



The Right to Truth in the Americas

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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Introduction

1. Both the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” the “Commission” or the “IACHR”) and the Inter-American Court of Human Rights (hereinafter the “Inter-American Court” or the “Court”) have emphasized the intrinsic relationship between democracy, and the observance of and respect for human rights. Some thirty years ago, the Inter-American Commission wrote that an analysis of the human rights situation in the countries of the region “enables [it] to affirm that only by means of the effective exercise of [...] democracy can the observance of human rights be fully guaranteed.”

2. However, the history of the countries in this hemisphere is strewn with multiple and repeated breaks with the democratic and institutional order, non-international armed conflicts, civil wars and situations involving widespread violence that lingered for long periods of time and that in some cases continue to this day. Given the circumstances, mass and systematic violations of human rights have been frequent, as have serious violations of international humanitarian law (hereinafter “IHL”), committed by agents of the State, private parties operating with a State’s support, tolerance or acquiescence, and members of illegal armed groups.

3. The absence of complete, objective, and truthful information about what transpired during those periods has been a constant, a policy of the State and even a “tactic of war,” as in the case of the practice of forced disappearances. The Commission has noted: “[a] difficult problem that recent democracies have had to face has been the investigation of human rights violations under previous governments and the possibility of sanctions against those responsible for such violations.”

4. The right to the truth has emerged in response to States’ failure to clarify, investigate, prosecute and punish gross human rights and IHL violations. Through its efforts to combat impunity, the organs of the system have developed regional standards, which flesh out the right to the truth, and States and civil society have developed approaches and initiatives to implement them using a wide range of methods. Furthermore, the right to the truth is one of the pillars of the mechanisms of transitional justice.

5. In the present context, the IACHR has prepared this report in order to support the inter-American system’s efforts to disseminate the principles on the right to the truth by systematizing the applicable framework of laws and examining a number of experiences undertaken in the region. Likewise, this report will serve as a springboard for discussion with a view to consolidating and improving the States’ laws, policies and practices for addressing this issue. In addition, through this report the Commission is responding to the mandate that the OAS General Assembly entrusted to it in operative paragraph six of resolution AG/RES. 2175 (XXXVI-O/06) “Right to the truth.”

6. This report has four chapters. The introductory chapter puts into context the relationship between democracy, human rights and truth, the importance of the right to the truth and describes the method used to prepare the report. In the second chapter, the Commission will explain the applicable legal framework, i.e., the inter-American system's norms and principles concerning the right to the truth. In the third chapter, the Commission will examine some initiatives undertaken by the States of the region as well as civil society, from the perspective of the principles and norms described in the second chapter. Finally, in chapter four, the Commission will offer pertinent conclusions and recommendations.

II. Legal framework: The conceptualization of the right to the truth in the Inter-American Human Rights System

7. The right to the truth is not expressly recognized in the inter-American human rights instruments. Nevertheless, since their inception both the IACHR and the Inter-American Court have established the substance of the right to the truth and the obligations it creates for States, based on a comprehensive analysis of a group of rights recognized in the American Declaration on the Rights and Duties of Man (hereinafter the "American Declaration") and the American Convention on Human Rights (hereinafter the "American Convention" or the "ACHR").

A. Development of the right to the truth as a response to the phenomenon of forced disappearance

8. Within the inter-American system, the right to the truth was initially linked to the widespread phenomenon of forced disappearance. Both the Inter-American Commission and Court have established that forced disappearance is a permanent or continuous violation of multiple rights, such as the right to personal liberty, to humane treatment, to life, and to recognition as a person before the law. Thus, a victim's disappearance and execution begin with his/her deprivation of liberty and the subsequent failure to provide information as to his/her whereabouts; it continues so long as the disappeared person's whereabouts have not been established or his/her remains identified. In short, both bodies have maintained that the practice of forced disappearance involves a gross abandonment of the essential principles upon which the inter-American human rights system is based and its prohibition is now accepted as *jus cogens*.

9. Given its implications, the phenomenon of forced disappearance, which remains a serious problem in the Americas,¹ has been a matter of particular interest and concern for the Commission since its inception, given its mandate to monitor the human rights situation. Responding to this situation, both the IACHR and the Inter-American Court have established the obligations incumbent upon States in cases of forced disappearance, based on the inter-American human rights instruments. Central to these obligations is the duty to take all measures necessary

¹ See, *inter alia*, IACHR, *Hearing Forced disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=3>.

to investigate and, where appropriate, punish those responsible, and to make fair and adequate reparations to the victim's next of kin. States also have an obligation to establish the facts of what happened, locate the victims' whereabouts or their remains, and inform the next of kin to that effect.

10. States are also obligated to conduct, *ex officio*, an effective search to establish the whereabouts of forcibly disappeared victims, in order to establish the truth of what happened. The IACHR has underscored the right of the family of victims of forced disappearance to know the truth of what happened to their loved ones, and the State's obligation to provide a simple, rapid, and efficient recourse that enables it to comply with that obligation.

11. Thus, the right to the truth first manifested itself as a right pertaining to relatives of victims of forced disappearance. The State's obligation is to take all measures necessary to establish what happened and to locate and identify the victims. The Commission has taken into account that determining the final whereabouts of the disappeared victim eases the anguish and suffering of his/her family members caused by the uncertainty as to the fate of their disappeared relative. Furthermore, receiving the bodies of their deceased loved ones is extremely important to their next of kin, given that it allows them to bury the victim according to their beliefs, as well as bring some degree of closure to the mourning process they have been living through all these years. The Court has held, therefore, that denying access to the truth concerning the fate of a disappeared loved one is a form of cruel and inhuman treatment to immediate family members, which explains the connection between a violation of the right to humane treatment and a violation of the right to know the truth.

B. Consolidation and content of the right to the truth in the inter-American system

12. The legal precedents of the IACHR and the Court, as explained in Chapter 2, supported by various reports and instruments developed by the United Nations (hereinafter the "UN"),² have established that the right to the truth is a guarantee recognized in both the American Declaration and the American Convention.

² UN, *Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth*, E/CN.4/2006/91, January 9, 2006, para. 8. In the case of extrajudicial executions, see, *inter alia*, Principle 9 of the "*Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*", adopted by the Economic and Social Council in resolution 1989/65 of May 24, 1989, which states the following: "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death." When enumerating the purposes of the inquiry, the "*United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*", adopted in 1991, states the following: "[a]s set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim."

13. In this regard, the Commission and the Court have held that the right to the truth is directly connected to the rights to judicial guarantees and judicial protection, set forth in Articles XVIII and XXIV of the American Declaration, and Articles 8 and 25 of the American Convention. Likewise, in some cases the right to the truth is connected to the right of access to information, protected under Article IV of the American Declaration and Article 13 of American Convention.

14. Under those articles, the right to the truth has two dimensions. The first dimension is the right of the victims and their family members to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in the violations. This means that the right to the truth creates an obligation upon States to clarify and investigate the facts, prosecute and punish those responsible for cases of serious human rights violations, and, depending on the circumstances of each case, to guarantee access to the information available in State facilities and files concerning serious human rights violations.

15. Secondly, a principle has been established to the effect that the holders of this right are not just the victims and their family members, but also society as a whole. The Commission has maintained that greater society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent recurrence of such acts in the future.

16. In the instant report, the Commission examines the general principles pertaining to the right to the truth as interpreted by the organs of the inter-American system in keeping with the provisions of the aforementioned inter-American human rights instruments.

1. Right to a fair trial and judicial protection

17. The case law of the Inter-American Court sets forth that the right to the truth is regarded as a fundamental element of the right to a fair trial and judicial protection. The Commission, for its part, has written that the “right to the truth” is a basic and essential obligation of States Parties to the American Convention under Article 1(1) thereof, since a State’s disregard of acts involving human rights violations means that, in practice, no protection system is in place to ensure that those responsible will be identified and, when appropriate, punished.

18. Thus, the right to the truth has been interpreted as a just expectation that a State must satisfy with respect to victims of human rights violations and their next of kin. Therefore, the purpose of fully ensuring the rights to judicial guarantees and judicial protection is to combat impunity, understood as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violating the rights protected by the American

Convention.”³ Otherwise, the State’s lack of due diligence “fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”⁴ Hence, victims of human rights violations or their relatives have the right to expect that everything necessary will be done to ascertain the truth of what happened through an effective investigation of the facts, prosecution of those responsible for the crimes, imposition of the appropriate punishments, and reparation of any damages and injuries that the relatives may have sustained.

19. The bodies of the system have also emphasized that the right to know the truth about what happened is not confined to the victims and their next of kin but also society as a whole. In the same vein, the Court has held that, in a democratic society, this right is a just expectation that the State must satisfy through performance of its obligation to investigate, on its own initiative, gross human rights violations and through public dissemination of the results of criminal prosecutions and investigations.

20. The Court has also pointed out that satisfaction of the collective dimension of the right to the truth requires a procedural examination of the most complete historical record possible, and a judicial determination as to the patterns of joint action and the identity of all those who, in one way or another, participated in the violations and their respective responsibility. Fulfillment of these obligations is necessary to guarantee a full reconstruction of the truth and a thorough investigation of the structures in which the human rights violations took place.

21. In view of the foregoing, the Commission stresses that no State measure adopted in the area of justice can mean that a human rights violation will go uninvestigated. The Court, too, has made the point that where grave human rights violations have been committed, the obligation to investigate cannot be ignored or made conditional on domestic legal acts or provisions of any kind. Accordingly, the instant report outlines the inter-American standards on the subject of amnesty laws and jurisdiction of military courts.

³ See, *inter alia*, I/A Court H.R., *Case of Ivcher Bronstein V. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 211. Also see: UN, Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN, E/CN.4/2005/102/Add.1, February 8, 2005.

⁴ See, *inter alia*, I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, para. 173; I/A Court H.R., *Case of Blake*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 64; *Case of Loayza Tamayo*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 170; *Case of Carpio Nicolle et al. v. Guatemala*. Judgment of November 22, 2004. Series C No. 117, para. 126.

a. Incompatibility of amnesty laws in cases of serious human rights violations

22. The Commission has held that the right to the truth cannot be curtailed by, *inter alia*, legislative measures such as amnesty laws. The IACHR has consistently maintained that the enforcement of amnesty laws that restrict access to justice in cases of serious human rights violations has two adverse effects. First, it renders ineffective the States' obligation to respect and observe the rights and freedoms recognized in the American Declaration and the American Convention and their obligation to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction, without any form of discrimination, as required under Article 1(1) of the ACHR. Second, it hampers access to information concerning the facts and circumstances surrounding the violation of a fundamental right,⁵ eliminates the most effective means of ensuring the exercise of human rights –i.e., the prosecution and punishment of those responsible– and prevents the exercise of the legal remedies available under domestic law.⁶

b. Incompatibility and illegitimacy of the military criminal justice system in cases of human rights violations

23. The military criminal justice system has been another means used to limit access to justice in the case of victims of human rights violations and their next of kin and to restrict their right to know the truth. Here, the organs of the inter-American human rights system have repeatedly and consistently held that military courts may not exercise jurisdiction to investigate and punish cases of human rights violations.⁷ The IACHR notes that military jurisdiction should apply only in the case of violations of military criminal law alleged to have been committed by members of

⁵ Cf. IACHR, Report No. 1/99, Case 10,480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 150; Report No. 136/99, Case 10,488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López Y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 225.

⁶ See, *inter alia*, IACHR, Report No. 36/96, Case 10,843, Héctor Marcial Garay Hermosilla et al., Chile, October 15, 1996, para. 78; Report No. 34/96, Case 11,228, Case 11,229, Case 11,231, Case 11,282, Juan Meneses, Ricardo Lagos Salinas, Juan Alsina Hurtos, Pedro Vergara Inostrozo, October 15, 1996, para. 76; Report No. 28/92, Cases 10,147, 10,181, 10,240, 10,262, 10,309 and 10,311, Argentina, October 2, 1992, para. 41; Report No. 29/92, Cases 10,029, 10,036 and 10,145, Uruguay, October 2, 1992, para. 51 *Annual Report of the Inter-American Commission on Human Rights 1997*, OEA/Ser.L/V/II.98, Doc. 6 rev, April 13, 1998; Report No.136/99, Case 10,488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 200; Report No. 25/98, Cases 11,505, 11,532, 11,541, 11,546, 11,549, 11,569, 11,572, 11,573,11,583, 11,585, 11,595, 11,652, 11,657, 11,675 and 11,705, Chile, April 7, 1998, para. 42.

⁷ See, *inter alia*, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999; I/A Court H.R., *Case of 19 Merchants v. Colombia*. Judgment of July 5, 2004. Series C No. 109; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140; *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248.

the military during the performance of specific duties related to the defense and external security of a State.

2. Right of access to information and the obligation to declassify documents

24. In transitional contexts, the rights to freedom of expression and access to information are of heightened importance. The Commission has held that States have an obligation to guarantee that victims and their family members have access to information concerning the circumstances surrounding serious human rights violations. The Commission has held that States have an obligation to guarantee that victims and their family members have access to information concerning the circumstances surrounding serious human rights violations. Both the Commission and the Court have emphasized that the right to be informed of events and have access to information is a right enjoyed by society in general as it is essential to the development of democratic systems.

25. The obligation of access to information in cases of serious human rights violations generates a set of affirmative obligations.⁸ First, as to the relevant legal framework, the organs of the inter-American system have held that, in imposing a limitation, the State has an obligation to set out, in a formal and material law, written in clear and precise language, the reasons for restricting access to certain information.

26. Second, the State should provide for a simple, prompt and effective judicial remedy, which in the event that a public authority denies information, determines whether an infringement of the right to information of the applicant took place and, if so, orders the appropriate institution to provide the information. Third, the Court has established that State officials have an obligation to help compile the evidence so that the objectives of an investigation can be achieved; they also must refrain from engaging in acts that obstruct the investigative process.⁹

27. Fourth, the Commission has also pointed out that State efforts to ensure access to information must include the opening of archives so that the institutions investigating an event can conduct direct inspections; searches of official installations and inventories; advancing search operations that include searches of the places where the information could be; and holding hearings and questioning those who could know where the information is or those who could reconstruct what occurred, and other measures.

⁸ IACHR, Report of Special Rapporteur for Freedom of Expression. *Access to information on human rights violations. The right of victims of human rights violation to access information in state archives on such violations*. Available at: http://www.oas.org/es/cidh/expresion/temas/acceso_informacion.asp.

⁹ See, *inter alia*, I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 112; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 171; *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 194.

28. Finally, the right of access to information imposes on States the duty to preserve and facilitate access to State archives when they exist, and to create and preserve them when they have not been compiled or organized as such. In the event of gross violations of human rights, the information these archives can bring together has an undeniable value and is indispensable not only for pushing investigations forward but also for preventing these aberrant actions from being repeated.¹⁰

C. Right to the truth as a measure of reparation

29. Because it is an obligation of States that emanates from the guarantees of justice, the right to the truth is another form of reparation in cases of human rights violations. In fact, acknowledgement of the facts is important, because it constitutes a form of recognizing the significance and value of persons as individuals, as victims and as holders of rights.¹¹ Furthermore, knowledge of the circumstances of manner, time and place, motives and the identification of the perpetrators are fundamental to making full reparations to victims of human rights violations.

D. Importance of the Truth Commissions for the inter-American system

30. Truth Commissions (hereinafter “TC”) are “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years.”¹² Both the Commission and the Court have placed emphasis on the importance of TC as non-judicial mechanisms of transitional justice whose purpose is to shed light on situations involving systematic human rights violations on a mass scale. On numerous occasions, both bodies have used information contained in the TC final reports as a source of information and as evidence in cases under consideration in the case and petition system.

31. The IACHR has repeatedly stressed its support for initiatives to investigate and shed light on situations involving systematic violations of human rights. The Commission has, therefore, applauded the creation of TC in the region and stressed their importance as a means to guarantee the right to the truth in both the individual and collective sense.

¹⁰ IACHR, Report of Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*, OEA/Ser.L/V/II, IACHR/RELE/INF. 1/09, December 30, 2009, para. 77.

¹¹ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, A/HRC/21/46, August 9, 2012, para. 30.

¹² UN, Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, February 8, 2005. See, also, ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013, p. 13. Available at: <http://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>.

32. Along this same line of thinking, the Inter-American Court has written that the creation of a TC is one of a number of important mechanisms that enable a State to fulfill its obligation to guarantee the right to know the truth of what happened. In effect, the Court has maintained that, depending on the object, procedure, structure, and purpose of their mandate, those Commissions may contribute to the construction and preservation of the historical memory, the elucidation of the facts, and the determination of institutional, social, and political responsibilities during specific historical periods of a society.

III. National experiences. States' initiatives to meet obligations emanating from the right to the truth

A. Judicial mechanisms

33. As is explained in this report, the organs of the Inter-American human rights system have established that the guarantee of the right to the truth as a corollary of the right to a fair trial, judicial protection and, depending on the particular circumstances of each case, the right to freedom of expression, requires the judiciary to investigate and shed light on human rights violations and overcome legal or *de facto* obstacles standing in the way of prosecuting those responsible.¹³ In that context, some countries of the region have taken significant steps in prosecuting cases of serious human rights and IHL violations and, in many instances, the instituting or re-instituting of judicial proceedings has been a direct consequence of decisions and positions of the organs of the Inter-American human rights system through friendly settlements, country reports or IACHR case decisions and Inter-American Court judgments.

B. Truth Commissions

34. In conjunction with judicial proceedings, TC contribute to moving forward in the joint effort to flesh out the truth about human rights violations in light of the historic, social and political context. At the same time, the work of TC is one way to recognize and dignify victims' experiences; and a fundamental source of information for instituting and continuing with judicial proceedings, as well as for public policy-making and mechanism-building aimed at providing adequate reparation to victims. In this regard, it has been noted that successful truth commissions have made contributions such as recognizing the victims as equal rights holders, giving them a voice and empowering them; fostering general social integration; and providing important information for the other measures of transitional justice.¹⁴ Moreover, the Court has held that even though these

¹³ In this same vein, in the UN framework, it has been established that "many communications stress the vital role of criminal proceedings in upholding the right to the truth." UN, Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights. The right to the truth*, A/HRC/5/7, June 7, 2007, para. 89.

¹⁴ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 24.

commissions do not replace the State's obligation to establish the truth through judicial proceedings, they involve determinations of the truth that complement each other, because each has its own meaning and scope, as well as particular potentials and constraints that depend on the context in which they arise and the specific cases and circumstances they analyze.¹⁵

C. Importance of other complementary initiatives

35. In view of the high degree of complexity of the phenomena of mass and systematic human rights violations, other initiatives have greatly aided States' efforts in guaranteeing the right to the truth in the broadest sense. These initiatives have contributed to shedding light on human rights violations and officially recognizing them as a measure of reparation for the victims and their next of kin, of commemoration and remembrance for society in general. Even though this report mainly focuses on examining States' efforts, the Commission also discusses the crucial role that has been played by the victims, their representatives and civil society organizations in seeking, contributing to, designing and implementing and engaging in a wide range of initiatives aimed at upholding and demanding respect for the right to the truth.

36. The tireless efforts of the victims, their family members, human rights defenders, and civil society organizations, who have demanded and continue to demand truth, justice and reparation in cases of human rights violations, must be highlighted. In addition to efforts to conduct and support investigations into these acts, the victims and their representatives, human rights defenders and civil society organizations have played a crucial role in pushing forward and supporting the necessary reform of laws, policies and practices to overcome obstacles to the right to the truth. While this examination is not held up as exhaustive, the report does spotlight examples of creative initiative and engaging a variety of segments of the population, which reflect the enforcement of human rights standards in the quest for the truth and justice.

37. Additionally, there have been initiatives in the region aimed at public reflection and keeping the memory alive of the mass and systematic human rights violations of the past, as well as dignification of the victims. These efforts include senior government officials publically recognizing guilt and apologizing for gross human rights violations, erecting museums, memorials, archives and monuments with a view to remembering and commemorating these violations.

IV. Conclusions and Recommendations

38. The States of the Americas have been pioneers in the adoption of different mechanisms to tackle situations involving grave, mass and systematic human rights violations. However, determined measures are still needed to resolve

¹⁵ Cf. IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment July 4, 2007. Series C No. 166, para. 128; *Case of Gudiel Álvarez (Diario Militar) v. Guatemala*. Merits, Reparations and Costs. Judgment November 20, 2012 Series C No. 253, para. 298.

those situations, and create the mechanisms required to fully redress victims and strengthen the rule of law. In order to accomplish those objectives, the kinds of legal and *de facto* obstacles mentioned throughout this report must be removed. Accordingly, the IACHR reaffirms its commitment to cooperating with the States in seeking solutions to the problems identified herein.

39. Based on the content of this report, the IACHR is recommending that the States:

1. Redouble efforts to guarantee the right to the truth in cases of grave violations of human rights and 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 compliance with their international obligations and adopt laws that guarantee the right to the truth.
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 Commission 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.
3. Eliminate all the legal and *de facto* obstacles that obstruct the institution and/or pursuit of judicial proceedings concerning serious human rights violations, including any amnesty laws which have been adopted and remain on the books.
4. Eliminate the use of the military criminal justice system for cases involving human rights violations.
5. Take the measures necessary to ensure the collaboration of all State institutions in declassifying and providing information in the judicial or non-judicial investigative proceedings in progress or those instituted in the future. In the case of serious violations of human rights or IHL in transnational or regional contexts, States must make all possible efforts to cooperate in providing official information to other States seeking to investigate, prosecute and punish those violations.
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.

7. Continue events to memorialize the victims, make apologies, and acknowledge responsibility for the commission of human rights violations.
8. Systematize the efforts undertaken to guarantee the truth and implement broad campaigns to publicize them and make the results achieved public.
9. Adopt the measures necessary to classify, systematize, preserve and make available historical archives concerning serious violations of human rights and IHL.

CHAPTER I INTRODUCTION

A. Relationship between democracy, human rights and truth

40. The organs of the inter-American human rights system have emphasized the intrinsic relationship that exists between democracy, and the observance of and respect for human rights. Some thirty years ago, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” the “Commission” or the “IACHR”) wrote that an analysis of the human rights situation in the countries of the region “enables [it] to affirm that only by means of the effective exercise of [...] democracy can the observance of human rights be fully guaranteed.”¹⁶

41. Representative democracy is the form of political organization that the member States of the Organization of American States (hereinafter the “OAS”) have explicitly adopted. In its principles, the OAS Charter provides that “[t]he solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy.”¹⁷ Furthermore, “representative democracy is an indispensable condition for the stability, peace and development of the region.”¹⁸ The countries of the American hemisphere later recommitted themselves to democratic government by adopting the Inter-American Democratic Charter,¹⁹ which provides that “the peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”²⁰ That legal instrument reflects the efforts to promote and strengthen democracy and the mechanisms implemented to prevent and respond to situations that affect the evolution of the democratic political institutional process.

42. The Inter-American Democratic Charter reaffirms that “the promotion and protection of human rights is a basic prerequisite for the existence of a democratic society”²¹ and stipulates the following:

[e]ssential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to

¹⁶ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, Chapter V.

¹⁷ Charter of the Organization of American States, signed in Bogotá in 1948, and amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993, Article 3, paragraph d).

¹⁸ Charter of the Organization of American States, Preamble.

¹⁹ Inter-American Democratic Charter, approved September 11, 2001, during the Twenty-eighth Special Session of the General Assembly of the Organization of American States, held in Lima, Peru.

²⁰ Inter-American Democratic Charter, Article 1.

²¹ Inter-American Democratic Charter, Preamble.

and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.²²

43. However, the history of countries in this hemisphere is strewn with multiple and repeated breaks with the democratic and institutional order, non-international armed conflicts, civil wars and situations involving widespread violence that lingered for long periods of time and that in some cases continue to this day. Given the circumstances, massive and systematic violations of human rights have been frequent, as have serious violations of international humanitarian law (hereinafter “IHL”), committed by agents of the State, private parties operating with a State’s support, tolerance or acquiescence, and members of illegal armed groups.

44. The absence of complete, objective and truthful information about what transpired during those periods has been a constant, a policy of the State and even a “tactic of war,” as in the case of the practice of forced disappearances. The Commission has observed that “[a] difficult problem that recent democracies have had to face has been the investigation of human rights violations under previous governments and the possibility of sanctions against those responsible for such violations.”²³

45. Given the situation, the OAS member States have recognized the importance of respecting and guaranteeing the right to the truth, i.e.:

the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families and society as a whole, to know the truth regarding such violations to the fullest extent practicable, in particular the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred.²⁴

²² Inter-American Democratic Charter, Article 3.

²³ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, September 26, 1986, Chapter V.

²⁴ OAS, General Assembly, Resolution AG/RES. 2175 (XXXVI-O/06) “Right to the Truth”. For its part, the Study on the right to the truth prepared by the Office of the United Nations High Commissioner for Human Rights states that: “The right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. This right is closely linked with other rights and has both an individual and a societal dimension and should be considered as a non-derogable right and not be subject to limitations.” UN, Commission on Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth*, E/CN.4/2006/91, January 9, 2006.

46. The OAS General Assembly, too, has underscored the need for the States to provide effective mechanisms for all society and, in particular, for the victims' family members to know the truth regarding manifest violations of human rights and international humanitarian law,²⁵ by adopting suitable measures to identify victims, especially in cases of serious or systematic human rights violations.²⁶

B. The importance of the right to the truth

47. The right to the truth has emerged in response to the States' failure to clarify, investigate, prosecute and punish serious violations of human rights and of IHL. This failure has been examined both by the IACHR and by the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or the "Court"), and by various organs of other international systems for the protection of human rights.²⁷

48. Furthermore, the right to the truth is one of the pillars of the mechanisms of transitional justice, defined as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."²⁸ In transitional contexts in particular, reaching at a complete,

²⁵ OAS, General Assembly, Resolution AG/RES. 2175 (XXXVI-O/06) "Right to the Truth." Similarly, in 2009, the Human Rights Council approved resolution 12/12 on "Right to the Truth". In that resolution, the Council recognized "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights." Accordingly, it urged the "States to consider establishing specific judicial mechanisms and, where appropriate, truth and reconciliation commissions to complement the justice system, in order to investigate and address gross violations of human rights and serious violations of international humanitarian law."

²⁶ Resolution AG/RES. 2406 (XXXVIII-O/08) – "Right to the truth."

²⁷ See, *inter alia*, ECHR, *Case of Kurt v. Turkey* (Application No. 15/1997/799/1002), May 25, 1998, para. 175; *Case of Çiçek v Turkey*, (Application No. 25704/94), February 27, 2001, para. 205; *Case of Bazorkina v Russia*, (Application No. 69481/01), July 27, 2006, para. 121; *Case of Baysayeva v Russia*, (Application No. 74237/01), April 5, 2007, para. 127; *Affaire Association « 21 December 1989 »- et autres c. Roumanie*, (Requêtes No. 33810/07 et 18817/08), May 24, 2011, paras. 144, 145, 194; *Case of El-Masri v. The Former Yugoslav Republic of Macedonia* (Application No. 39630/09), December 13, 2012, paras 191-194, 255-257, and 264. See, also: African Commission on Human and Peoples' Rights, Communication 48/90-50/91-52/91-89/93, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*, November 15, 1999, para. 50; African Commission on Human and Peoples' Rights, Resolution ACHPR/Res.111 (XXXII) 07 "Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence", November 28, 2007; "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa", October 4, 2011. In addition, see: UN, Commission on Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth*, E/CN.4/2006/91, January 9, 2006.

²⁸ Cf. UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, A/HRC/21/46, August 9, 2012, para. 20, citing from the Report of the United Nations Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, August 3, 2004. Within the United Nations system, the parameters for analyzing the mechanisms of transitional justice come from the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (UN, E/CN.4/2005/102/Add.1, February 8, 2005.

Available at: <http://daccess-dds->

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factual and impartial truth -reconstructed, shared and legitimized by society- is a fundamental factor in restoring citizens' confidence in the institutions of the State.

49. It has been written that truth, justice, reparations and guarantees of non-recurrence serve the pursuit of two intermediate or medium-term goals (recognizing victims and fostering trust) and two final goals (contributing to reconciliation and strengthening the rule of law).²⁹ Although these pillars are mutually complementary, each has its own content and scope. Hence, truth is no substitute for justice, reparations or guarantees of non-recurrence.³⁰

C. Objective, method and structure of the present report

50. In the present context, the purpose of this report is to support the inter-American system's efforts to disseminate the principles on the right to the truth by systematizing the applicable framework of laws and examining a number of experiences undertaken in the region. Likewise, this report will serve as a springboard for discussion with a view to consolidating and improving the States' laws, policies and practices for addressing this issue. In addition, through this report the Commission is responding to the mandate that the OAS General Assembly entrusted to it in operative paragraph six of resolution AG/RES. 2175 (XXXVI-O/06) "Right to the truth."³¹

51. This report is the product of the information that the Commission has analyzed concerning the evolution of the right to the truth in the Americas. To do this, the IACHR has drawn on information provided by the States and civil society in the public hearings held by the Commission and other international mechanisms that monitor human rights, the cases and petitions filed with the inter-American human rights system, and the country and thematic reports prepared by the Commission. Likewise, to identify principles in this area the Commission has also

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[ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement](http://www.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement)); the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UN, General Assembly, Resolution 60/147, December 16, 2005. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/147); and resolutions 12/11 and 12/12 of the Human Rights Council on *Human Rights and transitional justice and Right to the truth* (UN, Human Rights Council, Resolution 12/11 *Human rights and transitional justice*, October 1, 2009; Resolution 12/12, *Right to the truth*, October 1, 2009. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/A-65-53.pdf>).

²⁹ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, A/HRC/21/46, August 9, 2012, para. 21.

³⁰ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff, A/HRC/21/46, August 9, 2012, para. 26.

³¹ See, also, Resolution AG/RES. 2267 (XXXVII-O/07)- "Right to the truth;" Resolution AG/RES. 2406 (XXXVIII-O/08) – "Right to the truth"; Resolution AG/RES. 2509 (XXXIX-O/09) - "Right to the truth;" Resolution AG/RES. 2595 (XL-O/10) – "Right to the truth"; Resolution AG/RES. 2662 (XLI-O/11) – "Right to the truth"; Resolution AG/RES. 2725 (XLII-O/12) – "Right to the truth"; Resolution AG/RES. 2800 (XLIII-O/13) – "Right to the truth."

used international decisions and recommendations by specialized international organizations.

52. This report has four chapters. This introductory chapter examines the relationship between democracy, human rights and truth, and the importance of the right to the truth. It also describes the method used to prepare the report. In the second chapter, the Commission will explain the applicable legal framework, i.e., the inter-American system's norms and principles concerning the right to the truth. In the third chapter, the Commission will examine some initiatives undertaken by the States of the region, from the perspective of the principles and norms described in the second chapter. Finally, in chapter four, the Commission will offer pertinent conclusions and recommendations.

CHAPTER II
LEGAL FRAMEWORK: THE
CONCEPTUALIZATION OF THE
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53. The right to the truth is not expressly recognized in the inter-American human rights instruments. Nevertheless, since their inception both the IACHR and the Inter-American Court have established the substance of the right to the truth and the obligations it creates for the States, based on a comprehensive analysis of a series of rights recognized in the American Declaration on the Rights and Duties of Man (hereinafter the “American Declaration”) and the American Convention on Human Rights (hereinafter the “American Convention” or the “ACHR”).

54. Accordingly, in this chapter the IACHR will examine (i) the development of the right to the truth as a response to the phenomenon of forced disappearance; (ii) consolidation of the right to the truth within the inter-American system; (iii) the right to the truth as a measure of reparation; and (iv) the importance of truth commissions in the inter-American system.

A. Development of the right to the truth as a response to the phenomenon of forced disappearance

55. The right to the truth can be traced to IHL, when it was established that States have an obligation to take all practicable measures to account for missing persons in both international and non-international armed conflicts.³² IHL also established the right of family members to know the fate of the victims in such conflicts.³³

56. Within the inter-American system, the right to the truth was initially linked to the phenomenon of forced disappearance. Both the Commission and the Inter-American Court have established that forced disappearance is a permanent or continuous violation of multiple rights, such as the right to personal liberty, to humane treatment, to life and to recognition as a person before the law.³⁴ Thus, a victim’s disappearance and execution begin with his/her deprivation of liberty and the subsequent failure to provide information as to his/her whereabouts; it continues so long as the disappeared person’s whereabouts have

³² ICRC, Henckaerts, Jean-Marie and Doswald-Beck, Louis, *Customary International Humanitarian Law*, 2007, Rule 117.

³³ Protocol Additional to the Geneva Conventions of 1949, Article 32. See, also, UN, Commission on Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth*, E/CN.4/2006/91, January 9, 2006; IACHR, *Annual Report of the Inter-American Commission on Human Rights 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, Chapter V.

³⁴ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras 155-157; *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 112.

not been established or his/her remains identified.³⁵ In short, both the Commission and the Court have maintained that the practice of forced disappearance involves a gross abandonment of the essential principles upon which the inter-American human rights system is based³⁶ and its prohibition is now accepted as *jus cogens*.³⁷

57. Given its implications, the phenomenon of forced disappearance,³⁸ which remains a serious problem in the Americas,³⁹ has been a matter of particular interest and concern for the Commission since its inception, given its mandate to monitor the human rights situation.⁴⁰ As far back as its 1977 Annual Report, the Commission underlined the seriousness of the phenomenon of forced disappearance in the region and described it as follows:

[t]here are numerous cases wherein the government systematically denies the detention of individuals, despite the convincing evidence that the claimants provide to verify their allegations that such persons have been detained by police or military authorities and, in some cases, that those persons are, or have been, confined in specified detention centers.

This procedure is cruel and inhuman. As experience shows, a “disappearance” not only constitutes an arbitrary deprivation of freedom but also a serious danger to the personal integrity and safety and to even the very life of the victim. It is, moreover, a true form of torture for the victims’ family and friends because of the uncertainty that they experience as to the fate of the victim and because they feel powerless to provide legal, moral and material assistance.

³⁵ See, *inter alia*, I/A Court H.R., *Case of Gudiel Álvarez (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012 Series C No. 253, para. 191.

³⁶ See, *inter alia*, I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 114.

³⁷ See, *inter alia*, I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 84.

³⁸ See, *inter alia*, OEA AG/RES. 443 (IX-0/79) of October 31, 1979; AG/RES 510 (X-0/80) of November 27, 1980; AG/RES. 618 (XII-0/82) of November 20, 1982; AG/RES. 666 (XIII-0/83) of November 18, 1983; AG/RES. 742 (XIV-0/84) of November 17, 1984 and AG/RES. 890 (XVII-0/87) of November 14, 1987.

³⁹ See, *inter alia*, IACHR, *Hearing: Forced Disappearances in the Americas*, March 16, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=131&page=3>.

⁴⁰ See, *inter alia*, IACHR, *Annual Report of the Inter-American Commission on Human Rights 1978*, OEA/Ser.L/V/II.47, doc. 13 rev.1, June 29, 1979, pp. 22-24; *Annual Report of the Inter-American Commission on Human Rights 1980-1981*, OEA/Ser.L/V/II.54, doc.9 rev.1, October 16, 1981, pp. 113-114; *Annual Report of the Inter-American Commission on Human Rights 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8, rev. 1, September 26, 1986, pp. 40-42; *Annual Report of the Inter-American Commission on Human Rights 1986-1987*, OEA/Ser.L/V/II.71, Doc. 9 rev. 1, September 22, 1987, pp. 299-306; *Report on the Situation of Human Rights in Argentina*, OEA/Ser.L/V/II.49, doc. 19, April 11, 1980; *Report on the Situation of Human Rights in Chile*, OEA/Ser.L/V/II.66, doc. 17, May 8, 1990; and *Third Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.66, doc. 16, October 3, 1985.

Further, it is a demonstration of the government's inability to maintain public order and State security by legally authorized means, and of its defiant attitude toward national and international agencies engaged in the protection of human rights.⁴¹

58. Given this situation, the Commission emphasized that States have an obligation to adopt various measures, such as the following:

ascertaining and communicating in a timely manner with the family members on the situation of the disappeared. It is necessary to establish beyond any doubt whether these persons are still alive or are dead; if they are alive, it is necessary to know where they are; if they are dead, it is necessary to know where, when and under what circumstances they lost their lives and where their remains are buried.⁴²

59. The Court, for its part, has repeatedly observed that the systematic practice of forced disappearance presupposes a disregard for a State's duty to organize its apparatus so that it can safeguard the rights recognized in the ACHR, and perpetuates the impunity that enables these types of violations to recur.⁴³

60. Responding to this situation, both the IACHR and the Inter-American Court have established the obligations incumbent upon States in cases of forced disappearance, based on the inter-American human rights instruments. Central to these obligations is the duty to take all measures necessary to investigate and, where appropriate, punish those responsible, and to make fair and adequate reparations to the victim's next of kin. States also have an obligation to establish the facts of what happened, locate the victims' whereabouts or their remains, and inform the next of kin to that effect.⁴⁴ The Commission will now examine the obligations incumbent upon States in cases of forced disappearance, with an analysis of the rights to judicial guarantees and judicial protection and their nexus to the right to the truth.

⁴¹ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1977*, OEA/Ser.L/V/II.43, Doc. 21 corr. 1, April 20, 1978, Part, II, Areas in which further steps are needed to give effect to the human rights set forth in the American Declaration of the Rights and Duties of Man.

⁴² IACHR, *Report on the Situation of Human Rights in Argentina*, OEA/Ser.L/V/II.49, doc. 19, April 11, 1980, Chapter III, F.e., para. 11.

⁴³ See, *inter alia*, I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 89; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 126.

⁴⁴ See, *inter alia*, I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 89; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 126; *Case of Gudiel Álvarez ("Diario Militar") v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 231.

1. The obligation to investigate and punish those responsible

61. With respect to the principles governing the investigation of cases of forced disappearance,⁴⁵ the Court has determined that an investigation must be undertaken whenever there is reasonable cause to suspect that a person has been the victim of a forced disappearance.⁴⁶ This obligation exists regardless of whether a complaint has been filed, since, in cases of forced disappearance, international law and the general duty to guarantee protected rights impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial, and effective manner.⁴⁷ This is a fundamental and essential element for the protection of certain rights affected by these situations, such as the right to personal liberty, the right to humane treatment, the right to life, and the right to recognition as a person before the law. In any case, any state authority, public official or private party who has learned of acts perpetrated to effect a forced disappearance must report it immediately.⁴⁸

62. Similarly, the Court has emphasized that swift and immediate action on the part of prosecutorial and judicial authorities is imperative. Such authorities must order the immediate measures necessary to determine the whereabouts of the victim or the place where he/she may be deprived of his/her liberty.⁴⁹ The legal rights at stake in the investigation call for a redoubling of the effort that goes into achieving the investigation's objective, since the passage of time has a directly proportionate relationship to the constraints on –and, in some cases,

⁴⁵ See, *inter alia*, I/A Court H.R., *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 181; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 256, *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010 Series C No. 217, para. 237; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 285.

⁴⁶ See, *inter alia*, I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 143; *Case of Ibsen Cárdenas e Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 65; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 108.

⁴⁷ See, *inter alia*, I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010 Series C No. 217, para. 65; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 108.

⁴⁸ See, *inter alia*, I/A Court H.R., *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 65; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 65; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 186.

⁴⁹ See, *inter alia*, I/A Court H.R., *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 134; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 218.

the impossibility of- obtaining evidence and/or testimonies, thereby complicating and even rendering ineffective or useless the probative measures undertaken to shed light on the facts under investigation, identify the possible authors and their accomplices, and determine the eventual criminal responsibility.⁵⁰

63. Further, forced disappearance is a grave human rights violation⁵¹ that is continuous or permanent in nature -with effects that endure until the fate or whereabouts of the victims and their identity have been determined-; hence, the obligations of the State continue until fully discharged.⁵² As will be discussed at length below, States must refrain from resorting to mechanisms such as amnesties for perpetrators, or any other similar provision such as the illegitimate application of prescription, non-retroactivity of criminal law, *res judicata*, *ne bis in idem*, use of the military criminal justice system, or any other means to avoid its responsibility.⁵³

2. Obligation to establish the truth of what happened

64. States are also obligated to conduct, *ex officio*, an effective search to establish the whereabouts of forcibly disappeared victims, in order to establish the truth of what happened.⁵⁴ The IACHR has underscored the right of the family of victims of forced disappearance to know the truth of what happened to their loved ones, and the State's obligation to provide a simple, rapid and efficient recourse that enables it to comply with that obligation.⁵⁵

65. In one of its first judgments, delivered in the *Case of Velásquez Rodríguez v. Honduras* -which involved a forced disappearance-, the Inter-American Court affirmed that relatives of a victim have a right to know the victim's fate and, if the victim was killed, the location of his/her remains. That right is couched in terms of the right of access to justice and the obligation to investigate as a form of

⁵⁰ See, *inter alia*, I/A Court H.R., *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, para. 150; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 218.

⁵¹ See, *inter alia*, I/A Court H.R., *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 257; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 225.

⁵² I/A Court H.R., *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 185.

⁵³ I/A Court H.R., *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 185.

⁵⁴ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 181; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 209.

⁵⁵ Cf. IACHR, Report No. 10/95, Case 10.580, Manuel Stalin Bolaños, Ecuador, September 12, 1995, para. 45.

reparation in order to ascertain the truth in a given case.⁵⁶ The Commission, for its part, has emphasized that the American Convention protects the right to obtain and receive information, especially in cases of disappeared persons, whose whereabouts the State is obligated to determine.⁵⁷

66. Thus, the right to the truth first manifested itself as a right pertaining to relatives of victims of forced disappearance. The State's obligation is to take all measures necessary to establish what happened and to locate and identify the victims. The Court has taken into account that determining the final whereabouts of the disappeared victim eases the anguish and suffering that the uncertainty as to the fate of their disappeared relative causes to family members.⁵⁸ Furthermore, receiving the bodies of their deceased loved ones is extremely important to their next of kin, given that it allows them to bury the victim according to their beliefs, as well as bring some degree of closure to the mourning process they have been living through all these years.⁵⁹ The Court has held, therefore, that denying access to the truth concerning the fate of a disappeared loved one is a form of cruel and inhuman treatment to immediate family members,⁶⁰ which explains the connection between a violation of the right to humane treatment and a violation of the right to know the truth.⁶¹

67. Finally, as the Court has held, knowing the location and identification of the victims honors the dignity of those who disappeared or who were presumably executed and that of their family members, who have struggled for decades to find their loved ones; it also helps reconstruct their cultural integrity.

⁵⁶ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 181; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 118; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 201; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 243.

⁵⁷ IACHR, Report No. 1/99, Case 10,480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999.

⁵⁸ See, *inter alia*, I/A Court H.R., *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 155; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 222.

⁵⁹ See, *inter alia*, I/A Court H.R., *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 331; *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 245.

⁶⁰ See, *inter alia*, I/A Court H.R., *Case of Trujillo Oroza v. Bolivia*. Merits. Judgment of January 26, 2000. Series C No. 64, para. 114; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 270; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 123.

⁶¹ See, *inter alia*, I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 113; *Case of Gudiel Álvarez ("Diario Militar") v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 301.

The Court has observed that establishing what happened reveals historical facts that help bring the mourning process to a close and creates a precedent to ensure that grave, massive and systematic violations do not happen again.⁶²

B. Consolidation and content of the right to the truth in the inter-American system

68. As established in the preceding section, since its beginnings the IACHR has underscored the importance of clarifying violations of human rights and of IHL, especially with the emergence of the practice of forced disappearance. The jurisprudence of the IACHR and the Court,⁶³ supported by various reports and instruments developed by the United Nations (hereinafter the “UN”),⁶⁴ has established that the right to the truth is a guarantee recognized in both the American Declaration and the American Convention.

69. In this regard, the Commission and the Court have held that the right to the truth is directly connected to the rights to judicial guarantees and judicial protection, set forth in Articles XVIII⁶⁵ and XXIV⁶⁶ of the American Declaration and Articles 8⁶⁷ and 25⁶⁸ of the American Convention. Likewise, in

⁶² I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 265.

⁶³ See, *inter alia*, I/A Court H.R., *Case of Albán Cornejo et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171; *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C No. 200.

⁶⁴ UN, *Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth*, E/CN.4/2006/91, January 9, 2006, para. 8. In the case of extrajudicial executions, see, *inter alia*, Principle 9 of the “*Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*”, adopted by the Economic and Social Council in resolution 1989/65 of May 24, 1989, which states the following: “There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.” When enumerating the purposes of the inquiry, the “*United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*”, adopted in 1991, states the following: “[a]s set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim.”

⁶⁵ Article XVIII of the American Declaration: “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”

⁶⁶ Article XXIV of the American Declaration: “Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.”

⁶⁷ Article 8 of the American Convention: “1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

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some cases the right to the truth is connected to the right of access to information, protected under Article IV⁶⁹ of the American Declaration and Article 13⁷⁰ of the American Convention.

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2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.”

⁶⁸ Article 25 of the American Convention: “1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.”

⁶⁹ Article IV of the American Declaration: “Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatever.”

⁷⁰ Article 13 of the American Convention: “1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

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70. Under those articles, the right to the truth has two dimensions. The first dimension is the right of the victims and their family members to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in those violations.⁷¹ This means that the right to the truth creates an obligation upon States to clarify and investigate the facts, prosecute and punish those responsible for cases of serious human rights violations⁷², and, depending on the circumstances of each case, to guarantee access to the information available in State facilities and files concerning serious human rights violations.⁷³

71. Secondly, a principle has been established to the effect that the *titulaires* (holders) of this right are not just the victims and their family members, but all society as well. The Commission has maintained that “[e]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future.”⁷⁴

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3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

⁷¹ Cf. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 181; *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 117, and *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 118.

⁷² See, *inter alia*, IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 147; IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 221; Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 142. See, *inter alia*, I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 165, citing *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 246; *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 197; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 219.

⁷³ See, *inter alia*, I/A Court H.R., *Case of Gelman V. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, para. 243; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 173; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 201.

⁷⁴ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, September 26, 1986, Chapter V.

72. The Commission will now turn its attention to the general principles on the subject of the right to the truth as interpreted by the organs of the inter-American system based on the aforementioned provisions of the inter-American human rights instruments.

1. Rights to judicial guarantees and to judicial protection

73. According to the jurisprudence of the Court, the right to the truth is a fundamental element of the rights to judicial guarantees and judicial protection, as opposed to a right standing alone.⁷⁵ That interpretation first appeared in a 2000 judgment in the *Case of Bámaca Velásquez v. Guatemala*, where the Court expressly recognized that the right to the truth is subsumed in the right of the victim or his next of kin to obtain from the competent State organs a clarification of the facts relating to the violations and the corresponding responsibilities, through the investigation and prosecution that are a function of the rights to judicial guarantees and judicial protection recognized in Articles 8 and 25 of the Convention.⁷⁶

74. The Commission, for its part, has pointed out that the “right to the truth” is a basic and essential obligation of States Parties to the American Convention under Article 1(1) thereof, since a State’s ignorance of facts related to human rights violations means that, in practice, no protection system is in place that can ensure that those responsible will be identified and, where appropriate, punished.⁷⁷

75. Thus, the right to the truth has been interpreted as a just expectation that a State must satisfy with respect to victims of human rights violations and their next of kin.⁷⁸ Therefore, the purpose of fully ensuring the rights to judicial guarantees and judicial protection is to combat impunity, understood as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violating the rights protected by the American

⁷⁵ Cf. I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 219, citing the *Case of Blanco Romero et al. v. Venezuela*. Judgment of November 28, 2005. Series C No. 138, para. 62; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 62.

⁷⁶ Cf. I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 201.

⁷⁷ See, *inter alia*, IACHR, Report No. 25/98, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.595, 11.657 and 11.705, Alfonso René Chanfeau Orayce *et al.*, Chile, April 7, 1998, para. 87, citing the I/A Court H.R., *Case of Castillo Páez v. Peru*. Judgment of November 3, 1997. Series C No. 34, para. 86; IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 149.

⁷⁸ Cf. I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations. Judgment of November 19, 2004. Series C No. 116, para. 97; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 257; *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 201.

Convention.”⁷⁹ Otherwise, the State’s lack of due diligence “fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”⁸⁰ Hence, victims of human rights violations or their relatives have the right to expect that everything necessary will be done to ascertain the truth of what happened⁸¹ through an effective investigation of the facts, prosecution of those responsible for the crimes, imposition of the appropriate punishments, and reparation of any damages and injuries that the relatives may have sustained.⁸²

76. The Commission has also written that in cases of crimes against humanity, war crimes and/or human rights violations not subject to any statute of limitations, such as murders, forced disappearances, rapes, forced removals or displacements, torture, inhumane acts intended to cause death or inflict serious injury upon a person’s physical and mental integrity, attacks on a civilian population or their property, and recruitment of children and adolescents, States have a heightened duty to investigate and clarify the facts. Also, “in the context of a non-

⁷⁹ See, *inter alia*, I/A Court H.R., *Case of Ivcher Bronstein V. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 211. Similarly, the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* defines impunity as “the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victim. The *Set of Principles* also provides that “[i]mpunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.” UN, Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN, E/CN.4/2005/102/Add.1, February 8, 2005.

⁸⁰ See, *inter alia*, I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, para. 173; I/A Court H.R., *Case of Blake*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 64; *Case of Loayza Tamayo*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 170; *Case of Carpio Nicolle et al. v. Guatemala*. Judgment of November 22, 2004. Series C No. 117, para. 126.

⁸¹ See, *inter alia*, I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 219; *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, para. 133; *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 105, *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 191; and the *Case of Gudiel Álvarez (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 229.

⁸² See, *inter alia*, I/A Court H.R., *Case of Blake v. Guatemala*. Judgment of January 24, 1998. Series C No. 36, para. 97.

international armed conflict,” the elucidation of the truth of what happened acquires particular relevance.⁸³

77. The Commission has held that a judicial investigation must be undertaken in good faith and be diligent, exhaustive and impartial. It must follow every investigative lead that could help identify the authors of the crime and bring them to justice.⁸⁴

78. For its part, the Inter-American Court has determined that the authorities in charge of investigations have a duty to ensure that those investigations examine any systematic patterns that made the commission of serious human rights violations possible.⁸⁵ Furthermore, to ensure that they are effective, the investigations must take into account the complex nature of events of this type and the structure of which those suspected of being involved are part, based on the context in which the events occurred; any oversights in evidence collection and in following logical lines of investigation must be avoided.⁸⁶

79. The Court has also held that while the duty to investigate is an obligation of means and not results, this does not mean that the investigation can be undertaken as a mere formality preordained to be ineffective.⁸⁷ To the contrary, the Court has stated that “every State decision that is part of the investigative process, as well as the investigation as a whole, must be directed at a specific goal, the determination of the truth and the investigation, pursuit, capture, prosecution and, as appropriate, punishment of those responsible for the facts.”⁸⁸ Further, the investigation must be carried out by all available legal means and must also determine the responsibility of the intellectual and material authors of the crime, particularly when State agents are or may be involved.⁸⁹

⁸³ I/A Court H.R., *Case of Gudiel Álvarez (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012 Series C No. 253, para. 298.

⁸⁴ IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 80.

⁸⁵ See, *inter alia*, I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, para. 156; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011, Series C No. 232, para. 146.

⁸⁶ See, *inter alia*, I/A Court H.R., *Case of the Serrano Cruz Sisters v. El Salvador*. Judgment of March 1, 2005. Series C No. 120, para. 166; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 146.

⁸⁷ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of Pacheco Teruel et al. v. Honduras*. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 241, para. 129.

⁸⁸ See, *inter alia*, I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 192; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 153.

⁸⁹ See, *inter alia*, I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of González Medina and family v. Dominican Republic*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 153.

80. As for the participation of those most affected, the Court has held that States have an obligation to ensure the right of the victims or their families to participate in all phases of the respective proceedings, so that they can make suggestions, receive information, provide evidence, make arguments and, in brief, assert their interests and rights.⁹⁰ That participation or involvement should serve to provide access to justice, knowledge of the truth of what happened, and just reparations.⁹¹ Notwithstanding the foregoing, the effective search for the truth is the State's responsibility, and may not be made to depend on the procedural initiative of the victim or his/her next of kin or their offer of evidence.⁹²

81. The organs of the system have also emphasized that the right to know the truth of what happened is not limited to the victims and their families; instead it is the right of society as a whole. The Court has written that, in a democratic society this right is a just expectation that the State must satisfy through the performance of its obligation to investigate, on its own initiative, grave violations of human rights and through public dissemination of the results of the criminal and investigative proceedings.⁹³

82. The Court has also pointed out that satisfaction of the collective dimension of the right to the truth requires a procedural examination of the most complete historical record possible, and a judicial determination as to the patterns of joint action and the identity of all those who, in one way or another, participated in the violations and their corresponding responsibilities.⁹⁴ Fulfillment of these

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Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 204; *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 192.

⁹⁰ See, *inter alia*, 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. 246; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 251.

⁹¹ See, *inter alia*, I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 233; *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 251.

⁹² See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 265; *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para. 193.

⁹³ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 181, *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 170; *Case of Las Palmeras v. Colombia*. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96.

⁹⁴ See, *inter alia*, I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 195; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 158; *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 217, para. 158. Continues...

obligations is necessary to guarantee a full reconstruction of the truth and a thorough investigation of the structures in which the human rights violations fit.

83. In transitional justice situations, the Commission has acknowledged how complicated these scenarios can be for purposes of ensuring the justice, truth, reparations and reconciliation components. Here, the IACHR is mindful that States have the right and the duty to promote policies and implement programs whose goal is their people's reconciliation.⁹⁵ However, when the frameworks of transitional justice are devised, certain international obligations must be observed.

84. Within the United Nations system, the criteria for examining the mechanisms that States use in these contexts emanate from the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*,⁹⁶ the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,⁹⁷ and Human Rights Council resolution 12/11 on *Human Rights and Transitional Justice*⁹⁸ and resolution 12/12 on the "*Right to the truth.*"⁹⁹ As to the importance of observing these obligations, the UN Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-recurrence has written that:

[...] Transitional justice is not the name for a distinct form of justice, but of a strategy for achieving justice for redressing massive rights violations in times of transition. Redress cannot be achieved without truth, justice, reparations and guarantees of non-recurrence. [Further] only a comprehensive approach to the implementation of these measures can effectively respond to this

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2010. Series C No. 212, para. 234; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 192.

⁹⁵ See, *inter alia*, IACHR, Press Release 150/12, *Amnesty and Human Rights Violations*, December 26, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/150.asp.

⁹⁶ UN, Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN, E/CN.4/2005/102/Add.1, February 8, 2005. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>.

⁹⁷ UN, General Assembly, Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, December 16, 2005. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/147.

⁹⁸ UN, Human Rights Council, Resolution 12/11, *Human Rights and Transitional Justice*, October 1, 2009, available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G09/165/92/PDF/G0916592.pdf?OpenElement>; and Resolution 12/12, *Right to the truth*, October 1, 2009. Available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G09/165/99/PDF/G0916599.pdf?OpenElement>.

⁹⁹ Expert testimony of Javier Ciurlizza in Case 12.573, *Marino López et al. (Operation Genesis) v. Colombia*. Available at: <http://vimeo.com/60121157>.

task and put the victims at the center of all responses. [...] The recognition of victims as individuals and holders of rights is essential in any attempts to redress massive human rights violations and prevent their recurrence. Reconciliation cannot constitute a new burden placed on the shoulders of those who have already been victimized.¹⁰⁰

85. Based on those principles, the Commission has written that one ingredient for the establishment of a lasting peace is for the framework of transitional justice to function as a system of useful incentives, conducive to truth-telling, identification and punishment of perpetrators, and reparations to victims. The IACHR has pointed out that in applying a transitional justice law, compliance with the truth and redress components must be rigorously examined and upheld as they are conditions that must be met, for example, in order for a perpetrator to qualify for a lesser penalty.¹⁰¹ Furthermore, the Commission has observed that political agreements concluded between the parties in conflict cannot under any circumstances relieve the State of the obligations and responsibilities it has undertaken by its ratification of the American Convention and other international instruments on the subject.¹⁰²

86. In light of the foregoing, the Commission emphasizes that no State measure adopted in the area of justice can mean that a human rights violation will go uninvestigated. The Court, too, has made the point that where grave human rights violations have been committed, the obligation to investigate cannot be ignored or made conditional on domestic legal acts or provisions of any kind.¹⁰³ Accordingly, the Commission will now examine the inter-American standards on the subject of amnesty laws and the jurisdiction of the military courts.

¹⁰⁰ Office of the United Nations High Commissioner for Human Rights in Colombia. Press Release, “*Transitional justice is not a ‘soft’ form of justice,*” says new UN Special Rapporteur Pablo de Greiff, September 11, 2012. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12496&LangID=E>. See, also, UN, Human Rights Council, 21st session, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46*, August 9, 2012.

¹⁰¹ IACHR, *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, 2006, para. 38.

¹⁰² See, *inter alia*, IACHR, *Annual Report of the Inter-American Commission on Human Rights 1992-1993*, OEA/Ser.L/V/II.83, Doc. 14, March 12, 1993, Chapter IV, p. 195; IACHR, *Report on the Situation of Human Rights in El Salvador*, OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, Chapter I.2.

¹⁰³ See, *inter alia*, I/A Court H.R., *Case of the Rio Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 190; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 127.

a. Incompatibility of amnesty laws in the case of grave violations of human rights

87. The Commission has held that the right to the truth cannot be curtailed by, *inter alia*, legislative measures like amnesty laws.¹⁰⁴ The IACHR has consistently maintained that the enforcement of amnesty laws that restrict access to justice in cases of grave human rights violations have two adverse effects. First, it renders ineffective the States' obligation to respect and observe the rights and freedoms recognized in the American Declaration and the American Convention and their obligation to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction, without any form of discrimination, as required under Article 1(1) of the ACHR. Second, it hampers access to information concerning the facts and circumstances surrounding the violation of a fundamental right,¹⁰⁵ eliminates the most effective means of ensuring the exercise of human rights –i.e., the prosecution and punishment of those responsible– and prevents the exercise of the legal remedies available under domestic law.¹⁰⁶

88. Getting at the truth requires unfettered exercise of the right to seek and receive information and the adoption of the measures necessary to give the judiciary the authority to undertake and complete the necessary investigations.¹⁰⁷ By the same token, the *jurisprudence constante* of the Court is that in cases of grave violations of human rights, such as torture, summary, extrajudicial or arbitrary executions and forced disappearances,¹⁰⁸ the obligation to investigate the facts and

¹⁰⁴ Cf. IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 150; Report No. 136/99, Case 10,488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 225.

¹⁰⁵ Cf. IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, Jose Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 150; Report No. 136/99, Case 10,488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 225.

¹⁰⁶ See, *inter alia*, IACHR, Report No. 36/96, Case 10.843, Héctor Marcial Garay Herмосilla et al. (Chile), October 15, 1996, para. 78; Report No. 34/96, Case 11.228, Case 11.229, Case 11.231, Case 11.282, Juan Meneses, Ricardo Lagos Salinas, Juan Alsina Hurtos, Pedro Vergara Inostrozo, October 15, 1996, para. 76; Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992, para. 41; Report No. 29/92, Cases 10.029, 10.036 and 10.145 (Uruguay), October 2, 1992, para. 51 *Annual Report of the Inter-American Commission on Human Rights 1997*, OEA/Ser.L/V/II.98, Doc. 6 rev, April 13, 1998; Report No.136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 200; Report No. 25/98, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.585, 11.595, 11.652, 11.657, 11.675 and 11.705, Chile, April 7, 1998, para. 42.

¹⁰⁷ IACHR, *Report on the demobilization process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para. 30.

¹⁰⁸ See, *inter alia*, I/A Court H.R., *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, para. 114; *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Continues...

identify and punish the responsible parties is constrained by amnesty laws.¹⁰⁹ Specifically, the Court explained that:

amnesty laws are, in cases of serious violations of human rights, expressly incompatible with the letter and spirit of the Pact of San José, given that they violate the provisions of Articles 1(1) and 2, that is, in that they impede the investigation and punishment of those responsible for serious human rights violations and, consequently, impede access to victims and their families to the truth of what happened and to the corresponding reparation, thereby hindering the full, timely, and effective rule of justice in the relevant cases. This, in turn, favors impunity and arbitrariness and also seriously affects the rule of law, reason for which, in light of International Law, they have been declared to have no legal effect.¹¹⁰

In particular, amnesty laws affect the international obligation of the State in regard to the investigation and punishment of serious human rights violations because they prevent the next of kin from being heard before a judge, pursuant to that indicated in Article 8(1) of the American Convention, thereby violating the right to judicial protection enshrined in Article 25 of the Convention precisely for the failure to investigate, persecute, capture, prosecute, and punish those responsible for the facts, thereby failing to comply with Article 1(1) of the Convention.¹¹¹

89. The Court has also explained that amnesty laws' incompatibility with the American Convention is not simply a matter of form, such as its origin; instead, it is also a material incompatibility, as such laws violate the rights to judicial guarantees and judicial protection, recognized in Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 thereof.¹¹² Furthermore, amnesties in cases involving serious human rights violations are also incompatible with the

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Judgment of November 24, 2009. Series C No. 211, para. 129; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 171; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 225.

¹⁰⁹ See, *inter alia*, I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 190; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 127.

¹¹⁰ I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 226.

¹¹¹ I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221, para. 227.

¹¹² See, *inter alia*, I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 229.

American Convention; this incompatibility is not confined to the so-called “self amnesties.” In explaining the incompatibility, the Court points not so much to the process by which an amnesty law was adopted or the authority that issued it; instead, the Court points to the *ratio legis* of such a law, which is that it allows serious violations of international law to go unpunished.¹¹³

90. Hence, with respect to the various socio-political processes that a number of States in the region have undergone, the organs of the inter-American human rights system have insisted on the obligation to investigate grave violations of human rights, the non-derogable nature of that obligation, and the incompatibility of amnesty laws that obstruct its performance. In this regard, they have made no distinctions for transitions from dictatorships to democracy or for the processes through which peace is sought and established.

91. The Court has found that the amnesty laws in **Peru, Chile, Brazil** and **El Salvador** are incompatible with the American Convention because they are contrary to these States’ obligations under the Convention.¹¹⁴ At the same time, through its various mechanisms the Commission has on various occasions examined the laws adopted by various States, to ascertain whether those laws are compatible with the principles set out in the preceding paragraphs.

92. In the case of **El Salvador**, the Commission observed that “the passage of the amnesty, even after an arrest warrant had been issued for Armed Forces officers, legally eliminated the possibility of an effective investigation and the prosecution of the responsible parties, as well as proper compensation for the victims and their next of kin by reason of the civil liability for the crime committed.”¹¹⁵ The

¹¹³ See, *inter alia*, I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 229; *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 120; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 175.

¹¹⁴ See, I/A Court H.R., *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, paragraphs 41-44; *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, paragraphs 105-114; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 1477; *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 195; and *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 296.

¹¹⁵ IACHR, Report No. 26/92, Case 10.287, Las Hojas Massacre, El Salvador, September 24, 1992, para. 11. In effect, the amnesty decree ordered that convicted persons were to be immediately released, and those on trial or in any way involved in serious human rights violations could not be investigated, tried or punished nor could they face any civil liability. Thus, serious human rights violations went unpunished by law. The law’s effect was to legally eliminate the right to justice recognized in Articles 1(1), 8(1) and 25 of the American Convention, since effective investigation of human rights violations was made impossible under the law, as was the prosecution and punishment of those involved and reparation of the harm done. As the IACHR wrote, this amnesty extinguishes criminal and civil liability and thus disregards the legitimate rights of the victims’ next of kin to reparation. Such a measure will do nothing to further reconciliation and is certainly not consistent with the provisions of Articles 1, 2, 8 and 25 of the American Convention on Human Rights.” IACHR, *Report on the situation of human rights in El Salvador*, OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, Chapter II.4, Enactment of the Amnesty Law and El Salvador’s international commitments.

Commission also pointed out that “[t]he Legislative Assembly’s passage of a General Amnesty Law (Decree No. 486 of 1993) [...], immediately after publication of the Report of the Truth Commission, could compromise effective implementation of the Truth Commission’s recommendations and eventually lead to a failure to comply with the international obligations undertaken by the Government of El Salvador when it signed the Peace Agreements.”¹¹⁶

93. In the case of **Argentina**, the Commission observed that the effect of the enactment of Full Stop Law No. 23,492, Due Obedience Law No. 23,521, and Decree No. 1002, was to extinguish the pending trials of those responsible for past human rights violations. Those measures closed off any juridical possibility of pursuing the criminal proceedings to establish the crimes denounced, identify the authors of those crimes, their accomplices and accessories after the fact, and impose the corresponding criminal penalties. In effect, the two laws and the decree sought to prevent the exercise of the right recognized in Article 8(1) of the American Convention.¹¹⁷

94. In the case of **Uruguay**, the Commission indicated that Caducity Statute of Limitations Law No. 15,848 “ha[d] the intended effect of dismissing all criminal proceedings involving past human rights violations. With that, the law eliminate[d] any judicial possibility of a serious and impartial investigation designed to establish the crimes denounced and to identify their authors, accomplices, and accessories after the fact.”¹¹⁸ The Commission also maintained that “[t]he fact that the Caducity Law ha[d] not been applied by the Uruguayan Courts in several cases is a significant step forward, but it does not suffice to meet the requirements of Article 2 of the American Convention. Not only has the State failed to annul the amnesty law, or to render it without effect for being incompatible with its obligations under the American Convention; the State has also failed to provide a remedy to allow the reopening of judicial proceedings that have been closed pursuant to the *Ley de Caducidad*.”¹¹⁹

95. In the case of **Chile**, the Commission found that the self-amnesty was a general procedure that the State used to avoid having to impose punishment for certain grave offenses. In addition, the Chilean courts’ application of the amnesty law made it impossible to punish those who perpetrated the human rights abuses and ensured that no case would ever be brought against them and that the names of those responsible (the beneficiaries of the amnesty law) would never be disclosed. As a

¹¹⁶ IACHR, *Report on the situation of human rights in El Salvador*, OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, Chapter II.4, Enactment of the Amnesty Law and El Salvador’s international commitments .

¹¹⁷ Cf. IACHR, Report No. 28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992, para. 32.

¹¹⁸ IACHR, Report No. 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Uruguay, October 2, 1992, paragraphs 35-36.

¹¹⁹ IACHR, Application to the Inter-American Court of Human Rights in the case of Juan Gelman, María Claudia García Iruretagoyena de Gelman and María Macarena Gelman García Iruretagoyena (Case 12.607) against the Republic of Uruguay, January 21, 2010, para. 73.

result, legally speaking, it was as if those responsible for the abuses had never committed any illegal act at all. The amnesty law rendered the justice system ineffective with respect to those offenses and deprived the victims and their families of any judicial recourse to ascertain the identity of those responsible for the human rights violations committed under the military dictatorship and have them face punishment.¹²⁰ Consequently, the Chilean State, through its Legislative Branch, was deemed responsible because of its failure to rescind *de facto* Decree Law No. 2191 of April 19, 1978, which was in violation of the obligations it had undertaken to adapt its laws to the principles of the Convention; it thus violated Convention Articles 1(1) and 2.¹²¹ The Commission also observed that “[d]espite the emphasis placed by the Supreme Court on the fact that civil and penal procedures are independent of each other, the manner in which the amnesty was applied by the courts clearly affected the right to obtain reparation in the civil courts, given the impossibility of singling out or identifying the responsible parties.”¹²²

96. In the case of **Peru**, the Commission pointed out that Amnesty Law No. 26,479 constituted interference in the judicial function and that Law No. 26,492 interpreting the Amnesty Law not only failed to provide an effective remedy, but went much further by denying any possibility of appeal or of bringing an objection based on human rights violations, because it stated that the law applied even to those violations that had not been the subject of allegations.¹²³ Therefore, the Commission recommended that the Peruvian State repeal the amnesty law (No. 26,479), and the law on judicial interpretation (No. 26,492), because they were incompatible with the American Convention; it also recommended that the State investigate, try, and punish those State agents accused of human rights violations, especially violations that amounted to international crimes.¹²⁴ For its part, the Inter-American Court held that the Amnesty Law obstructed investigation and access to justice and prevented a victim’s relatives from learning the truth and receiving the corresponding reparations.¹²⁵ It also considered that:

self-amnesty laws are *ab initio* incompatible with the Convention; that is, their mere enactment “constitutes *per se* a violation to the

¹²⁰ IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, October 15, 1996, para. 70.

¹²¹ IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, October 15, 1996, para. 60.

¹²² IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, October 15, 1996, paragraph 65.

¹²³ *Annual Report of the Inter-American Commission on Human Rights 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Chapter V, Part 4, Section IV.C.

¹²⁴ *Annual Report of the Inter-American Commission on Human Rights 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Chapter V, Part 4, Section VIII.6. See, also, IACHR, *Demanda ante la Corte Interamericana de Derechos Humanos en el Caso 11.045, La Cantuta v. Peru*, [Application filed with the Inter-American Court of Human Rights in Case 11.045, *La Cantuta v. Peru*], February 14, 2006, para. 117.

¹²⁵ I/A Court H.R., *Case of Castillo Páez v. Peru*. Reparations. Judgment of November 27, 1998. Series C No. 43, para. 105.

Convention” since it “overtly conflicts with the duties undertaken by any State Party” to such treaty. Such is the rationale behind the Court’s pronouncement with general effects in the *case of Barrios Altos*. That is why its application by a state organ in a specific case, through subsequent statutory instruments or through its enforcement by state officers, constitutes a violation to the Convention.¹²⁶

97. In the case of **Suriname** and its enforcement of its 1989 Amnesty Law, the Court reiterated its case law to the effect that “no domestic law or regulation – including amnesty laws and statutes of limitation – may impede the State’s compliance with the Court’s orders to investigate and punish perpetrators of human rights violations.”¹²⁷ More recently, the Commission also expressed its profound concern over the amnesty law passed by the Surinamese Parliament on April 5, 2012, the purpose of which was to consolidate immunity for human rights violations committed during the military era (1982-1992) and to remove the exception in the 1992 Amnesty Law that applies to crimes against humanity and war crimes. The Commission also urged the authorities to take all measures necessary to comply with its obligation to investigate, prosecute and punish the grave human rights violations committed under the military dictatorship.¹²⁸

98. In the case of **Haiti**, the Commission expressed its concern over the decision to apply a statute of limitations for the crimes against humanity committed under the regime of Jean-Claude Duvalier in Haiti, which was done on January 30, 2012, by the examining judge charged with investigating those complaints. Back in 2011, the Commission underscored the Haitian State’s duty to investigate the grave human rights violations committed under the regime of Jean-Claude Duvalier and pointed out that the torture, extrajudicial executions and forced disappearances committed during that regime are crimes against humanity and as such are not subject to any statute of limitations or amnesty. The Commission urged the Haitian authorities to comply with Haiti’s international obligation to investigate, prosecute and punish such crimes.¹²⁹

¹²⁶ I/A Court H.R., *Case of La Cantuta v. Peru*. Judgment of November 29, 2006 Series C No. 162, para. 174.

¹²⁷ See, *inter alia*, I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 167, citing the *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 151; *Case of the “Five Pensioners” v. Peru*. Judgment of February 28, 2003. Series C No. 98, para. 164.

¹²⁸ IACHR, Press Release 38/12, *IACHR Expresses Concern about Amnesty Legislation in Suriname*, April 13, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/038.asp.

¹²⁹ IACHR, Press Release 10/12, *IACHR Urges the Haitian Authorities to Investigate, Try and Punish the Grave Violations to Human Rights*, February 1, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/010.asp. See, also, IACHR, Press Release 3/11, *IACHR Reminds Haiti of its Ongoing Duty to Investigate and Prosecute Human Rights Violations*, January 19, 2011. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/010.asp; Press Release 11/13, *IACHR reminds Haiti of its Duty to Investigate and Punish Human Rights Violations and Urges It to Guarantee the Independence of the Judiciary*, February 20, 2013. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/011.asp.

99. With respect to **Honduras**, the IACHR expressed its concern over the ambiguity of the Amnesty Decree approved by the National Congress on January 26, 2010. Specifically, the Commission observed the reference made to political crimes, the amnesty for conduct of a terrorist nature, and the inclusion of the concept of abuse of authority with no indication of its scope. It also observed that while the text contemplates certain exceptions in terms of human rights violations, the language is ambiguous, and the decree does not establish precise criteria or concrete mechanisms for its application. The Commission therefore urged the Honduran authorities to review the decree, taking into account the State's obligations under international treaties, especially the obligation to investigate and punish serious human rights violations.¹³⁰

100. In the case of **Brazil**, the Commission referred to the Law No. 6.683/79 adopted on August 28, 1979. The IACHR considered that said norm constitutes an amnesty law by absolving from any criminal liability all of those who committed "political crimes or common crimes related to them" between the military dictatorship, from September 2, 1961 to August 15, 1979¹³¹. The Commission indicated that the Brazilian courts have interpreted the amnesty law in the sense that it prevents the criminal investigation, prosecution and punishment of those responsible for serious human rights violations constituting crimes against humanity, such as torture, extrajudicial executions and forced disappearances¹³². In that sense, the IACHR considered that the Law No. 6.683/79 contravenes the American Convention, insofar as it has been applied in order to prevent the criminal prosecution of serious human rights violations¹³³.

101. As for **Colombia**, with respect to its "Legal Framework for Peace", the Commission found its concept of selectivity and the possibility of waiving investigation and prosecution of serious human rights violations to be problematic inasmuch as these would be incompatible with the State's obligations. The IACHR pointed out that the inter-American human rights system has repeatedly emphasized that victims of grave human rights violations have the right to judicial protection and guarantees in order to obtain the investigation and criminal prosecution of the perpetrators in the courts of ordinary jurisdiction.¹³⁴

¹³⁰ IACHR, Press Release 14/10, *IACHR Expresses Concern about Amnesty Decree in Honduras*, February 3, 2010.

¹³¹ IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al (*Guerrilha do Araguaia*), Brazil, October 31, 2008, para. 97.

¹³² IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al (*Guerrilha do Araguaia*), Brazil, October 31, 2008, para. 100.

¹³³ IACHR, Report No. 91/08, Case 11.552, Merits, Julia Gomes Lund et al (*Guerrilha do Araguaia*), Brazil, October 31, 2008, para. 180.

¹³⁴ IACHR, Press Release 144A/12, *IACHR'S Preliminary Observations on Its Onsite Visit to Colombia*, Annex to Press Release 144/12, issued upon completion of the onsite visit to Colombia, December 7, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/144A.asp.

b. The incompatibility and illegitimacy of the military criminal justice system in cases of human rights violations

102. Apart from the amnesty laws adopted, the military criminal justice system has been another means used to limit access to justice in the case of victims of human rights violations and their next of kin and to restrict their right to know the truth. Here, the organs of the inter-American human rights system have repeatedly and consistently held that military courts may not exercise jurisdiction to investigate and punish cases of human rights violations.¹³⁵ This position is supported by the Inter-American Convention on Forced Disappearance of Persons, Article IX of which provides that “[p]ersons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions” and that “acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.”

103. The IACHR observes that military jurisdiction should apply only in the case of violations of military criminal law alleged to have been committed by members of the military during the performance of specific duties related to the defense and external security of a State,¹³⁶ and never to investigate violations of human rights. In this regard, the Commission has consistently maintained that:

[t]he military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that the military jurisdiction cannot be considered a real judicial system, as it is not part of the judicial branch, but is organized instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of the Army, which means that they are in the position of sitting in judgment of their comrades-in-arms, rendering illusory the requirement of impartiality, since the members of the Army often feel compelled to protect those who fight alongside them in a difficult and dangerous context. [...]

[M]ilitary justice should be used only to judge active-duty military officers for the alleged commission of service-related offenses, strictly speaking. Human rights violations must be investigated, tried, and punished in keeping with the law, by the regular criminal

¹³⁵ See, *inter alia*, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999; I/A Court H.R., *Case of 19 Merchants v. Colombia*. Judgment of July 5, 2004. Series C No. 109; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140; *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248.

¹³⁶ I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 132.

courts. Inverting the jurisdiction in cases of human rights violations should not be allowed, as this undercuts judicial guarantees, under an illusory image of the effectiveness of military justice, with grave institutional consequences, which in fact call into question the civilian courts and the rule of law.¹³⁷

104. The Commission has also noted that in order for an offense to be subject to the jurisdiction of the military criminal justice system, from the outset there must be a clear link between the offense and military service activities. In other words, the punishable act must represent an abuse of power that occurred within the context of an activity directly linked to the proper function of the Armed Forces.¹³⁸ Further, “the link between the criminal act and the activity related to military service is broken when the crime is extremely grave, as in the case of crimes against humanity. Under those circumstances, the case must be remanded to the civilian justice system.”¹³⁹

105. The Court, for its part, has held that when military courts take jurisdiction over a matter that should be heard by the ordinary courts, the right to a hearing by a court with jurisdiction over the matter is violated, and thus the right to due process, which is also closely related to the right of access to justice.¹⁴⁰ The Court has underscored that a judge hearing a case must not only be independent and impartial, but also the competent judge.¹⁴¹

106. The Commission has also observed that military tribunals cannot be independent and impartial bodies for investigating and prosecuting human rights violations because of the “deep-rooted *esprit de corps*” within the armed forces, which is sometimes misinterpreted as requiring them to cover up or remain silent about crimes committed by fellow soldiers or police.¹⁴² The IACHR observed that when military authorities sit in judgment of actions whose active subject is another

¹³⁷ IACHR, Report No. 2/06, Case 12.130, Miguel Orlando Muñoz Guzmán, Mexico, February 28, 2006, paras 83, 84.

¹³⁸ See, *inter alia*, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 30.

¹³⁹ See, *inter alia*, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter V, para. 30; *Application filed with the Inter-American Court of Human Rights in Case 12.449, Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico*.

¹⁴⁰ See, *inter alia*, I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 273; *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 128; *Case of Tiu Tojín V. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 118.

¹⁴¹ See, *inter alia*, I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 112; *Case of 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 167; *Case of Escué Zapata v. Colombia*, Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 101.

¹⁴² IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, paragraphs 26-29.

member of the military, it is difficult for them to be impartial because the investigations into conduct by members of the military or police forces will be handled by other members of those forces who may be more inclined to conceal rather than shed light on the facts.¹⁴³ The IACHR recalls that a court's impartiality is premised on the conditions that its members have no direct stake in the matter at issue, have not already taken positions on the matter, have no preference for either party and are in no way involved in the controversy.¹⁴⁴

2. Right of access to information and the obligation to declassify documents

107. In transitional contexts, the rights to freedom of expression and access to information are of heightened importance.¹⁴⁵ The Commission has held that States have an obligation to guarantee that victims and their family members have access to information concerning the circumstances surrounding serious human rights violations.¹⁴⁶ Both the Commission and the Court have emphasized that the right to be informed of events and have access to information is a right enjoyed by society in general¹⁴⁷ as it is essential to the development of democratic systems.¹⁴⁸

¹⁴³ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, para. 19.

¹⁴⁴ IACHR, Report No. 66/11, Case 12.444, Eduardo Nicolas Cruz Sánchez et al., Peru, March 31, 2011, para. 196.

¹⁴⁵ IACHR, *Application before the Inter-American Court of Human Rights in the Case 12.590, José Miguel Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, February 18, 2011, para. 473.

¹⁴⁶ IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999. See also, Principle 24 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, which states that "victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations."

¹⁴⁷ See, *inter alia*, I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 274; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 173; *Case of Bámaca Velásquez v. Guatemala*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, paras 76, 77; *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012 Series C No. 252, para. 298; *Case of 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 261; *Case of Carpio Nicolle et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117, para. 128; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 200; *Case of Gelman V. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 243.

¹⁴⁸ IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 224.

108. Specifically, the IACHR indicated that society as a whole has the right :

(i) to learn the conduct of those who have been involved in committing serious violations of human rights or international humanitarian law, especially in the case of mass or systematic violations;(ii) to understand the objective and subjective elements that helped create the conditions and circumstances in which atrocious conduct was perpetrated, and to identify the legal and factual factors that gave rise to the appearance and persistence of impunity; (iii) to have a basis for determining whether the state mechanisms served as a context for punishable conduct; (iv) to identify the victims and the groups they belong to as well as those who have participated in acts victimizing others; and (v) to understand the impact of impunity.¹⁴⁹

109. Similarly, the organs of the inter-American human rights system have emphasized the fact that these rights enable society to rebuild the past, recognize the mistakes made, make reparation to victims and form the vigorous public opinion that is instrumental in rebuilding democracy and restoring the rule of law.¹⁵⁰ The Commission has underscored the fact that “the duty to preserve memory”, as the corollary of the right to the truth, is vitally important in avoiding a recurrence of violations in the future¹⁵¹ and is a guarantee essential to ensure that

¹⁴⁹ See, *inter alia*, IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, para.18, citing, *inter alia*, IACHR, the *Annual Report of the Inter-American Commission on Human Rights 1985-1986*, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, Chapter V.

¹⁵⁰ IACHR, *Application before the Inter-American Court of Human Rights in Case 11.324, Narciso González Medina v. Dominican Republic*, May 2, 2010, para. 159.

¹⁵¹ Cf. IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110, doc. 52, March 9, 2001, para. 23, citing from IACHR, Report No. 1/99, Case 10480, Lucio Parada Cea, Héctor Joaquín Miranda Marroquín, Fausto García Funes, Andrés Hernández Carpio, José Catalino Meléndez and Carlos Antonio Martínez, El Salvador, January 27, 1999, para. 147. See, also, IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999; Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez (El Salvador), April 13, 2000. Similarly, the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* states the following: (i) the inalienable right to the truth: every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations; (ii) the duty to preserve memory: a people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfillment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments; (iii) the victims’ right to know: irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate; and (iv) guarantees to give effect to the right to know: States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary. *Updated Set of principles for the*

Continues...

measures are taken to prevent a recurrence of past events.¹⁵² Likewise, ensuring the right of access to information in cases of alleged grave violations of human rights is fundamental to dismantling the authoritarian structures that seek to survive the transition to democracy¹⁵³ and is a necessary precondition for promoting accountability and transparency in government, and for preventing corruption and authoritarianism.¹⁵⁴

110. Therefore, the IACHR has maintained that the victims and their family members, and society as a whole, have a right to any information in a State's records that pertains to serious human rights violations, even if those records are held by security agencies or military or police units. Similarly, in the *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, the Court indicated that States must ensure the historical clarification concerning serious violations of human rights¹⁵⁵. This presupposes that the duty to afford access to information in cases of grave human rights violations involves a set of affirmative obligations.¹⁵⁶

111. First, and as to the relevant legal framework, the organs of the inter-American system have held that, in imposing a limitation, the State has an obligation to set out, in a formal and material law, written in clear and precise language, the reasons for restricting access to certain information.¹⁵⁷ The right of

...continuation

protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005.

¹⁵² IACHR, *Report of the Special Rapporteur for Freedom of Expression 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Chapter IV, para. 5.

¹⁵³ IACHR, Report of Special Rapporteur for Freedom of Expression, *Access to information on human rights violations. The right of the victims of human rights violations to access information in State archives on such violations*, para. 12, citing the Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic ("Birthler Commission"), reports on activities of the years 1999, 2001, 2009, describing the contribution of the office of the Federal Commissioner to the convictions of guards and other persons involved in murders committed in the former borders of the German Democratic Republic. This commission has also facilitated the seeking of redress on the part of victims of arbitrary detention, political persecution, labor discrimination, illegal confiscation of property, etc. Between 1991 and 2009 more than 2.6 million persons consulted the archives kept by the Federal Commissioner. Information available at: <http://www.oas.org/en/iachr/expression/docs/reports/access/Right%20to%20Access%20Araguaia%202010.pdf>.

¹⁵⁴ IACHR, Report of Special Rapporteur for Freedom of Expression. *Report of the Special Rapporteur for Freedom of Expression 2009*, OEA/Ser.L/V/II.Doc.51, December 30, 2009, Chapter IV, para. 5.

¹⁵⁵ I/A Court H.R., *Case of Gudiel Álvarez ("Diario Militar") v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 300.

¹⁵⁶ IACHR, Report of Special Rapporteur for Freedom of Expression. *Access to information on human rights violations. The right of the victims of human rights violations to access information in State archives on such violations*. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/access/Right%20to%20Access%20Araguaia%202010.pdf>.

¹⁵⁷ See, *inter alia*, I/A Court H.R., *Case of Claude Reyes et al.* Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 89; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 197.

access is governed by the principles of good faith and maximum transparency; hence, the information in the State's possession must be public, save for certain exceptions prescribed by law.¹⁵⁸

112. Further, when the State claims protection of national security, it must prove to an impartial authority that disclosing that information could pose a serious, real, objective and imminent threat to a democratic State's defense activities.¹⁵⁹ Claims such as "national security", "national defense" or "public order" must be defined and interpreted in accordance with the inter-American juridical framework and, in particular, with the American Convention on Human Rights.¹⁶⁰ Thus, it would be unacceptable to regard "protection of national security" as a legitimate state objective under the so-called "doctrine of national security" as grounds for waging the kind of repressive policy adopted by various authoritarian regimes in the region.¹⁶¹

113. As the Court has held, in cases of human rights violations, State authorities cannot legitimately resort to mechanisms like official secrecy or confidentiality of information, or assert claims like the public interest or national security as reasons for refusing to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceedings.¹⁶² A number of countries of the region have adopted laws requiring that information on human rights violations be handed over to the authorities investigating these

¹⁵⁸ See, *inter alia*, I/A Court H.R., *Case of Claude Reyes et al.* Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 92; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 199.

¹⁵⁹ IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, paragraphs 66, 67.

¹⁶⁰ IACHR, *Report of the Special Rapporteur for Freedom of Expression 2009*, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter IV.

¹⁶¹ IACHR, Final Written Arguments in Case 11.552, *Julia Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, June 21, 2010, paragraphs 66, 67. Additionally, the IACHR takes note of information provided by various human rights organizations relating to the operation of the School of the Americas, an institution of the United States of America that trained hundreds of military and police from several States in Latin America during the second half of the 20th century, many of them in the context of dictatorships and/or internal armed conflicts. The IACHR observes that these human rights organizations criticized their operation because they allegedly trained these persons in methods that violate human rights, such as the use of torture and extrajudicial executions. For more information see: <http://www.amnestyusa.org/pdfs/msp.pdf>; http://soaw.org/index.php?option=com_content&view=article&id=762.

¹⁶² See, *inter alia*, I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 180; *Case of Tiu Tojin v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 258; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, paragraphs 196-202.

crimes, stipulating that under no circumstances can such information be classified.¹⁶³

114. The decision to classify information as secret under these circumstances and to refuse to provide it may not be permitted to depend exclusively on a State body whose members are accused of committing the illegal act.¹⁶⁴ Nor can that State body have the final word as to whether the requested documentation exists.¹⁶⁵ In the *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, the Court spelled out certain obligations with respect to the right of access to information. It held that:

the State cannot claim the nonexistence of the requested documents; instead, it has to state the reason for refusing to provide the information, demonstrating that it has taken all the measures within its power to prove that, in fact, the requested information did not exist. To guarantee freedom of information, particularly when the right to the truth in cases of gross violations of human rights [...] is at stake, it is essential that the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right. To argue in a judicial proceeding [...], as was done in this case, the lack of evidence regarding the existence of certain information, without at least noting what procedures were carried out to confirm the nonexistence of said information, allows for the discretionary and

¹⁶³ IACHR, *Application before the Inter-American Court of Human Rights in Case 12.590 José Miguel Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, February 18, 2011, para. 453. See, also, Decree No. 4/2010 of the Office of the President of Argentina, stipulating, *inter alia*, that "any information that can be helpful in getting at the full truth of the events associated with human rights violations should be declassified"; United Mexican States, Law on Transparency and Access to Public Government Information, Article 14, which provides that "the classified nature [of information] cannot be invoked in cases involving investigation of grave human rights violations or crimes against humanity"; Republic of Peru, Law No. 27806 – the Law on Transparency and Access to Public Information-, Article 15-C of which provides that "no information related to human rights violations or violations of the 1949 Geneva Conventions, committed for any reason or against any person, shall be deemed classified"; Uruguay, Law No. 18,381, Right of Access to Public Information, Article 12, which provides that "those bound by this law may not invoke any of the exceptions mentioned in the preceding articles when the information being requested concerns human rights violations or is relevant information for investigating, preventing or averting human rights violations." See, also, IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, February 26, 1999, Chapter VII, paragraphs 59-60, to the effect that "[a]ppropriate independent authorities must have the ability to access intelligence information and to decide whether it may be held in confidentiality" and pointing out that "President Samper announced that the Procurator General of the Nation would review the military's intelligence files." See, also, UN, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, E/CN.4/2006/9, January 20, 2006, recommendation number 6, "The High Commissioner encourages the Government to promote legislation that adequately regulates the use of military intelligence records, including a procedure for annual review by the Office of the Procurator-General."

¹⁶⁴ Cf. I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 181.

¹⁶⁵ Cf. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 202.

arbitrary actions of the State to provide said information, thereby creating legal uncertainty regarding the exercise of said right.¹⁶⁶

115. Second, the State should have a simple, rapid and effective judicial remedy by which to determine whether a public authority that denied information violated the applicant's right and, if so, to order the corresponding institution to make the information available.¹⁶⁷ The judicial authorities should be able to access the information *in camera* or on visits *in loco* to determine either if the arguments of State agencies are legitimate or to verify whether purportedly nonexistent information is, in fact, nonexistent.¹⁶⁸

116. Third, the Court has held that State authorities have an obligation to help compile the evidence so that the objectives of an investigation can be achieved; they also must refrain from engaging in acts that obstruct the investigative process.¹⁶⁹ Therefore, the State has the obligation to produce, recover, reconstruct or capture the information it needs in order to comply with its duties under international, constitutional or legal norms. In this regard, for example, if information that it should safeguard was destroyed or illegally removed and such information was necessary to clarify human rights violations, the State should, in good faith, make every effort within its reach to recover or reconstruct that information.¹⁷⁰

117. Fourth, the Commission has also pointed out that State efforts to ensure access to information must include the opening of archives so that the institutions investigating an event can conduct direct inspections; searches of official installations and inventories; advancing search operations that include searches of the places where the information could be; and holding hearings and questioning those who could know where the information is or those who could reconstruct what occurred, and other measures. The IACHR has emphasized that a

¹⁶⁶ Cf. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 211.

¹⁶⁷ Cf. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 137.

¹⁶⁸ IACHR, Report of Special Rapporteur for Freedom of Expression, *Access to information on human rights violations. The right of the victims of human rights violations to access information in State archives on such violations*. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf.

¹⁶⁹ See, *inter alia*, I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 112; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 171; *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 194.

¹⁷⁰ IACHR, Report of Special Rapporteur for Freedom of Expression. *Report of the Special Rapporteur for Freedom of Expression 2009*, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter IV, para. 83.

public call for those who have documents to turn them in is not sufficient to satisfy the abovementioned obligations.¹⁷¹

118. Fifth, the right of access to information imposes on States the duty to preserve and facilitate access to State archives when they exist, and to create and preserve them when they have not been compiled or organized as such. In the event of gross violations of human rights, the information these archives can bring together has an undeniable value and is indispensable not only for pushing investigations forward but also for preventing these aberrant actions from being repeated.¹⁷² This practice is already reflected in some countries in the region that have created “memory archives” charged with compiling, analyzing, classifying, and distributing documents, testimonials, and other kinds of information linked to violations of human rights in the recent past.¹⁷³

119. The Commission also emphasizes how important it is for States to provide any information available in their offices in order to support the efforts of a country to investigate and gather documentation on serious human rights violations. The IACHR believes that the support and commitment of the international community in this regard is vital in order to ensure the right to the truth in States which endured periods of gross human rights violations. These relationships between States, as will be seen further below (see *infra* paras. 169-172), are reflected in both judicial cooperation and support initiatives involving gathering information for the work of the Truth Commissions.

120. Lastly, the IACHR finds that given the gravity of international crime as well as the importance of the obligation to investigate, prosecute, punish and redress, States must cooperate in order to avoid impunity and the consequent infringement of the right to the truth of the victims, their family members and society as a whole. In this regard, the IACHR has indicated that the development of international law has helped to consolidate the concept of universal jurisdiction,

¹⁷¹ IACHR, Report of Special Rapporteur for Freedom of Expression. *Access to information on human rights violations. The right of the victims of human rights violations to access information in State archives on such violations*. Available at: http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf.

¹⁷² IACHR, Report of Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*, OEA/Ser.L/V/II, IACHR/RELE/INF. 1/09, December 30, 2009, para. 77.

¹⁷³ IACHR, Report of Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*, OEA/Ser.L/V/II, IACHR/RELE/INF. 1/09, December 30, 2009, para. 78, citing Decree (*Decreto*) 1259/2003 of the executive branch of Argentina, which created the “National Memory Archive” (published in the official State newspaper on December 17, 2003). Article 1 of the provision establishes that the archive’s function is to “collect, analyze, categorize, copy, digitize, and archive information, testimony, and documents on the violation of human rights and fundamental freedoms in which the responsibility of the Argentine State is implicated, as well as on the social and institutional response to these violations.” The reasoning of the decree indicates that, “The duties of the State to promote, respect and guarantee human rights should be represented, including as pertains to the rights to truth and justice, as well as the paying of reparations, rehabilitation of victims, and assurance of the benefits of a democratic State for current and future generations.”

which constitutes an important mechanism of justice.¹⁷⁴ Universal jurisdiction empowers States to establish jurisdiction in order to track down, prosecute and punish those who they have probable cause to believe responsible for serious crimes against international law, regardless of whether or not the offense has been committed in the jurisdiction of the State or whether or not the perpetrator is a national of said State.¹⁷⁵

121. Accordingly, the IACHR has urged OAS member States to combat impunity of perpetrators of international crimes by invoking and exercising universal jurisdiction or, as the case may warrant, extradition in order to make sure that they stand trial.¹⁷⁶

C. Right to the truth as a measure of reparation

122. Since its earliest judgments, the Inter-American Court has held that, in keeping with Article 63.1 of the ACHR, every violation of an international obligation which results in harm creates a duty to make adequate reparation.¹⁷⁷ According to the Court, reparation is a generic term that covers the various ways a state may make amends for the international responsibility it has incurred.¹⁷⁸ The Commission, for its part, has recognized that States can adopt various means of reparation, involving both judicial and non-judicial mechanisms.¹⁷⁹

123. On a number of occasions, the case law of the inter-American system has established that victims of human rights violations are entitled to

¹⁷⁴ IACHR, Resolution No. 1/03, *On trial for international crimes*, October 24, 2003. Available at: <http://www.cidh.oas.org/reso.1.03.htm>

¹⁷⁵ This universal jurisdiction is reflected in instruments such as the 1949 Geneva Convention. Likewise, several regional and international legal instruments provide for a variety of grounds for jurisdiction for the prosecution of international crimes. These include the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Forced Disappearance of Persons, in the sphere of the OAS, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention against the Taking of Hostages, in the sphere of the United Nations, which establish the obligation of States to take measures to prosecute within their jurisdiction these crimes or, otherwise, extradite the persons charged with them to stand trial elsewhere. In fact, States have reached a consensus to expand this concept to include other international offenses, such as under the Inter-American Convention against Corruption. See: IACHR, Resolution No. 1/03, *On trial for international crimes*, October 24, 2003. Available at: <http://www.cidh.oas.org/reso.1.03.htm>.

¹⁷⁶ IACHR, Press Release 21/98, December 15, 1998. Available at: <http://www.cidh.org/Comunicados/Spanish/1998/Comunicado.21-98.htm>

¹⁷⁷ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs (Art. 63.1 American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25.

¹⁷⁸ See, *inter alia*, I/A Court H.R., *Case of Garrido and Baigorria v. Argentina*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of August 27, 1999. Series C No. 39, para. 41; *Case of Aloeboetoe et al. v. Suriname*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 46; *Case of El Amparo v. Venezuela*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 16.

¹⁷⁹ IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

adequate compensation for the harm caused, which must materialize in the form of individual measures calculated to constitute restitution, compensation and rehabilitation for the victim, as well as general measures of satisfaction and guarantees of non-repetition.¹⁸⁰ The Inter-American Court has held that “in cases of human rights violations, the State has the duty to provide reparations. This duty implies that while the victims or their next of kin should have ample opportunity to seek just compensation under domestic law, the State’s obligation cannot rest exclusively on their procedural initiative or on the submission of probative elements by private individuals.”¹⁸¹ Likewise, in a context of structural discrimination, “the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.”¹⁸²

124. Because it is an obligation of the States that emanates from the guarantees of justice, the right to the truth is another form of reparation in cases of human rights violations.¹⁸³ In effect, the acknowledgement [of the facts] is important, because it constitutes a form of recognizing the significance and value of persons as individuals, as victims and as holders of rights.¹⁸⁴ Furthermore, knowledge of the circumstances of manner, time and place, motives and the identification of the perpetrators are fundamental to making full reparations to victims of human rights violations. The Commission has previously established that:

[t]he right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations.¹⁸⁵

¹⁸⁰ See, *inter alia*, IACHR, *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, paragraphs 236-237; *Case of El Caracazo v. Venezuela*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, paragraphs 77-78; *Case of Blake v. Guatemala*. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, paragraphs 31-32.

¹⁸¹ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits and Reparations. Judgment of May 11, 2007. Series C No. 163, para. 220.

¹⁸² I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450.

¹⁸³ IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 224.

¹⁸⁴ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff*, A/HRC/21/46, August 9, 2012, para. 30.

¹⁸⁵ IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 148.

125. The Court, for its part, has deemed the obligation to investigate to be a form of reparation, given the need to remedy the violation of the right to know the truth in a specific case.¹⁸⁶ The Court has itemized the elements that can be instrumental in observing the right to the truth as a measure of reparation.

126. Specifically, the Court has ordered the following measures:

(i) “initiate, expedite, re-open, supervise, continue and conclude, as appropriate, the investigations into all the facts with the greatest diligence and within a reasonable time, [...] in order to identify, prosecute and, as appropriate, punish those responsible, and remove all *de facto* and legal mechanisms and obstacles that maintain impunity”;

(ii) “abstain from resorting to mechanisms such as amnesty in favor of the perpetrators, as well as any other similar provision, prescription, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem*, or any other mechanism that exempts responsibility so as to waive this obligation”;

(iii) “take into account the systematic pattern of human rights violations [...] so that the pertinent investigations and proceedings are conducted, bearing in mind the complexity of the events and the context in which they occurred, avoiding omissions in the collection of evidence and in following logical lines of investigation based on a correct assessment of the systematic patterns that gave rise to the events under investigation”;

(iv) “determine the identity of all the alleged masterminds and perpetrators [...]. Due diligence in the investigation means that all the State authorities are obliged to collaborate in the gathering of evidence; thus they must provide the judge, prosecutor or other judicial authority in the case with all the information that he requests and abstain from acts that obstruct the investigative process”;

(v) “ensure that the competent authorities conduct the corresponding investigations *ex officio* and, to this end, that they have and use all necessary logistical and scientific resources for gathering and processing evidence and, in particular, have the authority to access the pertinent documentation and information to investigate the facts denounced and to conduct promptly all essential actions and inquiries to clarify what happened”;

¹⁸⁶ See, *inter alia*, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 181; *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 190; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 118.

(vi) “guarantee that the investigations into the events [...] remain, at all times, in the courts of ordinary jurisdiction”;

(vii) “ensure that the different organs of the justice system involved in the case have the necessary human, financial, logistic, scientific or any other type of resources necessary to perform their tasks adequately, independently and impartially”;

(viii) “ensure that victims or their next of kin have full access and legal standing at all the stages of the investigation and prosecution of those responsible”;

(ix) “[publish] the results of the corresponding proceedings”;

(x) “guarantee to agents of justice, and also society, public, technical and systematized access to archives that contain relevant and useful information for the ongoing investigations in cases concerning human rights violations”;

(xi) “establish coordination mechanisms between the different State bodies and institutions with the authority to investigate, and mechanisms to monitor the cases being processed”;

(xii) “develop protocols for procedures in the matter with an interdisciplinary approach and train the officials involved in investigation of serious human rights violations”;

(xiii) “promote pertinent actions of international cooperation with other States in order to facilitate the collection and exchange of information, as well as and other necessary legal actions”;

(xiv) “take differentiated impacts into account”;

(xv) “execute the pending arrest warrants for those allegedly responsible and issue any that are pertinent in order to prosecute all those responsible”; and

(xvi) “initiate disciplinary, administrative, or criminal actions, in conformity with the domestic legislation, against the State authorities who may have thwarted or prevented an adequate investigation of the facts, as well as those responsible for the different procedural irregularities.”¹⁸⁷

¹⁸⁷ See, *inter alia*, I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 277; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010 Series C No. 217, para. 237; *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 216; *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs.

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D. Importance of the Truth Commissions for the inter-American system

127. Truth Commissions (hereinafter “TC”) are “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years.”¹⁸⁸ Both the Commission and the Court have placed emphasis on the importance of TC as non-judicial mechanisms of transitional justice whose purpose is to shed light on situations involving systematic human rights violations on a mass scale. On numerous occasions, both bodies have used information contained in the TC final reports as a source of information and as evidence in cases under consideration in the case and petition system.¹⁸⁹

128. The IACHR has repeatedly stressed its support for initiatives to investigate and shed light on situations involving systematic violations of human rights.¹⁹⁰ The Commission has, therefore, applauded the creation of TC in the region and stressed their importance as a means to guarantee the right to the truth in both the individual and collective sense. In the case of Brazil, for example, it has observed that:

[the establishment of a TC is] a fundamental step toward clarifying past events. International human rights law has recognized that everyone has a right to know the truth. In the case of victims of human rights violations and their families, access to the truth about what occurred is a form of reparation. In this regard, the establishment of a Truth Commission in Brazil will play an essential role in ensuring respect for the right to the truth for

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Judgment of October 25, 2012. Series C No. 252, paragraphs 319-321; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, paragraphs 186, 212; *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 233.b.; *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 257.

¹⁸⁸ UN, Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, February 8, 2005. See, also, ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013, p. 9. Available at: <http://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>.

¹⁸⁹ See, *inter alia*, IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 91; I/A Court H.R., *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 232; 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. 234.

¹⁹⁰ See, *inter alia*, IACHR, Press Release 10/01, *End of On-site Visit to Panama*, June 8, 2001, para. 21. Available at: <http://www.cidh.org/Comunicados/English/2001/Press10-01.htm>.

victims of past human rights violations, as well as for all people and society as a whole.¹⁹¹

129. Accordingly, the Commission also observed that:

[t]he official revelation of the truth of past human rights violations can perform a critical function in the process of healing and reconciliation, and in setting the stage for appropriate prosecution and punishment within the judiciary [...]. Revelation of the atrocities committed during the armed conflict, set forth in an officially sanctioned account, will enable the people [...] to reflect upon them, develop meaningful responses, and take steps to ensure peace for the future.¹⁹²

130. In this same line of thinking, the Inter-American Court has written that the creation of a TC is one of a number of important mechanisms that enable a State to fulfill its obligation to guarantee the right to know the truth of what happened. In effect, the Court has maintained that, depending on the object, procedure, structure, and purpose of their mandate, those Commissions may contribute to the construction and preservation of the historical memory, the elucidation of the facts, and the determination of institutional, social, and political responsibilities during specific historical periods of a society.¹⁹³

131. Given these considerations, the organs of the inter-American system have stressed the need for TC to have unrestricted access to the information they need to perform their mandate. The Commission wrote that:

[w]hen a state decides to create an extrajudicial investigation commission as mechanism for upholding the right to truth of the victims of human rights violations and of society as a whole, it must guarantee the commission's access to all the information necessary to ensure the due fulfillment of its mandate. In particular, such a commission must have full access to the archives covering the period it is to investigate, including access to "secret" or

¹⁹¹ IACHR, Press Release 48/12, *IACHR Welcomes Establishment of the Truth Commission in Brazil*, May 15, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/048.asp.

¹⁹² IACHR, *Annual Report of the Inter-American Commission on Human Rights 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Chapter V, Guatemala, para. 28.

¹⁹³ See, *inter alia*, I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 128; *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 119; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 74; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 297; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 135; *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 298.

“confidential” information on the human rights violations committed during that time. In principle, access to that information must be governed by the same conditions that ensure access by members of the judiciary investigating human rights violations.¹⁹⁴

132. The Court has also observed that when state authorities refuse to hand over information requested by a TC, the victims’ next of kin are prevented from knowing the truth through extrajudicial channels.¹⁹⁵ In the *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, the Court determined that “by preventing the family members from knowing the historical truth through the extrajudicial mechanism established by the State itself [...],the State violated the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention.”¹⁹⁶

133. Despite the importance and usefulness of TC, both the Commission and the Court have repeatedly pointed out that an effective, diligent judicial investigation, conducted within a reasonable period of time, is what is required to respect and guarantee the right to the truth. Thus, the IACHR has observed that:

[d]espite the important contribution that the Truth Commission made in establishing the facts surrounding the most serious violations, and in promoting national reconciliation, the role that it played, although highly relevant, cannot be considered as a suitable substitute for proper judicial procedures as a method for arriving at the truth. The value of truth commissions is that they are created, not with the presumption that there will be no trials, but to constitute a step towards knowing the truth and, ultimately, making justice prevail.

Nor can the institution of a Truth Commission be accepted as a substitute for the State’s obligation, which cannot be delegated, to investigate violations committed within its jurisdiction, and to identify those responsible, punish them, and ensure adequate compensation for the victim (Article 1.1 of the American Convention), all within the overriding need to combat impunity.¹⁹⁷

¹⁹⁴ IACHR, *Application before the Inter-American Court of Human Rights in Case 12.590, José Miguel Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, February 18, 2011, para. 464.

¹⁹⁵ I/A Court H.R., *Case of Gudiel Álvarez (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, paragraphs 300-301.

¹⁹⁶ I/A Court H.R., *Case of Gudiel Álvarez (Diario Militar) V. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 302.

¹⁹⁷ IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos and Celina Mariceth Ramos, El Salvador, December 22, 1999, paragraphs 229, 230.

134. The Commission has also highlighted that:

The [TC] established by the democratic Government to investigate violations of human rights which had taken place in the past looked into a goodly part of the total number of cases, and granted reparations to the victims or members of their families. Nevertheless, the investigation conducted by that Commission on cases of violation of the right to life and the victims of other violations--in particular, torture--were handled without any legal recourse or any other type of compensation.

Furthermore, that Committee was not a judicial body and its work was limited to establishing the identity of victims of violations of the right to life. Because of the nature of its mandate, the Commission was not authorized to publish the names of those who had committed the offenses or to impose any type of punishment. That being so, and despite the importance of its task of establishing the facts and granting compensation, the Truth Commission cannot be considered a satisfactory substitute for a judicial proceeding.¹⁹⁸

135. The Court, for its part, has held that the “historical truth” contained in the reports prepared by TC does not fulfill or substitute for the State’s obligation to establish the truth and ensure a judicial determination of individual or State responsibilities through the appropriate proceedings.¹⁹⁹ Hence, the State has an obligation to launch and prosecute criminal investigations to establish the corresponding responsibilities.²⁰⁰

¹⁹⁸ IACHR, Report No. 34/96, Cases 11.228, 11.229, 11.231 and 11.282, Chile, October 15, 1996, paragraphs 73-74.

¹⁹⁹ See, *inter alia*, I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 128; *Case of Contreras et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of August 31, 2011 Series C No. 232, para. 135; *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, para. 150, *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 250, para. 259.

²⁰⁰ I/A Court H.R., *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 298.

CHAPTER III
NATIONAL EXPERIENCES
STATES' INITIATIVES TO MEET
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136. The countries of the region have made forward strides in adopting and implementing initiatives aimed at reconstructing and preserving the memory of the historical truth, shedding light on human rights violations, dignifying the victims and reconciling society. In this vein, it has been noted: "if the truth is a prior condition for reconciliation, justice is a necessary condition for reconciliation as well as its result."²⁰¹

137. The design and implementation of different mechanisms, modalities and practices have been shaped by several factors, such as the intensity and way in which an authoritarian government or a situation of armed conflict or widespread violence comes to an end; the political will of the parties and state actors involved; the availability of information; the degree of participation by the victims, their family members and society in general; as well as certain structural and institutional components; and the particular history and dynamics of each country. In this Chapter, the IACHR will describe and briefly examine the most important experiences of countries in three areas: (i) judicial mechanisms; (ii) Truth Commissions; and (iii) other initiatives.

A. Judicial Mechanisms

138. As was fleshed out in the preceding chapter, the organs of the inter-American human rights system have established that the guarantee of the right to the truth as a corollary of the right to a fair trial, judicial protection and, depending on the particular circumstances of each case, the right to freedom of expression, requires the judiciary to investigate and shed light on human rights violations and overcome legal or *de facto* obstacles standing in the way of prosecuting those responsible.²⁰² In that context, some countries of the region have taken significant steps in prosecuting cases of serious human rights and IHL violations and, in many instances, instituting or re-instituting of judicial proceedings has been a direct consequence of decisions and positions of the organs of the Inter-American human rights system through friendly settlements, country reports or IACHR case decisions and Inter-American Court judgments.

²⁰¹ Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX, Chapt. 1, Basis for reconciliation.

²⁰² In this same vein, in the UN framework, it has been established that "many communications stress the vital role of criminal proceedings in upholding the right to the truth." UN, Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights. The right to the truth*, A/HCR/5/7, June 7, 2007, para. 89.

139. In the case of **Argentina**, in 1985, nine members of the Military Junta and other senior ranking officers were convicted of human rights violations.²⁰³ However, enactment of the ‘Full Stop’ and ‘Due Obedience’ Laws (*Ley de Punto Final* and *Ley de Obediencia Debida*) has hampered the progress of the judicial proceedings. Moreover, in 1989, the democratically elected government pardoned 38 high-ranking officers, who had not benefited from the Due Obedience Law; 280 officers involved in an uprising against the constitutionally elected government in 1987 and 1988; the members of the Military Junta and commanders convicted for their participation in the Falklands War; and 4 members of the guerrilla forces. Finally, in 1990, the pardon was extended to the members of the Junta, who were serving sentences, as well as to 3 Generals and a guerrilla leader.²⁰⁴

140. In 1995, when the laws preventing the judicial proceedings from moving forward were in effect, the “truth trials” began to be held. The “truth trials” were convened by judges of the Judiciary Branch of Government, who were empowered to open formal investigations of those allegedly responsible for serious charges, even though they were not empowered to punish those ultimately found to be guilty.²⁰⁵ Several years later, the Final Stop and Due Obedience Laws were overturned and found unconstitutional in three court judgments issued in 2001, 2002, and 2003,²⁰⁶ in addition to a decision of the Federal Court of the City of La Plata, which found that the crimes of gross human rights violations committed in these instances could not be subject to any limitation.²⁰⁷ Then, in August 2003,

²⁰³ The IACHR welcomed and recognized the historic precedent set by the Argentine government in trying and convicting the high-ranking officials of the de facto government for human rights violations. IACHR, Report N°28/92, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Argentina, October 2, 1992, paras. 32, 43.

²⁰⁴ EAAF, *2007 Annual Report, Special Section: Right to the Truth*. Available at: http://eaf.typepad.com/annual_report_2007/An07_RTT-3.pdf.

²⁰⁵ EAAF, *2007 Annual Report, Special Section: Right to the Truth*. Available at: http://eaf.typepad.com/annual_report_2007/An07_RTT-3.pdf. In 2000, as a result of a friendly settlement before the IACHR, the Argentine State accepted the right to the truth “which involves the exhaustion of all means to obtain information on the whereabouts of disappeared persons. It is an obligation of means, not of results, which is valid as long as the results are not achieved, not subject to prescription. This right is specifically recognized in relation to the disappearance of Alejandra Lapacó.” Additionally, the State pledged to adopt the necessary “laws to ensure that the national federal criminal and correctional courts throughout the country have exclusive jurisdiction in all cases to determine the truth regarding the fate of persons who disappeared prior to December 10, 1983, with the sole exception of cases involving kidnapping of minors and theft of identity, which shall continue on the basis of their status.” IACHR, Report No. 21/00, Case 12.059, Carmen Aguiar de Lapacó, Argentina, February 29, 2000, para. 17.

²⁰⁶ See National Criminal and Federal Correctional Court No. 4, Office of Clerk No. 7, Case No. 8686/2000 titled “Simon, Julio, Del Cerro, Juan Antonio re/kidnapping of minors under 10 years of age,” Judgment March 6, 2001; National Criminal and Federal Correctional Court No. 11 of the city of Buenos Aires, Office of Clerk No. 21, Case No. 6.859/98 titled “Scagliusi, Claudio Gustavo et al re/unlawful deprivation of liberty,” Judgment September 12, 2002; Federal Court of Resistencia, Province of Chaco, Case titled “Verbitsky, Horacio- C.E.L.S. re/ Unconstitutionality of Laws No. 23521 and 23492, in re: Forced disappearance of persons – torture and aggravated homicides in acts occurring in the locality of Margarita Belen (Chaco on 12 / 13 / 76, file No. 306 / 01”, Judgment March 6, 2003.

under Law 25.779, the Congress of the Republic repealed both laws, effective retroactively, thus paving the way to reopen criminal cases, which had been brought during the 1980s.²⁰⁸

141. As a consequence of the above, 2003 saw the beginning of a process of prosecuting cases of gross human rights violations committed during the military dictatorship in different jurisdictions of that country. In particular, on August 24, 2004, the Supreme Court of Justice of the Nation ruled, with reference to the standards of the Inter-American system, that crimes against humanity did not lapse under the statute of limitations;²⁰⁹ while in 2005, it held that laws enshrining impunity ran contrary to international human rights law, based on the status of the matter and, fundamentally, on the precedents of the Inter-American Court in the *Case of Barrios Altos v. Peru* and the preclusion from granting amnesty for crimes against humanity and the obligation of the State to investigate and punish any violation of rights recognized by the American Convention on Human Rights, in keeping with IACHR Report 28/92.²¹⁰

142. More recently, figures released by the Office of the Public Prosecutor of Argentina in December 2013 show that: (a) out of a total of 1069

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²⁰⁷ EAAF, *2007 Annual Report, Special Section: Right to the Truth*. Available at: http://eaaf.typepad.com/annual_report_2007/An07_RTT-3.pdf. Information available at: <http://www.apdhlaplata.org.ar/juridica/juridicab15.htm>.

²⁰⁸ EAAF, *2007 Annual Report, Special Section: Right to the Truth*. Available at: http://eaaf.typepad.com/annual_report_2007/An07_RTT-3.pdf.

²⁰⁹ CELS, *Human Rights in Argentina. Report 2012*, p. 33. Available at: <http://www.cels.org.ar/common/documentos/Informe2012.pdf>, with quote of the Supreme Court of Justice of the Nation, Arancibia Clavel, Enrique Lautaro re/ aggravated homicide and criminal association and others - case no. 259-. Judgment August 24, 2004.

²¹⁰ CELS, *Human Rights in Argentina. Report 2012*, p. 33. Available at: <http://www.cels.org.ar/common/documentos/Informe2012.pdf>. The Supreme Court of Justice of the Nation held that: "Inasmuch as [amnesties] are aimed at "obliterating" gross human rights violations, they are at odds with the provisions of the American Convention on Human Rights and the International Covenant on Civil and Political Rights, and therefore are constitutionally intolerable.[...] In order to comply with international treaties on the subject of human rights, the overturning of amnesty laws may not be postponed and must take place so that no legal obstacle may derive therefrom in order to prosecute crimes such as the ones that are the subject of the instant case. This means that those who benefited from such laws may not invoke either the prohibition on the harshest ex post facto criminal laws or res judicata. The Argentine State's submission to the Inter-American jurisdiction precludes the principle of "non ex post facto effect" of criminal laws from being invoked to breach the duties accepted as to prosecuting serious human rights violations. Supreme Court of Justice of the Nation of Argentina. *Case of Simón, Julio Héctor et al re/unlawful deprivation of liberty, etc.*, Case 17.768, Ruling June 14, 2005, Whereas clause 31. Additionally, with regard to the role of the legislative and judicial branches concerning the determination of the unconstitutionality of a law, the Supreme Court held that "after considering Law 25.779 [which rendered null and void the amnesty laws], from the procedural standpoint, could be struck down as unconstitutional, inasmuch as, in irremediably striking down a law, it violates the division of the branches of government, in usurping the powers of the Judiciary, which is the only body constitutionally empowered to strike down laws or any normative act with legal effect.[...] the solution that the Congress deemed appropriate for the case, [...] in no way deprives judges of the final decision-making power on the point." Supreme Court of Justice of the Nation of Argentina. *Case of Simón, Julio Héctor et al re/unlawful deprivation of liberty, etc.*, Case 17.768, Ruling June 14, 2005, cons. 34.

persons under investigation, 525 have one or more cases which have proceeded to trial and 123 persons have a case in which the prosecutor's office has requested proceeding to trial; (b) 520 persons have been convicted in cases of crimes against humanity even though only 71 of these cases yielded a dispositive judgment; and (c) 60 persons have been acquitted.²¹¹ The Center for Legal and Social Studies (CELS) has estimated that more than two thousand individuals, between civilians and members of the armed forces and law enforcement are or were involved in cases linked to State terrorism.²¹² CELS noted that since the first trial proceeding was held in 2006, as of 2013, 415 persons have been convicted and 35 acquitted.²¹³

143. As for **Chile**, the State has reported that as of 2001, the appointment of special human rights case judges has helped to revive and expedite these cases and as of December 31, 2008: (a) 338 judicial proceedings were pending involving 1,128 victims; (b) the Human Rights Program is a collaborating party to 254 proceedings; (c) out of 491 agents of the State, who have been charged and are under investigation, 173 have more than one charge; (d) out of the 257 agents, who have been convicted, 47 have been convicted more than once; (e) of the total number of agents tried and convicted, 45 are generals or admirals, 17 brigadier generals and 72 coronels; (f) several convictions have been handed down against the highest ranking officials of the security apparatus of the military regime.²¹⁴ In

²¹¹ Office of the Solicitor General of the Nation, *Report on the status on cases of human rights violations committed during the period of State terrorism*. Updated as of December 2013. Available at: http://fisciales.gob.ar/lesa-humanidad/wp-content/uploads/sites/4/2014/01/Informe_Lesa_Humanidad_20_diciembre_2013.pdf.

²¹² CELS, *Situation of the trials for crimes against humanity in Argentina*, March 21, 2013. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=1605>. In particular, CELS has reported that among those responsible, civilian defendants who played a variety of roles during the period of State terrorism have been tried for their liability in criminal offenses. In 2007, the third conviction since cases were reopened was of the priest and former chaplain of the late district police commander at the time of the events, Christian von Wernich, sentenced to life imprisonment for his responsibility in the crimes of homicide, torture and unlawful deprivation of liberty. Also convicted, in the trials that followed were civilians who served in the offices of the Armed Forces as civilian intelligence personnel. There were a total of 8 people who were tried and those receiving conviction included Ricardo Lardone in 2008 in Cordoba, Horacio Barcos in 2010 in Santa Fe, Eduardo Constanzo in 2010 in Rosario, and Raúl Guglielminetti in 2010 and 2011 and Eduardo Ruffo in 2011 in the Capital Federal. CELS also highlighted the opening of the oral trial for Plan Condor in 2013, CELS, and Human Rights in Argentina, pg. 33. Available at: <http://www.cels.org.ar/common/documentos/Informe2012.pdf>. In 2012, the Commission noted that the conviction handed down against former dictators Jorge Videla and Reynaldo Bignone for their responsibility in the baby kidnapping scheme, represented a significant step forward in efforts to combat impunity for serious human rights violations perpetrated during the military dictatorship and, especially, human rights violations against children. IACHR, Press Release 105/12, Argentina.

²¹³ CELS, *A 10 años de la anulación de las leyes de impunidad*. [‘10 years after repeal of the impunity laws’]. August 21, 2013. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=&idc=1657>.

²¹⁴ CELS, *Las cuentas pendientes de América Latina* [‘Scores to settle in Latin America’], March 21, 2013. Information available at: <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=1604>. More information on some judicial proceedings available at: <http://www.ddhh.gov.cl/fallosJudiciales.html>. Chile, *Country report submitted as provided under paragraph 15 a) annex to resolution 5/1 of the Human Rights Council*, A/HRC/WG.6/5/CHL/1, February 16, 2009, paras. 24, 27, 28.

June 2010, the full Supreme Court of Chile issued decision 81-2010, whereby it was agreed that it is be the job of the Justices of the Courts of Appeals to hear the cases regarding human rights violations from the period of the military dictatorship encompassing from September 11, 1973 to March 10, 1990.²¹⁵

144. Recently, the State reported that since May 2009, when the legal authority of the Human Rights Program of the Ministry of the Interior and Public Security was expanded, as of September 2013, said body had filed 737 criminal complaints for serious human rights violations committed from 1973 to 1990.²¹⁶ It claimed that these complaints cover more than one thousand victims qualified as such by the National Truth and Reconciliation Commission and by the National Corporation of Reparation and Reconciliation.²¹⁷ It asserted that over this same period of time, out of the 83 final judgments that were issued, 78 culminated in a conviction.²¹⁸

145. In addition, the Center for Human Rights of Diego Portales University reported that from July 2010 to June 2013: (a) 45 trial proceedings were completed in the Supreme Court involving 123 states agents; (b) 24 acquittals were handed down; and (c) 144 convictions were issued, with 52 people actually serving prison time and the rest were given alternative sentencing.²¹⁹

146. With regard to the amnesty law, which is still in force as of the present time, it is fitting to mention that the Inter-American Court noted that it has not been enforced by the Chilean Judiciary in several cases as of 1998.²²⁰ Moreover, the Supreme Court of Justice has consistently held in its judgments that Decree-Law No. 2.191²²¹ is unenforceable. Notwithstanding, both the Inter-American

²¹⁵ Decision 81-2010 of the Supreme Court of Justice of Chile, June 1, 2010. Available at: <http://pjudbeta.pjud.cl/documents/10179/67746/6.1.32.pdf/98dde6c7-f5ff-44bd-b808-35aa127ff434?version=1.0>.

²¹⁶ Chile report submitted to the Human Rights Council. November 11, 2013. A/HRC/WG.6/18/CHL/1. para. 100. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/185/71/PDF/G1318571.pdf?OpenElement>.

²¹⁷ Country Report on Chile submitted to the Human Rights Council. November 11, 2013. A/HRC/WG.6/18/CHL/1. para. 100. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/185/71/PDF/G1318571.pdf?OpenElement>.

²¹⁸ Country Report on Chile submitted to the Human Rights Council. November 11, 2013. A/HRC/WG.6/18/CHL/1. para. 100. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/185/71/PDF/G1318571.pdf?OpenElement>.

²¹⁹ Annual Report on Human Rights in Chile – 2013. Center for Human Rights of the School of Law of the University of Diego Portales, p. 47. Available at: <http://www.derechoshumanos.udp.cl/wp/wp-content/uploads/2013/10/Informe-Anual-2013-completo.pdf>.

²²⁰ I/A Court H.R., *Case of Almonacid Arellano et al v. Chile*. Preliminary Objections, Merits and Costs. Judgment September 26, 2006. Series C No. 154, para. 121.

²²¹ Supreme Court of Justice of Chile. *Decision of the Plenary regarding the motion to hear arguments on application of the Amnesty Law in the case of the kidnapping of member of the MIR party Miguel Ángel Sandoval*, File No. 517-2004, Case 2477, November 17, 2004, record. 33: The State of Chile imposed on itself, in signing and ratifying [international treaties], the obligation to ensure the safety of persons [...], banning
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Commission and Court have stressed that this positive legal precedent in the domestic legal system in and of itself does not provide legal certainty and, therefore, the necessary legislative measures must be adopted so that Decree-Law No. 2.191 ceases to have any legal effects.²²²

147. With regard to **Uruguay**, according to the State, in 2005, the Executive began to interpret the language of the Law on the Expiration of Punitive Claims ('Expiry Law') in a new way, which made it possible for the Judiciary to act. Said interpretation allows for opening investigations into a variety of cases of human rights violations, which occurred during the period of the dictatorship. As a result of this, it was noted that by 2008, the most emblematic human rights violators of the period were in jail, including the surviving dictators, one former Minister of Foreign Relations, and eight other high-ranking police and military officers.²²³

148. In 2009, the Supreme Court of Justice of that country ruled that the Expiry Law was unconstitutional, on grounds including that "the illegitimacy of an amnesty law issued to benefit military and police officers, who committed [gross human rights violations], with impunity during the *de facto* regimes, has been declared by adjudicatory bodies, both in the international community and in the States which went through a similar process to the one experienced by Uruguay during the same period."²²⁴

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measures aimed at protecting offenses committed against particular individuals or granting impunity to the perpetrators thereof, particularly taking into account that international agreements must be honored in good faith. [That] Supreme Court has consistently handed down judgments recognizing the internal sovereignty of the State [...] it recognizes its limit in rights emanating from human nature; values which are superior to any norm that the authorities of the State may order, including the very Power of Convening a Constituent Assembly to draft a Constitution, which precludes them [these values] from being disregarded. See: Supreme Court of Justice of Chile. Also, see: Supreme Court of Justice of Chile, *Case of Claudio Abdón Lecaros Carrasco for the crime of aggravated kidnapping*, Case File No. 47.205, Appeal No. 3302/2009, Decision 16698, Judgment of Appeal, and Decision 16699, Superseding Judgment of May 18, 2010.

²²² IACHR, Final Written Observations to the Inter-American Court of Human Rights, *Case of García Lucero v. Chile*. March 21, 2013. Also see: I/A Court H.R., *Case of Almonacid Arellano et al v. Chile*. Judgment compliance oversight decision. November 18, 2010, preambular clause 22.

²²³ Uruguay, *Universal Periodic Review of the UN Human Rights Council, 2004-2008*, para. 28. Available at: <http://www.mec.gub.uy/pdf/epu.pdf>.

²²⁴ The Court established that: "[no one] denies that under a law enacted by a special majority and in extraordinary cases, the State may decide to waive punishment for criminal facts. [H]owever, the law is unconstitutional because, in the case, the Legislative Power exceeded the constitutional scope for awarding amnesties [because] to declare the expiration of criminal prosecutions, in any case, exceeds the powers of the legislators and invades the forum of a function constitutionally assigned to judges, so that, for whatever reason, the legislature could not be attributed with the power of deciding that the period had expired regarding prosecution for certain serious crimes...[...]. [Current regulation of human rights is not based on the position of sovereign States, but in the person as holder, given his or her status as such, of essential rights that cannot be ignored based on the exercise of the constituent power, neither original nor derivative. *Cfr.* I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment February 24, 2011 Series C No. 221, para. 219, quoting the Supreme Court of Justice of Uruguay, *Case of Nibia Sabalsagaray Curutchet*, Judgment No. 365, paras. 8 and 9, cons, III.2, para. 13, III.8, paras. 6, 15.

149. As of November 2011, when Law 18.831 was enacted restoring full exercise of punitive claims of the State for the crimes committed as a result of State terrorism up until March 1, 1985, approximately 140 cases were in the process of being heard. Specifically, a former President elect and a former *de facto* President, one former minister, and several senior ranking members of the Armed Forces were being criminally prosecuted.²²⁵ However, in February 2013, the Supreme Court found the above-referenced law unconstitutional, which cast doubt on the viability of the trial proceedings being heard at the time.²²⁶ As a consequence of this judgment, some trial court judges closed the cases at the investigation stage. Nonetheless, a few recently issued Appeals Court judgments, which dealt with appeals brought against the closing of these investigation proceedings found that the duration of effect of the Expiry Law, from December 1986 until June 2011, cannot be considered to fall within the time-barred period covered under the statute of limitations of the crimes committed during the dictatorship and, therefore, these crimes may continue to be investigated.²²⁷

150. As for **Peru**, according to the State: (a) on October 1, 2010, the First Anti-Corruption Criminal Chamber convicted Vladimiro Montesinos Torres, Nicolás Hermoza Ríos, Santiago Enrique Martín Rivas, Carlos Eliseo Pichilingue Guevara, Juan Rivero Lazo and Julio Salazar Monroe for aggravated homicide and criminal association; some were charged as chiefs and/or superiors and others, as members of the military squadron known as “Colina” (and were sentenced to jail terms ranging from 15 to 25 years); (b) on October 07, 2011, the National Chamber for Criminal Matters convicted and sentenced former Peruvian Army Lieutenant, Enrique Aurelio De La Cruz Salcedo to 17 years in prison, as the mastermind behind the abduction and extrajudicial execution of seven peasant farmers of the district of Pucayacu, province of Huanta, Department of Ayacucho; (c) leaders of the Shining Path and MRTA groups were tried and convicted; and (d) as a result of the joint efforts of the Supraprovincial Offices of the Public Prosecutor of Ayacucho, Huancavelica and Huancayo and the Special Forensic Team (EFE, its Spanish language acronym), significant progress has been made in the recovery, identification and delivery of the remains of the bodies of the victims of forced disappearances and extrajudicial executions; during the period of 2002 to April 2012, the remains of 2,109 individuals were recovered and 1,074 of these remains have been identified and handed over to their next of kin.²²⁸ In addition, other sources report that from 2005 to 2012, 9 convictions, 26 acquittals and 11 mixed

²²⁵ UN, United Nations Special Rapporteur on the promotion of the truth, justice, reparation and guarantee of non-recurrence. ONU, Mr. Pablo de Greiff. *Preliminary observations at the end of his official visit to the Eastern Republic of Uruguay*, Montevideo, October 4, 2013.

²²⁶ CELS, *Las cuentas pendientes de América Latina* [‘Pending scores to settle in Latin America’], March 21, 2013. Information available at: <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=1604>.

²²⁷ Newspaper article “Grietas en la muralla” [‘Cracks in the wall’], published in Caras&Caretas. July 16, 2014. Available at: <http://www.carasycaretas.com.uy/grietas-en-la-muralla/>.

²²⁸ Peru, *Country report submitted under paragraph 5 of the annex to resolution 16/21 of the Human Rights Council*, A/HRC/WG.6/14/PER/1, August 7, 2012, paras. 32, 35.

sentences were handed down, which resulted in 12 individuals being charged in absentia, 66 convictions and 113 acquittals.²²⁹

151. In particular, on April 7, 2009, the Special Ad Hoc Chamber of the Supreme Court of Justice found former President Alberto Fujimori Fujimori criminally liable in the massacres of Barrios Altos and La Cantuta, which were deemed as crimes against humanity, and the aggravated abduction of Gustavo Gorriti and Samuel Dyer, convicting him to 25 years in prison. On December 30, 2009, the First Chamber for Criminal Matters of the Supreme Court upheld the judgment of the trial court on every charge.²³⁰

152. With regard to the amnesty laws, the Constitutional Court of that country found that “[the presumption that the legislator making criminal law has attempted to act within the framework of the Constitution and respect for fundamental rights] is not operative when it is proven that in exercising the legal authority to issue amnesty laws, the legislator of criminal law intended to cover up the commission of crimes against humanity. Nor when the exercise of such legal authority is used to “ensure” impunity for gross human rights violations.”²³¹

153. In the case of **Guatemala**, the Criminal Chamber of the Supreme Court of Justice found the judgments of the Inter-American Court to be self-enforcing in the cases of “Street Children (Villagrán Morales et al);” “White Van (Paniagua Morales et al);” “Bámaca Velásquez;” “Carpio Nicolle et al;” “Dos Erres Massacres” and, directed the Office of the Public Prosecutor to conduct new investigations in order to determine who was responsible as perpetrators and masterminds of the human rights violations established in the respective judgments.²³² The decisions of the Supreme Court of Justice of Guatemala are grounded in recognition of the jurisdiction of the Inter-American Court and in the

²²⁹ Information available at: http://rightsperu.net/index.php?option=com_content&view=category&id=40&layout=blog&Itemid=58. In this regard, it has been claimed that there is a predominance of acquittals in the court proceedings as a result of application of restrictive criteria in assessing evidence, CELS, *Las cuentas pendientes de América Latina*, March 21, 2013. Information available at: <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=1604>.

²³⁰ Peru, *Country report submitted in keeping with paragraph 5 of the annex of resolution 16/21 of the Human Rights Council*, A/HRC/WG.6/14/PER/1, August 7, 2012, para. 35.

²³¹ *Cfr.* I/A Court H.R., *Case of Gelman v. Uruguay*, Merits and Reparations. Judgment February 24, 2011 Series C No. 221, para. 218, quoting the Constitutional Court of Peru, *Case of Santiago Martín Rivas*, Motion for Leave to Appeal, Case File No. 4587-2004-AA/TC, Judgment November 29, 2005, para. 53.

²³² IACHR, Press Release 33/12, *IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women*, March 27, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/033.asp>. The State has reported that convictions have been handed down in the cases of El Jute, Dos Erres, Plan de Sánchez, Río Negro and Fernando García. Guatemala, *Country report submitted in keeping with paragraph 5 of the annex to resolution 16/21 of the Human Rights Council*, A/HRC/WG.6/14/GTM/1, August 7, 2012, para. 70.

fact that the State of Guatemala “under the pretext of domestic law may not obstruct or impede compliance with the orders of the supranational Tribunal.”²³³

154. Specifically, the investigations linked to the case of the Plan de Sánchez Massacre were reopened and in 2011 five men were arrested and charged with being the perpetrators of the massacre²³⁴ and were convicted.²³⁵ Likewise, in the case of the Massacre of Dos Erres, on August 2, 2011, convictions were issued against Reyes Colin Gualip, Manuel Pop Sun, Daniel Martínez Méndez and Carlos Antonio Carías López and extradition requests were filed.²³⁶ In May 2012, Efraín Ríos Montt was also charged with homicide and crimes against humanity in connection with the Massacre of Dos Erres, while in March, Pedro Pimentel, a former member of a special force of the Army, was convicted to 6,060 years in prison for his role in this same massacre.²³⁷

²³³ IACHR, Press Release 15/10, *IACHR Welcomes Decision of Guatemala's Supreme Court of Justice*, February 3, 2010. Available at: <http://www.cidh.org/Comunicados/Spanish/2010/15-10sp.htm>.

²³⁴ IACHR, Press Release 33/12, *IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women*, March 27, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/033.asp>.

²³⁵ UN, *Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala*, A/HRC/22/17/Add.1, January 7, 2013, para. 37.

²³⁶ On August 2, 2011, the First Sentencing Court for Criminal Matters, Drug-Related Crime and Crimes against the Environment found that Reyes Colin Gualip, Manuel Pop Sun, Daniel Martínez Méndez and Carlos Antonio Carías López were responsible as masterminds of the crime of murder against the lives and safety of the residents of Dos Erres; as well as perpetrators of crimes against the duties to prevent crimes against humanity, committed against the security of the State; and consequently were sentenced to 30 years in prison without parole; that Carlos Antonio Carías López is responsible as a perpetrator of the crime of aggravated theft, committed against the property of the residents of the land plots of las Dos Erres. The appeals against these convictions were denied. Additionally the First High-Risk Court B convicted Mr. Pedro Pimentel Ríos for the crime of murder against the lives of 201 individuals who inhabited the Dos Erres land plots and for the crime of failing in the duty to prevent crimes against humanity to the detriment of the same individuals. Lastly, on September 10, 2010, the Trial Court for Criminal Matters, Drug-Related Crimes and Crimes against the Environment of Guatemala ordered the active extradition to the United States of the defendants, who were arrested on January 14, 2011, in Calgary, Canada. *Cfr. I/A Court H.R., Resolution of supervision of compliance with judgment, Case of the Massacre of Las Dos Erres v. Guatemala*, September 4, 2012, paras. 7-8.

²³⁷ IACHR, Press Release 33/12, *IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women*, March 27, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/033.asp>. Additionally, it was reported that on August 20, 2012, a former police chief was convicted for his involvement in the forced disappearance of the student Edgar Sáenz Calito in 1981. In September, the investigation was opened into the case of the rapes and sexual enslavement of 15 women on a military base in Izabal, from 1982 to 1986. In February, exhumation began on the grounds of the military facilities in Coban (Alta Verapaz). In October, the remains of 466 victims were exhumed, including at least 75 belonging to minors; many showed possible signs of torture. This process, as well as the identification of three individuals buried on a former military outpost in San Juan Comalapa (Chimaltenango), whose names apparently are on record in the Military Base Log Book, are the results of the efforts of civil society and the Office of the Public Prosecutor in investigating and prosecuting past human rights violations. The files of the Presidential Staff were transferred to the General Archives of Central America (AGCA). UN, *Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala*, A/HRC/22/17/Add.1, January 7, 2013, paras. 37, 40, 41.

155. Additionally, after the immunity protecting him as a member of Congress was lifted, on May 10, 2013, Efraín Ríos Montt was convicted by the trial court to 50 years in prison for the crime of genocide, and 30 years in prison for crimes against humanity in connection with 15 massacres, which took place over the 17 months he held power in 1982 and 1983, during which 1,771 indigenous people of the Ixil ethnic group were killed, among other crimes.²³⁸ On May 20, of that year the Constitutional Court overturned the judgment and ordered the case to turn back in the proceedings to April 19, 2013;²³⁹ while on October 22, he ordered the trial court judge to issue a ruling providing her basis for either granting or denying the objection on the grounds of criminal prosecution being time-barred, as a result of the amnesty decree issued by General Óscar Humberto Mejía Víctores on January 10, 1986.²⁴⁰

156. As for **Colombia**, it has been reported that: (a) 218 members of the FARC and 28 members of the ELN have been convicted for crimes such as murder, forced displacement, hostage taking, torture and recruitment of young boys and girls and adolescents; (b) some senior commanders, including the chiefs of the FARC and the ELN and their respective second-in-command, have been convicted *in absentia*; (c) eight current members of the FARC Secretariat, its highest level governing body; and four current members of the ELN Central Command have been convicted *in absentia*;²⁴¹ (d) 14 individuals were convicted in the Justice and Peace proceedings, while as a consequence of facts revealed in the proceedings in that jurisdiction, 10,780 cases were opened in the regular criminal justice system in

²³⁸ Information available at: <https://www.hrw.org/es/news/2013/05/13/guatemala-condenan-rios-montt-por-genocidio>. The Commission has highlighted the trial of Efraín Ríos Montt, as well as the prosecution of retired generals Héctor López Fuentes and José Mauricio Sánchez for the crime of genocide. IACHR, Press Release 33/12, *IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women*, March 27, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/033.asp>.

²³⁹ Information available at: <http://www.fidh.org/es/americas/Guatemala/anulacion-de-la-condena-al-general-rios-montt-la-fidh-solicita-a-la-corte-13809>; <http://www.larepublica.pe/27-05-2013/ratifican-anulacion-de-sentencia-contra-jose-efrain-rios-montt>.

²⁴⁰ The new trial was supposed to begin in April 2014. Information available at: http://www.prensalibre.com/noticias/justicia/rios_montt-amnistia-corte_de_constitucionalidad-juicio_genocidio-cc-masacre_0_1016298381.html#UmfeTyUBvls.facebook; <http://www.telam.com.ar/notas/201310/37644-rios-montt-cerca-de-ser-beneficiado-por-la-amnistia-de-1986.html>. In this regard, the IACHR has emphasized that “the State of Guatemala must make sure that Amnesty Law (Decree Law 8-86) does not pose an obstacle to the investigation of the most serious human rights violations which occurred during the armed conflict, nor to the identification, prosecution and possible punishment of those responsible for them.” See, *inter alia*, IACHR Press Release 80/13, *Guatemala Must Investigate Serious Violations of Human Rights Occurred during the Armed Conflict*. October 25, 2013. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2013/080.asp>.

²⁴¹ *Cfr.* International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 12.

order to investigate potential liability of third parties implicated in the incidents,²⁴² and 23 paramilitary leaders were found guilty in the regular justice system.²⁴³

157. It was also reported that statements made by demobilized members reveal that the paramilitary groups and certain members of Congress, public officials, members of the Army, the Police and private entities all act in collusion and, consequently, as of August 2012, more than 50 former congressmen had been convicted by the Supreme Court,²⁴⁴ and three senators and one governor were convicted of murder, forced disappearances, kidnapping and torture.²⁴⁵

158. As for acts attributable to Army officers, it has been reported that 207 members of the armed forces have been convicted of murder of civilians and sentenced to prison terms ranging from 9 to 51 years. Additionally, there have been 27 convictions for complicity after and before the fact in the murders of civilians, with prison sentences ranging from 2 to 6 years. The HR and IHL Unit of the State is currently investigating 1,669 cases of extrajudicial execution of civilians attributable to members of the army, who tried to pass them off as deaths in combat, with the number of victims potentially as high as 2,896.²⁴⁶

159. With respect to the amnesty laws, the Constitutional Court of the country wrote that "laws such as 'Full Stop' laws, which impede access to justice, blanket amnesties for any crime, self-awarded amnesties (that is, the sentencing benefits that legitimate and illegitimate holders of power grant to themselves and to those who were accomplices in the crimes that were committed), or any other form intended to prevent victims from obtaining an effective judicial remedy in order to assert their rights, have been considered in violation of the international obligation of States to provide judicial remedies for human rights protection."²⁴⁷

160. In a 2013 report on the human rights situation in Colombia, the IACHR regarded as positive that the public confessions (*versión libre*) of demobilized paramilitary members provided under the Law No. 975 (Justice and Peace

²⁴² Cfr. International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 165.

²⁴³ Cfr. International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 166.

²⁴⁴ International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 177.

²⁴⁵ International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 178.

²⁴⁶ International Criminal Court, Office of the Prosecutor, *Situation in Colombia. Interim Report*, November 2012, para. 180.

²⁴⁷ Cfr. I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment February 24, 2011 Series C No. 221, para. 222, quoting the Constitutional Court of Colombia, Review of Law 742, June 5, 2002, Case File No. LAT-223, Judgment C-578/02, July 30, 2002, section 4.3.2.1.7.

program) have proven to be instrumental in the discovery of the bodies of disappeared persons.²⁴⁸

161. With regard to **Brazil**, it was noted that some federal prosecutors instituted criminal prosecutions of members of the public security services for abductions committed under the military government (1964-1985), asserting that these were “ongoing crimes” and, therefore, not covered under the Amnesty Law.²⁴⁹ On August 28, 2014, the Attorney General of the Republic, Rodrigo Janot Monteiro de Barros, in the context of a special motion for enforcement of the constitution to hear arguments on the effects of the Amnesty Law in light of the judgment of the Court in the *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil*, claimed that the Amnesty Law cannot be an obstacle to investigating crimes protected by said provision of law.²⁵⁰ Furthermore, in 2012, the UN High Commissioner for Human Rights wrote up a list of concerns of different civil society organizations regarding the lack of available official information, as well as the failure to investigate and call to account those responsible for human rights violations from 1964 to 1985.²⁵¹

162. In the case of **El Salvador**, the 1993 General Amnesty Law, currently in effect, has stood in the way of the prosecution of cases of human rights violation. More recently, on September 20, 2013, the Constitutional Chamber of the Supreme Court agreed to hear an unconstitutionality claim regarding said law. On this score, the Prosecutor for the Defense of Human Rights asserted that “said Law entails a breach of the inderogable obligation of the State of El Salvador to investigate serious human rights violations committed during the internal armed conflict, mainly Articles 1 and 2, which enshrine human dignity, the fundamental rights of individuals and the obligation of the State to protect these rights. The Peace Accords of El Salvador do not provide in any place for an amnesty of such characteristics, on the contrary, such Accords establish the creation of a Truth Commission and set forth in Chapter II of the Chapultepec Accords the principle of overcoming impunity, which envisions example-setting trials against those responsible for serious human rights violations on both sides.”²⁵²

²⁴⁸ IACHR, Truth, justice and reparation. Fourth Report on the Human Rights Situation in Colombia. December 31, 2013, para. 905.

²⁴⁹ Information available at: <http://amnesty.org/es/region/brazil/report-2013>. In particular, in March 2012, the Office of the Federal Prosecutor announced that it was going to bring charges of kidnapping against retired colonel Sebastião Curió Rodrigues de Moura for the disappearance of five members of the guerrilla forces in the state of Pará in 1974. Information available at: <http://www.amnesty.org/fr/node/30272>.

²⁵⁰ See: <http://static.congressoemfoco.uol.com.br/2014/08/parecerjanotpsolditadura1.pdf>.

²⁵¹ Summary prepared by the Office of the UN High Commissioner for Human Rights as provided for under paragraph 5 of the annex to resolution 16/21 of the Human Rights Council, Brazil. March 14, 2012, para. 38.

²⁵² The Prosecutor also argued that “amnesties should be humanitarian institutions whose purpose is to ensure the reintegration into society of the ex combatants after an armed conflict has ended, but in no instance should it be used to ensure impunity of those responsible for serious violations of International Humanitarian Law, as has been maintained by the International Committee of the Red Cross and the Inter-American Court of Human Rights, among other important international organizations and tribunals.” Statement of the Prosecutor for the Defense of Human Rights, September 23, 2013. Information available at: <http://www.pcdh.gob.sv/menupress/menuprensa/520-pronunciamiento-del-procurador-en-torno-a-la->

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163. As for **Honduras**, the Supreme Court of Justice found unconstitutional on the merits and, therefore inapplicable, Decree Number 199-87, which was enacted on December 11, 1987, and Number 87-91, enacted on June 24, 1991, which provided for a blanket amnesty. In order to arrive at its ruling, it considered that even though Article 205.16 of the Honduran Constitution granted the National Congress the power to approve this benefit for crimes intended to “jeopardize the existence and internal security of the State, the system of government and citizens’ rights.” Therefore, Decree 199-87 and Decree 87-91 “[served] only to turn the conduct of the military into a political offense, when in fact the alleged crimes committed by the military were carried out under the cloak of being an act of service or on the occasion thereof.”²⁵³

164. Regarding **Mexico**, a hybrid was promoted by creating the Office of the Special Prosecutor for Past Social and Political Movements (FEMOSPP). The FEMOSPP was created on November 27, 2001, in compliance with recommendation 26/2001 of the National Human Rights Commission and other connected recommendations to investigate what happened in the 532 cases of disappeared detained persons, and to provide a response to society as to the State’s action vis-à-vis the student movement of 1986. On December 15, 2005, a group of investigators submitted a draft report. However, as of the present time, the report has not been released and only the draft version was released when it was published by the *National Security Archive*.²⁵⁴

165. As for **Suriname**, in 2007, trial proceedings were instituted against the current President Dési Bouterse for the murder of fifteen individuals, including thirteen civilians, on December 8, 1982 during the time of the military dictatorship.²⁵⁵ Notwithstanding, said proceeding was put on hold after amnesty legislation was approved in 2012, which the IACHR addressed earlier (see *supra* para. 97).

166. In the case of **Paraguay**, from May 2006 and March 2008, the Truth and Justice Commission filed with the judiciary ten complaints of cases of human rights violations, specifically, cases of torture, cruel, inhuman and degrading

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admission-de-inconstitucionalidad-de-ley-de-amnistia. The IACHR has also emphasized “the State of El Salvador must make sure that the General Amnesty Law for the Consolidation of Peace does not pose an obstacle to the investigation of gross human rights violations committed during the armed conflict, nor to the identification, prosecution and possible punishment of those responsible for them.” IACHR, Press Release 72/13, *El Salvador Must Investigate Grave Human Rights Violations from the Armed Conflict*, October 2, 2013. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2013/072.asp>.

²⁵³ Cfr. I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment February 24, 2011 Series C No. 221, para. 220, quoting the Supreme Court of Justice of the Republic of Honduras, case proceedings titled – “R120-99 – Unconstitutionality of Decree Number 199-87 and Decree Number 87-91”, June 27, 2000.

²⁵⁴ Information available at: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/index2.htm>.

²⁵⁵ Information available at: http://www.foreignpolicy.com/articles/2014/02/24/murder_and_mayhem_in_suriname_hezbollah.

treatment or punishment, as well as forced disappearance of persons.²⁵⁶ In its report of February 2011 to the UN Human Rights Committee, Paraguay reported that cooperation agreements had been completed with the legal areas of civil society organizations to file new complaints for human rights violations during the dictatorship.²⁵⁷ However, in its 2013 report, the UN Human Rights Committee voiced its concern that the judicial investigation has still not been completed in many cases of human rights violations under the dictatorship of Alfredo Stroessner.²⁵⁸

167. After looking closely at the information submitted to it, the Commission notes that the prosecution of cases of gross human rights violations and infringements of IHL has moved forward and backward in the countries of the region and significant barriers are still standing in the way. These obstacles involve both domestic laws remaining in force, which prevent opening investigations or moving forward in these cases and/or ban access to relevant public information, as well as structural and institutional deficiencies of the justice systems relating to inadequacy of human, technical and financial resources; difficulties in undertaking complex investigations; effects of the passage of time on evidence gathering and following the logical lines of investigation; and political pressure, among other things.

168. In particular, as other bodies have done, the Commission stresses once more that adequate access and participation of the victims and their family members in all stages of judicial proceedings is absolutely essential in order to get to the bottom of human rights violations. Accordingly, it has been noted that prosecution will only be measures of real justice if the victims and their next of kin receive the necessary information and participate effectively in judicial proceedings.²⁵⁹

169. Additionally, the IACHR highlights the importance that States provide any information that may be in their archives to help another country investigate and prosecute those responsible for serious human rights violations. The Commission highlights cooperation agreements signed by the States of Argentina, Brazil, Chile and Uruguay to exchange documents for the investigation of serious human rights violations which occurred during the period of dictatorships in these countries.²⁶⁰

²⁵⁶ Truth and Justice Commission of Paraguay. Final Report “*Anive Hagua Oiko.*” Conclusions and Recommendations. Information available at: <http://www.meves.org.py/?node=page,66&meves=blob,631,0#>.

²⁵⁷ Paraguay Country Report to the UN Human Rights Committee. February 28, 2011, para. 14.

²⁵⁸ UN Human Rights Committee, Final observations on the third periodic report of Paraguay. April 29, 2013, para. 8.

²⁵⁹ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and guarantee of non-recurrence*, Mr. Pablo de Greiff, A/HRC/21/46, August 9, 2012, para. 54.

²⁶⁰ Institute for Human Rights Policies – MERCOSUR, “States from Mercosur agree to cooperate in investigations of human rights violations during periods of dictatorships”. Available at: <http://www.ippdh.mercosur.int/Novedad/Details/110152>. For more information, see at: Continues...

170. In May 2014, the IACHR issued an appeal to OAS member States to open their files on human rights violations committed by the Jean-Claude Duvalier regime in Haiti.²⁶¹ The Commission emphasized: “the support and commitment of the international community are essential at this historical moment for the Haitian justice system.”²⁶²

171. At the same time, in May 2014, Paraguayan authorities of the Museum of Justice, Documentation Center and Archive for the Defense of Human Rights announced that they would make available records held in the “Archives of Terror” for the court proceedings that are ongoing in Argentina pertaining to human rights violations during the dictatorship.²⁶³

172. Additionally, there have been instances when States have supported each other by providing evidence for the prosecution of senior government officials.²⁶⁴ For example, the United States forwarded declassified information, which served as evidence in the trial and subsequent sentencing of former President Alberto Fujimori, for the crime of homicide of civilians in the context of the armed conflict. The States of Paraguay and the United States submitted documentation, which also served as evidence for the trial and sentencing of the former head of State of Uruguay, Juan Bordaberry, for the crimes of forced disappearance and homicide of dissident politicians.

173. The IACHR also believes that the mechanisms of cooperation between States must ensure the rights of victims to obtain truth, justice and reparation. In this regard, the IACHR has expressed its concern over the extradition of demobilized combatants from Colombia to the United States.²⁶⁵ The Commission has maintained that this situation interferes with the obligation of the Colombian

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<http://www.presidencia.gub.uy/comunicacion/comunicacionnoticias/acuerdos-bilaterales-chile-mujica-bachelet-uruguay>.

²⁶¹ IACHR, Press Release 48/14, *IACHR Calls on Member States to Open their Archives on the Human Rights Violations Committed under the Regime of Jean-Claude Duvalier*, May 5, 2014. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2014/048.asp>

²⁶² IACHR, Press Release 48/14, *IACHR Calls on Member States to Open their Archives on the Human Rights Violations Committed under the Regime of Jean-Claude Duvalier*, May 5, 2014. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2014/048.asp>

²⁶³ Press article “Paraguay Makes ‘Archives of Terror’ [Archivos del Terror] Available to Argentine Trial,” published in Hoy. May 2, 2014. Available at: <http://www.hoy.com.py/nacionales/paraguay-aportara-archivo-del-terror-a-juicio-argentino>

²⁶⁴ For more information, see: Ciordiari, John D. and Franzblau, Jesse M., Missing Files: The Importance of Third-Country Records in Upholding the Right to the Truth (June 4, 2014). Columbia Human Rights Law Review, Vol. 46, No. 1, 2014. Available at: <http://ssrn.com/abstract=2446205>.

²⁶⁵ IACHR, Press Release 21/08, *IACHR Expresses Concern about Extradition of Colombian Paramilitaries*. May 14, 2008. Available at: <http://www.cidh.org/Comunicados/Spanish/2008/21.08sp.htm>.

State to prosecute civilians and agents of the State involved in cases of serious violations of protected rights.²⁶⁶

174. The Commission urges States to live up to their international obligations in the field of human rights by taking the legal and policy measures required to bring their legislation, institutions and domestic procedures in line with these obligations; and ensure effective access to justice in cases of serious human rights violations and infringements of IHL.

175. Accordingly, the Commission reemphasizes the duty of States to meet the obligations emanating from Articles 1.1, 8, 13 and 25 of the American Convention by investigating and prosecuting cases of gross human rights violations, within a reasonable period of time and with due diligence, as well as guaranteeing access to information pertaining to such contexts. All branches of government must collaborate in their respective areas of legal authority to achieve this end. Additionally, it is of particular importance to systematize and disseminate the results of these cases, in order to help get the word out to all corners of society as to the truth uncovered by state institutions, civil society organizations and society as a whole.

B. Truth Commissions

176. As a complement to judicial proceedings, the work of TC helps to make progress in collectively reconstructing the truth about human rights violations, in light of the historic, social and political contexts. At the same time, TC efforts are a way of recognizing and dignifying the experiences of the victims; and a fundamental source of information for both instituting and continuing with investigations and judicial proceedings, as well as for making public policy and putting adequate reparation mechanisms into place. In this regard, it has been noted that the contributions of successful truth commission experiences have provided, among other things, recognition to victims as rights holders, given a voice to victims and empowered them; fostered general social integration; and provided important information for other transitional justice.²⁶⁷ In this same vein, the Court has held that even though TC do not supplant the State's obligation to establish the truth by means of judicial proceedings,²⁶⁸ they are both about determinations of the truth which are complementary between themselves, since each has its own meaning and scope, as well as particular potentialities and limits, which depend on

²⁶⁶ IACHR, Truth, justice and reparation: Fourth report on the human rights situation in Colombia. December 31, 2013, para. 303.

²⁶⁷ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and guarantee of non-recurrence*, Mr. Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 24.

²⁶⁸ *Cfr. I/A Court H.R., Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment July 4, 2007. Series C No. 166, para. 128; *Case of Massacres of El Mozote and neighboring villages v. El Salvador*. Merits, Reparations and Costs. Judgment October 25, 2012 Series C No. 252, para. 298.

the context in which they take place and particular circumstances as the subject of analysis.²⁶⁹

177. Many Truth Commissions have been instituted in the region, namely: (i) the National Commission on the Disappearance of Persons²⁷⁰ of **Argentina** (1983); (ii) the National Commission for the Investigation of Forced Disappearances²⁷¹ of **Bolivia** (1982); (iii) the Special Commission on Political Deaths and Disappearances²⁷² (1995), the Amnesty Commission of the Ministry of Justice²⁷³ (2001) and the National Truth Commission²⁷⁴ (2011) of **Brazil**; (iv) the National Truth and Reconciliation Commission²⁷⁵ (1990) and the National Commission on Political Imprisonment and Torture²⁷⁶ (2003) of **Chile**; (v) the

²⁶⁹ Cfr. I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment July 4, 2007. Series C No. 166, para. 128; *Case of Gudiel Álvarez (Diario Militar) v. Guatemala*. Merits, Reparations and Costs. Judgment November 20, 2012 Series C No. 253, para. 298.

²⁷⁰ The National Commission on the Disappearance of Persons (CONADEP) was created under Decree 187 of December 15, 1983, for the purpose of elucidating the facts connected to the disappearance of persons. The Commission released its final report "*Nunca Más*" ['Never again'] in 1984. Information available at: <http://www.derhuman.jus.gov.ar/anm/index.html>.

²⁷¹ The National Commission for the Investigation of Forced Disappearances was created under Supreme Decree No. 19.441 of October 28, 1982, for the purpose of examining, investigating and determining the situation of missing citizens in Bolivia. See, I/A Court H.R., *Case of Ticona Estrada et al v. Bolivia*. Merits, Reparations and Costs. Judgment November 27, 2008. Series C No. 191, para. 73. The Commission was dissolved after finishing its work and, consequently, was unable to complete its final report.

²⁷² The Special Commission on Political Deaths and Disappearances was created under Law 9140 of 1995, for the purpose of investigating cases of deaths and disappearances of political dissidents during the period of 1961 to 1988. The Commission released its final report "*Derecho a la memoria y a la verdad*" ['Right to memory and to the truth'] in 2007. Information available at: <http://www.iade.org.ar/modules/noticias/article.php?storyid=2056>.

²⁷³ The Amnesty Commission was created in 2001, for the purpose of morally and financially redressing the victims of the excesses, arbitrary acts and human rights violations committed from 1946 to 1988. The Commission has more than seventy thousand amnesty requests on record. As of 2011, more than 35 thousand individuals had been granted "political amnesty" and official public apologies from the State for the violations committed were promoted. Information available at: <http://ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-Spanish.pdf>.

²⁷⁴ The Truth Commission was created under Law N° 12.528 of 2011 and took effect on May 16, 2012, for the purpose of investigating gross human rights violations, which took place from September 18, 1946 to October 5, 1988. Information available at: <http://www.cnv.gov.br/>.

²⁷⁵ The National Truth and Reconciliation Commission was created under Supreme Decree N° 355 of April 25, 1990, for the purpose of contributing to the overall elucidation of the truth about the most serious human rights violations committed from September 11, 1973 to March 11, 1990, either in the country or overseas, when the latter were related to the State of Chile or to national political life. The Commission released its final report, the "*Rettig Report*," in 1991. Information available at: http://www.ddhh.gov.cl/ddhh_rettig.html.

²⁷⁶ The National Commission on Political Imprisonment and Torture was created under Supreme Decree (Interior) N° 1.040 of November 11, 2003, for the purpose of determining which individuals had endured deprivation of liberty and torture for political reasons during the period of September 11, 1973 to March 10, 1990. The Commission released its final report, the "*Valech Report*," in 2004. Information available at: <http://www.indh.cl/informacion-comision-valech>.

National Reparation and Reconciliation Commission²⁷⁷ (2005) and the Center for Historical Memory²⁷⁸ (2011) of **Colombia**; (vi) the Truth and Justice Commission²⁷⁹ (1996) and the Truth Commission²⁸⁰ (2007) of **Ecuador**; (vii) the Truth Commission²⁸¹ (1992) of **El Salvador**; (viii) the Truth and Reconciliation Commission²⁸² (2001) of **Grenada**; (ix) the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer²⁸³ (1997) of **Guatemala**; (x) the National Truth and Justice Commission²⁸⁴

²⁷⁷The National Reparation and Reconciliation Commission was created within the framework of Law 975 of 2005 (Justice and Peace Law), for the purpose of facilitating the processes of peace and individual and collective reincorporation into civilian life of the members of the outlawed armed groups. The National Reparation and Reconciliation Commission has produced several reports. Information available at: <http://www.vicepresidencia.gov.co/Iniciativas/Paginas/CNRR.aspx>.

²⁷⁸The Center for Historical Memory was created as part of the institutional framework provided for under Law 1448 of 2011 (Victims and Land Restitution Law), for the purpose of gathering and recovering all of the documentary, oral testimonial or any other type of material regarding persons who either individually or collectively have sustained harm from acts committed as of January 1, 1985, as a consequence of infringements or serious violations of International Humanitarian Law or of International Human Rights norms. The Center for Historical Memory has produced several reports. Information available at: <http://www.centrodememoriahistorica.gov.co/index.php/somos-gmh/ique-es-el-centro-de-memoria-historica>.

²⁷⁹The Truth and Justice Commission was created under Ministerial Resolution No. 012 of September 17, 1996, for the purpose of investigating 176 cases regarding the right to the truth, to liberty and to personal security. The Commission broke off its relationship to the Government on February 3, 1997, and consequently it was unable to complete its final report. See, IACHR, Report on the Human Rights Situation in Ecuador OEA/Ser.L/V/II.96, April 24, 1997, Chapt. II. The Commission did not finish its work or complete a report.

²⁸⁰The Truth Commission was created on May 3, 2007, for the purpose of documenting the alleged human rights violations and crimes against humanity, which took place from 1984 to 2008. The Commission released its final report "*Sin Verdad no hay Justicia*" ['Without truth there is no justice'] in 2010. Information available at: <http://www.fiscalia.gob.ec/index.php/servicios/fiscalias-especializadas/comision-de-la-verdad.html>.

²⁸¹The Truth Commission was created on April 28, 1991 – in the framework of the peace accords between the government of El Salvador and the Farabundo Marti National Liberation Front (FMLN), for the purpose of investigating the serious crimes of violence, which took place as of 1980. The Commission produced its final report "*De la Locura a la Esperanza*" ['From Madness to Hope'] in 1993. Information available at: <http://www.pddh.gob.sv/memo/verdad>.

²⁸²The Truth and Reconciliation Commission began to operate on September 4, 2001, for the purpose of investigating the period of January 1, 1976 to December 31, 1991. The Commission submitted to the Parliament in 2006 its final report "*Report on certain political events which occurred in Grenada 1976-1991*". Information available at: <http://www.thegrenadarevolutiononline.com/trcreport.html>.

²⁸³The Commission for Historical Clarification was created under the Oslo Accord, signed on June 23, 1994, for the purpose of elucidating the human rights violations and acts of violence that have caused the Guatemalan population to suffer, in connection with the armed confrontation. The Commission released its final report "*Guatemala: Memory of Silence*" [Memoria de Silencio] in 1999. Information available at: http://shr.aaas.org/projects/human_rights/guatemala/ceh/sp/toc.pdf.

²⁸⁴The Truth Commission was created under a Presidential Decree of March 28, 1995, for the purpose of determining the truth about serious human rights violations, which occurred from September 29, 1991 to October 15, 1994. The Commission released its final report "*Si m pa rele*" in 1996. Information available at: <http://www.usip.org/publications/truth-commission-haiti>.

(1995) of **Haiti**; (xi) the Truth and Reconciliation Commission²⁸⁵ (2009) of **Honduras**; (xii) the Truth Commission²⁸⁶ (2001) of **Panama**; (xiii) the Truth and Justice Commission²⁸⁷ (2003) of **Paraguay**; (xiv) the Truth and Reconciliation Commission²⁸⁸ (2000) of **Peru**; and (xv) the Parliamentary Commission of Inquiry into the Situation of Disappeared Persons and the events leading up to their disappearances²⁸⁹ (1985) and the Peace Commission²⁹⁰ (2000) of **Uruguay**. Additionally, in 2008, **Canada** created a Truth and Reconciliation Commission with a specific mandate to investigate rights violations in the context of treatment of indigenous children at boarding schools.²⁹¹

²⁸⁵ The Truth and Reconciliation Commission was created under Executive Decree PCM-011-2010 of April 13, 2010, following up on the commitments of the Tegucigalpa – San Jose Accords for National Reconciliation and the Strengthening of Democracy in Honduras, for the purpose of elucidating the crimes occurring prior to and after June 28, 2009. The Commission released its final report “*Para que los hechos no se repitan*” [‘So that the events are not repeated’] in 2011. Information available at: <http://www.sjdh.gob.hn/sites/default/files/TOMO-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>. Previously, the National Human Rights Commissioner published in 1993 his report “*Los hechos hablan por sí mismos*.” [‘The facts speak for themselves’]. *Preliminary Report on Disappearances in Honduras 1980-1993*. Report available at: http://www.dhnet.org.br/verdade/mundo/honduras/tnm_honduras_los_hechos_hablan_por_si_mismos.pdf.

²⁸⁶ The Truth Commission was created under an Executive Decree of January 18, 2001, for the purpose of shedding light on violations of the right to life, including disappearances, committed during the military regime from 1968 to 1989. The Commission released its “Final Report” in 2002. Information available at: http://www.defensoriadelpueblo.gob.pa/index.php?option=com_flippingbook&view=book&id=6:informe-final-de-la-comision-de-la-verdad&catid=6:informes.

²⁸⁷ The Truth Commission was created under Law 2225 of 2003, for the purpose of investigating acts that may constitute human rights violations committed by state and quasi-state agents from May 1954 to October 2003. The Commission released its Final Report “*Anive Hagua Oiko*” in 2008. Information available at: <http://www.meves.org.py/?node=page,66&meves=blob,631,0#>.

²⁸⁸ The Truth and Reconciliation Commission was created under Supreme Decrees N° 065-2001-PCM and N°101-2001-PCM of June 4 and September 4, 2001, respectively, for the purpose of elucidating the proceedings, the events and those responsible for crimes from May 1980 to November 2000. The Commission released its “*Final Report*” in 2003. Information available at: <http://www.cverdad.org.pe>.

²⁸⁹ Commission of Inquiry into the Situation of Disappeared Persons and the Events Leading up to their Disappearances was created within the structure of the parliamentary committees of the Lower Chamber. The Commission submitted its final report in November 1985, though it was not published. Information available at: http://archivo.presidencia.gub.uy/_web/noticias/2007/06/tomo4.pdf.

²⁹⁰ The Commission was created under Resolution of the President of the Republic No. 858/2000 of August 9, 2000, for the purpose of determining the situation of disappeared detainees during the *de facto* regime, as well as disappeared minors in these same circumstances.” The Commission released its final Report “The Possible Truth” in 2003. Information available at: archivo.presidencia.gub.uy/noticias/archivo/2003/.../Informe_final.doc.

²⁹¹ Beginning in 1874, Canada forced little indigenous boys and girls to attend Indian Residential Schools (IRS). More than 150,000 of these children were separated from their families and communities and sent to schools where i) they were physically, sexually and emotionally abused; ii) it was prohibited for them to speak their native indigenous languages; and iii) it was prohibited to practice their traditional cultures. In 1920, attending these Residential Schools became mandatory for Canadian indigenous little boys and girls and then, in 1996, the practice was halted. In 2006, after years of negotiations, the federal government, the churches and the aboriginal groups reached a \$2 billion settlement for the nearly 80,000 survivors of these schools. Information available at: <http://www.trc.ca/websites/trcinstitution/index.php?p=3>.

178. Because they are official government initiatives, TC are created by (i) an act of law born of an agreement between disputing parties, as was the case of Guatemala²⁹² or El Salvador;²⁹³ (ii) a decree of the Executive Branch, as was the case of Argentina or Panama;²⁹⁴ or (iii) a provision of law emanating from the Legislative Branch, as was the case of Uruguay.²⁹⁵

179. The legal instrument creating a truth commission establishes its mandate and the parameters governing its work, such as the duration of its work; the aim and scope of the investigation; its purposes; the past period and conduct to be covered and examined by it; and the rules for its composition; among other things. Additionally, once they are operating, truth commissions issue their own by-laws and internal rules of procedure in order to regulate their work at a more detailed level, organize the work load distribution and establish more explicit processes to conduct their work.

180. Because of the extrajudicial status of truth commissions, their mandates tend to be broad and multidisciplinary.²⁹⁶ For example, with regard to Peru, the mandate is aimed at “elucidating the events, proceedings and responsibilities”²⁹⁷ and “examining the political, social and cultural conditions.”²⁹⁸ As for Chile, the mandate was “to establish the most comprehensive picture possible.”²⁹⁹ In the case of Guatemala, it was urged to “encompass all internal and external factors.”³⁰⁰ As for the applicable legal framework, the experiences of the countries of the region have been to examine crimes and situations investigated in

²⁹² See, *inter alia*, Guatemala, Oslo Accord of June 23, 1994 (Accord on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer)

²⁹³ El Salvador. Final report “From Madness to Hope” in 1993. Information available at: <http://www.pddh.gob.sv/memo/verdad>.

²⁹⁴ See, *Inter alia*, Decree N° 187/83 of the Republic of Argentina; Executive Decree of January 18, 2001 of the Republic of Panama.

²⁹⁵ See, *inter alia*, Uruguay, Lower Chamber, Parliamentary Commission of Inquiry into the situation of Disappeared Persons and the events leading up to their disappearances.

²⁹⁶ *Cfr.* UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 40.

²⁹⁷ Truth and Reconciliation Commission of Peru, *Final Report*, pg. 32.

²⁹⁸ Peru, Supreme Decrees N° 065-2001-PCM and N°101-2001-PCM.

²⁹⁹ Chile, Supreme Decree N° 355 of April 25, 1990, article. 1.a.

³⁰⁰ Commission for the Historical Clarification, *Guatemala: Memory of Silence* [Original Spanish title: *Memoria del Silencio*], Purposes. In this regard, it has been claimed that the investigation has ceased to be an effort aimed at elucidating cases and determining the fate of the victims and the identity of those responsible for the violations; and it has turned toward comprehensive examination of the causes, circumstances, factors, context and motives behind the situations of repression and/or violence nationwide.

light of the rights and obligations emanating from both domestic law and the supplementary body of international human rights and humanitarian law.³⁰¹

181. Likewise, as to the object of the investigation, based on national experiences thus far, each country has tended to pursue one of these three approaches: (i) a narrow list of specific acts or crimes, such as in Argentina and Chile,³⁰² (ii) a broad approach, such as in El Salvador and Guatemala;³⁰³ or (iii) a combination or hybrid of both approaches, such as the Truth and Reconciliation Commission of Peru.³⁰⁴ In other instances, after initial proposals narrowing the scope of conduct of the commission, subsequent initiatives have had to be taken in order to complement original efforts, with an aim toward “taking an overall look at violations of essential rights of human beings and recognizing the victims of said violations.”³⁰⁵ Furthermore, with regard to the persons allegedly responsible for the violations, in some instances truth commissions have confined their targets to involvement of state agents or persons acting in the service of the state,³⁰⁶ while in others, the conduct of “private individuals [acting] under political pretext”³⁰⁷ or the conduct of all parties in a conflict, has been examined.³⁰⁸

182. The success of the work of a truth commission is closely tied to the participation and involvement of society in these processes, which is the reason why “consultation with the victims’ groups should be a priority”³⁰⁹ during the

³⁰¹ See, *inter alia*, Truth and Reconciliation Commission of Peru, *Final Report*, p. 196 et seq; National Truth and Reconciliation Commission, *Rettig Report*, p. 11; Truth Commission, *From Madness to Hope*, p. 10.

³⁰² See, *inter alia*, CONADEP, *Never More*; National Truth and Reconciliation Commission, *Rettig Report*.

³⁰³ El Salvador, Mexico Accords of April 27, 1991, Truth Commission, art. 2; Accord on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer, Purposes.

³⁰⁴ The Truth Commission will focus its work on the following acts, provided that they are attributable to terrorist organizations, to agents of the State or paramilitary groups: a) Murders and abductions; b) Forced disappearances; c) Torture and other serious bodily harm; d) Violations of the collective rights of Andean and native communities of the country; e) Other crimes and serious violations of the rights of persons. The open-ended wording of subparagraphs «c» and «e» provide for the possibility that the TC may decide to include conduct that is not expressly described therein, but that—by analogy— is similarly serious. Truth and Reconciliation Commission of Peru, *Final Report*, p. 23.

³⁰⁵ Chile, Supreme Decree N° 1040 of 2003, cons. 2.

³⁰⁶ Chile, Supreme Decree N° 1040, art.1.1.1.

³⁰⁷ National Truth and Reconciliation Commission, *Rettig Report*, p. 874 et seq.

³⁰⁸ See, *inter alia*, Commission for Historical Clarification, *Guatemala: Memory of Silence [Memoria del Silencio]*, pg. 46; Truth Commission, *From Madness to Hope [De la Locura a la Esperanza]*, p. 10; Truth and Reconciliation Commission of Peru, *Final Report*, p. 215 et seq.

³⁰⁹ ICTJ, *Truth Seeking: Creating an Effective Truth Commission*, 2013, pg. 19. Available at: <http://ictj.org/es/publication/en-busca-de-la-verdad-elementos-para-la-creacion-de-una-comision-de-la-verdad-eficaz>. Similarly, Principle 6 of the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* establishes: “To the greatest extent possible, decisions to establish a truth commission, define its terms of reference and determine its composition should be based upon broad public consultations in which the views of victims and survivors especially are sought. Special efforts should

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establishment of a truth commission. The Commission notes that in very few instances has there been a consultation on the need to create a truth commission as well as on the mandate of the commission; notwithstanding, different sectors of civil society have played an important role in requesting the State to create a truth commission. For example, the Truth and Reconciliation Commission of Peru did engage in consultations with civil society organizations.³¹⁰ The IACHR also stresses the need to coordinate dissemination and sensitization campaigns, as well as to establish adequate channels of participation and communication with victims and society in general, in addressing this type of process.

183. In particular, with regard to the scope of the mandate of truth commissions, it has been asserted that the exclusion of obvious patterns of conduct or placing time limits on certain important events generates doubt about the impartiality of the mechanism³¹¹ and victim identification and location has been emphasized as an essential function of truth commissions, in view of the important role of exhumations in truth and justice processes.³¹² Furthermore, in light of truth commissions' broadness of function and tendency for these functions to increase, the United Nations Special Rapporteur on the promotion of the truth, justice, reparation and guarantee of non-recurrence has emphasized that it is predictable that truth commissions tasked with objectives for which they do not have the means to pursue, will not live up to expectations.³¹³

184. The IACHR finds that transparency of the mandate of truth commissions regarding their function, purpose, object and scope of investigation, duration and powers of investigation is essential to ensure their legitimacy and effectiveness. Additionally, the Commission deems it important for the mandate to be submitted to consultation with society, so that victims' expectations and views are assessed and taken into consideration, supporting citizen participation and confidence-building, and helping to keep the expected results of the work of the

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be made to ensure that men and women participate in these deliberations on a basis of equality. In recognition of the dignity of victims and their families, investigations undertaken by truth commissions should be conducted with the object in particular of securing recognition of such parts of the truth as were formerly denied." UN, Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, February 8, 2005.

³¹⁰ "The Inter-Institutional Working Group met for three months, during which time it conducted consultations with hundreds of civil society and State organizations, and with national and international experts. The topics explored encompassed the breadth of the mandate of the TRC, its powers and the most adequate mechanism to establish it." Truth and Reconciliation Commission of Peru, *Final Report*, pgs. 22-23.

³¹¹ *Cfr.* UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 34.

³¹² *Cfr.* UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 42.

³¹³ *Cfr.* UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 52.

truth commission clear. In that context, consultations with experts in the field could provide theoretical and practical evidence to aid in the analysis of the specific factors and conditions of the situation in question.

185. In this regard, it has been stated that: “the legal framework should be strong, but flexible in defining the types of violations and issues under examination in terms that are not exhaustive.”³¹⁴ Given that establishing the conduct and periods of time to be investigated has legal consequences as to the determination of the status of the victim and the potential reparation he or she might be entitled to, the Commission finds that a wide-ranging approach would afford truth commissions the necessary flexibility to adequately address any phenomena, which could be rendered invisible or slip through the cracks in the context of mass and systematic violations. In particular, the Commission emphasizes the importance of mandates of truth commissions incorporating differential approaches,³¹⁵ which make it possible to take into account the particular profile of infringements inflicted on the victims.

186. One central factor with regard to truth commissions is their composition and installation. Truth commissions have recognized the significance of the moral fitness,³¹⁶ ethical path,³¹⁷ prestige³¹⁸ and representativeness³¹⁹ of their members. Likewise, it has been noted that the power of a truth commission resides to a great extent in the moral authority and competence of its members,³²⁰ and therefore it is a high priority to establish selection criteria that attach value to technical experience or proven achievements in the areas of the mandate or areas related thereto.³²¹ Additionally, emphasis has been placed on the need to establish international guidelines on incompatibilities, conflicts of interest, and moral fitness

³¹⁴ ICTJ, *Truth Seeking: Creating an Effective Truth Commission*, 2013, p. 29. Available at: <http://ictj.org/es/publication/en-busca-de-la-verdad-elementos-para-la-creacion-de-una-comision-de-la-verdad-eficaz>

³¹⁵ Cfr. UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 36.

³¹⁶ Truth and Reconciliation Commission of Peru, *Final Report*, p. 28.

³¹⁷ Truth and Reconciliation Commission of Peru, *Final Report*, p. 28.

³¹⁸ CONADEP, *Nunca Más* ['Never Again'], p. 350.

³¹⁹ CONADEP, *Nunca Más*, ['Never Again'], p. 350. The Truth Commission of El Salvador was the only one that was made up exclusively of international actors.

³²⁰ Cfr. UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 53.

³²¹ Cfr. UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 61.

of individuals serving on truth commissions.³²² The IACHR believes that the qualifications of the members serving on a truth commission are essential to inspire the trust of the citizens and contribute to the legitimacy of the mechanism. Therefore, it is indispensable for there to be adequate procedures in place for the appointment of the members of truth commissions, as well as appropriate measures to ensure that they are impartial and independent in the performance of their duties.

187. The main source of information for the work of truth commissions has been the testimony of the victims, their family members and witnesses to the crimes. Additionally, truth commissions have utilized national and international reports, and even the testimony of individuals charged with the very human rights violations at issue in the complaints. Using these individuals as a source has yielded mixed results in the case of Chile and Guatemala, inasmuch as even though in some circumstances, “the members on active duty of the armed institutions declined to give testimony;”³²³ in other instances, the testimony provided by individuals who had participated in the human rights violations, “constituted a basic element for the elucidation of an important number of specific cases and an invaluable input used in the analysis of the strategies and mechanisms that led to these human rights violations or acts of violence.”³²⁴

188. Nonetheless, a special situation of concern regarding investigations by truth commissions has been the persistence of different obstacles to gaining access to state information. For example, it has been stated that: i) “the destruction or removal of the documentation provided before government was handed over to the constitutional authorities” hindered the investigation in Argentina;³²⁵ ii) when a request for information was received, “all the documentation from that period had been legally burned”³²⁶ or that documentation was not sent out on the grounds of “legal provisions currently in force” as was the case in Chile;³²⁷ and (iii) as was the case in Guatemala, “collaboration provided by the National Army”³²⁸ has been “precarious and unsatisfactory,” inasmuch as there is proof that “some of the documents whose existence has been repeatedly denied by the Army actually exist and are archived in offices of the National Army.”³²⁹

³²² Cfr. UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 60.

³²³ National Truth and Reconciliation Commission, *Rettig Report*, p. 6.

³²⁴ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 54.

³²⁵ “The former *de facto* President General Reynaldo Benito Bignone himself gave orders, in classified Decree N°2726/83, to destroy documentation relating to those detained at the disposition of the National Executive under the state of siege.” CONADEP, *Nunca Más* [‘Never Again’], pg. 204 and conclusions.

³²⁶ National Truth and Reconciliation Commission, *Rettig Report*, p. 5.

³²⁷ National Truth and Reconciliation Commission, *Rettig Report*, p. 5.

³²⁸ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 49.

³²⁹ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 50.

189. The Commission reiterates that States are obliged to guarantee access to public information, especially when it pertains to human rights violations. In the context of creating a truth commission, the State's commitment to create it and work together with it includes providing public information. Accordingly, the failure of State officials to cooperate in handing over information poses an obstacle to the work of the truth commission; it contributes to perpetuating silence with regard to human rights violations; and raises doubts as to the willingness of authorities to submit to an indepth review of the distant and recent past. In fact, as is apparent in the cases of the "Diario Militar" of Guatemala³³⁰ or the "Archives of Terror" of Paraguay,³³¹ public documents are in existence, which show the planning, strategy, intent and pattern in cases of mass human rights violations. Consequently, just as it is when judicial authorities are involved, information in the possession of the State must be made available to a truth commission without omitting any part thereof and in an orderly fashion. The IACHR has also stressed the importance of States providing information stored in their offices that may be useful and relevant to the work of a truth commission in another country. For example, the United States forwarded declassified information to the Truth

³³⁰ On May 20, 1999, the non-governmental organization *National Security Archive* released a document which later came to be known as "Dossier de la Muerte" or "Diario Militar" ['Death Dossier' or 'Military Log'], containing a register of operations –kidnappings, secret detentions and in many instances murders – and information on victims of said operations conducted in Guatemala. According to the analysis by the aforementioned organization, it is an "authentic document, produced by agents of the State, concretely by Guatemalan presidential intelligence, also known as the Archives, prepared between August 1983 and March 1985." The so-called *Diario Militar* contains seven sections. The seventh of the seven sections is the most relevant part of the document to the instant case. In its 53 pages, it contains a registry of actions perpetrated against some 183 persons, most of them with a photo, vital statistics (age, sex, occupation), alleged membership in dissident and/or insurgent groups, ties to other persons suspected of being subversives and details about the arrest of the person such as location, date and fate. This section is organized chronologically, based on the date on which each person was arrested, beginning in November 1983 and ending in March 1985. IACHR, *Application to the Inter-American Court of Human Rights in the Case 12.590, José Miguel Gudiel Álvarez et al ["Diario Militar"] v. Guatemala*, February 18, 2011, paras. 86, 87. Additionally, in July 2005, investigators of the Office of the Prosecutor for Human Rights discovered a vast collection of documents of the National Police stored in five buildings in Guatemala City and in an advanced stage of deterioration. Information available at: <http://www2.gwu.edu/~nsarchiv/guatemala/police/index.htm>.

³³¹ On December 22, 1992, the Productions Department of the Police is searched and on December 24, 1992, the National Directorate of Technical Matters is searched. The documents confiscated on those occasions date back to 1958 until 1965 (early years of operation of the Directorate, files of political detainees and personnel documents of the Director of the office). Subsequently, two more search warrants are executed, the first one in January 1993, the Judicial Department of the Police and the second one of the Third District Police Command. Documents, books and files were confiscated not only of political detainees but also a large quantity of documents and files on detainees for common crimes. Beginning in January 1993, an inventory of the seized materials, known as the "Archives of Terror," is conducted. Information available at: <http://www.unesco.org/webworld/paraguay/historia.html>; <http://www.pj.gov.py/contenido/132-museo-de-la-justicia/334>. The Inter-American Court of Human Rights assesses positively the creation of the Center for Documentation and Archives for the Defense of Human Rights in Paraguay, "which has contributed to the search for the historical truth not only of Paraguay, but the entire region. The preservation, classification and systematization of these documents constitutes an important effort for establishing and recognizing the historic truth of the events that occurred in the Southern Cone over several decades." I/A Court H.R., *Case of Goiburú et al v. Paraguay*. Judgment September 22, 2006. Series C No. 153, para. 170.

Commissions of Chile, Peru, Guatemala, Honduras and recently, Brazil,³³² in order for them to have more information available to them to do their job.³³³

190. Additionally, in view of the complexity of their functions, truth commissions have come to establish a variety of work methodologies and, in some instances, have engaged in meetings and consultations with civil society on those methodologies.³³⁴ In particular, truth commissions have taken to making announcements and alerts to the oral and print media -in different languages-; public information campaigns; deployments throughout the national territory and opening offices in several locations of the country; taking testimony overseas; on site examinations and inspections; requests for reports and documents; serving summons; interviewing -engaging the services of translators and interpreters-; review of records; and visits to morgues, among other things.³³⁵

191. The Commission notes that despite their flexibility and the different investigatory methods they use in order to gather as much information as possible on the historic period under investigation and the many sources consulted in this process, truth commissions are not always successful at getting all the information they need. In addition to the difficulties stemming from reluctance of authorities to provide public information, truth commissions have expressly raised the phenomena of under-reporting of human rights violations, either as a result of the failure to report by victims and their family members or because of the inability of truth commissions to cover the entire territory of the country, among other reasons.³³⁶

192. The IACHR stresses that truth commissions must be able to conduct their work autonomously, independently and impartially and must be endowed with the technical, human and financial resources necessary to perform their duties.³³⁷ In particular, truth commissions call for staffing with

³³²The National Security Archive, Brazil: Torture techniques revealed in declassified U.S. documents. July 8, 2014. Available at: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB478/>.

³³³ WOLA, The United States Should Declassify Documents Relevant to the Work of the Brazilian Truth Commission. December 7, 2012. Available at: <http://www.wola.org/es/node/3526>. For more information, see: Ciorciari, John D. and Franzblau, Jesse M., Missing Files: The Importance of Third-Country Records in Upholding the Right to the Truth (June 4, 2014). Columbia Human Rights Law Review, Vol. 46, No. 1, 2014. Available at: <http://ssrn.com/abstract=2446205>.

³³⁴ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 29.

³³⁵ See, *inter alia*, Truth Commission, *From Madness to Hope*, p. 3; CONADEP, *Never Again*, Chapt. IV and conclusions; Commission for Historical Clarification, *Guatemala: Memory of Silence*, pp. 32, 60; Truth and Reconciliation Commission of Peru, *Final Report*, pp. 35, 40; National Truth and Reconciliation Commission, *Rettig Report*, p. 2.

³³⁶ See, *inter alia*, CONADEP, *Never Again*; Truth and Reconciliation Commission, of Peru, *Final Report*, Annex 2. *How many Peruvians died? Estimate of total number of victims as a consequence of the internal armed conflict from 1980 to 2000*.

³³⁷ See, *inter alia*, UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, paras. 63-69.

multidisciplinary competencies pertaining to the particular phenomena under scrutiny and must receive adequate training, instruction and sensitization in order to be able to deal with the issues at hand. It is also essential to introduce differential measures to tailor care to vulnerable groups and implement measures to aid in overcoming barriers to geographic distance, economic hardship or limited language ability, among other things, striving to avoid retraumatizing victims and family members.

193. As for management of the information received by truth commissions, the general rule of thumb is to maintain the confidentiality and secrecy of the proceedings before these commissions.³³⁸ In this regard, it has been stated that the assurance of confidentiality of the proceedings serves several purposes, which are that: (i) it constitutes an incentive to victims, family members and witnesses to overcome the climate of terror which was keeping them from reporting the human rights violations inflicted upon them;³³⁹ (ii) it aids in protecting victims and witnesses from potential retaliation by the persons and/or institutions charged as liable for the violations;³⁴⁰ and (iii) it enables potential perpetrators to contribute to the work of truth commissions without fear of any subsequent punishment and, at the same time, it guarantees preclusion of an individual being charged as responsible for violations, as expressly established in some truth commission mandates.³⁴¹ In the region, the only exception to the rule of secrecy of information has been the use of the public hearings conducted by the Truth and Reconciliation Commission of Peru, under the premise that “the opportunity to provide testimony before the country is an act of dignification and healing for the victims appearing at the public hearing and for those persons who can identify with the cases presented.”³⁴²

³³⁸ See, *inter alia*, Chapultepec Peace Accords; I Report of the Parliamentary Commission of Inquiry into the Situation of Disappeared Persons and the Events Leading up to their Disappearances; Accord on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer; Chile, Supreme Decree N° 1040, art.5.4.

³³⁹ Truth Commission, *From Madness to Hope*, p. 13.

³⁴⁰ Truth Commission, *From Madness to Hope*, p. 13.

³⁴¹ See, *inter alia*, Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 54; Chile, Supreme Decree N° 355, art. 2.

³⁴² According to the Truth Commission, “public hearings are solemn sessions in which the commissioners directly receive, before national public opinion, the testimony of victims or witnesses, on events that have seriously affected the victim and his or her family or social group, or because of the scope and complexity thereof, have scarred the country for good and have raised serious concern in the international community. The Commission intends for the victims to enrich the investigation with their own personal truth, their interpretation of the events and their hopes for justice, reparation and prevention. Likewise, the country stands in solidarity and recognizes the dignity of the victims, which has been denied to them for so long. The public hearings expand the public national space to give voice to traditionally excluded sectors. At the same time, because of the immediate nature of them [the hearings], they move [people] to emotional interaction and personal reflection on the need to respect the rights of every person. In this way, they can foster national reconciliation, defined as overcoming the forms of discrimination, which victimize on a permanent basis broad sectors of the population and prevent Peruvians from recognizing and rejoicing in our diversity.” Information available at: <http://www.cverdad.org.pe/apublicas/audiencias/index.php>.

194. The Commission attaches a high priority to ensuring the safety of the victims, family members, witnesses and any person who provides information or testimony to a truth commission,³⁴³ by adopting suitable and effective mechanisms of protection and prevention,³⁴⁴ The most appropriate measures to achieve this purpose depend on the needs of the victims, family members and witnesses, as well as the specific circumstances of each country.

195. As to how the information received by truth commissions is organized, several different methods have been used, such as files,³⁴⁵ dossiers³⁴⁶ and “packets” or groups of complaints that eventually are forwarded to the justice system,³⁴⁷ among other methods. Truth commissions have also organized information by building databases, as was done in Argentina.³⁴⁸ Also, with regard to the degree of rigor in assessing accuracy and reliability of the information gathered, truth commissions have used scientific and technical methods from different disciplines such as anthropology, sociology, history, psychology, as well as methods of analysis of evidence such as forensic examinations, expert opinions, forensic anthropology and laboratory tests, among other ones.³⁴⁹ Consequently, truth commissions have established a system of evaluation of evidence, based on different degrees of certainty³⁵⁰ and levels of persuasion;³⁵¹ screening and rating procedures;³⁵² mechanisms of verification, proof and double checking³⁵³ and

³⁴³ The issue of witness protection has been included in several of the Human Rights Council’s Manuals of Operation of special procedures and Training Manuals for the enforcement of human rights. See, UN, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights, The Right to the Truth*, A/HCR/5/7, June 7, 2007, para. 33.

³⁴⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, doc. 5 rev. 1, 2006, para. 133.

³⁴⁵ National Commission on Political Imprisonment and Torture, *Valech Report*, p. 40.

³⁴⁶ CONADEP, *Never Again*, p. 353.

³⁴⁷ CONADEP, *Never Again*, pp. 357, 358.

³⁴⁸ CONADEP, *Never Again*, p. 364. Commission for Historical Clarification (CEH), pg. 59.

³⁴⁹ Truth and Reconciliation Commission of Peru, *Final Report*, pp. 32-33.

³⁵⁰ The Commission of El Salvador describes the evidence as overwhelming, substantial or sufficient. Truth Commission, *From Madness to Hope*, p. 14.

³⁵¹ The CEH established three levels of proof: *plena convicción* [‘full proof’], *presunción fundada* [‘reasonable assumption’] and *presunción simple* [‘simple assumption’] (these are the minimum standards for a situation to qualify for consideration in the Annex of Cases Filed). Commission for Historical Clarification, *Guatemala: Memory of Silence*, pgs. 62-63.

³⁵² The Valech Commission established a ‘Prequalification Form,’ in which the following categories were established: “prequalified,” “non prequalified” and “with background information to be defined under the mandate,” after which cases were rated as either “qualified” or “outside of mandate.” National Commission on Political Imprisonment and Torture, *Valech Report*, pp. 43-47.

³⁵³ Truth Commission, *From Madness to Hope*, p. 15.

validation;³⁵⁴ statistical procedures;³⁵⁵ and cross-referencing of data.³⁵⁶ As a result of those exercises, in their final reports, truth commissions have presented information in different ways, such as through (i) “individual cases,” as was done in Chile;³⁵⁷ (ii) “individual paradigmatic cases and events,” as was done in El Salvador;³⁵⁸ (iii) percentages, as was done in Argentina;³⁵⁹ (iv) “grouping individual cases with similar characteristics together to reveal a systematic pattern,” as was done in Uruguay;³⁶⁰ or (v) a combination of these methods.

196. The Commission emphasizes the importance for the methodology used to gather, systematize and analyze the information to be clearly and expressly stipulated and based on scientific methods. Therefore, the use of interviewing guidelines or pre-prepared forms for information recording or documentation is useful for subsequent efforts to build a standardized data base to facilitate analysis of information by type of evaluation, pattern, victim and victimizer profiles, region and time period, among other categories. Additionally, organizing information into databases is a fundamental element for public policy-making and is absolutely essential in order to ensure compliance with other obligations, such as confidentiality and anonymity. Scientific rigor and responsibility for organizing and managing the information is key in ensuring the seriousness of the work of a truth commission and of the conclusions and recommendations put forward by it.

197. Accordingly, because of the value attached to archives of truth commissions as a guarantor of the voices of the victims; their contribution to the culture of commemoration and memorialization; the assurance they provide against revisionism and denial; and their value to judicial investigations and other mechanisms of transitional justice,³⁶¹ it is of the utmost importance for them to be classified, protected and adequately preserved.³⁶² Consequently, truth commissions

³⁵⁴ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 63; National Commission on Political Imprisonment and Torture, *Valech Report*, p. 41.

³⁵⁵ Truth and Reconciliation Commission of Peru, *Final Report, Final Report*, Annex 2. *How many Peruvians have died? Estimate of total number of victims as a consequence of the internal armed conflict 1980-2000*.

³⁵⁶ Truth and Reconciliation Commission of Peru, *Final Report, Final Report*, Annex 2. *How many Peruvians have died? Estimate of total number of victims as a consequence of the internal armed conflict 1980-2000*.

³⁵⁷ See, *inter alia*, Commission of Inquiry into the Situation of Disappeared Persons and the Events Leading up to their Disappearances, *Final Report*; National Truth and Reconciliation Commission, *Rettig Report*, Volume III.

³⁵⁸ Truth Commission, *From Madness to Hope*, p. 10.

³⁵⁹ CONADEP, *Never Again*.

³⁶⁰ Truth Commission, *From Madness to Hope*, p. 10.

³⁶¹ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 83.

³⁶² See, *inter alia*, UN, *Report of the Office of the United Nations High Commissioner for Human Rights. The Right to the Truth*, A/HRC/12/19, August 21, 2009, para. 26; *Report of the Office of the United Nations High Commissioner for Human Rights. The right to the Truth*, A/HRC/5/7, June 7, 2007, para. 58.

have adopted mechanisms for the preservation and storage of the information that has been gathered by them³⁶³ and have stipulated that their archives be transferred and/or deposited in national archives, ministries or human rights institutions, monitoring institutions, or even at the United Nations.³⁶⁴ The IACHR underscores the obligation of States to properly preserve the archives of truth commissions and ensure access thereto.

198. With regard to the task of ascribing liability by truth commissions, in the case of Guatemala, it was expressly written into its mandate that “the work, recommendations and report of the TC shall not single out liability of any individual, nor shall it have judicial purposes or effects,”³⁶⁵ which has been interpreted as “omitting from the text of the report, and particularly in the case descriptions, the names of the persons responsible for the instances of human rights violations and acts of violence under investigation.”³⁶⁶ Similarly, it was established in the Chilean process that the truth commission “may not issue a pronouncement on liability that may be ascribed to individuals.”³⁶⁷ Consequently, institutional liability has been ascribed,³⁶⁸ naming groups and noting the branch or agency of the State as responsible.³⁶⁹ In El Salvador, it was recommended to remove from office or their position any officials who were involved in serious acts of violence during the conflict.³⁷⁰

199. As to coordination of truth commission investigations with the justice system, in some instances, the express objective of the truth commission has been to contribute to “elucidation by the respective judicial bodies” of human rights violations,³⁷¹ which by virtue of the information gathered [by the truth commission] was provided to the Judiciary in order to institute and follow up with the pertinent judicial proceedings.³⁷² In other instances, such as in El Salvador, criminal

³⁶³ See, *inter alia*, CONADEP, *Never Again*, p. 361; National Truth and Reconciliation Commission, *Rettig Report*, Recommendations.

³⁶⁴ The UN Secretary General established a special set of rules for the management, utilization, preservation and disposal of documents, records and other materials of the Commission for Historical Clarification of Guatemala in the archives of the United Nations in New York, making it a requirement to obtain written authorization signed by the Secretary General to open the sealed archive prior to January 1, 2050. UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantee of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, paras. 85-86.

³⁶⁵ Guatemala, Oslo Accord, Operation.

³⁶⁶ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 44.

³⁶⁷ Chile, Supreme Decree N° 355, art. 2; Supreme Decree N° 1040, art. 3.

³⁶⁸ Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 61.

³⁶⁹ National Truth and Reconciliation Commission, *Rettig Report*, p. 25.

³⁷⁰ Truth Commission, *From Madness to Hope*, p. 188.

³⁷¹ Peru, Supreme Decree, No. 065-2001-PCM, art. 2.

³⁷² See, *inter alia*, Commission of Inquiry into the Situation of Disappeared Persons and the Events Leading up to their Disappearances, *Final Report*; CONADEP *Never Again*, Conclusions; National Truth and

Continues...

prosecution was expressly excluded from the work of the truth commissions, inasmuch as the proceedings were sealed.³⁷³

200. However, in addition to the fundamental importance of the final report of a truth commission as the product of an exercise to identify victims and reconstruct the truth, which is shared in a broad and participatory fashion with greater society, the findings of which must be properly disseminated and publicized via social and other media,³⁷⁴ another paramount function of truth commissions has been to put forward proposals for reparation³⁷⁵ and recommend measures of a legal, political or administrative nature³⁷⁶ and institutional, legal and educational reforms,³⁷⁷ based on the information gathered and examined by them.

201. In fact, truth commissions have recommended adopting a number of measures, policies and programs, such as: instituting judicial investigations and taking administrative measures; implementing security measures on behalf of victims and witnesses; institutional reforms; forensic anthropology measures;³⁷⁸ measures to preserve the memory of the victims; measures aimed at fostering a culture of mutual respect and observance of human rights; measures to strengthen the democratic process;³⁷⁹ recommendations to restore rights and make symbolic reparation; recommendations of a legal and administrative nature; recommendations regarding the welfare of society and prevention of human rights violations; measures of punishment for concealing or withholding information on illegal inhumations and the legal authority to investigate these incidents;³⁸⁰ measures of removal from positions in the armed forces, the public administration and disqualification from holding public office; measures of judicial reform; reforms of the armed forces and in the area of public security;³⁸¹ review of provisions of constitutions and laws; symbolic gestures of recognition and face-to-face meetings;

...continuation

Reconciliation Commission, *Rettig Report*, p. 8, Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX, Chapt. 2. Recommendations.

³⁷³ See, *inter alia*, El Salvador, Mexico Accords of April 27, 1991.

³⁷⁴ See, *inter alia*, Commission for Historical Clarification, *Guatemala: Memory of Silence*, p. 41; Truth Commission, *From Madness to Hope*, p. 6; Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX, Chapt. 2. Recommendations.

³⁷⁵ See, *inter alia*, Truth and Reconciliation Commission of Peru, *Final Report*, Introduction; Chile, Supreme Decree N° 355 of April 25, 1990, Art. 1.c.

³⁷⁶ Guatemala, Oslo Accord, Purposes; Truth Commission, *From Madness to Hope*, p. 9.

³⁷⁷ Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX. Recommendations.

³⁷⁸ Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX, Chapt. 2. Recommendations.

³⁷⁹ Commission for Historical Clarification, *Guatemala: Memory of Silence*, Chapt. V. Recommendations.

³⁸⁰ National Truth and Reconciliation Commission, *Rettig Report*, Recommendations.

³⁸¹ Truth Commission, *From Madness to Hope*, Chapt. V, Recommendations.

measures of recognition of the official record or memory;³⁸² and implementation of plans and programs of reparation,³⁸³ among other things.

202. The Commission notes that, because of the nature and scope of the work of truth commissions, which aid in identifying victims and address not only human rights violations but also the causes and consequences thereof, the result of their investigations provides important evidence for identifying institutional deficiencies and liability; adopting measures of reparation and guarantees of non-recurrence; and design of reparation programs, which take into account specific and differential patterns of conduct, hidden acts and infringements committed against the victims and their family members.

203. However, by virtue of the transitory nature of truth commissions, other permanent bodies are in charge of implementing policies and mechanisms of follow-up to the conclusions and recommendations made by truth commissions.³⁸⁴ In fact, different institutional mechanisms of follow-up have been adopted such as the creation of specific agencies, the establishment of units in existing ministries to perform this duty or assigning the duty of follow-up to independent human rights institutions.³⁸⁵ In this regard, strengthening civil society has been deemed an essential element for the improvement of compliance with the recommendations of truth commissions by States.³⁸⁶

204. The Commission finds that truth commissions must have the necessary political support and backing in order to be able to complete their job and produce a final report, which encapsulates the information gathered, identifies the victims and comprehensively and closely analyzes the human rights violations under investigation. Dissemination of the “official” truth about systematic and gross human rights violations dignifies the victims and contributes to strengthening democratic societies and the rule of law. Therefore, wide-ranging information campaigns must be conducted to disseminate final reports, which must be translated into other languages, when necessary, as well as include teachable versions of these reports in school curricula.

³⁸² National Commission on Political Imprisonment and Torture, *Valech Report*, Recommendations.

³⁸³ See, *inter alia*, Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX, Chapt. 2, Recommendations; Commission for Historical Clarification, *Guatemala: Memory of Silence*, Chapt. V, Recommendations; National Truth and Reconciliation Commission, *Rettig Report*, Recommendations; Truth Commission, *From Madness to Hope*, Chapt. V, Recommendations.

³⁸⁴ See, *inter alia*, , Commission for Historical Clarification, *Guatemala: Memory of Silence*, Chapt. V, Recommendations; Truth Commission, *From Madness to Hope*, Chapt. V, Recommendations; Truth and Reconciliation Commission of Peru, *Final Report*, Volume IX, Recommendations.

³⁸⁵ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantees of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 76.

³⁸⁶ UN, Human Rights Council, *Report of the Special Rapporteur on the promotion of the truth, justice, reparation and the guarantees of non-recurrence*, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 79.

205. The Commission emphasizes that the impact of creating a truth commission is contingent to a great measure upon the follow-up given to its conclusions and recommendations. However, interruptions in a commission's work,³⁸⁷ the failure to publish its final report,³⁸⁸ enactment of general amnesty laws subsequent to release of a final report,³⁸⁹ closing down of historical archives³⁹⁰ and the failure to implement the commission's recommendations, all have a deeply negative impact on regaining the trust of citizens and further exacerbate the after-effects of past human rights violations.

C. Importance of other complementary initiatives

206. Because the phenomena of mass and systematic human rights violations is of such great complexity, other initiatives are necessary and have also aided in guaranteeing the right to the truth in the broadest sense and have contributed to the elucidation and official recognition of human rights violations as a measure of reparation to the victims and their next of kin and of commemoration and stand as a reminder to society in general. Even though this report mainly examines initiatives of States, the Commission finds that the victims, their representatives and civil society organizations have played an essential role in calling for, contributing to, designing, implementing and carrying on with a wide range of endeavors aimed at upholding and demanding respect for the right to the truth.

207. Firstly, we must highlight the tireless efforts of victims, family members, human rights defenders and civil society organizations, who have demanded and continue to assert the right to truth, justice and reparation in cases of human rights violations. The region holds many examples of the efforts of civil society to document, verify and spread the truth about human rights violations by establishing unofficial truth commissions, conducting investigations and studies and

³⁸⁷ See, *inter alia*, Bolivia, National Commission of Enquiry into Forced Disappearances; Ecuador, Truth and Justice Commission.

³⁸⁸ See, Mexico, FEMOSPP. Information available at: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/index2.htm>.

³⁸⁹ See, *inter alia*, El Salvador, Mexico Accords of April 27, 1991.

³⁹⁰ In Guatemala, on June 29, 2012, through an internal agreement of the Secretariat for Peace, under Antonio Arenales Forno, the Office of the Historical Peace Archives was effectively dismantled. Several studies conducted and documents written by the defunct Office of the Historical Peace Archives were received and catalogued by the Center for Documentation of the Latin American Social Sciences Institute (FLACSO), making them available for reference by researchers and the public in general, reported Ruth del Valle, coordinator of the Memory, History and Justice Program of FLACSO. The Peace Archives was created in 2008 in order to digitize and analyze declassified military files on the armed conflict. Thus far, more than two million documents, containing information from both the defunct National Police (PN) and from the Army, on operations during the internal war, have been digitized. Information available at: <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/161621-ofrecen-copia-ante-cierre-de-archivo-de-la-paz>; <http://www.s21.com.gt/archivos/2012/06/01/perez-niega-cierre-archivos-paz>.

authoring reports,³⁹¹ as well as initiatives to bring pressure to bear for recognition of these violations by society and the public. Moreover, in many instances, those reports and investigations have subsequently been used as a source of information by official truth commissions. In this regard, it has been noted that:

In the absence of political will or capacity to create an effective investigation, civil society, local governments and other institutions have created innovative investigations, which are similar to the truth commissions. The unofficial, local or specific commissions to investigate a case do not have the capacity to compel information to be furnished and it is unlikely that they are well funded as compared to activities financed by the State. However, by mobilizing the victims and survivors, by documenting the abuse and formally presenting their findings, these investigations have often generated the support of the public and have catalyzed government action, leading to deeper investigations and other measures.³⁹²

208. While not an exhaustive inventory of all efforts, the Commission cites hereunder examples of creative endeavors, with heavy involvement of different sectors of society and reflecting the use of human rights principles in the quest for truth and justice.

209. In **Guatemala**, the report of the interdiocesan Recovery of the Historical Memory Project “Guatemala: Never Again” is one example of such endeavors.³⁹³ The report is the result of a large organized effort by the Human Rights Office of the Archdiocese to document and analyze human rights violations committed during the armed conflict. The initiative actually predated the establishment of the Commission for Historical Clarification. It was intended to contribute to the eventual work of that Commission and focused its efforts on violations, which took place in rural areas, where it was more difficult to gain access to in order to create a historical registry of the political violence. In this regard, it viewed the conflict as having robbed the victims of their right to speak, and it attempted to restore that right, through a report examining the impacts of violence, the “mechanisms of horror,” the historical context and the plight of the victims.³⁹⁴

³⁹¹ See, *inter alia*, Mothers of the Plaza de Mayo Association (Argentina), Vicariate of Solidarity (Chile), Human Rights Office of the Archdiocese (Guatemala), Victims’ Movement (Colombia), APRODEH (Peru), Asociación Pro-Búsqueda (El Salvador), COFADEH (Honduras).

³⁹² ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013, p. 14. Available at: <http://ictj.org/es/publication/en-busca-de-la-verdad-elementos-para-la-creacion-de-una-comision-de-la-verdad-eficaz>.

³⁹³ Interdiocesan Recovery of the Historical Memory Project “Guatemala: Never Again *Report on the Recovery of the Historical Memory*.” Available at: <http://www.derechoshumanos.net/lesahumanidad/informes/guatemala/informeREMHI.htm>

³⁹⁴ Interdiocesan Recovery of the Historical Memory Project “Guatemala: Never Again *Report on the Recovery of the Historical Memory*.” Available at: <http://www.derechoshumanos.net/lesahumanidad/informes/guatemala/informeREMHI.htm>

210. In the **United States**, in 2004, activists and community members decided to create the Greensboro Truth and Reconciliation Commission for the purpose of examining the context, the causes and the consequences of what had taken place, as well as making recommendations for the community to recover from the tragedy in Greensboro, North Carolina, on November 3, 1979.³⁹⁵ According to the International Center for Transitional Justice, the report approved by the Commission in 2006 is taught at local universities and “offers a community [which was] divided by suspicion and denial, the opportunity to begin to solve difficult problems related to race, social class and politics.”³⁹⁶

211. In **Brazil**, the Archdiocese of São Paulo examined hundreds of case files of the military justice system and in 1986 published the report “Brazil: *Never Again*.” This document attests to the widespread practice of torture during the military dictatorship.³⁹⁷ Then, in 2011, the Center for the Preservation of the Political Memory was created in order to engage in awareness raising and memory preservation at public and private organizations.³⁹⁸ The Bar Association undertook a memory preservation and truth-seeking campaign in 2010 in order to gain access to military files created during the dictatorship.³⁹⁹

212. Additionally, during the debate and the creation of the National Truth Commission, many States, universities and social organizations created local and regional committees, with varying spheres of competence for investigative purposes.⁴⁰⁰ In several States, civil society has created memory and truth committees to support the National Truth Commission.⁴⁰¹

³⁹⁵ Based on the findings of the special commission, on November 3, 1979, members of the Ku Klux Klan and the Nazi Party opened fire on a rally of political activists and union members, which left a toll of five anti-Klan demonstrators dead, and nine demonstrators and a photographer wounded. The commission interviewed the survivors, the witnesses, the police, the judges and attorneys, ex members of the Ku Klux Klan and of the Nazi Party, and held public hearings. In May 2006, the Commission released its final report on the events of 1979, as well as the causes and consequences thereof. The Commission found that the decision of the police to stay away from the events was a decisive factor in bringing about the violent outcome, that the jurors, who were not representative of the community, contributed to the impunity of the murders, and the police department and key senior city officials “deliberately deceived the public about what had happened, in order to shift liability away from the police. For more information, see: <http://www.greensborotrc.org/>

³⁹⁶ ICTJ, Greensboro – United States. Available at: <http://ictj.org/our-work/regions-and-countries/usa-greensboro-nc>

³⁹⁷ Information available at: <http://ictj.org/es/our-work/regions-and-countries/brasil>.

³⁹⁸ Information available at: <http://www.nucleomemoria.org.br/conheca/>.

³⁹⁹ Information available at: <http://www.oabrj.org.br/memoria-e-verdade>.

⁴⁰⁰ ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013, p. 10. Available at: <http://ictj.org/es/publication/en-busca-de-la-verdad-elementos-para-la-creacion-de-una-comision-de-la-verdad-eficaz>.

⁴⁰¹ ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 2013, p. 10. Available at: <http://ictj.org/es/publication/en-busca-de-la-verdad-elementos-para-la-creacion-de-una-comision-de-la-verdad-eficaz>.

213. In **Colombia**, the National Historical Memory Center, made up of state authorities and representatives of victims' organizations, released in 2013 the report *Enough Already! Colombia: Memories of war and dignity*,⁴⁰² which recapped the six year findings by the Historical Memory Group in the context of the armed conflict.⁴⁰² Additionally, said institution has published more than twenty-five reports on thematic and emblematic cases of the armed conflict.⁴⁰³ The IACHR has also emphasized the work and investigations of different organizations of Colombian society, which can complement and aid the judicial and non-judicial investigation proceedings, as well as the reconstruction of the Colombian historical memory.⁴⁰⁴

214. In **Haiti**, the Coalition against Impunity, an institution encompassing several local organizations, brought to the attention of the IACHR at a hearing in March 2014 different efforts to generate mechanisms of memory preservation regarding human rights violations committed during the regime of Jean-Claude Duvalier.⁴⁰⁵ Additionally, a documentary web site was created and dubbed "Haiti against impunity."⁴⁰⁶

215. In **El Salvador**, different victims committees formed the National Coordinator of Committees of Victims of Human Rights Violations during the Armed Conflict in order to work on preserving the historical memory and reparation for the gross human rights violations committed during the armed conflict.⁴⁰⁷ In addition, the Human Rights Institute of "José Simeón Cañas" Central American University and the National Coordinator created in 2009 the international Tribunal for the application of restorative justice.⁴⁰⁸ This institution, chaired by a panel of international jurists and human rights defenders, convenes annually in order to restore to the extent possible relationships between the offended and offending parties, as well as between members of the community by means of active participation of the actors cited above. This is carried out through acts of admission of guilt by those responsible and the reparation of victims by the perpetrators. Some

⁴⁰² National Historical Memory Center. *Enough Already! Colombia: Memories of war and dignity*. 2013. See: <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/>.

⁴⁰³ Information available at: <http://www.centrodememoriahistorica.gov.co/informes>

⁴⁰⁴ IACHR, Truth, justice and reparation: Fourth Report on the situation of human rights in Colombia. December 31, 2013, para. 36.

⁴⁰⁵ Collectif contre l'impunité. ['Coalition against Impunity']. Report submitted on March 28, 2014 at the hearing "Access to justice of victims of the Jean-Claude Duvalier regime in Haiti" as part of the 150th Session of the IACHR.

⁴⁰⁶ See at: http://www.haitiluttecontre-impunite.org/index_by_tag/13.

⁴⁰⁷ Human Rights Institute of the "José Simeón Cañas" Central American University. Memory in El Salvador. Available at: <http://www.uca.edu.sv/publica/idhuca/memoria.html>.

⁴⁰⁸ Human Rights Institute of the "José Simeón Cañas" Central American University. Memory in El Salvador. Available at: <http://www.uca.edu.sv/publica/idhuca/memoria.html>.

communities that have participated in this initiative include Arcatao and Santa Marta.⁴⁰⁹

216. In **Honduras**, the National Coordinator of Widows of Guatemala (CONAVIGUA) monitors judicial proceedings for human rights violations committed in the context of the armed conflict.⁴¹⁰ Additionally, this organization provides legal assistance for victim exhumation procedures.

217. In **Peru**, the Peruvian Forensic Anthropology Team promotes processes of reconstruction of the historical memory by writing local narratives about the violence and creating networks of interfamily cooperation.⁴¹¹ In addition, the Institute for Democracy and Human Rights of the Pontifical Catholic University of Peru has created different initiatives about recovery of the memory and the right to the truth, such as i) training programs with state entities, civil society organizations, education centers and victims coalitions; ii) follow-up and monitoring of cases prosecuting human rights violations committed during the armed conflict, including the trial instituted against former President Alberto Fujimori; and iii) publications and diagnostic assessments on spaces of commemoration, prosecution of human rights violations, among other topics.⁴¹²

218. In addition to the initiatives to conduct and support investigations into the crimes, the victims and their representatives, human rights defenders and civil society organizations have played a crucial role in pushing forward and supporting reform in the legislation, policies and practices required to overcome obstacles standing in the way of the right to the truth. In **Argentina**, one of the first initiatives for legal precedent reform was the *amicus curiae* brief submitted by the International Commission of Jurists, Amnesty International and Human Rights Watch to the National Chamber for Criminal and Correctional Matters of the Republic of Argentina in June 2001, in the case of "Simón, Julio, Del Cerro, Juan – abduction of 10 year old children."⁴¹³ The *amicus curiae* brief laid out a general vision of the standards fleshed out by the international and regional system, including the Inter-American system, with regard to nullification of amnesty laws and the overriding obligation of the State to investigate, prosecute and punish human rights violations. This type of initiative has been at the core of support for bringing domestic law in line with international and regional standards.

⁴⁰⁹ Resolution of the Tribunal for Restorative Justice. See at: <http://unfinishedsentences.org/es/resolution-of-the-6th-restorative-justice-tribunal/>.

⁴¹⁰ See at: <http://conavigua.tripod.com/>.

⁴¹¹ Peruvian Forensic Anthropology Team. Memory. Available at: <http://epafperu.org/que-hacemos/memoria/>.

⁴¹² For more information, see: <http://idehpucp.pucp.edu.pe/>.

⁴¹³ *Amicus curiae* brief filed by the International Commission of Jurists, Amnesty International and Human Rights Watch with the National Chamber for Criminal and Correctional Matters of Argentina. Case of "Simón, Julio, Del Cerro, Juan – abduction of 19 year old children." June 1, 2001.

219. Civil society organizations, human rights defenders, and other experts play a crucial role as well in evaluating the effectiveness of the strategies and measures put into practice by States to ensure the right to the truth.⁴¹⁴

220. The IACHR emphasizes its recognition of the efforts of the victims, family members, human rights defenders and civil society organizations and their contribution to the guarantee of the right to the truth about serious human rights violations in the hemisphere. Likewise, the Commission reiterates that the work of human rights defenders is fundamental for the universal implementation of human rights, as well as for full existence of democracy and the rule of law.⁴¹⁵

221. Throughout the region, there have also been initiatives taken by States aimed at reflection on and memorialization of the mass and systematic human rights violations of the past, as well as returning dignity to the victims. These efforts include recognition of responsibility and public apologies for the perpetration of gross human rights violations by high-level authorities of the State, construction of museums, memorials, archives and monuments to remember and commemorate these violations, among other things.⁴¹⁶

222. For example, in **El Salvador**, on January 16, 2010, on the occasion of the 18th Anniversary of the signing of the Peace Accords, the President of El Salvador, Mauricio Funes, issued recognition of responsibility and apologized to the victims of human rights violations, including the crimes committed at the Massacre of El Mozote. The IACHR welcomes the remarks of the President in the quest for justice.⁴¹⁷ Similarly, in its judgment of the *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, the Inter-American Court found that the effect of said act is to bring back the memory of the victims, recognize their dignity as human beings and console the family members and other relatives.⁴¹⁸

⁴¹⁴ With regard to initiatives undertaken in Argentina, Chile, Colombia, El Salvador, Guatemala, Peru and Uruguay, see: Due Process of Law Foundation. The victims and transitional justice. Are Latin American States complying with international standards? 2010. Available at: <http://www.dplf.org/sites/default/files/1285258696.pdf>

⁴¹⁵ IACHR, *Second Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 13.

⁴¹⁶ Standing as examples of this are initiatives of the United States, Barbados and some States of the Caribbean granting reparations to the descendants of persons subjected to slavery during the 19th Century. Different proposals are currently under debate. For more information, see: <http://atlantablackstar.com/2012/11/06/barbados-takes-lead-in-fight-for-reparations-for-slavery-in-the-caribbean/>; <http://www.cnn.com/2014/06/27/opinion/liu-reparations-slavery>. Additionally, in 1988, the United States Congress approved payment of a set amount of money as reparation to the survivors of persons of Japanese ancestry, who were interned in concentration camps during World War II. For more information see: <http://www.archives.gov/press/press-releases/2013/nr13-118.html>

⁴¹⁷ IACHR, Press Release 6/10, *IACHR Welcomes El Salvador's Recognition of Responsibility and Apology for Grave Human Rights Violations during the Armed Conflict*, January 21, 2010. Available at: <http://www.cidh.org/Comunicados/Spanish/2010/4-10sp.htm>. Public apologies were also issued in Argentina, Brazil, Chile, Colombia, Guatemala and Peru, among other places.

⁴¹⁸ I/A Court H.R., *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment October 25, 2012 Series C No. 252, para. 331.

223. In **Chile**, the Museum of Memory was inaugurated in January 2010. The IACHR welcomes this initiative and stresses the fundamental value of recovery of the historical memory of serious human rights violations as a mechanism to prevent such acts from being repeated.⁴¹⁹

224. In **Peru**, on May 20, 2005, the space "The eye that cries – Alameda of Memory" was created.⁴²⁰ Additionally, the Truth and Reconciliation Commission inaugurated in 2003 the photo exhibit "Yuyanapaq: Para Recordar," a display providing a graphic narration of the 20 years of armed conflict in Peru.⁴²¹ Currently, construction is under way of a museum to be known as "The Place of Memory, Tolerance and Social Inclusion."⁴²²

225. In **Uruguay**, the Cultural Center and Museum of Memory was set up in 2007, under the direction of the municipal government of Montevideo, while the National Archives of Memory was created in 2008.⁴²³

226. In **Paraguay**, in April 2007, the Supreme Court of Justice decided to create the Museum of Justice and Center of Documentation and Archives for the Defense of Human Rights.⁴²⁴ Documents seized from the Department of Investigations of the Police during the judicial investigation conducted in 1992 are held at that site.⁴²⁵ Based on information from the State, the Museum's database contains approximately seventy thousand records of documents from the "Archives of Terror." Additionally, in 2006, the Inter-American Court highlighted the importance of the Center of Documentation "which has contributed to the search for the historic truth not only of Paraguay, but of the entire region. The preservation, classification and systematization of these documents constitute an important effort for establishing and acknowledging the historic truth of the events that occurred in the Southern Cone during several decades."⁴²⁶

⁴¹⁹ IACHR, Press Release 1/10, *Opening of Chile's Museum of Memory*. January 11, 2010. Available at: <http://www.cidh.org/Comunicados/Spanish/2010/1-10sp.htm>. Additionally, as of the time of its creation, the Human Rights Program has participated in the construction and maintenance of 39 memorials, which are intended to keep the memory of the victims alive. Information available at: <http://www.ddhh.gov.cl/memoriales.html>.

⁴²⁰ See, Centro de Derechos Humanos [Center for Human Rights] of the University of Chile, Study: Public Policies on Truth and Memory in Seven Latin American Countries. 2011. Available at: <http://www.cdhu.uchile.cl/publicaciones/detalle.tpl?id=78>.

⁴²¹ Information available at: http://www.cverdad.org.pe/apublicas/p-fotografico/e_yuyanapacha.php.

⁴²² Information available at: <http://lugardelamemoria.org/sedelum/>.

⁴²³ Uruguay, *Universal Periodic Review of the UN Human Rights Council, 2004-2008*, paras. 31-32.

⁴²⁴ Information available at: <http://www.pj.gov.py/contenido/132-museo-de-la-justicia/132>.

⁴²⁵ Human Rights Council. Country report submitted in accordance with paragraph 15.a of the annex to resolution 5/1 of the Human Rights Council. Paraguay. November 15, 2010, para. 25.

⁴²⁶ I/A Court H.R., *Case of Goiburú et al v. Paraguay*. Judgment September 22, 2006. Series C No. 153, para. 170.

227. In 2009, the General Directorate of Truth, Justice and Reparation was also created.⁴²⁷ The function of the Directorate is to organize and preserve the archives and databases produced during the investigation conducted by the Truth and Justice Commission, as well as to propose memory-preserving and truth-seeking/telling promotional and training activities to the Office of the Ombudsman. In 2010, the Directorate created the Inter-Institutional Commission for the Installation and Implementation of the Paraguayan Network of Historic Sites in order to raise awareness by spotlighting historical sites and outfit spaces of memory and conscience at locations where crimes were committed during the military dictatorship.⁴²⁸

228. In **Argentina**, on March 24, 2004, the “Memory and Human Rights Space” on the premises that housed the Navy Mechanics School (ESMA) was established and, on November 7, 2007, the Park of Memory – Monument to the Victims of the State Terrorism was dedicated.⁴²⁹ Additionally, in December 2002, the Provincial Commission for Memory in La Plata founded the Museum of Art and Memory for the purpose of becoming a space of reflection on authoritarianism and democracy.⁴³⁰ In September 2014, the Argentine State handed over to the IACHR records of the military dictatorship that governed Argentina from 1976 to 1983, which reflect the discussions at the meetings of the Military Junta, which ran the Government from the time of the coup d’état on March 24, 1976.⁴³¹

229. In **Brazil**, the Secretariat of Culture created the Memorial of the Resistance in the state of São Paulo, which houses documents and exhibits on the military regime.⁴³² Additionally, one of its lines of work is to identify sites of historical significance to serve as places of memory, such as prisons, trade union office buildings, hospitals, detention camps, theaters, among other ones, in the State of São Paulo.⁴³³ Similarly, in 2009, the Office of the President of the Republic created the Reference Center for Political Struggles in Brazil, known by the name of “Memories Revealed.”⁴³⁴ The Center, coordinated by the National Archives makes state files kept during the military regime available to the public.

⁴²⁷ See at: <http://www.verdadyjusticia-dp.gov.py/historia/>.

⁴²⁸ See at: <http://www.verdadyjusticia-dp.gov.py/historia/>.

⁴²⁹ Information available at: <http://www.argentina.gob.ar/informacion/26-derechos-humanos.php>.

⁴³⁰ Information available at: <http://www.comisionporlamemoria.org/museodearteymemoria/el-museo.html>.

⁴³¹ IACHR, Press Release 99/14, Argentina Hands Records of the Military Dictatorship to IACHR, September 17, 2014. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2014/099.asp>

⁴³² For more information, see: http://www.memorialdaresistencia.org.br/index.php?option=com_content&view=article&id=8&Itemid=14.

⁴³³ For more information, see: http://www.memorialdaresistencia.org.br/index.php?option=com_content&view=article&id=45&Itemid=4.

⁴³⁴ For more information see: <http://www.memoriasreveladas.gov.br/cgi/cgilua.exe/sys/start.htm?inford=1&sid=2>.

230. In its 2012 report to the UN Human Rights Council, Brazil reported on staging 50 “caravans of amnesty,” which public hearings are held at the sites where human rights violations occurred in order to examine amnesty requests.⁴³⁵ It explained that the events involve a session of memory and tribute, followed by an examination of the amnesty request, a public statement by the victim and an official apology from the State. It also reported that the Amnesty Memorial is in the process of being built in the city of Belo Horizonte, which will be a national monument on political repression to pay tribute to the victims of the violations of the past and to publicize human rights principles in the present.⁴³⁶

231. In **Colombia**, the Center of Memory Peace and Reconciliation was christened in Bogota in December 2012, as a public space to promote the historical and collective memory.⁴³⁷ In 2005, the Office of the Mayor of Medellin created the House of Memory Museum in order to shed light on the history of the armed conflict in the city.⁴³⁸ In September 2013, in compliance with the measure of reparation ordered by the Inter-American Court in the *Case of the 19 Merchants v. Colombia*, the State inaugurated the monument to the victims of this case⁴³⁹. Currently, a project is being drawn up to create the National Museum of Memory, which was entrusted to the Historical Memory Center.⁴⁴⁰

232. In **Mexico**, in October 2010, the Museum of Memory and Tolerance was opened to the public to raise awareness through exhibits and displays on genocides and other serious crimes.⁴⁴¹ The premises were used by the State to hold a ceremony of recognition of international responsibility for the human rights violations committed in the context of the *Case of Rosendo Cantú et al v. Mexico*.⁴⁴² Additionally, the Supreme Courthouse of the Nation displays murals, which depict acts of torture, executions, denial of justice, military and police repression, among other things, in order to raise awareness about these human rights violations.⁴⁴³

⁴³⁵ Country report of Brazil to the UN Human Rights Council, March 7, 2012, para. 125. See at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/116/21/PDF/G1211621.pdf?OpenElement>.

⁴³⁶ Country report of Brazil to the UN Human Rights Council, March 7, 2012, para. 125. See at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/116/21/PDF/G1211621.pdf?OpenElement>.

⁴³⁷ For more information see: <http://centromemoria.gov.co/centrodememoria/>.

⁴³⁸ For more information see: <http://www.museocasadelamemoria.org/site/Default.aspx?tabid=66>.

⁴³⁹ Newspaper article “Entregan monumento en memoria de 19 víctimas de paramilitares”, published in *El Colombiano*, September 20, 2013. Available at: http://www.elcolombiano.com/BancoConocimiento/E/entregan_monumento_en_memoria_de_19_victimas_de_paramilitares/entregan_monumento_en_memoria_de_19_victimas_de_paramilitares.asp.

⁴⁴⁰ For more information see: <http://www.centrodememoriahistorica.gov.co/areas-trabajo/museo-nacional-de-la-memoria>.

⁴⁴¹ For more information see: <http://www.memoriaytolerancia.org/index.php>.

⁴⁴² See at: <https://www.youtube.com/watch?v=N1bnJvBpVg>.

⁴⁴³ See at: <http://www2.scjn.gob.mx/tour/>.

233. In **Honduras**, in 1993, the National Human Rights Commissioner at the time, Leo Valladares Lanza, published the document “The Facts Speak for Themselves: Preliminary Report on the Disappeared in Honduras 1980-1993.”⁴⁴⁴ This report provides a description of the most representative cases of violations committed during the armed conflict, a list of persons who disappeared and testimony of family members, as well as recommendations to the State on measures of monetary reparation, legal reforms and investigation into those responsible.⁴⁴⁵ Additionally, in 2010, the National Coordinator of Widows of Guatemala (CONAVIGUA) dedicated a monument known as “Casa Grande” [‘large house’] or “Nimajay,” in Kakchiquel Maya language, in the former military outpost of San Juan Comalapa.⁴⁴⁶ This monument was erected in order to honor the victims of the armed conflict in this area.

234. In **El Salvador**, in 1993 at the initiative of the Pro-Monument to Civilian Victims of Human Rights Abuses Committee, a Monument to Memory and the Truth was dedicated in the city of San Salvador.⁴⁴⁷ Construction of the national monument in memory of the victims of the armed conflict in El Salvador was one of the recommendations to the Salvadoran State put forth in the Report of the Truth Commission.⁴⁴⁸

235. In view of the foregoing, the IACHR urges States to continue adopting measures of recognition, remembrance and commemoration of cases of human rights violations, since recognition of responsibility and apology are an important measure of reparation and stand for a commitment to non-recurrence of the gross violations that were perpetrated.⁴⁴⁹

⁴⁴⁴ See at: http://www.dhnet.org.br/verdade/mundo/honduras/tnm_honduras_los_hechos_hablan_por_si_mismos.pdf.

⁴⁴⁵ See at: http://www.dhnet.org.br/verdade/mundo/honduras/tnm_honduras_los_hechos_hablan_por_si_mismos.pdf. It is fitting to note that Mr. Leo Valladares Landa was a Commissioner of the IACHR from 1988 to 1995.

⁴⁴⁶ See at: <http://conavigua.tripod.com/>.

⁴⁴⁷ See at: <http://www.amnesty.org/es/library/asset/AMR29/011/2003/es/e5719dc9-d657-11dd-ab95-a13b602c0642/amr290112003es.html>.

⁴⁴⁸ See at: <http://www.amnesty.org/es/library/asset/AMR29/011/2003/es/e5719dc9-d657-11dd-ab95-a13b602c0642/amr290112003es.html>.

⁴⁴⁹ See, *inter alia*, IACHR, *Press Release 6/10, CIDH welcomes El Salvador’s Recognition of Responsibility and Apology for Grave Human Rights Violations during the Armed Conflict*, January 21, 2010. Available at: <http://www.cidh.org/Comunicados/Spanish/2010/4-10sp.htm>.

CHAPTER IV
CONCLUSIONS AND
RECOMMENDATIONS

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236. In this report, the Commission has outlined the evolution and principles of the inter-American human rights system with respect to the right to the truth. It has also examined some of the initiatives taken by the region's States in this area. According to these principles, the right to the truth follows from a set of rights recognized in international human rights instruments and its protection essentially depends on whether judicial mechanisms are set in motion when grave violations of human rights and of IHL are committed. The guarantee of the right to the truth also necessitates a body of political and legal measures aimed at shedding light on the human rights violations, making reparation to the victims and strengthening democratic institutions. In all these endeavors, the participation of and coordination with the victims, their family members, human rights defenders, civil society organizations and the general public are essential.

237. Precisely because of their history, the States of the Americas have been pioneers in the adoption of different mechanisms to tackle situations involving grave, massive and systematic human rights violations. However, as explained over the course of this report, determined measures are still needed to resolve those situations, and create the mechanisms required to fully redress victims and strengthen the rule of law. In order to accomplish those objectives, the kinds of legal and *de facto* obstacles mentioned in this report must be removed.

238. The IACHR reaffirms its commitment to cooperating with the States in seeking solutions to the problems identified. Various measures taken by States to guarantee the right to truth in the region and the recognition of the difficulties involved in prosecuting serious human rights violations and violations of IHL reflect an understanding and recognition of the existing problems and a commitment to effectively tackle the obstacles that the victims of these violations are up against.

239. These recommendations are made with a view to cooperating with the States in the region in adopting the measures that will guarantee the right to the truth in the Americas. Based on the content of this report, the IACHR is recommending that the States:

1. Redouble efforts to guarantee the right to the truth in cases of grave violations of human rights and 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 compliance with their international obligations and adopt laws that guarantee the right to the truth.
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 Commission 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.

3. Eliminate all the legal and *de facto* obstacles that obstruct the institution and/or pursuit of judicial proceedings concerning serious human rights violations, including any amnesty laws adopted that remain on the books.
4. Eliminate the use of the military criminal justice system for cases involving human rights violations.
5. Take the measures necessary to ensure the collaboration of all State institutions in declassifying and providing information in the judicial or non-judicial investigative proceedings in progress or those instituted in the future. In the case of serious violations of human rights or IHL in transnational or regional contexts, States must make all possible efforts to cooperate in providing official information to States seeking to investigate, prosecute and punish those violations.
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.
7. Continue events to memorialize the victims, make apologies, and acknowledge responsibility for the commission of human rights violations.
8. Systematize the efforts undertaken to guarantee the truth and implement broad campaigns to publicize them and make the results achieved public.
9. Adopt the measures necessary to classify, systematize, preserve and make available historical archives concerning serious violations of human rights and IHL.