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juridical personality / Sole instance in direct reparation proceedings in Colombia / Failure to investigate and punish crimes committed by indigenous justice / Failure to enforce a judgment / Right to privacy, honor and dignity, among others, in criminal proceedings / Pension rights of miners with silicosis in Peru / Freedom of expression and gender expression / Judgment of high officials in single instance by high courts / Statutory limitation in cases involving crimes against humanity in Chile / Right to appeal any judgment imposing a sanction / Responsibility of the State for failure to investigate and prosecute crimes committed by third party actors / Right to equal protection of the law when the petitioner alleges divergent judicial decisions / Gender affirmation surgery of transgender persons in public hospitals / Violation of the right to life by attempt, even if the alleged victim did not die / The use of criminal law as a mean to suppress the freedom of speech / Murder of journalist / Arbitrary levying of a tax debt / Judges' freedom of expression / Sexual assault on a journalist / Reparation to human rights violations as an autonomus right / Lawsuits in civil court arising freedom of speech matters / Transfer of detainees to remote locations / Indirect censorship / Freedom of speachs and union leadres / Right to property regarding pensions / Right to adequate housing / Access to public information / Right to appeal a criminal conviction / Killings of Human Rights advocates / Difference between administrative and criminal law / Gender-based discrimination/ Labor conditions of judges and other judicial officials / Failure to enforce a judgment / Killing of Human Rights activist (ecologist) known by the State to be at risk / Discretionary dismissal of public servants.

PROLOGUE

The system of petitions and cases has been fundamental for the work of the Inter-American Commission on Human Rights (IACHR) and for the region, in the first place because it has brought justice to people who has not found it domestically, providing reparation to victims of human rights violations. Moreover, because the Inter-American System has made an important contribution to the national legal systems in the region with regard to the interpretation of human rights norms, thus creation a shared hemispheric understanding, based on the treaty law. Since its establishment in 1959, the Inter-American Commission on Human Rights has evolved from having more informal procedures of complaints to current one duly organized and regulated. A complaints procedure that strictly respects the principle of equality of arms, and the rights to defense of the parties. Thus, for example, in its Report of the Situation of Human Rights in Cuba of 1962 –as a result of its first *in loco* visit– the IACHR accounts the reception of thirty-five individual complaints by which the IACHR requested a response from the State.

In 1965, with the reform of its Statute the IACHR gained competence to receive and process complaints on individual cases. In its Annual Report from 1969, the IACHR reported the reception of 153 communications pertaining to 77 individual cases. In 1987, the Inter-American Commission included for the first time a specific analysis on the admissibility in a resolution; and, on March 5, 1996, the IACHR delivered its first specific and separated resolution on admissibility, when deciding the case of Myrna Mack, regarding Guatemala.

In the year of 2000, after a dialogue with member States of the OAS, NGOs, civil society representatives and independent experts, the IACHR adopted a new set of Rules of Procedure. This new Rules of Procedure establish the adoption of a separate procedure for the admissibility stage, also called petitions, apart from the merits stage, and decide the fulfilment of the admissibility requirements through a public decision. According to these Rules of Procedure, a petition formally becomes a case, with a correspondent number, once it is approved the report on the admissibility. These norms are still in force, and remained in the current Rules of Procedure approved by the IACHR in 2009, modified for the last time in 2013.

Thus, in the course of the last twenty years there has been a significant and constant increase in the number of petitions submitted to the IACHR. In 1998, the Commission reported a record number of more than five-hundred petitions; in 2003 the Commission received for the first time more than fifteen-hundred petitions; and in 2019 the amount of petitions came to 3,034. The quantity of reports on admissibility has also increased considerably since 2017, when the IACHR began the execution of its Strategic Plan 2017-2021. In 2016, a year before the adoption of the plan, the IACHR approved forty-five reports on admissibility. This number went to 120 in 2017, to 133 in 2018, and last year, 2019 an even higher number reports on admissibility was achieved, 145 (122 admissibility reports, and 23 inadmissibility reports).

In this scenario, this Digest is one of the tools developed within the special program to reduce the procedural delay (OE1/P1), and it is the result of the systematization of IACHR decisions on admissibility in the last 20 years, with emphasis on those adopted within the last two years. Its main objective is to present a compendium of the decisions of the IACHR on the admissibility and competence requirements that appear mainly in their admissibility reports; although, some references to the jurisprudence of the Inter-American Court and to the decisions on the merits of the own IACHR are made. This compendium is a useful tool in the sense that it systematizes the criteria adopted by the IACHR, giving more consistency to its decisions and facilitating the access to the contentious mandate of the Inter-American System of Human Rights.

This important document also comes in commemoration of the sixty anniversary of the IACHR and of the fifty years of adoption of the American Convention on Human Rights.

CHAPTER 1: INTRODUCTION

1. The processing of petitions before the Inter-American Commission on Human Rights (hereinafter: “the Inter-American Commission”, “the Commission” or “the IACHR”) is divided in four procedural stages. The first stage, termed “initial processing” by the IACHR Rules, has been delegated by the Commission to its Executive Secretariat (Arts. 26 & 29.1). As for this procedural stage, the IACHR has received an increasing number of petitions through the years, thus in 2001 it received 885, and in the past four years more than 8,000 (2016: 2,567; 2017: 2,494; 2018: 2,957 and 2019: 3,034).

2. Those petitions that make it through initial processing are then notified to the State (art. 27 & 28), giving rise to the “admissibility” stage (Art. 30). The admissibility stage culminates with the IACHR’s adoption of a report on the admissibility or inadmissibility of a petition. This report is the first public decision by the IACHR about the petition (Art. 36.1). In said report, the IACHR determines whether the petition meets the competency and admissibility requirements, including a *prima facie* analysis of the substance (“*caracterización*”) of the allegations. That is, whether the facts alleged by the petitioning party, if true, would constitute violations to the human rights of the alleged victims, in light of the Inter-American System’s standards. By the end 2018, there were 3,200 petitions in the admissibility stage. Thus, as of December 2019 there was 1,898 petitions in the admissibility stage.

3. Those petitions that are deemed admissible proceed to the “merits” stage (Arts. 36.2 & 37.1), culminating with the adoption of a report where the Commission decides on the merits of the case (Arts. 43 & 44). If all the requirements are met, the case could eventually be referred to the Inter-American Court of Human Rights.

4. The same competency and admissibility requirements established in the American Convention on Human Rights (hereinafter “the Convention ” or “American Convention ”), in the Statute, and in the Rules of Procedure of the Commission are analyzed in both the initial processing and the admissibility stages. With a different level of strictness in the analysis, taking into account the natural differences of both stages. This, coupled with the great volume of petitions lodged in these two procedural stages, and the high percentage of petitions received by the IACHR that do not meet the minimum processing requirements, brought about the need to adopt this Digest. In this regard, this document is meant to serve as a tool to keep the consistency of the decisions adopted by the IACHR, while also serving the different users of the Inter-American System.

5. This document is organized in three sections: one addressing fundamental procedural issues in the first stages of the processing of a petition and the purpose of the admissibility analysis carried out by the IACHR; and two dealing with competency and admissibility requirements. This Digest also includes an annex with current examples of colorable claim criteria.

6. In each section, the relevant norms are presented and segments of jurisprudence are included, prioritizing those that define the general rule of application of the said norms, followed by those that offer relevant examples of their application in specific cases. These decisions have been edited to keep the Digest within the length necessary to include essential information. We are giving special importance to the recent jurisprudence instead of older cases, the interested reader is free to go deeper and research other precedents. It is important to note that this is not an exhaustive document, rather, it systematizes the main criteria for the most reoccurring issues, without claiming to cover all scenarios and exceptions. This Digest takes examples of recent decisions that contain current and illustrative criteria; it is not an absolute compendium of all the relevant cases. This first edition mainly covers decisions adopted by the IACHR up to December 2019.

7. The IACHR underscores that the present document is a compilation of the admissibility criteria followed by the IACHR up to this date; however, the IACHR acknowledges that despite need uniformity and legal certainty, each case presents its own particularities. Moreover, the IACHR can change its jurisprudence; therefore, this document is not binding in future decisions that the IACHR may adopt. [the

excerpts from reports and other documents have been kept in their original English version without further editing, in order to keep the consistency of those original sources].

CHAPTER 2: PRELIMINARY CONSIDERATIONS ABOUT PROCEDURAL ISSUES

A. Object of the admissibility reports

8. **Rules of Procedure of the IACHR Article 36:** (1) Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter. The reports on admissibility and inadmissibility shall be public and the Commission shall include them in its Annual Report to the General Assembly of the OAS. (2) When an admissibility report is adopted, the petition shall be registered as a case and the proceedings on the merits shall be initiated. The adoption of an admissibility report does not constitute a prejudgment as to the merits of the matter.

9. “The Commission's rulings on the admissibility of the cases brought before it are intended to provide greater security and legal certainty, besides focusing the attention of the parties on the central issues at stake”¹.

10. “[T]he rights specified in the Report on Admissibility are the result of a preliminary assessment of the petition in progress, hence the possibility of including other rights or articles allegedly violated at subsequent stages of the proceedings is not limited, provided that the State’s right to defend itself is protected in the factual background of the case under consideration.”²

B. Point in time when the admissibility requirements are assessed

11. **Rules of Procedure of the IACHR Article 30.6:** The considerations on or challenges to the admissibility of the petition shall be submitted as from the time that the relevant parts of the petition are forwarded to the State and prior to the Commission’s decision on admissibility.

12. [General rule] “[T]he analysis of the requirements set out at Articles 46 and 47 of the Convention should be made in light of the situation at the time of the ruling on the admissibility or inadmissibility of the claim. It is very common, during the processing of a matter, for changes to occur in the status of exhaustion of domestic remedies. Nonetheless, the system of petitions and cases ensures that both the State and the petitioner have the full opportunity to submit information and arguments on this point.”³

13. [General rule regarding the exhaustion of domestic remedies] “Regarding the State's questioning of the fact that exhaustion of domestic remedies occurred after the petition had been filed, the IACHR reaffirms its position that what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the time of the ruling on admissibility.”⁴ [This allows the State to solve the situation at the domestic level.]

14. [Example of application] “[T]he alleged victims exhausted the contentious administrative procedure through the case filed with the Council of State, which is forum of sole instance. After this petition was filed before the Commission, the alleged victims also filed an action seeking a writ of protection, which the Council of State denied. In this regard, the Commission reiterates its doctrine according to which the analysis of the requirements provided in Articles 46 and 47 of the American Convention is performed in the light of the situation in effect at the time a decision is issued regarding a petition’s admissibility or inadmissibility. It often happens that, while a petition is being processed, the situation as regards exhaustion

¹ IACHR, Report No. 33/98, Petition 10.545. Admissibility. Clemente Ayala Torres and others. Mexico. May 5, 1998, para. 22.

² I/A Court H.R., Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246. Para. 52

³ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Urtusuástegui. Mexico. July 29, 2016, para. 33.

⁴ IACHR, Report No. 4/15, Petition 582-01. Admissibility. Raul Rolando Romero Feris. Argentina. January 29, 2015, para. 40.

of the domestic remedies changes. Nevertheless, the petition and case system assures that both the State and the petitioner have every opportunity to present information and arguments in this regard. The Commission therefore deems that the requirement established in Article 46(1)(a) of the American Convention has been met.”⁵

15. [Submitting additional information] “[T]he Commission notes that there is no specific requirement in its procedures that obliges petitioners to articulate all of their legal arguments in their initial petition. Rather, the Commission’s Rules require a petition to include an account of the act or situation denounced without placing explicit conditions upon the nature or timing of specific legal claims.”⁶

C. International responsibility of the State before the Inter-American System

16. [General rule] “[T]he mechanism provided by Articles 44 to 51 of the American Convention is not intended to establish the individual criminal responsibility of those persons who, acting either as civilians or as state agents, might have been involved in the commission of a crime, but rather to establish the State’s responsibility for violating the American Convention and other applicable instruments.”⁷

17. [The Inter-American Court in its precedent has established the scope of the State’s responsibility] “[I]n principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

Violations of the Convention cannot be founded upon rules that take psychological factors into account in establishing individual culpability. For the purposes of analysis, the intent or motivation of the agent who has violated the rights recognized by the Convention is irrelevant the violation can be established even if the identity of the individual perpetrator is unknown. What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court’s task is to determine whether the violation is the result of a State’s failure to fulfill its duty to respect and guarantee those rights, as required by Article 1 (1) of the Convention.

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”⁸

18. [The duty to repair corresponds to the State as a whole, as an entity in international law, and not to its agents as private individuals] “In the instant case, the remedy suggested by the State offers the right to recovery against a judge, not the State. The Commission has stated that there is a difference between the personal responsibility of a State officer or agent, and the responsibility of the State itself, and the petitioner is required only to exhaust the remedies intended to establish State responsibility. Consistent with international human rights law, the Commission has held that the obligation to remedy human rights violations committed by its agents directly corresponds to State, and not to its agents. Moreover, in several occasions, the Commission has indicated that Member States’ international obligation to compensate victims of human rights violations committed by their agents is one of its direct, main responsibilities, i.e. it is a direct

⁵ IACHR, Report No. 15/15, Petition 374-05. Admissibility. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 39.

⁶ IACHR, Report No. 33/06, Petition 12.261. Admissibility. Philip Workman. United States. March 14, 2006, para. 87.

⁷ IACHR, Report No. 86/06, Petition 499-04. Admissibility. Marino López and others (Operación Génesis). Colombia. October 21, 2006, para. 57.

⁸ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 172-174.

responsibility of the State and does not require that victims first take personal action against those agents, regardless of the content of domestic provisions on the matter.”⁹

D. Representation before the IACHR

19. **American Convention on Human Rights** Article 44: Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

20. **American Convention on Human Rights** Article 46.1.d: [Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements] that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

21. **Rules of Procedure of the IACHR** Article 23: Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons [...].

22. [General rule] “[U]nlike what is laid down in other human rights protection systems, whether regional or universal, the inter-American system makes a distinction between a petitioner and a victim. This distinction derives from the broad language used in the above-mentioned articles according to which, on the one hand, nongovernmental organizations or groups of persons are considered to be petitioners, and on the other, no connection at all is required between the victim and the nongovernmental organization, group of persons or individual who submits the petition. It can therefore be concluded that active legitimation in the case of petitions to the Commission is characterized by breadth of definitions and flexibility.

As a corollary, it must also be noted that the victim's consent to a petition is not a requirement either. The Commission has stated in this respect that: [...] [A] person who denounces an act that is in violation of human rights to the Inter-American Commission on Human Rights does not require authorization from the victim.”¹⁰

23. [Representation is not required] “[A]rticle 44 of the Convention allows any person or group of persons, or a nongovernmental entity that is legally recognized in one or more of the member states of the Organization, to report allegations of violations of the Convention, without requiring that they have the authorization of the alleged victims or that they provide a power of attorney as their legal representative.”¹¹

24. [The signature of the petitioner] “[R]egarding the State’s argument referring to the lack of the petitioner’s signature on the petition, the Commission believes that the petition meets the requirement set in Article 47.1(d) of the American Convention inasmuch as it was filed through the online form available, which is a valid mechanism for filing complaints.”¹²

E. Forwarding the petition to the State

25. **Rules of Procedure of the IACHR** Article 26.1: The Executive Secretariat of the Commission shall be responsible for the study and initial processing of petitions lodged before the Commission that fulfill all the requirements set forth in the Statute and in Article 28 of these Rules of Procedure.

26. **Rules of Procedure of the IACHR** Article 30: (1) The Commission, through its Executive Secretariat, shall process the petitions that meet the requirements set forth in Article 28 of these Rules of Procedure. (2): For this purpose, it shall forward the relevant parts of the petition to the State in question.

⁹ IACHR, Report No. 8/05, Petition 12.238. Admissibility. Miriam Larrea Pintado. Ecuador. February 23, 2005, para. 33.

¹⁰ IACHR, Report No. 5/96, Petition 10.970. Admissibility. Fernando and Raquel Mejía. Peru. March 1, 1996, págs. 3/8 and 4/8.

¹¹ IACHR, Report No. 71/16, Petition 765-09. Admissibility. Q’oq’ob community of the municipality of Santa Maria Nebaj. Guatemala. December 6, 2016, para. 23.

¹² IACHR, Report No. 20/17, Petition 1500-08. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, para. 8.

The request for information made to the State shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition.

27. [No time frame for the transfer of the petition to the State] “The Inter-American Commission takes note of the State’s claim about the failure to refer the petition within the stipulated period. In this regard, the IACHR says that after receipt there is no deadline for the referral of petitions to the State, under the American Convention and the Commission’s Rules. Deadlines established by the Rules and the Convention for other stages in the processing do not apply by analogy.”¹³ [Corte IDH. Caso Mémoli Vs. Argentina. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 22 de agosto de 2013. Serie C No. 265, para. 30-33.]

28. [The absence of a time frame for transferring the petition to the State] “[A]fter receipt there is no deadline for the referral of petitions to the State, under the American Convention and the Commission’s Rules. Moreover, in none of them is it set forth that the time in between the receipt of a petition and its transmission to the State makes the petition inadmissible.”¹⁴

29. [No statute of limitations] “[I]n the processing of individual petitions before IACHR, there is no statute of limitations ipso iure based on the passage of time. It also notes that all information furnished by the parties has been forwarded to the other party for comment, in accordance with the pertinent conventional and regulatory provisions. Accordingly, the due process rights of the parties in the Commission’s processing of the case have not been impaired.”¹⁵

30. [The aforementioned rules are different from those relating to the archiving of petitions (Article 42 of the Rules of Procedure of the IACHR), particularly those relating to the archiving of petitions due to the inaction of the petitioner during the proceedings.]

F. Lack of response from the State

31. **Rules of Procedure of the IACHR** Article 38: The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

32. [According to Resolution 1/16 of October 18th, 2016, the IACHR will apply Article 36.3 of its Rules of Procedure –which lays out the cases in which the decision on admissibility will be rendered in the merits stage– when the respondent State fails to submit its response during the admissibility stage. The IACHR will always send a reminder to the State before applying this rule.¹⁶]

G. Severance and joinder of petitions

33. **Rules of Procedure of the IACHR** Article 29.4: If the petition sets forth distinct facts, or if it refers to more than one person or to alleged violations not interconnected in time and place, the Commission may divide it and process the files separately, so long as all the requirements of Article 28 of these Rules of Procedure are met.

34. **Rules of Procedure of the IACHR** Article 29.5: If two or more petitions address similar facts, involve the same persons, or reveal the same pattern of conduct, the Commission may join them and process them together in the same file.

35. [Disjoining of the petitions requested by the State] “Regarding this, the Commission has established that interpretation of Article 29.4 of its Rules of Procedure does not require the facts, victims, and

¹³ IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016, para. 29.

¹⁴ IACHR, Report No. 55/16, Petition 4949-02. Admissibility. Guillermo Antonio Álvarez. Argentina. December 6, 2016, para. 24.

¹⁵ IACHR, Report No. 105/13, Petition 514-00. Admissibility. Oscar Alfonso Morales Díaz and family. Colombia. November 5, 2013, para. 26.

¹⁶ IACHR, Resolution 1/16, On measures to reduce procedural backlog, October 18, 2016. Available in: <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-16-en.pdf>

violations presented in a petition to strictly match each other in terms of time and place so that they can be processed as a single case. The Commission has processed individual cases in connection with many alleged victims that allege violations occurring at different times and places, which allegedly had the same origin, such as the implementation of legal standards or the existence of an identical pattern or practice or where there was a similarity among the alleged incidents. In the present petition, the alleged facts refer to alleged violations occurring over a 20-year time-frame, perpetrated in a given territorial space allegedly by the same armed group and on the basis of the same *modus operandi*. The above-mentioned elements are similar in each one of the complaints described and make it possible to examine them jointly. Therefore, the Commission shall proceed with the review of the petition as one case.”¹⁷

36. [Case in which two petitions were joined at the request of the respondent State] “The two petitions considered in this report address the alleged acts of persecution and attacks against the members of the Municipal Utility Workers’ Union of Cali (hereinafter ‘SINTRAEMCALI’). The State has requested the IACHR to apply Article 29.5 of the Commission’s Rules of Procedure, which entitles the Commission to join petitions concerning relevant issues in common and to process them together, in view that both petitions address a purported plan to attack SINTRAEMCALI’s members; that Alexander Lopez Maya and Robinson Emilio Masso Arias were the union’s leaders at the time of the facts; and that the State undertakes a single criminal investigation into the denounced facts concerning ‘Operacion Dragon.’ With respect to this, SINTRAEMCALI informed that it does not oppose to the joint processing of the petitions as long as petition 788-10 will not be limited in its scope, since, unlike petition 1460-07, petition 788-10 addresses not only facts in relation to ‘Operacion Dragon’ but also alleged attacks against members’ trade union rights. Therefore, in view of the similar facts addressed, the Commission decided to join both petitions pursuant to Article 29.5 of its Rules of Procedure.”¹⁸

37. [*Ex officio* joining of the petitions by the IACHR] “[T]he Commission has established that interpretation of Article 29.4 of its Rules of Procedure does not require the facts, victims, and violations presented in a petition to strictly match each other in terms of time and place so that they can be processed as a single case. The Commission has processed individual cases in connection with many alleged victims that allege violations occurring at different times and places, which allegedly had the same origin, such as the implementation of legal standards or the existence of an identical pattern or practice or where there was a similarity among the alleged incidents. In the present petition, the alleged facts refer to alleged violations occurring over a 20-year time-frame, perpetrated in a given territorial space allegedly by the same armed group and on the basis of the same *modus operandi*. The above-mentioned elements are similar in each one of the complaints described and make it possible to examine them jointly. Therefore, the Commission shall proceed with the review of the petition as one case.”¹⁹

38. [Joining requested by the petitioners] “[T]he IACHR notes that these allegations do not lack a link in time and place to the purpose of the petition, as described in general terms as the recognition and effective protection of the ancestral territory of a Garifuna community. In fact, as argued by the petitioner, the principal claim involves the recognition and quiet enjoyment of its territorial rights vis-à-vis third parties with interests in their territory, who have perpetrated several acts of violence, persecution and intimidation against members of the Community. According to the petitioner, these acts include the extrajudicial execution of two members of San Juan Community and the attempted homicide of another five members. The IACHR also notes that the information provided on this issue by the petitioner, as of the filing of the initial petition and throughout the proceedings before the IACHR, was brought to the attention of the State in a timely

¹⁷ IACHR, Report No. 113/17. Petition 1141-07. Admissibility. Alfredo Manuel Martínez Meza and others. Colombia. September 7, 2017, para. 3.

¹⁸ IACHR, Report No. 117/17, Petitions 1460-07 and 788-10. Admissibility. Alexander López Maya and others (SINTRAEMCALI). Colombia. September 7, 2017, para. 2.

¹⁹ IACHR, Report No. 113/17, Petition 1141-07. Admissibility. Alfredo Manuel Martínez Meza and others. Colombia. September 7, 2017, paras. 2 and 3.

fashion. Therefore, the Commission finds that it is out-of-order to sever these allegations and it shall take them into consideration in the examination of admissibility requirements.”²⁰

H. Assessment of admissibility postponed to the merits stage

39. **Rules of Procedure of the IACHR Article 36.3:** In exceptional circumstances, and after having requested information from the parties in accordance with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The decision shall be adopted by a reasoned resolution of the Commission, which will include an analysis of those exceptional circumstances. The exceptional circumstances that the Commission shall take into account will include the following: a. when the consideration of the applicability of a possible exception to the requirement of exhaustion of domestic remedies would be inextricably tied to the merits of the matter; b. in cases of seriousness and urgency, or when the Commission considers that the life or personal integrity of a person may be in imminent danger; or c. when the passage of time may prevent the useful effect of the decision by the Commission.

40. **Rules of Procedure of the IACHR Article 36.4:** When the Commission proceeds in accordance with Article 30.7 of these Rules of Procedure, it shall open a case and inform the parties in writing that it has deferred its treatment of admissibility until the debate and decision on the merits.

41. [In its Resolution 1/16, regarding the application of Article 36.3 of its Rules of Procedure, the IACHR establishes that the admissibility analysis will be postponed to the merits stage in the following cases: (a) petitions that have been pending before the Commission for an extensive period, understanding that these petitions are those received up until 2006 and in which the time period established in Article 30.3 of the Rules of Procedure has expired; (b) petitions for which no response has been forthcoming from the State in question during the admissibility stage; (c) petitions in which the State concerned indicates that it has no objection to admissibility; (d) petitions associated with an existing precautionary measure; (e) petitions having to do with the application of the death penalty; and (f) petitions that by their very nature lend themselves to summary decisions based on the application of precedent of the Inter-American Commission and/or Court in identical cases.²¹]

42. [Example of an admissibility report where the analysis on exhaustion of domestic remedies was postponed to the merits stage] “[T]he issue of exhaustion of domestic remedies is inextricably bound up with the alleged violations of the American Declaration the question of exhaustion of domestic remedies and the violations alleged on the merits of the petition pertaining to the non-availability of processes to the victims to assert their claims of refugee status and the right to access judicial processes to challenge the sending back of the alleged victims to the United States to await interview eligibility dates.”²²

²⁰ IACHR, Report No. 37/14, Petition 674-06. Admissibility. Garifuna Community of San Juan and its members. Honduras. June 5, 2014, para. 26.

²¹ IACHR, Resolution 1/16, On measures to reduce procedural backlog, October 18, 2016. Available in: <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-16-en.pdf>

²² IACHR, Report No. 121/06, Petition 554-04. Admissibility. John Doe and others. Canada. October 27, 2006, para. 63.

CHAPTER 3: COMPETENCE OF THE IACHR

A. Competence *ratione personae*

43. **American Convention on Human Rights** Article 1.2: For the purposes of this Convention, "person" means every human being.

44. **American Convention on Human Rights** Article 44: Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

45. **Rules of Procedure of the IACHR** Article 23: Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons [...]

[Individualization of the alleged victims]

46. [General rule] "The Commission has consistently interpreted Article 44 of the American Convention to require that for a petition to be admissible that there must be concrete victims, who have been individualized and identified, or a group of specific and identified victims which is comprised of identifiable individuals."²³

47. [Flexibility on the identification of victims] "The Inter-American Commission's Rules and jurisprudence recognize situations in which it is not possible to identify every victim by name. The IACHR recognizes that certain human rights violations, by their nature or circumstances, may affect a given individual or group of persons are identifiable according to specific criteria."²⁴

48. [The final assessment on the identification of victims corresponds to the merit stage] "[T]he text of Article 44 of the Convention, [...] does not mention any limitations of competence in terms of "full and complete" identification of the persons affected by violations; instead, it allows the assessment of violations of human rights which –by their characteristics– may affect one person or group of persons in particular but who are not necessarily fully identified. In this case, although the petitioning party has individualized 303 alleged victims throughout the processing, the Commission takes note of the difficulties found in establishing the names of all the alleged victims, and believes that in cases like this –where the reported crimes are said to be linked to the attacks on a community on the grounds of the victims' membership to it– the criteria to identify victims shall be flexible, and the full and complete identification of the victims will be determined according to the evidence provided by the parties during the stage of assessment of merits."²⁵

49. [The IACHR is independent in its assessment of the victims] "The Commission stresses that the status of alleged victim before the Inter-American system is established based on provisions of the American Convention and the Commission's Rules of Procedure in the merits stage at the IACHR, not before domestic courts."²⁶

²³ IACHR, Report No. 57/08, Petition 283-06. Inadmissibility. Mario Roberto Chang Bravo. Guatemala. July 24, 2008, para. 38.

²⁴ IACHR, Report No. 64/15, Petition 633-04 Admissibility. Mayan peoples and members of the Cristo Rey, Bullet Tree, San Ignacio, Santa Elena, and Santa familia communities. Belice. October 27, 2015, para. 27.

²⁵ IACHR, Report No. 61/16, Petition 12.325. Admissibility. Peace community of San José de Apartadó. Colombia. December 6, 2016, para. 62.

²⁶ IACHR, Report No. 12/18, Petition 178-10. Admissibility. 48 workers killed in the explosión at the Pasta de Conchos mine. Mexico. February 24, 2018, para. 28.

50. [Commission’s lack of competence over abstract victims] “On the other hand, as regards the general claims concerning ‘*all elderly and mentally disabled persons whose life and personal integrity are put at risk*,’ the IACHR determines that it does not have competence *ratione personae* to adjudicate the present matter in accordance with jurisprudence of the inter-American system establishing the standard of interpretation for Article 44 of the American Convention. Indeed, as it has done several times in the past, the Inter-American Commission holds the present complaint to be inadmissible since it concerns abstract victims represented in an action popularis.”²⁷

[Exceptional circumstances in which a person behind a legal entity could be considered as a victim]

51. The submission of petitions alleging acts committed against legal entities is now a trend in the Inter-American System that entails complex challenges, and whose assessment should be conducted in a case by case basis. Nevertheless, the Inter-American System has established relevant standards in this regard, for instance, that the victim of the violations must be a human being; that the domestic remedies, in principle, should be exhausted in order to protect the rights of human beings as victims; and that, in some cases, certain legal entities, like the media, unions or political parties are indispensable to the exercise of rights of specific individuals. The Inter-American Court in its Advisory Opinion 22 of February 26th, 2016 addressed this matter extensively²⁸; and reiterated that: that, in general, the rights and obligations attributed to companies become rights and obligations for the individuals who comprise them or who act in their name or representation (para.111). And ruled that, the exercise of a right through a legal entity must implicate an essential and direct relationship between the individual who requires protection by the Inter-American system and the legal entity through which the violation took place, since a mere link between the two is not sufficient to conclude that the rights being protected are those of the natural person and not those of the legal entity. To this effect, more than mere participation of the individual in the activities of the legal entity must be shown, in a manner that said participation is substantially related to the rights allegedly being violated (para.119).

52. [Example where the acts of the State affected only the legal entity] “The Commission has consistently and invariably held in its jurisprudence the inadmissibility of petitions filed by business entities or cases in which the domestic remedies were exhausted by such entities and not by the person appearing as petitioners before the Commission. Such is the situation in the instant case, where the alleged victim invokes that condition as proprietor of an artificial person in the name of which domestic remedies were exhausted. The petitioner recognizes that an artificial person is a juridical instrument to engage in economic activities. One of the reasons for the creation of artificial persons is to separate their assets from those of the physical persons that constitute them. Just as the laws of Peru and of all the other countries in the hemisphere draw a distinction between artificial persons and human, physical, or natural persons, so too are the laws to which they are subject different.”²⁹ [See also, IACHR, Report No. 83/05, Petition 644-00. Inadmissibility. Carlos Alberto López Urquía. Honduras. October 24, 2005, para. 42.]

[Indigenous communities]

53. The recognition of indigenous communities as identifiable groups, entitling them to the protections offered by the mechanisms in the Inter-American System, comes from decisions by the Inter-American Court through provisional measures, in which the Court granted protection to large numbers of individuals that were not previously listed, but were susceptible to be determined and identified, and were at risk due to their belonging in an indigenous community³⁰. In the same fashion, the IACHR in its decisions on

²⁷ IACHR, Report No. 79/12, Petition 342-07. Admissibility. Ivete Jordani Demeneck and others. Brazil. November 8, 2012, para. 20.

²⁸ It is also important to point out, in addition to the text of the opinion, the observations submitted by the IACHR, whose public summary is available at: http://www.corteidh.or.cr/docs/opiniones/resumen_observaciones_seriea_22_esp.pdf

²⁹ IACHR, Report No. 40/05, Petition 12.139. Inadmissibility. José Luis Forzanni Ballardo. Peru. March 9, 2005, para. 35.

³⁰ See for example, I/A Court H.R., Matter of Members of the Miskitu Indigenous People of the North Caribbean Coast regarding to Nicaragua. Request for provisional measures. Order of the Inter-American Court of Human Rights of September 1, 2016, para. 15; I/A Court H.R., Matter of Kichwa Indigenous People of Sarayaku regarding Ecuador. Provisional Measures. Order of the Inter-American Court of Human Rights of July 6, 2004, para. 9; I/A Court H.R., Matter of the Communities of Jiguamiandó and Curvaradó regarding Colombia.

admissibility has taken into account geographical, territorial, political, cultural and demographical features to establish its *ratione personae* competence over indigenous communities as victims of human right violations attributable to State action.³¹

54. “[T]he IACHR finds that the petition refers to four indigenous communities, which are asserting the collective exercise of their right to freedom of expression and their cultural rights. On this point, the Inter-American Court has held that, ‘international standards on indigenous or tribal peoples and communities recognize the rights of peoples, and not just their members, as collective rights-holders under international law; indigenous or tribal peoples and communities, united by their particular ways of life and identity, exercise some rights recognized by the Convention in their collective dimension.’ Similarly, the Rules of Procedure and the decisions of the IACHR acknowledge situations in which it is not possible to identify each victim by his or her name.

The Commission recognizes that certain human rights violations, due to their nature or circumstances, may affect a particular individual or a group of individuals who can be identified by specific criteria, a situation that would be evident in this case.”³²

[Exercise of the freedom of speech]

55. “The jurisprudence of the Inter-American System has held that interference in a media outlet could become a violation of the right protected under Article 13 of the American Convention in the case of those persons who use that outlet to express or circulate opinions and information. According to the Commission, it is through the communications media that directors, editors and journalists are able to exercise their right to freedom of expression as individuals.”³³ [See also: IACHR, Report No. 114/11, Petition 243-07. Admissibility. Marcel Granier and others. Venezuela. July 22, 2011, para. 39.]

56. “[A] system for the effective and material protection of human rights is obliged to examine whether in each concrete case, beyond formal appearances, the allegedly arbitrary acts that affected a legal person also had by extension a material or substantial effect on the human rights of the natural persons related to, associated with, or in any way connected to the legal person. [...]

Although the Sociedad Periodística Extra, Limitada cannot be considered an alleged victim, the question that the IACHR must decide in this case is whether the imposition of subsequent liability against a newspaper in the instant case may have infringed on the freedom of expression of its editor-in-chief, who was responsible for deciding on the publication of the article and will, in the future, be responsible for deciding what to publish and what not to publish, based on his journalistic criteria. [...]

[...] [I]t is essential that editors and journalists who work in the media should enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.

The Commission therefore considers that any State conduct which allegedly interferes in the free exercise of the work of a media outlet could tend to constitute a violation of the right to freedom of expression to the

Provisional Measures. Order of the Inter-American Court of Human Rights of March 6, 2003, considering nine; I/A Court H.R., Matter of the Peace Community of San José de Apartadó regarding Colombia. Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, considering eight; I/A Court H.R., Matter of the Peace Community of San José de Apartadó regarding Colombia. Provisional Measures. Order of the Inter-American Court of Human Rights of November 24, 2000, considering seven.

³¹ See for example (including the footnotes), IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, para. 44; IACHR, Report No. 33/15, Petition 11.754. Admissibility. U'wa People. Colombia. July 22, 2015, para. 28; IACHR, Report No. 63/10, Petition 1119-03. Admissibility. Garifuna Community of Punta Piedra and its members. Honduras. March 24, 2010, para. 32; IACHR, Report No. 141/09, Petition 415-07, Diaguita Agricultural Communities of the Huasco-Altinos and the members thereof. Chile. December 30, 2009, para. 28; IACHR, Report No. 75/09, Petition 286-08. Admissibility. Ngöbe Indigenous Communities and their members in the Changuinola river valley. Panama. August 5, 2009, para. 26; IACHR, Report No. 58/09, Petition 12.354. Admissibility. Kuna of Madungandí and Emberá of Bayano Indigenous peoples and their members. Panama. April 21, 2009, para. 26; and IACHR, Report No. 62/04, Petition 167-03. Admissibility. The kichwa peoples of the sarayaku community and its members. Ecuador. October 13, 2004, para. 47.

³² IACHR, Report No. 51/18, Petition 1779-12. Admissibility. Kaqchikel Maya Indigenous Peoples of Sumpango and others. Guatemala. May 5, 2018, para. 21.

³³ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, para. 35.

detriment of natural persons who use this vehicle to disseminate information and opinions. In such cases, the Commission must analyze the origin, nature and scope of the sanction, its effect on the right to freedom of expression of those who utilize the media outlet in question, and, in particular, the alleged victim's role in the media outlet. In this way, the Commission will determine whether, by extension, the sanction imposed on the media outlet (legal person) had a negative, real and substantial impact on the right to freedom of expression of the alleged victim (natural person). In conformity with the IACHR's practice, these criteria provide a means to distinguish when the rights of a legal person are at issue, and when the rights of a natural person are negatively affected."³⁴

57. "The IACHR has observed that *'these days, a significant amount of journalism is done via media outlets. These media outlets are, in effect, associations of persons who have come together to exercise steadily their freedom of expression. At the same time, it is currently very rare for a media outlet to not have the status of a legal person, meaning that restrictions on freedom of expression frequently take place through State actions that formally [affect] that legal person.'* Similarly, the Inter-American Court has recognized that *'media outlets serve as mechanisms for the exercise of the right to freedom of expression of those who use them as a means to disseminate their ideas and information,'* and has noted that restrictions to the freedom of expression of a media outlet can affect a *'number of individuals, such as their shareholders or the journalists they employ, who carry out acts of communication through [the media outlet] and whose rights can also be violated.'* In this regard, the IACHR has stated that *'journalists or, in the case of a television channel, those appearing on the screen, are not the only ones expressing themselves through media outlets.'*"³⁵

B. Competence *ratione loci*

58. **American Convention on Human Rights** Article 1.1: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms [...]

59. [General rule] "At the time of adopting of the American Convention, the Inter-American Specialized Conference on Human Rights chose to omit the reference to 'territory' and establish the obligation of the State parties to the Convention to respect and guarantee the rights recognized therein to all persons subject to their jurisdiction. In this way, the range of protection for the rights recognized in the American Convention was widened, to the extent that the States not only may be held internationally responsible for the acts and omissions imputable to them within their territory, but also for those acts and omissions committed wherever they exercise jurisdiction [...]

Thus, the following is essential for the Commission in determining jurisdiction: the exercise of authority over persons by agents of a State even if not acting within their territory, without necessarily requiring the existence of a formal, structured and prolonged legal relation in terms of time to raise the responsibility of a State for acts committed by its agents abroad. At the time of examining the scope of the American Convention's jurisdiction, it is necessary to determine whether there is a causal nexus between the extraterritorial conduct of the State and the alleged violation of the rights and freedoms of an individual."³⁶

60. "[T]he Inter-American Commission has decided, as other international organizations have done, that it is competent *ratione loci* regarding a State for incidents occurring in the territory of another State when the alleged victims have been subjected to the authority and control of its agents. Otherwise, there would be a legal loophole regarding the protection of the human rights of persons that the American Convention is striving to protect, which would be contrary to the purpose and end of this instrument."³⁷

³⁴ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, paras. 33-36.

³⁵ IACHR, Report No. 52/18, Petition 253-10. Admissibility. Alejandro Fernando Aguilera Mendieta, et al. Mexico. May 5, 2018, para. 19.

³⁶ IACHR, Report No. 112/10, Inter-state Petition IP-02. Admissibility. Franklin Guillermo Aisalla Molina. Ecuador-Colombia. October 21, 2010, paras. 90 and 99.

³⁷ IACHR, Report No. 153/11, Petition 189-03. Admissibility. Danny Honorio Bastidas Meneses and others. Ecuador. November 2, 2011, para. 21.

61. [Extraterritorial competence] “In regard to the apprehension of Mr. El-Masri, the IACHR observes that those actions implied an exercise of physical power and control over the person in question. The alleged victim was purportedly kept in the hotel under constant guard by agents of the Macedonian security forces, and those agents were allegedly acting under the direction and control of the U.S. Government, which is the decisive element to establish the jurisdiction of the State over those facts. The Commission considers that the indications about the supposed involvement of the U.S. government in the unlawful arrest of Mr. El-Masri are sufficient to require an analysis at the merits stage of whether the U.S. exercised extraterritorial jurisdiction.”³⁸ [See also: IACHR, Report No. 17/12. Admissibility. Djamel Ameziane. United States. March 20, 2012, paras. 29-35.]

C. Competence *ratione temporis*

62. [The competence *ratione temporis*, as it can be seen in the following precedents, deals with the applicability of the American Convention, the American Declaration, and other Inter-American instruments, over facts that took place when the applicable instrument was in force for the respondent State; or when the events began prior to its entry into force and continued after its entry into force.]

63. [The alleged facts began before the IACHR had competence to receive petitions] “The Commission observes that the petitioners are alleging facts that have taken place over the past eight decades, that is, from 1937 to the present day. Regarding the alleged facts that occurred before 1965, the Commission does not have competence *ratione temporis* to review them since its competence to review individual petitions only began that year. Therefore, the IACHR has competence *ratione temporis* only to review allegations subsequent to 1965. In this regard, it shall examine, in light of the American Declaration, claims regarding alleged facts that occurred between 1965 and March 24, 1981, the date on which the Mexican State deposited its instrument of ratification of the American Convention. The Commission recalls that for those States that have not yet ratified the American Convention, as States Party to the Charter of the OAS they have undertaken to respect the fundamental rights set forth in the American Declaration, which is a source of international obligations. Finally, the facts that are alleged to have occurred while the American Convention was in force or whose effects continued after the Convention went into effect, shall be examined in light of the Convention.”³⁹

64. [Example of a case in which some of the facts took place before the American Convention went into effect, and others after it did] With respect to the allegation raised by the State regarding the Inter-American Commission’s lack of competence to hear cases on events taking place prior to the ratification of the American Convention by Chile, the Commission reiterates that the petition is about the failure to pay compensation to the alleged victims, in particular, the judgments of the Court of Appeals of Santiago of January 9, 2006 and of the Supreme Court of Justice of July 24, 2007, both issued when the Convention was already in effect on Chile. In similar cases, the IACHR has concluded that, even though the alleged violations of due process rights are based on the antecedent disappearance, the petition pursues claims based on the judicial response of the State, and especially, the right to full reparation.”⁴⁰

65. [The continuing nature of the violations] “[T]he facts alleged by the petitioner could represent violations to the rights protected in Articles 3, 5, 8, 11, 13, 18, 22, 23, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. Also, taking into account the entry into force of the denunciation of the Convention on 10 September 2013, it is possible that the alleged ongoing nature of the affects represents a violation of Articles II (equal protection), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VIII (residence and movement), XVII (recognition of juridical personality), XVIII (justice), and XX (vote and participation in government) of the American Declaration.”⁴¹

³⁸ IACHR, Report No. 21/16, Petition 419-08. Admissibility. Khaled El-Masri. United States. April 15, 2016, para. 24.

³⁹ IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, para. 45.

⁴⁰ IACHR, Report No. 85/17, Petition 1580-07. Admissibility. Gloria Lucía Magali Neira Rivas and Juan Pablo Belisario Poupin Neira. Chile. July 7, 2017, para. 10.

⁴¹ IACHR, Report No. 66/16, Petition 824-12. Admissibility. Tamara Mariana Adrián Hernández. Venezuela. December 6, 2016, para. 28.

66. [San Salvador Protocol] “Nicaragua is a State party to [...] the Protocol of San Salvador, since March 5, 2010, when it deposited the instrument of ratification of this treaty. [...] [T]he Commission is competent *ratione personae* to hear the petition. Likewise, the Commission is competent *ratione loci* to hear the petition, as it alleges violations to rights protected under the American Convention that took place in the territory of Nicaragua, which is a State party to said treaty. [...] [T]he IACHR has competence *ratione temporis* over those incidents that happened after the entry into force of the Protocol of San Salvador, and with regard to the consequences of events when they extended after the entry into force of the said treaty. [...] [I]n the framework of the general context of denying justice as alleged by the petitioner and the resulting impossibility for them to conduct their union activities up to the present date.”⁴²

67. [Inter-American Convention on Forced Disappearances of Persons] “The Commission considers that between August 1974 and April 1982, the temporal competence of the IACHR in this matter derives from the American; after that date, its competence is based on the American Convention. The Inter-American Commission also has competence under the Inter-American Convention on Forced Disappearance of Persons, in that the alleged incidents constitute a situation of continuity [the uncertainty about the whereabouts of the victim and the impunity of this crime that persists as of the date of this report. Mexico deposited the instrument of ratification on April 9, 2002.]”⁴³

D. Competence *ratione materiae*

68. **American Convention on Human Rights** Article 33 (a): The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention: (a) the Inter-American Commission on Human Rights [...].

69. **Statute of the IACHR** Article 1.2: For the purposes of the present Statute, human rights are understood to be: a. The rights set forth in the American Convention on Human Rights, in relation to the States Parties thereto; b. The rights set forth in the American Declaration of the Rights and Duties of Man, in relation to the other member states. [In connection to its other functions established in Articles 18 y 20.]

70. **Rules of Procedure of the IACHR** Article 23: Any person [...] may submit petitions to the Commission [...], concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights “Pact of San José, Costa Rica”, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém do Pará”, in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The petitioner may designate an attorney or other person to represent him or her before the Commission, either in the petition itself or in a separate document.

71. **Rules of Procedure of the IACHR** Article 51: The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the Member States of the Organization that are not parties to the American Convention on Human Rights.

72. [American Declaration] “According to the long-standing practice and jurisprudence of the inter-American human rights system, however, the American Declaration of the Rights and Duties of Man constitutes a source of international obligation for the United States and other OAS Member States that are not parties to the American Convention on Human Rights. These obligations are considered to flow from the human rights commitments of Member States under the OAS Charter, which Member States have agreed are contained in and defined by the American Declaration, as well as from the customary legal status of the rights

⁴² IACHR, Report No. 41/16, Petition 142-04. Admissibility. José Tomás Tenorio Morales and others (Ervin Abarca Jimenez Union for Higher Education Professionals of the National Engineering University). Nicaragua. September 11, 2016, paras. 40, 41 and 59.

⁴³ IACHR, Report No. 65/05, Petition 777-01. Admissibility. Rosendo Radilla Pacheco. Mexico. October 12, 2005, para. 16.

protected under many of the Declaration's core provisions, and the Commission is empowered under Articles 18 and 20 of its Statute to receive and evaluate allegations that states have failed to respect these commitments. It is therefore appropriate to characterize a Member State's failure to guarantee the rights under the American Declaration as a violation of its obligations under international human rights law and the Commission rejects the State's contention that the American Declaration does not create legally binding obligations for Member States of the OAS."⁴⁴

73. [American Declaration] "The Commission has previously established that, once the American Convention enters into force in relation to a State, the latter, and not the Declaration, becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and does not refer to a situation of ongoing violations."⁴⁵

74. [Protocol of San Salvador] "[T]he IACHR notes that the jurisdiction conferred on the Commission under the terms of Article 19.6 of this treaty is confined to adjudicating individual complaints that arise in relation to articles 8 and 13. With respect to the other articles, in accordance with Article 29 of the American Convention, the Commission may take this treaty into account at the merits stage of this case in interpreting and applying the American Convention and other applicable instruments."⁴⁶

75. [Convention of Belen Do Para] "[T]he IACHR believes that the facts presented here establish possible violations of Article 7 of the Convention of Belém do Pará. Regarding the claims about the violation of Articles 2 and 4 of the Convention of Belém do Pará, the IACHR notes that the competence foreseen in said convention's Article 12⁴⁷ in connection with ruling in the context of an individual case is limited to Article 7. With respect to the other articles invoked, Article 29 of the American Convention establishes that the Commission may consider them in order to interpret or apply the American Convention and other applicable instruments."⁴⁸

76. [Inter-American Convention on Forced Disappearance of Persons] "Likewise, the fact that five wounded victims were held incommunicado for more than four months in detention without their next of kin being informed of their whereabouts and the claim that Juan García de los Santos still appears as a deceased although it has not yet been established whose body is buried under his name nor his mortal remains have been returned to his family, could tend to establish a violation of Article 3 (juridical personality) of the American Convention in relation to Article 1.1 thereof, and Article I of the Inter-American Convention on Forced Disappearance of People in connection with the duty to investigate."⁴⁹

77. [Inter-American Convention to Prevent and Punish Torture] "[D]espite its ratification after the alleged disappearance, the Commission emphasizes that it has been interpreted in multiple cases by the application of its articles 1, 6 and 8. In the present case, the occurrence or non-occurrence of violations related to the failure to investigate the acts of torture and the effects caused by impunity to the alleged victim's family may be analyzed in the merits stage. In the context, both the Commission and the Inter-American Court have already declared violations of these provisions in other cases, on the understanding that the third paragraph of Article 8 incorporates a general clause of jurisdiction accepted by the States when ratifying or acceding to said instrument."⁵⁰

⁴⁴ IACHR, Report No. 57/06, Petition 526-03. Admissibility. Hugo Armendáriz. United States. July 20, 2006, para. 30.

⁴⁵ IACHR, Report No. 180/18, Petition 1616-07. Admissibility. A.G.A. and family. Colombia. December 26, 2018, para. 17.

⁴⁶ IACHR, Report No. 76/19, Petition 1495-08. Admissibility. Hugo Eduardo Ibarbuden. Argentina. May 21, 2019, para. 12.

⁴⁷ Article 12 of the Convention Of Belem Do Para states: Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

⁴⁸ IACHR, Report No. 174/17, Petition 831-11. Admissibility. Hester Suzanne Van Nierop and family. Mexico. December 30, 2017, para. 11.

⁴⁹ IACHR. Report No. 166/18, Petition 1315-12. Admissibility. Efrén Cortes Chávez and others (El Charco Massacre). Mexico. December 14, 2018, para. 17. Inter-American Convention on Forced Disappearance of Persons establishes in its Article XIII the competence of the IACHR to decide cases of violations to that treaty.

⁵⁰ IACHR, Report No. 70/19. Petition 858-09. Admissibility. Luiz José da Cunha "Crioulo" and family. Brazil. May 5, 2019, para.12.

78. In respect of the alleged violations of Articles I, II, IV of the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disability, the Commission lacks the competence to entertain individual complaints of violations of this treaty. Nevertheless, the Commission may take this treaty into account at the merits stage of this case in interpreting and applying the American Convention under the terms of Article 29 of the American Convention⁵¹.

79. [Other treaties outside the Inter-American System] “The IACHR lacks competence *ratione materiae* to decide on violations of rights embodied in treaties outside the Inter-American System, notwithstanding that it may resort to the standards established in other treaties in order to interpret the Convention by virtue of Article 29 of the said treaty.”⁵²

⁵¹ IACHR, Report No. 76/19, Petition 1495-08. Admissibility. Hugo Eduardo Ibarbuden. Argentina. May 21, 2019, para. 13.

⁵² IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, para. 9.

CHAPTER 4: ADMISSIBILITY REQUIREMENTS

A. Duplication of procedures and international *res judicata*

80. **American Convention on Human Rights** Article 46.1.c: [Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:] that the subject of the petition or communication is not pending in another international proceeding for settlement.

81. **American Convention on Human Rights** Article 47.d: [The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:] the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

82. **Rules of Procedure of the IACHR** Article 28.9 [Petitions addressed to the Commission shall contain the following information:] an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of these Rules of Procedure.

83. **Rules of Procedure of the IACHR** Article 33.1: The Commission shall not consider a petition if its subject matter: [a] is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member; or [b] essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.

84. **Rules of Procedure of the IACHR** Article 33.2: However, the Commission shall not refrain from considering petitions referred to in paragraph 1 when: [a] the procedure followed before the other organization is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or it will not lead to an effective settlement; or [b] the petitioner before the Commission or a family member is the alleged victim of the violation denounced and the petitioner before the other organization is a third party or a nongovernmental entity having no mandate from the former.

85. [General rule] “In order to consider that a situation of duplication or international *res judicata* exists in a case, besides the identity of the subjects, the object, and the intent, it is required that the petition is being considered, or has been decided, by an international body with competence to adopt decisions concerning the specific facts contained in the petition, and measures for the effective resolution of the dispute involved.”⁵³

86. [Assessment of the nature of both claims] “The fact that a communication involves the same person as a previously presented petition is just one element of duplication. Regard must also be had to the nature of the claims presented and the facts adduced in support thereof. The presentation of new facts and/or sufficiently distinct claims about the same person could, under certain circumstances, and with other applicable requirements having been met, provide the basis for consideration. It may also be noted that, where a second presentation of claims concerns rights which were not covered by the subject matter jurisdiction of the body before which a first petition was presented, the matter will not, in principle, be barred as duplicative.”⁵⁴

⁵³ IACHR, Report No. 67/15, Petition 211-07. Admissibility. Jorge Marcial Tzompaxtle Tecpile and others. Mexico. October 27, 2015, para. 34.

⁵⁴ IACHR, Report No. 96/98, Petition 11.827. Inadmissibility. Peter Blaine. Jamaica. December 17, 1998, para. 42.

1. Matters already decided by the IACHR

(a) Matters already decided under the petition and case system

87. [Example of a case in which one of the victims had been previously recognized as victim in a decision of the Inter-American Court, and two of the victims had been recognized as victims in merits reports of the IACHR] “The State also asserts that the claims as regards Rigoberto Tenorio Roca are inadmissible, since he is the beneficiary of a judgment issued by the Inter-American Court concerning said facts. The petitioners do not controvert the State’s claim. The Commission notes that said judgment is about the detention and subsequent disappearance of Mr. Tenorio Roca committed by the Navy, the legal proceedings before the ordinary and the military courts, and the reopening of the investigations in the ordinary jurisdiction in 2003 until the deadline extension in 2012. In this regard, the Inter-American Court ordered the State of Peru to conduct the domestic procedures in an impartial, effective and timely manner in order to fully determine the facts, identify the persons responsible and impose the punishment applicable. As a result, the Commission concludes that the petition is inadmissible regarding Mr. Rigoberto Tenorio Roca. Furthermore, the State alleges the inadmissibility of the claims regarding Mr. Jaime Boris Ayala Sulca in view of the fact that he appears as a victim in a merits report of the Inter-American Commission issued in 1987. The Commission moreover notes that Nemesio Fernández Lapa is also a victim in another merits report made by the Commission and issued in 1988. The Commission notes that both reports are about their forced disappearance only and do not include the subsequent facts that were denounced in both petitions and which concern the alleged denial of justice, such as the delay in the legal proceedings begun in 2002. Therefore, as regards to both alleged victims, the Commission will in the merits stage assess all those arguments on which it has not ruled yet in the abovementioned reports.”⁵⁵

88. [Duplication of procedures in two petitions pending before the IACHR] “Furthermore, with respect to José Santiago Posso Madrid and Lucía del Carmen Posso Madrid, who appear as alleged victims in the present petition, as well as in petition P-554-09, the Commission shall continue to examine their complaints and the alleged violation of their human rights in the framework of the present case. In that respect, for the purpose of guaranteeing enforcement of Article 47.d of the Convention and because of the chronological criterion for the submittal of the petitions, the Commission shall exclude the above-mentioned alleged victims from petition P-554-09. Finally, the Commission observes that José Eliecer Cuava Posso is one of the alleged victims in case 13.077, which is currently being analyzed in the merits stage, as a result of which it cannot be included in the present case.”⁵⁶

89. [Assessment of the nature of both petitions] “The State claims there is duplication with facts the Commission is currently examining under Case No. 12.575 regarding the massacre of the people in Nueva Venecia, which is currently in the merits stage, and that a number of the victims are the same. As regards the reported duplication of facts, the Commission observes that Case No. 12.575 was admitted because of the alleged deaths and bodily harm that occurred during the events of November 22, 2000, and that no violations having to do with forced displacement, which are the main thrust of this petition, were alleged. Accordingly, although the petitions may be related, their aims are different. Furthermore, with respect to the alleged victims in this petition who are also part of Case No. 12.575, given that the violations being alleged therein have to do with reported deaths and bodily harm, and that herein the allegations have to do with cases of forced displacement, the Commission has concluded that there is also no duplication with respect to such individuals.

[...] [T]he alleged deaths and reported acts of torture concerning the alleged victims that are not a part of Case 12.575, could characterize potential violations of Article 4 (right to life) of the Convention, in connection with

⁵⁵ IACHR, Report No. 124/17, Petition 21-08. Admissibility. Fernanda López Medina and others. Peru. September 7, 2017, paras. 12 and 13.

⁵⁶ IACHR, Report No. 113/17, Petition 1141-07. Admissibility. Alfredo Manuel Martínez Meza and others. Colombia. September 7, 2017, para. 28.

Article 1(1) thereof, and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.”⁵⁷

(b) Issues examined by the IACHR under its monitoring capacities

90. [Country reports] “Neither the Convention nor the Regulations of the Commission require that the Commission declare the inadmissibility of a case where the subject of the case has previously been addressed in a general report. [...] The discussion of specific facts in a general country report does not constitute a ‘decision’ on those facts as would a final report on an individual petition which denounced the same or similar facts.

The processing of a case pursuant to the individual petition procedure is more structured than the preparation of a general report, which serves an informative rather than adjudicatory purpose. In processing an individual petition, the Commission must follow the procedures set forth in Articles 44 through 51 of the Convention. The Commission must engage in a careful analysis of the case so that it may reach conclusions of fact and law, pursuant to Articles 50 and 51 of the Convention.

The Commission further considers that it must be able to include information on specific human rights situations in its general reports on the human rights situations in the member states of the Organization of American States. The Commission must have the ability to include this information even where the situation involves a previously opened or potential future case under the individual petition system. Otherwise, the Commission would be forced to exclude from its general reports on countries the consideration of entire segments of the human rights panorama in those countries.”⁵⁸

91. [Public statements] “To this extent, a public statement from the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission that, after a rigorous examination of the information, alerted the State to possible violations of the individual right to freedom of expression, cannot be interpreted as compromising the impartiality of the IACHR; rather, it is the exercise of its powers of promotion and protection.”⁵⁹

2. Cases submitted to other international human rights bodies

92. [General rule] “[T]he grounds for inadmissibility require that in addition to having identical subjects, purposes, and claims, the petition must be under consideration or have been ruled upon by an international organization that is competent to adopt decisions on the specific facts contained in the petition and measures for effective settlement of the matter in dispute.”⁶⁰

93. “The Commission has maintained that [...] [t]he proceeding in the inter-American system for the protection of human rights is conventional and contentions in nature, and the Inter-American Commission does play an adjudicative role in this procedure.”⁶¹

94. [Lack of duplication of procedures] “[T]he Commission must not refrain [...] when the procedure followed by the other organization is limited to addressing the general situation of human rights in a State, and no decision has been made on the specific facts that are the object of the petition submitted to the Commission or no steps have been taken toward effective settlement of the alleged violation.”⁶²

⁵⁷ IACHR, Report No. 27/17, Petition 1653-07. Admissibility. Forced displacement Nueva Venecia, Caño El Clarín, and Buena Vista. Colombia. March 18, 2017, paras. 9 and 12.

⁵⁸ IACHR, Report No. 5/97, Petition 11.227. Admissibility. Patriotic Union. Colombia. March 12, 1997, paras. 69, 72 and 74.

⁵⁹ IACHR, Report No. 66/15, Petition 1436-11. Admissibility. Emilio Palacio Urrutia and others (*El Universo* Newspaper). Ecuador. October 27, 2015, para. 35.

⁶⁰ IACHR, Report No. 33/15, Petition 11.754. Admissibility. U'wa People. Colombia. July 22, 2015, para. 41.

⁶¹ IACHR, Report No. 147/10, Petition 497-03. Admissibility. Jesús Ángel Gutiérrez Olvera. Mexico. November 1, 2010, para. 50.

⁶² IACHR, Resolución No. 33/88, Petition 9786. Juan Geldres Orozco and Benigno Contreras. Peru. September 14, 1988, considerando F.

(a) Existence of international *res judicata*

95. As it can be observed in the following precedents, IACHR has considered that the treaty bodies of the United Nations, with specific mandates to decide contentious cases, render decisions equivalent to those delivered by the IACHR; therefore, when a case is brought to any of those bodies and to the IACHR, it can be deemed inadmissible.

96. [UN Human Rights Committee] “[T]he facts in this case have also been alleged before the Human Rights Committee. The Human Rights Committee, an organ of the universal human rights system, pursuant to Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights, has the authority to examine petitions submitted by individuals when they allege the violation of human rights protected in the Covenant. [...] [T]he IACHR must declare inadmissible any petition before it that is substantially the same as a petition that has been studied by the Human Rights Committee, so long as the facts alleged before the two bodies are substantially the same. [...] [B]oth have similar legal prerogatives and their decisions have the same scope or are similar in scope.”⁶³

97. [UN Human Rights Committee] “In the case of Mr. Blaine, certain legal claims put forward, first before the UNHRC and then before the IACHR, concern the same specific due process guarantees in the prosecution carried out against him and the corresponding appeals. [...] Because the claims and factual allegations raised before the IACHR concerning the trial and appeal are substantially the same as those raised before and considered by the UNHRC, they are inadmissible in the present case.”⁶⁴

98. [UN Committee against Torture] “[T]he Commission notes that the procedure for individual communications set by Article 22 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment empowers the Committee to take decisions on specific incidents and to adopt measures for resolving disputes that are similar to those established by the American Convention for the Inter-American Commission on Human Rights.”⁶⁵

(b) Non-existence of international *res iudicata*

99. Based on the aforementioned standards, the IACHR has ruled the non-existence of international *res iudicata*, for admissibility purposes, in cases also submitted before the following international human rights mechanisms:

i. International Court of Justice: [T]he jurisdiction of the ICJ differs from that of the IACHR in significant respects, particularly insofar as the ICJ deals with interstate litigation whereas the Commission deals with petitions brought by individuals against states, and insofar as the rights at issue and the remedies provided by the Commission correspond directly to the individual presumably concerned. Therefore, the Commission considers that the Avena litigation provides no bar to the admissibility of the present petition⁶⁶.

ii. Committee on Freedom of Association of the ILO: [R]ecommendations by the ILO’s Committee on Freedom of Association do not have a legally binding effect nor are of a compensatory nature⁶⁷. Moreover, a decision rendered by the ILO’s Committee on Freedom of Association does not refer to the possible breach of other rights that do not come under the jurisdiction of that body but over which the bodies of the Inter-American System do have jurisdiction⁶⁸. The Commission must also consider a point made by the Inter-American Court

⁶³ IACHR, Report No. 32/00, Petition 11.048. Inadmissibility. Víctor Alfredo Polay Campos. Peru. March 10, 2000, paras. 16 and 19.

⁶⁴ IACHR, Report No. 96/98, Petition 11.827. Inadmissibility. Peter Blaine. Jamaica. December 17, 1998, para. 46.

⁶⁵ IACHR, Report No. 89/05, Petition 12.103. Inadmissibility. Cecilia Rosana Nuñez Chipana. Venezuela. October 24, 2005, para. 37.

⁶⁶ IACHR, Report No. 73/12, Petition 15-12. Admissibility. Edgar Tamayo Arias. United States. July 17, 2012, para. 44.

⁶⁷ IACHR, Report No. 49/17, Petition 384-08. Admissibility. Workers dismissed from Ecopetrol. Colombia. May 25, 2017, para. 15.

⁶⁸ IACHR, Report No. 41/16, Petition 142-04. Admissibility. José Tomás Tenorio Morales and others (Ervin Abarca Jimenez Union for Higher Education Professionals of the National Engineering University). Nicaragua. September 11, 2016, para. 53.

to the effect that the recommendations made by the Committee on Freedom of Association are different in nature from the judgments delivered by the Inter-American Court⁶⁹.

iii. Human Rights Council of the United Nations (UPR): [T]he procedures in question were not substantially the same as the procedure stipulated for processing individual petitions lodged with the inter-American system, in part because they were not examining individual cases but rather situations affecting many people with a view to determining whether the situation presented involved persistent human rights violations. The IACHR finds that unlike an individual petition system, those mechanisms did not aim for an effective resolution of the violation denounced, nor were decisions and measures adopted aimed at settling disputes such as the matter under consideration⁷⁰.

iv. UN Working Group on Enforced Disappearances (special procedures of the Council): [T]he Commission establishes that [...] body does not have a case system to issue rulings that can attribute specific responsibilities. Consequently, the procedure of the Working Group is mainly a non-adversarial urgent action whose most important end is to establish a communication channel between the victims and the governments to effectively search for the disappeared⁷¹.

v. UN Working Group on Arbitrary Detentions (special procedures of the Council): [T]he IACHR notes that [...] the UN Working Group on Arbitrary Detention was established by resolution 1991/42 as a Special Procedure, and fulfills the mandate of investigating cases of deprivation of liberty imposed arbitrarily.⁶ Furthermore, the mandate of the Inter-American Commission on Human Rights in this case derives from a conventional source, the American Convention on Human Rights⁷².

vi. UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions (special procedures of the Council): The mandate of the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions was established by virtue of Resolution 1982/35 of the United Nations Economic and Social Council. The mandate of the Inter-American Commission on Human Rights is convention-based in that it derives from the American Convention on Human Rights. The Commission, in contrast to the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, falls within the category of treaty supervisory bodies.⁷³

B. Exhaustion of domestic remedies

100. **American Convention Preamble:** [...] [T]he essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.

101. Article 46.1.a: [Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:] that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

⁶⁹ IACHR, Report No. 15/15, Petition 374-05. Admissibility. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 49.

⁷⁰ IACHR, Report No. 33/15, Petition 11.754. Admissibility. U'wa People. Colombia. July 22, 2015, para. 42.

⁷¹ IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, para. 37.

⁷² IACHR, Report No. 67/15, Petition 211-07. Admissibility. Jorge Marcial Tzompaxtle Tecpile and others. Mexico. October 27, 2015, para. 35.

⁷³ IACHR, Report No. 22/05, Petition 12.270. Admissibility. Johan Alexis Ortiz Hernández. Venezuela. February 25, 2005, para. 41.

102. **Statute of the IACHR** Article 20: In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18: [b] to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and [c] to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

103. **Rules of Procedure of the IACHR** Article 28.8: [Petitions addressed to the Commission shall contain the following information:] Any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure.

104. Article 31.1: In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.

1. General criteria

(a) Object and purpose of the rule

105. [Purpose of the rule] “[T]he requirement of prior exhaustion of domestic remedies is intended to allow domestic authorities to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body.”⁷⁴

106. [Case by case analysis] “The examination of the rule requiring exhaustion of local remedies must be done on a case by case basis, and the relationship between the situation raised with the Commission and the manner in which the internal remedies were invoked; in other words, for whom and in relation to what facts and which rights.”⁷⁵

107. [Nature of the remedies] “The rule on the exhaustion of remedies provided by Article 46.1(a) of the American Convention establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question.”⁷⁶

108. [Consistency between the claims litigated in the national jurisdiction and the claims presented before the IACHR] “[I]f the petitioners claim to have exhausted the domestic remedies, the complaint alleging the violation of the American Convention lodged before the IACHR should have been heard and decided by the national courts, at least implicitly under the applicable national laws. This guarantees that the State has the opportunity to remedy the alleged violation before it is heard by the bodies of the Inter-American System.”⁷⁷

109. [Lack of litigation before the domestic tribunals of an essential claim brought before the IACHR] “[I]t does not appear from the information provided that the alleged impartiality of those who were members of the Council of the Magistrature, the harassment, the gender-based violence and discrimination, or the revelation of the confidential records on the procedure against her were alleged by the alleged victim domestically. The Commission therefore concludes that, with respect to the rights protected by Article 7 of the Convention of Belém do Pará, the right to an independent and impartial judge contained in Article 8(1) of

⁷⁴ IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12.

⁷⁵ IACHR, Report No. 39/09, Petition 717-00. Inadmissibility. Tomás Eduardo Jiménez Villada. Argentina. March 27, 2009 para. 59.

⁷⁶ IACHR. Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada De Saavedra. Peru. February 24, 2018, para. 12.

⁷⁷ IACHR, Report No. 75/14, Petition 1018-08. Admissibility. Ronald Moya Chacón and Freddy Parrales Chaves. Costa Rica. August 15, 2014, para. 32.

the American Convention, and the protection of privacy contained in Article 11, the petition does not meet the requirement established in Article 46(1)(a) of the Convention.”⁷⁸

110. [No application of the rule to the precautionary measures procedure] “[T]he facts that give rise to a request for precautionary measures do not need to be absolutely verified. The information provided, intending to identify a serious and urgent situation, should be examined *prima facie*. Furthermore, in relation to the statement by the State regarding the alleged failure to exhaust domestic remedies, one of the requirements for admissibility of a petition, the Commission recalls that the precautionary measures mechanism is governed exclusively by Article 25 of the Rules of Procedure. In this regard, clause 6.a. only states that: *‘[i]n considering the request the Commission shall take into account its context and the following elements: a. whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so.’*”⁷⁹

(b) Adequate and effective remedies

111. [General rule] “The rule on the exhaustion of remedies provided by Article 46.1(a) of the American Convention establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.”⁸⁰

112. [Criteria to establish the adequate and effective remedies to be exhausted] “With a view toward determining the appropriate procedural means within the Commission’s internal laws, it is necessary to determine first the purpose of the petition submitted for it to hear. [...] As per this point, the Commission deems it relevant to verify whether the matter before it was submitted to domestic courts through one of the remedies that could have been appropriate and effective for resolving this type of situation domestically.”⁸¹

113. [Ineffective remedies] “However, in accordance with the jurisprudence of the Commission and with that of other international human rights organs, ineffective remedies do not need to be exhausted. In the IACHR’s view, for the purposes of the petition’s admissibility, remedies are ineffective when it is shown that none of the means to vindicate a remedy before the domestic legal system appears to have prospects of success. In order to satisfy this point, the Commission must have before it evidence allowing it to evaluate effectively the probable outcome of the petitioners’ proceedings. The mere doubt about the prospects of filing a case is insufficient to exonerate the petitioners from exhausting domestic remedies. In order to decide whether a case is admissible or not and without prejudging the merits issues, in those cases where the said remedies are considered ineffective due to a lack of prospects for success, the exception to the exhaustion of domestic remedies set out in Article 31.2 (b) of the IACHR’s Rules of Procedure would be applicable.”⁸²

114. [An unfavorable outcome does not necessarily mean the ineffectiveness of the remedy] “With respect to the suitability of the motion for review and the petition for habeas corpus filed by the alleged victim, the Commission notes that the judicial authorities cited the circumstances in which these remedies could be used to satisfy the claims of the alleged victim but concluded in the specific case that the alleged victim had not proven that his situation matched any of these circumstances. The Commission finds that the unfavorable result does not prove in and of itself the lack of suitability of these remedies. Additionally, Mr.

⁷⁸ IACHR, Report No. 104/17, Petition 1281-07. Admissibility. Mirta Carmen Torres Nieto. Argentina. September 7, 2017, para. 10.

⁷⁹ IACHR, Resolution No. 11/2019, Precautionary Measure No. 1450/18. Julio Renato Lancellotti y Daniel Guerra Feitosa. Brazil. March 8, 2019, para. 27.

⁸⁰ IACHR, Report No. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

⁸¹ IACHR, Report No. 56/08, Petition 11.602. Admissibility. Workers dismissed From Petróleos Del Perú (Petroperú) Northwest – Talara Area. Peru. July 24, 2008, para. 58.

⁸² IACHR, Report No. 18/12, Petition 161-06. Admissibility. Juvenile offenders sentenced to life imprisonment without parole. United States. March 20, 2012, para. 47.

Paría filed the petition for habeas corpus in relation to his right to freedom, which in principle provides for a chance to protect said right.”⁸³

115. [Case in which an appeal on constitutional grounds was the adequate remedy] “The petitioners contend that they have exhausted the applicable domestic remedies by filing an unconstitutionality action challenging various provisions of the Telecommunications Act, which in their opinion impose legal obstacles that prevent the indigenous peoples who are the alleged victims in the instant case from accessing the radio spectrum under equal conditions. [...]

For purposes of admissibility, the Commission finds that the constitutionally challenged legislative provisions in this case have a direct effect on the rights of the alleged victims, who contend that the law is discriminatory and prevents them from exercising their rights to freedom of expression, equal protection, and cultural identity under equal conditions. In these kinds of situations, an unconstitutionality action can be a suitable remedy for protecting the violated legal status.

Given that a final decision has been rendered by Guatemala’s highest court on the facts alleged in this case, the Commission finds that the domestic remedies have been exhausted in the terms of Article 46.1.a of the American Convention.”⁸⁴

116. [Case in which an appeal on constitutional grounds was the adequate remedy] “In light of the Information presented and arguments put forth by the parties, the Inter-American Commission observes that in this case Mr. McDonald, personally or through his legal representatives, filed several administrative and judicial remedies to challenge the legality and enforcement of Articles 23 and 24 of the Family Code. These articles, which grant ministers of the Catholic Church the power to have the marriages that they perform be recognized before the law, are the very reason that Mr. McDonald filed his claims, both before the domestic authority and before the Inter-American Commission. The Commission notes that, as alleged by the petitioner, the judicial decision that gave the final domestic ruling is Resolution 2004-08763 issued by the Constitutional Chamber of the Supreme Court on August 13, 2004, after an appeal was filed by a group of interested parties, including the petitioner. In this regard, the State does not question the exhaustion of domestic remedies. Therefore, the Commission concludes that this petition complies with Article 46.1 of the American Convention.”⁸⁵

117. [Case in which an appeal on constitutional grounds was not an adequate remedy] With respect to the action for unconstitutionality, Article 277 of the Ecuadorian Constitution specifically determines which persons have standing to bring such an action along with the requirements in order to do so. The Inter-American Commission finds excessive the requirements of collecting the signatures of 1,000 citizens or securing a favorable opinion from the Ombudsman. At the time of the events, there were no regulations in place on the proceeding before the Ombudsman, and therefore there was no specific procedure or time limits. In addition, the State has also failed to provide information about the action for unconstitutionality in other individual petitions. Accordingly, it has not furnished any information to support its suitability and effectiveness for disposing of the instant matter in the domestic jurisdiction. Furthermore, the IACHR takes as reasonable and uncontested the petitioners’ argument regarding the ineffectiveness that any action brought before the Constitutional Tribunal would have had in practice, since said organ had already adopted a decision setting out its position on the inadmissibility of actions against the congressional resolution under which Hugo Quintana Coello and the other justices had been terminated. In sum, the action for unconstitutionality was not a domestic remedy that the petitioners had to exhaust before they could seek the intervention of the Inter-American Commission⁸⁶.”

⁸³ IACHR, Report No. 122/17, Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, para. 13.

⁸⁴ IACHR, Report No. 51/18, Petition 1779-12. Admissibility. Kaqchikuel Maya Indigenous Peoples of Sumpango and others. Guatemala. May 5, 2018, paras. 13, 14 and 16.

⁸⁵ IACHR, Report No. 47/18, Petition 975-07. Admissibility. Jasper McDonald Hamilton. Costa Rica. May 4, 2018, para. 12.

⁸⁶ IACHR, Report No. 8/07, Petition 1425-04. Admissibility. Hugo Quintana Coello and others (Justices of the Supreme Court). Ecuador. February 27, 2007, para. 29.

(c) Wrongful exhaustion of domestic remedies

118. [Non-compliance with legal requirements] “[T]he petitioner must exhaust domestic remedies in accordance with domestic procedural legislation. The Commission cannot regard the petitioner as having duly complied with the requirement of prior exhaustion of domestic remedies if said recourse has been rejected on reasonable, not arbitrary, procedural grounds, such as filing an appeal for amparo without previously exhausting the pertinent channels and lodging an administrative dispute with the local courts after the corresponding time limits have lapsed.”⁸⁷

119. [Filing of an inadequate remedy] “[T]he petitioner claims that the proceedings undertaken before the Council of the Federal Judiciary are of single instance of jurisdiction and that, as a result, it was impossible for him to file remedies against the decisions made by this court. Still, he presented a constitutional appeal against the Judiciary Council’s ruling, which was contrary to his interests. The State, for its part, alleges lack of exhaustion of domestic remedies on the grounds that the petitioner should have exhausted the remedy of complaint before the National Supreme Court of Justice.

[...] [T]he petitioner filed a direct constitutional appeal before the Eleventh Collegiate Court for Labor Matters of the First Circuit, but it was rejected on August 7, 2006. The court considered that under Article 73 of the Law on Constitutional Appeals, said remedy is out of order whenever another special law so rules; in the petitioner’s case, in particular, this special law would be Article 100 of the National Constitution. Said decision was challenged before the National Supreme Court of Justice, which confirmed the collegiate court’s decision and also invoked, as the basis of its decision to dismiss, Article 103 of the Law on Constitutional Appeals, which sets forth that “[t]he remedy of complaint is appropriate to challenge decisions issued by the president of the Supreme Court of Justice or by the presidents of its Chambers or the Circuit Collegiate Courts.”

[...] As to this case, the fact that the alleged victim did not file the corresponding remedy pursuant to the rules in force at the time of the facts means that the Commission cannot find this petition admissible in accordance with Article 46.1.a of the Convention, as the domestic remedies were not duly exhausted.”⁸⁸

120. [Lack of exhaustion of strictly judicial remedies] “[T]he only procedure that the petitioner filed was a complaint before the Ombudsman’s Office, which is not a legal remedy for the purpose of the requirement of exhaustion of domestic remedies. Moreover, once said Office notified him, in 2001, that criminal proceedings and ordinary proceedings for civil liability could be lodged at that time, the petitioner failed to pursue said remedies. In addition, the petitioner did not submit arguments or information about the reasons that allegedly prevented him from pursuing said remedies.”⁸⁹

(d) Burden of proof and timeliness

121. **Rules of Procedure of the IACHR Article 31.3:** When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

122. [Burden of proof on the respondent State] “[W]henever a State alleges that a petitioner has not exhausted domestic remedies, it has the burden of identifying the remedies to be exhausted and demonstrating that the remedies that have not been exhausted are ‘appropriate’ for redressing the alleged violation in other words, that the function of those remedies within the national legal system is suitable for protecting the legal right infringed.”⁹⁰

123. [The State must prove the adequacy of judicial remedies] “Regarding the State’s argument concerning failure to file a federal extraordinary appeal against said judgment, the IACHR recalls that when a

⁸⁷ IACHR, Report No. 90/03, Petition 0581/1999. Inadmissibility. Gustavo Trujillo González. Peru. October 22, 2003, para. 31.

⁸⁸ IACHR, Report No. 127/17, Petition 527-07. Inadmissibility. Juan José Reséndiz Chávez. Mexico. September 29, 2017, paras. 9, 10 and 12.

⁸⁹ IACHR, Report No. 150/17, Petition 123-08. Admissibility. Hernando de Jesús Ramírez Rodas. Colombia. October 26, 2017, para. 10.

⁹⁰ IACHR, Report No. 26/16, Petition 932-03. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, para. 25.

State argues failure to exhaust domestic remedies, it itself has to indicate the remedies not exhausted and demonstrate their suitability. The Commission observes that the State has not indicated how the federal extraordinary appeal, exceptional and discretionary, would have been suitable for solving the lack of timely reparation for the alleged victim after 20 years of processing of the ‘Cid v. Flores’ case. Therefore, taking into account the exceptional nature of the remedy and the time that has elapsed, the IACHR considers that the need to exhaust this remedy in order to resort to the IACHR has not been demonstrated.”⁹¹

124. [Information that should be provided by the State] “The State, for its part, although it invokes the lack of exhaustion of domestic remedies, does not explain which appropriate and effective remedies should have been exhausted. It does not explain, either, why it was necessary for the petitioners to use the cassation appeal before the Superior Court of Neuquén as the appropriate appeal to use in the context of the facts object of the complaint.”⁹²

125. [No challenge by the respondent State] “[W]hen a State does not call into question the exhaustion of domestic remedies by the petitioner, its tacit decision to not avail itself of this line of defense established for its benefit is presumed.”⁹³ [When the respondent State does not contest the exhaustion of domestic remedies, it only means that the State loses its chance to raise this defense. Even when the respondent State does not question the exhaustion of domestic remedies, the IACHR will assess compliance with the rule from the information already on file.]

126. [Timeliness] The Inter-American Court of Human rights since its earliest precedents has laid down that: “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”⁹⁴ In this regard, the IACHR has consistently stated through the years that “the exception of failure to exhaust domestic remedies, to be timely, must be raised during the first stages of the proceedings before the Commission, and the failure to do so is presumed to be a tacit renunciation of this exception by the interested State.”⁹⁵ [In practice, as it has been already mentioned, this admissibility requirement is assessed before the admissibility report.]

127. [When the State fulfills its burden to contest the exhaustion of domestic remedies, the petitioner must submit arguments about his compliance with the exhaustion of remedies] “With respect to the alleged mistreatment during his detention and the alleged lack of defense counsel, the State alleges failure to exhaust domestic remedies because, unlike the other defendants, the alleged victim did not file a complaint. The IACHR observes that the petitioner did not dispute what has been alleged and does not provide information tending to demonstrate that he reported the facts in relation to himself. In this regard, he merely states that ‘*the accused were victims of physical and verbal abuse to force them to sign documents in which self-incriminating statements were made*’ and that a co-defendant, in the police interview, indicated that ‘*it was obtained under threats and without the presence of a defense lawyer.*’ In this regard, the Commission considers that, according to the information provided, domestic remedies have not been exhausted in relation to these points.”⁹⁶

(e) State’s consent or acceptance of the exhaustion

128. [General rule] “According to what can be inferred from principles of international law, reflected in the precedents established by the Commission and the Inter-American Court, the State complained against can expressly or tacitly renounce the invocation of the lack of exhaustion of domestic remedies.”⁹⁷

⁹¹ IACHR, Report No. 83/17, Petition 151-08. Admissibility. José Francisco Cid. Argentina. July 7, 2017, para. 17.

⁹² IACHR, Report No. 3/11, Petition 491-98. Inadmissibility. Néstor Rolando López and others. Argentina. January 5, 2011, para. 26.

⁹³ IACHR, Report No. 88/17, Petition 1286-06. Inadmissibility. Rivas Family. El Salvador. July 7, 2017, para. 13.

⁹⁴ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1., para. 88.

⁹⁵ IACHR, Report No. 171/10, Petition 578-03. Admissibility. Miguel Ángel Millar Silva and others. Chile. November 1, 2010, para. 28.

⁹⁶ IACHR, Report No. 168/17, Petition 1502-07. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, para. 18.

⁹⁷ IACHR, Report No. 171/10, Petition 578-03. Admissibility. Miguel Ángel Millar Silva and others. Chile. November 1, 2010, para. 28.

129. [In its Resolution 1/16 of October 18, 2016, regarding the application of Article 36.3 of its Rules of Procedure, the IACHR established that when the respondent State manifestly expresses its agreement or does not object to the admissibility of the petition, the IACHR will postpone its decision on its admissibility to the merits stage⁹⁸.]

2. Exhaustion of ordinary and/or extraordinary remedies

130. [General rule] “In regard to special remedies, the Commission has previously established that although in some cases these remedies may be appropriate to dealing with human rights violations, as a general rule, the only remedies necessary to be exhausted are those which, within the legal system, are suitable for providing the protection needed to remedy the infringement of a specific legal right. In principle, these remedies are regular, not special.”⁹⁹ [However, exhaustion of these remedies could be required in cases where they are adequate and effective to remedy the specific matter that is being denounced.]

131. [Case where extraordinary remedies were not required, because it flows from the facts that the adequate remedy is a different one] “[T]he petitioners have alleged a series of what they characterize as irregularities in the scope of the investigation carried out concerning the torture and death, as well as in the prosecution and conviction. These allegations concern the depth of the torture investigation, alleged efforts to cover up the crime and obstruct the investigation, and that charges were not brought against individuals allegedly involved in that cover-up. It is not the purpose of an extraordinary appeal to remedy alleged irregularities in the investigative or charging stages of a criminal case, nor are there arguments on record suggesting that these issues would be susceptible to extraordinary review.”¹⁰⁰

132. [If the petitioner chooses to pursue extraordinary remedies, he must exhaust them in accordance with the applicable procedural rules, as long as said rules are reasonable] “[T]he Inter-American Commission observes that the Superior Court of Justice of the City of Buenos Aires, in its judgment of June 29, 2006, considered that the decision appealable by way of the extraordinary federal appeal was the one issued by the Superintendent’s Court of Public Notaries dismissing him, because it was of a definitive nature. Based on this and on the fact that this decision was notified on October 7, 2005, the Superior Court of Justice dismissed the extraordinary federal appeal as untimely. In other words, under domestic legislation, the petitioner did not raise his “federal question” of alleged violation of the right to double instance at the appropriate procedural stage.

The Commission observes that although the organic statute governing public notaries establishes that the decision of the Superintendent’s Court in matters relating to the disciplinary responsibility of public notaries is of a single instance, in the present case the petitioner chose to resort to extraordinary remedies available under domestic law. In this regard, the Inter-American Commission recalls that although in principle it is not necessary to exhaust extraordinary remedies in all cases, whenever the petitioner considers that these may have a favorable outcome in remedying the situation and he or she chooses to pursue them, such remedies must be exhausted in accordance with procedural rules in force, provided that conditions of access to them are reasonable. Therefore, in view of the fact that Mr. Waiman did not raise the federal question at the appropriate procedural juncture, that is, against the final decision ordering his dismissal, the Commission considers that the present petition fails to meet the requirement of exhaustion of domestic remedies under the terms of Article 46.1.a of the Convention.”¹⁰¹

⁹⁸ IACHR, Resolution 1/16, On measures to reduce procedural backlog, October 18, 2016. Available in: <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-16-en.pdf>

⁹⁹ IACHR, Report No. 161/17, Petition 29-07. Admissibility. Andy Williams Garcés Suárez and family. Peru. November 30, 2017, para. 12.

¹⁰⁰ IACHR, Report No. 51/03, Petition 11.819. Admissibility. Christian Daniel Domínguez Domenichetti. Argentina. October 22, 2003, para. 45.

¹⁰¹ IACHR, Report No. 135/18, Petition 1045-07. Inadmissibility. Enrique Alberto Elías Waiman. Argentina. November 20, 2018, paras. 9 and 10.

3. Duties of State authorities regarding domestic remedies

133. [General rule] “[T]he absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective. That could be the case, for example, when practice has shown its ineffectiveness: when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or in any other situation that constitutes a denial of justice, as when there is an unjustified delay in the decision; or when, for any reason, the alleged victim is denied access to a judicial remedy.”¹⁰²

134. [Access to justice to persons or groups in vulnerable conditions] “[T]he Inter- American System has established that there are certain categories of vulnerable groups, among others, indigenous peoples, persons living in poverty, persons living with disabilities and children for whom that vulnerability has an effect on their access to justice and due process guarantees. In this regard, the ‘Reglas de Brasilia sobre Acceso a la Justicia de las Personas en condición de Vulnerabilidad’, establish that the State has a reinforced duty to ensure access to justice to all persons who are in a vulnerable condition, on equal terms and the duty to adapt the procedures and all due process guarantees to protect their rights.”¹⁰³

135. [Clarity from the courts regarding what remedies are to be exhausted] “[T]he Commission observes that to reclaim their violated rights, the petitioners initially opted to file a petition seeking amparo relief, since their claims involved a violation of constitutional rights. When the Constitutional Court dismissed the petition, they attempted to file an adversarial administrative action, which the Constitutional Court had indicated was the proper remedy for protection of their rights. Despite making every effort to get their claim settled under the domestic legal system, their adversarial administrative action was dismissed on the grounds that it was filed after the legal deadline. The Commission, however, considers that based on the foregoing, it was reasonable for the petitioners to file the petition seeking amparo relief and then to file the adversarial administrative action since, based on the domestic case law on the subject, it was not clear which procedural avenue was the appropriate one to follow. It is important to note that this lack of clarity was affirmed by the Inter-American Court in its case law concerning a case of a similar nature that occurred during roughly the same time period as that of the present case in Peru. It was established that, considering the framework of practical and normative obstacles to the assurance of real access to justice, ‘the alleged victims had no certainty about the proceeding they should or could use to claim the rights they considered violated, whether this was administrative, under administrative-law, or by an action for amparo.’”¹⁰⁴

4. Exhaustion of domestic remedies regarding alleged violations to specific rights

(a) Right to life

136. “[I]n situations [...] –which involves crimes against life and security– the domestic remedies that must be taken into account for the purposes of the petition’s admissibility are those related to the criminal investigation and punishment of the persons responsible.”¹⁰⁵

¹⁰² I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

¹⁰³ IACHR, Report No. 89/13, Petition 879-07. Admissibility. *Loni Edmonds and Childern. Canada*. November 4, 2013, para. 59.

¹⁰⁴ IACHR, Report No. 54/08, Petition 160-02. Admissibility. *Employees Dismissed from The Ministry of the Economy and Finance (MEF). Peru*. July 24, 2008, para. 43.

¹⁰⁵ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. *Moisés de Jesús Hernández Pinto and family. Guatemala*. June 20, 2018, para. 10.

137. “[A]s a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone deemed a suspect in the framework of the investigation.”¹⁰⁶

138. “The IACHR notes that the reported facts in this case involve the alleged forced disappearance of Mr. Muniz, and that such type of crime requires an expeditious investigation at the State’s own initiative. In such cases, a regular criminal trial is the adequate means to establish the facts, trial the persons responsible, and decide on the criminal punishments applicable, as well as allow for other ways of monetary reparation.”¹⁰⁷

139. “[I]n cases where possible violations of the right to life are involved [extrajudicial executions] the domestic remedies to be considered for the purpose of admissibility are those concerning the investigation and punishment of the persons responsible, which translate into the domestic legislation on criminal offences subject to prosecution *ex officio*. In this case, the Commission notes that, according to the available information on the facts of violence leading to the death of the alleged victims, a criminal investigation was open on August 26, 2007 and is still in progress.”¹⁰⁸

140. “[I]n cases such as the present one, which involve possible violations of human rights [ejecución extrajudicial], that is, prosecutable *ex officio*, and even more so when agents of the State may be implicated in the alleged facts, the State has the obligation to investigate them. This burden must be assumed by the State as its own legal duty, and not as a management of private interests or that depends on the initiative of the latter or the provision of evidence by them.”¹⁰⁹

141. [Persons deprived of liberty] “With regards to the proceedings that were launched to investigate the alleged victim’s death, the IACHR recalls that the State’s has the duty *ex officio* and without delay to launch a serious, impartial, and effective investigation which must be conducted within a reasonable time and not as a mere formality. This is a guarantee of the right to life of those deprived of liberty when their deaths occurred in State custody and applies even in cases of natural death or suicide. It is for the State to clarify the circumstances in which the death occurred as a legal duty and not as a management of specific interests that depends on such interests’ initiatives.”¹¹⁰ [See also: IACHR, Report No. 1/18, Petition 137-07. Admissibility. *Mirta Elizabeth Canelo Castaño and family*. Argentina. February 24, 2018, para. 10.]

(b) Right to humane treatment

142. “[I]n situations [...] —which involves crimes against life and security— the domestic remedies that must be taken into account for the purposes of the petition’s admissibility are those related to the criminal investigation and punishment of the persons responsible.”¹¹¹

143. “[A]s a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone deemed a suspect in the framework of the investigation.”¹¹²

144. “As to the alleged acts of torture perpetrated against the alleged victim, the Commission reiterates that under international standards applicable to cases like this one, where serious human rights violations such as torture are alleged, the appropriate and effective remedy is precisely the filing and the

¹⁰⁶ IACHR, Report No. 44/18, Petition 840-07. Admissibility. *Pijiguay Massacre*. Colombia. May 4, 2018, para. 11.

¹⁰⁷ IACHR, Report No. 78/16, Petition 1170-09. Admissibility. *Almir Muniz Da Silva*. Brazil. December 30, 2016, para. 31.

¹⁰⁸ IACHR, Report No. 118/17, Petition 1484-07. Admissibility. *Carmen Luz Cuchimba Vallejo and others*. Colombia. September 7, 2017, para. 8.

¹⁰⁹ IACHR, Report No. 159/17, Petition 712-08. Admissibility. *Sebastián Larroza Velázquez and family*. Paraguay. November 30, 2017, para. 14.

¹¹⁰ IACHR, Report No. 110/17, Petition 802-07. Admissibility. *Leonardo Vanegas and family*. Colombia. September 7, 2017, para. 8.

¹¹¹ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. *Moisés de Jesús Hernández Pinto and family*. Guatemala. June 20, 2018, para. 10.

¹¹² IACHR, Report No. 44/18, Petition 840-07. Admissibility. *Pijiguay Massacre*. Colombia. May 4, 2018, para. 11.

undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, individualize the persons responsible and attribute the corresponding responsibilities.”¹¹³

145. “The Commission holds that the information supplied by the petitioners, not disputed by the State, shows that the alleged victim had revealed to the judicial authority responsible for ruling in the proceeding in which he was charged that state agents had tortured him. The court found that the accused had not proved the alleged acts of torture. Considering that the appropriate authorities are responsible for investigating torture and that they were informed of torture by the alleged victim, the victim cannot be required to exhaust another series of actions or remedies, because it is not the victim’s responsibility to start a proceeding of this nature.”¹¹⁴

146. [Case in which the alleged victim was detained] “Concerning the allegations of physical abuse and inadequate detention conditions, the petitioner argues that the prison authorities were made aware of his situation and did not take action. The petitioner claims that he sent numerous communications to judicial and governmental authorities of his country –including INDECOM– in which he complained of violence and lack of medical treatment, but the authorities allegedly failed to address or resolve the situation. In these circumstances, the IACHR is satisfied that the authorities were aware of the situation of the alleged victim, and that he invoked the remedies readily available to him as a practical matter, and thus satisfied the requirements of Article 46.”¹¹⁵

147. [Case involving personal integrity violations by third party actors] “In the present case, the Commission must decide which remedy must have been exhausted depending on the circumstances, that is, the one that is deemed capable of settling the legal situation that has been violated. In the present case, involving the alleged crimes of rape, injury and attempted murder, the suitable remedy is filing criminal proceedings to identify and punish those responsible; proceedings that the State must process promptly and with due diligence. The criminal proceeding brought by the Prosecutor’s Office on July 19, 2001 in the framework of which Linda Loaiza López personally filed charges on November 19, 2001, is the one that must be considered for the purpose of determining the admissibility of the complaint. The petitioners contend that this criminal proceeding passed through of all its respective stages and definitively culminated on May 11, 2007 when the appeal of last resort filed by the petitioner was dismissed, and said ruling has not been disputed by the State.

The Commission also observes that the petitioners have submitted evidence of a large number of complaints they filed with various bodies of the State such as the Office of the Attorney General of the Nation, the Supreme Court of Justice, the Office of the Inspector General of the Courts, and the Commission for the Restructuring and Functioning of the Judiciary System, aimed at correcting irregularities committed by the prosecutors and judges involved in the criminal proceeding between 2001 and 2007, without leading to any concrete results; claims which have not been disputed by the State. In particular they stress that, in view of the dismissal on June 6, 2003 of the individual charges filed by Linda Loaiza López, the petitioners filed appeals for reconsideration and constitutional review on July 8 and October 23, 2003, both of which were dismissed. The State has not submitted any information indicating that one of the above-mentioned appeals is being actively processed or is pending an internal ruling.

[...]

On the basis of the factors indicated above, the Commission concludes that the petitioners exhausted the ordinary remedies of the criminal justice system. Therefore, their claims meet the requirement of prior exhaustion of domestic remedies provided for in Article 46(1)(a) of the American Convention.”¹¹⁶

¹¹³ IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 13.

¹¹⁴ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, para. 64.

¹¹⁵ IACHR, Report No. 89/17, Petition 788-08. Admissibility. Curtis Armstrong A.K.A. Tyrone Traill. Jamaica. July 7, 2017, para. 10.

¹¹⁶ IACHR, Report No. 154/10, Petition 1462-07. Admissibility. Linda Loaiza López Soto and next of kin. Venezuela. November 1, 2010, paras. 49, 50 and 52.

(c) Right to personal liberty

148. [Concept of deprivation of liberty] “Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under de facto control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses. This category of persons includes not only those deprived of their liberty because of crimes or infringements or noncompliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental, or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.”¹¹⁷

149. [Habeas corpus] “Regarding the situation of the alleged victims, who were deprived of their liberty by order of the Sixth Duty Judge of First Instance in Juvenile Protection and Correctional Matters, habeas corpus is in principle the appropriate remedy. Habeas corpus is the appropriate remedy in all cases in which a person believes that he or she has been illegally deprived of his or her liberty. In this regard, the Inter-American Court of Human Rights has established that habeas corpus performs a vital role in ensuring that a detained person's life and physical integrity are respected, in preventing that person's disappearance or the keeping of his or her whereabouts secret.”¹¹⁸

150. [Habeas corpus] “As has been established in other cases concerning Ecuador, the remedy of constitutional habeas corpus mentioned by the State had to be lodged with the Mayor or the President of the Council. In this regard, both the Commission and the Inter-American Court have found that a petition of habeas corpus to an administrative authority is not an adequate remedy under the standards of the American Convention. Therefore, the Commission believes that at the time of the events, the remedy of constitutional habeas corpus was not an adequate remedy; as a result, its exhaustion is not necessary.”¹¹⁹

151. [When pre-trial detention last beyond a reasonable period of time or when is imposed in violation of human rights standards] “[I]n the case of petitions alleging the misapplication or excessive prolongation of preventive detention, the Commission has established that these claims may have, in relation to Article 46.1.a of the Convention, its own dynamics of exhaustion of domestic remedies, independent of that of the criminal process as a whole; and that for the exhaustion of resources, the request for release and rejection is sufficient.”¹²⁰

152. [Execution of sentences] “In this case, the petitioner requested the benefit of day parole and, as it was rejected, he lodged several remedies, which were examined and dismissed by the courts. As the State heard the claims contained in this petition and the remedy filed was appropriate, the Commission believes that the alleged victim exhausted the domestic remedies.”¹²¹

(d) Examples of exhaustion of domestic remedies involving other rights

153. [Lack of monetary damages] “In the four petitions included in this report, the petitioner states that judicial actions have been initiated with the objective of obtaining compensation as a result of the human rights violations committed during the Chilean dictatorship. In this regard, the alleged victims' next of kin filed civil lawsuits that, culminated in judgments of the Supreme Court of Justice, thereby exhausting the domestic remedies [...].

¹¹⁷ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008. Available in: <http://www.oas.org/en/iachr/mandate/Basics/principlesdeprived.asp>

¹¹⁸ IACHR, Report No. 16/08, Petition 12.359. Admissibility. Cristina Aguayo Ortiz and others. Paraguay. March 6, 2008, para. 79.

¹¹⁹ IACHR, Report No. 16/17, Petition 101-03. Admissibility. Eva Cristina Allan Ramos. Ecuador. January 27, 2017, para. 25.

¹²⁰ IACHR, Report No. 49/18, Petition 1542-07. Admissibility. Juan Espinosa Romero. Ecuador. May 5, 2018, para. 13.

¹²¹ IACHR, Report No. 160/17, Petition 531-07. Admissibility. Franklin Nima Curay. Peru. November 30, 2017, para. 9.

[...] In similar cases, the IACHR has concluded that, although the alleged violations of due process are based on the background of the disappearances, the petition submits claims based on the State's judicial response, and specifically what they claim as the right to have full reparation."¹²²

154. [Deportation] "According to the available information, at least two applications for refugee status were lodged before the COMAR during the alleged victim's detention term. [...] According to the State, the petitioner could have filed the appeal for review set forth in article 83 of the Federal Law on Administrative Procedure effective when the facts took place, from the time the repatriation procedure began and in view of the Cuban Consulate's formal acceptance to repatriate him. On the other hand, the State alleges that, apart from administrative proceedings, the petitioner could have filed constitutional proceedings and had his removal order suspended by a judicial resolution. The Commission notes that in situations like this, in general, the remedy that must be exhausted is the one that allows challenging the administrative or judicial resolution leading to removal or deportation."¹²³

155. [Forced displacement] "[A]s forced displacement is a crime, a criminal action is the remedy that would have to be pursued in order to consider this requirement exhausted. The Commission observes that the investigation began on November 22, 2000 and when the most recent communication from the parties took place, 14 years later, that investigation was still ongoing."¹²⁴

156. [Noncompliance with judgment] "In cases of alleged noncompliance with judicial decisions, the IACHR has maintained that, since the situation is reported under mechanisms provided for in domestic legislation, it is up to the competent judicial organ to adopt the necessary measures to ensure execution of the decision."¹²⁵

157. [Ineffective assistance of public defender] "[T]he Commission observes that the domestic remedies were indeed definitively exhausted with the ruling of the Supreme Court of Justice notified to the petitioner on April 15, 2008. As for the matter of untimely filing of the special appeal by the alleged victim's court-appointed defendant, because it is connected with the right to the effective benefit of counsel, it is a substantive matter that the Commission shall eventually examine in the later stage of the present case. In that regard, the Commission deems that the petition meets the requirement set forth in Article 46.1.a of the American Convention. The Commission also observes that the petition was filed on October 7, 2008, that is, within a period of six months, as set forth in Article 46.1.b of the American Convention."¹²⁶

158. [Damages to a community radio station] "The petitioner explained that Radio Estrella del Mar is located in a small town on the Island of Melinka, in the south of Chile. The island has problems of accessibility and connectivity. [...] [E]lectricity is provided by the municipality through its own electricity-generating equipment and that there are two systems of provision of energy: a restricted-access one with extended hours that allows for the use of energy free of charge from eight o'clock in the morning until twelve o'clock at night, and one with unrestricted access with limited hours that is subject to payment according to consumption and operates from six o'clock in the evening until twelve o'clock at night. According to the petitioner's account, the station Radio Estrella del Mar, of which he is the director, was excluded from the provision of electricity through the extended-hours system. He alleged that this was due to the animosity of the mayor in relation to the radio's editorial slant. [...] [T]he Commission considered that, in general, the remedy for protection and the appeal filed by the petitioner are adequate and effective remedies to redress violations of fundamental rights. In this respect, and taking into account that the State did not present any claims relating to the satisfaction of the

¹²² IACHR, Report No. 152/17, Petition 280-08, 860-08, 738-08 and 629-08. Admissibility. Hugo Tomás Martínez Guillén and others. Chile. November 30, 2017, paras. 20 and 25.

¹²³ IACHR, Report No. 146/17, Petition 296-07. Admissibility. Orosmán Marcelino Cabrera Barnés. Mexico. October 26, 2017, paras. 9 and 10.

¹²⁴ IACHR, Report No. 27/17, Petition 1653-07. Admissibility. Forced Displacement in Nueva Venecia, Caño El Clarín, and Buena Vista. Colombia. March 18, 2017, para. 10.

¹²⁵ IACHR, Report No. 106/10, Petition 147-98. Admissibility. Oscar Muelle Flores. Peru. July 16, 2010, para. 29.

¹²⁶ IACHR, Report No. 3/18, Petition 1173-08. Admissibility. Diego Fabián Montesino. Argentina. February 24, 2018, para. 12.

requirement of exhaustion of domestic remedies, nor did it indicate any additional remedies that must be exhausted.”¹²⁷

159. [Example of exhaustion of domestic remedies through a legal entity in regard to freedom of speech] “The Commission therefore considers that Mr. William Gómez Vargas—as editor-in-chief, owner, and legal representative of the newspaper Extra— exhausted the remedies available under Costa Rican law to challenge the judicial sanctions imposed for publication of the abovementioned information. Although these remedies were exhausted on behalf of the Sociedad Periodística Extra Limitada, the question of possible violation of freedom of expression now being considered was clearly raised by the defendant in the domestic proceedings and resolved by the Supreme Court—with explicit references to Article 13 of the American Convention—in those proceedings. As such, the complaints in the proceedings that were exhausted (on behalf of the Sociedad Periodística Extra Limitada) at the domestic level coincide with those submitted (by Mr. William Gómez Vargas) to the IACHR. The Commission therefore considers that domestic remedies were exhausted, as required by Article 46.1.a of the American Convention.”¹²⁸

160. [Exhaustion of domestic remedies through a legal entity in regard to freedom of speech] “The IACHR has understood that the fact that domestic remedies have been exhausted in the name of a legal entity, does not automatically exclude the possibility of ruling on the effects on the rights of natural persons as a consequence of acts or omissions that affect the legal entity. It is then necessary to evaluate, in each case, whether the natural person had -effectively and in front of the specific state act or omission- the remedies to claim as such the violation of their human rights.

In addition, the Inter-American Court of Human Rights has declared that, for the purpose of the admissibility of the petition, “if it is proven that the remedy exhausted by the legal entity protects the individual rights of the natural persons who intend to avail themselves of the inter-American system, that remedy could be understood to be a suitable and effective remedy. On this point, the Inter-American Court underscored that, in these types of matters, “domestic remedies must be understood to have been exhausted in compliance with Article 46.1.a) of the Convention when: i) it is proven that the available, suitable, and effective remedies for the protection of an individual’s rights have been filed, regardless of whether they have been filed and decided in favor of a legal entity, and ii) it is demonstrated that the claims asserted by the legal entity in the domestic proceedings coincide with the alleged violations argued before the inter-American system.”¹²⁹

161. [Consular assistance] “[P]etitioners point out that in his appeal to the Texas Court of Criminal Appeals, the alleged victim’s court-appointed appellate counsel failed to raise the violation of Article 36 of the Vienna Convention. They state that the appeal was rejected and that subsequent appeals based on ineffective assistance of counsel and violations of the Vienna Convention have failed based on the court’s findings that such claims were foreclosed by procedural default. Accordingly, petitioners allege that the United States violated Articles XVIII and XXVI of the American Declaration by providing incompetent defense counsel in a capital case.

The petitioners contend that the Mexican Consulate did not learn of Mr. Maldonado’s detention until one month before the start of trial, and after voir dire had begun. They indicate that the Mexican Consulate only learned of Mr. Maldonado’s detention when an employee happened to see Mr. Maldonado’s story on the television. They conclude that, had the Consulate been notified sooner, the office would have offered Mr. Maldonado flexible and far-reaching assistance to avoid the imposition of the death penalty. The execution of Mr. Maldonado would therefore violate Articles I, XVIII, and XXVI of the American Convention according to the petitioners.

According to the information provided, after the Texas Court of Criminal Appeals denied Mr. Maldonado’s appeal and rehearing, the alleged victim presented, among others, three federal petitions for writ of habeas corpus, a petition asserting violations of the Fifth, Sixth, and Eighth Amendments and the Vienna Convention, and a petition for a writ of certiorari before the United States Supreme Court, all of which were denied.

Based on the above factors, the Inter-American Commission concludes that the petitioners properly exhausted all domestic remedies available within the legal system with respect to the claims of mental

¹²⁷ IACHR, Report No. 171/10, Petition 578-03. Admissibility. Miguel Angel Millar Silva y otros. Chile. November 1, 2010, paras. 2-4 and 29.

¹²⁸ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gomez Vargas. Costa Rica. March 31, 2011, para. 43.

¹²⁹ IACHR, Report No. 52/18, Petition 253-10. Admissibility. Alejandro Fernando Aguilera Mendieta, et al. Mexico. May 5, 2018, paras. 25-26.

retardation, ineffective assistance of counsel and denial of consular rights. Regarding the lethal injection claim, based on the information provided, the IACHR concludes that the claim raised in the present case has been litigated multiple times before the domestic courts, including before the United States Supreme Court, and that it is not necessary for the petitioners to relitigate the same claim as a condition of admissibility.”¹³⁰ [IACHR, Report No. 73/12, Petition 15/12. Admissibility. Edgar Tamayo Arias. United States. July 17, 2012.]

162. [Consular assistance] “With regard to the alleged violation of the right to consular notification set forth in Article 36 of the Vienna Convention on Consular Relations, the petitioners claim that Mr. Teleguz was detained, deprived of his liberty, arrested, tried and sentenced to death without having been informed about his right to contact Ukraine consular officers. [...]

[...] [A]fter the death sentence was upheld on direct appeal, the Supreme Court of Virginia denied a state habeas petition and the United States District Court for the Western District of Virginia denied a federal habeas petition. The petitioners indicate that Mr. Teleguz has only one more non-discretionary appeal and that he will likely be executed in the spring of 2012. They argue that the alleged victim should not be required to wait until that appeal is heard before the IACHR can consider the petition given that there is no effective right to appeal in US federal habeas proceedings and that delaying consideration of the petition would effectively deny Mr. Teleguz any realistic prospect of having the alleged violations considered while he is still alive.

[...] In the instant case, the State, through the direct appeal and the state and federal habeas petitions, had the opportunity to take cognizance of the alleged violations to the American Declaration.”¹³¹

163. [Internationa child restitution] “The Commission notes that, in this case, the parties have focused their claims on the proceedings undertaken before the civil jurisdiction for the international return of child D., which is the appropriate remedy. In this regard, the IACHR takes into account that since 2006 Mr. Javier Córdoba has filed numerous requests before the Paraguayan judicial authorities to have the judgment for the return of his son enforced. However, his efforts have been unsuccessful in view of the alleged escape of the mother and other actions to avoid the return, and in view of the legal resolutions of temporary guardianship and stay in Paraguay, issued in 2015 and 2017, respectively. In addition, on October 18, 2006, the alleged victim reported the child’s abduction before the criminal jurisdiction and has continuously filed requests seeking the enforcement of the international arrest warrant to establish the whereabouts of the mother and the child. In this context, the Commission deems that Mr. Javier Córdoba did everything that is reasonably expected from him to exhaust domestic remedies. In light of the foregoing, the IACHR believes that the exceptions concerning the exhaustion of domestic remedies set forth in Article 46.2.b) and c) of the American Convention apply on this case.”¹³²

5. Exceptions to the rule requiring exhaustion of domestic remedies

164. [Distinction between the analysis on admissibility and the analysis on the merits] “[G]iven their nature and purpose, are autonomous regulations *vis à vis* the substantive provisions of the Convention. Therefore, the determination of whether the exception for exhaustion of the internal remedies, as per the abovementioned provision, is applicable to the case in point should be resolved prior and separate from the substantial analysis of the case, since it is governed by provisions that differ from the ones used for determination of the violation of Articles 8 and 25 of the Convention. It is worth clarifying that the causes and effects that have prevented the exhaustion of the internal remedies in this case will be analyzed, to the extent that they are relevant, in the report adopted by the Commission on the substantial content of the controversy, in order to establish whether, in effect, they constitute violations to the Convention.”¹³³ Moreover, in order for

¹³⁰ IACHR, Report No. 63/12, Petition 1762-11. Admissibility. Virgilio Maldonado Rodriguez. United States. March 29, 2012, paras. 17, 19, 48 and 51.

¹³¹ IACHR, Report No. 16/12, Petition 1528-11. Admissibility. Iván Teleguz. United States. March 20, 2012, paras. 14 and 20-21.

¹³² IACHR, Report No. 147/17. Admissibility. Javier Arnaldo Córdoba and D. Paraguay. October 26, 2017, para. 11.

¹³³ IACHR, Report No. 71/17, Petition 271-07. Admissibility. Jorge Luis de la Rosa Mejía and others. Colombia. June 29, 2017, para. 51.

judicial protection mechanisms to be truly effective, the entity receiving the complaint must reach a reasoned decision on the merits of the case¹³⁴.

165. [Uncertainty about the outcome of the remedies] “Mere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies.”¹³⁵

166. “The petitioner alleges that the sexual abuses committed by the father of the alleged victim were not timely and duly investigated by the competent authorities and that as a result of those omissions and lack of diligence she has not been able to obtain a fair resolution in the family proceedings initiated to prevent the visits of the alleged assailant with R.B.L. Accordingly, she considers that the various challenges presented against the visitation regime concluded with the ruling of the Supreme Court of Justice of the Nation of July 12, 2001, a judgment that exhausted available judicial remedies. For its part, the State indicates that domestic remedies were not exhausted since proceedings on visitation regime never reach finality, thus the petitioner would always be able to file her motion anew if it pulls together the elements that justify it. In the instant case the IACHR observes that the proceedings on the visitation regime are never final and, in this sense, do not produce final decisions. The Commission also takes into account that the petitioner’s main argument is that she could not obtain a judicial decision that protects the rights of her daughter due to the lack of diligence in the processing and investigation of the different requests and motions that she filed. In that regard, the IACHR understands that in the context of a complaint related to sexual abuse against a girl, what was alleged with respect to the purported shortcomings in the investigation poses an exception to the requirement of prior exhaustion in terms of the purported obstacles to access to a proper investigation and the alleged delay in carrying out any investigation. Therefore, considering the characteristics of the instant case, the Commission considers that the exceptions provided for at Article 46(2)(b) and (c) of the American Convention apply, and so prior exhaustion is not required.”¹³⁶

(a) When the domestic legislation does not afford due process of law

167. **American Convention on Human Rights** Article 46.2.a: [The provisions of paragraphs 1.a and 1.b of this Article shall not be applicable when:] the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated.

168. **Rules of Procedure of the IACHR** Article 31.2.a: [The provisions of the preceding paragraph shall not apply when:] the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated.

169. [Nonexistence of appropriate remedies] “[T]aking into account the time elapsed since she had requested a copy of her ID card until obtaining it, during which time she would not have had an identity document, the procedure would not have been expeditious. In this regard, the Inter-American Court of Human Rights in its Advisory Opinion OC-24/17 has established that the procedures for requesting the adaptation of identity data in accordance with the self-perceived gender identity must be expedited and carried out with as quickly as possible, given the degree of affectation that these procedures can have. For purposes of admissibility, the Commission observes that, through the writ of habeas corpus, the Constitutional Court analyzed the situation raised and ruled in favor of the change of name according to the ruling that ordered its modification years earlier. However, it was indicated that the other elements of identity, including sex, remain ‘unalterable’. In this regard, the Commission concludes that, *prima facie*, it appeared that there was no due process or appropriate remedy to protect the rights allegedly violated, which is why the exception to exhaustion contemplated in Article 46.2.a of the American Convention is applicable.”¹³⁷

¹³⁴ IACHR, Report No. 100/01. Merits. Case No. 11.381, Milton García Fajardo and others v. Nicaragua. October 11, 2001, paras. 85-87.

¹³⁵ IACHR, Report No. 104/05, Petition 65-99. Inadmissibility. Víctor Nicolás Sánchez and others (“Operation Gatekeeper”). United States. October 27, 2005, para. 67.

¹³⁶ IACHR, Report No. 54/16, Petition 223-01. Admissibility. Marisa Andrea Romero and R.B.L. Argentina. December 6, 2016, paras. 27 and 28.

¹³⁷ IACHR, Report No. 57/18, Petition 969-17. Admissibility. Karen Mañuca Quiroz Cabanillas. Peru. May 5, 2018, para. 13.

170. [Amnesty laws and statutory limitations on international law related crimes] “In similar cases, the Commission has stated its position, that the application of statutes of limitations to cases of alleged crimes against humanity, and the fact that Brazil’s Amnesty Law was in force, make it impossible to investigate individual liability and to punish the state agents involved in the case. Thus, the Commission views as applicable the exception to the exhaustion of domestic remedies provided in Article 46.2(a) of the American Convention. Furthermore, as for timeliness in lodging the petition, the Commission considers that, because the ongoing impunity for the violations committed against the alleged victim is a result of the expiration of the statute of limitations for prosecution, and because of the Amnesty Law, applicable to this case and allegedly still in force to this day, the timeliness standard for filing petitions is satisfied.”¹³⁸

171. [Legal impossibility to appeal] “[T]he Commission considers that when the text of a specific law (*lex specialis*) expressly establishes that recourse to domestic remedies is out of order in a specific situation in which a violation of human rights is alleged, it is not reasonable to require the petitioner, contrary to the express text of said law, to file an appeal, whether ordinary or extraordinary. Thus, grounds exist for the exception set out in Article 46.2.a of the American Convention.”¹³⁹

172. [Legal impossibility to appeal] “Concerning the requirement of prior exhaustion of domestic remedies, both parties agree that the Federal Council of the Judicature issued a disciplinary punishment against the petitioner on October 31, 2006 and that on May 7, 2007 the petitioner filed an action for administrative review before the Supreme Court of Justice, which was rejected on the grounds that judgements by the Federal Council of the Judicature are final and incontestable. Consequently, based on this information, the Commission believes that in the domestic venue no remedies are available to challenge the disciplinary punishment imposed on the alleged victim and that, as a result, the exception set forth in Article 46.2(a) of the Convention and Article 31.2(a) of the Rules applies in this case.”¹⁴⁰

173. [Lack of legal capacity to pursue legal remedies] “[T]he petition was presented on behalf of C., not her parents, and that the matter of the petition are the alleged violations of due process to the detriment of the girl since she was not listened to or had a representation that was impartial and other than her parents. In this regard, the IACHR notes that, according to the Fourth Collegiate Court’s judgment of July 13, 2010, this Court believed that C. had no legal capacity to lodge a remedy that would allow her to enforce her rights or access legal representation other than her parents. Moreover, the Commission notes that the judicial authorities that heard the remedies were aware of the situation described in the petition. As a result, the Commission considers that, for the purpose of the *prima facie* analysis of domestic remedies exhaustion, there were no available remedies for C. to file a remedy to enforce her rights apart from her parents, which means that exception set forth in Article 46.2.a of the Convention applies on this petition.”¹⁴¹

174. [Nonenforcement of a favorable judgment] “[T]he September 15, 2010 judgment of the Supreme Court that admitted the remedy of protection and recognized the adverse effects of the project on the Community’s exercise of its rights has not been enforced. Therefore, for purposes of examining admissibility, the Commission considers that domestic remedies have not been effective in protecting the Pepiukelen indigenous community, which requires specific protection to exercise its rights. The Commission thus concludes that the exception to exhaustion of domestic remedies provided for in Article 46(2)(a) of the Convention applies to the instant case.¹⁴² [This in the case of a judgment that by its very nature must be enforcement by the public authorities, in other cases where the domestic legislation requires additional steps for the enforcement of a judgment, the IACHR could analyze this circumstance.]

175. [Nonenforcement of judgment] “Based on the information provided by the petitioner, which the State has not challenged, to date the judgment issued by the Court of Appeals of Santiago on July 9, 1969, ordering the return of the alleged victims’ property, has yet to be complied with. Furthermore, according to the information provided, it can be concluded *prima facie* that the alleged victims brought the legal actions

¹³⁸ IACHR, Report No. 70/19. Petition 858-09. Admissibility. Luiz José da Cunha “Crioulo” and family. Brazil. May 5, 2019, para. 8.

¹³⁹ IACHR, Report No. 77/14, Petition 140-05. Admissibility. Inés Yadira Cubero González. Honduras. August 15, 2014, paras. 26 and 27.

¹⁴⁰ IACHR, Report No. 69/17, Petition 570-08. Admissibility. Héctor Marcelino Flores Jiménez. Mexico. May 25, 2017, para. 5.

¹⁴¹ IACHR, Report No. 145/17, Petition 72-11. Admissibility. “C.”. Mexico. October 26, 2017, para. 6.

¹⁴² IACHR, Report No. 36/18, Petition 837-07. Admissibility. Comunidad Mapuche Huilliche “Pepiukelen”. Chile. May 4, 2017, para. 11.

available domestically to have the judgement enforced, but these remedies were ineffective. Additionally, the information available does not show the existence of other legal venues for the petitioners to exhaust in order to seek the enforcement of those judgments delivered in their favor. Therefore, the IACHR concludes that the exception to the exhaustion of domestic remedies set forth in 46(2)(a) of the American Convention is applicable.”¹⁴³

176. [Non-bailable offenses] “[R]espect to Messrs. Alcides Mendoza and Juan Guedes, the Commission observes that as per the information produced by the parties, as per Article 239 of the Code of Criminal Procedure amended by Law No. 586, the cessation of pretrial detention is not in order in proceedings related to crimes against state security, a situation that is in evidence in the case of the alleged victims. Accordingly, the Commission concludes that the exception provided for at Article 46(2)(a) of the American Convention applies.”¹⁴⁴

177. [Indigenous lands titling process] “Regarding the land titling process, the petitioners allege that there is no legal process to establish the collective rights of indigenous peoples. [...] The Commission recalls that the procedures to title indigenous or tribal communal lands must be effective and must allow the affected communities to bring them, not solely private individuals. In that sense, the mere possibility of recognizing rights through certain judicial processes cannot replace the actual recognition of those rights. It also observes that in this case, the petitioners pursued a number of judicial actions to replace the missing pages, with no results. The Commission therefore concludes that in this case, an exception applies to the requirement of exhausting internal remedies established in Article 46(2)(a) of the American Convention and 31(2)(a) of the Rules of Procedure as regards the titling process for the land of the Agua Caliente Community.”¹⁴⁵

178. [Unappealable decisions by high courts] “[T]he petitioner [...] argues that Colombian law does not provide for appeal in proceedings against high-level government officials. [...] It should be noted that the State has not expressly refuted the petitioner’s claim regarding the absence of a remedy against a decision issued by the Criminal Division of the Supreme Court of Justice in proceedings against high-level government officials. It has merely indicated that the alleged victim has recourse to the action for review. [T]he State did not take responsibility for proving the existence and availability of adequate, appropriate, and effective domestic remedies that had not been exhausted by the Petitioner. In this regard, the Commission observes that the action for review cited by the State is an extraordinary remedy invocable against final judgments on specific grounds and therefore cannot be considered an appropriate remedy that ensures review or appeal of a conviction before it becomes final. Therefore, in accordance with Article 42(2) (a) of the American Convention, the rule of exhaustion of remedies under domestic law does not apply because the State did not afford the alleged victim a remedy that could protect the rights allegedly violated.”¹⁴⁶

(b) Denied access to the domestic remedies

179. **American Convention on Human Rights** Article 46.2.b: [The provisions of paragraphs 1.a and 1.b of this Article shall not be applicable when:] the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

180. **Rules of Procedure of the IACHR** Article 31.2.b: [The provisions of the preceding paragraph shall not apply when:] the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

181. [Denial of access to domestic remedies] “The alleged victim claims that he was unable to file any remedies since he was not notified of the removal order enforced on June 9, 2006 or informed of his destination while being taken by air until he arrived in La Habana.

¹⁴³ IACHR, Report No. 40/16, Petition 468-02. Admissibility. Gadala María Dada and others. Dominican Republic. September 4, 2016, para. 28.

¹⁴⁴ IACHR, Report No. 6/18, Petition 1172-09. Admissibility. Mario Francisco Tadic Astorga and others. Bolivia. February 24, 2018, para. 45.

¹⁴⁵ IACHR, Report No. 30/17, Petition 1118-11. Admissibility. Maya Q’eqchi’ Agua Caliente Community. Guatemala. March 18, 2017, paras. 37 and 38.

¹⁴⁶ IACHR, Report No. 62/16, Petition 4449-02. Admissibility. Saulo Arboleda Gómez. Colombia. December 6, 2016, paras. 30 and 31.

182. [...] [W]hen a removal order is issued and enforced on the same day, there is an unreasonably short time to ensure the basic right of due process if a petitioner is deprived of liberty, like in this case; therefore, remedies are materially unavailable in terms of access. Likewise, when the removal order was enforced, any remedy became manifestly useless to prevent the order's effects. Therefore, in view of the characteristics of this case, the Commission believes that the situation denounced by the petitioner meets the criteria of the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2.b of the Convention."¹⁴⁷

183. [When the authorities do not receive complains] “[A]uthorities’ alleged denial to receive complaints from the alleged victim, consisting in discriminatory treatment for her gender identity, and police officers’ alleged comments aimed at discouraging her from filing a complaint and threatening the alleged victim, taken as a whole, are sufficient elements to believe that the exception set forth in Article 46.2 (b) of the Convention is applicable in this case.”¹⁴⁸

184. [Physical impossibility to file a remedy] “[T]he events that allegedly happened in the initial stage, that is, between the alleged victim’s detention and his removal from Honduras [in order to transport him to the United States], were carried out summarily, which would have prevented any chance of invoking judicial remedies in order to prevent his removal. Based on that, the Commission concludes that, in the initial stage of these events, Mr. Matta Ballesteros did not have access to domestic remedies.”¹⁴⁹

185. [Incomunicado detention] “In terms of the remedy of legal habeas corpus established in the Code of Criminal Procedure, the Commission notes that in view of the incomunicado detention to which Gonzalo Cortéz was said to have been subjected in his first detention, he and his family members or attorneys would not have had any real possibility of pursuing such a remedy during the first days of detention, when this remedy is effective. Considering that the alleged victim was impeded from exhausting it, due to the incomunicado detention to which he is said to have been subjected, the Commission considers that the exception to the exhaustion of domestic remedies set out at Article 46(2)(b) applies to this part of the petition.”¹⁵⁰

186. [Legal fees] “Concerning the other twenty-two alleged victims, the petitioners assert that they were unable to access justice in view of the fact that a sum equivalent to USD\$.30 was required in order to file a claim for damages. The Commission believes that given the alleged victims’ purported economic situation, said requirement may establish, for the purpose of deciding on the petition’s admissibility, a demand that prevented the access to and exhaustion of domestic remedies. In this initial stage of analysis, based on the information available so far, the Inter-American Commission decides that the exception to the requirement of exhaustion of domestic remedies is applicable concerning these people, pursuant to Article 46.2.b of the American Convention.”¹⁵¹

187. [Availability of the relevant information as a condition for the access to certain legal remedies] “The Commission has indicated with regard to prior consultation that the condition of timeliness means the information must be provided sufficiently in advance of any authorization or beginning of negotiations, taking into account the consultation process and the time required for indigenous communities in question to make decisions. In this regard, it has also been established that access to relevant information is necessary for accessing judicial remedies, as the lack of information on corporate operations can make it very difficult for affected people or communities to collect the evidence necessary to pursue legal actions. Thus, a lack of access to or failure to disclose information can harm the right to effective judicial protection.

¹⁴⁷ IACHR, Report No. 146/17, Petition 296-07. Admissibility. Orosmán Marcelino Cabrera Barnés. Mexico. October 26, 2017, paras. 10 and 11.

¹⁴⁸ IACHR, Report No. 73/16, Petition 2191-12. Admissibility. Alexa Rodríguez. El Salvador. December 6, 2016, para. 7.

¹⁴⁹ IACHR, Report No. 64/17, Petition 585-06. Admissibility. Juan Ramón Matta Ballesteros and family. Honduras. May 25, 2017, paras. 28 and 29.

¹⁵⁰ IACHR, Report No. 148/11, Petition 12.268. Admissibility. Gonzalo Orlando Cortez Espinoza. Ecuador. November 1, 2011 para. 46.

¹⁵¹ IACHR, Report No. 125/17, Petition 1477-08. Admissibility. Henry Torres and others. Colombia. September 7, 2017, para. 10.

Based on the documentation provided by the petitioners, the Commission observes that on December 2, 2005, almost one month after the publication of the study, Gerardo Tzalam Caal filed a complaint with MARN alleging that he had not been aware of the existence of the study because the newspaper in which it was published does not circulate in his community. When he failed to receive a response, on January 17, 2006, he filed for a writ of amparo against the general director of MARN. It was granted on November 27, 2006, and MARN general director was ordered to notify the November 5, 2006, resolution to not admit the petition filed on December 2, 2005, for being filed extemporaneously. Therefore, according to the information available, the merits of the claim filed by Mr. Tzalam Caal less than one month after the publication of the study were never examined.

Taking this into account, the Commission therefore concludes that in this case, an exception applies to the requirement of exhausting internal remedies established in Article 46(2)(b) of the American Convention and 31(2)(b) of the Rules of Procedure.”¹⁵²

188. [Indigency] With regard to indigent cases, the Inter-American Court has pointed out that a State that fails to provide free legal advice in cases of indigence may not later argue that a given remedy was available but not utilized. In particular, the Inter-American Court has pointed out that if an individual requires legal aid to protect a right guaranteed by the Convention and his indigence prevents him from obtaining it, he is relieved of responsibility for exhausting domestic remedies. Mr. Vélez Loor was sentenced in Panama to a prison term for having repeatedly entered Panama in an illegal fashion. Due process requires that someone against whom charges are made must have the right to defend himself personally or be helped by a defense attorney of his own choosing and if he does not do so he has the inalienable right of being helped by a defense lawyer provided by the State, whether or not pro bono under domestic law. Given that Mr. Vélez Loor was not Panamanian, it is obvious that he needed to retain a Panamanian lawyer to defend himself against the charges brought against him in Panama. This is how the Convention guarantees the right to legal aid in legal proceedings. Although Mr. Vélez Loor has been provided with legal aid to bring his case before the Commission, he was able to document the difficulty he had obtaining legal aid, particularly at the time of his arrest and throughout the period of his detention in Panama.

Consequently, [...] particularly taking into account the fact that Mr. Vélez Loor was unable to exhaust domestic remedies as he was deprived of liberty and was without legal counsel, the IACHR finds in favor of applying the exception provided for in Article 46.2.b of the American Convention, given that the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.”¹⁵³

(c) Unwarranted delay in rendering a final judgment on the legal remedies

189. **American Convention on Human Rights** Article 46.2.c: [The provisions of paragraphs 1.a and 1.b of this Article shall not be applicable when:] there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

190. **Rules of Procedure of the IACHR** Article 31.2.c: [The provisions of the preceding paragraph shall not apply when:] there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

191. [Time frame] “The IACHR also notes in this regard that the Inter-American Court of Human Rights has held that the prior exhaustion rule must never ‘lead to a halt or delay that would render international action in support of the defenseless victim ineffective.’ ”¹⁵⁴

192. “[T]here are no specific provisions in the Convention or Rules of Procedure that define the length of time that constitutes ‘unwarranted delay,’ meaning that the Commission evaluates each case to determine whether a delay exists.”¹⁵⁵

¹⁵² IACHR, Report No. 30/17, Petition 1118-11. Admissibility. Maya Q’eqchi’ Agua Caliente Community. Guatemala. March 18, 2017, paras. 41, 42 and 44.

¹⁵³ IACHR, Report No. 95/06, Petition 92-04. Admissibility. Jesús Tranquilino Vélez Loor. Panama. October 23, 2006, paras. 45 and 46.

¹⁵⁴ IACHR, Report No. 71/12, Petition 1073-05. Admissibility. Inhabitants of The “Barão De Mauá” Residential Complex. Brazil. July 17, 2012, para. 22.

193. “An assessment of delay in the resolution of domestic remedies must also take into account the purpose of the judicial action.”¹⁵⁶

194. [Criminal investigation] “To determine whether an investigation has been carried out ‘promptly,’ the Commission takes into account a number of factors, such as the time passed since the crime was committed, whether the investigation has moved beyond the preliminary stage, the measures adopted by the authorities, and the complexity of the case.”¹⁵⁷

195. [Unwarranted delay in carrying out a criminal investigation] “In the case, [...] three persons were involved in the alleged victims’ death and that two of them were police officers. Nevertheless, according to the available information, the Commission notes that the continued investigation into one of the police officers suspected of involvement, ordered on May 29, 1992, by the Superior District Court of Tunja, has not to date taken place. Regarding the other two perpetrators, the Commission sees that although they were convicted of the murder of the alleged victims on March 17, 1993, one of them —the police officer— has not served his sentence by reason of allegedly being a fugitive from justice for almost 24 years. According to the available information, in spite of the request made by the alleged victims’ families, it was not until November 21, 2006, that the Second Judge for Sentence Execution and Security Measures in Tunja again issued the warrant for the arrest of the convicted police officer, a formality that to date has produced no results. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies rule is applicable, in keeping with the provisions of Article 46.2.c. of the Convention.”¹⁵⁸

196. [Failure to investigate cases of torture] “Regarding the alleged acts of torture [which allegedly took place during the first days of detention] “[T]he case file indicates that the alleged victim lodged several complaints to the Judge in charge of case 105/96 and to the Republic’s Attorney General’s Office [since 1996]. For its part, the State does not provide information on the current state or the result of the investigation undertaken into those facts. Considering the available information, the Commission notes that the purported acts of torture were reported to many authorities and that to this date these investigations have not produced any results yet. Consequently, the IACHR rules the application of the exception to the requirement of exhaustion of domestic remedies foreseen in Article 46.2.c of the Convention.”¹⁵⁹

197. [Failure to prosecute and punish perpetrators of forced disappearance] “Regarding the alleged forced disappearance of three of the alleged victims, the IACHR notes that on November 24, 2003, the petitioners presented a *habeas corpus* as an adequate remedy that was not resolved by the judicial authorities. In addition, the Commission notes that, to date [2017], the circumstances surrounding the disappearances have not yet been clarified. There has been no determination as to their whereabouts nor those responsible. The Commission takes into account the judicial authorities’ view that the alleged victims are ‘fugitives from justice’, but does not have information at this stage demonstrating an investigation after the complaint. The foregoing is sufficient to conclude that there is an unjustified delay in the terms of Article 46.2.c. of the American Convention.”¹⁶⁰

198. [Failure to effectively investigate sex crimes committed by third party actors] “The Commission notes that the alleged acts of sexual violence against the alleged victim were reported to the Bolivian authorities in July 2002; nevertheless, to this date no criminal conviction has been entered against the person allegedly responsible. Moreover, from the information submitted by each party, the IACHR notes that given that the accused fled, the Bolivian judicial authorities declared him to be in default on October 28, 2008, but that it was not until February 28, 2014 that the Prosecutor’s Office requested INTERPOL Bolivia to report the actions taken to apprehend him. Therefore, in view of the characteristics of this case, the

¹⁵⁵ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, para. 68.

¹⁵⁶ IACHR, Report No. 17/06, Petition 531-01. Admissibility. Sebastián Claus Furlan and family. Argentina. March 2, 2006, para. 38.

¹⁵⁷ IACHR, Report No. 50/08, Petition 298-07. Admissibility. Néstor José Uzcátegui and others. Venezuela. July 24, 2008, para. 42.

¹⁵⁸ IACHR, Report No. 39/18, Petition 196-07. Admissibility. José Ricardo Parra Hurtado, Félix Alberto Páez Suárez and their families. Colombia. May 4, 2018, para. 12.

¹⁵⁹ IACHR, Report No. 166/17, Petition 365-09. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, para. 11.

¹⁶⁰ IACHR, Report No. 157/17, Petition 286-07. Admissibility. Carlos Andrade Almeida and others. Ecuador. November 30, 2017, para. 20.

Commission believes that the exception to the requirement of prior exhaustion of domestic remedies set forth in Article 46.2(c) of the American Convention applies to the present case.”¹⁶¹

199. [Unwarranted delay regarding causes of action based on constitutional grounds] “Eleven months after the dismissal of the justices, the actions for the violation of constitutional guarantees had still not been ruled on by the courts, thus causing an unwarranted delay in protecting their rights. As a result, it has created a problem in the Constitutional Court, which does not have the necessary number of members to hear cases on the constitutionality of laws.”¹⁶²

200. [Nonenforcement of judgment] “The petitioner alleges that she has a judgment handed down in her favor by the Second Collegial Court of the 15th Circuit. Nonetheless, she argues that to date it has not been fully implemented, leading to several motions filed and remedies pursued due to the refusal of the authorities with responsibility to abide by that judgment, ending up with case 462/2013, pending resolution before the Supreme Court of Justice of the Nation.

The Commission observes that without prejudice to the procedural impetus by both parties to comply with the judgment, according to the petitioner it still has yet to be carried out more than ten years after having been handed down. Given the circumstances of this petition, the Commission considers that the exception provided for at Article 46(2)(c) of the American Convention applies.”¹⁶³

6. Examples of remedies generally not required

(a) Complaints before non-judicial institutions

201. [Non-judicial institutions] “[T]he alleged victim and his relatives took actions before the IESS and the Office of the Ombudsman, which does not constitute a judicial remedy for purposes of exhaustion of domestic remedies. Accordingly, the information available provides no evidence that the petitioner invoked and exhausted available legal remedies or that any exceptions to the exhaustion of domestic remedies would apply. In view of the foregoing, the Commission concludes that this petition does not meet the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the American Convention.”¹⁶⁴

202. [Non-judicial institutions, example] “[I]t is argued that members of the Salvadoran Army were allegedly responsible for the forced disappearance of three children in the midst of the internal armed conflict in El Salvador.

203. [...] [T]he IACHR does not consider that lodging a complaint with the International Committee of the Red Cross is one of the remedies that the Convention requires be exhausted.”¹⁶⁵

204. [Informal complaints] “[C]omplaints such as the one before the Federal Council of the Judiciary, or the complaints that the petitioner presented to the Office of Citizen Matters of the Presidency of the Republic, the Supreme Court, the Ministry of Interior, Ministry of Foreign Affairs, Internal Affairs Department of the Office of the PGR, or the Office of the Comptroller and Administrative Development, they do not constitute adequate resources in the face of the human rights violations denounced in this petition.”¹⁶⁶

¹⁶¹ IACHR, Report No. 25/17, Petition 86-12. Admissibility. Brisa Liliana De Angulo Losada. Bolivia. March 18, 2017, para. 9.

¹⁶² IACHR, Report No. 35/98, Petition 11.760. Admissibility. Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo de Mur. Peru. May 5, 1998, para. 20.

¹⁶³ IACHR, Report No. 18/17, Petition 267-07. Admissibility. Ana Luisa Ontiveros López. Mexico. January 27, 2017, paras. 6 and 7.

¹⁶⁴ IACHR, Report No. 18/18, Petition 1148-08. Inadmissibility. Mario Eugenio López Velasco. Ecuador. February 24, 2018, para. 10.

¹⁶⁵ IACHR, Report No. 11/05, Petition 708-03. Admissibility. Gregoria Herminia, Serapio Cristián and Julia Inés Contreras. El Salvador. February 23, 2005, paras. 25 and 33.

¹⁶⁶ IACHR, Report No. 36/05, Petition 12.170. Inadmissibility. Fernando A. Colmenares Castillo. Mexico. March 9, 2005, para. 39.

(b) Civil remedies in cases involving right to life and humane treatment

205. [Illegal detention and torture] “[I]n situations [...] that include allegations of illegal detention and torture [...] whether or not the alleged victims have sought pecuniary compensation from civil courts has no bearing on the analysis of exhaustion of domestic remedies in this case.”¹⁶⁷

206. [Forced disappearance] “[I]n cases like this, there is no need to exhaust a civil action before resorting to the Inter-American system, since that remedy would not settle the main issue in this petition –the alleged enforced disappearance of Mr. Muniz and the lack of diligence throughout the investigation, search and punishment of the persons responsible.”¹⁶⁸

207. [Case of gross violations of human rights whose subject matter was the lack of compensatory damages] According to the petitioner, adequate and effective domestic remedies were exhausted for good when the judgment was issued by the Supreme Court of Justice of Chile on July 24, 2007, upholding the judgment of appeal, which cited as grounds for denial that the right to civil reparation had lapsed [...] The Commission notes that the subject of the petition is the failure to pay compensation to the alleged victims, the family members of a person who disappeared in 1973 during the dictatorship of Augusto Pinochet. In view of these considerations and of the information in the case file of the petition, the Inter-American Commission finds that the instant petition does meet the requirement of prior exhaustion of domestic remedies in accordance with Article 46.1.a of the Convention.”¹⁶⁹ [The exhaustion of civil remedies seeking monetary compensation (damages) is not required in cases of gross violations of human rights. However, if in the context of civil proceedings seeking solely compensatory damages, the petitioner alleges specific claims regarding the way these proceedings are conducted, the Commission will analyze the exhaustion of all remedies that apply to said proceedings.]

(c) Administrative lawsuits in cases involving right to life and humane treatment

208. [General rule - inadequate remedy] “Regarding the proceedings at the administrative venue, the Commission reiterates that in order to determine the admissibility of a claim such as the one at hand [torture and extrajudicial killing], an action for direct redress is not a suitable mechanism and need not be exhausted, in that it is not appropriate for securing comprehensive redress and justice for the next-of-kin.”¹⁷⁰

209. [Inadequate remedy, disciplinary sanction] “[D]ecisions issued in disciplinary orders and administrative proceedings are not suitable remedies for purposes of the prior exhaustion of domestic remedies. In the instant case, the petitioners’ claims relate to the investigation, prosecution, and criminal punishment of those responsible, questions that do not correspond to those jurisdictions.”¹⁷¹

210. [Law for the Reparation of Victims in Ecuador] “[W]ith regard to the reparation proceedings provided for in the Law for the Reparation of Victims and its Regulations, the Commission has repeatedly held that recourse to this does not constitute an appropriate remedy *vis-a-vis* the analysis of the admissibility of a claim such as the present [extrajudicial executions], since it is not adequate to provide comprehensive reparation and justice to family members.”¹⁷²

211. [Action of direct reparation in Colombia] “[R]egarding the direct reparation action, the Commission states that in cases of forced disappearance, [...] such a remedy would not be in response to the main claim contained in this petition, concerning lack of due diligence in the investigation, prosecution and

¹⁶⁷ IACHR, Report No. 105/17, Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017, para. 11.

¹⁶⁸ IACHR, Report No. 78/16, Petition 11170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, para. 32.

¹⁶⁹ IACHR, Report No. 85/17, Petition 1580-07. Admissibility. Gloria Lucía Magali Neira Rivas and Juan Pablo Belisario Poupin Neira. Chile. July 7, 2017, paras. 7 and 8.

¹⁷⁰ IACHR, Report No. 40/18, Petition 607-07. Admissibility. Nelson Enrique Giraldo Ramírez and family. Colombia. May 4, 2018, para. 15.

¹⁷¹ IACHR, Report No. 32/15, Petition 11.100. Admissibility. Ayure Quintero Familia. Colombia. July 22, 2015. Para. 41.

¹⁷² IACHR, Report No. 157/17, Petition 286-07. Admissibility. Carlos Andrade Almeida and others. Ecuador. November 30, 2017, para. 22.

punishment of the persons responsible. In that sense, the Commission has made a pronouncement on the direct reparation action in Colombia referring to admissibility.”¹⁷³

212. [Administrative lawsuits] “[I]n connection with the suit for direct redress filed by the petitioners with the administrative justice system, the Commission has repeatedly said that such venues are not a suitable remedy for analyzing the admissibility of claims such as those involved in the case at hand, in that they are not appropriate for providing families with comprehensive redress and justice. Irrespective of that, the Commission notes that the petitioners in this case also allege specific violations in the direct redress proceedings. Accordingly, given the relationship that exists between the two processes, the IACHR notes that in the administrative proceedings, domestic remedies were exhausted with the decision ruling the remedy for annulment inadmissible that was adopted by the Administrative Tribunal of Boyacá on February 17, 2006, and notified to them on August 23, 2006.”¹⁷⁴

213. [Administrative lawsuits] “[I]n relation to the contentious-administrative process, while the Commission has repeatedly said that said jurisdiction does not offer a suitable remedy when it comes to analyzing the admissibility of a claim of the sort of the claim in the instant matter, since it is not adequate for providing integral reparation and justice to the family members, given that in the instant matter autonomous violations are alleged emanating from that proceeding, the Commission will analyze the requirements of Articles 46(1)(a) and (b) of the Convention in relation to the contentious-administrative proceeding.”¹⁷⁵ [As is the case in a civil proceeding seeking compensatory damages, if specific violations are alleged in an administrative proceeding seeking reparation, the Commission will analyze the exhaustion of all remedies applicable to said proceedings.]

(d) Disciplinary proceedings in cases of gross violations of human rights

214. [General rule] “Disciplinary proceedings are an insufficient means to prosecute, punish, and redress the consequences of human rights violations. [...] Therefore, in a case such as this one [*violación del derecho a la vida*], it is not necessary to exhaust those remedies before taking advantage of the Inter-American System.”¹⁷⁶

215. [Example] “In situations such as this one, which includes allegations of forced disappearance followed by execution, torture, and sexual violence, the domestic remedies that must be taken into consideration for the purposes of admissibility of the petition are those related to the criminal investigation and punishment imposed on the persons responsible for those facts [...]. [...] [T]he disciplinary jurisdiction is not a suitable forum for prosecuting, punishing, or making reparation for the consequences of human rights violations.”¹⁷⁷

(e) Judicial proceedings initiated by family relatives when the state must investigate ex officio

216. [General rule] “[U]nder procedural rules in which victims or their family members may have the right to intervene in criminal proceedings, the exercise of that possibility is not mandatory but optional and in no way substitutes for actions to be taken by the State, because whenever a crime is committed that must be prosecuted ex officio, such as homicide, it is the State that is obliged to promote and advance the criminal proceedings.”¹⁷⁸

¹⁷³ IACHR, Report No. 71/17, Petition 271-07. Admissibility. Jorge Luis de la Rosa Mejía and others. Colombia. June 29, 2017, para. 49.

¹⁷⁴ IACHR, Report No. 39/18, Petition 196-07. Admissibility. José Ricardo Parra Hurtado, Félix Alberto Páez Suárez and their families. Colombia. May 4, 2018, para. 13.

¹⁷⁵ IACHR, Report No. 76/18, Petition 1453-08. Admissibility. Yaneth Valderrama and family. Colombia. June 21, 2018, para. 12.

¹⁷⁶ IACHR, Report No. 14/16, Petition 1108-08. Admissibility. Jhonny Silva Aranguren and family. Colombia. April 14, 2016, para. 36.

¹⁷⁷ IACHR, Report No. 109/17, Petition 795-08. Admissibility. Rosalía Benavides Franco and others. Colombia. September 7, 2017, paras. 23 and 24.

¹⁷⁸ IACHR, Report No. 33/18, Petition 377-08. Admissibility. Amanda Graciela Encaje and family. Argentina. May 4, 2018, para. 12.

217. [Basis] “It is clear from the instruments and decisions of the Inter-American system that the obligation to investigate prosecute and punish serious violations of human rights rests with member states, as the entities with the international legal commitment and resources to carry out these functions. To expect the Petitioners to assume these responsibilities would not only be inconsistent with the system’s jurisprudence, it would also place an inequitable burden on those who generally lack the means and expertise to fulfill these responsibilities.”¹⁷⁹

218. “As to the arguments concerning the petitioners’ alleged ‘lack of diligence’ for failing to appear as the plaintiff in the criminal proceedings, the IACHR recalls that in procedural systems where victims or their relatives are entitled to participate in criminal proceedings, said participation is not an obligation but an option which under no circumstances substitutes actions by the State. In other words, the fact that said procedural concepts, with complementary or contributing functions, were not used in the criminal proceedings that the State must further, does not affect the analysis of the requirement of prior exhaustion of domestic remedies.”¹⁸⁰

(f) Military and law enforcement disciplinary jurisdiction

[In cases involving gross human rights violations:]

219. [General rule] “[T]he military jurisdiction does not constitute an appropriate forum and therefore does not provide an adequate remedy to investigate, prosecute and punish alleged violations of human rights enshrined in the American Convention, allegedly committed by members of the Security Forces, or with their collaboration or acquiescence. Therefore, it considers that in the present case, since the investigations for the alleged forced disappearance in the military criminal justice system have been made and filed, the exception established in Article 46.2.b of the Convention is applicable.”¹⁸¹

220. “[T]he military jurisdiction does not constitute an appropriate forum and therefore does not offer an adequate remedy for investigating, prosecuting, and punishing violations of the human rights enshrined in the American Convention allegedly committed by members of the armed forces or National Police or with their collaboration or acquiescence. In that regard, with respect to the facts set forth, the IACHR notes that by pursuing and concluding the investigations in the military criminal justice system, it was not possible for the family members of the alleged victim to participate in the proceeding, present evidence, and pursue remedies to appeal the decisions handed down in favor of the persons allegedly responsible. Therefore, the Commission notes that the exception set out at Article 46(2)(b) of the Convention applies, as the alleged victim has not been allowed access to domestic remedies, or was impeded from exhausting them.”¹⁸²

221. [Case where the unwarranted delay exception was also found in the ordinary jurisdiction] “[S]pecial jurisdictions (either military or police) do not constitute an appropriate forum, and therefore do not provide an adequate remedy to investigate, prosecute and punish violations of human rights enshrined in the American Convention, allegedly committed by members of the Security Forces, or with their collaboration or acquiescence. On the other hand, the Commission observes that despite the reopening of the investigations ordered on January 17, 2012, as a result of Ecuador’s Truth Commission Report, to date there is no final decision regarding the punishment of those responsible. Therefore, the Commission considers that the exceptions established in Article 46.2.b. and c. of the Convention are fulfilled.”¹⁸³

¹⁷⁹ IACHR, Report No. 87/08, Petition 558-05. Admissibility. Jeremy Smith. Jamaica. October 30, 2008, para. 36

¹⁸⁰ IACHR, Report No. 53/17, Petition 1285-04. Admissibility. Dora Inés Meneses Gómez and others. Colombia. May 25, 2017, para. 38.

¹⁸¹ IACHR, Report No. 154/17, Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and family. Colombia. November 30, 2017, para. 10.

¹⁸² IACHR, Report No. 107/17, Petition 535-07. Admissibility. Vitelio Capera Cruz. Colombia. September 7, 2017, para. 8.

¹⁸³ IACHR, Report No. 157/17, Petition 286-07. Admissibility. Carlos Andrade Almeida and others. Ecuador. November 30, 2017, para. 19.

[In cases involving law enforcement agents who have committed an offense when not on duty:]

222. “The petitioner alleges that on April 14, 2003, he was sentenced at first instance to five years in prison in the military jurisdiction. On November 23, 2006, this decision that was upheld in the second instance by the Court Martial, which rejected his request to be tried before the ordinary jurisdiction and also increased his sentence to seven years in prison. [...]

In view of the fact that the present complaint involves the investigation of the criminal responsibility of a civilian, the Commission considers that the adequate remedy is a criminal investigation in the ordinary jurisdiction. In this regard, the Commission recalls that the military jurisdiction only provides adequate remedies to prosecute members of the forces for the commission of offenses and misdemeanors that, by their very nature, affect legal interests specific to the military. Therefore, in the present case, the exception established in Article 46.2.a) of the Convention in connection with the alleged violations of due process is applicable.”¹⁸⁴

C. Timeliness of the petition

223. **American Convention on Human Rights** Article 46.1.b: [Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:] that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

224. **Rules of Procedure of the IACHR** Article 28.7: [Petitions addressed to the Commission shall contain the following information:] Compliance with the time period provided for in Article 32 of these Rules of Procedure.

225. **Rules of Procedure of the IACHR** Article 32: [1] The Commission shall consider those petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.

226. [General rule] The IACHR assesses ex-officio the compliance with the rule of the six-month deadline. However, in contested cases, the State must provide concrete and specific allegations, it loses its chance to present a defense regarding the untimeliness of the filing of the petition. Furthermore, the Inter-American Court on Human Rights has determined that the appropriate time for the State to challenge the compliance of the six-month deadline is during the processing of the petition before the IACHR.¹⁸⁵

227. [Basis] “The principles underlying the inter-American system of human rights certainly include legal certainty, which is the basis for the six-month rule and a reasonable time frame when applying exceptions to the exhaustion of domestic remedies.”¹⁸⁶

1. Compliance with the six-month time limit to file a petition

(a) Continuity in the exhaustion of domestic remedies

228. [General rule] “Concerning the requirement of timeliness, and in view of the State’s observation about the purported untimely presentation of this complaint, the Commission recalls that although in a case like the present, in principle, it may suffice that the alleged victim exhaust ordinary remedies, if they exhaust special remedies in the reasonable expectation that they will obtain a favorable result, then these should be deemed as validly exhausted remedies when determining the petition’s

¹⁸⁴ IACHR, Report No. 91/18, Petition 574-07. Admissibility. Giorgio Vera Fernández. Chile. August 23, 2018, paras. 8 and 9.

¹⁸⁵ I/A Court H. R., Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331, paras. 28 and 29.

¹⁸⁶ IACHR, Report No. 100/06, Petition 100/06. Inadmissibility. Gaybor Tapia and Colón Eloy Muñoz. Ecuador. October 21, 2006, para. 20.

compliance with the admissibility requirements.”¹⁸⁷ [See also: IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para. 17.]

229. [Case where the IACHR deemed the chain of remedies pursued by the petitioner as valid for the exhaustion of domestic remedies] “[T]he State has alleged that the complaint was filed extemporaneously, given that the procedural moment when the discussion of challenges to the petitioner’s conviction closed was the decision on May 18, 1999, when a resolution on the complaint was reached. The State argues that the filing of the extraordinary appeals for review did not interrupt the six-month period from the date the petitioner was notified of the May 18, 1999 decision, so that the complaint was lodged after the six-month deadline had expired.

Regarding this argument, the Commission considers that that the fact that the appeals filed after the cassation appeal were admitted for processing by the courts and their merits examined, suggests that they were appropriate courses of action undertaken by the alleged victim to present his arguments in Peruvian courts. Nothing leads the Commission to regard the filing of those appeals was manifestly unreasonable or reckless. The complaint to the Commission was lodged on January 14, 2004 and internal appeals were exhausted on March 11, 2008, with the judgment resolving the appeal for annulment.”¹⁸⁸

230. [Case where the IACHR deemed the chain of remedies pursued by the petitioner as valid for the exhaustion of domestic remedies] “The Commission warns that the petition for recognition of innocence is a special remedy, thus its exhaustion is unnecessary. Under certain conditions, this remedy, if filed, might be appropriate if, once granted, it leads to the annulment of criminal proceedings with a final judgment, and to the person’s release from prison. In the case of this petition, the Commission believes that the presentation of this special remedy was not unreasonable and considers it in order to analyze this petition. According to the case file, the petitioners were notified of the final resolution on February 3, 2010 and the Commission received the petition on August 3 of that same year. Consequently, the Commission concludes that the alleged victim met the requirement set forth in Article 46.1.b of the Convention.”¹⁸⁹

231. [Final judgment on an appeal on constitutional grounds (tutela) in Colombia] “[T]he Inter-American Commission considers that domestic remedies were definitively exhausted with the Constitutional Court ruling of November 7, 2006, with which that supreme court decided not to examine the appeal on constitutional grounds (tutela) file in the alleged victim’s case. In this sense, the Commission notes that the case could have been selected for review by the constitutional jurisdiction, since this was in principle an appropriate judicial way to protect the judicial situation that had been violated within the domestic legal system. Further, given that the Commission received the petition on March 22, 2007, within the six months that followed the aforementioned court decision, the petition satisfies the admissibility requirements set forth in Articles 46.1(a) and 46.1(b) of the American Convention.”¹⁹⁰

(b) Notice of the last judicial remedy

232. [Example of analysis and application] “The Commission notes that none of the decisions constituting the end of remedies under domestic law were reported personally to the alleged victims. Rather, notification was given to the court-appointed defense attorneys [...]. In this regard, it bears mention that the National Supreme Court of Argentina has established that a judgment becomes final only once the defendant is personally notified.”¹⁹¹ [As a general rule, the means by which a final judicial decision is notified to a petitioner is governed by domestic law and the circumstances of each case.]

¹⁸⁷ IACHR, Report No. 58/18, Petition 1434-08. Admissibility. Rómulo Palma. Peru. May 5, 2018, para. 15.

¹⁸⁸ IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexander Santillán Hermoza. Peru. April 15, 2016, paras. 25 and 26.

¹⁸⁹ IACHR, Report No. 167/17, Petition 1119-10. Admissibility. Alberto Patistán Gómez. Mexico. December 1, 2017, para. 15.

¹⁹⁰ IACHR, Report No. 48/17, Petition 338-07. Admissibility. Luis Fernando Leyva Micolta. Colombia. May 25, 2017, para. 10.

¹⁹¹ IACHR, Report No. 26/08, Petition 270-02. Admissibility. César Alberto Mendoza and others. Argentina. March 14, 2008, para. 81.

(c) Filing the petition with the IACHR

233. [Cases where the petition is filed by post mail] “[T]he petition, sent by ordinary mail, was received by the IACHR on September 23, 2008, and that the petitioners were notified of the Supreme Court’s resolution on March 18, 2008. In this regard, based on the IACHR’s practice in the matter, presuming that the number of days elapsed while the petition was in the post office, the Commission believes that the petition was filed in a timely manner. Therefore, it declares that the petition meets the requirement established in Article 46.1.b of the American Convention.”¹⁹²

234. [Exceptional receipt in cases where the petition is filed in other OAS offices] “In the case at hand, the petitioners were notified of the final judgment on October 28, 1997, and the petition was filed on April 29, 1998: in other words, one day after the deadline set by the Convention. However, the Commission has repeatedly noted, citing the Inter-American Court, the commonly accepted principle that the procedural system is a means of attaining justice, and that justice cannot be sacrificed for the sake of mere formalities.”¹⁹³

235. [Example of an inadmissible petition] “In regard to the requirement of timeliness of the petition, the State explicitly denies that it has been met on the grounds that the last judicial decision in the framework of these proceedings was notified eight months before the petition was presented to the IACHR. In this respect, the Commission notes that both parties agree in stating that the abovementioned ruling on the constitutional appeal was issued by the Chamber of Civil Appeals of the Supreme Court of Justice on March 14, 2007, of which the petitioner was notified on March 22, 2007. Therefore, the parties do not controvert this information, which is also evidenced by the corresponding certificate submitted by the petitioner himself. With regard to this, the Inter-American Commission moreover notes that its Executive Secretariat received the instant petition in paper (in printed form) on November 8, 2007, which the IACHR confirmed through an acknowledgement of receipt dated November 14 of that same year. In light of the foregoing, the Commission concludes that the instant petition was lodged beyond the six-month period established on Article 46.1.b of the American Convention.”¹⁹⁴

2. Timeliness of a petition in cases where the exception to the rule of exhaustion of domestic remedies applies

236. **Rules of Procedure of the IACHR Article 32:** [2] In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

237. [Case involving illegal detention and torture] “Regarding the deadline for presenting the petition, the Commission observes that the facts alleged took place starting in 1973; that the petitioners took legal action toward the start of the 2000s; that the alleged victims are recognized in the 2004 Valech Report (I); and that the consequences of the facts, including the alleged failure to investigate and punish those responsible and the damage to the health of the alleged victims, continues to the present day. Thus, taking into account that this petition was filed on June 13, 2007, the Inter-American Commission finds that the petition was filed within a reasonable period of time, in the terms of Article 32(2) of the Rules of Procedure of the IACHR, pursuant to Article 46(2) of the American Convention.”¹⁹⁵

238. [Case involving extrajudicial killing] “The petition was received on June 29, 2007, the alleged facts matter of this complaint started on November 13, 1988 and their effects concerning the alleged denial of

¹⁹² IACHR, Report No. 173/17, Petition 1111-08. Admissibility. Marcela Brenda Iglesias, Nora Ester Ribaldo and Eduardo Rubén Iglesias. Argentina. December 29, 2017, para. 8.

¹⁹³ IACHR, Report No. 12/10, Petition 12.106. Admissibility. Enrique Herman Pfister Frías and Lucrecia Pfister Frías. Argentina. March 16, 2010, para.43.

¹⁹⁴ IACHR, Report No. 171/17, Petition 1454-07. Inadmissibility. María Del Carmen Camargo Romero. Colombia. December 28, 2017, paras. 16 and 17.

¹⁹⁵ IACHR, Report No. 105/17, Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017, para. 12.

justice allegedly persist. The Commission notes that between the date that the alleged facts took place and the date that the petition was filed by Mr. Elías Puente’s family, they pursued legal remedies, among others, to have the facts concerning his death established and to obtain reparation. Consequently, in view of the context and the characteristics of this case, the Commission believes that the petition was filed within a reasonable term and that the admissibility requirement of timeliness is met.”¹⁹⁶

239. [Burden of proof on the petitioner to justify why it took several years to file the petition with the IACHR/Example of a case declared inadmissible] “[O]n November 14, 1971, the General Command of the Uruguayan Navy performed a display of maneuvers with two helicopters, one of which crashed, resulting in eight deaths (including three children) and more than 40 persons injured, approximately 10 of whom suffered amputations. They allege that the State did not conduct the proper investigation into the facts in the regular justice system, but rather limited the investigation to the military courts, without the victims or their next-of-kin having had any access to justice or proper compensation by the State for what happened, to this day. They allege that even though they requested information from various government offices with respect to the expert examinations and investigations conducted in the military justice system, they had not obtained any response whatsoever, and that it was not until 2005 that they came to learn relevant information [...]

[...] [T]he Commission observes that the alleged shortcomings of the military jurisdiction, including the alleged lack of access to the relevant information, could have kept the alleged victims or their next-of-kin from pursuing other remedies, due to the failure of clarify the facts and lack of evidence alleged.

Without prejudice to those difficulties in exhausting possible domestic remedies, the Commission observes that the petitioners have turned to the system of individual petitions 35 years after the accident. According to the Rules of Procedure of the IACHR, in cases in which it has not been possible to exhaust domestic remedies, the petitioners must file their petitions in a time which, in light of the circumstances, is reasonable. Moreover, it should also be noted that 34 years have elapsed since the resolution of the military investigation, 33 years since the adoption of Law 14,106, which decreed the compensation challenged here, and 21 years since the re-establishment of democracy in Uruguay. The petitioners have not presented the Commission any arguments that explain or justify the lapse between these relevant events and the submission of the petition under study.”¹⁹⁷

D. Assessment of colorable claims

240. **American Convention on Human Rights** Article 47: [The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:] [b] the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention; [c] the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order.

241. **Rules of Procedure of the IACHR** Article 34: The Commission shall declare any petition or case inadmissible when: [a] it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; [b] the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or [c] supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

1. Nature of the *prima facie* analysis

242. “For purposes of admissibility, the Commission must decide whether the facts alleged could characterize a violation of rights, according to the provisions of Article 47(b) of the American Convention, or whether the petition is ‘manifestly groundless’ or ‘obviously out of order,’ pursuant to subparagraph c of that article. The criterion for evaluating these requirements is different from that used to pronounce on the merits of the petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition

¹⁹⁶ IACHR, Report No. 37/17, Petition 854-07. Admissibility. Ricardo Antonio Elías Puente and family. Colombia. April 27, 2017, para. 30.

¹⁹⁷ IACHR, Report No. 159/10, Petition 1250-06. Inadmissibility. Iris Martínez and others. Uruguay. November 1, 2010, paras. 2, 43 and 44.

establishes the legal grounds for a possible or potential violation of a right enshrined by the Convention, but not to establish the actual existence of a violation of rights. This determination constitutes a preliminary analysis that does not imply a prejudgment of the merits of the matter.”¹⁹⁸

243. “The Commission recalls that this requirement is a *prima facie* analysis aimed at determining whether the facts described establish a possible violation of the rights enshrined in the American Convention or other applicable instruments, or are manifestly groundless or out of order.”¹⁹⁹

2. No requirement that the petitioner identifies specific rights

244. “[T]he corresponding judicial instruments do not require the petitioners to identify the specific rights that have allegedly been violated by the State in an issue submitted to the Commission, although the petitioners are entitled to do so. It is the Commission’s duty to determine in its Admissibility reports, based on the system’s jurisprudence, what provisions in the relevant Inter-American instruments are applicable to establish violation of rights in case the alleged facts of the case are proven by means of sufficient evidence.”²⁰⁰

245. “[T]he Commission notes that there is no specific requirement in its procedures that obliges petitioners to articulate all of their legal arguments in their initial petition. Rather, the Commission’s Rules require a petition to include an account of the act or situation denounced without placing explicit conditions upon the nature or timing of specific legal claims. This flexibility afforded to the form of petitions is consistent with an interpretative approach that seeks to give practical effect to the Convention’s safeguards where, for example, developments relevant to the situation denounced in the original petition arise after the petition has initially been filed with the Commission.”²⁰¹

3. Threshold to consider the claims as properly grounded

246. [Lack of detailed information] “Although on various occasions the petitioner referred to an alleged lack of independence on the part of the members of the Supreme Court at the time of the acts in question, it never submitted allegations or specific information to support what were offered as mere assertions.”²⁰²

247. [Broad human rights claims] “With regard to the criminal proceedings, the petitioners claim that the alleged victim is innocent, that the judicial authorities failed to consider the exculpatory evidence and that untrue and contradictory incriminating evidence was unlawfully collected. In this regard, the available information indicates that the different courts that heard the criminal proceeding and dismissed the amparo complaints filed by the alleged victim ruled that the evidence and the forensic expert reports were duly assessed, and that, as a result, the elements of aggravated homicide with malice and aforethought as well as [...]’ participation as the perpetrator of the crime all are proven. With respect to this, the Commission notes that the allegations submitted by the petitioners are not specific; for instance, there is no reference as to why the incriminating evidence against the alleged victim is said to have been unlawfully collected. Consequently, the IACHR does not *prima facie* identify any violation of the American Convention.”²⁰³

248. [Allegation of miscarriage of justice] “The Commission will not review a judicial decision even when there has been an alleged miscarriage of justice, even if it arises from an independent and impartial judiciary, unless the purported miscarriage of justice entails the violation of a right protected by the

¹⁹⁸ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.

¹⁹⁹ IACHR, Report No. 93/17, Petition 48-08. Admissibility. Ernesto Lizarralde Ardila and others. Colombia. August 8, 2017, para. 13.

²⁰⁰ IACHR, Report No. 71/17, Petition 271-07. Admissibility. Jorge Luis de la Rosa Mejía and others. Colombia. June 29, 2017, para. 56.

²⁰¹ IACHR, Report No. 33/06, Petition 12.261. Admissibility. Philip Workman. United States. March 14, 2006, para. 87.

²⁰² IACHR, Report No. 40/06, Petition 11.214. Inadmissibility. Pedro Velásquez Ibarra. Argentina. March 15, 2006, para. 54.

²⁰³ IACHR, Report No. 14/18, Petition 1057-07. Admissibility. Thelmo Reyes Palacios. Mexico. February 24, 2018, para. 11.

inter-American system. It falls to the petitioner to argue and to prove that the judges' interpretation or the appraisal of evidence ignored the protection underlying those rights."²⁰⁴

4. The "fourth instance doctrine"

249. "The complementary role of the Commission is the basis of the so-called "fourth instance formula" [...] According to this formula, the Commission cannot review decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention"²⁰⁵.

250. "[T]he IACHR has established that it is competent to declare a petition admissible and rule on the basis for it when the petition refers to a judgment by a domestic court handed down without regard to due process or which apparently violates any other right guaranteed by the Convention. The Commission recalls that it has admitted petitions when it transpires from the arguments of the parties *prima facie* that the court judgments or procedures followed could have been arbitrary or might have involved arbitrary unequal treatment or possible discrimination."²⁰⁶

251. "[T]he Inter-American Commission is competent to declare a petition admissible and rule on its merits when the judgment challenged could materially affect any right guaranteed by the American Convention."²⁰⁷

252. [Criminal case] "It does not fall to the IACHR to rule on the finding of guilt or innocence of a defendant in a criminal trial. However, it is competent to analyze whether the guarantees of due process protected by the Convention have been undermined and –in order to rule on the admissibility of a claim– whether domestic remedies have been exhausted or whether their exhaustion may be waived on account of the circumstances of the claim."²⁰⁸

[Criminal case] "In the instant case, the petitioner alleges that Mr. Ayala was criminally convicted for kidnap on the sole basis of the accusation by a codefendant, though the petitioner claims that such accusation never existed. The petitioner also claims that proof was submitted that Mr. Ayala did not partake in the kidnap nor was at the place where the offense was committed. In this regard, he emphasizes that the Supreme Criminal Prosecutor requested the alleged victim's release on considering that the trial court made a mistake in the assessment of the codefendant's statements. For its part, the State alleges that the IACHR is not competent to work as a court additional to the domestic courts competent to reassess evidence already examined by the latter or to declare the alleged victim's innocence. The State submits that the guilty judgment was duly grounded on the accusatory statements of other codefendants and that these are consistent with a legal logic based on the material truth of the alleged events.

In this regard, the Commission reiterates that, for the purpose of admissibility, it must determine whether the alleged facts may establish a violation of rights under the provision of Article 47 subparagraph (b) of the American Convention, or if the instant petition is 'manifestly groundless' or 'obviously out of order,' under subparagraph (c) of the same article. The assessment criterion of those requirements differs from that used for determining the merits of a petition. Likewise, under its mandate, the IACHR is competent to declare a petition admissible when it concerns domestic proceedings that may infringe any of the rights guaranteed by the American Convention. That is, based on said conventional rules, pursuant to Article 34 of the IACHR Rules of Procedure, the analysis for the purpose of admissibility focuses on the verification of said requirements, which refer to the existence of elements that, if proven, could *prima facie* lead to determine violations of the American Convention. Therefore, that the alleged victim claims innocence or requests the IACHR to review the evidence presented in the domestic proceeding does not mean in itself that the instant petition is inadmissible or that the Commission lacks competence to rule on this case. This is so, because the analysis undertaken by the Commission is about whether, in the framework of the criminal proceeding, the

²⁰⁴ IACHR, Report No. 104/06, Petition 4593-02. Inadmissibility. Peter Anthony Byrne, Panama. October 21, 2006, para. 34.

²⁰⁵ IACHR, Report No. 8/98, Case 11.671. Carlos García Saccone, Argentina. March 2, 1998, para. 53.

²⁰⁶ IACHR, Report No. 64/14, Petition 806-06. Admissibility. Laureano Brizuela Wilde. Mexico. July 25, 2014, para. 43.

²⁰⁷ IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, para. 52.

²⁰⁸ IACHR, Report No. 65/12, Petition 1671-02. Admissibility. Alejandro Peñafiel Salgado. Ecuador. March 29, 2012, para. 38.

guarantees of due process and judicial protection were respected in accordance with the American Convention or other applicable instruments. That is, this is an objective analysis undertaken in the light of applicable standards and rules of human rights international law, and as such it also concerns the performance of all public authorities, including justice operators.

In view of the foregoing and the information submitted by both parties during the procedure of the instant petition, and considering the inter-American standards in relation to criminal due process, particularly in relation to the principle of the presumption of innocence, the burden of proof, the duty to adopt reasoned judicial resolutions, and the statements by the codefendants, the Inter-American Commission concludes that the alleged facts could tend to establish violations of the rights established in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in accordance with its Article 1.1, to the detriment of Mr. Luis Américo Ayala Gonzáles.”²⁰⁹

5. Interpretation of other treaties or standards outside the competence *ratione materiae* of the IACHR

253. **American Convention of Human Rights Article 29:** No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

254. [General rule] “The IACHR lacks competence *ratione materiae* to decide on violations of rights embodied in treaties outside the Inter-American System, notwithstanding that it may resort to the standards established in other treaties in order to interpret the Convention by virtue of Article 29 of the said treaty.”²¹⁰

255. [General rule] “[A]s regards the other international instruments cited by the petitioners, the Commission lacks competence to determine violations of their norms. However, the IACHR may consider them for interpretation purposes of the American Convention at the merits stage of this case, in accordance with Article 29 of the American Convention.”²¹¹

256. [International Covenant on Civil and Political Rights] “[W]ith regard to the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, the Commission is not competent to establish violations of the provisions of said treaties, though it may take them into account in interpreting the provisions of the American Convention during the merits stage of the instant case, as provided for in Article 29 of the Convention.”²¹²

257. [Convention on the Rights of the Child] “[T]he Commission recalls that it is not competent to declare violations of rights enshrined in the Convention on the Rights of the Child, but it is empowered to resort to its standards for the purposes of interpreting the provisions of the American Convention by virtue of Article 29 of the Convention.”²¹³

258. [Vienna Convention on Consular Relations] “[T]he Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Declaration. The IACHR notes that the State contends that the Commission lacks jurisdiction to review claims under the Vienna Convention. The Commission has determined in previous cases that it is appropriate to

²⁰⁹ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, paras. 11-13.

²¹⁰ IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, para. 9.

²¹¹ IACHR, Report No. 111/17. Petition 883-07. Admissibility. Rosario Bedoya Becerra. Colombia. September 7, 2017, para.15.

²¹² IACHR, Report No. 132/18. Petition 1225-12. Admissibility. Octavio Romero and Gabriel Gersbach. Argentina. November 20, 2018, para. 13.

²¹³ IACHR, Report No. 83/17, Petition 151-08. Admissibility. José Francisco Cid. Argentina. July 7, 2017, para. 23.

consider compliance with Article 36 of the Vienna Convention by a state party to that treaty when interpreting and applying the provisions of the American Declaration to a foreign national who has been arrested, committed to trial or to custody pending trial, or detained in any other manner by that state.”²¹⁴

259. [Statute of Rome] “As to the petitioners’ complaint on the alleged violation of Article 7.1 (h) of the Statute of Rome of the International Criminal Court, the Inter-American Commission sees that it is not competent to rule on violations of said statute. However, under the principles of interpretation of treaties and Article 29 of the Convention, if necessary, the Commission is entitled to resort to provisions established in other treaties in order to interpret the provisions of the American Convention.”²¹⁵

260. [ILO Conventions] “Concerning the petitioner’s quest for a finding that Honduras violated ILO Covenant 169, the Commission has no jurisdiction in the matter, although it may and must use it as a standard of interpretation of the obligations prescribed by the Convention, as established in Article 29 thereof.”²¹⁶

261. [OAS Charter] “As to Mr. Romero’s claim on the violation of rights enshrined in the OAS Charter, the Commission recalls that although it is not entitled to rule on the violation of rights established in said instrument, it is competent to resort to the standards established there, in order to interpret the rules of the Convention by virtue of Article 29 of the Convention.”²¹⁷

262. [Inter-American Democratic Charter] “With respect to the Inter-American Democratic Charter, the Commission notes that this instrument was adopted by the General Assembly of the OAS and provides an important statement of principles and standards concerning the relationship between democracy and human rights. It has been referred to by the Commission many times in interpreting and applying related articles of the American Declaration and Convention. The Democratic Charter does not refer to the individual petition system as a direct mechanism of implementation; rather it has served to inform the interpretation of certain rights protected under the American Declaration and Convention. In accordance with basic canons of interpretation, the Commission will take the terms of the Democratic Charter into account in applying the American Declaration, in relation to the OAS Charter and its Statute and Rules of Procedure, in the present case. Similarly, the IACHR will also take into account the terms of the Universal Declaration of Human Rights and the ICCPR into account in applying the American Declaration in the present case.”²¹⁸ [See also: IACHR, Report No. 17/17, Petition 1105-06. Admissibility. Pedro Roselló and others. United States. January 27, 2017, para. 12.]

263. [Inter-American Convention on the International Restitution of Children] “[T]he Commission believes that, if proved, the purported failure to enforce the judgment establishing the international return of boy D., the alleged failure to observe the principle of the child’s best interest and the lack of judicial protection regarding the facts may establish possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 17 (Family) and 25 (Judicial Protection) of the American Convention in connection with its Article 1.1 (Obligation to Respect Rights), in light of the Inter-American Convention on the International Restitution of Children and the corpus jure on children, to the detriment of the alleged victims. Likewise, the facts might also establish a possible violation of Article 19 (Rights of the Child) of the Convention, in connection with its Article 1.1 to the detriment of child ‘D.’”²¹⁹

²¹⁴ IACHR, Report No. 63/12, Petition 1762-11. Admissibility. Virgilio Maldonado Rodríguez. United States. March 29, 2012, para. 46.

²¹⁵ IACHR, Report No. 64/16, Petition 2332-12. Admissibility. Vicky Hernández and family. Honduras. December 6, 2016, para. 19.

²¹⁶ IACHR, Report No. 29/06, Petition 906-03. Admissibility. Garífuna Community of “Triunfo De La Cruz” and its members. Honduras. March 14, 2006, para. 39.

²¹⁷ IACHR, Report No. 149/17, Petition 559-08. Admissibility. Samuel Walter Romero Aparco. Peru. October 26, 2017, para. 15.

²¹⁸ IACHR, Report No. 60/17, Petition 776-06. Admissibility. Four Million American Citizens Residents in Puerto Rico. United States. May 25, 2017, para. 16.

²¹⁹ IACHR, Report No. 147/17, Petition 120-09. Admissibility. Arnaldo Javier Córdoba and D. Paraguay. October 26, 2017, para. 13.

264. [Declaration] “Concerning said article and those invoked from UN Declaration on Human Rights Defenders, the Commission can consider them to interpret and apply the American Convention, under Article 29 of the Convention.”²²⁰

265. [“Soft law” instruments] “[B]oth the Commission and the Inter-American Court have found that the Guiding Principles on Internal Displacement issued in 1998 by the Representative of the United Nations Secretary-General are of particular relevance in defining the content and scope of Article 22 of the Convention in cases of internal displacement. They have furthermore stated that given the situation of internal armed conflict in Colombia, the rules applicable to displacements contained in Protocol II of the 1949 Geneva Conventions are particularly useful. Consequently, the Commission has competence *ratione materiae* to examine this petition.”²²¹

6. Partial reparations or new and later facts

266. [As the precedents presented in the present section show, new and later facts during domestic procedures, including partial compensation, do not prevent the admissibility of the petition nor the finding that violations did in fact occur; and they will be evaluated by IACHR in light of the standards of the Inter-American System.]

267. [Partial compensation] “[I]n the event of finding the State responsible for a violation of human rights, the Commission must consider pecuniary elements sufficient to repair both material and moral injuries sustained, as well as non-pecuniary elements, measures of satisfaction and guarantees of non-repetition that comprehensively repair the consequences of the violations. In that regard, the Commission finds that the delivery of a sum of money to the father of Mirey Trueba in acknowledgement of the State’s responsibility could be regarded as partial reparation of the damage caused by the State, since it is not sufficient or effective reparation for all the harm caused; in other words, comprehensive reparation remains pending. Based on the foregoing, the IACHR decides to declare the petition admissible in spite of the existence of the aforesaid agreement.”²²²

268. [Partial restitution] “[O]nce the Commission had established that the facts that had come to light did not alter its understanding of the matter, in this case it will follow the doctrine of the Inter-American Court in the *Dismissed Congressional Employees v. Peru*. In that decision, the Court found that: ‘in international proceedings, a decision on the effect of one or more of the victims returning (or not) to work at the same institution from which they were allegedly dismissed, as well as the basis of their claims for reinstatement to their jobs, was part of the merit phase, and potentially the reparations phase.’ In that regard, the Commission will set aside analysis of the measures alleged by the State until the merits phase.”²²³

269. [New and later facts, example] “[T]he State, in its communication of May 9, 2005, asked that the petition be declared inadmissible, since on August 26, 2004, it was decreed that the statute of limitations had run on the penalty imposed on the alleged victim. The Commission finds that notwithstanding that decision, when the Commission took cognizance of the case, the acts alleged to produce the violation had already occurred, and, accordingly, the State may have already become internationally responsible. In any event, the IACHR shall take that situation into account when deciding on the merits of this petition.”²²⁴

270. [New and later facts] “With regards to the State’s request to exclude the facts denounced after the initial petition was filed, the Commission notes that neither the Convention nor the Rules establish a time for closing the discussion and that, on the contrary, *‘the bodies of the system have had the need to integrate and assess new and later facts, as long as these are connected with, and reasonably a part of, the case*

²²⁰ IACHR, Report No. 128/17, Petition 278-07. Admissibility. Pilar Noriega García, Leonel Rivero Rodríguez and family. Mexico. October 11, 2017, para. 9.

²²¹ IACHR, Report No. 51/10, Petition 1166-05. Admissibility. Tibú Massacres. Colombia. March 18, 2010, para. 107.

²²² IACHR, Report No. 48/08, Petition 515-01. Admissibility. Mirey Trueba Arciniega. Mexico. July 24, 2008, para. 56.

²²³ IACHR, Report No. 55/08, Petition 532-98. Admissibility. Workers dismissed from Empresa Nacional de Puertos S.A. (ENAPU). Peru. July 24, 2008, para. 46.

²²⁴ IACHR, Report No. 48/05, Petition 12.194. Admissibility. Euclides Rafael Moreno Morean. Venezuela. October 12, 2005, para. 27.

under assessment.' This requirement is met in this case since background information is presented as a part of a series of events which are allegedly the result of actions attributable to the State and linked to its denial to provide information on the archived procedure regarding Ernestina Ascencio's death."²²⁵

271. [Payments already made can be taken into account as part of the reparation, even if they do not constitute the main form of reparation] "Regarding the proceedings at the administrative law court and based on the information submitted, the Commission notes that by the sentence of April 10, 2008 the alleged victims got favorable judgments, and that the corresponding payments were made in 2009. Notwithstanding that the IACHR may consider said payments in a likely report on the merits, the Commission recalls that in order to determine the admissibility of a petition of this nature, the prior exhaustion of domestic remedies is neither adequate nor necessary, since it is inadequate to obtain a full redress and justice for the family members. Based on the foregoing, the IACHR concludes that in this case, the exception to the prior exhaustion of domestic remedies applies, in accordance with Article 46.2 (c) of the American Convention."²²⁶

²²⁵ IACHR, Report No. 144/17, Petition 49-12. Admissibility. Ernestina Ascencio Rosario and others. Mexico. October 26, 2017, para. 11.

²²⁶ IACHR, Report No. 14/17, Petition 1197-08. Admissibility. José Rubián Gómez Martínez, Rolfe Arialdo Figueredo Martínez, Miguel Novoa Martínez, Alcira Martínez Álvarez and families. Colombia. January 27, 2017, para. 7.

ANNEX: EXAMPLES OF COLORABLE CLAIMS (IN CHRONOLOGICAL ORDER)

272. [Non-characterization of potential property rights] “About the alleged violation of Article 21 (property) of the Convention, the IACHR notes that the alleged victim’s complaint refers to the alleged denial of compensation for work-related injury on the basis of equal conditions vis-à-vis other state and non-state employees; and not to an alleged violation of an acquired right to property. Accordingly, the Commission considers that the petition does not contain any elements that might substantiate a prima facie violation of Article 21 of the Convention.”²²⁷

273. [Forced displacement and ESCR] “Additionally, considering the multiple, complex and continuous nature of the displacement of people, in particular that related to the direct effects that derive from it on the rights to free movement and residence, housing and personal integrity as well as uprooting that in social and cultural terms may be presented, the Commission considers that the allegations related to this phenomenon could characterize possible violations of Articles 5, 22 and 26 of the American Convention in a joint and interconnected manner.”²²⁸

274. [Readjustment in pensions] “The IACHR takes into account the context referred to by the petitioner, including the domestic legal framework of pensions, formed by Decree Law No. 20530 and its subsequent amendments among other rules, as well as the elements submitted by the parties. In light of this, it deems that the impossibility claim by the alleged victims of receiving adjusted pensions must be analyzed in the merits stage in order to determine if this establishes a violation of the rights recognized in Articles 21 (Property), and 26 (Economic, Social and Cultural Rights) of the American Convention, in accordance with Articles 1.1 and 2 thereof.”²²⁹

275. [Trade unions rights, collective bargain and social security] “The Inter-American Commission observes that the facts denounced by the petitioners —that the Constitution was modified through Legislative Act 001/2005, which prohibits trade unions’ right to collective bargaining on social security but keeps two special pension schemes—, if proven, may prima facie constitute violations of the rights enshrined in Articles 8 (Fair Trial), 16 (Freedom of Association), 24 (Equal Protection), 25 (Judicial Protection) and 26 (Economic, Social and Cultural Rights) of the American Convention, in relation to Article 1.1 (Obligation to Respect Rights) thereof, and Article 8 (Trade Union Rights) of the Protocol of San Salvador, to the detriment of workers of the SINTRAISA, SINTRAIASAGEN and SINTRACHIVOR trade unions.”²³⁰

276. [Gender-based discrimination and domestic violence] “[T]he IACHR finds that, if proven, the purported failure, on the part of the State, to adopt prevention and protection measures in relation to the abuse, deprivation of liberty, and death of Nadia Alejandra Muciño Márquez occurred in a context of gender-based discrimination and violence, within the family or domestic unit; the obstacles for the family members to access justice; as well as the alleged lack of due diligence in the investigation, prosecution and punishment of the reported events all could establish violations of the rights protected through Articles 4 (life), 5 (humane treatment), 7 (personal liberty) and 24 (equal protection) of the American Convention, in relation to Ms. Muciño; and Articles 5 (humane treatment), 8 (fair trial), 17 (family), 19 (child) and 25 (judicial protection) in regard to the family members, all the articles in connection with Articles 1.1 and 2 thereof.

²²⁷ IACHR, Report No. 76/19, Petition 1495-08. Admissibility. Hugo Eduardo Ibarbuden. Argentina. May 21, 2019, para. 10.

²²⁸ IACHR, Report No. 7/19, Petition 18-07. Admissibility. Bocas de Aracataca Massacre. Colombia. February 3, 2019, para. 19.

²²⁹ IACHR, Report No. 239-08. Admissibility. National Association of Retired and Discharged Officials of the Judiciary. Peru. December 4, 2018, para. 11.

²³⁰ IACHR, Report No. 103/18. Petition 703-07. Admissibility. Workers of SINTRAISA, SINTRAIASAGEN, and SINTRACHIVOR. Colombia. September 20, 2018, para. 15.

Likewise, the Inter-American Commission believes that the allegations can establish violations of Article 7 of the Convention of Belém do Pará to the detriment of Ms. Muciño.”²³¹

277. [Dismissal of judges] “Based on the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the alleged victim’s alleged arbitrary removal as Numerary Judge before the end of his term as well as the consequent violation of the minimum safeguards of labor stability and due process applicable to any judge could establish possible violations of the rights protected by Articles 8 (fair trial), 23 (participation in government), 25 (judicial protection) and 26 (economic, social and cultural rights) of the Convention, in relation to the general obligations foreseen in its Articles 1.1 and 2.”²³² [In cases involving the dismissal of judicial officials, the IACHR has ruled the violation of Article 23 of the American Convention; and in cases involving other public servants, the IACHR has recognized a violation of Article 23.1.c. Irrespective of whether they were disqualified from holding public office as a sanction or an accessory penalty.]

278. [Respect for due process even in the military justice] “[T]he pleadings submitted by the petitioner exclusively deal with the purported irregularities and violations of the right to a fair trial committed by the State in the framework of the military criminal proceedings he was subjected to on the charge of stealing military weapons for their illegal sale. In this regard, Mr. Palma Rodríguez emphasizes, in his communications to the IAHR, that he lacked proper legal representation because he did not have the opportunity to meet the person that would be his defense counsel, or to meet him sometime, in particular, right before the trial court sentenced him to 25 years in prison. In addition, he refers to other purported violations of due process and an alleged interference with his right to file a petition before the IACHR.

[...]

Therefore, the Commission believes that if the facts reported by the petitioner are proved to be true, they may establish violations of the rights enshrined in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 thereof, to the detriment of Mr. Palma Rodríguez.”²³³

279. [Identity document of a transgender woman] “[T]he facts alleged in relation to the various administrative and judicial difficulties experienced by the alleged victim in order to obtain copy of her DNI that reflects the name and gender with which she identifies herself, as well as the allegation of having been several years without an identification document, as well as the possible consequences that this entailed in various areas of her life, including in the field labor and education, could characterize possible violations of articles 3 (juridical personality), 5 (personal integrity), 8 (judicial guarantees), 11 (honor and dignity), 13 (freedom of thought and expression), 18 (name), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to its Articles 1.1. and 2.”²³⁴

280. [Local community media] “On several occasions, the IACHR and the Office of the Special Rapporteur have acknowledged that community media outlets perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information. In those decisions, they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private non-commercial media. The IACHR has also indicated that, “the issuance or renewal of broadcast licenses must be subject to a clear, fair and objective procedure that takes into consideration the importance of the media so that all sectors of society [...] may participate in an informed manner in the democratic process.”²³⁵

281. [Freedom of speech and political advertisement] “The petition refers to the alleged violation of the right to freedom of expression and the principle of legality to the detriment of three audiovisual media

²³¹ IACHR, Report No. 94/18, Petition 1402-10. Admissibility. Nadia Muciño Márquez and family. Mexico. August 23, 2018, para. 14.

²³² IACHR, Report No. 77/18, Petition 727-09. Admissibility. Fernando Tovar Rodríguez. Mexico. June 27, 2018, para. 11

²³³ IACHR, Report No. 58/18, Petition 1434-08. Admissibility. Rómulo Rubén Palma Rodríguez. Peru. May 5, 2018, paras. 17 and 19.

²³⁴ IACHR, Report No. 57/18, Petition 969-07. Admissibility. Karen Mañuca Quiroz Cabanillas. Peru. May 5, 2018, para. 15

²³⁵ IACHR, Report No. 51/18, Petition 1779-12. Admissibility. Kaqchikuel Maya Indigenous Peoples of Sumpango And others. Guatemala. May 5, 2018, para. 19.

licensees and their executives as a result of penalties (an order to cease the broadcasting of content and a monetary fine) imposed against those licensees in 2009 by the Mexican State ‘for allegedly having entered into an contract for election advertising and [...] having disparaged certain candidates for elected office and a political party in the midst of elections.’ Based on the legal and factual elements presented by the parties and the nature of the matter brought before it, the Commission has decided that it will examine the possible violations of Articles 8, 9, 13 and 25 of the ACHR in relation to Article 1.1 and 2 thereof, with respect to Alejandro Fernando Aguilera Mendieta, Miguel Ángel Díez García, Ángel Israel Crespo Rueda, Miriam Villanueva Chiapas, and Félix José Araujo Ramírez, at the merits stage.”²³⁶

282. [Use of pretrial detention imposed in violation of the American Convention] “The petitioner alleges that the conduct of two criminal proceedings brought against him arbitrarily deprived him of liberty for twenty months without proving his involvement in any of the two processes. He also states that he was tried in both processes on the same facts; that he did not receive an answer to the legal remedies he filed against his detention, and that this caused serious personal and financial losses. So, if the facts alleged by the petitioner are true, it could constitute *prima facie*, violations of the rights enshrined in Articles 7 (personal liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (Domestic Legal Effects), in detriment of Mr. Espinosa Romero.”²³⁷

283. [The Convention of Belem do Para as applied to LGBTI women] “[T]he allegations could constitute violations of Article 7 of the Convention of Belém do Pará taking into account that under that instrument, States have an obligation to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, trans and intersex women.”²³⁸

284. [Right to reparation for pretrial detention imposed in violation of the American Convention] “In view of the elements of fact and law presented by the petitioners, the Commission believes that the alleged facts concerning the alleged victim’s lack of compensation in light of the damages caused by the allegedly unlawful pretrial detention for almost three years and for the lack of reparation in a procedure of single instance of jurisdiction could establish violations of the rights enshrined in Articles 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, analyzed in the light of Article 7 (Personal Liberty) and in relation to Articles 1.1 and 2. In this regard, the IACHR will analyze the facts concerning the criminal proceedings filed against the alleged victim as relevant and necessary background for a correct understanding and assessment of the subsequent facts.”²³⁹ [See also: IACHR, Report No. 43/18, Petition 705-07. Admissibility. Neris Luz Martínez Padilla and daughters. Colombia. May 4, 2018, para. 13].

285. [Partial impunity in cases of gross human rights violations] “[T]he purported torture and execution of the alleged victims by three persons, including two police officers, the partial impunity that still surrounds the case, and the lack of effective judicial protection could tend to establish possible violations of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof; of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, due to the failure to conduct an investigation following the entry into force of that Convention, with respect to José Ricardo Parra Hurtado and Félix Alberto Páez Suárez; and of Articles 5 (humane treatment), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof, with respect to the members of their families.”²⁴⁰

286. [Cases in which the petitioner claims some ESCR present in the American Declaration] “As regards the allegations of violations of Article XIV ((Work and Fair Remuneration)) of the American Declaration, the IACHR has previously established that once the American Convention enters into force with

²³⁶ IACHR, Report No. 52/18, Petition 253-10. Admissibility. Alejandro Fernando Aguilera Mendieta, et al. Mexico. May 5, 2018, paras. 1 and 31.

²³⁷ IACHR, Report No. 49/18, Petition 1542-07. Admissibility. Juan Espinosa Romero. Ecuador. May 5, 2018, para. 17

²³⁸ IACHR, Report No. 46/18, Petition 1638-12. Admissibility. Raiza Isabela Salazar. Colombia. May 4, 2018, para. 14.

²³⁹ IACHR, Report No. 45/18, Petition 1494-07. Admissibility. John Jairo Restrepo and others. Colombia. May 4, 2018, para. 12.

²⁴⁰ IACHR, Report No. 39/18, Petition 196-07. Admissibility. José Ricardo Parra Hurtado, Félix Alberto Páez Suárez and their families. Colombia. May 4, 2018, para. 15.

respect to a State, it is that instrument, and not the Declaration, that becomes the specific source of law to be applied by the Inter-American Commission, provided that the petition alleges violations of rights of identical substance upheld by both instruments. Thus, considering that Article 26 of the American Convention refers broadly to the economic, social and cultural rights, and that these rights should be analyzed in relation to the OAS Chart and other relevant legal instruments. Therefore, the IACHR deems that alleged violations of the American Declaration in relation to the Article 26 of the Convention, the analysis of its interplay and common scope should be made at the merits stage.”²⁴¹

287. [Failure to justify a judgment] “In this petition, the Commission identifies three principal allegations made by the petitioner: a) the violation of due process in the civil action filed against him with respect to aspects related to evidence, lack of impartiality of the judges who ruled on the civil action, and failure to state the legal basis for the judgment against him; b) the violation of his right to speak, in his capacity as a member of the Cantonal Council of Chunchi, about matters of public interest that formed part of the political debate; and c) the judgment ordering him to pay US\$ 25,000 in non-pecuniary damages, which caused serious and disproportionate financial harm, according to the petitioner.

In view of the legal and factual elements presented by the petitioner and the nature of the matter brought before it, the Commission deems it necessary to examine at the merits stage of this case the possible violation of Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 23 (right to participate in government) and 25 (right to Judicial Protection) of the American Convention, in relation to the general obligation enshrined in Article 1.1 thereto.”²⁴²

288. [Speech referring to public servants] “[I]n a democratic society speech referring to the suitability of public servants enjoys a greater degree of protection. [...] [C]ivil judgments in cases involving freedom of expression must be strictly proportionate, so as to not have a chilling effect on that freedom, since the fear of a civil penalty, in view of [a] claim [...] for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to compromise the personal and family life of an individual who accuses [...] a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”²⁴³

289. [Violence against journalists having precautionary measures] “[T]he Commission will analyze the possible applicability of Articles 4, 5 and 13 of the ACHR at the merits stage of the present case with respect to the alleged victim. As the IACHR has expressed, when it comes to violence against journalists and media workers, the failure to comply with the obligation to protect journalists at special risk, as well as the investigation and criminal punishment of those responsible for the events also imply a breach of the obligation to guarantee the victim’s right to life and freedom of expression.”²⁴⁴

290. [Execution of sentences] “The facts described in this petition concern the alleged legal prohibition enforced after a penalty was imposed, to grant prison benefits to persons sentenced for certain offenses, and said law’s purported incompatibility with the right of personal liberty. Since the facts alleged here are not manifestly groundless and must be analyzed in the merits stage, the Commission believes that the claims are admissible as regards Articles 7 (Personal Liberty), 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the Convention in accordance with its Articles 1.1 and 2.”²⁴⁵ [See also: IACHR, Report No. 122/17, Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, para. 18.]

291. [Right to appeal in criminal proceedings/special appeal in Guatemala] “[T]he alleged facts concerning the non-admission of proof expressly requested by the petitioner appears, *prima facie*, to be based on the domestic code of criminal procedure; along with the possible violation of the right to object to a judgment on the grounds that ordinary remedies allowing to review the assessment of evidence during the proceedings are not foreseen by the law, all these could establish violations of the rights set forth in Articles 7

²⁴¹ IACHR, Report No. 34/18, Petition 1018-07. Admissibility. Guillermo Juan Tiscornia and Family. Argentina. May 4, 2018, para. 22.

²⁴² IACHR, Report No. 7/18, Petition 310-08. Admissibility. Rogelio Miguel Ortiz Romero. Ecuador. February 24, 2018, paras. 10 and 11.

²⁴³ IACHR, Report No. 7/18, Petition 310-08. Admissibility. Rogelio Miguel Ortiz Romero. Ecuador. February 24, 2018, para. 12.

²⁴⁴ IACHR, Report No. 5/18, Petition 1520-08. Admissibility. Carlos Quispe Quispe and family. Bolivia. February 24, 2018, para. 9.

²⁴⁵ IACHR, Report No. 160/17, Petition 531-07. Admissibility. Franklin Nima Curay. Peru. November 30, 2017, para. 10.

(Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in connection with the general obligation to respect rights established in Article 1.1, and the obligation to adopt domestic measures established in Article 2 thereof, to the detriment of Mr. José Luis Villeda. In support of these considerations, the Commission recalls that in a recent decision [IACHR, Report 99/17, Petition 11.782. Admissibility and Merits. Miguel Ángel Rodríguez Revolorio and others. Guatemala. September 5, 2017, para. 136] it concluded, referring specifically to the special appeal in Guatemala, which results from the way it is regulated, with grounds limited to errors of law or procedure but excluding the analysis, as a general rule, the review of the facts and the evaluation of the evidence, that in the decided case the right to appeal a conviction in the terms of Article 8.2.h of the American Convention had not been satisfied.”²⁴⁶

292. [Permanent ban from holding public office] “[T]he IACHR will analyze in the merits stage if the permanent ban on the alleged victim to be reinstated in another post in the Judicial Branch or the Attorney General’s Office, resulting from the alleged victim’s removal, could constitute a violation of the right enshrined in Article 23 (Right to Participate in Government) of the Convention pursuant to Article 1.1 of the same treaty.”²⁴⁷

293. [Single instance proceedings in Colombia] “[T]he allegations submitted in connection with the application of Law 954 of 2005 (which appears to have established a single instance of jurisdiction in view of the bill of damages for the proceedings regarding the claim for damages) must be analyzed on the merits, since they concern issues about the obligation set forth in Article 2 of the American Convention, in relation to the safeguards provided in Article 8 thereof.”²⁴⁸

294. [Right to equal protection of the law when the petitioner alleges divergent judicial decisions] “[T]he Inter-American Commission has established that “the right to equal protection of the law cannot be assimilated to the right to have the same resolution granted in all the proceedings concerning the same matter.” According to the instant petition, the petitioner claims that Argentina’s Supreme Court of Justice denied her access to the compensation requested, as it did not admit the appeal of complaint she filed, as opposed to similar cases in which it did issue a favorable decision in relation to the matter at issue. In this regard, the Commission considers that the mere citation that other decisions made on the same matter had a different result does not suffice to *prima facie* establish a possible violation of Article 24 of the Convention.”²⁴⁹

295. [Statute of limitations in civil proceedings relating to human rights violations in Chile] “[T]he IACHR believes that, if proved, the alleged dismissal of the civil compensation claims for serious human rights violations on statute of limitations grounds; the alleged lack of investigation and prosecution of the acts of torture committed, and the purported damage caused by the denial of justice and fair reparations may establish possible violations of the rights enshrined in Articles 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to Articles 1.1 and 2 of the same instrument, and of Article 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the 1,719 victims and the family members of those who died.”²⁵⁰ [See also: IACHR, Report No. 85/17, Petition 1580-07. Admissibility. Gloria Lucía Magali Neira Rivas y Juan Pablo Belisario Poupin Neira. Chile. July 7, 2017, para. 9.]

296. [Right to an education] The petitioners maintain that the decision of the Third Court for Children and Adolescents ordering the parents of the Orellana Vásquez family to find a school with a daily plan regime and to attend the School for Parents constituted a violation of the right to privacy, to freedom of conscience and religion, to the protection of the family, to education, and the rights of the child with respect to the Orellana Vásquez family.

[...]

The Commission notes that the petition raises issues related to the rights of K.A. and E.E. to education and to the associated guarantees, as well as to the rights of their parents under the terms of Article 13.4 of the Protocol of San Salvador, which provides that *‘in conformity with the domestic legislation of the States Parties,*

²⁴⁶ IACHR, Report No. 158/17, Petition 404-08. Admissibility. José Luis Villeda Recinos. Guatemala. November 30, 2017, para. 13.

²⁴⁷ IACHR, Report No. 149/17, Petition 559-08. Admissibility. Samuel Walter Romero Aparco. Peru. October 26, 2017, para. 13.

²⁴⁸ IACHR, Report No. 108/17, Petition 562-08. Admissibility. Pedro Herber Rodríguez Cárdenas. Colombia. September 7, 2017, para. 16.

²⁴⁹ IACHR, Report No. 91/17, Petition 1400-07. Inadmissibility. Adriana Sonia Peralta. Argentina. July 7, 2017, para. 14.

²⁵⁰ IACHR, Report No. 84/17, Petition 188-11. Admissibility. Marcos Luis Abarca Zamorano and others. Chile. July 7, 2017, para. 14.

parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above,' and other associated guarantees. Furthermore, it raises questions regarding the obligations and role of the State in education, taking into account the provisions of Article 13.2 of the Protocol, which indicates, inter alia, that 'education should be directed towards the full development of the human personality and [...] that education ought to enable everyone to participate effectively in a democratic and pluralistic society.' Accordingly, the Commission believes the issues raised warrant study at the merits stage [...] the IACHR decides that the instant petition is admissible as regards Articles 11, 12, 17, 19, and 26 of the American Convention, in light of the obligations arising from Article 1.1 thereof, and as regards Article 13 of the Protocol of San Salvador."²⁵¹

297. [Right to juridical personality] "The Commission believes that the alleged detention and subsequent extrajudicial killing of the 5 alleged victims, the fact that they were allegedly presented to the media as FARC members, and the purported situation of risk during detention by State officers are a possible violation of the rights embodied in Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty) and 11 (Privacy) of the American Convention, in relation to Article 1.1 thereof. Likewise, as to the alleged lack of identification of the alleged victims' remains and the alleged lack of return of the bodies to the relatives, together with its possible legal effects, the Commission must analyze in the merits stage the possible violation of Article 3 (Juridical Personality) of the Convention."²⁵²

298. [Sole instance in direct reparation proceedings in Colombia] "[T]he arguments concerning the application of Law 954 of 2005 (which established a sole instance in view of the amount of damages applicable in cases such as the alleged victim's case) establish possible violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof."²⁵³

299. [Failure to investigate and punish crimes committed by indigenous justice] "[W]ere proof to be established of the lack of due diligence by police officers and legal officials in this criminal investigation, of the excessive delay in criminal proceedings without events having been established and without those responsible for them having been tried to date, of the alleged pattern of lynching that have prompted no effective legal response, and also bearing in mind public recognition of the Jilanko as a natural authority that can fulfil administrative tasks and also enforce rules that are circumscribed to indigenous and peasant communities, these acts would tend to establish possible violations of the rights recognized in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in accordance with Article 1.1 of said Convention. There might further be violations of the rights enshrined in Articles 5, 8, and 25 of the Convention to the detriment of the alleged victim's family."²⁵⁴

300. [Failure to enforce a judgment] "[T]he petitioner's arguments on unwarranted delay in the process of carrying out the judicial judgment that recognized her right to a hearing, and the corresponding compensation for dispossession of her property, tend to establish possible violations of the rights contained in Articles 8 (judicial guarantees), 21 (right to private property), and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) of the same instrument."²⁵⁵

301. [Right to privacy, honor and dignity, among others, in criminal proceedings] "In view of the elements of fact and law presented by the parties and given the nature of this matter, the Commission believes that the alleged acts of torture, arbitrary detention, violations in the criminal trial allegedly filed based on leaflets and a Marxist book found at the alleged victim's workplace, the public accusations of terrorism against him based on his nationality, and the likely violation of his freedom of movement could all tend to establish a violation of Articles 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to A Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 22 (Freedom of Movement

²⁵¹ IACHR, Report No. 62/17, Petition 731-11. Admissibility. Orellana Vásquez Family. Guatemala. May 25, 2017, paras. 32 and 33.

²⁵² IACHR, Report No. 53/17, Petition 1285-04. Admissibility. Dora Inés Meneses Gómez and others. Colombia. May 25, 2017, para. 50.

²⁵³ IACHR, Report No. 52/17, Petition 816-08. Admissibility. Diana Milena Barona Sánchez and family. Colombia. May 25, 2017, para. 9.

²⁵⁴ IACHR, Report No. 46/17, Petition 69-08. Admissibility. Javier Charque Choque and family. Bolivia. May 25, 2017, para. 12.

²⁵⁵ IACHR, Report No. 18/17, Petition 267-07. Admissibility. Ana Luisa Ontiveros López. Mexico. January 27, 2017, para. 9.

and Residence), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the Convention, in agreement with Articles 1.1.”²⁵⁶

302. [Pension rights of miners with silicosis in Peru] “The IACHR takes note of the context in which the alleged violations occurred, including the domestic legal framework for pensions, as well as the aspects presented by the parties. In view of those considerations, it believes that both the imposition of retirement pension caps and the application of restrictive regulations for compensating miners who suffer from silicosis require an analysis in the merits stage to evaluate whether these constitute violations of the rights recognized in Articles 21 (right to property), 24 (equal protection), and 26 (progressive development) of the American Convention, in conjunction with Articles 1(1) and 2 thereof. In addition, the retroactive application of the legal framework for compensation to the detriment of Mr. Emiliano Romero Bendezú, denounced in Petition 1077-98, could constitute a violation of Article 9 (freedom from ex post facto laws) of the Convention.”²⁵⁷

303. [Freedom of expression and gender expression] “[T]he IACHR will also examine the possible applicability of Article 13 of the Convention concerning the alleged violation of the alleged victim’s expression of gender.”²⁵⁸ [See also: IACHR, Report No. 64/16, Petition 2332-12. Admissibility. Vicky Hernández and family. Honduras. December 6, 2016, para. 31.]

304. [Judgment of high officials in single instance by high courts] “According to the alleged victim, he was convicted in criminal proceedings that did not ensure the right to double instance; in other words, he could not contest a judgment against him. According to the State, the petitioner sought constitutional protection through the tutela action and can lodge an action for review if he has new evidence that could reverse the initial judgment. [...] [T]he IACHR considers that, if proven, sole-instance criminal proceedings might constitute a possible violation of the rights protected in Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) and 2 thereof.”²⁵⁹

305. [Statutory limitation in cases involving crimes against humanity in Chile] “[T]he facts alleged in the petition could amount to violations of rights contained in Articles 8 and 25 of the Convention, given that the petition claims that the families did not have access to simple and effective recourse in the context of a proceeding that observes fair-trial guarantees and affords the possibility of an appropriate and proportional punishment for the perpetrators of the violations, as well as by virtue of the complained-of application of a legal concept that mitigates criminal responsibility based on the passage of time and its possible incompatibility with the prohibition against applying statutory limitations in cases of crimes against humanity; and Article 5 of the Convention, in relation to the suffering caused to the families of the alleged victims on account of what they claim to be a denial of justice. All of the above is taken in conjunction with Articles 1 (1) and 2 of the Convention.”²⁶⁰

306. [Right to appeal any judgment imposing a sanction] The petitioner claims that the State has violated his right to a fair trial, equal protection and judicial protection, inasmuch as while he was acting as a plaintiff’s legal advisor in the context of a civil suit for damages, he was assessed a fine in the appeals court decision. He further contends that no effective judicial remedy was available for him, to call said decision into question and that he was precluded from introducing evidence in any of the subsequent proceedings before the authorities of the Argentine judiciary.

[...]

Additionally, he asserts that he was not allowed to introduce evidence in his defense before the Court of Appeals and the Supreme Court. He also argues that the appeal to the Supreme Court was not effective

²⁵⁶ IACHR, Report No. 7/17, Petition 1049-11. Admissibility. José Antonio Cantoral Benavides and family. Bolivia. January 27, 2017, para. 17.

²⁵⁷ IACHR, Report No. 79/16, Petition 1077-98, 1295-07, 1296-07, 1401-07, 300-08 and 405-08. Admissibility. Emiliano Romero Bendezú and others (miners with silicosis). Peru. December 30, 2016, para. 27.

²⁵⁸ IACHR, Report No. 73/16, Petition 2191-12. Admissibility. Alexa Rodríguez. El Salvador. December 6, 2016, para. 9.

²⁵⁹ IACHR, Report No. 62/16, Petition 4449-02. Admissibility. Saulo Arboleda Gómez. Colombia. December 6, 2016, para. 38.

²⁶⁰ IACHR, Report No. 58/16, Petition 1275-04B and 1566-08. Admissibility. Juan Luis Rivera Matus and others. Chile. December 6, 2016, para. 131.

because of the discretionary power granted to it under Article 280 of the Code of Civil and Commercial Procedure, which enabled the Court to rule arbitrarily in his case.

[...] [I]t is evident that, because no adequate remedy existed in the Argentine legal system, the petitioner filed an appeal directly to the Supreme Court (*recurso extraordinario*) as the only way to challenge the order of an appellate court to extend to him a monetary penalty for abuse of process and bringing frivolous suit. Said remedy, however, was not effective. Therefore, the lack of an accessible and effective remedy to challenge a monetary penalty for procedural reasons originally assessed at the appellate level, could tend to establish potential violation of the rights protected in Articles 8 and 25 of the American Convention, in connection with Article 1.1 and 2 of said instrument.”²⁶¹

307. [Responsibility of the State for failure to investigate and prosecute crimes committed by third party actors] In the instant case, the petitioners hold that the Honduran State violated the right of the alleged victims to a fair trial and judicial protection on account of the alleged unwarranted delay in the criminal proceeding in connection with Mr. Soto Soto's homicide, and of the lack of a meaningful, prompt, and effective investigation to clarify the circumstances of his death and identify those responsible. The State, for its part, argues that it was diligent, given that from the outset all the necessary steps were taken to establish the truth of the events and bring those responsible to justice.

The available information in the record suggests, *inter alia*, that the investigation initiated by the prosecutor's office was conducted in secrecy, purportedly preventing the petitioners from having knowledge of it; and despite the fact that those convicted are still free. Furthermore, both parties refer to shortcomings committed during the first stages of the investigation, when the evidence was collected, such as, the small number of samples collected, which purportedly had an impact on how the criminal proceeding unfolded.

In light of the factual and legal arguments presented by the petitioners and the nature of the matter before it, the IACHR finds that, if proven, the allegations could characterize possible violations of rights protected in Articles 8 and 25 of the American Convention, taking in conjunction with Article 1(1) thereof. In the merits stage the Commission will also consider if the allegations concerning a purported denial of justice would amount to a violation of the alleged victims' right to humane treatment under Article 5 of the Convention.”²⁶²

308. [Right to equal protection of the law when the petitioner alleges divergent judicial decisions] The petitioner alleges that the decision of the Constitutional Court is discriminatory because it was based on a legal reasoning that was different from the reasoning applied by this same court in two other cases similar to his.

[...] [T]he IACHR reiterates that although the obligations derived from Articles 8 and 25 of the American Convention impose upon the States a certain degree of foreseeability in access to justice, it does not mean that divergent judicial decisions cannot exist. In this respect, legal certainty—inherent to effective judicial protection—must be made compatible with the principle of judicial autonomy, so that judges are not prevented from freely interpreting the laws applicable to the cases before them. While the application of dissimilar legal reasoning by a single judicial or administrative authority in situations that share the same substantive and procedural characteristics can create a situation of legal uncertainty incompatible with Article 25.1 of the Convention, the IACHR is of the opinion that the facts alleged by the petitioner do not *prima facie* constitute such a situation.”²⁶³

309. [Gender affirmation surgery of transgender persons in public hospitals] “The petitioners argue that the State's refusal to perform Ms. Melinho's gender affirmation surgery at a public hospital, its refusal reimburse her for the expenses of the surgery performed in a private hospital, and its refusal to grant her any compensation for the alleged moral damages, constitute violations of Articles 1, 4, 5, 8, 11, 24, and 25 of the American Convention [...]

The jurisprudence of the inter-American system has already established that sexual orientation, gender identity and non-discrimination on the grounds of gender identity are essential components of people's private lives. The right to privacy guarantees spheres of intimacy that neither the State nor anyone else can invade, such as the ability to develop one's personality and aspirations and to determine one's own identity,

²⁶¹ IACHR, Report No. 39/16, Petition 196-01. Admissibility. José Alberto Picciotto. Argentina. August 31, 2016, paras. 4, 37 and 39.

²⁶² IACHR, Report No. 31/16, Petition 326-03. Admissibility. Aristides Soto Soto and family. Honduras. July 22, 2016, paras. 37-39.

²⁶³ IACHR, Report No. 26/16, Petition 932-03. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, paras. 35 and 36.

as well as areas of activity that are personal and autonomous, such as decisions, interpersonal relationships, and home and family.

[...]

The Commission also notes that both CFM-BR resolutions require that medical supervision be conducted for a minimum of two years, but neither sets a maximum period for this supervision nor allows for a shorter term under particular circumstances. In this regard, the Commission notes that in the case of Schlumpf vs. Switzerland, the European Court of Human Rights, upon analyzing the imposition of objective deadlines for the performance of gender affirmation surgeries with no regard for the individual circumstances of each case, said that imposing such limits may lead to a violation of the right to privacy.

In the case at hand, when the domestic courts claim that the alleged victim could have gone to another public hospital and that she failed to do so because she did not want to restart the two-year medical supervision period, they seem, *prima facie*, to fail to take into account the individual circumstances of the alleged victim.

Given the above, and in view of the facts and laws submitted by the parties and the nature of the matter before it, the Commission considers that, if proven, the allegations could characterize possible violations of the rights protected by the American Convention, Articles 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 24 (right to equal protection) and 25 (right to judicial protection), in concordance with Articles 1.1 and 2 thereof.

Additionally, the IACHR will consider at the merits stage whether the allegations, if proven, could constitute a violation of Article 26 (progressive development) of the American Convention.”²⁶⁴

310. [Violation of the right to life by attempt, even if the alleged victim did not die] “[T]he Commission has ruled that violations of the right to life may be involved when a person was placed in a situation in which his or her life was at risk; accordingly, at the merits stage of this case, the Commission will analyze the possible application of Article 4 of the American Convention.”²⁶⁵

311. [The use of criminal law as a mean to suppress the freedom of speech] “The petitioners asserted that the imposition of a criminal conviction and civil penalties against the journalists and directors of a newspaper for having published an opinion column on a matter of significant public interest based on the argument that the opinion column constituted the offense of “serious criminal defamation of an authority” violates Article 13 of the American Convention to the detriment of the alleged victims.

The Commission is of the opinion that the petitioners’ arguments concerning the potential violation of the rights enshrined in Articles 13, 8, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof, are not manifestly groundless.”²⁶⁶

312. [Murder of journalist] “[T]he petitioner alleged that the journalist Mario Coelho Filho was murdered as a result of exercising his right to freedom of expression after suffering serious death threats over reports that he was publishing in the newspaper A Verdade. These threats have been publicly reported in a timely manner, yet the journalist did not receive protection. The petitioner also stated that the investigations and criminal proceeding carried out to determine the mastermind in the case were seriously flawed. This includes the failure to hear testimony from the perpetrator of the murder despite the fact that he was in State custody. The petitioner also alleged that despite the conviction of the perpetrator of the crime in May of 2007, the State has not taken additional measures to exhaust lines of investigation connected to the journalism work of the alleged victim, determine motives for which the journalist was murdered, and to identify the mastermind behind the crime. Finally, the petitioner stated that the relatives of the alleged victim had been the victims of threats during the investigations carried out in this case.

In view of the elements of fact and law presented by the parties and the nature of the matter under consideration, the Commission finds that, should they be proven, the facts alleged by the petitioner could represent violations to the rights to life, fair trial, and judicial protection as protected by Articles 4, 8, and 25, of the American Convention. Likewise, the conclusion can be reached from the character of the facts alleged in the petition that they could represent violations of Article 5(1) of the American Convention with regard to the

²⁶⁴ IACHR, Report No. 11/16, Petition 362-09. Admissibility. Luiza Melinho. Brazil. April 14, 2016, paras. 48-49 and 53-56.

²⁶⁵ IACHR, Report No. 18/16, 1208-07. Admissibility. Carlos Manuel Camacho Coloma and family. Ecuador. April 15, 2016, para. 36.

²⁶⁶ IACHR, Report No. 66/15, Petition 1436-11. Admissibility. Emilio Palacio Urrutia et al. (El Universo Newspaper). Ecuador. October 27, 2015, paras. 50 and 52.

relatives of the alleged victim. The Commission shall examine the merits of the possible violation of these provisions in light of the general obligation enshrined in Article 1(1) of the Convention.”²⁶⁷

313. [Arbitrary levying of a tax debt] “[A]lthough in none of the judicial decisions rendered by criminal or fiscal courts expressly stated that the petitioner was coerced into agreeing to pay the sums that the Secretariat of Finance deemed that he owed, it becomes clear to an outside observer that the fact that he had to accept the tax debt while incarcerated put him in a situation in which it could not reasonably be expected that he would opt not to accept it. Therefore, as already indicated, it is incumbent upon the Commission to analyze, in the merits phase, whether in response to the tax claims submitted by the petitioner the competent courts acted in accordance with Articles 8 and 25 of the American Convention.”²⁶⁸

314. [Judges’ freedom of expression] “According to the information provided by the petitioner, the Commission considers that the complaint regarding the imposition of a disciplinary measure against Judge Daniel Urrutia as a result of having sent the Supreme Court of Justice his ideas in an academic paper, subject to sanction under Article 323(4) of the Organic Code of Courts prohibiting ‘*publishing, without authorization from the President of the Supreme Court, writings in defense of one’s official conduct or attacking in any way the conduct of other judges or magistrates,*’ could constitute, upon study of the merits, a violation of Article 13 of the American Convention in connection with Articles 1 and 2 of the same instrument. The Commission considers necessary to analyze in a merits stage whether the standard applied is consistent with the principle of legality, a principle that must be observed in the context of disciplinary proceedings, since otherwise this could constitute a violation of Article 9 of the Convention.”²⁶⁹

315. [Sexual assault on a journalist] “[T]he claim under review presents a number of alleged violations of the rights of the alleged victim; that reportedly began with threats in 1998 and her kidnapping and sexual assault on May 25, 2000; the subsequent threats and attacks that cause her to leave the country; the alleged lack of adequate protection with regards to these events, as well as the alleged failure to administer justice that reportedly extend to the present. According to the petitioner all these events give rise to the State’s international responsibility, either for its actions or its omissions. Therefore, in view of the elements of fact and law submitted by the parties and the nature of the case submitted to its review, the Commission deems that, if proven, the petitioner’s allegations about the scope of the alleged responsibility of the State in the incidents set forth in the petition could tend to establish a violation of the rights enshrined in Articles 4, 5, 7, 8, 11, 13, 17, 22, 24 and 25 of the Convention to the detriment of Jineth Bedoya Lima, in relation to articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Convention of Belém do Pará. The Commission shall examine the merits of the possible violation of these provisions in the light of the general obligation enshrined in Article 1(1) of the Convention, as well as the obligation to adopt measures under domestic law in accordance with the provisions of Article 2 of the American Convention.”²⁷⁰

316. [Reparation to human rights violations as an autonomus right] “[T]he Commission is of the view that the right to reparation for human rights violations, specifically with respect to the right to liberty, is an autonomous right, thus it exists independent of the domestic law and is part of the international responsibility of the State with respect to the violative conduct of its agents. The Commission observes that in the instant petition it is alleged that the domestic system does not provide for the possibility of reparation for the victims of “release under surveillance” in those cases in which there is no written order emanating from the Executive. Therefore, the Commission considers that it should analyze, in the merits phase, whether the domestic system offered adequate remedies for seeking reparation in the instant petition.”²⁷¹

²⁶⁷ IACHR, Report No. 74/14, Petition 1294-05. Admissibility. Mário de Almeida Coelho Filho and family. Brazil. August 15, 2014, paras. 48 and 49.

²⁶⁸ IACHR, Report No. 64/14, Petition 806-06. Admissibility. Laureano Brizuela Wilde. Mexico. July 25, 2014, para. 45.

²⁶⁹ IACHR, Report No. 51/14, Petition 1389-05. Admissibility. Daniel Urrutia Labreaux. Chile. July 21, 2014, paras. 27 and 28.

²⁷⁰ IACHR, Report No. 50/14, Petition 779-11. Admissibility. Jineth Bedoya Lima. Colombia. July 21, 2014, paras. 50 and 51.

²⁷¹ IACHR, Report No. 45/14, Petition 325-00. Admissibility. Rufino Jorge Almeida. Argentina. July 18, 2014, para. 58.

317. [Lawsuits in civil court arising from freedom of speech matters] “The petitioner argued that imposition of a sanction on a newspaper that published true information about a matter of relevance to the community had violated the provisions of Article 13 of the American Convention to the detriment of the newspaper’s editor-in-chief. The petitioner also maintained that the law used as the basis for the sentence is ambiguous.

In the merits phase of the instant case the Commission must decide whether the civil penalty impugned by the petitioner did or did not satisfy the requirements established in Article 13 of the American Convention in order to be characterized as a legitimate restriction on the right to freedom of thought and expression of the editor-in-chief of the penalized newspaper. To do that, the Commission must determine whether the Convention’s requirements for imposing subsequent liability for the abuse of the right to freedom of thought and expression have been met.”²⁷²

318. [Transfer of detainees to remote locations] “[T]he distance between a person’s place of residence and the facility where he or she is incarcerated constitutes one of a set of conditions of detention of that person. In the instant case, the transfer of the alleged victims to places distant from their place of residence could constitute a disproportionate measure that could unjustifiably worsen their incarceration, and could constitute a real obstacle to the maintenance of family ties. Therefore, at the merits stage, the Commission must determine if the application of this measure in fact has infringed the rights to humane treatment and the rights of the family provided for by the American Convention.”²⁷³

319. [Indirect censorship] “From the information and allegations presented by the petitioner, it can be deduced that Radio Estrella del Mar was denied access to electrical power provided by the Municipality free of charge under the restricted extended-hours system, that is, from eight o’clock in the morning until twelve o’clock at night. This decision, according to the petitioner’s allegations, was motivated by the Mayor’s animosity towards the radio station and generated inequality amongst the various communications media in Melinka, since the two television channels and the municipal radio station continued to receive the extended-hours electrical service. In the petitioner’s opinion, there was no reason that could reasonably justify this decision. Finally, he affirms that the decision seriously prejudiced the functioning of the radio station and had a silencing effect upon all of the communicators who work there.

The Commission considers that, taking into account the allegations and the information provided, there could be a possible violation of the alleged victims’ rights to freedom of expression and equality before the law. In effect, if the allegations regarding the arbitrary restriction of access to extended-hours electrical service, motivated by the editorial line of the radio station, can be proven, these facts could constitute a violation of Articles 13 and 24 of the American Convention.”²⁷⁴

320. [Freedom of speech and union leaders] “It can be deduced from the information and allegations presented by the petitioner that Mr. Alfredo Lagos del Campo was dismissed from his job at the Ceper-Pirelli S.A. company for allegedly having made statements to the newspaper La Razón in which he was said to have used negative descriptions in referring to the company and to his co-workers. Mr. Lagos del Campo denied responsibility for these statements and alleged that they are the responsibility of the journalist who wrote the article. [...]

Moreover, the petitioner was allegedly dismissed for having expressed certain opinions that the company in which he worked considered to be defamatory. According to what was alleged by the State itself and as it appears from the documentation in the file, the dismissal was based on Article 5(h) of Law 24.514, which classifies the injury of an employer as a “serious offense.” Bearing in mind the petitioner’s position as union leader and inter-American jurisprudence in the area of freedom of expression, the Commission believes, based on the principle of *iura novit curia*, that it is appropriate to study the merits of the case in order to identify whether the published statements for which the petitioner was dismissed were protected by Article 13 of the American Convention, that is, whether the dismissal occurred as a result of the legitimate exercise of

²⁷² IACHR, Report No. 72/11, Petition 1164-05. Admissibility. William Gómez Vargas. Costa Rica. March 31, 2011, paras. 48 and 50.

²⁷³ IACHR, Report No. 3/11, Petition 491-98. Admissibility. Néstor Rolando López and others. Argentina. January 5, 2011, para. 39.

²⁷⁴ IACHR, Report No. 171/10, Petition 578-03. Admissibility. Miguel Ángel Millar Silva and others. Chile. November 1, 2010, paras. 34 and 35.

his right to freedom of expression or whether, to the contrary, the statements fall outside the realm of protection of that right and therefore the work-related sanction imposed on him is not objectionable.”²⁷⁵

321. [Right to property regarding pensions] “[T]he Jurisprudence of the Inter American System has established that the patrimonial damage caused by the State’s non-compliance with the judgments that were intended to protect the right to a pension in some circumstances could characterize a violation of the right to property.”²⁷⁶

322. [Right to adequate housing] “As regards the alleged violation of Article 26 of the American Convention, the IACHR has ruled [...] that the right to adequate housing comes within the scope of that provision. Additionally, the Inter-American Commission has determined that the obligation derived from Article 26 of the American Convention, means a correlative obligation not to back down in the advances achieved in this matter. That is the non-regressive obligation developed by other international organisms and understood by the IACHR as a State obligation which compliance can be analyzed by the [Inter-American] Commission through the individual petition system enshrined in the Convention.”²⁷⁷

323. [Access to public information] “Ana Andrea Tuzcek Fries and Miguel Ignacio Fredes González, among others, filed an information request with the Servicio Agrícola y Ganadero [the Agriculture and Livestock Service] (hereinafter ‘the SAG’), which is a department of the State’s Ministry of Agriculture. [...] To make it easier to locate the [certain] information [...] the national director of the SAG did not answer the request within the time period stipulated in [the] Law. [...] The alleged victims filed a civil action of ‘Amparo seeking protection of the right of access to public information.’ The action was filed in Santiago’s 26th Civil Court against the SAG, and invoked, inter alia, the right of access to information, upheld in Article 13 of the American Convention. [...] [Thus], Santiago’s 26th Civil Court ruled in favor of the petitioners. [...] [T]he SAG and the Asociación Nacional de Productores de Semillas A.G. de Chile [Chilean National Seed Producers Association A.G.] filed an appeal challenging the ruling of the court of first instance. [T]he Santiago Court of Appeals reversed the ruling of the court of first instance. The appellate court held that ‘disclosure and the right to request information not permanently available to the public only applies in the case of government records and documents that are used as the direct and essential basis or support for the SAG’s administrative actions and not just any background information that the government has on file concerning its measures or activities.’ [...] [and ruled that] disclosure and access to information ‘only concerns businesses that provide public services’. [...]

For the Commission, the issue in the present case is whether the State’s conduct [...], compromised the alleged victims’ rights under the American Convention, particularly the right protected under Article 13. [...] In the Commission’s opinion, the arguments made by the petitioners and the State regarding the alleged violation of the right of access to information pose a legal question that could tend to establish a violation of the rights protected by Article 13 of the American Convention, in relation to articles 1(1) and 2 thereof.”²⁷⁸

324. [Right to appeal a criminal conviction] “[O]ne essential aspect of due process is the right to have a higher court examine the legality of all judicial decisions that result in an irreparable harm or when that harm affects fundamental rights and liberties, such as personal liberty. In this regard, should the alleged inefficacy of the legal remedies available to request legal review, by a higher court, of the judgments and other relevant proceedings in the framework of the process that led to the revocation of Mr. Lynn’s temporary release benefit be proven true, for the purpose of establishing whether the director of the correctional institute or the enforcement judge did indeed incur in violations of procedural guarantees or other rights, it could constitute a violation of Article 25 of the American Convention.”²⁷⁹

325. [Killings of Human Rights advocates] “[T]he alleged victim’s death was her activities as a union leader, and that her execution-style killing was for intimidation and a display of power. The

²⁷⁵ IACHR, Report No. 152/10, Peticion 459-97. Admissibility. Alfredo Lagos del Campo. Peru. November 1, 2010, paras 33 and 38.

²⁷⁶ IACHR, Report No. 106/10, Petition 147-98. Admissibility. Oscar Muelle Flores. Peru. July 16, 2010, para. 36.

²⁷⁷ IACHR, Report No. 38/10, Petition 1198-05. Admissibility. Ivanildo Amaro Da Silva and others. Brazil. March 17, 2010, para. 41.

²⁷⁸ IACHR, Report No. 14/09, Petition 406-03. Admissibility. Miguel Ignacio Fredes Gonzalez and Ana Andrea Tuzcek Friez. Chile. March 19, 2009, paras. 7 to 14, 54 and 55.

²⁷⁹ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 51.

Commission observes that a violation of a human rights defender's right to life has a particularly strong impact that extends well beyond the immediate victim. Such acts instill fear in other human rights defenders, directly curtailing their chance of exercising the right to defend human rights."²⁸⁰

326. [Difference between administrative and criminal law] “[C]riminal law, and administrative/disciplinary law, serve entirely different purposes. Criminal law is designed to pass judgment and, where appropriate, to punish those responsible for perpetrating crimes or criminal offenses established under the pertinent criminal codes. In contrast, administrative/disciplinary law is designed to determine official responsibility and if necessary to discipline government employees who fail to fulfill their duties in accordance with pertinent staff regulations. In this respect, the Commission believes that while the guarantees of legal due process should be applied in both legal systems, the latter are nonetheless separate entities and one particular fact or situation may be analyzed from the perspective of criminal law as well as from the perspective of disciplinary law, inasmuch as the two approaches are designed to achieve different objectives and entail the application of different standards for the assessment of the challenged conduct.”²⁸¹

327. [Gender-based discrimination] “Furthermore, it considers that the alleged facts would constitute possible violations to Article 24 of the American Convention, in connection with Article 1(1) of said instrument. The IACHR observes that the petitioners allege that the facts described have occurred in a context of impunity toward violent acts by the administration of justice, which affect women disproportionately as a group and promotes the repetition of these acts. Within this context of impunity, attitudes from justice officials based on sociocultural discriminatory concepts that affect mostly women are claimed. This pattern of impunity has been observed by the IACHR Rapporteurship on the Rights of Women.”²⁸²

328. [Labor conditions of judges and other judicial officials] “The Commission considers that in view of the importance of the stability of judges to ensure the independence and impartiality of the judiciary in a democratic society, even provisional, alternate, or temporary judges should enjoy minimal due process before being removed. The Commission believes that if the allegations are proven to be true, namely that the alleged victim was dismissed by an organ that was neither authorized to do so nor impartial, and that the guarantees of due process for challenging such a decision were not observed, these acts could characterize violations of Articles 8 and 25 of the American Convention, all of which would be considered in connection with the general obligations specified in Articles 1 and 2 of that instrument, in light of the case law of the inter-American system. The Commission is also of the opinion that in the event that the petitioner's allegations, to the effect that she did not have access to public office on conditions of equality, are proven to be true, they could also constitute violations of Articles 23.1.c and 24 of the American Convention. Finally, in view of the petitioner's allegations, it is important to point out that Article 29 of the Convention will be used in its entirety in this as well as in all matters, as a guide for interpreting the obligations of the State under the Convention.”²⁸³

329. [Failure to enforce a judgment] “Without prejudging the merits of the case, the Commission has previously decided that failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention, which sets forth the right to effective judicial protection.”²⁸⁴

330. [Killing of Human Rights activist (ecologist) known by the State to be at risk] “[I]t is the opinion of the Commission that Article 4, in connection with Article 1(1) of the American Convention, implies a duty of full protection which not only requires that no person should be deprived arbitrarily of his or her life (negative obligation), but that also requires the States to take all appropriate measures to protect and preserve the right to life (positive obligation) as part of their duty to ensure full and free exercise of their rights by all persons under their jurisdiction. This is a duty which imposes on the State the obligation to efficiently investigate and punish those actions that could lead, by action or by omission, to the negation of

²⁸⁰ IACHR, Report No. 09/08, Petition 12.332. Admissibility. Margarida Maria Alves. Brazil. March 5, 2008, para. 53.

²⁸¹ IACHR, Report No. 105/06, Petition 32-01. Inadmissibility. Guillermo Jaulis Cancho. Peru. October 21, 2006, para. 44.

²⁸² IACHR, Report No. 92/06, Petition 95-04. Admissibility. María Isabel Véliz Franco. Guatemala. October 21, 2006, para. 52.

²⁸³ IACHR, Report No. 38/06, Petition 549-05. Admissibility. Mercedes Chocrón Chocrón, Venezuela. March 15, 2006, para. 40.

²⁸⁴ IACHR, Report No. 82/05, Petition 12.169. Inadmissibility. Efraín Ramírez Echeverría and Amílcar Mario Acosta Luna. Ecuador. October 24, 2005, para. 33.

the inviolability of the right to life. It also imposes the obligation to provide compensation to the relatives of the victims for the damages caused by said violations. In view of the aforementioned considerations, the facts of the instant case could constitute a violation of the obligation to respect rights derived from Article 4 of the Convention.”²⁸⁵

331. [Discretionary dismissal of public servants] “[T]he Commission will examine, during the merits stage, whether the standard established by the Convention would accord validity to a purely discretionary decision taken by the Chilean President, at the proposal of the General Director of the Carabineros, to dismiss a police officer, if such dismissal affects individual rights recognized in the American Convention and in the Chilean Constitution. Is a police officer entitled to due process in a disciplinary administrative procedure established by law, and does he have the right to defend himself against the charges presented? If the answer is affirmative, what are the guarantees required for due process? In addition, what purpose is served by guarantees of due process for the accused if the final decision on his dismissal can be taken by the President on purely discretionary ground? While the Commission recognizes that states have the jurisdiction to exercise certain discretionary powers in the course of government decisions and policies (for example, the appointment and removal of senior political figures such as cabinet ministers), the Commission must in this case determine whether, in light of the American Convention, those discretionary powers can be invoked in situations that involve the exercise of individual rights.”²⁸⁶

²⁸⁵ IACHR, Report No. 15/05, Petition 59-03. Admissibility. Carlos Escaleras Mejía. Honduras. February 24, 2005, para. 31.

²⁸⁶ IACHR, Report No. 57/05, Petition 12.143. Admissibility. Eduardo Perales Martínez. Chile. October 12, 2005, para. 36.