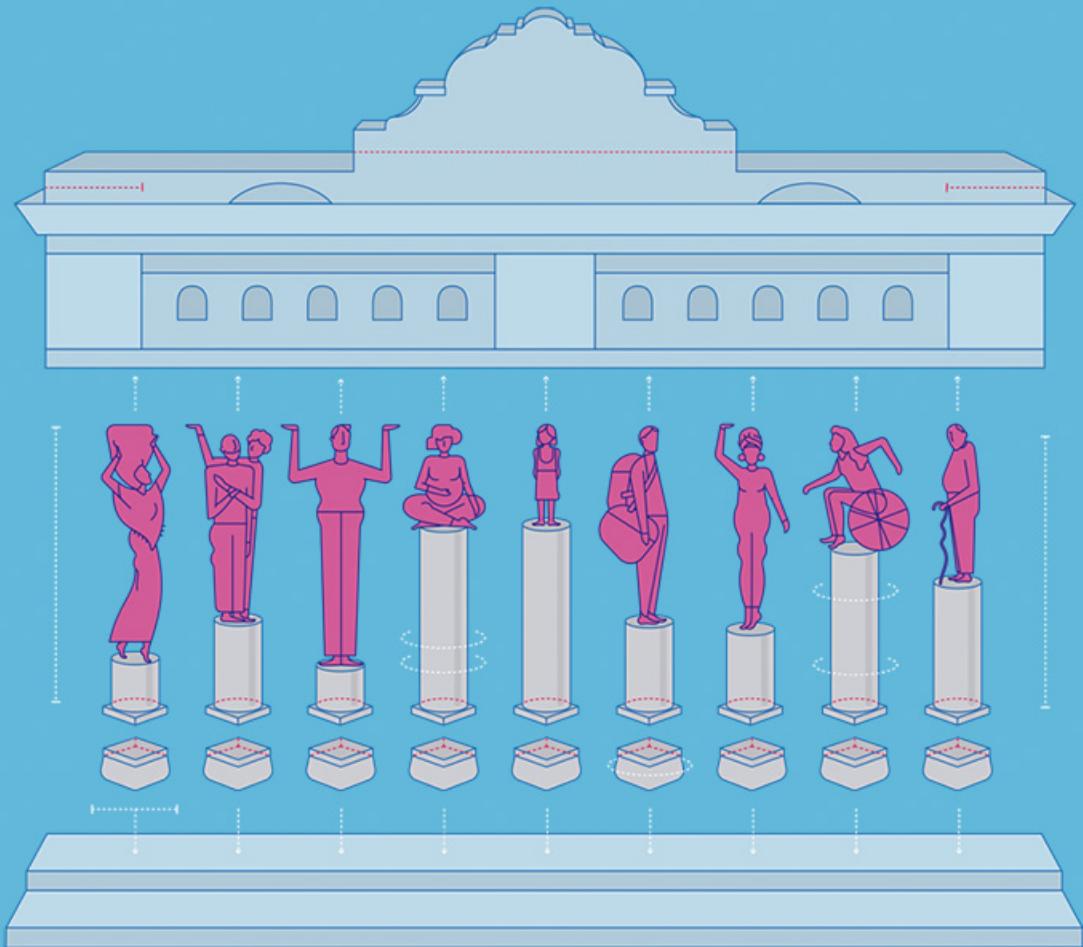


Public Policy with a Human Rights Approach



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CHAPTER 1
INTRODUCTION

INTRODUCTION

A. *Objective*

1. The Inter-American Commission on Human Rights (hereinafter the Inter-American Commission, the Commission, or the IACHR) is aimed principally at promoting and protecting human rights in the Americas. It exercises these functions by visiting the countries, drawing up reports about the human rights situation of a given country or on a specific theme, adopting precautionary measures or requesting provisional measures with the Inter-American Court of Human Rights (hereinafter the Inter-American Court or the Court), processing and reviewing petitions and cases through the system of individual cases, providing technical cooperation, and carrying out promotional and training activities.
2. The OAS Charter, in Article 106¹ establishes that the IACHR's main duty is to promote the observance and protection of human rights and to serve as a consultative organ for the Organization in these matters. As the American Convention on Human Rights (hereinafter the American Convention or the ACHR) indicates, in Article 41², the duties and attributions of the IACHR, among which there are the following: making recommendations, requesting reports from State, providing technical advisory services at the request of States, and responding to individual petitions submitted in line with the

¹ Charter of the OAS. 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: a. to develop an awareness of human rights among the peoples of America; 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; d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights; 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.

treaty, in addition to submitting an Annual Report to the OAS General Assembly.

3. It must be pointed out that the mandate and therefore the work of the Inter-American Commission encompasses a wide range of activities to address the human rights situation in the Hemisphere, among which dispute settlement approaches are supplemented by those aimed at exerting an impact on the realities leading to human rights violations. Ultimately, in order to abide by the regulatory framework of the OAS Charter and the provision of Article 41 of the American Convention, in terms of promoting “respect for and defense of human rights,” work must be carried out using a preventive and transformative approach focusing on the structural conditions that make human rights violations possible and even trigger them.
4. In that framework, on the basis of its various mechanisms, the IACHR has been monitoring the human rights situation in 35 states that are members of the Organization of the American States (OAS) and has issued recommendations to help them fulfill their obligation to strengthen and guarantee human rights for the persons under their jurisdiction.
5. Along this line, between 2015 and 2016, the IACHR drafted the Strategic Plan 2017-2021³ using a participatory approach and setting the priorities to successfully accomplish its mission and tackle current and future challenges to promote and protect human rights in the Hemisphere.
6. Among the greatest challenges identified, the need to strengthen the democratic institutional framework of States was stressed, as well as capacity building for implementing public policies with a human rights approach that can exert concrete impacts on the enjoyment and exercise of these rights for persons, groups, and communities, with guarantees of equality and justice as the inherent foundation of human dignity.
7. In this context, it is important to stress that Strategic Objective ³ of the above-mentioned Plan is aimed at promoting democracy, human dignity, equality, justice, and basic liberties by actively contributing to strengthening the institutional framework and public policies with a human rights approach of the states in line with inter-American norms and standards and building up the capacity of organizations and networks of social and academic stakeholders to act for the defense of human rights.
8. To this end, the IACHR proposed, as one of its priorities, strengthening its technical cooperation to Member States, regional bodies, social

³ IACHR, Strategic Plan 2017-2021, OEA/Ser.L/V/II.161, Doc. 27/17, March 20, 2017.

organizations, and other institutions for institutional capacity building and the drafting, implementation, and evaluation of public policies aimed at respecting and guaranteeing human rights in the Americas on the basis of inter-American standards. This emphasis emerges from the concerted conviction, of both the IACHR and the states and civil society, that public policies have a relevant role to play as a major tool of the state for its actions.

9. On the basis of this background and in view of the importance of strengthening public policies, the key goal of the present report is to present a conceptual framework that would make it possible to steer the IACHR's work in the area of public policy with a human rights approach, in order to proactively contribute, with the states, to exerting structural impacts on preventing and avoiding the repetition of human rights violations.
10. As a result, the IACHR has decided to issue the present report to provide effective tools to those in charge of planning, drafting, implementing, monitoring, or evaluating public policies, providing them with inter-American principles and standards on the subject, as well as a set of practical guidelines steering these actions by the state throughout the various stages of the cycle of drafting a public policy using a human rights approach. In that respect, a series of examples of impacts on public policies emerging from the actions carried out in the various working mechanisms of the IACHR is also presented.
11. The IACHR is convinced of the important role that the inter-American system performs in transforming the structural causes that trigger, deepen, and encourage the violation of basic rights and situations of inequality. Thus, by strengthening the institutional framework of the State and promoting public policies with a human rights approach, it is possible to move forward with a prevention and social transformation agenda to avoid a repetition of human rights violations.
12. The IACHR stresses its willingness and readiness to provide technical assistance to states, regional bodies, social organizations, and other institutions for institutional capacity building and to draft, implement, and evaluate public policies aimed at strengthening and enforcing human rights in the Americas on the basis of inter-American standards identified herein and on the basis of those standards relative to the various themes targeted by state intervention.

B. Background regarding Structural Recommendations and Public Policy

13. The IACHR is working on making structural recommendations on the basis of the individual cases system and evaluates and recommends, in greater detail, through its activities of monitoring the human rights situation, through onsite visits, working visits, thematic reports, country reports, letters requesting information, press releases, and hearings, and the creation of public policies with a human rights approach.
14. On the basis of these recommendations, issued using its various working mechanisms, which address structural problems that prevent millions of persons in the hemisphere from fully enjoying and exercising their rights, the Inter-American Commission has also played a vital role in preventing and avoiding the repetition of human rights violations.
15. Through its various working mechanisms, the IACHR adopts:
 - In the framework of the system of petitions and cases:
 - Recommendations in the reports on the merits adopted by the IACHR;
 - Decisions on the reports that approve friendly settlement agreements between member States and petitioners before the IAHR;
 - Decisions on the resolutions that grant or extend precautionary measures to persons or groups in situations of imminent risk.
 - In the framework of the monitoring system:
 - Recommendations in the framework of the monitoring system enshrined in reports on the situation of human rights in the countries; in thematic reports; and in the Annual Report of the IACHR (Chapter IV A. and B. and Chapter V);
 - Resolutions issued by the IACHR in the area of human rights.
16. The work that the IACHR has been developing over the six decades since it was established and that has led to the decisions and recommendations it has made for states so that they could adapt their laws, practices, policies, and institutions to the international standards for the protection of human rights, has exerted clearly positive impacts in the region in structural terms. The member states of the OAS have asserted their unequivocal commitment

to democracy and human rights, and the Commission makes efforts to ensure that this commitment produces tangible results.⁴

17. The IACHR has played a vital role in promoting the adoption of constitutional amendments, laws, public policy with a human rights approach, and judgments in line with inter-American norms and standards. Its recommendations have led States to eliminate discriminatory laws, policies, and practices; to provide comprehensive reparations to victims; to prevent the repetition of human rights violations; and to strengthen the protection of human rights. The Commission's reports have contributed to the adoption of collective and structural actions by the OAS to protect the rights and democratic liberties in the member states.⁵
18. As shall be seen, the inter-American human rights system (IAHRS) has differentiated itself from other regional mechanisms by including, within its recommendations and judgments, measures of non-repetition that tackle the conditions that gave rise to the human rights violation in question and which can be viewed as structural measures.
19. Said structural measures arise from various sources of recommendations because they have been issued in the framework of its Reports on the Merits—referred to the Court or published—as well as from the recommendations of its reports on the general situation of human rights in a member state or from thematic reports, making it easier for states to amend and adjust their legislation, adopt public policies, or create institutions, programs, and services in order to guarantee the exercise of the human rights of all their inhabitants.
20. Nevertheless, it must be specified regarding this that, although the Inter-American Commission has been working directly or indirectly on structural issues or public policies, the only definition of a public policy that existed had come from a Report on Citizen Security and Human Rights of 2009,⁶ which had been adjusted to the specific needs of said theme. In that report, public policies were defined as “the guidelines or courses of action that the State authorities lay down in order to achieve a given objective and that serve to create or transform the conditions under which individuals or groups in society conduct their affairs.”⁷

⁴ IACHR. Strategic Plan 2017-2021, OEA/Ser.L/V/II.161, Doc. 27/17, March 20, 2017, p. 11.

⁵ IACHR. Strategic Plan 2017-2021, OEA/Ser.L/V/II.161, Doc. 27/17, March 20, 2017, p. 11.

⁶ IACHR. [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II. doc. 57, 31 December 2009, para. 52.

⁷ This definition was drawn up in the framework of a thematic report on citizen security. Since then, the Inter-American Commission has been moving forward with its increasingly in-depth work on public policies.

C. Structure

21. The report shall present an introductory chapter in which the goals, background in terms of structural recommendations, and methodology used are presented.
22. Chapter II presents the human rights principle that the IACHR believes must be included in the drafting of all public policies. After reviewing the standards of the inter-American human rights system, the IACHR shall provide certain guidelines on their application to the process that every state policy undergoes.
23. In Chapter III, the Commission shall set forth an up-to-date idea of public policies with a human rights approach that is based on the standards and recommendations that the IAHRs has been promoting over the years.
24. This same chapter also presents analytical diagrams to introduce the concrete contribution of IACHR's work to the process of drafting policies undertaken by states and provides a list of key elements that can be taken as a reference in the cycles of public policymaking conducted in the states.
25. Finally, Chapter IV examines the impact stemming from the structural recommendations the IACHR has made through the various human rights promotion and protection mechanisms in the area of fulfilling human rights. In particular, examples of the impact of the recommendations that have emerged from the cases admitted and processed by the IACHR shall be presented, highlighting those where the Commission has recommended that the state implement or change a public policy.
26. Likewise, some of the Commission's monitoring mechanisms shall be addressed in order to exemplify how, in each one of them, they have impacted the design and/or adjustment of public policies in the Hemisphere.
27. Ultimately, it must be underscored that the examples that are provided in the above-mentioned Chapter IV have been selected for the sole purpose of illustrating the scope that the tools of the Inter-American Commission have had in the matter, without claiming to be exhaustive or making any value judgments.

D. Methodology

28. For the drafting of the present report, various information research, review, and systematization process have been carried out.

29. Chapter II was prepared on the basis of analyses of information compiled in the previous chapter, as well as on the basis of the review of various methodologies that have been proposed, by both members of the academic sector and international and regional bodies. Among them, there are mainly the human-rights based approach to development proposed by the United Nations and adopted by its agencies;⁸ and the guidelines for the drafting of rights-based public policies of the MERCOSUR Institute of Public Policy in Human Rights (IPPDH),⁹ which have been especially taken into consideration as they were developed by OAS member countries.
30. Chapter III incorporates the elements of the models taken as a reference for the drafting of the conceptual framework, guidelines, standards, and recommendations of the inter-American system and moves forward with some practical guidelines and the development of the Inter-American Commission's own broad definition of public policies with a human rights approach.
31. Chapter IV, in its section on the System of Individual Petitions and Cases required the preparation of technical files for 292 reports issued by the Commission between 2000 and 2015; of these, 194 involved cases that were referred to the jurisdiction of the Inter-American Court of Human Rights (hereinafter the Inter-American Court) and 98 published by the IACHR in its Annual Reports.
32. On the basis of the above-mentioned files, a database was prepared and coordinated, comprised of 1,290 recommendations, of which 371 appear in the published reports. On the basis of the information contained in the database, a systematization was undertaken of the 35 member states of the Organization of American States (OAS) in two areas: reports and recommendations. On the basis of this classification, model recommendations were selected in terms of public policies and structural measures, which constitute a didactic sample of the structural recommendations made by the Commission. In the case of friendly solutions, the report on the Impact of the Friendly Settlement Procedure was used as a reference, especially with respect to non-repetition measures.¹⁰
33. It must be reiterated that, in view of the scope of the present report, the IACHR did not engage in any direct follow-up on the policies implemented,

⁸ United Nations Development Group (UNDG), [The Human Rights-based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies](#). 2016.

⁹ MERCOSUR Institute for Public Policies in Human Rights (IPPDH), [Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos](#). [Achieving rights: Guidelines for rights-based public policymaking], September 2014.

¹⁰ IACHR, [Impact of the Friendly Settlement Procedure](#), OEA/Ser.L/V/II. Doc. 45/13. December 18, 2013.

which is why mentioning these policies in the examples do not necessarily imply that they have been successfully designed and/or implemented.

34. The specific section on the monitoring mechanism was developed on the basis of a review of the thematic and country reports that the Inter-American Commission has published over the past 20 years. To the extent possible, efforts were made for the examples to be diverse among the member states. On the basis of the country reports, the progress reported by the states through IACHR communications was analyzed, and they are reported in Chapter V of the Annual Report.
35. Having said the above, the present Commission has, among its tasks that of providing the technical cooperation that states might need to build up their public policies using a human rights perspective. To this end, it is essential to establish a conceptual framework that would make it possible to delimit the actions of this body in its role of providing technical assistance and support to promote and protect human rights in the continent. On the basis of these goals, the IACHR issues this first report on public policies with a human rights approach.

CHAPTER 2

PRINCIPLES OF THE HUMAN
RIGHTS APPROACH AND PUBLIC
POLICY

PRINCIPLES OF THE HUMAN RIGHTS APPROACH AND PUBLIC POLICY

A. Presentation

36. From its beginning, when fulfilling its mandate, the Inter-American Commission on Human Rights has carried out work to exert a direct or indirect impact on the structural causes that provoke, permit, or foster human rights violations in the Hemisphere.
37. The specific way of conducting this work has evolved over the years. On the one hand, because the state's obligations with respect to persons have been interpreted on the basis of treaties, conventions, recommendations, and the system's jurisprudence. But, at the same time, because the way a state organizes its public actions, in general, has also changed.
38. Thus, in the Strategic Plan 2017-2021, the Inter-American Commission established, as its third goal, "To promote democracy, human dignity, equality, justice, and fundamental freedoms based on an active contribution to the strengthening of State institutions and public policies with a human rights approach (...)." ¹¹ In the framework of this objective, the Technical Cooperation Program on Institutionality and Public Policy with a Human Rights Approach was established, aimed at promoting "public policies designed to strengthen respect for human rights as a central element of processes to strengthen national capacity to implement inter-American human rights standards."
39. In that respect, in view of the importance of public policy capacity building for the Commission and the states of the region, a current challenge consists of providing concrete contributions that will consolidate the efforts made by states in this matter, on the basis of thematic standards, recommendations, decisions, interpretations, and judgments issued by the inter-American system.

¹¹ IACHR. Strategic Plan 2019-2021, OEA/Ser.L/V/II.161 Doc. 27/17. March 20, 2017, p. 56.

40. The conceptual framework presented by the IACHR shall be based on the entire course of this body's evolution to strengthen and promote public policies, as well as to draw up the new standards presented in this report.
41. This is aimed at encouraging states to not view human rights as something additional or alien to public policymaking but something that is indeed the key focus of the entire process of designing, implementing, monitoring, and evaluating public policies.
42. Along this same line, the IACHR asserts that the human rights approach urges states to adopt, as the framework of reference for their actions, the principles and standards that recognize the fundamental rights enshrined in both international instruments and national constitutions and regulatory frameworks.¹²
43. The Commission points out that the principles and standards of international human rights law serve as guidelines or benchmarks for the intervention of states in identifying and defining problems and in designing, implementing, and evaluating public policies.
44. The human rights approach is supported by two essential pillars: the state as the guarantor of rights and the agent in charge of promoting, defending, and protecting them; and persons and social groups as holders of rights with the capacity and right to call for these rights and participate.
45. The IACHR has moved forward, through its various promotion and protection mechanisms, in defining the international standards for each one of the principles of the human rights approach, which shall be identified in the following sections. On this occasion, the Commission shall draw up certain general guidelines for the enforcement of these standards in the process of drafting, implementing, monitoring, and evaluating public policies.

1. Principle of Equality and Nondiscrimination

46. The IACHR has repeatedly established that the principle of equality and nondiscrimination is one of the pillars of any democratic system and one of the fundamental bases for the human rights protection system established by the OAS. Both the American Declaration and the Convention were

¹² In 1997, the United Nations General Assembly established the human rights-based approach (HRBA) which reinstated human rights as the core element of public affairs as originally intended by the Universal Declaration.

inspired by the ideal that: “All men are born free and equal, in dignity and in rights.”¹³

47. Throughout the interpretation that the inter-American system has made of these standards, not only has it been adopting a formal notion of equality, confined to requiring objective and reasonable criteria of distinction and therefore forbidding irrational, whimsical, or arbitrary differences in treatment, it has also moved forward toward a concept of material or structural equality that arises from the recognition that certain sectors of the population require the adoption of special measures to ensure a level playing field for all.¹⁴
48. The Commission points out that, in terms of public policy, it has three dimensions which must be taken into consideration. On the one hand, it implies that the state must adopt measures grounded in 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 using a differentiated approach that addresses 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 the persons, groups, and populations in situations of historical discrimination in designing public policies that concern them.
49. This dimension of equality is aimed at transforming structural causes that give rise to a situation of disadvantage for certain groups of persons regarding access to rights. In that respect, the Commission believes that the role that public policies play as an instrument to transform the conditions triggering these structural inequalities is of the utmost importance and must be viewed as a great opportunity for those who are in charge of governing the public sector.
50. The IACHR emphasizes that the principle of equality and nondiscrimination must be present from the very moment the state identifies a problem or situation in which it intends to intervene. The application of this principle requires paying attention to situations of inequality and the existence of divides between various social groups in terms of access to human rights. When defining the nature of the problems involved in a situation, we must

¹³ Article II of the American Declaration of the Rights and Duties of Man and Article 1 of the American Convention on Human Rights (ACHR).

¹⁴ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, September 7, 2017 p. 161, and Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II Doc. 68, January 20, 2017 p. 89-99.

be guided by the identification and visibility of the structural conditions that promote and widen these divides.¹⁵

51. Likewise, the Commission believes that the application of this principle shall exert a direct impact on the strategy and design for tackling the problem. The IACHR deems that the spotlight should focus on giving priority to those groups who are at a disadvantage in terms of access to rights, as well as on designing measures that take into account the various situations of the persons and groups that must be addressed in order to guarantee conditions of equality and the dismantling of obstacles to the fulfillment of rights.¹⁶
52. The same occurs at the moment of implementing the policy. The IACHR reiterates that the strategy and mode of implementation must once again tackle the situations that trigger or foster inequality and put emphasis on achieving, on the basis of the actions set forth, the objectives proposed in terms of access to rights and reducing the divides.
53. Finally, the Commission deems that the monitoring and evaluation of the policy must also be permeated by this principle because the results that it must yield must also be measured both quantitatively and qualitatively in terms of closing the divides, ensuring universal access to rights, and establishing conditions that benefit from a level playing field.¹⁷

2. Social Participation

54. Participation is a political right enshrined in Article XX of the American Declaration of the Rights and Duties of Man and in Article 23 of the American Convention on Human Rights.¹⁸

¹⁵ MERCOSUR Institute for Public Policies in Human Rights (IPPDH), *Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos* [Achieving rights: Guidelines for rights-based public policymaking], p. 59.

¹⁶ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, September 7, 2017, p. 195.

¹⁷ Some examples along these lines are: the development of public policies with a universal scope, the adoption of affirmative action measures for certain population groups, and the inclusion of differential approaches that highlight the needs of certain groups and manage to eliminate the unequal conditions in which they live. See MERCOSUR Institute for Public Policies in Human Rights (IPPDH), *Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos* [Achieving rights: Guidelines for rights-based public policymaking], p. 30.

¹⁸ OAS, American Declaration of the Rights and Duties of Man. Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free. American Convention on Human Rights. Article 23. Right to Participate in Government. 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal

55. The Inter-American Court has broadly interpreted this right: “Political participation can include widespread and varied activities that people perform individually or within an organization in order to intervene in the appointment of those who will govern a State or who will be responsible for conducting public affairs, as well as to influence the development of State policy using direct participation mechanisms.”¹⁹
56. From the above, the Commission points out that, in addition to participation in elections, the active participation of persons in public decision making—in the cycle of public policymaking among others—is not only desirable but also an enforceable right and an obligation of the state.
57. Furthermore, the IACHR believes that participation in each cycle of public policymaking is very closely related to other rights, such as freedom of opinion, association, and assembly, and the right to information.
58. Furthermore, the Commission asserts that participation of the public in the cycle of public policymaking makes it possible for the identification of problems, the drafting of the policy, its implementation and evaluation to incorporate the experiences, perspectives, and viewpoints of the persons and groups who are the holders of the rights that are being targeted for safeguarding.²⁰
59. For the Commission, this is especially relevant in the case of populations or groups in situations of historical discrimination. Participation must not be confused with the will of the majority; on the contrary, a human rights perspective requires emphasizing specifics, addressing the needs and perspectives of groups who have historically been discriminated, as well as adjusting them to the international obligations acquired by the state concerned.²¹
60. Finally, the IACHR understands that it is important to highlight the notion of effective participation because it is not enough to create consultation and deliberation mechanisms; on the contrary, it is necessary to incorporate the

and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

¹⁹ 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. 146.

²⁰ IPPDH, Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 105.

²¹ IACHR. Report on Poverty OEA/Ser.L/V/II.164, September 7, 2017, p. 196.

contributions coming from them into the decision making process throughout the cycle, from the preparation of the assessment and design of the instruments up to their implementation, monitoring, and evaluation.²²

61. There are various participation models and schemes that have various levels of formalization and institutionalization. The Commission stresses the importance of having forums that exist, function, and promote thinking, the exchange of opinions, and negotiations that exert a tangible impact on public policymaking processes and then on the implementation and evaluation stages. That impact shall be determined on the basis of the influence that participation processes have on public policies, that is, if the opinions that are consulted are then enshrined and lead to changes and reformulations, thus enriching the various stages of the process.²³
62. Solely as an example, the Commission would like to point out: the participatory drafting of standards, the holding of public hearings, the establishment of consultative councils, the drafting of participatory social budgets, among others. All of the above have been approaches attempted in various countries of the continent to promote that participation.²⁴

3. Mechanisms for Filing Complaints and Gaining Access to Justice

63. As a complementary human rights protection system, the inter-American system is based on the premise that access to suitable and effective legal remedies constitutes the front line of defense for human rights. The duty of states to provide judicial remedies is not confined to formal availability, but rather these remedies must be suitable to redress the human rights violations that are reported.²⁵
64. The Commission understands that the possibility of filing complaints is an inherent part of the concept itself of law and substantiates the notion of the subject of rights as the central focus of the human rights approach. A right is a right only as long as it is susceptible to being enforced and tools and

²² IACHR. Situation of human rights in Guatemala. OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017, para. 10. IACHR. Toward a Comprehensive Policy to Protect Human Rights Defenders, para. 281.

²³ IACHR. Toward a Comprehensive Policy to Protect Human Rights Defenders, OEA/Ser.L/V/II. doc. 207/17 December 27, 2017, p. 142.

²⁴ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving Rights: Guidelines for rights-based public policymaking], p. 105.

²⁵ IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, December 31 2015, p. 181.

mechanisms are available to facilitate meeting this requirement. The access to mechanisms for filing complaints is, to a large extent, what takes persons from the status of passive beneficiaries to that of rights-bearing key stakeholders.²⁶

65. The Commission reiterates that the states parties have the obligation to take all kinds of measures so that nobody will be left out of judicial protection and the exercise of the right to a simple and effective remedy.²⁷ Indeed, Article 25.1 of the Convention sets forth, in broad terms, the obligation that states have to provide, to all persons subject to their jurisdiction, an effective legal remedy against actions violating their basic rights.²⁸ In particular, the Inter-American Court has considered that states have the obligation to provide effective judicial remedies to those persons who allege they are victims of human rights violations (Article 25), remedies that must be substantiated according to the rules of due process of law (Article 8.1), all of this as part of the general obligation, to be fulfilled by the states themselves, to ensure to all persons subject to their jurisdiction the free and full exercise of those rights recognized by the Convention (Article 1.1).²⁹
66. The Court has also pointed out that the states have the responsibility of enshrining in their regulatory frameworks, and ensuring due implementation of, effective remedies and guarantees of due process of law with the competent authorities, which protect all persons under their jurisdiction against actions that violate their basic rights or that lead to the determination of the rights and obligations of these persons.³⁰ It has also established that, for the state to comply with the provisions of Article 25 of the Convention, it is not enough for the remedies to be there formally, but rather it is necessary for them to be effective on the basis of Convention's

²⁶ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, September 7, 2017, p. 508.

²⁷ IACHR. Report No. 35/17, Case 12.713. Report on the Merits, para. 194.

²⁸ I/A Court H.R. Case of Velásquez Rodríguez v. Honduras. Preliminary objections. Judgment of June 26, 1987. Series C No. 1, para. 91; Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 180; and Case of Rosendo Cantú et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 164.

²⁹ I/A Court H.R. Case of Velásquez Rodríguez v. Honduras. Preliminary objections. Judgment of June 26, 1987. Series C No. 1, para. 91; Case of the "Los Dos Erres" Massacre v. Guatemala. Preliminary objection, merits, reparations and costs. Judgment of November 24, 2009. Series C No. 211, para. 104; and Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of May 25, 2010. Series C No. 212, para. 190.

³⁰ I/A Court H.R. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, Preliminary objections. Judgment of September 11, 1997. Series C No. 32, para. 237; Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 182; and Case of Rosendo Cantú et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 166.

terms,³¹ that is, for them to produce results or responses to the violations of recognized rights, whether in the Convention, in the Constitution, or under the law.³² The Court has reiterated that said obligation implies that the remedy shall be suitable to combat the violation and that its enforcement by the competent authority shall be effective.³³

67. In that respect, the IACHR observes that recognition and implementation of the power to voice grievances play a key role in designing, implementing, and evaluating human rights-based public policy. This capacity not only grants persons an active role in public governance, it also makes it possible to obtain information on the quality of the measures adopted, that is, to be able to identify failures, obstacles, omissions, flaws, among many other issues that highlight the need to correct or adopt measures that have not even been designed and/or implemented.³⁴
68. Furthermore, the inter-American system has also ruled about the positive duty of states to organize the institutional apparatus so that all individuals can have access to these remedies, for which purpose the states must dismantle the regulatory, social, or economic obstacles that hamper or restrict the possibility of gaining access to justice.³⁵
69. The Commission considers that judicial complaint mechanisms, in turn, give the judicial branch of government a dominant role in public policy with a human rights approach. The recognition of rights supported by the filing of legal complaints, as well as the measures of reparation that are defined

³¹ I/A Court H.R. Advisory Opinion on Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24; Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 182; and Case of Rosendo Cantú et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 166.

³² I/A Court H.R. Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 182; and Case of Rosendo Cantú et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 166.

³³ I/A Court H.R. Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs. Judgment of November 27, 2003. Series C No. 103, para. 117; Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 30, 2010. Series C No. 215, para. 182; and Case of Rosendo Cantú et al. v. Mexico, Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, para. 166.

³⁴ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 93.

³⁵ IACHR. Access to Justice as a Guarantee of Economic, Social, and Cultural rights: A Review of the Standards Adopted by the Inter-American Human Rights System, OEA/ Ser.L/V/II.129, doc. 4, September 7, 2007, para. 52.

therein, must be carried out in the light of the principles of the human rights approach.

70. The Commission also reiterates that complaint mechanisms are not confined to judicial proceedings; they also include administrative procedures that oftentimes provide quicker and more timely responses to certain grievances.³⁶
71. In that respect, the state's obligations themselves stem from the existence and guarantee of access to administrative procedures from a human rights approach in the area of public policy.
72. To this end, the IACHR insists on pointing out that one of the key elements about public policy with a human rights approach is that the state apparatus must guarantee the existence, access to, and effectiveness of both judicial and administrative remedies.

4. Production of, and Access to, Information as a Guarantee for Transparency and Accountability

73. The IACHR has pointed out that, through this Commission's Special Rapporteurship for Freedom of Expression, access to information is a key element of all democratic societies and a key element to guarantee the effective exercise of all human rights, in particular, to ensure effective participation in public affairs.³⁷
74. The IACHR has also indicated that "the right of access to information has been considered an essential tool for public control over the state's functioning and governance, among others through the informed exercise of political rights and, in general, to achieve other human rights, especially of the most vulnerable groups."³⁸

³⁶ IACHR. Towards the Effective Guarantee of the Rights of Children and Adolescents: National Protection Systems, OEA/Ser.L/V/II. 166 doc. 206/17, November 30, 2017, para. 308.

³⁷ IACHR. Special Study on the Right of Access to Information, Special Rapporteurship for Freedom of Expression. Inter-American Commission on Human Rights, Washington, D.C. 2007. Furthermore, the former United Nations Human Rights Commission established in its Resolution 2003/36 that transparency and accountability are key elements of democracy. Regarding this, see: Minerva Martínez Garza. "Derechos Humanos, rendición de cuentas y participación ciudadana" [Human Rights, Accountability, and Citizen Participation], *Opinión y Debate*, No. 12. December 2011, p. 21.

³⁸ IACHR. 2008 Annual Report. Volume II: Annual Report of the Special Rapporteurship for Freedom of Expression. Chapter III: Inter-American Legal Framework for the Freedom of Expression, para. 147.

75. In that respect, for this Commission, an indispensable element to guarantee adequate processes of transparency and accountability is the state's capacity to produce information as well as guarantee its dissemination and society's access to this information. The state's obligation to produce and disseminate public information thus becomes an essential element so that society can supervise the state's action in drafting and managing public policies.³⁹
76. The IACHR has indicated that states must guarantee that gender and diversity perspectives shall be adopted in the systems and databases that are established, in order to benefit from information disaggregated by gender and diversity. It is also essential for data to be disaggregated by sex and other elements of diversity, such as age, ethnicity, disability, socioeconomic situation, etc.⁴⁰
77. Regarding public policies, the IACHR stresses that access to information starts with the stage prior to designing policies themselves, that is, during the assessment stage. This is mainly because the correct development of mechanisms to guarantee human rights requires the compilation of enough high-quality information, both quantitative and qualitative. In equal measure, it is not possible to implement and evaluate the impact of a public policy if the state itself does not generate the information needed for this purpose.⁴¹
78. Furthermore, the IACHR believes that it pertains to the state to fulfill the obligation of promoting, over a reasonable time period, a true culture of transparency, which means systematic campaigns to inform the general public of the existence of the right of access to information and ways of exercising that right.⁴²
79. Likewise, the Commission is convinced that transparency encompasses a series of components for the development of public policies ranging from design processes—including the above-mentioned participation mechanisms—to decision making on sectors, groups, and populations who

³⁹ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, September 7, 2017, p. 195.

⁴⁰ 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. 426.

⁴¹ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 91.

⁴² IACHR. The Inter-American Legal Framework regarding the Right of Access to Information. Special Rapporteurship for Freedom of Expression, para. 38.

will be the beneficiaries, monitoring their implementation, and ultimately the data needed to carry out an objective evaluation.⁴³

5. Priority Protection of Groups in Situations of Historical Discrimination

80. The IACHR has been reiterating, through its diverse mechanisms, the obligation of states to provide special priority protection to groups who, because of various circumstances, are in situations of historical discrimination.⁴⁴
81. The Commission considers that, in the context of protecting the rights of every person under the jurisdiction of the American States, it is essential to focus attention on persons, communities, and groups who have been historically subject to discrimination and exclusion.⁴⁵
82. For more than three decades now, the IACHR has been giving priority attention to these groups by establishing Rapporteurships and Thematic Units, which have been consolidated by the drafting of guidelines of the Strategic Plans 2011-2015 and 2017-2021, from which it can be concluded that emphasis has been placed on highlighting the situation of historically discriminated groups.
83. In that respect, the Commission has indicated “that this duty obligates the States to pay special attention to the social sectors and individuals who have suffered from the various manifestations of historic exclusion or are victims of persistent prejudice, and must immediately adopt the necessary measures to prevent, reduce, and eliminate the conditions and attitudes that create and perpetuate discrimination in practice. These principles have

⁴³ IACHR, Report on Poverty, Extreme Poverty and Human Rights in the Americas, 2017, p. 195. The IACHR, for its part, in resolution 1/18, “Corruption and Human Rights,” recommended that States: “i. Adopt strong public policies and effective mechanisms to eradicate corruption, which must include a comprehensive and crosscutting human rights-based approach at every stage, including in their design, planning, implementation and assessment. ii. Regarding social policies and programs, strengthen and generate active transparency mechanisms and access to timely and adequate information. iii. Generate legal and public policy mechanisms that make it possible to clearly determine the impact of different forms of corruption on the effective enjoyment of economic, social, cultural and environmental rights by individuals and communities, especially those that live in poverty or extreme poverty, such as those historically discriminated against.

⁴⁴ As an example, see IACHR. 2017 Annual Report, p. 597.

⁴⁵ IACHR. Strategic Plan 2017-2021, p. 9.

been enshrined in the instruments that govern the actions of the inter-American human rights system.”⁴⁶

84. The Inter-American Court referred especially to the obligations of the state with respect to historically discriminated individuals, communities, and groups, indicating that the above-mentioned obligation to adopt concrete measures to guarantee the right to a decent life is reinforced when it involves persons in situations of historical discrimination and risk, whose care becomes a high priority.⁴⁷
85. This duty of the state means giving priority to these population groups not only when identifying the problems to be tackled but also when highlighting them at the moment of designing, implementing, and evaluating policies, which leads to the adoption of affirmative action measures, as well as the inclusion of differentiated approaches in those policies that have a universal scope.⁴⁸

6. Inclusion of the Gender and Diversity Perspective

86. The Commission understands that the principle of gender equality is based on eliminating the situation of imbalance between men and women, as a result of historical, social, cultural, political, economic, and legal constructions based on patriarchal models and deeply rooted gender stereotypes.
87. The Commission has sought to fully mainstream the gender, diversity, and intercultural perspective that must steer all work aimed at ensuring respect for and guaranteeing the advancement of human rights in the Americas, using as a framework the principal inter-American instruments in the matter, such as the Convention and the American Declaration, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter the Belém do Pará Convention),⁴⁹ the Inter-American Convention against Racism, Racial Discrimination and

⁴⁶ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164 , September 7, 2017, p. 62

⁴⁷ I/A Court H.R. Case of the Yakye Axa Indigenous Community v. Paraguay. Judgment of June 17, 2005. Series C, No. 125, para. 162.

⁴⁸ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 46.

⁴⁹ OAS, [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#) "Convention of Belem do Para".

Related Forms of Intolerance,⁵⁰ and the Inter-American Convention against all Forms of Discrimination and Intolerance,⁵¹ among others.

88. Among its standards, the IACHR—especially through its Thematic Rapporteurship on the Rights of Women—has promoted the adoption of policies to make progress in gender equality and eliminate restrictions that prevent it; furthermore, it has advocated giving priority to this approach in all public policies of the state.⁵²
89. Along this line, it has pointed out that states have the duty to mainstream a gender perspective into the adoption of public policies, in view of the historical discrimination and stereotypes that have affected women, girls, and adolescents. This perspective must steer and be taken into account in the investigation and judgment of all cases of violence against women, girls, and adolescents in the judiciary.⁵³
90. The IACHR has also begun to make progress on the principle of diversity in its report, which envisages the specific situation and particular risks encountered by persons with diverse and non-normative sexual orientations, gender identities, and expressions, or whose bodies deviate from female and male bodily standards in the Americas.⁵⁴
91. The Commission stresses the importance of adopting differentiated measures considering the diverse particularities and identities of women in a special situation of risk. This entails taking into consideration the intersection of factors, such as race, ethnicity, age, sexual orientation, gender identity and expression, among other variables, that can aggravate a situation of exposure to violence and discrimination. The IACHR seeks to incorporate an intercultural perspective which takes into consideration racism, structural discrimination, risks, and differences in terms of attention for reasons of race and ethnicity, such as in the case of indigenous and Afro-descendent women.⁵⁵
92. Likewise, the IACHR envisages an approach of the states, considering conditions that aggravate the situation of vulnerability of women and girls to violations of their civil, political, economic, social, and cultural rights, as

⁵⁰ OAS, [Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance](#) (A-68).

⁵¹ OAS, [Inter-American Convention against All Forms of Discrimination and Intolerance](#) (A-69).

⁵² For an example, see IACHR. 2017 Annual Report, p. 616.

⁵³ *Ibid.*, p. 620.

⁵⁴ *Ibid.*, p. 637.

⁵⁵ *Ibid.*, p. 619.

in the case of women with a disability, older women, women deprived of their liberty, and immigrant and internally displaced women, among others.

93. As for the OAS, it has made progress in an Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality.⁵⁶ Among its objectives, this Program includes the following: "To encourage OAS member states to formulate public policies, strategies, and proposals aimed at promoting women's human rights and gender equality in all spheres of public and private life, considering their diversity and their life cycles."⁵⁷ The OAS has also designed an Institutional Policy on Gender Equality, Diversity and Human Rights that strives "to move toward an organizational change that institutionalizes a vision of gender equality and human rights in its policies, programs, projects, and practices, as well as in its organizational culture and structure.... To advance equality in the exercise of rights, equal opportunities, and equal treatment in all the work of the GS/OAS by strengthening its management, culture, and institutional capacities."⁵⁸
94. Furthermore, the International Labor Organization has indicated that: "Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality."⁵⁹
95. The IACHR emphasizes that this conceptualization must serve as a guide when drafting, implementing, and evaluating public policies; it therefore involves including in the analysis the following three elements: (i) the differential impact that measures adopted for men and for women have or might have; (ii) the opinion, experience, and concerns of women and men at the different stages of the policy's cycle; and (iii) the benefit that the adopted measures brings in terms of reducing the inequality divide between men and women.

⁵⁶ ICHR, Inter-American Program on the Promotion of Women's Human Rights and Equity and gender equality, [CIM/RES. 209/98 y AG/RES. 1625 (XXIX-O/99)].

⁵⁷ Ibid., Article III.2.

⁵⁸ OAS, Executive Order No. 16-03.

⁵⁹ International Labor Organization, definition of cross-cutting nature of the gender perspective.

B. Monitoring and Evaluation Mechanisms and Human Rights Indicators Systems

96. The process of evaluating a policy is aimed at inquiring into the various aspects encompassing the design and implementation, but the evaluation from a human rights approach, in particular, shall be geared to reviewing the effectiveness of the policy as a tool for the fulfillment of rights.
97. The Commission has pointed out that the creation of monitoring and evaluation systems is tied to the adequate fulfillment of the international obligations of the states and to the principles relative to good governance and, in particular, the principle of transparency and accountability.⁶⁰
98. The IACHR understands that evaluation mechanisms must focus on identifying the evidence and concrete results achieved, comparing this information to the planning. In addition to contributing to transparency, ensuring accountability for society, deterring corruption,⁶¹ and enhancing the suitability of these policies and their capacity to guarantee the exercise and enjoyment of rights.⁶²
99. These mechanisms can rely on periodic monitoring processes as tools for gathering and systematizing information that make it possible to identify, throughout the implementation stage, matters that must be changed or consolidated in order to guarantee attainment of the expected results; and with evaluation processes that can be concomitant with, and subsequent to, the implementation and that make it possible to benefit from information on the policy's results and impacts.⁶³
100. As the IACHR, it has indicated on other occasions that building indicators is crucial for monitoring, evaluation, transparency, and accountability, and at the same time indicators highlight the efficacy and effectiveness of policies and services.⁶⁴ In that respect, it is suggested that these processes must include specific indicators on human rights that provide adequate

⁶⁰ IACHR. Towards the Effective Fulfillment of Children's Rights: National Protection Systems (above note 187), OEA/Ser.L/V/II. 166 doc. 206/17, November 30, 2017, para. 434.

⁶¹ IACHR. Resolution 1/18. Corruption and Human Rights. Approved in Bogotá, Colombia, in the framework of its 167 period of sessions, on March 2, 2018.

⁶² *Ibid.*, para. 435.

⁶³ UNICEF and CIPPEC. *Monitoreo y evaluación de políticas, programas y proyectos sociales* [Monitoring and evaluating social policies, programs, and projects]. First edition, Buenos Aires, Argentina, 2012, pp. 39-41.

⁶⁴ *Ibid.*, para. 437.

information to check whether or not the state has fulfilled its obligations to protect rights.

101. Regarding this, in 2008, the Commission adopted the Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights⁶⁵ which provides a set of indicators to evaluate and monitor economic, social, and cultural rights enshrined in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights—Protocol of San Salvador (hereinafter the Protocol). It is an initiative aimed at providing States Parties, the other organizations of the inter-American system, and civil society with a tool that serves as the basis for presenting the Protocol’s reports, but also for designing an internal mechanism of ongoing evaluation of national policies.⁶⁶
102. Afterwards, on the basis of the IACHR guidelines document, the Working Group to Analyze Periodic Reports of the States Parties to the Protocol of San Salvador (Working Group of the Protocol of San Salvador) prepared progress indicators for the rights contained in the Protocol which were adopted by OAS bodies and ensured that the monitoring mechanism’s operation became functional.⁶⁷
103. Likewise, in the framework of the OAS, there is the Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women—Belém do Pará Convention (MESECVI). The Committee of Experts comprising the MESECVI has defined indicators to evaluate and monitor compliance with the Convention in the region’s countries and to determine whether or not states are fulfilling their obligation to guarantee a life without violence for women.⁶⁸ The system was established on the basis of the indicators defined for the monitoring of the Protocol of San Salvador so as to promote joint efforts and systematize the ways of measuring the fulfillment of rights in the inter-American system.
104. The human rights indicators systems proposed by the present Commission, the Working Group of the Protocol of San Salvador, and the MESECVI are methodological tools that provide information not only about the states’

⁶⁵ IACHR. [Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights](#). OEA/Ser.L/V/II.132. Doc. 14 rev. 1. July 19, 2008.

⁶⁶ Mindful of the importance of the public policy recommendations put forward by the Working Group, the IACHR encourages countries that have not yet done so to ratify the Protocol of San Salvador and to accede to the reporting system established by that treaty.

⁶⁷ Progress Indicators for Measuring Rights under the Protocol of San Salvador. Final document drafted by the Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador in fulfillment of the mandate specified in Resolution AG/RES 2582 (XL-0-10) and AG/ RES 2666 (XLI-O/11), Washington, D.C., December 12, 2011.

⁶⁸ OAS, [Follow-up Mechanism of the Convention Belém Do Pará](#).

fulfillment of their international obligations in the light of the principles described but also produce results stemming from the impact of the measures adopted on the realization of rights.

105. As for the United Nations Office of the High Commissioner for Human Rights (OHCHR), it has pointed out that a human rights indicator provides “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.” The OHCHR developed a proposal of Indicators for Promoting and Monitoring the Implementation of Human Rights, and on that basis it drafted a document Human Rights Indicators: A Guide to Measurement and Implementation. It involves both quantitative and qualitative structural, process, and outcome indicators.⁶⁹
106. The Commission points out that the adoption of these methodologies and their adaptation to national information contexts can build up the capabilities of states to monitor and evaluate public policies from a human rights approach.

C. Institutional and Public Policy

107. The Commission understands that the public and state institutional framework is understood as the entities where public policies are designed, implemented, and monitored; in these areas it is essential to highlight the promotion and/or protection of human rights.⁷⁰ The public institutional framework can be defined by both its formal standards or rules which structure the organizational duties and jurisdictions, and informal practices established by the culture, values, routines, habits, customs, etc., that characterize an institution.⁷¹

⁶⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Indicators: A Guide to Measurement and Implementation. HR/PUB/12/5. It involves quantitative and qualitative structural, process, and outcome indicators. Illustrative indicators are proposed on the following rights: rights to life, to not suffer torture and other cruel, inhuman and degrading treatment, to health, to a fair trial, to work and social security, to housing, to adequate food, to participation in public affairs, to liberty and personal security, to freedom of expression and opinion, to education, to equality and non-discrimination, and to end violence against women.

⁷⁰ IACHR. Strategic Plan 2017-2021, p. 40.

⁷¹ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 151.

108. The IACHR considers that the ties between the institutional framework and public policy is absolutely interdependent and indivisible because every policy is structured in the framework of some institution, and every state institution is comprised of policies that it drafts, implements, and/or monitors and evaluates.⁷²
109. Therefore, the inclusion of the human rights approach into public policy necessarily exerts an impact on the institutional framework, questioning it, challenging it, and requiring it to rethink itself before, during, and after the entire designing, implementation, and evaluation process.⁷³
110. The Commission observes that the principles of indivisibility, universality, and interdependence of human rights depending on the understanding that the full exercise of rights can only be achieved if the state adopts comprehensive measures. This integral nature does not only entail dialogue, coordination, and working together with the various sectors of the state's apparatus which must contribute coordinated responses on the basis of the various dimensions involved in dealing with one problem, it also requires focusing on situations of multiple discrimination suffered by persons and social groups.⁷⁴
111. The IACHR stresses that the integral nature of the approach must be reflected in the institutional structure that functions as a public policymaking framework from the initial moment of identifying the rights that must be protected to the stages of drafting, implementation, monitoring, and evaluation.⁷⁵
112. Likewise, the IACHR points out that the human rights approach is not confined to a specific institution, such as secretariats, ministries, human rights departments, but rather is aimed at permeating the state's entire apparatus and the actions taken by various sectors, levels, and branches of government.
113. Nevertheless, the IACHR observes that the human rights approach, beyond the institutional division, calls for human rights to be addressed from a cross-cutting and intersectional perspective.

⁷² IACHR. Strategic Plan 2017-2021, p. 40.

⁷³ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 152.

⁷⁴ IACHR. Strategic Plan 2017-2021, p. 39.

⁷⁵ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 153.

114. As for the IACHR, it is convinced that an intersectional approach requires both horizontal and vertical coordination in order to prevent the overlapping of functions or programs and to guarantee the joining of efforts between government agencies and levels. One single central, national, or federal public policy cannot be agreed upon without taking into account the local perspective; likewise, in horizontal terms, a policy cannot examine the problem without taking into account the various dimensions and complexities entailed in every human rights protection situation.⁷⁶
115. To examine how public institutionality is responding to human rights issues, the IACHR believes it is important to understand how public policy, regulatory frameworks, and institutions in general are characterized, established, and coordinated.
116. The Commission reiterates that public policy with a human rights approach must steer and coordinate state actions for the purpose of protecting and promoting these rights, focusing on resolving problems that are politically defined in a social, economic, cultural, and environmental context. Institutional capacity building in human rights is a key factor to ensure respect for, and enforcement, of inter-American human rights standards.⁷⁷

D. Budgeting with a Human Rights Approach

117. The IACHR considers that a complementary aspect of examining institutional frameworks and public policies from a human rights perspective is the analysis of fiscal policies and state budgets for financing human rights.⁷⁸ In that connection, the Commission believes it necessary to consider whether resources have been allocated and if those resources are adequate to address structural issues relating to human rights in line with the objectives and goals that they seek; if they clearly target specific aspects, and if their execution is trackable and transparent for the purposes of measuring the impact of human rights policy.⁷⁹
118. The IACHR has pointed out that public spending planning should promote equality in the Americas, and that the right fiscal policy can contribute to wealth redistribution for reducing inequality gaps; to correcting market deficiencies; to the investment needed for the realization of human rights,

⁷⁶ Ibid., p. 158.

⁷⁷ IACHR. Strategic Plan 2017-2021, p. 40.

⁷⁸ IACHR. Report on Poverty and Human Rights. OEA/Ser.L/V/II.164, September 7, 2017, p. 174.

⁷⁹ Ibid. p. 177.

especially economic and social rights; and to accountability between State and citizenry.⁸⁰

119. In that regard, the Commission believes that, from a human rights perspective, the following principles and obligations are particularly relevant for fiscal policy: securing essential minimum levels; mobilization of the maximum amount of resources available for progressive realization of economic, social, and cultural rights; the progressive realization and non-regressive nature of those rights; and the principle of equality and non-discrimination.⁸¹
120. In that same vein, the IACHR wishes to emphasize that the rights to participation, accountability, transparency, and access to information are fundamental principles fully applicable to fiscal policies. Thus, they must be implemented in the entire policy cycle from tax codes and budget preparation to expenditure allocation, execution and supervision.⁸² Both sources of funds and mechanisms for obtaining them, as well as the ways in which they are allocated and distributed, will have implications on the efficiency, quality, and sustainability of public policies.
121. In that context, the Commission reaffirms that no public policy can be formulated, implemented, or evaluated, without being allocated a budget. From the very identification of the issues to be addressed to the design and the ensuing execution, monitoring, and evaluation stages requires adequate and sufficient resources.
122. The Commission has long been recommending that States design public policies consistent with a framework that respects human rights with the necessary budget appropriation to ensure their effective implementation and sustainability. The IACHR would like here to examine in greater depth a number of aspects of adequate budget allocation in the framework of public policy formulation with a human rights approach.
123. In general, the Commission considers budgeting to entail programming public spending, public revenue mobilization, budget allocation and expenditures of States.⁸³

⁸⁰ Ibid., p. 174.

⁸¹ IACHR, Poverty and Human Rights, OEA/Ser.L/V/II.164 , September 7, 2017, para. 502.

⁸² Ibid., para. 501.

⁸³ Committee on the Rights of the Child, General Comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4), CRC/C/GC/19, 20 July 2016, para. 4.

124. The IACHR considers that a human rights approach demands that budget allocation and execution address the various principles identified above. Therefore, decisions on amounts and beneficiaries must keep in mind that the aim is to reduce inequality gaps, prioritize historically discriminated-against groups, and remove obstacles to the realization of rights, among other objectives.⁸⁴ In particular, the Commission emphasizes the importance that, in designing budgets, States adopt a gender and diversity perspective when it comes to allocation and execution.
125. By the same token, the principles of the human rights approach that apply to the entire public policy formulation cycle, also apply to budgets. This presumes that the State has access to timely, complete, sufficient, and reliable data and information to make budget decisions designed to implement the human rights that they seek to protect through the development of specific public policies.⁸⁵
126. The Commission notes that human rights obligations do not impose a single way of allocating public resources for policy implementation. However, international treaties set limits on state discretion and establish criteria with the aim of ensuring that the objective of budget allocation is to ensure observance, protection, and fulfillment of human rights.
127. In that regard, through its standards and recommendations, the IACHR gives substance to the guidelines contained in inter-American instruments by setting prioritization criteria that take into account national contexts and the obligations assumed by States in relation to special protection for groups suffering historical discrimination, fulfillment of the principle of substantive equality, and incorporation of a gender and diversity perspective, among other principles of the rights-based approach.
128. In terms of budgets, the IACHR understands that implementing human rights means that the State is obliged to program, allocate and spend public resources in a manner that adheres to its obligations of implementation of

⁸⁴ IPPDH, *Ganar Derechos: lineamientos para la formulación de políticas públicas basadas en derechos*, p. 143.

⁸⁵ *Ibid.*, para. 240. For example, specifically with respect to protection of the rights of children and adolescents, the IACHR “recommends that states make estimates of the cost of proposed legislation, policies, programs, and services that affect children and adolescents, as well as of the operating costs of the institutional framework, in order to determine the level of financial resources necessary and enable budget planners and the pertinent decision-makers in the executive and legislative branches to adopt informed decisions on the resources necessary.”

international human rights treaties at all levels of the executive, legislative, and judicial branches as well as in all their structures.⁸⁶

129. In that sense, the Commission believes that fulfillment of the State's obligations in terms of investment in human rights should be considered in relation to each stage of the budget process; that is, planning and approval of the public budget; execution; follow-up and evaluation of how the investment is carried out; and results in relation to achieving the proposed goals.⁸⁷
130. The IACHR also reiterates the need to introduce and apply the budgetary principles of transparency, effectiveness, efficiency, equity, sustainability, accountability, and participation—and in general ensuring that good governance principles are adhered to—in budgetary regulations, as well as coordinating anticorruption measures, at all levels. The absence or weak enforcement of such principles can create inefficiencies, mismanagement of public finances, and corruption.⁸⁸
131. The IACHR believes that public policies need not only to be allocated a budget to ensure their effectiveness, but also monitoring for the purposes of review and making the necessary changes to ensure the budget's adequacy for meeting programmed targets. The Commission considers that such monitoring must also analyze the impact of budget decisions in effectively protecting the human rights to be safeguarded and in reducing the inequality gaps targeted, particularly for ensuring access to basic services. That information should be made widely available to the public in clear, easily understood language.⁸⁹
132. In that connection, the Commission considers that any impact assessments of budget allocations and executions must include data disaggregated by sex and other diversity elements, such as age, ethnicity, disability, socioeconomic situation, etc., so as to identify situations of indirect discrimination arising from the disproportionate effects of such budget

⁸⁶ IACHR, *Towards the Effective Fulfillment of Children's Rights: National Protection Systems*, OEA/Ser.L/V/II.166 doc. 206/17, November 30, 2017, par. 234 and 235. In particular, regarding protection of children and adolescents, the IACHR "agrees with the Committee on the Rights of the Child when it says that the rights of children will not be realized "without sufficient financial resources being mobilized, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner," and the necessary investment must be envisaged both for the institutions to function and for the national children's policy to be implemented."

⁸⁷ *Ibid.*, para. 238 and 239.

⁸⁸ *Ibid.* para. 241.

⁸⁹ *Ibid.* para. 242.

allocations and executions on specific groups.⁹⁰ For those objectives to succeed, the Commission considers it essential to promote a deep-seated and urgent dialogue through the office of its Special Rapporteur for Economic, Social, Cultural, and Environmental Rights (REDESCA) with the world of economics and finance, at both the domestic and the international level.⁹¹

133. The IACHR also finds that the judiciary has a critical role to play in monitoring and oversight of budgets and their impact on rights protection in the context of judicial proceedings. Thus, for instance, in the framework of the substantial progress that is being made in the region with regard to judicial enforceability of economic, social, cultural, and environmental rights, a key element of case law studies has been to evaluate whether budgets allocated and executed satisfy states' obligations to ensure essential minimum levels of economic, social, cultural, and environmental rights, the principles of progressive realization and non-regression, and the principle of equality and nondiscrimination.⁹²
134. Likewise, the Commission considers that both national human rights institutions and civil society organizations are key actors in monitoring and lobbying the State in relation to budgets and protection of human rights by demanding participation, transparency, accountability, and access to information as democratic components of public policies.⁹³
135. Finally, the Commission underscores the importance of audits performed by oversight bodies in the budget process. Audits should be conducted under a human rights approach, which means that the evaluation should seek to identify, among other things, whether the end result of the budget allocated and executed is the assurance of rights, the closing of inequality gaps, and the prioritization of groups suffering historical discrimination.⁹⁴
136. In this section, without intending to be exhaustive, the IACHR has presented a number of considerations that it believes critical for a comprehensive public policy analysis. To meet their human rights obligations States must review their budgets and fiscal policies from a rights-based perspective, so that they can determine if the resources programmed, allocated, mobilized,

⁹⁰ IACHR, Public hearing, Control of Public Spending, Fiscal Policies and Economic, Social and Cultural Rights Guarantees in Latin America, 168th regular session, May 11, 2018. Comments of the IACHR.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ 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. 113.

and executed satisfy the principles that must guide their actions for effective protection of human rights.

E. End-of-Chapter Conclusions

137. As indicated by the IACHR, the human rights approach calls upon the states to adopt, as a framework of reference for its actions, the principles and standards that recognize the basic rights enshrined in both international instruments and national constitutions and regulations.
138. The Commission has identified, over the past few years, a divide between human rights standards, principles, and regulations and the practices, policies, institutions, and regulatory frameworks of member states.
139. In that respect, the IACHR aims to translate some of its standards and recommendations into practical guidelines that states and other stakeholders can use to make the necessary adjustments, on the basis of a human rights approach, to these practices, institutions, policies, and regulatory frameworks.
140. The IACHR is convinced that the principles set forth herein must be a guide for the actions of those who are responsible for governing and organizing the state's apparatus at its various levels and from distinct areas.
141. Along this same line, the Commission invites the states to reflect upon the implementation of each one of these principles in the state's actions, as well as to urge social organizations and other relevant stakeholders to promote the mainstreaming of the human rights approach into the monitoring and surveillance role they perform with respect to the state.
142. Ultimately, the IACHR is expressing its willingness and readiness to provide technical assistance to states, regional organizations, social organizations, and other institutions for institutional capacity building and the drafting, implementation, and evaluation of public policy aimed at strengthening, and ensuring respect for, human rights in the Americas on the basis of the inter-American standards identified herein and those standards relative to various issues that are the target of state interventions.

CHAPTER 3
PUBLIC POLICY WITH A HUMAN
RIGHTS APPROACH

PUBLIC POLICY WITH A HUMAN RIGHTS APPROACH

143. The general notion of public policy was set, for the first time, by the IACHR in its 2009 Report on Citizen Security and Human Rights. It was there that public policy was defined as “the guidelines or courses of action that the State authorities lay down in order to achieve a given objective and that serve to create or transform the conditions under which individuals or groups in society conduct their affairs.”⁹⁵
144. The Commission considers that, at present, one of the challenges involves updating the notion of public policy with a human rights approach, one grounded in the standards, recommendations, decisions, interpretations, and judgments issued from the inter-American system, as well as in the evolution that international human rights law has undergone over the past decade.
145. In that respect, on the basis of the Commission’s historical work regarding promotion and protection, the inter-American standards that have been developed on the basis of the interpretation of the principles of the human rights approach, the recommendations made in the framework of IACHR’s various mechanisms, the evolution that international human rights law has had over the past few years, and the role that states and social organizations have been requiring this body to play in terms of technical assistance, the IACHR is presenting herein an up-to-date notion of public policy with a human rights approach.
146. This new conceptualization intends to bring together the various elements that have been developed on the basis of the theory and practice over the years in the inter-American system, OAS member states, and social stakeholders that promote and defend human rights in the continent.

147. A public policy with a human rights approach is a series of decisions and actions that the state designs, implements, monitors, and evaluates—on the basis of an ongoing process of effective social inclusion, deliberation, and participation—for the purpose of protecting, promoting, respecting, and guaranteeing the human rights of all the persons, groups, and communities

⁹⁵ This definition was drawn up in the framework of a thematic report on citizen security. Since then, the Inter-American Commission has been moving forward with its increasingly in-depth work on public policies.

that comprise a society, under the principles of equality and nondiscrimination, universality, access to justice, accountability, transparency, and cross-cutting and intersectional perspectives.

148. The Inter-American Commission's proposal places the obligation the state has with respect to persons at the center of government actions and incorporates the elements needed so that all actions undertaken will enshrine the standards that the inter-American system has established in terms of human rights.
149. The IACHR believes it is necessary to point out that, although the notion of public policy is sufficiently broad to incorporate the various ways in which member states establish them (plans, programs, policies), it is also important to set certain limits that prevent the excessively widespread use of the term.
150. Because of the above, it is important to stress that special and/or provisional commissions or mechanisms established by the states for targeted circumstances, in order to oversee a specific situation, shall not necessarily be included under the term public policy. This is because public policies cannot be construed as circumstantial exercises but rather as a series of actions aimed at permanently guaranteeing a right.
151. Likewise, the IACHR points out that isolated measures fail to provide the comprehensiveness that is needed to be considered a public policy, although they may contribute to the goal of strengthening the protection of human rights. For example, regarding a state's penitentiary system, the redistribution of the population among penitentiaries to avoid overcrowding could be viewed as a measure aimed at guaranteeing the rights of persons deprived of liberty; nevertheless, the relocation must be part of a comprehensive policy that also takes into consideration the other elements set forth in the present chapter.
152. Along this same line, the Commission considers that not all legislative initiatives, amendments, or new laws comprise in themselves public policy, although it is important for them to benefit from the legal framework underpinning them and, in some cases, comprising their point of origin or structure supporting them.
153. Finally, the Commission emphasizes that the judicial branch of government can also have an impact, as a result of its judgments and resolutions, on how laws are interpreted, resources allocated, and persons or groups included in a program or public policy. On many occasions, the IACHR has observed, as part of the monitoring of conformance to international conventions conducted by judges and magistrates, that the executive branch of

government has ordered the implementation of programs, public policies, or other specific actions to remedy the human rights violation of a person or group.⁹⁶

154. Ultimately, the Commission would like to stress that it must not be assumed that all measures adopted by the branches of government are public policies on the basis of the notion presented herein, but rather that, in each case, the elements that comprise the policy and its enforcement within the sphere of the state's actions must be assessed.

A. Human Rights Approach in the Cycle of Public Policy and the Contribution of the IAHR

155. Once the general guidelines have been identified and defined for the implementation of the principles of the human rights approach in public policy, the Commission understands that it is important to understand how these elements can be incorporated in practice into the government's existing actions or else those that are the process of being designed.
156. The IACHR has been observing that, on the basis of a traditional vision, the cycle of public policy starts with the detection of a social or individual problem when this problem becomes sufficiently important, is inserted into the public agenda, and requires the preparation of an assessment or structuring of the problem. From there, public policy instruments are designed to be operational and then their implementation is undertaken, and finally their results are evaluated.
157. Nevertheless, the IACHR deems it is important to include in this structure the preventive approach that requires state's actions not only to respond to incidents that have already occurred and led to the violation of rights, but also to encourage states to adopt measures to prevent such risks.
158. The Commission asserts that the establishment of public policy requires the states to conduct exhaustive, ongoing reviews of their human rights obligations in order to create the policies needed to ensure due diligence in promoting, protecting, and guaranteeing them. As indicated by the IACHR at the beginning of the present chapter, human rights are not supplementary

⁹⁶ For further illustration, see IACHR. Annual Report 2017. Chapter IV. Development of human rights in the region, para. 73. See: I/A Court H.R., [Monitoring Conformity with the Convention](#). Jurisprudence Bulletin of the Inter-American Court of Human Rights No. 7.

elements of public policy, they are the core and prime reason for the state's actions.

159. This means that states have the obligation not only to adopt measures by drafting and implementing public policies when a rights violation situation is identified, but also to act in such a way as to prevent these situations from occurring again. The Commission points out that the exhaustive ongoing review of international human rights obligations strengthens the capacity of states to develop public policies of a preventive nature.

160. Below, the Commission presents a diagram in order to better understand the various times and stages through which a public policy passes.

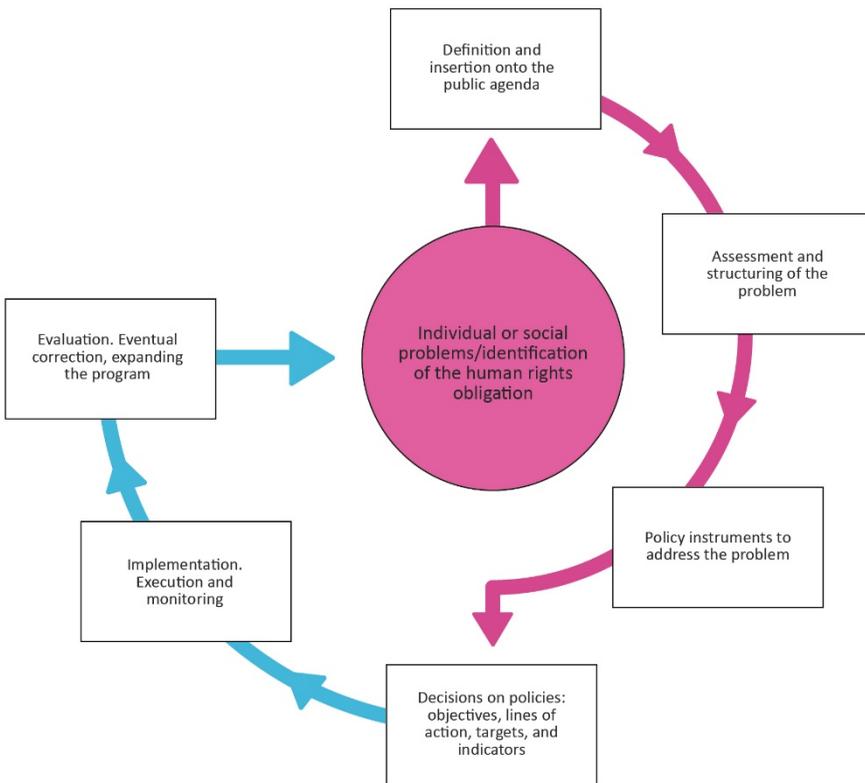


Figure 1. Public policy cycle. Prepared by IACHR based on inputs from IPPDH,⁹⁷ the World Bank,⁹⁸ and Vázquez and Delaplace.⁹⁹

161. The IACHR believes that this structure can be strengthened on the basis of the work developed by the organization relative to the mandates granted to promote and protect human rights in the Americas. The Commission stresses that the various mechanisms it has available are a source of information that can enrich each one of the stages.
162. The IACHR may act as the promoter of public policy with a human rights approach on the basis of its decisions and recommendations and on the basis of the role it plays, in particular with respect to technical cooperation with the states.
163. Likewise, the IACHR, through its system of petitions and cases and the human rights situation monitoring mechanism in the continent, periodically identifies individual and social problems on the basis of which it recommends the states to adopt the corresponding measures in line with the standards themselves which define the scope of the international obligations that have been accepted.
164. In turn, the Commission, through its country and thematic reports, undertakes assessments of the specific problems that could be a source of information for those who are in charge of drafting, implementing, and evaluating public policies, as well as for those who have the duty to exert an impact on the public agenda and call for state actions to protect human rights.
165. Ultimately, the IACHR stresses the complementary aspect of its mandate to support, through its various mechanisms, efforts undertaken by member states to transform the structural causes that create situations of inequality and discrimination by drafting public policies.
166. With this same objective, the Commission provides a diagram of analysis and a guide showing the principal elements of the human rights approach as a result of the mandates given to the present body and for the purpose of providing a tool to promote and strengthen public policies.

⁹⁷ IPPDH. Ganar derechos: lineamientos para la formulación de políticas públicas basadas en derechos [Achieving rights: Guidelines for rights-based public policymaking], p. 23.

⁹⁸ World Bank. La Formulación de Políticas en la OCDE: Ideas para América Latina [Policy Making in the OECD: Ideas for Latin America]. 2010.

⁹⁹ Daniel Vázquez and Domitille Delaplace. Políticas Públicas con Perspectiva de Derechos Humanos: Un Campo en Construcción [Public Policies with a Human Rights Perspective: A Field under Construction]. SUR – Revista Internacional de Derechos Humanos [International Journal on Human Rights]. Vol 8, No. 14, 2011.

1. Analytical diagram of the contribution of the IAHRs

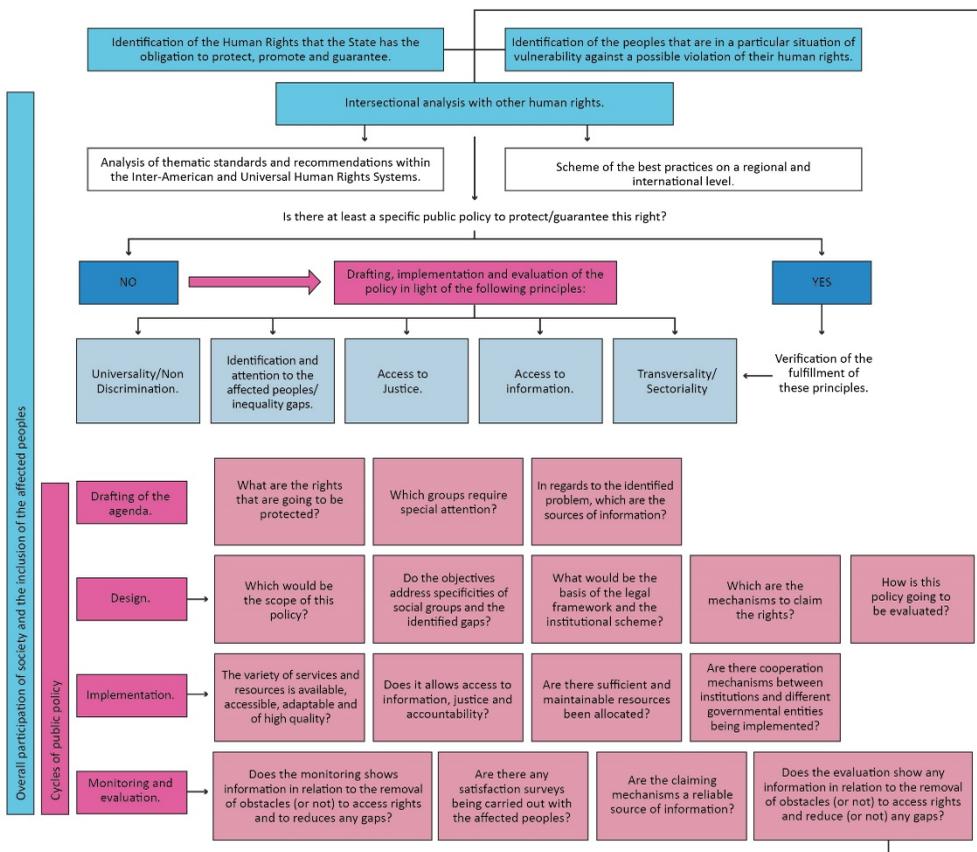


Figure 2. Diagram of analysis of public policy on the basis of the contribution of the IAHRs. Prepared by the IACHR.

167. The IACHR points out that this review is aimed at summarizing how the role of the inter-American system, through its human rights promotion and protection mechanisms, can contribute at various times or phases of a public policy.
168. Likewise, the Commission, on the basis of this diagram, wishes to illustrate how the established principles and standards are applicable throughout the process and delimit the elements that the states must consider at the moment of designing, implementing, monitoring, and evaluating a policy.
169. Furthermore, the Commission would like to stress that, in the implementation, monitoring, and evaluation stages, a series of principles

that are also essential for public policy with a human rights approach have been incorporated.

170. Availability understood as the sufficiency of economic, human, and material resources, as well as the procedures and means to realize rights.
171. Accessibility requires that the means whereby a right is realized must be accessible, both physically and economically, to all persons, without any discrimination. Furthermore, quality requires the means and contents whereby a right is realized to meet the acceptable requirements and properties to discharge that duty.
172. Adaptability involves the possibility of adjustment to various social and cultural contexts and specificities. It is the representation of diversity and attention paid to differentiated approaches that certain policies must include in order to guarantee the principle of equality in substantive terms.
173. Quality implies that the tools and mechanisms that have been chosen are acceptable, so that the population that has access to them find that they are sufficient and effective to remedy the inequality divide which would otherwise prevent the enjoyment of rights.
174. Finally, bearing in mind all the aspects indicated, the Commission presents a list, which does not intend to be exhaustive, of those elements that must be taken into consideration from a human rights approach in the various stages or cycles of a public policy.

2. Guide of Elements to be considered in the Cycle of Policy

a. Building the Agenda and/or Identifying the Situation to be addressed

175. The IACHR considers that building the agenda and identifying the situation that is to be addressed from a human rights approach must include, at least, the following elements:
 - Identification of the human right(s) that the state has the obligation to protect, promote, and guarantee.
 - Identification of the subjects of rights who are encountering obstacles or could be encountering obstacles in gaining access to that right/those rights. Identification of the social groups disaggregated by reasons forbidding discrimination and territorial location.

- Identification of the sources of information that could provide an assessment of the specific obstacles to gaining access to rights, the groups who are in a special situation of disadvantage, the cultural and social contexts, the relevant stakeholders, etc.
- Existence of enough quantitative and qualitative information to carry out a situational assessment.
- Description of the situation identified as a problem to be resolved in terms of the impact it has on groups who are in a situation of structural inequality. Identification and emphasis on the impact and inequality divides.
- The qualitative and quantitative review of the inequality divides in the access to rights that are the target of the state's intervention.
- Prioritization of social groups who have been identified as living in a situation of structural inequality when defining and assessing the problem.
- Identification of the mechanisms for filing complaints and/or reports (if any) regarding the obstacles to access to the rights and description of the type of information that these sources provide.
- Identification of the subjects who have information about the problem and other stakeholders tied to the problem.
- Consultations with the affected persons and groups about the obstacles they encounter when accessing rights.
- Consultations with the social stakeholders identified to gather opinions, experiences, and information about the situation that is to be addressed.
- Incorporation of information, opinions, and suggestions coming from all subjects consulted when defining and assessing the problem.
- Final construction of the assessment with the participation of the various stakeholders associated with the situation that is to be addressed.

b. Design and/or Drafting

176. The IACHR believes that the design or drafting of a public policy with a human rights approach should have, at least, the following elements:

- Definition of the scope that the policy shall have, with the inclusion of a strategy of universality (if possible) for dismantling the obstacles to access to the rights.
- Special attention paid to the needs of the groups identified as priorities when defining the problem.
- Removal of obstacles to access to rights and effective fulfillment of rights as general measurable objectives of the public policy.
- Bridging the inequality divides between the affected groups among the specific measurable objectives of the public policy.
- Thoughts about and analysis of the adequate institutional structure to implement and evaluate the policy and the strategies for reforms or adjustments if they are needed.
- Clear identification, for the population at large, of the institutions in charge of the policy.
- Definition of the regulatory framework that will be underpinning the policy, with priority given to the one that guarantees the greatest legitimacy and sustainability.
- Provision of accessible mechanisms to file complaints or reports on the violation of rights because of failure to enforce the policy or its deficiencies.
- Design of a strategy of dissemination about the existence of mechanisms to file complaints.
- Review of channels so that information received through the complaint filing mechanisms is also forwarded to those implementing the policy.
- Design of mechanisms to monitor and evaluate the policy including systems of specific indicators on human rights.

- Disaggregation of indicators by gender and other elements of diversity, such as age, ethnicity, disability, socioeconomic situation, etc.
- Existence and implementation of participatory mechanisms for the design and guarantee to take into account the opinions of the interested persons and other relevant social stakeholders in the final drafting of the policy.
- Design of social participation mechanisms to be used during the implementation stage.
- Planning the mechanism to disseminate information on the progress achieved in implementing the policy.
- Determination of the budget allocation based on the principles of the human rights approach.

c. Implementation and/or Execution

177. The IACHR considers that implementation or execution of the public policy with a human rights approach should include, at least, the following elements:

- Implementation of the actions planned in line with the principles of universality, equality, and non-discrimination and priority given to groups in a situation of historical discrimination.
- Analysis of the resources designed and provided during implementation in terms of availability, quality, accessibility, and adaptability.
- Implementation of the mechanisms to disseminate information on the public policy that is being applied.
- Consultation of the subjects whose rights are being protected regarding their perceptions of the policy's implementation.
- Changes (if necessary) in the design of the policy on the basis of the opinions of the subjects consulted.
- Dissemination of the mechanisms for filing complaints, checking their use by users, and forwarding the information received there to those in charge of implementing the policy.

- Conducting progress assessments that make it possible to change or improve the issues that are not achieving the expected results.
- Dissemination of information about the status of the policy's implementation.
- Consultations or implementation of participatory mechanisms with relevant social stakeholders who could contribute to improving the policy's implementation process.
- Inclusion of the opinions of social stakeholders who are consulted about the policy's implementation process.
- Review of budget allocation in terms of sufficiency and distribution.

d. Monitoring and Evaluation

178. The IACHR believes that the monitoring and evaluation of the public policy with a human rights approach should have, at least, the following elements:

- Drafting of periodic monitoring reports that contain quantitative and qualitative information about the dismantling (or not) of the obstacles to access to rights for persons who are the subject of the state's intervention.
- Drafting of periodic monitoring reports that contain quantitative and qualitative information about the bridging (or not) of the inequality divides identified when defining the problem.
- Implementation of satisfaction polls or other kinds of evaluation instruments that make it possible to learn about the perceptions of the subjects whom the policy wishes to reach.
- Use of information produced by the complaint mechanisms as a guideline for the evaluation of the policy's functioning.
- Consultations or other participatory mechanisms with other relevant social stakeholders to monitor and evaluate the policy.
- Evaluation process benefiting from social participation and capable of determining the effectiveness of the policy in terms of fulfilling rights and bridging inequality divides.
- Dissemination of information about the policy's evaluation.

179. The Commission reiterates the importance of having the human rights approach steer all state actions and having it mainstreamed into all measures adopted by the state, in particular the public policies they draw up.
180. Regarding this, the IACHR emphasizes that this approach must permeate all branches of government, all areas where the state apparatus is organized, and all levels of government.
181. The Commission has been observing that, in many cases, public policy with a human rights approach focus on one given sector of the state's structure and are not included in other sectors that, either directly or indirectly, exert an impact on the protection of rights.
182. Likewise, the IACHR reiterates that it has identified, over the years, major difficulties for states to comply with the recommendations made to promote structural reforms. There are many causes to these obstacles, among which, the Commission highlights the gap between human rights standards, principles, and regulations and the policies of member states.
183. In that respect, the IACHR observes that the objective of the present report is to provide a tool with practical guidelines that states and other stakeholders of the state can use to harmonize the measures that are adopted with the structural recommendations issued by the IACHR with respect to public policy with a human rights approach.

CHAPTER 4
IMPACT OF THE IACHR'S WORK
ON PUBLIC POLICY

IMPACT OF THE IACHR'S WORK ON PUBLIC POLICY

A. IACHR Mechanisms for Promoting and Protecting Human Rights and Public Policy

184. Compared to other regional human rights systems¹⁰⁰—like the European and African systems—the inter-American system stands out because it uses its recommendations and judgments not only to ensure that States provide reparations to the victims but also to pursue changes to the structural conditions that originated in the violation of a human right. In this regard, the system is not limited to seeking reparations for victims. Rather, it serves as a platform for advancing certain structural reforms to institutions, public policy, legislation, and case law through recommendations of measures of non-repetition.
185. The recommendations issued by the IACHR aimed at developing or changing public policy on human rights should be underscored, as they constitute a measure for preventing future violations and for adjusting States' actions to meet inter-American standards and to comply with the international commitments assumed by States.
186. The early annual reports of the IACHR—specifically, those published from 1970 to 1975—contained a section called “some constitutional, legal, or administrative laws and court rulings that are indications of progress toward attaining the objectives set forth in the American Declaration,” which was a collection of what today would be called good practices in State human rights protection policies.¹⁰¹

¹⁰⁰ David Harris, *Regional Protection of Human Rights: The Inter-American Achievement*, en Henry Steiner y Philip Alston “*International Human Rights in Context*” Oxford University Press. 2000. p. 874.

¹⁰¹ As an example, in its Annual Report from 1971, the IACHR highlighted the reforms carried out by the Executive Branch in Colombia to reorganize and expand social protection and security, including for illness, maternity, family allowances, disability, old age, and death. For its part, the Annual Report from 1973 described preparation of a plan to establish daycare centers nationwide in Uruguay. The centers were to care for children under the age of six of women working in public and private organizations for periods no longer than 30 days, taking into account “the priority that the executive branch places on actions aimed at promoting and protecting childhood.” Later, the annual report from 1975 underscored the creation in Mexico of the Seri Tribe Development

187. From that time and until today, the IACHR has issued structural recommendations—specifically, public policy recommendations—through its various mechanisms, which include the system of individual cases, friendly settlement processes, public hearings, country and thematic reports, technical assistance, and promotion and training activities.
188. It should be underscored that, as established in Article 25 of the Rules of Procedure of the Inter-American Commission, precautionary measures are a mechanism for processing serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system.¹⁰² Based on this, it would follow that the effects of the measures only apply to the petitioners; however, when they are issued, the awareness they raise surrounding a particular issue has occasionally served to reorient public opinion and lead to legislative or public policy changes with more extensive consequences.
189. Many of these tools are closely interrelated. For example, a country report could have been preceded by one or more hearings that served as a basis to later conduct an on-site visit. Likewise, all friendly settlement processes necessarily originate from a case. It is sometimes difficult to separate the specific effects that one tool or another have had on strengthening or developing human rights-focused public policy.
190. It should also be emphasized that designing and implementing a public policy does not by itself mean that the State has complied with its obligation. Along with its sustainability over time, execution, monitoring, and evaluation of the policy in coordination with civil society are crucial for correcting the manner of implementation, adjusting to new realities, and strengthening mechanisms.
191. Therefore, the examples given in this report are not necessarily cases of success, nor do they necessarily mean that the IACHR approves of the implementation and/or results of the specific public policies described hereinafter. Rather, the idea is to provide examples of situations in which the Commission's tools have led to the initiation of a process, the results and assessment of which are beyond the scope of this report.
192. In this regard, the IACHR finds that factors such as political will, the strength of civil society's actions, state institutions' ability to prevent and respond to violations, the general public's knowledge of their human rights, and the

Committee in the State of Sonora. Its objective was to promote the development of that community and the tribe's cultural integration in accordance with the spirits of the Federal Population Act.

¹⁰² IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, approved in the 137th period of sessions. Article 25(1).

creation of conditions conducive to the exercise of human rights are fundamental for achieving compliance with the obligations contained in the inter-American instruments.¹⁰³

193. The following are several examples of structural recommendations that guide the development, strengthening, or modification of public policy issued by the Commission in the framework of the individual petitions and cases system and through the monitoring mechanism.

B. Petitions and Cases System

1. Recommendations in the Framework of Merits Reports

194. The individual petitions and cases system (hereinafter the IPCS) is one of the IACHR's main pillars for protecting and defending human rights in the hemisphere. Through this system, an individual, group of individuals, or organization can ask the Commission to analyze the alleged violation of the human rights of the victim or victims and, where warranted, make recommendations to the State responsible.
195. Although—as its name indicates—the IPCS focuses on the individual or specific situation of the victim or victims, on numerous occasions, the Commission's recommendations have resulted in the State making the corresponding corrections or modifications necessary to guarantee non-repetition of the facts, both for those affected and for other potential victims. That is, the IACHR has made structural recommendations in response to an individual rights violation.
196. Based on the Commission's experience, during the 16-year period analyzed (2000-2015), structural recommendations have been included in 88% of its Merits Reports. These structural recommendations account for 52% of all recommendations: specifically, 676 of the 1290 recommendations in which the Commission has recommended a structural or public policy measure.¹⁰⁴ Consequently, the Commission's recommendations have sought reparation for individual damages, while significantly and consistently providing

¹⁰³ IACHR, Considerations Related to the Universal Ratification of the American Convention and other Inter-American Human Rights Treaties. OEA/Ser.L/V/II.152 Doc.21, para. 77.

¹⁰⁴ See the methodology described in Chapter I (Introduction) of this report.

guidelines for how States can modify structures that enable or perpetuate the chronic repetition of human rights violations.

197. Therefore, from a broader perspective, the IPCS also plays a role in transforming the structural conditions that enabled the violation or that could be decisive for its repetition. This is in line with the obligation that all States have under Article 1(1) of the American Convention to take the steps necessary to guarantee non-repetition.¹⁰⁵
198. A comprehensive reparations policy cannot in itself be limited to investigation, provision of restitution, rehabilitation, and compensation of the direct victims. On the contrary, as set forth in the case law of the inter-American System, the goal must also be to promote justice and strengthen the democratic rule of law in the region as a collective matter.¹⁰⁶
199. This includes all legal, political, administrative, and cultural measures that promote the protection of human rights and ensure any violation is effectively assessed and addressed as an illegal action, with perpetrators subject to punishment. It also includes the obligation to compensate victims for damages they experience¹⁰⁷ and prevent repetition of the facts with structural changes.
200. In this regard, in contrast to other regional systems, the inter-American system tends to recommend that States take specific actions or implement public policies, the impact of which extends beyond the situation of a specific case. These recommendations are the specific subject of this chapter, and they are aimed at strengthening, harmonizing, or developing public policy with a human rights focus. These types of measures seek to influence institutional designs, institutional practices, development or modification of public policy, and the legal framework.
201. Once it issues recommendations, the Commission monitors compliance with them through its Annual Reports (in cases in which the decision is to publish rather than submit the case to the Inter-American Court). While this makes it possible to assess the extent to which the damages to the victims are redressed in the short term, in the medium and long term this process is of particular importance for assessing whether a Member State has made structural changes to prevent repetition of the facts.

¹⁰⁵ IACHR, Impact of the Friendly Settlement Procedure, OEA/Ser.L/V/II. Doc. 45/13. December 18, 2013, para. 158. See Inter-American Court. Case of Garrido y Baigorria v. Argentina. Reparations. (Article 63(1) of the American Convention on Human Rights). Judgment dated August 27, 1998. Series C No. 39, para. 41. Also see Inter-American Court. Case of Trujillo Oroza v. Bolivia. Reparations. (Article 63(1) of the American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 110.

¹⁰⁶ *Ibid*, para. 65.

¹⁰⁷ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 41.

202. As examples of this, a number of cases are presented hereinafter. For each one, a brief overview of the facts is provided; the Commission's recommendations are described; and lastly, the actions that the State took or is taking to comply with them are described.

EXAMPLE 1

BRAZIL

Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes

A. Summary of the facts alleged

The case involves domestic violence committed in the city of Fortaleza, Ceará State, by Marco Antônio Heredia Viveiros to the detriment of his wife at the time, Maria da Penha Maia Fernandes, during the years that they were married, culminating in attempted murder and further attacks in May and June of 1983. As a result of these attacks, Maria da Penha has suffered from irreversible paraplegia and other ailments since 1983.¹⁰⁸

B. Rights violated

The Commission concluded that the State was responsible for the violation of the right to a fair trial (Article 8(1) of the ACHR) and the right to judicial protection (Article 25 of the ACHR), in conjunction with the obligation to respect and guarantee rights (Article 1(1)), as well as the violation of Article 7 of the Convention of Belém do Pará.¹⁰⁹

C. Recommendations of the IACHR

Recommendation 4. Continue and expand the reform process that will put an end to the condoning by the State of domestic violence against women in Brazil and discrimination in the handling thereof. In particular, the Commission recommends:

- a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.
- b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.

¹⁰⁸ IACHR, Report No. 54/01, Case 12,051, Maria da Penha Maia Fernandes, (Brazil), April 16, 2001, para. 2.

¹⁰⁹ Ibid, para. 60.

- c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.
- d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.
- e. The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.¹¹⁰

D. Follow-up

- ❖ A series of laws and decrees were passed, including the following: law number 11,340/06, *Lei Maria da Penha*, which emphasizes prevention, assistance, and protection for women and their dependents in situations of violence; establishes mechanisms to punish, reeducate, and rehabilitate attackers; and deals with the issue from a comprehensive, multidisciplinary, complex, and specific perspective;¹¹¹ law number 10,745/03, consecrating 2004 as the Year of the Woman;¹¹² law number 10,886/04, which increased the punishment for the crime of bodily injury in cases of domestic violence;¹¹³ decree number 104/2011 of the Ministry of Health, requiring compulsory notification in cases of domestic and sexual violence against women;¹¹⁴ law number 13,140/15, which provides for mediation between private parties as a means of conflict resolution along with other forms of conflict resolution in the realm of the administration of justice (*autocomposição*).¹¹⁵
- ❖ The creation of an Observatory for monitoring the implementation of the Maria da Penha Act and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of

¹¹⁰ IACHR, Report No. 54/01, Case 12,051, Maria da Penha Maia Fernandes, (Brazil), April 16, 2001, para. 61.

¹¹¹ IACHR, Annual Report 2006, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 89; IACHR, Annual Report 2007, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 100.

¹¹² IACHR, Annual Report 2004, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 74.

¹¹³ *Ibid*, para. 70.

¹¹⁴ IACHR, Annual Report 2011, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 240.

¹¹⁵ IACHR, Annual Report 2017, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 382.

Belém do Pará”) throughout the country and in the Executive, Legislative, and Judicial branches.¹¹⁶

- ❖ Creation of the National Policy for Addressing Violence against Women.¹¹⁷
- ❖ Training for police and public defenders, as well as gender and racial sensitivity training for all the professionals in the Specialized Women’s Assistance Delegations.¹¹⁸
- ❖ Launch, in 2007, of the National Pact for Addressing Violence against Women, which, between 2008 and 2011, secured investment for actions to address violence against women focused on specific ministries and secretariats, under the coordination of the Office of the Special Secretariat on Policies for Women,¹¹⁹ and made important progress in implementing public policies in federal, state, and municipal governments, including by: increasing the budget for dealing with violence; strengthening and increasing the number of women’s political organization; consolidating the broad concept of violence against women to include a wider variety of types of violence (trafficking of women, domestic and family violence, institutional violence, sexual harassment, and others); incentivizing integration of the actions taken by different agencies and bodies; consolidation of the “Women’s Care Hotline – Call 180” as a direct access channel for women facing violence; increasing the number of specialized services; adding violence against women to the political agenda of governments; organizing the model for managing policies for combating violence against women; and preparing a diagnostic and action plan for all states, municipalities, and the Federal District.¹²⁰
- ❖ In 2007, the State of Ceará launched the State Action Plan to implement the National Pact for Addressing Violence against Women in order to prevent and combat all forms of violence against women based on a comprehensive approach to the issue. This included the creation of three Reference Centers; the creation of two women’s shelters; professional training for women who were victims of violence; creation of a database on violence against women in Ceará; creation of a specialized unit for applying the Maria da Penha Act within the Office of the People’s Ombudsperson; creation of a Family and Domestic Violence against Women Court; implementation of six Violence

¹¹⁶ Ibid, para. 103.

¹¹⁷ IACHR, Annual Report 2004, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 74; IACHR, Annual Report 2008, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 104.

¹¹⁸ IACHR, Annual Report 2004, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 74.

¹¹⁹ IACHR, Annual Report 2008, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 108.

¹²⁰ IACHR, Annual Report 2010, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 175.

Prevention and Health Promotion Units; implementation of a model project on caring for victims of human trafficking; publication of the Interdisciplinary Working Group Report on the women's Penitentiary System; and creation of a State office on execution of public policy on women.¹²¹

- ❖ The creation of specialized domestic violence courts, specialized ombudsperson offices and prosecutor units focused on gender, and shelters for victims.¹²²
- ❖ Launch of multiple national campaigns, such as: “*Sua vida começa quando a violência termina*” (2003)¹²³; “*Compromisso e Atitude pela Lei Maria da Penha – a Lei é Mais Forte!*” (2013)¹²⁴; “Justice for Peace in the Home” (2015).¹²⁵
- ❖ The creation of the National Forum of Judges on Domestic and Family Violence against Women (FONAVID), the purpose of which was to establish a permanent forum for discussing the Maria da Penha Act and domestic violence.¹²⁶
- ❖ The creation of a series of State mechanisms for promoting the defense of the rights of women, such as the *Comissão da Mulher no Conselho Nacional dos Defensores Públicos Gerais* (CONDEGE).¹²⁷
- ❖ In the framework of the National Mediation and Reconciliation Policy developed by the Secretariat on Judicial Reform, in conjunction with the National Council of Justice and the National Magistrate Training School, a program was established to provide training on mediation and reconciliation to magistrates and professional volunteers.¹²⁸

In its 2016 Annual Report, the IACHR found that Brazil had complied fully with Recommendation 4(a).¹²⁹

¹²¹ IACHR, Annual Report 2008, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 109.

¹²² IACHR, Annual Report 2009, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 130; IACHR, Annual Report 2011, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 239.

¹²³ IACHR, Annual Report 2004, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 74.

¹²⁴ IACHR, Annual Report 2017, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 373.
¹²⁵ Ibid, para. 381.

¹²⁶ IACHR, Annual Report 2013, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 298.
¹²⁷ Ibid, para. 298.

¹²⁸ IACHR, Annual Report 2017, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 382.

¹²⁹ IACHR, Annual Report 2016, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 369.

In its 2017 Annual Report, the IACHR declared that compliance with its recommendations in the case was partial.¹³⁰

EXAMPLE 2

MEXICO

Case 12,551, Report No. 51/13, Paloma Angélica Escobar Ledezma *et al.*

A. Summary of the facts alleged

The case involves the failure to conduct a timely, immediate, serious, and impartial investigation into the disappearance of Paloma Angélica Escobar Ledezma, 16 years old, whose body was found almost a month after her disappearance by a family of passersby at kilometer 4.5 of the highway from Chihuahua to Aldama.¹³¹

B. Rights violated

The Commission concluded that the State was responsible for violations of the rights to a fair trial and judicial protection (Article 8(1) of the ACHR), the rights of the child (Article 19 of the ACHR), the right to equal protection of the law (Article 24 of the ACHR), and the right to judicial protection (Article 25 of the ACHR), all in connection with the obligations imposed on the State by Articles 1(1) and 2 of the same Convention, as well as the violation of Article 7 of the Convention of Belém do Pará.¹³²

C. Recommendations of the IACHR

Recommendation 4. Adopt reforms in state education programs, starting at the pre-school and early stage, in order to promote respect for women as equals and observance of their right not to be subjected to violence or discrimination.¹³³

Recommendation 6. Strengthen the institutional capacity to fight impunity in response to cases of violence against women in the state of Chihuahua through

¹³⁰ IACHR, Annual Report 2017, Case 12,051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil), para. 392.

¹³¹ IACHR, Report No. 51/13, Case 12,551, Paloma Angélica Escobar Ledezma *et al.* (Mexico), July 12, 2013, para. 1857.

¹³² *Ibid.*, para. 152-53.

¹³³ *Ibid.*, pg. 45, para. 153.

effective criminal investigations with a gender perspective that have consistent judicial follow-up, thereby guaranteeing adequate punishment and reparation.¹³⁴

Recommendation 7. Implement public awareness measures and campaigns on the duty to observe and ensure children’s human rights.¹³⁵

Recommendation 9. Continue adopting public policies and institutional programs aimed at restructuring stereotypes concerning the role of women in the state of Chihuahua and promoting the eradication of discriminatory sociocultural patterns that impede their full access to justice, including training programs for public officials in all of the branches of the administration of justice and the police, and comprehensive prevention policies.¹³⁶

D. Follow-up

- ❖ The Government Policy Committee on Human Rights approved the 2010-2012 National Human Rights Education Program project (PRONALEDH), the central focuses of which included educational dissemination and research on human rights, and methodologies, experiences, outcomes, evaluations, impacts, and tools necessary for demanding, defending, and respecting human rights.¹³⁷
- ❖ The National Conference on the Administration of Justice approved the general guidelines for standardizing investigations into crimes involving disappearances of women, the crime of rape committed against women, and the crime of gender-based homicide committed against women.¹³⁸
- ❖ The Chihuahua Women’s Institute (ICHMUJER) implemented the Campaign to Prevent Femicide in Ciudad Juárez, the central purpose of which is mass dissemination of the Alba Protocol to the general population, and to women and girls in particular.¹³⁹
- ❖ In 2011, the Office of the Attorney General of Chihuahua began implementing permanent programs on domestic violence prevention—with a particular emphasis on the rights of children—directed toward the general population.¹⁴⁰

¹³⁴ Ibid, pg. 46, para. 153.

¹³⁵ Ibid, para. 153.

¹³⁶ Ibid, para. 153.

¹³⁷ Ibid, pg. 95.

¹³⁸ Ibid, pg. 97.

¹³⁹ Ibid, pg. 99.

¹⁴⁰ Ibid. 99

- ❖ The State launched a campaign to raise the visibility of forms of violence against women with the goal of preventing violence against women, raising awareness among the population on the issue, and providing a 1-800 number they could call.¹⁴¹
- ❖ In 2011, the National Commission for the Prevention and Eradication of Violence against Women (CONAVIM) conducted 20 reviews of a variety of content issued by the national media—both electronic and printed, in multiple States—and prepared recommendations to the media outlets on international guidelines on the issue of eradication of gender violence against women and the human rights of women.¹⁴²
- ❖ The State prepared a Crime Victims Bill of Rights and distributed it to a number of local authorities. It also posted it at the offices of public prosecutors and other government institutions.¹⁴³
- ❖ The State created a joint program with CONAVIM to execute an awareness-raising strategy aimed at the media.¹⁴⁴

In its 2014 Annual Report, the IACHR found that Mexico had complied fully with Recommendation 6.¹⁴⁵

In its 2017 Annual Report, the IACHR declared that compliance with its recommendations in the case was partial.¹⁴⁶

¹⁴¹ Ibid, pg. 102.

¹⁴² Ibid, pg. 103.

¹⁴³ Ibid, para. 1875.

¹⁴⁴ Ibid, para. 1903.

¹⁴⁵ Ibid, para. 1067.

¹⁴⁶ Ibid, para. 85.

EXAMPLE 3

COLOMBIA

Case 11,554, Report No. 62/01, Riofrío Massacre

A. Summary of the facts alleged

The case involves members of the Army who worked with a group of armed civilians to execute 13 people and to cover up the massacre in the municipality of Riofrío, Valle del Cauca department, Colombia.¹⁴⁷

B. Rights violated

The Commission concluded that the State was responsible for the violation of the right to life (Article 4 of the ACHR), the right to humane treatment (Article 5 of the ACHR), the right to a fair trial (Article 8 of the ACHR), the rights of the child (Article 19 of the ACHR), and the right to judicial protection (Article 25 of the ACHR), in conjunction with the obligation to respect and guarantee rights (Article 1(1) of the ACHR).¹⁴⁸

C. Recommendations of the IACHR

Recommendation 3. Take the necessary steps to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention as well as the necessary measures to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission on Human Rights in investigating and prosecuting similar cases through the ordinary criminal justice system.¹⁴⁹

D. Follow-up

- ❖ The Ministry of National Defense incorporated, on a permanent basis, human rights and international humanitarian law policies that apply to all members of the military. Guiding principles on human rights and international humanitarian law leadership, promotion, and respect were developed, along with principles on prevention, dissuasion, oversight, integration, and recognition.¹⁵⁰
- ❖ Through Directive No. 003 of January 8, 2013, the General Command of the Military Forces made changes to the organization and operations of the Internal

¹⁴⁷ IACHR, Report No. 62/01, Case 11,654, Riofrío Massacre (Colombia), April 6, 2001, para. 1.

¹⁴⁸ Ibid, para. 53.

¹⁴⁹ Ibid, para. 54.

¹⁵⁰ IACHR, Annual Report 2017, Case 11,654, Report No. 62/01, Riofrío Massacre (Colombia), para. 602.

Affairs offices, including their functions on issues related to human rights, international humanitarian law, and other matters.¹⁵¹

- ❖ An operations manual was developed for use by the Army, the Navy, and the Air Force, and Law 1,621 was issued in April 2013 to strengthen the legal framework governing intelligence bodies and to require them “to strictly comply with the Constitution, the law, international humanitarian law, and international human rights law.”¹⁵²
- ❖ The Human Rights and International Humanitarian Law School of the National Army was established, along with occasional extracurricular training workshops to integrate human rights and international humanitarian law.¹⁵³
- ❖ The position of Operational Legal Advisor was established under a strategy within the Comprehensive Human Rights and International Humanitarian Law Policy as well as an internal affairs inspectorate to monitor compliance with human rights and international humanitarian law and a system for receiving reports of alleged violations of human rights and international humanitarian law by the Armed Forces.¹⁵⁴
- ❖ Legislative Act No. 1 of July 25, 2015 amended Article 221 of the Political Constitution to allow for certain conduct committed by members of active duty security forces to be brought before a court martial.¹⁵⁵
- ❖ It should be underscored that in the IACHR’s 2017 Annual Report, the representatives indicated that the reforms implemented under Act L.01 of 2015 and Law 1,765 of 2015 were a significant step backward regarding the limitation on bringing human rights violations before court martials. Progress was also reversed with regards to non-repetition guarantees.¹⁵⁶
- ❖ In its 2017 Annual Report, the IACHR declared that compliance with its recommendations in the case was partial.¹⁵⁷

¹⁵¹ Ibid, para. 602.

¹⁵² Ibid, para. 602.

¹⁵³ Ibid, para. 603.

¹⁵⁴ Ibid, para. 603.

¹⁵⁵ Ibid, para. 608.

¹⁵⁶ Ibid, para. 615.

¹⁵⁷ Ibid, para. 618.

EXAMPLE 4 GUATEMALA

Case 11,171, Report No. 69/06, Tomas Lares Cipriano

A. Summary of the facts alleged

The case involves an extrajudicial execution conducted by State agents on April 30, 1993, against Tomas Lares Cipriano, a farmer and member of the Runujel Junam Ethnic Communities Council and the Farmer Unity Committee. As an active community leader in his village—Chorraxá Joyabaj, El Quiché—he had organized numerous protests against the presence of the military in the area and against the conscription of farmers who were required to serve in the so-called Civil Self-Defense Patrols. He had filed numerous complaints over threats against the local population from representatives of the military serving as civilian agents of the Army, patrol leaders, and occasionally, soldiers.¹⁵⁸

B. Rights violated

The Commission concluded that the State was responsible for the violation of the right to life (Article 4 of the ACHR), the right to humane treatment (Article 5 of the ACHR), the right to a fair trial (Article 8 of the ACHR), and the right to judicial protection (Article 25 of the ACHR), in conjunction with the obligation to respect and guarantee rights (Article 1(1) of the ACHR).¹⁵⁹

C. Recommendations of the IACHR

Recommendation 4. Adopt the necessary measures to avoid similar events in the future, pursuant to the duty of prevention and guarantee of fundamental human rights, recognized by the American Convention.¹⁶⁰

D. Follow-up

- ❖ Passage of a number of laws and treaties, including the following: Decree 21-2006, the Organized Crime Act;¹⁶¹ Decree 40-2010, which created the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;¹⁶² the Criminal Prosecution Strengthening Act, through Decree 17-2009, which includes amendments to the Penal Code, the Penal Procedural Code, the Organized Crime Act, and the

¹⁵⁸ IACHR, Annual Report 2017, Case 11,171, Report No. 69/06, Tomas Lares Cipriano (Guatemala), para. 1579.

¹⁵⁹ IACHR, Annual Report 2017, para. 1579.

¹⁶⁰ Ibid, para. 133.

¹⁶¹ Ibid, para. 1594.

¹⁶² Ibid, para. 1585.

Extradition Procedure Regulatory Act;¹⁶³ Decree 40-2010, which enables the establishment of the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;¹⁶⁴ Decree 3-2012, approving the Rome Statute of the International Criminal Court;¹⁶⁵ Decree 5-2012, which approves amendments to Decree 28-2010, the Alba-Keneth Alert System Act;¹⁶⁶ Decree 15-2012, the Office of General Criminal Investigation Act;¹⁶⁷ Decree 31-2012, the Anti-Corruption Act; Decree 9-2016, the Immediate Search for Disappeared Women Act.¹⁶⁸

- ❖ The creation of the specific cabinet office on security, justice, and peace as part of the executive branch, whose purpose is to aid in the implementation of proposals and public policies aimed at increasing governability, security, and protection from violence and impunity in the country.¹⁶⁹
- ❖ On strengthening criminal investigations, the Office of the Public Prosecutor conducted strategic prosecution of crimes committed by criminal organizations to dismantle them.¹⁷⁰

In its 2017 Annual Report, the IACHR declared that compliance with its recommendations in the case was partial.¹⁷¹

203. These cases are only some examples of the multiple occasions in which the Commission's recommendations, through its petitions and cases system, have led to structural recommendations and particularly to public policy that may contribute to non-repetition of the violations that gave rise to them.

204. The Commission has also issued recommendations on public policy in cases that were submitted to be tried by the Inter-American Court, which, in ordering the corresponding reparations for the case in its judgment, takes up the public policy recommendations made in the Merits Report of the IACHR.¹⁷²

¹⁶³ Ibid, para. 1585.

¹⁶⁴ Ibid, para. 1594.

¹⁶⁵ Ibid, para. 1594.

¹⁶⁶ Ibid, para. 1594.

¹⁶⁷ Ibid, para. 1594.

¹⁶⁸ Ibid, para. 1594.

¹⁶⁹ Ibid, para. 1585.

¹⁷⁰ Ibid, para. 770.

¹⁷¹ Ibid, para. 1596.

¹⁷² See, for example: Inter-American Court. Case of I.V. Vs. Bolivia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 30, 2016. Series C No. 329, paras. 2 and 337-342; Inter-American Court. Case of

205. It should be noted that implementing a policy is not in itself a guarantee that the necessary changes take place, especially not in the short term. Therefore, beyond developing policies for compliance with the recommendations, States must work constantly to implement, evaluate, and adjust their policies to the reality on the ground.
206. It should also be noted that public policies of this variety cannot arise reactively. On the contrary, States have an obligation to conduct the due diligence necessary to ensure that their plans, programs, and policies have a human rights focus.
207. In sum, it must be underscored that although the IPCS is a mechanism for addressing and deciding on individual cases, the IACHR's work has also involved addressing the structural causes of human rights violations, beyond the victims or their relatives identified in the case.

2. Friendly Settlements

208. While the Individual Petition System is by nature contentious, there is a mechanism that enables the State and the petitioners to arrive at a friendly settlement at any stage during the examination of a petition or case, as long as both parties are willing and the solution is grounded in respect for human rights.
209. In 2013, the Commission published *Impact of the Friendly Settlement Procedure*, which describes the procedure and its various impacts. This report noted that for the petitioners and victims, the procedure “opens up the opportunity to discuss and agree with the State the terms of the reparations,” while for the State, the arrangement “is an opportunity to bring the litigation to an end and to demonstrate its commitment to its duty to respect and ensure human rights, and its good faith compliance with its obligations.”¹⁷³
210. Friendly settlement agreements can result in one or several forms of reparation, as long as they are full, effective, appropriate, and proportional. Circumstances can sometimes permit, for example, the full restitution of a right; others, compensation and rehabilitation.
211. There is one form, however, that goes beyond the petitioners and victims and is related to guarantees of non-repetition. Therefore, a friendly settlement

Atala Riffo and girls v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 24, 2012. Series C No. 239, paras. 273-284.

¹⁷³ IACHR, *Impact of the Friendly Settlement Procedure*, OEA/Ser.L/V/II. Doc.45/13, November 18, 2017 p. 2.

agreement may provide that, in addition to reparations for those who were directly harmed, the State take action to correct the structural problems that permitted or resulted in the violation of rights.

212. Thus, “[t]hrough the friendly settlement procedure, petitioners and States have mutually agreed to commitments under which programs and action plans will be established to transform the conditions under which thousands of people live and function. The IACHR’s experience shows that the States have pledged to implement public policies on such issues as labor conditions, protection of children, women, and indigenous peoples.”¹⁷⁴
213. This section focuses on that form, based on the experience of the work of the IACHR. In particular, it will make reference to friendly settlement agreements that have resulted in a public policy, action, or government program. Here it is important to note the following: first, unlike cases settled through the adversarial system, public policy derived from friendly settlements tend to be implemented more expeditiously and with better coordination with the affected parties, as long as they have the support of the State; second, often, the public policies necessary to ensure non-repetition are already in place but need to be amended, implemented, or have sufficient resources to operate effectively. A friendly settlement agreement can therefore have a positive impact on groups or populations that would otherwise not have had access to certain government programs or actions.
214. Below are some examples of the agreements that have led to the creation, amendment, or reorientation of public policy.

EXAMPLE 1

PERU

Case 12.041, Report No. 69/14, M.M.

A. Summary of the facts alleged

The case concerns the alleged sexual abuse of M.M., a young female farmer, by a doctor at the Carlos Monge Medrano de Juliaca public hospital and errors of the Peruvian State in its investigation of the matter and its failure to punish those responsible.¹⁷⁵

¹⁷⁴ Ibid, p. 64.

¹⁷⁵ IACHR, Report No. 69/14, Case 12.041, M.M. (Peru), July 25, 2014, paras. 1 and 14.

B. Alleged rights violated

The petition alleged the international responsibility of the State for violations of Articles 1.1, 5, 8.1, 11, and 25 of the American Convention on Human Rights. The petitioners likewise alleged violations of Articles 3, 4, 7, 8, and 9 of the Convention of Belém do Para and Articles 1 and 12(1) of the Convention on the Elimination of All Forms of Discrimination against Women, to the detriment of M.M. The foregoing allegations stemmed from the sexual abuse suffered by M.M. from a doctor at the Carlos Monge Medrano de Juliaca public hospital, as well as errors of the Peruvian State in the investigation of the matter and its failure to punish those responsible.¹⁷⁶ In the friendly settlement agreement, the State recognized its international responsibility with respect to the case.¹⁷⁷

C. Reparation measures established in the friendly settlement agreement

On March 6, 2000, the parties signed a friendly settlement agreement.¹⁷⁸

Clause 8. The State shall create a Monitoring Committee made up of representatives of the State and the petitioners for purposes of verifying compliance with the commitments that are the subject of this agreement. The State also proposes to conduct follow up of the regulatory reforms provided for in the petitioners' draft friendly settlement agreement and implement specialized services to provide treatment nationally for victims of sexual violence.¹⁷⁹

D. Follow-up

- ❖ On March 31, 2014, the Board of Directors of the Academy of Judges [*Academia de la Magistratura*] issued Administrative Resolution No. 03-201-AMAG-CD approving the new regulations of the Academy's regime of studies, which included training courses, workshops, and seminars on gender and justice in the curriculum.¹⁸⁰
- ❖ Approval of the Forensic Medical Guide for Comprehensive Evaluation of Alleged Victims of Crimes against Sexual Freedom.¹⁸¹

In Report No. 69/14, the IACHR declared the friendly settlement agreement to have been fulfilled in its entirety.¹⁸²

¹⁷⁶ Ibid, para. 1; Ibid, para. 1513.

¹⁷⁷ Ibid, pg. 6.

¹⁷⁸ Ibid, para. 2.

¹⁷⁹ Ibid, pg. 7.

¹⁸⁰ Ibid, pg. 11.

¹⁸¹ Ibid, pg. 11.

¹⁸² Ibid, para. 31; Ibid, para. 1515.

EXAMPLE 2**BOLIVIA****Case 12.350, Report No. 103/14, M.Z.****A. Summary of the facts alleged**

The case refers to the rape of M.Z., a 30-year old woman, committed at her residence in the city of Cochabamba by her landlord's son, a crime that was reported to the Judicial Technical Police. The petitioners alleged that during the investigation and trial, the Bolivian State had disregarded the right to an impartial tribunal in determining the rights of M.Z. and the right to obtain a well-founded decision based on the evidence appearing in the process, in response to the allegations of the parties. In addition, they asserted that remedies filed within the domestic jurisdiction proved to be ineffective for protecting M.Z. against the violations to which she had been subject, also failing to recognize her rights to a life free of violence, to physical, mental, and moral integrity, and the protection of honor and dignity.¹⁸³

B. Alleged rights violated

The petition alleged the international responsibility on the part of the State for violation of the rights established in Article 1 (right to humane treatment); Article 8 (right to a fair trial); Article 11 (right to privacy); Article 24 (right to equal protection); Article 25 (right to judicial protection) of the American Convention on Human Rights; as well Articles 3, 4, 6, and 7 of the Convention of Belém do Pará, to the detriment of M.Z.¹⁸⁴ In the friendly settlement agreement, the State recognized its international responsibility with respect to the case, noting that “the referenced case illustrates the situation faced by many women victims of sexual violence who have been discriminated against by the justice system in violation of the rights protected by the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women – the Convention of Belém do Pará – and the American Convention on Human Rights.”¹⁸⁵

¹⁸³ IACHR, Report No. 103/14, Case 12.350, M.Z. (Bolivia), November 7, 2014, paras. 2; IACHR, Annual Report 2015, Case 12.350, Report No. 103/14, M.Z. (Bolivia), para. 285.

¹⁸⁴ Ibid, para. 1.

¹⁸⁵ Ibid, pg. 4; IACHR, Annual Report 2015, Case 12.350, Report No. 103/14, M.Z. (Bolivia), para. 286.

C. Reparation measures established in the friendly settlement agreement

On March 11, 2008, the parties signed a friendly settlement agreement.¹⁸⁶

Commitment 1. The State agrees to implement within a period of one year through the Judiciary Institute of Bolivia a positive action to ensure that at least 15% of the total amount of time in its educational programs is dedicated to activities focusing on the promotion and protection of human rights with a gender approach, for which purpose it must ensure the participation of personnel who specialize in this subject.¹⁸⁷

Commitment 4. The Ministry of Foreign Relations will organize a conference during 2008 on the rights of women and the Convention of Belém do Para for judicial officials of the Supreme Court and District Superior Courts, the General Prosecutor's Office, District Prosecutors' Offices, the National Police, as well as lawyers in private practice and public defenders, ensuring the participation of the organizations acting as petitioners in the case and the Ministry of Justice and the Vice Ministry on Gender.¹⁸⁸

Commitment 5. The State, through the Ministry of Foreign Relations, and the Ministry of Justice – Vice Ministry on Gender and Generational Affairs, agrees to make financial provision for editing manuals and other publications on the treatment of the victims of sexual violence, which will be given to the Judicial Branch, the General Prosecutor's Office, the National Police, and other institutions, as a campaign to raise awareness regarding the rights of women and the effect of international treaties.¹⁸⁹

Commitment 6. The State, through the Office of the Attorney General, in accordance with Art. 26 of Law 2033 on protecting victims of crimes against sexual freedom, will create within a period of two years a Specialized Unit to support the victims of sexual violence as well as to conduct investigations and take public criminal action with respect to these crimes.¹⁹⁰

Commitment 7. The State, through the Office of the Attorney General – Forensic Investigations Institute – will create within a period of two years a Special Unit to develop the scientific-technical studies needed for the investigation of crimes against sexual freedom.¹⁹¹

Commitment 8. The State, through the Office of the Attorney General – Forensic Investigations Institute – agrees to make the necessary adjustments within no more than two years to ensure that the physical locations where victims of sexual violence submit their statements provide the necessary infrastructure conditions to guarantee their privacy.¹⁹²

D. Follow-up

- ❖ The design of the curriculum of the Course on Human Rights in the Administration of Justice, for the ongoing training of judges, and specifically, with regard to the M.Z. case, incorporates the gender approach in the instruction and training course of the School for State Judges.¹⁹³
- ❖ Implementation of a series of training courses with an Orientation Cycle for Recently Appointed Court Officials, in which a course had been taught on Human Rights with a gender approach to 47 male and female judges; a course organized by the School for State Judges in coordination with the Spanish Agency for International Development Cooperation (AECID) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on “International Standards on the Rights of Women – Comprehensive Law to Guarantee Women a Life Free of Violence and a Gender Approach in the Administration of Justice;” a course-workshop “Specialization on Issues of Gender, Human Rights, and Violence, Law 348,” which has been conducted since June 2013 in various departments of the country by the School for State Judges in coordination with the OCHCR, which has the national objective of training approximately 600 male and female judges and 100 prosecutors;¹⁹⁴ and a cycle of workshops called “Obligations and International Responsibility of the State in the Area of Human Rights,” conducted by the General Procurator’s Office and the OHCHR, and directed to police officers, male and female judges, prosecutors, and public defenders.¹⁹⁵
- ❖ Approval of the Regulations for the Judicial Career through Agreement No. 079/2014, issued by the Council of the Judiciary, which ensures that male and female judges will continue to have ongoing training in human rights and gender.¹⁹⁶
- ❖ The organization of several conferences and seminars, including: the Third National Seminar on the IACHR Friendly Settlement Mechanism, in which the

¹⁸⁶ IACHR, Report No. 103/14, Case 12.350, M.Z. (Bolivia), November 7, 2014, para. 286.

¹⁸⁷ *Ibid.*, pg. 5.

¹⁸⁸ *Ibid.*, pg. 5.

¹⁸⁹ *Ibid.*, pg. 6.

¹⁹⁰ IACHR, Report No. 103/14, Case 12.350, M.Z. (Bolivia), November 7, 2014, pg. 6.

¹⁹¹ *Ibid.*, pg. 6.

¹⁹² *Ibid.*, pg. 6.

¹⁹³ *Ibid.*, para. 37.

¹⁹⁴ *Ibid.*, para. 38.

¹⁹⁵ *Ibid.*, para. 42.

¹⁹⁶ *Ibid.*, paras. 41 and 44.

State gave a presentation on this case and gave the participants a CD titled “Friendly Settlement Agreement in the MZ Case – Compilation of Materials on Gender-Based Violence and Sexual Violence;”¹⁹⁷ and the International Public Conference on Access to Justice for Women in Domestic and International Jurisdictions, which trained male and female officials at all levels of the Judicial Branch regarding matters related to violence and discrimination against women.¹⁹⁸

- ❖ The production and publication of the National Diagnosis of the Victims and Witnesses Support Unit; Protocol for Gesell Chamber Interviews and Methodology for Taking Testimony from Children, Adolescents, Victims, and Witnesses; Guide on the Use of the Gesell Chamber; and Single National Critical Path for Supporting the Victims of Crimes against Sexual Freedom and Gender Violence.¹⁹⁹
- ❖ The March 9, 2013 enactment of Law No. 348, the “Comprehensive Law to Guarantee Women a Life Free of Violence,” whose purpose is to establish mechanisms, measures, and comprehensive policies on prevention, care, protection, and support for women who have been the victims of violence.²⁰⁰
- ❖ The creation of several units, including the National Coordinating Office on Sexual Crimes, Human Smuggling and Trafficking, and Support for Victims and Witnesses; Units to Support Victims and Witnesses (UAVT); Specialized Units for the Prosecution of Human Smuggling and Trafficking, Sexual Crimes, and Gender-based Violence; (UTS);²⁰¹ and the Forensic Investigations Institute.²⁰²
- ❖ The implementation of Gesell Chambers for taking statements in seven of the State’s nine departments.²⁰³

In Report No. 69/14, the IACHR declared the friendly settlement agreement to have been fulfilled in its entirety.²⁰⁴

¹⁹⁷ Ibid, para. 43.

¹⁹⁸ Ibid, para. 52.

¹⁹⁹ Ibid, para. 53.

²⁰⁰ Ibid, para. 54.

²⁰¹ Ibid, para. 56.

²⁰² Ibid, para. 61.

²⁰³ Ibid, para. 57.

²⁰⁴ Ibid, para. 65; IACHR, Annual Report 2015, Case 12.041, Report No. 69/14, M.M. (Peru), p. 10.

EXAMPLE 3**ECUADOR****Case 12.631, Report No. 61/13, Karina Montenegro et al.****A. Summary of the facts alleged**

The case concerns the unlawful detention of 5 women, Tania Shasira Cerón Paredes, Karina Montenegro, Leonor Briones, Martha Cecilia Cadena y Nancy Quiroga, who, on the date of their detention, 4 of them were pregnant and Mrs. Martha Cecilia Cadena was 68 years of age, failing to comply with Ecuadorian law which provides that pregnant women and persons over the age of 65 cannot be deprived of their liberty, and such persons are subject to house arrest rather than pretrial detention.²⁰⁵

B. Alleged rights violated

The petition alleged that the Republic of Ecuador violated articles 7, 11, 24 and 25 of the American Convention on Human Rights; articles 2 (b and c), 4 (b, c and f), 6 (a) and 7 (a and d) of the Convention of Belém do Para; and articles 1 and 2 (c) of the Convention on the Elimination of All Forms of Discrimination Against Women, to the detriment of Tania Shasira Cerón Paredes, Karina Montenegro, Leonor Briones, Martha Cecilia Cadena y Nancy Quiroga, respectively.²⁰⁶

In the friendly settlement agreement signed between the parties, the State of Ecuador acknowledged its international responsibility for the violation of the rights to humane treatment, personal freedom, and judicial protection, the rights of the child, and the obligation to respect and guarantee the human rights enshrined in the American Convention on Human Rights.²⁰⁷

C. Reparation measures established in the friendly settlement agreement

On December 18, 2008, the parties signed a friendly settlement agreement.²⁰⁸

3. Measures of non-repetition

- Training to civil servants of the National Police Force, the Prosecution Service, Social Rehabilitation Services, the

²⁰⁵ IACHR, 2017 Annual Report, Case 12.631, Report No. 61/13, Karina Montenegro et al. (Ecuador), para. 1119.

²⁰⁶ IACHR, Report No. 61/13, Case 12.631, Karina Montenegro et al. (Ecuador), 16 July 2013, para. 1.

²⁰⁷ IACHR, 2017 Annual Report, Case 12.631, Report No. 61/13, Karina Montenegro et al. (Ecuador), para. 1118.

²⁰⁸ IACHR, Report No. 61/13, Case 12.631, Karina Montenegro et al. (Ecuador), 16 July 2013, para. 3.

Constitutional Court, the Habeas Corpus Unit of the Mayor's Office, the judicial branch of government, and other relevant operators of justice.²⁰⁹

- Establishing a prison house or correctional institution.²¹⁰
- Establishment of a special healthcare program for pregnant women, their children, and elderly persons.²¹¹

D. Follow-up

- ❖ The realization of 33 human rights and gender training activities, including training sessions for medical and penitentiary staff, and personnel who work in social rehabilitation facilities; ongoing education programs on human rights and gender, specifically sexual and domestic violence, at the prosecutors' school; training sessions on gender issues to police personnel through the Ongoing Comprehensive Training Program (PCIC).²¹²
- ❖ The Council of the Judiciary has held educational and training sessions for judiciary employees.²¹³
- ❖ Since May 2013 a joint project—*Proyecto Lazos de Amor Naciendo en Libertad* (Bonds of Love: Born in Liberty)—has been carried out between the Metropolitan Council for the Comprehensive Protection of Children and Adolescents, Coordinating Region 9, and the Ministry of Economic and Social Inclusion. This program aims to strengthen the mother-child bond by accompanying mothers throughout the pregnancy, delivery, and postpartum stages and encouraging the practice of breastfeeding. As part of this program, women's correctional facilities are providing health services with the necessary care for pregnant women, including monthly check-ups between the first and seventh months of pregnancy and bimonthly check-ups during the last two months. Gynecology services are also available every two weeks; however, there is a general practitioner on staff who is available when needed. In addition, folic acid is administered from the first month of pregnancy, and other vitamins and minerals are provided beginning in the second month and throughout the pregnancy, in line with the Public Health Ministry's protocols.²¹⁴

²⁰⁹ Ibid, pg. 16.

²¹⁰ Ibid, pg. 17.

²¹¹ Ibid, pg. 17.

²¹² IACHR 2016 Annual Report, Case 12.631, Report No. 61/13, Karina Montenegro et al. (Ecuador), paras. 995 & 999.

²¹³ Ibid, para. 995.

²¹⁴ Ibid, para. 999.,

- ❖ The New Prison Management Model, which aims to create new regional centers for social rehabilitation under a self-management model. The Guayas Center for Social Rehabilitation opened in August 2013 and has positioned itself as a pilot plan for this new management model. In November 2013, 4,300 individuals were transferred to the Guayas Center for Social Rehabilitation. Additionally, Chapter III of the New Prison Management Model establishes the parameters for physical space, medical care, nutrition, and participation in activities for pregnant women, the elderly, and persons with disabilities.²¹⁵

In its 2016 Annual Report, the IACHR found that Ecuador had complied fully with items 3 (a) and (e) of the friendly settlement agreement.²¹⁶

In its 2017 Annual Report, the IACHR declared that compliance with the friendly settlement is partial.²¹⁷

C. *Monitoring System*

215. This section will examine the recommendations that have been issued in the monitoring function exercised by the IACHR through its thematic, country, and annual reports.

1. **Thematic Reports**

216. The Inter-American Commission on Human Rights continuously monitors the human rights situation in the hemisphere, as well as individuals, groups, or populations in a particular situation of structural inequality or whose rights have historically been violated. In order to do so, it has different thematic rapporteur ships, with two special rapporteurs and three recently created units.²¹⁸

²¹⁵ Ibid, para. 999.

²¹⁶ Ibid, para. 995 & 999.

²¹⁷ IACHR, 2017 Annual Report, Case 12.631, Report No. 61/13, Karina Montenegro et al. (Ecuador), para. 1133.

²¹⁸ The thematic rapporteurships, which are headed by a member of the Commission, are the following: Indigenous Peoples, Women, Migrants, the Rights of the Child, Human Rights Defenders, the Rights of Persons Deprived of Liberty, the Rights of Afro-Descendants and against Racial Discrimination, the Rights of LGBTI Persons. In addition, the Special Rapporteurships, which are headed by a full-time rapporteur, are: Freedom of Expression and Economic, Social, Cultural, and Environmental Rights. In 2016, three units were also created: the Unit on Memory, Truth, and Justice; the Unit on the Rights of Older Persons; and the Unit on the Rights of Persons with disabilities.

217. Based on this work, the IACHR publishes detailed thematic reports on the situation with respect to the rights and/or populations it monitors. In addition to providing an in-depth diagnostic study on hemispheric circumstances or particular situations in a State or region, it issues specific recommendations in these reports.
218. It should be noted that the reports are the product of a process in which the Member States are invited to participate and provide information on what the Commission has examined, as well as input to improve the reports. As a result, the Member States sometimes alter or adjust their institutional practices, regulations, and/or policies, even before the publication of the report.
219. Thematic reports have been a fundamental tool for the Commission to identify areas of opportunity or spaces in which States should reorient their actions in order to increase the protection and guarantee of human rights. Public policy recommendations have been an essential component in this regard.
220. There are diverse and abundant examples in this area, but the following have been identified for the purposes of this report:

EXAMPLE 1

THEME: MEASURES TO REDUCE PRETRIAL DETENTION

A. Summary of the situation

For two decades, the Commission has noted that the arbitrary and illegal application of pretrial detention is a chronic problem in the region.²¹⁹ In particular, in its Report on the Use of Pretrial Detention in the Americas,²²⁰ issued on December 30, 2013, the IACHR concluded that the non-exceptional use of this measure is one of the most serious and widespread problems faced by OAS Member States in respecting and guaranteeing the rights of persons deprived of liberty. The excessive use of pretrial detention is one of the clearest signs of failure in the justice administration system and constitutes an unacceptable structural situation in democratic societies that strive to uphold the right of all citizens to be presumed innocent. In that report, the Commission included a series of legislative, administrative, and judicial recommendations to States to ensure that the use of pretrial detention as a precautionary criminal justice measure is compatible with their international obligations in respect of human rights.²²¹

²¹⁹ IACHR, Measures to Reduce Pretrial Detention, OEA/Ser.L/V/II.163.Doc.105, July 3, 2017, p. 11, para. 1.

²²⁰ IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.Doc.46/13, December 30, 2013.

²²¹ IACHR, Measures to Reduce Pretrial Detention, OEA/Ser.L/V/II.163.Doc.105, July 3, 2017, p. 11, para. 2.

In 2017, the IACHR published the thematic report *Measures to Reduce Pretrial Detention* as a follow-up to the 2013 report, analyzing the main gains and challenges regarding the use of this measure by States.²²²

With regard to women deprived of liberty, the 2017 report addresses the disproportionate negative impacts they face, as well as the severe consequences of their incarceration when these women are responsible for raising their children, are heads of families, and have persons under their care.²²³ The incarceration of women has implications of its own that result in specific violations of their rights, based on their gender, and they are exposed to special risk when subjected to the pretrial detention regime.²²⁴

B. Recommendations of the IACHR

Concerning women and other persons belonging to groups at special risk:

Recommendation 2. Incorporate a gender perspective in the establishment, implementation, and follow-up to legislative and policy reforms aimed at reducing the use of pretrial detention. This perspective should take into consideration the historical discrimination and gender stereotypes that have affected women and adolescent females, and that have severely limited the exercise of their civil, political, economic, social, and cultural rights in contexts of being deprived of their liberty. Account should also be taken of the special situation of risk of violence in all its manifestations, including physical, psychological, sexual, economic, obstetric, and spiritual, among others, as well as the fact that the vast majority of these incidents end in impunity. The perspective also implies considering the specific risks of persons who have diverse or non-normative sexual orientations and gender identities and expressions, or whose bodies vary from the standard female and male body types. Similarly, the States should incorporate an intersectional and intercultural perspective that takes into consideration the possible aggravation and frequency of human rights violations due to factors such as race, ethnicity, age, or economic position.²²⁵

C. Relevant measures adopted by States

- ❖ **Brazil:** In connection with the National Policy for Attending to Women Deprived of Liberty and Those Released from Prison, the National Survey of Data on Women in Prison was published in November 2015 in an effort to provide important information about the female population to enable the

²²² Ibid, para. 3.

²²³ Ibid, pg. 125, para. 194.

²²⁴ IACHR, *Practical Guide to Reduce Pretrial Detention*, OEA/Ser.L/V/II.163.Doc.107, 2017, p. 44.

²²⁵ IACHR, *Measures to Reduce Pretrial Detention*, OEA/Ser.L/V/II.163.Doc.105, July 3, 2017, pg. 157, para. 2.

authorities concerned to develop and implement policies for incarcerated women.²²⁶

- ❖ **Colombia:** Law 1709 of 2014 adopts a differentiated approach to the protection of women and persons belonging to groups at special risk.²²⁷
- ❖ **Mexico:** Article 6 of the National Execution of Judgments Act of 2016, the scope of which also covers internment due to pretrial detention, regulates the specific rights of women deprived of liberty and grants special protection to pregnant women and mothers.²²⁸

EXAMPLE 2

THEME: THE RIGHT TO TRUTH IN THE AMERICAS

A. Summary of the situation

With many States in the region facing enormous challenges in safeguarding the rights of thousands of victims after periods of dictatorship, internal armed conflict, and situations involving widespread violence, the Commission presented its report *The Right to Truth in the Americas* in 2014.²²⁹ In this report, the IACHR noted that a lack of access to information about what had happened was a common pattern in many countries in the region during the military dictatorships and that, in some countries, concealing information was a deliberate policy of the State and even a “tactic of war.” In this context, the report examines States’ obligations with regard to guaranteeing the right to the truth in the face of grave human rights violations and refers specifically to the progress made on this front and the challenges that remain in several countries in of the region.²³⁰

B. Recommendations of the IACHR

Recommendation 1. Redouble efforts to guarantee the right to the truth in cases of grave violations of human rights and international human rights law (IHL). Accordingly, the Commission is urging the States to review their domestic laws and other norms, strike down those provisions that directly or indirectly hamper their

²²⁶ IACHR, Practical Guide to Reduce Pretrial Detention, OEA/Ser.L/V/II.163.Doc.107, 2017, pg. 45.

²²⁷ Ibid, pg. 45.

²²⁸ Ibid, pg. 45.

²²⁹ IACHR, The Right to Truth in the Americas. OEA/Ser.L/V/II.152.Doc.2, August 13, 2014.

²³⁰ IACHR, Annual Report 2014, Chapter IV Human Rights Developments in the Region, pg. 374, para. 96.

compliance with their international obligations and adopt laws that guarantee the right to the truth.²³¹

Recommendation 2. In particular, redouble efforts to prevent the phenomenon of forced disappearance of persons and set in motion the mechanisms necessary to ensure that it is codified as a criminal offense; clarify what happened to the victims; determine their whereabouts; identify the exhumed bodies; and return the remains to the next of kin in accordance with their wishes, as well as through adequate mechanisms to ensure their participation in the process. The IACHR recommends that the States ratify the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance.²³²

Recommendation 4 Eliminate the use of the military criminal justice system for cases involving human rights violations.²³³

Recommendation 6. Provide the necessary political, budgetary, and institutional support to the official non-judicial initiatives to ascertain the truth, such as Truth Commissions. Specifically, States must ensure appropriate conditions for a Truth Commission to be established and function properly and must take appropriate measures to implement Truth Commissions' recommendations effectively and within a reasonable period of time.²³⁴

Recommendation 8. Systematize the efforts undertaken to guarantee the truth and implement broad campaigns to publicize them and make the results achieved public.²³⁵

Recommendation 9. Adopt the measures necessary to classify, systematize, and make available historical archives concerning serious violations of human rights and IHL.²³⁶

C. Relevant measures adopted by States

- ❖ **Haiti:** The decision issued by the Court of Appeals in Port-au-Prince on February 20, 2014 ordering the immediate investigation of the serious human rights violations committed under the regime of Jean-Claude Duvalier. The Court of Appeals concluded that international law is part of Haitian domestic

²³¹ IACHR, The Right to Truth in the Americas, OEA/Ser.L/V/II.152.Doc.2, August 13, 2014, pg. 113, para. 239.

²³² Ibid.

²³³ Ibid, p. 114, para. 239.

²³⁴ Ibid, p. 114, para. 239.

²³⁵ Ibid, p. 114, para. 239.

²³⁶ Ibid, p. 114, para. 239.

law and therefore, that statutory limitations do not apply to crimes against humanity.²³⁷

- ❖ Brazil: The final report of the Brazilian Truth Commission was issued in December 2014. The fight against grave human rights violations and the publication of the Brazilian Truth Commission's findings contribute to the strengthening of the democratic State and provide a voice and hope to victims and their families.²³⁸
- ❖ Argentina: The handing over of newly discovered records of its military dictatorship to the IACHR on September 16, 2014. These records summarize the contents of the meetings held by the military junta in charge of the Government. These documents have immeasurable historical and legal value, and their availability reflects a policy of seeking the truth, which is inspiring and valuable.²³⁹
- ❖ Colombia: Incorporation of the criminal offense of forced disappearances into its domestic legal system and the creation of the National Commission for the Search of Disappeared Persons (CNBD). The activation of this mechanism can be requested, before any judicial authority, by any person who believes that someone has been a victim of forced disappearance, without having to wait for the person to be missing for a certain amount of time before filing the request. Once the mechanism has been activated, public officials have 24 hours to initiate all the necessary measures to find the disappeared person. Public officials cannot refuse to undertake the measures requested or ordered on the basis that a person must be missing for a determined period of time. Moreover, family members of the person that has allegedly been the victim of forced disappearance can follow the work of CNBD and may even be authorized to participate in the measures carried out whenever their participation does not obstruct the work of the CNBD.²⁴⁰
- ❖ Mexico: The approval by the Mexican Congress of reforms to the Code of Military Justice restricting the scope of military jurisdiction. Under these reforms, cases involving human rights violations committed by members of the military against civilians will now be tried exclusively by the civilian justice system and not by military courts.²⁴¹

²³⁷ IACHR, Annual Report 2014, Chapter IV Human Rights Developments in the Region, pg. 374, para. 97; IACHR, Press Release 48/14, "[IACHR Welcomes Decision of the Haitian Court of Appeals to Investigate Serious Human Rights Violations Committed under the Regime of Jean-Claude Duvalier](#)", February 28, 2014.

²³⁸ Ibid, p. 375, para. 98.

²³⁹ Ibid, p. 375, para. 99.

²⁴⁰ Ibid, p. 376, para. 104.

²⁴¹ Ibid, p. 377, para. 110.

EXAMPLE 3

THEME: INDIGENOUS PEOPLES, AFRO-DESCENDENT COMMUNITIES, AND EXTRACTIVE INDUSTRIES

A. Summary of the situation

The IACHR has consistently received information evidencing the human, social, health, cultural, and environmental impacts of these projects on indigenous peoples and Afro-descendent communities. Many extractive and development activities in the hemisphere are implemented in lands and territories historically occupied by indigenous and Afro-descendent communities, which often coincide with areas hosting a great wealth of natural resources. There is information indicating that these projects and activities are still not properly supervised by host States and States of origin, the scarcity of mechanisms to prevent human rights violations, and formidable barriers faced by victims, peoples, and communities to access justice when human rights violations take place. These challenges, as well as the widespread implementation of these projects in the Americas, led to the IACHR's preparation of the report *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* in 2015.²⁴²

B. Recommendations of the IACHR

Recommendation 14. Calls on OAS Member States, as states of origin, to establish and enforce adequate and effective mechanisms to guarantee the access to justice to peoples, communities, and persons affected by the activities of companies which are registered, domiciled, or have their principal headquarters or center of activities in said country.²⁴³

Recommendation 15. Adopt legislative, administrative, and other measures necessary to fully implement and enforce, within a reasonable time, the right to consultation, and where appropriate, prior and informed consent of the indigenous and tribal peoples and Afro-descendent communities affected, according to international standards and with the full participation of the peoples and communities.²⁴⁴

²⁴² IACHR, *Indigenous Peoples, Communities of African Descent, Extractive Industries. 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, p. 9, para. 2.

²⁴³ *Ibid.*, p. 179, para. 14.

²⁴⁴ *Ibid.*, p. 179, para. 15.

Recommendation 16. Modify the legislative, administrative and other measures that prevent the full and free exercise of the right to prior consultation, which shall ensure the full participation of indigenous and tribal peoples and Afro-descendent communities.²⁴⁵

C. Relevant measures adopted by States

- ❖ **Canada:** The creation of a Canadian Ombudsperson for Responsible Enterprise (CORE) to address complaints related to allegations of human rights abuses arising from a Canadian company's operations abroad, as well as a multi-stakeholder Advisory Board on Responsible Business Conduct.²⁴⁶
- ❖ **Colombia:** The Constitutional Court has developed a singularly rich and progressive jurisprudence on indigenous peoples' right to consultation, especially the right to free, prior, and informed consent and its compatibility with the decision of the Inter-American Court in the *Case of the Saramaka People v. Suriname*.²⁴⁷ In effect, the Constitutional Court of Colombia has indicated that "even through the general duty of the State in relation to prior consultation consists in ensuring an effective and active participation of the communities with the objective of obtaining their consent, when the proposed measures represent an intense effect of the right to the collective territory obtaining consent from the community is a requirement prior to the implementation of a political measure, plan or project."²⁴⁸

2. Country Reports

221. Parallel to the Commission's ongoing monitoring of matters and groups that have historically been discriminated against, the IACHR monitors the situation of human rights in each of the OAS Member States.
222. Important to this work are its requests for information to Member States, working visits, press releases, questionnaires, and on-site visits conducted

²⁴⁵ Ibid, p. 179, para. 16.

²⁴⁶ IACHR, Press Release 20/18, "[IACHR Welcomes Creation by Canada of an Ombudsperson to Oversee Canadian Companies Operating Abroad](#)", February 6, 2018.

²⁴⁷ Inter-American Court, *Case of the Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Serie C No. 172, para. 134.

²⁴⁸ 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, pg. 97.

with the consent of the State, in accordance with Article 18(g) of the Statute of the IACHR.²⁴⁹

223. On-site visits by the IACHR to observe the situation of human rights in a country are made at the invitation of the State. During these visits, the IACHR delegation, which ordinarily consists of members of the Commission and the Executive Secretariat, interviews officials at the different levels of government, members of civil society, and alleged victims. Based on these interviews, it examines, systematizes, validates, and strengthens the information with that of visits which have been made by the rapporteurships and the ongoing monitoring of the Commission.²⁵⁰
224. Based on the visits, the Commission publishes country reports that examine the human rights situation in the country in question in order to issue pertinent recommendations. As indicated earlier, the draft report is sent to the State for its comments, and in subsequent years, the Commission monitors compliance with the recommendations issued in Chapter V of its Annual Report.
225. Below are some examples related to specific themes in which the Commission has recommended the implementation of public policy, or rather, in which the Commission's recommendations have resulted in the creation of or change in a public policy.
226. It should be noted that unlike the thematic reports, the country reports naturally cover a wide range of themes and rights. The themes selected as examples in this report do not necessarily indicate the prioritization of one right or population over another; they have been selected merely to illustrate the Commission's role in the matter.

EXAMPLE 1

COLOMBIA

A. Summary of the situation

In 2013, the IACHR published the report *Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia*, which examined the human rights situation in Colombia. In particular, it examined the evolution of the internal armed conflict over more than five decades and its impact on the protection,

²⁴⁹ See: IACHR, [Statute of the Inter-American Commission on Human Rights. Resolution No. 447 OCTOBER 1979 \(Bolivia\)](#). Consulted July 18, 2017

²⁵⁰ The [published IACHR country reports can be found here](#).

enjoyment, and exercise of the human rights of all persons who live in Colombian territory.²⁵¹

B. Recommendations of the IACHR

Concerning reparation mechanisms:

Recommendation 3. Guarantee, in practice, the implementation of a differential approach for women, children and adolescents, persons with disabilities, indigenous peoples, Afro-descendant persons, lesbian, gay, trans, bisexual and intersex persons, defenders of human rights, among others.²⁵²

Recommendation 4. Guarantee victims' effective participation in the proceedings provided for in Law 1448 and take their expectations into account when deciding the appropriate measures of reparation.²⁵³

C. Follow-up measures

- ❖ Implementation by State institutions of a variety of measures, strategies, models, and guidelines involving a differential approach to gender, disability, LGBT persons, and different ethnicities.²⁵⁴
- ❖ Strengthening and training of the Office of Public Prosecution on the Effective Participation Protocol, assessing the performance of management and the strengthening process of the departmental participation committees, among other strategies implemented in order to make participation more effective in the processes of reparation to victims, particularly women, indigenous, Afro-descendants, child and adolescent victims.²⁵⁵
- ❖ Within the framework of the Public Policy for Victims, the implementation of the strategy for new leaders that seeks to provide outgoing heads of departmental and municipal administrations with guidelines so that, their performance reports – both mayors and governors – and their development

²⁵¹ IACHR, Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.Doc.49/13, December 31, 2013, p. 13, para. 1.

²⁵² Ibid, p. 216, para. 532.

²⁵³ Ibid.

²⁵⁴ IACHR, Annual Report 2016, Chapter V Follow-up on Recommendations Made by the IACHR in its Country and Thematic Reports. Follow-up on Recommendations Made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia, p. 713, para. 154.

²⁵⁵ Ibid.

plans, include the incorporation of the ethno-differential approach, with training workshops on the matter.²⁵⁶

- ❖ The implementation of various campaigns against discrimination and racism, as well as training plans for public servants, judicial officers, and citizens in general, and regional plans for meetings to raise societal awareness of the country's cultural and ethnic diversity.²⁵⁷

EXAMPLE 2

MEXICO

A. Summary of the situation

In 2015, the IACHR published the report *Situation of Human Rights in Mexico*, with particular emphasis on forced disappearances, extrajudicial executions, and torture, as well as citizen insecurity, access to justice and impunity, and the situation of journalists, human rights defenders, and other groups especially affected by the context of violence in the country, among them LGBT persons.²⁵⁸

B. Recommendations of the IACHR

Concerning LGBT persons:

Recommendation 3. Adopt necessary measures in terms of prevention of violence, including legislative measures and public policy aimed at eradicating social discrimination towards LGBT persons, which causes and reinforces the violence based on prejudice.²⁵⁹

C. Follow-up measures

- ❖ Thirty-two federal entities have legislation recognizing non-discrimination based on sexual orientation and gender identity, and 26 federal entities

²⁵⁶ IACHR Annual Report 2017, Chapter V Follow-up to Rec,ommendations Made by the IACHR in its Country or Thematic Reports. Follow-up to Recommendations Made by the IACHR in its Report Truth, Justice, and Reparation: Fourth Report on the Situation of Human Rights in Colombia, p. 719, para. 200.

²⁵⁷ IACHR, Annual Report 2016, Chapter V Follow-up on Recommendations Made by the IACHR in its Country and Thematic Reports. Follow-up on Recommendations Made by the IACHR in the Report Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia, p. 724, para. 212.

²⁵⁸ IACHR, Situation of Human Rights in Mexico, OEA/Ser.L/V/II.Doc.44/15, December 31, 2015, p. 11, para. 1.

²⁵⁹ Ibid, p. 226.

criminalize hate-based discrimination for reasons of sexual orientation, gender identity, or body modification.²⁶⁰

- ❖ The adoption of the Protocol for Access without Discrimination to the Provision of Medical Care Services for Lesbian, Gay, Bisexual, Transsexual, Transvestite, Transgender and Intersex Persons and Guidelines for Specific Care, which both address the particular requirements of the protection for different LGBTI groups in terms of their medical care.²⁶¹
- ❖ The creation by the Office of the Attorney General of a Strategy for Assistance to the Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) population.²⁶²
- ❖ The National Anti-Discrimination Council (CONAPRED) issued a resolution on social security addressing the right to obtain a widower's or widow's pension in same-sex marriages.²⁶³
- ❖ CONAPRED coordinated the studies *Living Conditions and Experiences of Discrimination of Trans Populations in Mexico* and the *Qualitative Study to Find out about the Living Conditions of Intersex Persons in Mexico* in order to focus diagnostic assessments on the subject matter.²⁶⁴
- ❖ The Secretariat of Health published on June 24, 2017, the Protocol for Access without Discrimination to Medical Care Services for Lesbian, Gay, Bisexual, Trans, and Intersex (LGBTI) Persons and 4 related care manuals.²⁶⁵
- ❖ The realization of outreach campaigns to counteract hate speech and expressions of hatred, as well as to position the values of human diversity and inclusion over discrimination.²⁶⁶
- ❖ CONAPRED and the National Human Rights Commission developed the Survey on Discrimination Based on Sexual Orientation and Gender Identity

²⁶⁰ IACHR, Annual Report 2017, Chapter V Follow-up on Recommendations Made by the IACHR in its Country and Thematic Reports. Second Follow-up Report to Recommendations Made by the IACHR in its Report on the Situation of Human Rights in Mexico, p. 836, para. 140.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid, p. 836, para. 141.

²⁶⁴ Ibid.

²⁶⁵ Ibid, p. 837, para. 142.

²⁶⁶ Ibid, p. 837, para. 143.

(ENDOSIG) to gather views, perceptions, and data on experiences of discrimination, exclusion, and violence faced by LGBTI persons in Mexico.²⁶⁷

EXAMPLE 3 GUATEMALA

A. Summary of the situation

In 2015, the IACHR published the report *Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion*, which addresses the situation of human rights in Guatemala and a number of structural challenges in access to justice and impunity, citizen security, marginalization, and discrimination, which have severely affected the human rights of its inhabitants.²⁶⁸

B. Recommendations of the IACHR

Concerning the situation of violence and insecurity:

Recommendation 4. Design preventive public policy based on the causes of violence and high levels of crime for the purpose of reducing crime substantially and ensure that Guatemalans can live in peace in a country free of violence.²⁶⁹

C. Follow-up measures

- ❖ The presentation, in April 2016, of the 2015-2035 Democratic Political Policy, which aims to reduce criminality and violence through reforms in four different areas: prevention, investigation, punishment, and reinsertion.²⁷⁰
- ❖ The establishment of several measures to prevent criminality, such as the implementation of the National Policy to Prevent Violence and Crime, Citizen Security, and Peaceful Cohabitation 2014-2034; the development of early warning and monitoring mechanisms for social conflicts; the passing of

²⁶⁷ IACHR, Press Release 87/18, "[IACHR Welcomes Mexico's Move to Develop a Survey on Discrimination Based on Sexual Orientation and Gender Identity](#)," April 23, 2018.

²⁶⁸ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc.43/15, December 31, 2015, p. 11, para. 1.

²⁶⁹ IACHR, *Annual Report 2016*, Chapter V Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Follow-up on the Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala, p. 775.

²⁷⁰ IACHR, *Annual Report 2016*, Chapter V Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Follow-up on the Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala, p. 777, para. 32.

amendments to laws and regulations to strengthen public ethics and judicial independence; the implementation of holistic and coordinated mechanisms of attention to victims with special attention to those who are part of particularly vulnerable groups; the implementation of public campaigns to promote a culture of peaceful cohabitation, as well as to reduce sexism, racism, and discrimination; the promotion of a culture of reporting acts of corruption, as well as the design of rapid-response mechanisms to prevent lynchings.²⁷¹

- ❖ The existence of 10 public policies that include prevention and the reduction of violence and insecurity among their objectives.²⁷²

227. To conclude this chapter, the IACHR wishes to note that the impact of its work through the various mechanisms for the promotion and protection of human rights in the public policy arena will be enriched by the guidelines presented in this report and the willingness expressed by Member States to receive technical assistance from this Commission in the formulation of their public policy and institutional strengthening.

²⁷¹ IACHR, Annual Report 2016, Chapter V Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Follow-up on the Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala, p. 777, para. 32.

²⁷² IACHR, Annual Report 2016, Chapter V Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports. Follow-up on the Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala, p. 777, para. 32.

CHAPTER 5
CONCLUSIONS

CONCLUSIONS

228. Since the launch of its operations, the Inter-American Commission on Human Rights, in the exercise of its mandate, has incorporated the monitoring and follow-up of public policy with a human rights approach in the States of the hemisphere in of its work to help them meet their international obligations in this area and comply with the mandate of preventing human rights violations.
229. Indeed, pursuant to the mandate established in Article 106 of the OAS Charter and Article 41 of the American Convention to provide technical assistance to the States and given the interest expressed by the Member States and social organizations, the IACHR is offering an instrument based on the standards of the Inter-American Human Rights System that will serve as a guide for State action and the work of this Commission going forward.
230. Based on the Commission's historical work on promotion and protection, the inter-American standards, the recommendations made within the framework of the different mechanisms of the IACHR, and the evolution of the international law of human rights, the Commission presents in this report an updated notion of public policy with a human rights approach.
231. The IACHR understands that "a public policy with a human rights approach is a series of decisions and actions that the state designs, implements, monitors, and evaluates—on the basis of an ongoing process of effective social inclusion, deliberation, and participation—for the purpose of protecting, promoting, respecting, and guaranteeing the human rights of all the persons, groups, and communities that comprise a society, under the principles of equality and nondiscrimination, universality, access to justice, accountability, transparency, and cross-cutting and intersectional perspectives".
232. Regarding this notion and the conceptual framework presented in this report, the Commission will guide its work in the area of public policy with a human rights approach, with the purpose of contributing with the States in a proactive manner to generate structural impacts in the prevention and non-repetition of human rights violations.
233. This initiative is based on the IACHR's conviction that, as instruments with the capacity to effect social change and impact human rights, public policy is the backbone and main objective of State action.

234. This report, therefore, attempts to provide an effective tool for those responsible for the planning, development, implementation, and monitoring or evaluation of public policy. Without pretending it is a perfect solution, the IACHR seeks to offer an instrument that can guide thinking throughout the different stages of a public policy cycle.
235. The IACHR is convinced of the importance of the role that the Inter-American System plays in mitigating the structural causes that spark, intensify, and fuel the violation of fundamental rights and situations of inequality. Thus, strengthening State institutions and promoting public policy with a human rights approach will make it possible to move forward with a prevention and social transformation agenda.
236. To this end, the IACHR is making available to the States, civil society and other organizations, and interested stakeholders this document, which examines the standards of the Inter-American System in terms of the policy-making process, promotes a conceptual framework that will improve State action and the work of the Commission in this regard, and describes the impact of this Commission's role on the promotion of public policy with a human rights approach.
237. Finally, the IACHR reiterates its willingness and availability to provide technical assistance to the States, regional social organizations, and other institutions to strengthen institutions and formulate, implement, and evaluate public policies aimed at enhancing and promoting respect for human rights in the Americas, based on the inter-American standards identified here and those related to the different areas subject to State intervention.