2/2003/18, 14 May 2003, para. 21 subparagraph g).

⁵⁷⁸ “Emphasizing that human rights education and awareness-raising campaigns and other measures are important enablers for the prevention of and the fight against corruption.” United Nations, General Assembly. Resolution 29/11 of the Human Rights Council. [Las consecuencias negativas de la corrupción en el disfrute de los derechos humanos](#) [The negative impact of corruption on the enjoyment of human rights]. A/HRC/RES/29/11, 22 July 2015, p. 2.

with specific mechanisms to ensure that those recovered assets are used to make reparation for violations of the human rights of victims of corruption.

509. Accordingly, the signing of cooperation agreements among the agencies in the different countries responsible for investigation corruption cases could turn out to be an effective tool for expediting the flow of information among institutions and the countries' judicial systems. Such agreements may prove useful to facilitate cooperation, the transmission of information, and evidence-gathering procedures needed to move ahead with investigations involving more than one State.
510. At the same time, the cooperation that regional and universal human rights organizations, such as the IACHR or the Office of the United Nations High Commissioner for Human Rights, can provide through their various mechanisms, may facilitate joint actions with States to protect human rights defenders, whistleblowers reporting acts of corruption, and justice operators in charge of investigating those reports, along with other initiatives designed to strengthen the monitoring, promotion, and oversight of compliance with international human rights obligations in connection with the implementation of public policies to combat corruption.
511. Finally, the Commission invites the states to reflect upon the observance of each one of these principles in their actions, as well as to encourage social organizations and other important stakeholders to promote the mainstreaming of the human rights approach in the monitoring and oversight role they play with respect to states in the matter of corruption.

CONCLUSIONS

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512. The magnitude of the phenomenon of structural corruption experienced in the region and which has adverse consequences for democracy, the rule of law, and human rights requires efforts that are proportional to the problem. To this end, it is necessary for civil society, social movements, and the entire population to call for structural transformations to eliminate corruption and find the political leadership that would promote those changes.
513. Indeed, the phenomenon of corruption exerts a differentiated impact on the enjoyment and exercise of human rights, in particular with respect to the various groups that historically have been vulnerable and discriminated against. Corruption especially affects persons living in poverty and extreme poverty, because, as a result of their condition of vulnerability, they suffer more severely from the consequences of this phenomenon.
514. According to inter-American standards, states are required to adopt all necessary measures to guarantee full respect for and exercise of human rights. In that matter, these measures must be comprehensive and coordinated in order to dismantle the systemic factors that foster, enable, and give rise to corruption in the region, among which, weakness of institutions, the concentration of power, ample discretionary power, the absence of effective monitoring mechanisms, the environment of impunity, the lack of adequate and timely reparations for victims, and the influence of a widespread culture of tolerance for corruption.
515. Because of the convergence of human rights and corruption, states are required to adopt public policies with a human rights approach that are coordinated, adequate, and effective to implement strategies combating corruption and to follow a series of principles pertaining to the human rights approach as identified above (principles of equality and nondiscrimination, access to justice, accountability, transparency, among others). In this context, it must be underscored that consideration of the key role to be played by victims must steer the states' utmost efforts toward adopting adequate measures for identifying the victims and ensuring reparations by drafting public policies. The IACHR has also identified, as another key point of the convergence between human rights and corruption, the need to move forward with institutional capacity building of the rule of law and democratic institutional framework.
516. Capacity building and adoption of an adequate institutional framework aimed at combating corruption must effectively investigate, prosecute, and punish the perpetrators of crimes against journalists, human rights defenders, and other persons who report acts of corruption. This institutional framework must guarantee the necessary technical and human resources for effective investigation,

prosecution, and punishment and also guarantee independence from third-party intrusion or influence that might undermine this activity.

517. In case of widespread corruption and macro-corruption, when the state is a product of that corruption and therefore is unable to guarantee social rights fully, or to the utmost of its resources, because of various forms of corruption, it is necessary for the state to adopt measures to reverse the situation and also to establish reparations for the victims. When corruption has systemic ramifications or a public service is coopted by private interests preventing the state from fulfilling its obligations, it must immediately adopt measures to put an end to the irregular situation and to provide the service with the necessary resources so that it can achieve its purpose.
518. States must keep in mind that striving for effectiveness when investigating cases of corruption must be done with full respect for human rights. Judicial guarantees and limits to the restriction of rights are standards that are fully applicable when combating corruption. Without doubt, the complexity of these cases requires adopting extraordinary measures to adequately investigate illegal activities, and this goal must be deemed as an aim compatible with the international commitments of states and must be considered to evaluate the proportionality of the measures of restrictions on rights. To bring clashing human rights into line with collective interests is one of the major challenges in democratic societies that are tackling the fight against organized crimes and other widespread and systematic forms of corruption. The Commission is convinced that the fight against corruption must take place within the parameters set by inter-American human rights instruments.
519. The IACHR observes that the absence of effective punishment leads to an environment of impunity which in turns foster corruption. States must provide an adequate response since acts of corruption not only exert an impact on the human rights situation in the state concerned, they are also illegal criminal acts. To this end, combating impunity also entails guaranteeing that these acts of corruption, which have a serious impact on the enjoyment and exercise of human rights, do not occur again in the future.
520. In that context, states must review their legislation with respect to punishing corruption, especially criminal law for the purpose of adjusting it to deal with new forms of corruption appearing in the region. It is also important for monitoring institutions to have the capacity for analysis and follow-up of situations that present the highest risk of corruption.
521. The Commission understands that reparation measures are a key element in public policies combating corruption with a human rights perspective. When corruption leads or contributes to human rights violations, it is essential for states to take responsibility for providing reparations to the victims. A comprehensive policy of reparations cannot be confined to investigating, restoring, rehabilitating, or compensating the direct victims. On the contrary, the end purpose must also be promoting justice and strengthening the democratic rule of law in the region as a collective matter.

522. In short, the Commission has drafted the present report to develop those aspects involved in examining the convergence of human rights and corruption, in order to make available to users of the inter-American system the principles of the human rights approach which would make it possible to strengthen the effectiveness of public policies combating corruption. To this end, the IACHR has stated its willingness and readiness to provide technical assistance to states, regional bodies, social organizations, and other institutions for institutional capacity building and the drafting, implementation, and evaluation of public policies aimed at fighting corruption with a human rights approach in the Americas, on the basis of the inter-American standards identified here and on the basis of those standards related to various issues involving interventions by the state.

Addressing corruption as part of the Inter-American Commission's mandate

523. The IACHR takes the view that corruption impairs the enjoyment and exercise of human rights in ways that are largely invisible, disproportionately harming persons and groups in vulnerable situations or who, historically, have been victims of discrimination. For that reason, and invoking its mandate and the powers vested in it, the Commission proposes to outline in this Section a series of steps by which the Commission can use its own mechanisms to address and analyze the corruption phenomenon, focusing on the harm that acts of corruption can wreak on individuals and groups.

1. Monitoring/Follow-up Mechanism

- a) Through its monitoring sections and thematic and special rapporteurships, the IACHR will continue to track acts of corruption that may impair enjoyment of human rights in the States.
- b) Based on Article 41 of the American Convention on Human Rights, the IACHR may request governments of the member states to supply it with information on matters of special concern regarding human rights measures they adopt.
- c) Through its follow-up mechanisms, the IACHR will pay particular heed, to reports and precautionary measures adopted in connection with acts of corruption.
- d) The IACHR will draw attention to large-scale corruption cases through its social networks, press releases, and public hearings during its periods of sessions, to create awareness of the impacts corruption has on the enjoyment of human rights.

2. Precautionary Measures mechanism

- a) The IACHR will accord priority to requests for protection measures for justice operators, witnesses, and those who report acts of corruption (whistleblowers), whose life and bodily integrity are at risk.

- b) The IACHR will pay special attention in its periods of sessions to requests for working meetings to follow up on precautionary measures granted.

3. Individual Petitions and Cases System

- a) In its admissibility analyses, the IACHR will examine the context in which an alleged human rights violation arises in order to determine whether it stemmed from an alleged act of corruption.
- b) The international responsibility of the State could be established, inter alia, by taking into account actions or omissions by state agents in the performance of their public duties that violated human rights.
- c) The IACHR will consider giving priority attention to cases of serious violations of human rights resulting from alleged acts of large-scale corruption, pursuant to Article 29.2.d of the Rules of Procedure of the IACHR.

4. Technical Cooperation mechanism

- a) The IACHR will offer technical cooperation and training to States and human rights defenders regarding the State's obligations to prevent, make reparation for, and punish human rights violations, with a special emphasis on situations stemming from acts of corruption.
- b) The Special Rapporteurships on freedom of expression and ESCER will mainstream efforts to combat corruption in their work programs, underscoring the most serious cases of human rights violations.
- c) The IACHR will ensure that this report is widely distributed.

RECOMMENDATIONS

RECOMMENDATIONS

524. On the basis of a joint examination of corruption and international human rights obligations, the IACHR concludes the present document by making recommendations to develop public policies for combating corruption with a human rights perspective.
1. Ensure that the victims of corruption are at the center of the fight against corruption and become an integral part of the analysis, diagnosis, design, and implementation of mechanisms, practices, policies, and strategies to prevent, punish, and eradicate corruption, taking into consideration the principles of non-discrimination and equality, accountability, access to justice, transparency, and participation.
 2. Take the necessary measures to put an end to the disproportionate and aggravated forms of corruption against women, the LGBTI population, children and adolescents, persons of African descent, indigenous and tribal peoples, migrants, persons with disabilities, and persons deprived of liberty, and older persons. Repair the damages caused to the direct victims in line with international standards and guarantee they are not repeated.
 3. Carry out efficient, prompt, and thorough investigations into instances of corruption; guarantee that those investigations are serious, bent on achieving results, and mindful of judicial guarantees to safeguard due process and full rights to legal defense, in both administrative and judicial hearings.
 4. Install mechanisms to protect witnesses, victims, and next of kin that provide for the participation, at the very least, of defenders, civil society organizations, and experts; develop a comprehensive and inter-agency approach to corruption issues, tailored to the risk posed in each situation, and allowing immediate responses to denunciations; create a risk assessment model capable of accurately gaging the risk and each whistleblower's or group's protection needs; establish an information management system to protect whistleblowers and prevent reprisals; foster a culture legitimizing and protecting the work of those who report corruption; make available sufficient human and financial resources to cover the real protection needs of those who investigate and denounce corruption.⁵⁷⁹

⁵⁷⁹ "Adopt provisions to provide those filing reports with guarantees against any threats, retaliations, or reprisals they may face as a result of complying with this duty, including the protection of their identities [...] Provide special protective measures in those cases in which the complaint involves the reporting employee's hierarchical superior. [...] Develop, in addition to rules for protecting public officials who lodge reports,

5. Establish special protection mechanisms for journalists, human rights defenders, and others who report acts of corruption, in situations involving structural violence or cooption of all or part of the state apparatus by corruption networks. Such mechanisms need to prioritize protection measures for those areas of greatest risk to life and bodily integrity. The risk assessments drawn up by these protection mechanisms must not require the disclosure of journalists' sources or material in order to verify the veracity of statements regarding risk.
6. Ensure that witnesses of corruption are not subjected to external or internal pressure, do not suffer reprisals, and are not harmed with respect to their professional careers and/or labor rights; guarantee them the conditions they need to go about their work safely; adopt effective measures to ensure protection for them and their families in the event of threats.
7. Adopt domestic and, where appropriate international cooperation measures, to facilitate investigation into international corruption cases.⁵⁸⁰ For that, it is important to conduct studies of national anti-corruption laws with a view to facilitating cooperation, the transmission of information, and international evidence-gathering procedures.⁵⁸¹

mechanisms or programs for ensuring that protection is effective [...]". MESICIC Hemispheric Report. First Round of Review. SG/MESICIC/doc.170/06 rev. 1, March 31, 2006, Measure A.3

⁵⁸⁰ "The IACHR underscores the importance of cooperation among the judicial systems of states with a view to confronting a transnational issue, including the exchange of information and the creation of multilateral investigation units that could foster the establishment of an evidence unit and a coordinated policy for identification of flows of assets used in corruption, as well as for asset recovery." IACHR. Resolution 1/18. Corruption and Human Rights, March 2, 2018.

⁵⁸¹ "Encourages national anti-corruption authorities and national human rights institutions, where they exist, to cooperate through the exchange of information, where appropriate, and the development of joint strategies and plans of action to fight corruption and its negative impact on the enjoyment of human rights [...] Stresses that international cooperation can contribute to the prevention of the negative impact of corruption on the enjoyment of human rights, including through the delivery of advisory services, technical assistance and capacity-building, and the exchange of best practices to support States, upon their request, in their efforts to prevent and to fight corruption". United Nations, General Assembly. Resolution 35/25 adopted by the Human Rights Council. The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/35/25, 14 July 2017.