THE CONTRIBUTIONS OF HUMAN RIGHTS PROTECTION TO PEACEBUILDING AND CONFLICT PREVENTION IN THE AMERICAS

On the human rights and peace and security nexus in the Western Hemisphere

GLOSSARY

ACHR	American Convention on Human Rights
CIM	Inter-American Commission of Women
CSO	Civil Society Organisation
DECO	Department of Electoral Cooperation and Observation
ECHR	European Convention on Human Rights
GA	General Assembly
GBV	Gender-Based Violence
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IACPPT	Inter-American Convention to Prevent and Punish Torture
IAHRS	Inter-American Human Rights System
IAP	Inter-American Program on Women's Human Rights and Gender Equity and Equality
ICC	International Criminal Court
IHL	International Humanitarian Law
LGBTI	Lesbian, Gay, Bisexual, Transgender/Transsexual, Intersex
MAPP/OAS	Mission to Support the Peace Process in Colombia
MESECVI	Follow-Up Mechanism to the Belém do Pará Convention
MESENI	Special Follow-up Mechanism for Nicaragua
MESEVE	Special Follow-up Mechanism for Venezuela
OAS	Organisation of American States
OHCHR	United Nations Office of the High Commissioner for Human Rights
PC	Permanent Council
R2P	Responsibility to Protect
SFHR	Swedish Foundation for Human Rights
SG	Secretary General
UN	United Nations
WPS	Women, Peace and Security

CONTENTS

"The Organization of American States, in order to put into practice the principles on which it is founded and to fulfil its regional obligations under the Charter of the United Nations, proclaims the following essential purposes: […] To achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States."

Charter of the Organisation of American States, article 2(h).

EXECUTIVE SUMMARY

The nexus between human rights and peace and security occupies a central position in the work of the Swedish Foundation for Human Rights as its pillars include the redress for grave human rights violations, rule of law, and transitional justice. This report on the Americas is the second in a series of studies to come, examining the role of the different regional human rights systems for peace and security. The first report "Silencing the Guns in Africa" was launched in 2020, and the third report on Europe will be presented in 2022.

Even though the normative framework of the Organisation of American States (OAS) does not include an explicit writing of the right to peace, the OAS Charter, the different treaties on peace and security, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and the different special conventions on human rights, as well as the Inter-American Democratic Charter, all contribute to a notion of a right to peace in the Americas. Under the umbrella of the OAS we find a whole range of instruments, of which many are analysed in this report. Additionally, the central objective for the very founding of the predecessor to the OAS was to prevent armed conflict in the Americas.

Looking at the OAS Charter, the promotion of peace and security is an integral part of the organisation's purpose and guiding principles. Already article 1 states that the central objective of the OAS is to "achieve an order of peace and justice". Although the framework of the Charter is focused on states and inter-state conflicts, the Charter also touches upon the rights and freedoms of individuals as it proclaims that stability, peace and development of the region is achieved through representative democracy and juridical organisation and links the protection and fulfilment of rights and freedoms to the achievement of true peace.

Having said this, the principles of non-intervention and state sovereignty have been as central to the region and the OAS as has the promotion of peace and security. In practice, OAS member states and parties to its human rights treaties too often cite the principles of state sovereignty and non-intervention when receiving criticism on part of an OAS institution or political body, or on part of the Inter-American Human Rights System (IAHRS), despite the fact that such actions for the most part are a result of obligations and agreements entered into by the state itself in its capacity of a sovereign state. A critique is based on the failure to comply with these international obligations. Some examples of the latter is the recent walkout of the representatives of the Colombian state in the *Bedoya Lima et al v Colombi*a case, requesting the substitution of Court judges, as well as the non-compliance of protective measures on part of the Nicaraguan and Venezuelan states.

As for the American Convention on Human Rights, of particular importance in relation to conflicts are the non-derogable rights, including the right to life and the prohibition of torture, inhumane or degrading treatment. Even though the possibility exists to derogate from some responsibilities under the Convention in situations threatening the independence or the security of the state, such action much be limited in time and scope and reported to the other state parties through the Secretary General. Furthermore, of special importance has been article 29 which provides for the Court to also interpret the American Declaration and other treaties acceded by the state, customary law, as well as non-binding human rights instruments. This has been instrumental for the development of the IAHRS.

Looking at the mandates of the Inter-American Commission on Human Rights (hereinafter the Commission) and the Inter-American Court of Human Rights (hereinafter the Court), the toolbox available to the two institutions of the regional human rights system certainly contain a quite wide array of tools suitable for contributing to peace and security in the region. Although the nature of some work to a certain degree is reactive, as in the case of complaints and country visits, such actions can potentially contribute to avoid further escalation of conflict and human rights abuses,

as well as prevention of future events. These more long-term tools can also contribute to peace building and non-recurrence. This while the adoption of precautionary measures and provisional measures as well as press-notes are actions that can respond to on-going situations and contribute to early warning and conflict prevention.

When it comes to the Court, its possibilities to act are limited as it is dependent on the cases presented before it and also on the limited number of states (20) that have agreed to its jurisdiction. The Court can however also, as an immediate action, adopt provisional measures in relation to cases. Regarding its advisory function, the Court, at the request member states and OAS organs, can issue advisory opinions as to the compatibility of internal norms with the Convention, and on the interpretation of the Convention or other treaties concerning the protection of human rights in the American states. This, in theory, would allow for example the OAS Permanent Council to ask for an advisory opinion regarding a particular issue or situation. Also the Commission has the function of acting as a consultative organ to the OAS and to member states.

Apart from these tools, the OAS Permanent Council can also request the Commission to conduct investigations on the human rights situation in member states. In general, the regional human rights system could be used as an expert resource in all matters related to peace and security and in any peace and security effort – as has been the case in the MAPP/OAS-mission in Colombia.

The reports produced by the Commission create an opportunity to interact with other parts of the OAS, and in particular the Permanent Council, as for example when presenting the reports on the situation in Nicaragua to the Permanent Council on several occasions after the outbreak of protests in 2018, contributing information on the context, and to discussions. Also the annual reports of the Court and the Commission, presented to the OAS General Assembly, at least in theory offer an opportunity for the IAHRS and the General Assembly to interact.

When it comes to Women, Peace and Security (WPS), the same tools could be used for advancing the WPS-agenda. Additionally, important for the WPS-agenda would be increased cooperation between the Inter-American Commission of Women, the Rapporteur on the Rights of Women and the Rapporteur on the Rights of Children, as well as the Follow-up Mechanism to the Belém do Pará Convention (MESECVI). In comparison to the African Union, the OAS does not count with an equivalent of its Special Envoy on Women, Peace and Security.

The report describes and deliberates on quite an array of measures taken by the Commission and the Court, related to peace and security. The IAHRS has contributed to accountability in cases when states have been unwilling to investigate and prosecute, advanced the rights of victims and their families to truth, justice and reparations, declared amnesties for gross human rights violations unlawful, advanced jurisprudence of a wide range of rights and freedoms relevant for conflict prevention and the protection of human rights in conflict situations. It has contributed with analysis regarding the human rights situation in countries facing tension, social unrest and internal armed conflict, and provided protective measures to human rights defenders, social leaders, ethnic groups and others. This work has also included measures contributing to the Women, Peace and Security Agenda.

On balance, the Commission and the Court can be considered successful in their efforts to impact the member states' conduct in some areas. States for example often reach partial compliance with decisions of the Court. They tend to comply with softer aspects of orders, such as provision of psychological and medial support to the family of victims, while orders calling for criminal prosecution of military/security actors responsible for violations are more seldom met. However, the IAHRS has been acknowledged for its' impact beyond compliance in individual cases, for example empowering local actors and raising international attention and response to ongoing crises. Although it is difficult to evaluate the system's contributions to prevention and resolution of conflict, transition and

peacebuilding, an area where the IAHRS is recognised to have been particularly successful is transitional justice, including important recommendations, judgements and standards.

To have an impact, the IAHRS is dependent on the individual state's willingness to respect its mandates and authority. It is also dependent on the willingness of OAS member states as a group to defend its mandate and authority and to work for the compliance on part of all member states with their obligations under international law and their duties regarding the mandates and authority of the IAHRS. A first action is for states to recognise the jurisdiction of the Court – only twenty states have done so. A second action is for states to accede the different human rights treaties of the Americas and of the UN-system.

Looking at the impact of the IAHRS from another angle – asking what consequences non-compliance and non-action might have for conflict prevention and non-recurrence – some risks seem apparent. Lack of implementation of recommendations and judgements leads to a notion of failed political and judicial systems and the sense of judicial processes being non-inclusive and the state lacking separation of powers. This, together with other factors, we suggest, might be driving forces for conflict and, in transitional contexts, jeopardising non-repetition.

Over the years, criticism and concerns have been raised in relation to a low level of compliance with decisions of both the Commission and the Court, as one of the main problems impacting the effectiveness of the regional human rights system. Quantitative research has indicated that non-compliance with measures required by the IAHRS has been notably widespread and the Commission acknowledged that limited resources resulted in an unacceptable case backlog and in severe limitations in the analyses requested by the General Assembly, visits and other promotion activities, participation in proceedings before the Inter-American Court, difficulties in funding the Commission's third period of sessions, and restrictions in the functions of thematic rapporteurships.

However, this pessimistic picture, laid out by quantitative studies has been challenged by other researchers and practitioners, questioning the methodology, arguing for adding a qualitative lens to analysis. Moreover, the experience of most stakeholders engaging with the Court seems to suggest otherwise and contradict the critical assessments in terms of impacts in access to justice.

A central critique is the failure of quantitative research to take account of compliance as a dynamic process that evolves over time, as its logic is a binary compliance/non-compliance mind-set. Adding a qualitative approach to compliance also allows for understanding impact beyond compliance. As an example, the decisions of the Court, in some cases and countries, have led to additional and higher rank domestic prosecutions. In effect this means that the outcomes in terms of prosecutions might well be more important in scope, including the prosecution of those in power. This, in a Latin American context marked by impunity – especially regarding the intellectual authors behind gross human rights violations – has been an important outcome, which is not reflected by quantitative research.

As an example, the *Barrios Altos v Peru* case resulted in a catalytic effect where cases that had not reached the IAHRS, advanced at the national level. In fact, for two decades the Court intervened and assisted the Peruvian judiciary to ensure the effective prosecution and sanction of those bearing the highest responsibility in this and other similar cases. The effect also reached the former president Fujimori who became the first elected president to be convicted of crimes against humanity in his own country. Finally, all authors – intellectual and material – were prosecuted – the intellectual authors being high ranking government and military officials. On balance, the Court has played an important role for the prosecution of high-rank perpetrators and this should be taken into account when analysing its impact – not least considering that prosecuting a high-rank intellectual author is harder than a low-rank material author. Elaborating further on the effects of decisions by the IAHRS, it is evident that there

are results that go beyond compliance and that there is a need to analyse also the indirect effects of the IAHRS at the domestic level.

Looking at other challenges regarding quantitative analysis of compliance there are a number of factors that limit the reliability of such studies as to assessing the impact of the IAHRS. A first limitation concerns the notion of "partial compliance". The IAHRS uses three degrees of compliance being "compliance", "partial compliance" and "non-compliance". Of these, partial compliance is by far the most commonly registered status of compliance. Partial compliance can range from opening of a criminal investigation to a ruling that has not yet gained legal force, without making any distinction between the two – also this calls for a qualitative analysis. The low level of compliance indicated by a number of quantitative studies, which has made the IAHRS to be classified as an ineffective system can be contested also on other, seemingly paradoxical grounds. An order that is categorised as *partially complied* leaves the possibility of the Court to continue engaging in a case, supervising and redirecting actions that can be of significant value to accountability at the domestic level and reach even beyond the particular case and beyond compliance, as seen in the *Barrios Altos v Peru* case referred to above. In short, the use of these three categories oversimplifies the institutional and societal processes that are triggered by a decision of the IAHRS.

Another factor that has an impact on the reliability of quantitative studies is time. Quantitative studies tend to ignore this factor by not taking into account the amount of time that has passed since the adoption of the decisions – in other words valuing the non-compliance of a recent decision equal to one that is more distant in time. Furthermore, states' compliance with international legal orders takes time even when states are willing to implement.

In conclusion, there is an evident risk that researchers, practitioners and politicians use quantitative studies as references for the assessment of the impact of the IAHRS as figures are eye-catching and seemingly easy to use and relate to in comparison to qualitative data. However, while quantitative studies can be of important use, they can also be conveying an absolute but wrongful message if not complemented by qualitative analysis.

Apart from the IAHRS organs themselves, the international community, civil society and the OAS, all have important roles to play in order to increase compliance and ultimately the effectiveness of the Commission and the Court. Not least considering the political challenges currently facing the regional human rights system with member states questioning its legitimacy. Venezuela has withdrawn from the Court's jurisdiction, Ecuador and Peru have threatened to follow Venezuela's example and Nicaragua initiated the process of withdrawing from the OAS in 2021. Furthermore, Argentina, Brazil, Chile, Colombia and Paraguay have demanded reforms of the Commission in order to decrease the institution's interference in the countries' "internal business".

Inevitably, considering the findings, inserting the IAHRS in the current context of the Americas and the OAS, the question arises as to whether the IAHRS could play a more important role in relation to peace and security in the region and if the OAS could make greater use of its regional human rights system. There are a few prerogatives as to the functioning and effectiveness of the IAHRS, including the human and financial resources made available, the compliance of states with their international obligations, the cooperation of states in implementing its rulings, decisions and recommendations, and the support from states in terms of backing the mandate of the IAHRS. If the IAHRS is to play a greater role, these prerogatives needs to be delivered upon. In addition, there are some other determining factors related to the insertion of the IAHRS within the OAS.

Looking at reparations, the IAHRS has developed a practice of integral reparation which goes beyond the classic reparation of damage through compensation. This integral reparation also entails the judicial investigation, prosecution and punishment of those responsible, as well as

guarantees of non-repetition. While the first is important also in a wider rule-of-law-perspective, the latter often can provide measures for coming to terms with structural deficiencies that caused the harm. In those cases where a legal norm or the absence of a legal norm caused the violation, the state is ordered to repair the violation through legal reforms, the adoption of public policies or change of practice. Considering the importance of rule of law and the non-repetition of gross human rights violations also for peace and security and the non-recurrence of violent conflicts, the implementation of measures in the areas of judicial investigation, prosecution and punishment, as well as measures on non-repetition, must be considered as central for the purposes of this study.

While the Court and the Commission already spend considerable resources on the follow-up of state implementation of recommendations and measures ordered regarding cases, more needs to be done in this area. Also here, there has been a positive development in recent years. The complementarity of the Commission and the Court provides an incentive for states to comply with the recommendations of the Commission, and the Commission, through changes in rules and practice since 2000 has sought to capitalise on this, creating incentives for states to engage in friendly settlements as well as setting out a presumption in favour of submission to the Court whereas previously the submission to the Court had been the exception. This indirectly creates a greater access to the Court while also creating incentives for compliance before the Commission in order to avoid a process before the Court. Interestingly enough, looking at the Commission, the highest degree of implementation is seen in friendly settlements which is largely due to implementation being a part of the process. Also, maybe not surprising, the level of involvement of the petitioners actively advocating regarding implementation of recommendations and measures, is important for compliance.

As litigation before the IAHRS is a long-term engagement, adding the time of implementation to the overall time-frame, it demands a lot of patience and persistence of petitioners. Especially pursuing the implementation of measures of non-recurrence such as legal projects, public policy and practice, demands even greater persistence, resources, knowledge and engagement. Even though implementation should not be put as a burden on victims, considering their importance for the matter, a central factor for improving implementation could be the provision of legal aid to petitioners in the follow-up phase, and financing initiatives following-up on recommendations and measures regarding non-repetition.

The credibility of the OAS as a regional intergovernmental institution unfortunately still is affected by distrust, regional power imbalance and polarisation. Despite numerous peace operations, special missions and election observation missions, only to mention a few initiatives where the OAS has been involved and contributed to peace and security in the region – including in for example Nicaragua – the notion of power imbalance and polarisation persists.

The IAHRS – being a part of – but independent of the OAS, might be better positioned in terms of recognition as an independent and impartial body which would support the idea of a strengthened role for the IAHRS as to peace and security in the Americas – not least considering the importance of impartiality in this field of action. On a broader scale, international law, including human rights law and international humanitarian law as well as the IAHRS and other parts of the system of international law, can facilitate a framework for the context of peace and security; i.e. something to hold onto that can guide efforts and context analysis. There will of course always exist different opinions as to the interpretation of international law, which can produce controversy, but at least analysis can be guided by judgements and other contributions of these bodies, offering an objective legal opinion.

As part of this report we are looking at a few country examples related to peace and security and in doing so we have identified a number of examples showing interaction between the Commission and other parts of the OAS – mostly the Permanent Council. However, we have also identified

situations where there seems to be a lack of cooperation and interaction. In general, studies on the subject find that reports and other materials produced by the IAHRS often have not been used by other parts of the OAS and even less been taken into consideration in decision-making. This holds for country reports as well as annual reports and in relation to the General Assembly as well as the other political organs. In other words, while the release of reports have had an immediate effect on the knowledge on part of the international community and a preventive effect as to raising awareness and calling the attention of states to human rights violations and country situations, the political organs of the OAS have not discussed the reports extensively. This suggests that the interaction between the IAHRS and the political organs of the OAS mainly exists on an ad-hoc basis. There is reason to believe that the IAHRS could be of further support to the OAS, formalising the sharing of information and taking into account in its decision-making, the wealth of information produced within the IAHRS. It further suggests that the impact of the IAHRS could be greater, should such interaction be formalised.

Looking at the relationship with states, through the action of states in OAS' political organs, the region's polarised politics often has made it difficult for the OAS to make quick, decisive calls to action. Adding to this the U.S. hegemony, the lack of funding and an inadequately staffed organisation, the challenges are many. Considering history, the heavy weight on non-intervention and state sovereignty and insufficient funding – the question is if member states are interested in investing in a strong intergovernmental organisation or if they are content with an organisation that is struggling to make ends meet. In view of this context, and the financial restraints – not only affecting the IAHRS but the OAS as a whole – taking into account the different mandates and roles of the political organs and the human rights bodies and not compromising the independence and impartiality of the IAHRS, the effective use of its different parts and striving at greater coherency seems reasonable, but is not necessarily a priority for member states.

Turning to the contemporary country contexts relating to conflict situations discussed in the report, the IAHRS certainly has done a lot, but despite their efforts the situations in Venezuela and Nicaragua continue to be alarming and unresolved. The situation in Colombia in the context of implementation of the peace agreement is highly preoccupying, including the worrying levels of violence against and murders of human rights defenders and social leaders, forced displacements and armed violence.

The relationship between the Maduro and the Ortega regimes and the OAS is extremely frosty. While calling for the Permanent Council to invoke article 20 of the Democratic Charter – meaning the temporary suspension of the states from participating in the OAS – somehow was intended to embarrass Venezuela and Nicaragua, the response by the regimes was to leave the OAS. Seemingly, the threat of being suspended almost served as a welcomed excuse for leaving. The Venezuelan regime first denounced the American Convention and a few years later also the OAS Charter, and the Nicaraguan regime denounced the OAS Charter.

Bearing in mind that a number of critical situations that risk evolving into violent conflicts and even internal armed conflicts – potentially threatening hemispheric security – fall into a pattern combining human rights violations, democratic deficit, the abuse of political power and non-separation of powers as well as the perverse use of rule of law, there seems to be ground for increased cooperation between the IAHRS and the parts of the OAS working on the support of building democratic societies, including electoral support and elections observation. Mandates are of course different but the contexts are the same. This might also add to a notion of OAS as an organisation and a system where the parts are working in the same direction, while at the same time respecting the integrity and the independence of each institution.

Over the years, voices have been raised advocating for a more active role of the General Assembly in supporting and ensuring the implementation of recommendations, decisions and Court rulings, including by the adoption

of costly political sanctions against states that are reluctant to comply with the measures ordered. While states are informed of the status of implementation by the Court, states have, over the years, been reluctant to criticise each other for unwillingness to implement the decisions of the Court and to adopt sanctions on the same grounds – despite the fact that the Court has invoked article 65 of the Convention which provides for this possibility – only on a few occasions. Thus, this collective guarantee-system where the General Assembly is supposed to cooperate with the Court in order to ensure that its judgements do not become illusory, has not been delivered upon by states. In general, states have also been reluctant to adopt measures designed to increase the efficiency of the IAHRS.

On balance, even though the picture is mixed and complex, there is an opportunity for the IAHRS to play an increasingly important role for peace and security in the Americas in view of fragmented OAS political organs and the questioning of OAS impartiality, historically leaning towards and identified as a U.S. ally. This potential role of the IAHRS however, requires the active, consistent and universal support by OAS member states and state parties to the American Convention to the mandates of the IAHRS, as well as willingness to dedicate resources and adopt measures to increase the efficiency and impact of the system. In the context of the notion of Responsibility to protect, such active support to the continuous development of the IAHRS would constitute a most important and relevant measure as to fulfil the obligation to protect in the Americas and as such also enhancing conflict prevention and state sovereignty.

INTRODUCTION

The nexus between human rights and peace and security occupies a central position in the work of the Swedish Foundation for Human Rights (SFHR) as its pillars include the redress for grave human rights violations, rule of law, and transitional justice. In line with this mandate, the SFHR in 2018 conducted a study on the nexus between human rights and peace and security in Swedish development cooperation – examining policy documents and strategies.

Following many years of interaction with the regional systems for human rights in Africa and the Americas, a publication outlining the central characteristics of the two systems was published in 2017. The present series of studies is a continuation of this work – taking stock of accumulated experience – combining the role of human rights for peace and security, and the role of regional human rights systems. This report is the second in a series of studies to come, examining the role of the different regional human rights systems for peace and security. The first report "Silencing the Guns in Africa" was launched in 2020, and the third report, on Europe will be presented in 2022.

Focusing on the Inter-American Human Rights System (IAHRS) and the Organisation of American States (OAS) is relevant for a number of reasons. The IAHRS has a long and rich history of dealing with gross violations of human rights in the context of internal armed conflict and has contributed to the development of transitional justice in the region and globally. The OAS has also been an important player for peace and security in the region through its different peace missions, diplomatic efforts, electoral support, and election observation missions.

In the last few years, the Western Hemisphere has seen a number of crises – often connected to elections and the deterioration of rule of law and separation of powers. These crises also have important implications for the region – as for example the regional refugee flows generated by the situations in

Venezuela and Nicaragua. This while the civil unrest seen in Chile and Colombia and the two states' use of force in those cases raises questions of proportionality and the right to protest. As for the whole region, shrinking civic space and violence against human rights defenders, environmental rights defenders, social leaders and ethnic groups are also issues of great concern. The IAHRS and the OAS Permanent Council have had to deal with a number of complex situations threatening peace and security and human rights in a variety of countries, eventually risking to spill over to the region. The Inter-American Commission on Human Rights, as a response has – inter alia – set up special follow-up mechanisms for Venezuela, Bolivia and Nicaragua, and conducted in-country visits to Chile and Colombia.

Further, as an intergovernmental organisation, the OAS struggles with its legacy of having been dominated by the US and the constant accusations of serving "the empire". Cuba has chosen not to reintegrate, after having been suspended in 1962 and re-invited in 2009, Venezuela communicated its withdrawal from the OAS in 2017 and Nicaragua did the same in 2021. This while the IAHRS has been facing severe budgetary constraints and has also been under attack by states wanting to restrict its mandate. Considering this, the OAS slogan and goal "More Rights for More People", certainly is under pressure. Its vision is dependent on the national and regional development in a wide range of sectors which can be englobed by the human rights framework.

In a wider perspective, the Agenda 2030 through its Sustainable Development Goal 16 "Peace, justice and strong institutions" makes for a clear nexus between human rights and peace and security. Hopefully, in the same spirit, this study can bring some important contributions to ways at breaking the silos between human rights and peace and security in the Americas – looking at the challenges that can be found in the region as well as solutions and best practice.

The full enjoyment of human rights without peace is as unthinkable as the full enjoyment of peace without human rights.

METHOD AND DELIMITATIONS

Method

This study was primarily conducted through an analysis of primary and secondary written sources. Interviews with relevant stakeholders were made both at the initial stages of research, in order to orient the study, and further on in the process. Interviews were made through virtual meetings. A complete list of interviewees can be found under the list of sources. The report also benefitted from the outcomes of a seminar held in April 2021 and a round-table discussion on the report draft in December 2021 – both organised as a part of the research project.

Delimitations

The mandate of the Organisation of American States (OAS) on peace and security as well as human rights, is shared with the UN. While the two institutions generally collaborate in their responses to conflict situations in the Americas, the UN bears the primary responsibility for the maintenance of international peace and security. This relationship is relevant for the report matter. However, due to the necessity of delimiting the study to a doable approach, the intersection and complementarity between the UN and the OAS is not studied in detail. This is also true for the sub-regional intergovernmental organisations of the Americas which also are not part of this study.

THE ORGANISATION OF AMERICAN STATES

The Organisation of American States (OAS) was established in 1948 by 21 nations of the hemisphere. Its predecessor, the International Bureau of the American Republics (later renamed to the Pan American Union) was agreed upon already in 1890, making it the oldest regional intergovernmental organisation in the world. A central objective for the founding conference in 1890 was to prevent armed conflict in the Americas. The Ninth International Conference of American States, meeting in Bogotá in 1948, with the participation of 21 states, adopted the Charter of the Organization of American States, the American Treaty on Pacific Settlement[1] (Pact of Bogotá), and the American Declaration on the Rights and Duties of Man.[2]

The Conferences of American States met at varying intervals until, in 1970, they were replaced by the sessions of the OAS General Assembly. There were also meetings of Ministers of Foreign Affairs and special meetings, such as the 1945 Conference on Inter-American Problems of War and Peace in Mexico City, to discuss joint activities to be undertaken by the American States consistent with the United Nations, which was then in the process of being established, or the Inter-American Conference for the Maintenance of Continental Peace and Security, convened in Rio de Janeiro in 1947, which adopted the Inter-American Treaty of Reciprocal Assistance, in order to ensure legitimate collective self-defence in the event of an attack from a foreign power from outside the region and to decide on joint actions in the event of a conflict between two state parties to the treaty. Prior to this, numerous agreements were adopted that established the basic principles of what would later become the OAS. In 1923, the Fifth International Conference of American States (Santiago, Chile) adopted the Treaty to Avoid or Prevent Conflicts Between American States (Gondra Treaty).[3] The Gondra Treaty is significant since it was the first positive effort to establish, on a contractual basis, a procedure for preventing conflicts.[4] In 1933, the Seventh International Conference of American States (Montevideo, Uruguay) adopted the Convention on the Rights and Duties of States, which reaffirmed the principle that states are juridically equal, enjoy the same rights, and have equal capacity in their exercise; reiterated the principle of non-intervention, and underscored the obligation of all states to settle any differences that might arise between them through recognised pacific methods.[5]

The Inter-American Conference for the Maintenance of Peace (Buenos Aires, 1936) adopted the Convention for Maintenance, Preservation and Re-establishment of Peace[6] (Consultative Pact), which installed a procedure of consultation in case of threat to peace. These principles were later incorporated into the OAS Charter of 1948.[7]

The conference also adopted the Additional Protocol Relative to Non-Intervention[8] which reiterated the principle of non-intervention – that no state has the right to intervene in the internal or external affairs of another.[9] Additionally, the Treaty on the Prevention of Controversies[10] created mixed, bilateral commissions, which would serve as a *preventative system*, specifically to study and work to prevent any future controversies that might arise and to suggest lawful measures to promote the regular application of treaties, as well as good relations.

Finally, adopted at the same conference, the Inter-American Treaty on Good Offices and Mediation[11] outlined that state parties could turn to the good offices or the mediation of an eminent citizen of one of the American countries, who would be selected from a list of persons elected by American States.

In this spirit, throughout the years, the OAS has served as a political forum for multilateral dialogue and action. In broad terms, its major concerns have been the promotion of democracy, human rights, peace and security, trade, and development. The OAS is the umbrella and governing body for many inter-American committees and specialised organisations, including the Pan American Health Organisation, the Inter-American

Commission on Human Rights (hereinafter the IACHR or the Commission), and the Inter-American Agency for Cooperation and Development. An Inter-American Court of Justice was proposed in 1923 but has never materialised, even though there was a precedent in the form of the Central American Court of Justice, which functioned from 1907 to 1918.

Since its creation, the OAS has expanded to include all 35 independent countries of the Americas. The Cuban government was excluded from participation in 1962 but at the thirty-ninth regular session of the General Assembly (San Pedro Sula, Honduras) the decision was revoked and Cuba was invited to participate again.[12] Cuba does however not as of December 2021 count with a Permanent Mission to the OAS. Moreover, the government of Venezuela notified the OAS of its withdrawal from the organisation in 2017 and Nicaragua did the same in November 2021. However, regarding the status of Venezuela, since Juan Guaidó – recognised by the Venezuelan National Assembly as the acting president after Venezuela's presidential crisis in 2019 – annulled the country's denunciation, the status of Venezuela's membership remains unclear.[13] In effect though, for the representation to the OAS, Juan Guaidó's cabinet has assigned a Permanent Mission to the OAS.

The four official languages of the OAS are English, Spanish, French and Portuguese.

Political structure

General Assembly

The General Assembly (GA) is the supreme organ of the OAS and comprises the delegations of all member states. The mechanisms, policies, actions, and mandates of the OAS are determined by the General Assembly, and its functions are defined in chapter 9 of the OAS Charter. Article 57 of the Charter provides that "the General Assembly shall convene annually during the period determined by the Rules of Procedure and at a place selected in accordance with the principle of rotation" and Article 58 goes on to state that "in special circumstances and with the approval of two thirds of the Member States, the Permanent Council shall convoke a special session of the General Assembly." All member states are represented at the General Assembly and have the right to one vote.

The ordinary sessions of the General Assembly are convened focusing on a specific topic. In relation to peace and security, the session in Lima in 2010 had a focus on "Peace, Security and Cooperation in the Americas" and the session in San Pedro de Sula in 2009 was labelled "Toward a Culture of Non-Violence".

Sessions are also an arena for interaction of the GA with the IACHR and the Inter-American Court of Human Rights (hereinafter the IACtHR, or the Court) where reports from the two organs are considered. Some critics have been made arguing that the Court and the Commission are granted too little time and attention during GA sessions, recommending a reform in this matter.[14]

Permanent Council

The Permanent Council (PC) reports directly to the General Assembly and has the powers assigned to it by the Charter and the other inter-American instruments and the functions entrusted to it by the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs (discussed below). The PC is the governing and controlling organ of the OAS and acts as its Preparatory Committee.

The Permanent Council is composed of one Permanent Representative of each member state, especially appointed by the respective government, with the rank of Ambassador. The offices of chair and vice chair are held by each of the permanent representatives, in turn, running for three months at a time. The Assistant Secretary General is the secretary of the Permanent Council.

In relation to peace and security, the Permanent Council holds the mission to keep vigilance over the maintenance of friendly relations among member states and, for that purpose, effectively assists them in the peaceful settlement of their disputes.

The PC shall carry out those decisions of the General Assembly or of the Meeting of Consultation of Ministers of Foreign Affairs, the implementation of which has not been assigned to any other body. It watches over the observance of the standards governing the operation of the General Secretariat and, when the General Assembly is not in session, adopts provisions of a regulatory nature that enable the General Secretariat to carry out its administrative functions. At the request of the member states, it prepares draft agreements to promote and facilitate cooperation between the OAS and the United Nations and other inter-American institutions. It submits recommendations to the General Assembly with regard to the functioning of the OAS and the coordination of its subsidiary organs, agencies, and committees. It considers the reports of the organs, agencies, and entities of the inter-American system and presents to the General Assembly any observations and recommendations it deems necessary.

The Permanent Council further serves provisionally as the Organ of Consultation under Article 83 of the OAS Charter and under the provisions of the Inter-American Treaty of Reciprocal Assistance (Rio Treaty). It also considers any matter which the Secretary General may bring to its attention under Article 110 of the OAS Charter and Article 20 of the Inter-American Democratic Charter.

The permanent committees under the Permanent Council are the General Committee, the Committee on Juridical and Political Affairs, the Committee on Administrative and Budgetary Affairs, the Committee on Hemispheric Security, and the Committee on Inter-American Summits Management and Civil Society Participation in OAS Activities. The Council may also establish such special committees, subcommittees, and working groups as it deems necessary.

The Permanent Council holds regular, special, and protocolary meetings, in accordance with its Rules of Procedure.

Meeting of Consultation of Ministers of Foreign Affairs

The Meeting of Consultation of Ministers of Foreign Affairs is held in order to consider problems of an urgent nature and of common interest to the member states. Any member state may request to the Permanent Council that a meeting be called, according to the OAS Charter (article 60). The Permanent Council decides by an absolute majority whether a meeting should be held.

When one or more of the member states that have ratified the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) requests that the Meeting of Consultation be convened in accordance with Article 13 of the Treaty, the Permanent Council decides by the vote of an absolute majority of the states that have ratified the Treaty whether such a meeting should be held.

In case of an armed attack on the territory of an American state or within the region of security delimited by the treaty in force, the Chair of the Permanent Council shall without delay call a meeting of the Council to decide on the convocation of the Meeting of Consultation, without prejudice to the provisions of the Rio Treaty with regard to the states parties to that instrument. The Assistant Secretary General acts as Secretary of the Meeting of Consultation of Ministers of Foreign Affairs when the rules of procedure of the Meeting so provide.

As an example, on September 11, 2001, the OAS Foreign Ministers were meeting in Lima, to adopt and sign the new Inter-American Democratic Charter. Their response to the terrorist attacks in the USA was an immediate condemnation and a focus on a united hemispheric response. The OAS was the first international organisation to condemn the 9/11 attacks on the United States. Following the events, the signatories of the Rio Treaty met and declared that an attack against one member is an attack

against all and committed themselves to providing mutual assistance in the war against terrorism. On 21 September, the Foreign Ministers approved a resolution – "Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism" – calling on member states to take effective measures to combat terrorism.[15]

Inter-American Peace and Security Architecture

According to the Charter of the Organisation of American States, strengthening peace and security, preventing conflicts, and resolving disputes are among the essential purposes of the OAS. Preventive diplomacy, mediation and promotion of dialogue are some of the most prominent measures employed by the OAS to resolve tensions between countries and help governments handle internal conflicts.[16]

The regional challenges and discourse regarding "security" have changed since the 1990s and the ending of the Cold War, the civil wars in Central America and the military rule in several South American states. The peace efforts of the OAS after 2000 reflect this situation. OAS' resolutions regarding peace and security in the Americas in the first decade of the 21st century concentrate on territorial disputes between states, the peace processes in Colombia and broader efforts to promote a culture of non-violence in the region.[17] The high levels of violence in several regions are associated with criminal cartels, traffickers and gangs, fuelled by underlying structural violence of neoliberal globalisation, social inequality, and economic underdevelopment, have shifted regional debates about "security". A double-discourse about security has emerged; one addressing more traditional national security and defence concerns of states' "multidimensional security" and the other more local about personal safety and policing "public security" and "citizen security". [18]

Secretariat for Multidimensional Security

The mission of the Secretariat for Multidimensional Security is to promote and coordinate cooperation among OAS member states, as well as with other parts of the OAS and other international organisations, in order to assess, prevent, confront, and respond to security threats.

The activities of the Secretariat are defined by the Declaration on Security in the Americas and its concept of hemispheric security as being multidimensional and comprising traditional threats and new threats, concerns, and challenges to the security of the states of the hemisphere.

Secretariat for Strengthening Democracy

The mandate of the Secretariat for Strengthening Democracy is to assist member states in strengthening their democratic governance, and to carry out activities related to the prevention, management and resolution of countries' internal conflicts. Under the Secretariat the Department of Sustainable Democracy and Special Missions is the focal point and principal advisory unit to the OAS Secretary General on political issues, developments, challenges, conflicts and crises that occur or may occur. Among other activities, the Department provides advisory and technical services to Special Missions established by the OAS Permanent Council (or by the General Secretariat) in the event of a potential or ongoing conflict, or in response to member states' requests.[19,20] Under this Department, lies several missions related to peace and security in the region, including; the OAS Mission to Support the Peace Process in Colombia (OAS/MAPP); the Mission in Haiti, working for the strengthening of democratic governance by promoting dialogue, engaging in mediation efforts and facilitating compromise amongst political stakeholders, and; the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH), which aims to improve the quality of the services provided by the Honduran justice system in the prevention and combat of corruption and impunity in the country.[21]

The Political Analysis and Scenario Section is to assure that the OAS has at its disposal the necessary resources and capacities to effectively predict and mitigate the various conflict risks that can emerge in the region, with

particular regard to those which have the potential to escalate into political and institutional crises. It´s services includes:[22]

- Intensive and continuous monitoring of the political situation and the emerging priorities of member states.
- Constant generation of alerts and newsletters during the development of complex situations.
- Creation of political briefings and debriefings for the authorities of the General
- Secretariat of the OAS.
- Preparation of briefings and debriefings as key inputs for Special Missions and Electoral Observation Missions.
- Construction of prospective scenarios in order to design strategies in the medium- and long term for each country.
- Strengthening institutional capacities in early warning and conflict analysis of the OAS.

The Secretariat also includes the Department of Electoral Cooperation and Observation (DECO), deploying electoral observation missions to member states. Since 1962 the OAS has deployed more than 240 electoral observation missions in 27 countries throughout the continent. Based on the recommendations made by the Electoral Observation Missions, DECO develops projects and activities to contribute to the modernization and improvement of the quality of services provided by electoral bodies.[23]

Peace Support Missions

Since the creation of the OAS, member states have requested assistance in times of crisis. The OAS has deployed numerous peace missions, ranging from short-term ad-hoc and good offices assignments, to longer term demobilisation, disarmament and peace-building missions. During the 21st century the OAS has deployed fifteen peace support missions which can be sorted into four categories: prevention and resolution of political-institutional crises, prevention and resolution of intra-state conflicts, peaceful settlement of territorial disputes, and other inter-state conflicts.[24]

Peace support missions in the 21st century

Prevention and Resolution of Political-Institutional Crises	
Special Program to Support Guatemala	1996 - 2003
Facilitation Mission to Venezuela	2002 - 2004
Political Missions in Bolivia, Ecuador, Haiti and Nicaragua	2005
Special Mission for Strengthening Democracy in Haiti	2002 - 2006
International Forensic Commission to Colombia	2007
Political Mission to Bolivia	2008
Good Offices Mission in Honduras	2009 -
Special Mission to Ecuador	2010
Fact-finding visit to Paraguay	2012
Prevention and Resolution of Intra-State Conflicts	
Mission to Support the Peace Process in Colombia (MAPP/OAS)	2004 -
Peaceful Settlement of Territorial Disputes	
Honduras and Nicaragua	1999 - 2007
Honduras and El Salvador	2003 - 2004
Belize and Guatemala	2000 -
Costa Rica and Nicaragua	2010
Other Inter-State Conflicts	
Colombia and Ecuador	2008 -

Defending democracy

The OAS has played an important role defending democracy in the region through delegitimising military dictatorships and to support restoring representative democracy. A cornerstone is the Democratic Charter, analysed in the next chapter. Among others, the OAS contributed to the fall of the Trujillo dictatorship in the Dominican Republic in 1965, and the establishment of democracy after the fall of the Somoza Dictatorship in Nicaragua in 1978. This while putting pressure on the respective autocratic governments of Bolivia in 1980, Peru 1992 and Guatemala 1993, and acting against a threatening coup d'état in Paraguay in 1996.

One example of efforts that were less successful was coming to terms with the overthrowing of the democratically elected President Aristide in Haiti in 1994. The military coup was condemned by the OAS Permanent Council and sanctions were put in place, but the situation was not resolved. The UN Security Council decided upon a military intervention – a decision that was criticised by an array of states of the region. In all, the Haiti example shows the importance of the Santiago Declaration on Democracy from 1991, as sanctions were put in place, while at the same time confirming the resistance to military intervention even when peace and security are at stake. A later example is the overthrowing of President Zelaya in Honduras in 2009. While the OAS condemned the coup referring to the Democratic Charter, President Zelaya was not reinstalled.[25]

Women Peace and Security Agenda

Regional human rights mechanisms play a key role in the implementation of UN Security Council Resolution 1325 on Women, Peace and Security (UNSCR 1325), and holding states accountable to commitments for gender equality in conflict-affected contexts. At first glance, the OAS may appear to have been slow to recognise and implement the Women, Peace and Security (WPS) agenda. The Organisation has not developed a regional action plan for implementing Resolution 1325, the resolution appears in very few OAS documents and the OAS is not clearly mentioned in the Global Study of UN Security Council Resolution 1325. However, a closer look at the Inter-American Human Rights System (hereinafter the IAHRS) indicates that important work is under way on the WPS agenda.[26] The IAHRS, comprised of the Inter-American Commission on Human Rights (hereinafter the Commission or the IACHR) and the Inter-American Court of Human Rights (hereinafter the Court or the IACtHR), provides a strong example of accountability for state violations through regional mechanisms, particularly by reinforcing norms of women's human rights and advancing innovative ideas for gender justice.[27] The IAHRS has adopted a comprehensive approach to gender justice, which recognises the importance of addressing structural and intersectional discrimination as a root cause of human rights violations. In this way, the inter-American approach could be considered a model for all regional accountability mechanisms in implementing the WPS agenda.

The particular forms of conflicts envisioned by Resolution 1325 are currently less prevalent in the Americas than elsewhere, but the four pillars of the WPS agenda (participation, protection, prevention and relief and recovery) are relevant to the nations of the Western Hemisphere. Many countries in the Americas are confronted with enormous levels of physical insecurity and violence related to drug cartels, trafficking and criminal gangs. Record high levels of homicide, femicide and gender based violence, and displacement caused by widespread social and economic insecurity. Structural violence linked to income inequality, gender discrimination and economic underdevelopment is a reality in nearly all countries. Although not with explicit references to Resolution 1325, the OAS, through the Inter-American Commission of Women, has long experience of working in each of the pillars of the WPS agenda.

The Commission and the Court have issued a number of reports and judgments in relation to the WPS agenda throughout the years. Important advances have been made in the regional and global understanding of what it means to do justice for women victims of gender-based violence, and to provide them with some degree of accountability against states, particularly vis-à-vis violations by non-state actors.[28]

The Inter-American Commission of Women and the implementation of the WPS agenda

The OAS Inter-American Commission of Women (hereinafter the CIM, by its Spanish acronym), established in 1928, was the world's first inter-governmental agency established to ensure recognition of women's human rights.[29] Its first major accomplishment was the ground breaking Convention on the Nationality of Women adopted in 1933 by the Seventh International Conference of American States in Montevideo. In 1948 the

CIM accomplished the drafting of two new fundamental human rights instruments for women in the hemisphere; the Inter-American Convention on the Granting of Civil Rights to Women and the Inter-American Convention on the Granting of Political Rights to Women. Since 1948, the CIM has expanded its work on the advancement of women's rights and equality into issues and policy areas as education, health, economic development, and more recently, violence against women.[30] Lately, the CIM has been an important norm entrepreneur and protagonist in advancing women's human rights and working to end violence against women in the Americas through the far-reaching Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter the Convention of Belém do Pará) adopted in 1994.[31]

At the inter-American level, the principal mandate on gender mainstreaming is the Inter-American Program on Women's Human Rights and Gender Equity and Equality (IAP), developed by the CIM on request of the OAS and adopted in 2000.[32] The IAP has contributed to an inclusion of the gender equality agenda in the activities of both the member states of the OAS and its General Secretariat. However, various challenges are still preventing effective planning, execution, monitoring and evaluation of the agenda, for lack of operational targets, strategies, and management mechanisms and tools for keeping track of actions being undertaken at the OAS.

The strategic plan 2016-2021 includes objectives on prevention and punishing of gender-based violence and increasing women's political participation.[33] Through these reforms, and by the recruitment of highly professional and expert staff, the CIM has managed to advance the focus on women's rights and gender equality within the OAS system in ways that are directly relevant to the WPS agenda. CIM is furthermore pushing the region's gender regime even further by working to reframe the regional discussion of "citizen security" in terms of "gender, peace and security". The focus areas of the work conducted by the CIM today are directly linked to the four WPS pillars, however surprisingly few references are made to the Resolutions.

The CIM's senior gender specialist Hilary Anderson has given three reasons to the absence of references to the UNSCR 1325 within the OAS. Firstly, Resolution 1325 is considered "a UN thing" and some believe it should stay within the UN, "different organization, different agenda". Secondly, and related, some states prefer to keep the UN Security Council out of regional affairs. This reflects the deeply rooted defence of national sovereignty and autonomy in the region, and the fact that the OAS has its own security and defence arrangements. Thirdly, Resolution 1325 is not considered relevant to some states since they argue that there is "no formal conflict" in the region, not as the resolution defines it.[34]

Other OAS organs

The OAS is rich in terms of specialised organisations and conferences, commissions, agencies, committees, councils and entities. Some of those that are not handled above but have an impact on peace and security as well as human rights in the region include:

- Inter-American Committee against Terrorism
- Inter-American Drug Abuse Control Commission
- Inter-American Juridical Committee

NORMATIVE FRAMEWORK

The American States were among the first to adopt legally binding provisions in protection of human rights. This occurred through the so called constitutional movement, during which independent states adopted constitutions based on the belief that all people have certain, natural-given rights.[35] On a regional level, the first major step was taken in 1948 at the Ninth Inter-American Conference in Bogotá, which adopted the American Declaration of the Rights and Duties of Man. [36]

When it comes to the inter-American human rights instruments, there are very few direct references to peace and security. Unlike some treaties in the African human rights system there is no explicit right to peace. Nevertheless, several human rights provisions in regional treaties are applicable in times of conflict and crisis. In the following we will present a short analysis of the most important regional human rights instruments for peace and security and for the Women, Peace and Security Agenda.

Charter of the Organisation of American States

The OAS Charter was adopted in 1948 and entered into force in 1951. By the charter, the American States establish the international organisation that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. The charter also declares that the Organisation of American States is a regional agency within the United Nations. The charter has been amended several times; by the Protocol of Buenos Aires in 1967, the Protocol of Cartagena de Indias in 1985, the Protocol of Washington in 1992, and the Protocol of Managua in 1993.[37]

The Organisation of American States, in order to put into practice the principles on which it was founded and to fulfil its regional obligations under the Charter of the United Nations, declares the following essential purposes: 1) To strengthen the peace and security of the continent; 2) To promote and consolidate representative democracy, with due respect for the principle of non-intervention; 3) To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member states; 4) To provide for common action on the part of those states in the event of aggression; 5) To seek the solution of political, juridical, and economic problems that may arise among them.

Already article 1 states that a central objective of the OAS is to “achieve an order of peace and justice” and that objective is reiterated in article 2.a. Article 3 states the principles of the organisation and manifests that social justice and social security are bases of lasting peace and that all individuals have fundamental rights without distinction as to race, nationality, creed, or sex. Gender equality or violence and discrimination against women is however not particularly highlighted.

Article 3 also contains several sub-provisions in relation to conflict. War is condemned by "victory does not give rights" (3.g), aggression against one member state is seen as aggression against all member states (3.h), there is an obligation to refrain from interfering in the affairs of other states (3.e) and conflicts between different states must be resolved peacefully (3.i). Finally, the paragraph states that social justice and security are the cornerstones of lasting peace (3.j) and that education of people should focus on justice, freedom and peace (3.n).

An interesting aspect is the exhortation of article 2.h for states to prioritise economic and social development which reads “To achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States.” As a comparison, within the framework of the African Union, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) in its article 10 urges state parties to reduce military expenditure in favour of investments in social development and women’s development.

Article 15 restricts member states by stipulating that the right of states to protect themselves does not mean that they may commit unfair acts against other states. Similar provisions are contained in Articles 11, 12 and 21 concerning the right of states to exist freely.

Article 18 provides that respect and faithful observance of the Treaties are essential for the development of peaceful relations between states and article 19 lays down the principle of non-intervention (further developed on below).

In article 45, it is declared that member states agree that full realisation of just social order, along with economic development and true peace, can only be achieved through the application of certain principles and mechanisms, including the right to material well-being and to spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security for all, without distinction as to race, sex, nationality, creed, or social condition. Overall, it's notable how far the Charter reaches as to the obligation of states to ensure individual rights (chapter VII) – in particular economic, social and cultural rights – while also underscoring access to justice and democratic order.

Article 54 deals with the powers of the General Assembly. These include to "consider any matter relating to friendly relations among the American States" (article 54.a). In the event of urgent problems (not necessarily in relation to conflict), a consultation meeting between Foreign Ministers shall be held in accordance with article 61.

In the event of an armed attack against an American State, the Permanent Council shall be convened in accordance with Article 65. The Permanent Council shall also monitor the peace situation in the region and assist states in finding peaceful solutions (article 84) and any party to a dispute may resort to the Permanent Council for obtaining its good offices (article 85).

The Permanent Council has the right to set up ad hoc committees to carry out its tasks and with the consent of conflicting parties (Art. 86). A relevant standing committee under the Permanent Council is the Committee on Hemispheric Security. Pursuant to Article 20 of the Rules of Procedure of the Permanent Council, the task of the Committee on Hemispheric Security is to study and make recommendations to the Permanent Council on all matters relating to security which may be entrusted to it by the Permanent Council and, through it, by the General Assembly, in particular to promote cooperation in this field.

Article 87 gives the Permanent Council the faculty to investigate facts in a dispute, including by a field visit, with the consent of the government concerned.

According to article 110, the Secretary General "may bring to the attention of the General Assembly or the Permanent Council any matter which in his opinion might threaten the peace and security of the Hemisphere or the development of the Member States."

Hence, the promotion of peace and security is an integral part of the organisation's purpose and guiding principles. According to the Charter, stability, peace and development of the region is achieved through representative democracy and juridical organisation. The inclusion of a gender-, or a Women, Peace and Security perspective, is however rather limited.

Principle of non-intervention, Rio Treaty and Pact of Bogotá

The OAS has granted itself limited possibilities to intervene in member states' internal affairs. Chapter V of the Charter, "Pacific settlement of disputes", states that peaceful procedures exemplified in the chapter, shall be used to resolve international disputes between member states. In an amendment to the charter in 1985 (Protocol of Cartagena de Indias) the principle of non-intervention was manifested in article 1, clarifying that the OAS has no authorisation to intervene in matters that are within the internal jurisdiction of its member states and it underlines state sovereignty. Already in 1933, under the Pan American Union, the Convention on Rights and Duties of States, which entered into force in 1934 and

has been acceded by 17 States[38], established the non-intervention principle (article 8). The same convention in its article 11 also states that "The territory of a state is inviolable and may not be the object of military occupation." [39]

In chapter VI on collective security, article 29, the Charter states that acts of aggression, conflict or situations that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defence, shall apply the measures and procedures established in the special treaties on the subject. This latter article refers to the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty) which was agreed upon in 1947 and incorporated into the Charter.

This while the American Treaty on Pacific Settlement (the Pact of Bogotá) signed in 1948, stipulates a "General obligation to settle disputes by pacific means" [40] and outlines the steps to follow; good offices and mediation, procedure of investigation and conciliation, judicial procedure and procedure of arbitration. In article 2 the procedure is set to settle international controversies by regional procedures before referring to the UN Security Council. While the Pact of Bogotá is not widely ratified, the Rio Treaty in article 1 states that the state parties "condemn war and undertake in their international relations not to resort to the threat or use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty." It further makes a similar reference to use the resources of the OAS before referring to the UN (article 2).

The principle of peaceful settlement of disputes was already established within the framework of the Pan American Union in 1933 by means of the Convention on Rights and Duties of States (article 10).[41] This is also the essence of the Treaty to avoid and prevent conflicts between the American States (Gondra Treaty) from 1923, an agreement that is now viewed as the inspiration for the present-day peacekeeping mechanisms of the OAS. The treaty's seven articles detail procedures for the settlement of disputes between the American republics through an impartial investigation of the facts relating to the controversy. Disputes that could not be resolved through normal diplomatic means would be submitted to a commission of inquiry composed of five members, all nationals of American states, who would then render a final report within one year. The report would not have the force of arbitral awards and would be binding on the parties involved for only six months after its issuance. Significantly, the Gondra Treaty called for disputes in the hemisphere to be resolved by the American republics themselves. The treaty was superseded by the Pact of Bogotá in 1948.

While a central part of the Rio Treaty concerns the concept that *an attack on any American State is an attack on them all* (the hemispheric defence doctrine) it also, in its article 7 deals with the case of conflict between two or more American States. The article calls for states to "suspend hostilities and restore matters to statu quo ante bellum, and shall take in addition all other necessary measures to re-establish or maintain inter-American peace and security and for the solution of the conflict by peaceful means." This while article 8, as a measure that can be decided on, include the use of armed force. Having said this, the principle of non-intervention has a very strong mandate among governments in the region and is a matter that unites governments of opposed political orientation. The principle of non-intervention was introduced to the Charter by means of the Protocol of Cartagena de Indias in 1985 and has in numerous occasions been referred to by different leaders throughout the region. The firm support of the principle is also, at least partly, an expression of the anomaly in power relations in the hemisphere where governments have been overthrown, or attempted to, by U.S. intelligence and military interventions as for example in Guatemala in 1954, Cuba in 1961, Chile in 1973 and Grenada in 1983. This while Latin American States often have expressed concern regarding OAS being dominated by the USA using the organisation for its own purposes – not always in line with the interest of other member states. As an example, some members of the U.S. Congress have expressed that they found the OAS to be operating contrary to U.S. interests and recommended the suspension of funding to the OAS until the organisation had changed.[42]

Responsibility to protect

The concept of Responsibility to protect (R2P) was developed in the international context from a custom where states enjoyed absolute sovereignty under the principle of non-intervention – a concept that has been central to the Western Hemisphere – although in practice it has been sidestepped on numerous occasions in favour of national interests and the power struggle during the Cold War. Within the international arena, the genocides in Rwanda and Srebrenica led to a process within the UN that ended up in the adoption of the concept of Responsibility to protect by the UN General Assembly by means of paragraphs 138 and 139 of the 2005 World Summit Outcome Document (A/RES/60/1).

Heads of state and government affirmed their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity and accepted a collective responsibility to encourage and help each other uphold this commitment. They also declared their preparedness to take timely and decisive action, in accordance with the United Nations Charter and in cooperation with relevant regional organisations, when national authorities manifestly fail to protect their populations.

The concept of the responsibility to protect drew inspiration of Francis Deng's idea of "state sovereignty as a responsibility" and affirmed the notion that sovereignty is not just protection from outside interference – but rather a matter of states having positive responsibilities for their population's welfare, and to assist each other. Consequently, the primary responsibility for the protection of its people rests first and foremost with the state itself. However, when a particular state is clearly either unwilling or unable to fulfil its responsibility to protect, or is itself the actual perpetrator of crimes or atrocities, a residual responsibility of the international community is activated.

The Responsibility to protect as described in the resolution is based on an underlying body of international legal obligations for states which are contained in international instruments or are developing through state practice and the case-law of international courts and tribunals. These existing international obligations require states to refrain from and take a number of actions to prevent and punish genocide, war crimes, ethnic cleansing and crimes against humanity. There is also a specific commitment of states through the UN to take "collective action" in a "timely and decisive" manner through "appropriate diplomatic, humanitarian, and other peaceful means," to protect populations from these crimes.[43]

In 2020, the OAS Secretary General, Luis Almagro, appointed Jared Genser as the Special Adviser on the Responsibility to Protect to the OAS. The appointment had a clear connection to the efforts by the Secretary General to call to the attention of, and to action by, the international community and in particular the ICC, the alleged crimes against humanity taking place in Venezuela. The Special Advisor (SA) soon commented on his mandate and view regarding R2P in the region highlighting the lack of action for prevention in the region and, as a result, according to the SA "Today in Venezuela, Nicolás Maduro's regime is committing crimes against humanity against civilian populations including extrajudicial killings, arbitrary detentions, torture, disappearances, and other inhumane acts that have denied food and health care to supporters of interim President Juan Guaidó." [44]

Jared Genser puts emphasis on the preventive work since: "It is always much easier for a regional organization to prevent mass atrocities before or just as they begin then after they are raging." As example of such efforts he highlights "personal diplomacy by top diplomats, the sending of an envoy or fact-finding mission, initiating mediation or conflict resolution processes, the adoption of resolutions recommending specific actions be undertaken, robust human rights reporting, the mobilization of humanitarian assistance for victims, and the requesting of more support from the United Nations, if necessary." [45]

The SA also emphasises that there is much the OAS could consider doing now to prevent mass atrocities in the future, as for example having an annual dialogue in the General Assembly about the responsibility to protect in the region, informed by a report about activities undertaken in the prior year by the organisation. He also suggests that there could be an early warning system put in place where states were proactively informed about situations of concern as they arise along with recommendations for their consideration. Further that there could be a survey conducted across different parts of the OAS to understand how atrocity prevention can operate in a complementary manner with its human rights and conflict prevention activities. And finally, that states asking for help building national capacity to identify risk factors and to align their institutions towards prevention, could be provided training and support.

The SA holds that developing a robust mechanism "will help identify further actions that can be taken, excluding the use of force […] the Organization of American States should not be an international bystander that remains impotent and ineffectual in the face of mass atrocities in the region." [46]

This vision is similar to the UN view on R2P which states that "Ultimately, the Responsibility to Protect principle reinforces sovereignty by helping states to meet their existing responsibilities. It offers fresh programmatic opportunities for the United Nations system to assist states in preventing the listed crimes and violations and in protecting affected populations through capacity building, early warning, and other preventive and protective measures, rather than simply waiting to respond if they fail." [47]

Within the framework of a panel discussion in April 2021, part of the process leading up to the present publication, Jared Genser continued to emphasise the importance of the preventive actions and other "soft" measures within the R2P framework, while downplaying military intervention, indicating that his coming report on R2P will focus on prevention.[48]

In parallel to the OAS process on R2P, the UN has also advanced and the General Assembly adopted a new resolution in May 2021 – the first since 2009 (Resolution A/75/277). With an overwhelming majority of states voting for the resolution – UN member states decided to include R2P on the annual agenda of the General Assembly and to formally request that the Secretary-General reports annually on the topic.[49]

The historical contributions of the IAHRS to the protection and promotion of human rights, building conflict prevention and thus also contributing to the responsibility to protect is further examined in the chapter *IAHRS: Contributions to peace and security*.

American Declaration of the Rights and Duties of Man

At the Inter-American Conference on War and Peace, held in 1945, an Inter-American Juridical Committee was created with the purpose to draft a declaration of international rights and duties.[50] The draft was presented and approved three years later, in 1948, at the Ninth International Conference of American States in Bogotá. The declaration was named the American Declaration of the Rights and Duties of Man, but more commonly, it has been referred to as the Bogotá Declaration or the American Declaration.

The American Declaration became the world's first major international human rights treaty, preceding the Universal Declaration of Human Rights by seven months. Considering this, the American Declaration played an important role in shaping the future development of human rights documents in the Western Hemisphere. Most notably it has had a great influence on the creation of the latter American Convention on Human Rights, which will be discussed below.[51]

The Declaration consists of both civil and political rights as well as economic, social and cultural rights. In addition to rights which all humans

are entitled to, the declaration also lists several duties which are imposed on individuals. These duties include the act of voting, adhering to the law and serving one's nation.[52]

At its creation, the Declaration was established as a non-legally binding document. There was no mechanism implemented which would monitor the Declaration or promote its content.[53] Despite this, the Declaration has over time been utilised by the Commission. An important reason for this is that when the Commission was established in 1960, the American Convention on Human Rights had not yet been written. Without any legally binding convention to monitor, the Commission turned to the Declaration to safeguard human rights in the region.[54] Throughout the years, both the Commission and the Court have treated the Declaration as a legally binding document and applied it in cases where states have not ratified the Convention. Article 106 and 145 of the OAS Charter gives the Commission competence in monitoring member states' conduct regarding human rights, thus the declaration has binding force over all member states. Over time, some of the rights outlined in the Declaration achieved normative status as they are either customary international law or provisions of the OAS Charter.

The Declaration does not explicitly promote peace and security, however references to the right to security on a more individual level are made. Furthermore, the Declaration manifests rights that are indispensable for peace and security. The first article of the Declaration affirms the right to life, liberty and personal security. The article does not state how this right should be interpreted, however, protection of the law against abusive attacks upon ones honour, reputation, family and private life is protected under article 5 and protection from arbitrary arrest is elaborated on under article 25. In article 2, the Declaration prohibits discrimination and proclaims the right to equality before the law, without distinction as to race, sex, language, creed or any other factor. Article 7 declares women's particular right to protection, however only as mothers during pregnancy and the nursing period. There is no further integration of a gender perspective on the rights established in the Declaration.

American Convention on Human Rights

In 1965, the Inter-American Council of Jurists presented a draft of the American Convention on Human Rights (hereinafter the Convention or the ACHR). The Convention was agreed upon in 1969 at the Inter-American Specialised Conference on Human Rights in San Jose, Costa Rica – making it now over 50 years old – and is also known as "the Pact of San José". The Convention required eleven ratifications to be activated and entered into force in 1978. To date, 25 states within the Americas have ratified the Convention, two of which later denunciated it: Trinidad and Tobago in 1998 and Venezuela in 2012. It follows from article 78 of the ACHR that the effect of a denunciation is that the state in question is no longer bound by the convention beginning a year after its denunciation, but it can still be held responsible for acts which took place before that.

Neither Canada nor the United States have ratified the ACHR. In the case of Canada, this mainly comes down to an issue with article 4.1 of the Convention, which protects life "in general, from the moment of conception", as an adherence to this would conflict with Canadian abortion laws.[55]

A notable difference between the ACHR and one of its sister-conventions, the European Convention on Human Rights (ECHR), is the mere size of the two documents. The ACHR is considerably more extensive than its European counterpart. Initially, it was argued that this might constitute an obstacle to ratification.[56] Compared to the American Declaration, the rights enshrined in the ACHR are also a lot more precise, which gives predictability. The Convention has been amended by means of two protocols; the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) and; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Similarly to the Declaration there are no explicit references to peace, however security is treated not only on an individual level but also at national level under the freedom of thought and expression (article 13) right of

assembly (article 15), and freedom of association (article 16). Concerning freedom of thought and expression, the Convention makes special mention of propaganda for war and advocacy of national, racial, or religious hatred as offences punishable by law (article 13 §5). The notion of "war" is not defined in the Convention but has later been interpreted as war of aggression.[57] This while the right to assembly is specified as "The right of peaceful assembly, without arms".

The very first article of the ACHR holds that states are obliged to respect the rights and freedoms which are enshrined in the Convention. This must be done without discrimination, including on the basis of sex. Another provision in relation to gender equality can also be found in article 24, which promotes an equal protection of the law.

The right to life, which can be found in article 4 of the ACHR, is an essential, non-derogable right.[58] This means that it is always applicable, even in times of war and conflict. While there are several exceptions to this right prescribed in the article, life is not allowed to be taken arbitrarily. This means that states are prohibited from depriving someone of their life through acts such as extrajudicial executions, unlawful use of force and forced disappearances.[59] States are also under a positive obligation to protect the right to life. This entails measures such as prevention of violence and investigations into disappearances or deaths – particularly relevant in times of conflict and insecurity – when the value of human life often is neglected.[60]

Similarly to the right to life, the right to humane treatment is another non-derogable right. It is found in article 5 and includes respect for one's physical, mental and moral integrity, as well as a prohibition of torture, inhumane and degrading treatment. Apart from being prohibited from violating someone's right to humane treatment, states also have an obligation to protect individuals from non-state actors who would violate their rights.

Article 22 §7 handles the right of every person "to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes."

Article 27 provides for the possibility for states to derogate from some of their obligations under the Convention "in times of war, public danger, or other emergency that threatens the independence or security of a State Party […] to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin." The same article states that any suspension of rights shall immediately be communicated to the other state parties, through the OAS Secretary General, including the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 29 provides for the Court to also interpret the American Declaration, other treaties acceded by the state, customary law, as well as non-binding human rights instruments. This provision has been important for the development of and role of the IAHRS in relation to peace and security.

Regarding state cooperation, the Convention states that state parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture (article 42). Further that state parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of the Convention (article 43).

The implementation of the Convention is monitored by the Commission[62] and the Court.[63] Article 65 in the American Convention provides the possibility for the General Assembly to actively interact in the case of state unwillingness to follow the decisions of the Court, this possibility has however not been used.[64]

Further analysis in coming chapters on the contributions of the IAHRS to peace and security in the region will go more in detail regarding the interpretation of the Convention.

Protocol of San Salvador

The Additional Protocol to The American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), acceded by 16 states, was adopted in 1988 and entered into force in 1999.[65]

The Protocol is the result of efforts to highlight and reaffirm the importance of economic, social and cultural rights and their inclusion to the regional human rights framework along with the civil and political rights. The need for this departed from the fact that only article 26 of the American Convention is devoted to economic, social and cultural rights and that article does not specify any rights but only makes reference to goals provided in the OAS Charter.[66]

The Protocol and the rights enshrined in it are important in relation to peace and security as the full implementation of these rights – in conjunction with the civil and political rights, and group rights – would mean a tremendous conflict-prevention measure for a region facing high levels of inequalities. Provisions entail the rights to just, equitable, and satisfactory conditions of work (article 7), right to social security (article 9), right to health and a healthy environment (articles 10 and 11), right to food (article 12), right to education (article 13), rights of children (article 16) and rights of persons with disabilities (article 18). However, a limitation regarding state responsibility for implementation of economic, social and cultural rights is found in the American Convention (article 26) and the Protocol of San Salvador (article 1) as state responsibility only amounts to efforts "to the extent allowed by their available resources, and taking into account their degree of development" progressively achieving the full observance of the rights recognised. A key challenge in relation to these rights and assessing state implementation performance is therefore the great range in terms of development and resources between different states as well as how to measure if a state is dedicating enough effort according to its resources. A framework for follow-up and measurement has however been elaborated.[67] Considering the more than two decades since the entry into force of the Protocol, is state performance acceptable and in line with the Protocol? How far will the effects of the covid-19 pandemic push back the implementation of and enjoyment of economic, social and cultural rights?

In terms of enforceability, the possibilities for complaints before the Commission – and by extension the Court – is restricted by article 19(6) to the right to education (article 13) and the right of workers to organise trade unions and to join the union of their choice (article 8). However, as we shall see below, the Court has on several occasions and to a greater degree handled economic, social and cultural rights, using the Convention, but also referring to rights in the Protocol in order to interpret rights enshrined in the Convention. The Court has established the right to health and adequate health services, adequate living, social insurance and pension, the right to land and water and the right to education. It has further – rather than using article 26 of the Convention – made use of the civil and political rights in deriving connected economic, social and cultural rights. As an important example, the Court in deriving a minimum of economic and social rights created the concept of *vida digna* which is based on the right to life. Both the Commission and the Court have also declared positive obligations for states to guarantee certain services such as access to clean water, especially for vulnerable groups.[68] Furthermore, the IAHRS has made important contributions as to adding environmental rights to the package of economic, social and cultural rights and its Special Rapporteur includes environmental rights in the title as well as the mandate.

Convention of Belém do Pará

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, or the Convention of Belém do Pará, was adopted in Belém do Pará in 1994. The treaty became effective one year later and was the first international, legally binding treaty concerning such a wide range of violence against women.[69] The Convention was drafted and first accepted by the Inter-American Commission of Women (CIM), before it was presented to the OAS General Assembly. To date, the Convention has been ratified by 32 states.

The convention means an important step for securing women's rights. Violence against women was long considered a part of private life and subsequently not included in international treaties. However, the Belém do Pará Convention introduces a different and more modern approach to the traditional division between the public and private sphere giving the Commission and the Court the faculty to try complaints regarding violence against women in the private sphere (art. 11 and 12).[70]

The convention calls for the establishment of mechanisms for protecting and defending women's rights as essential to combating the phenomenon of violence against women's physical, sexual, and psychological integrity, whether in the public or the private sphere, and for asserting those rights within society. The comprehensive definition of violence against women in Article 2, the fact that it goes beyond domestic or family violence in the private sphere to include violence in community (schools, workplace etc.) and all public spaces, as well as violence perpetrated or condoned by state agents, is one of the Convention's key advances.[71] A brief introduction to some of the central rights in relation to the Women, Peace and Security Agenda, concerning participation, protection, prevention and relief and recovery, will be provided below.

Under chapter II, article 4 establishes that every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others; the right to have her life, physical, mental and moral integrity and personal liberty and security respected. It also includes the right to not be subjected to torture, the right to dignity, equal protection before the law and of the law, freedom of association and religion, and equal access to the public service and participation in public affairs, including decision-making.

According to article 5, every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. State parties furthermore recognise that violence against women prevents the exercise of these rights.

Another key advance of the convention is the establishment of state responsibilities and duties in eradicating all forms of violence against women under chapter III. According to article 7, states shall pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence via national legislation, law enforcement and policy development.[72] By article 8, the states commit to undertake progressively specific measures, including programs to raise awareness on women's rights, challenge gender norms and stereotypes, educate law enforcement personnel, provide services to victims of violence against women, among other actions. Importantly, in relation to peace and security, article 9 obliges state parties, with respect to the adoption of measures, to take special account of the vulnerability of women affected by armed conflict or deprived of their freedom.

Finally, chapter IV, article 10, presents the inter-American mechanisms of protection, stating that the states parties shall include in their national reports to the CIM, information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women. According to article 11, the CIM may request of the Court, advisory opinions on the inter-

pretation of the convention. The right of any person or group of persons, or any non-governmental entity to submit petitions to the Commission containing denunciations or complaints of violations of Article 7 of the convention by a state is provided under article 12.[73]

The convention engages the Commission and the Court to help establish its juridical force. The Commission holds the power to investigate complaints lodged by individuals or groups against a state as violations of the convention, and the Court is entitled to hear cases referred to it by the Commission and interpret and apply the convention. Progress in establishing the authority of the convention since 1995 has been slow but measurable.[74]

The implementation of the convention is monitored by the Follow-Up Mechanism to the Belém do Pará Convention (MESECVI), established in 2004. MESECVI is a systematic and permanent multilateral evaluation methodology that is based on exchange and technical cooperation between the states parties to the convention and a Committee of Experts. MESECVI follows-up, analyses and evaluates progress in the implementation of the convention by the state parties, as well as persistent challenges to an effective state response to violence against women. Civil society can participate in the process by elaborating shadow reports to help the Committee of Experts in their evaluation on the implementation of the convention by state parties. MESECVI regularly complies follow-up reports on the state of implementation of the recommendations of the Committee of Experts of the MESECVI – the third one published in 2021.[75]

Inter-American Democratic Charter

At the core of the legal framework lies also the Inter-American Democratic Charter, adopted in 2001, which affirms that democracy should be the common form of government for all countries in the Americas. The charter also expresses a commitment by member states to maintain and strengthen democracy in the region.[76]

If one of the OAS members should fail to uphold the essential elements of democratic life, the Democratic Charter allows a member state or the Secretary General to request an immediate convocation of the Permanent Council to consider the facts, deploy diplomatic efforts, or use other political mediation. In case of a clear interruption of democratic order, or if an undemocratic alteration is not remedied, the charter calls for a General Assembly meeting that may, among other things, suspend the offending government from the inter-American system, which requires a two-thirds majority vote.[77]

The charter also establishes democracy as the main guiding principle for the field of conflict resolution in the Americas. Conflict prevention measures and citizen participation at all political levels are promoted as ways of consolidating democracy and peace in the region.[78]

The Democratic Charter is frequently used as a legal reference and tool by the OAS in dealing with crises of governance in the Americas. According to International IDEA, the OAS has been able to effectively contribute the prevention and management of a number of conflicts and political crises in the region through the charter.[79]

Inter-American Convention to Prevent and Punish Torture

The Convention specifies the measures that American States must take in order to not only punish perpetrators of torture, but also to prevent and punish any other cruel, inhuman or degrading treatment within their respective jurisdictions. The Convention was developed in order to give greater legal effect to the prohibitions against torture and cruel, inhuman or degrading punishment or treatment found in article 5 of the American

Convention on Human Rights, as well as instruments such as the Charter of the Organisation of American States, the Charter of the United Nations, the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights.

Since its early days, the Commission has examined many cases of torture and violations of the right to humane treatment. Both the Commission and the Court developed an important body of jurisprudence on this issue. This growing body of law, plus the increasing public concern over the behaviour of some authoritarian governments in the region, contributed to the growing support for a dedicated international instrument to prevent torture. In particular, the Inter-American Convention to Prevent and Punish Torture and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, were in large measure a response to the serious repression in Chile and Argentina. The convention was adopted by the OAS General Assembly in 1985 and entered into force in 1987. As of September 2021, 18 states have acceded to it.[81]

The purpose of the convention, according to its preamble, is to ensure "conditions that make for recognition of and respect for the inherent dignity of man, and ensure the full exercise of his fundamental rights and freedoms." The preamble further reaffirms that acts of torture or any other cruel, inhuman or degrading treatment or punishment, are considered a breach of the declared principles of the OAS Charter and the Charter of the United Nations. Acts of torture are also considered violations of fundamental human rights and freedoms provided in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights.[82]

Torture is defined in article 2 as "any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishments, as a preventive measure, as a penalty, or for any other purpose." The definition of torture in the Convention is considered broader in scope than the UN Torture Convention because it also includes "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish." Thus, there does not need to be tangible physical repercussions of acts of torture. These acts of torture could include instances of intimidation, humiliation, and psychological torture. The convention also factors in cases in which intentionality is not present, but rather there is failure to adhere to the protection of personal integrity through proper diligence and protection of rights.

Article 3 specifies who shall be held guilty for the crime of torture:
"a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.
b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto."

In article 4, the matter of acting on orders of superiors is addressed stating that "having acted under orders of a superior shall not provide exemption from the corresponding criminal liability."

In relation to peace and security, article 5 provides that "circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture."

In accordance with article 6, all state parties must actively take efficient measures in order to prevent and punish torture within their jurisdiction. This includes ensuring that such acts or attempts to commit torture are considered offenses under their respective criminal law, and are appropriately punished through penalties reflecting the nature of the crime. In accordance with article 3 and 4, this also includes protection from private

actors, including public servants or employees, and any such individual who has acted under the orders of a superior.

In article 7, the convention states that all state parties shall take an active duty in properly training police officers and other public officials in charge of the detainment of persons deprived of their freedom. In doing so, there should be special attention to the prohibition of the use of torture in interrogation, detention or arrest, as well as an emphasis on measures to, prevent other cruel, inhuman or degrading treatment or punishment.

In terms of extradition, according to article 11, all parties must "extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter." State parties can practice jurisdiction when the punishable offence has been committed within their jurisdiction and when the alleged perpetrator and/or victim is a national of their state.

Other key provisions include the responsibility to properly investigate accusations of torture or ill-treatment (article 8), the duty to compensate victims of torture (article 9), and commitment to exclude any testimony retrieved through acts of torture or ill-treatment (article 10).

The Convention does not have an independent enforcement instrument for monitoring implementation of its provisions – this task falls within the duties and functions of the Commission and the Court. Article 8 states that "After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State." Further, in accordance with article 17, in keeping with its duties and responsibilities, the Commission "will endeavor in its annual report to analyze the existing situation in the member states of the Organization of American States in regard to the prevention and elimination of torture."

Inter-American Convention on Forced Disappearance of Persons

The Inter-American Convention on Forced Disappearance of Persons was adopted in 1994 and came into force in 1996. The convention was one of the earlier attempts to address a crime that had been committed in the context of the frequent military dictatorships and internal armed conflicts in the region. The convention preceded the (UN) International Convention for the Protection of All Persons from Enforced Disappearances by more than a decade. The Convention had been acceded by 15 states as per September 2021.[83]

Ratification of the Convention of Forced Disappearance of Persons is not limited to states part of the Inter-American Human Rights Treaties, but is open to all members of the OAS, as per article 16 of the convention. Violations of the convention can be brought to the attention of the Inter-American Commission on Human Rights and follow the same process as petitions under the American Convention.

There are four main responsibilities of states under the convention: a) not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; b) to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; c) to cooperate with other states in helping to prevent, punish, and eliminate the forced disappearance of persons; and d) to take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in the convention.

The convention includes requirements for the procedural matters of criminal prosecution, some of which relate to armed conflict and armed forces:

- Persons alleged to be responsible for the acts constituting the offense can only be tried in courts of ordinary law, to the exclusion of all other special jurisdictions, particularly military jurisdictions as per article 9.

- The acts constituting forced disappearance cannot be said to have been committed in the course of military duties and "no privileges, immunities, or special dispensations" can be admitted during trials, as per article 9. The same article further grants the right and stipulates a duty on subordinates to refuse "superior orders or instructions that stipulate, authorize, or encourage forced disappearance."
- Once the process of criminal prosecution is completed and a judicial decision in rendered, the convention requires that the punishment should not be subject to a statute of limitation as per article 7. In case this conflicts with a fundamental principle in domestic law, then the punishment of the offense should be equivalent to the harshest penalty in the domestic law.
- Cases of exceptional circumstances such as war, the threat of war, internal political instability or any other public emergency do not justify the forced disappearance of persons as per article 10.
- The convention does not apply to international armed conflicts governed by the 1949 Geneva Convention and its Protocols, as per article 15.

Other important provisions include article 11 which provides that state parties are to maintain up-to-date registries of their detainees (in accordance with their domestic law) and to make these records available to relatives, judges, attorneys, and any other person having a legitimate interest. Furthermore, regarding the IAHRS, article 14 provides that when the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.

Full compliance in matters of forced disappearance has been interpreted to include: investigating and prosecuting the perpetrators, carrying out exhumations of suspected gravesites, and identifying bodies. In cases where a government does not comply with the Court's decision, the General Assembly of the OAS can apply political process to aid in a state's compliance.[84]

Other relevant treaties

The OAS and its predecessors are the authors of a great number of multilateral treaties and declarations, fruits of more than a century of state interaction and cooperation in the Western Hemisphere. A significant part of these are relevant to human rights and peace and security. For the purpose of the present report, a selection of the most relevant treaties has been made, although there are a number of treaties and declarations that have bearing on the two areas and the nexus between them. Other treaties include but are not restricted to:

- Inter-American Convention on Transparency in Conventional Weapons Acquisitions
- Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials
- Inter-American Convention on Mutual Assistance in Criminal Matters
- Inter-American Convention on Extradition
- Inter-American Convention against Terrorism

On a macro-level it is also worth mentioning the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) on a nuclear-weapon-free zone in the Western Hemisphere as an important security measure to prevent the proliferation of nuclear weapons and guarantee international peace and security. The treaty was opened for signature in 1967 in Mexico City and has inspired other nuclear-weapon-free zones in various regions of the world, such as the South Pacific (Treaty of Rarotonga), Southeast Asia (Treaty of Bangkok),

Central Asia (Central Asian Nuclear-Weapon-Free Zone Treaty) and Africa (Treaty of Pelindaba), which cover more than half the countries of the world and all of the southern hemisphere.[85]

Conclusion

Although the Declaration and the Convention do not make explicit references to peace and conflict, the rights stipulated in the two treaties require peace and security, and likewise peace and security cannot be achieved without the provision of the rights enshrined in those instruments. The OAS Charter and the Democratic Charter do, on the other hand, provide a clear and strong basis for both prevention and resolution of conflict, through the promotion of democracy and respect for fundamental human rights. Additionally, specialised conventions as the one on the prevention and punishment of torture and the one on forced disappearances are instruments that are important for the protection of central rights and freedoms during social unrest, protests, political crisis and internal armed conflict.

With regards to the Women Peace and Security Agenda, all treaties call for equal rights for men and women. The rights outlined in the OAS Charter, the Declaration, the Convention and the Democratic Charter are further elaborated on from a gender perspective in the Convention of Belém do Pará and harmonise well with the WPS agenda. The instruments are important in the promotion of gender equality and women's rights in conflict-affected societies and in the transition from conflict to peace. Member states are further obliged to strive for gender equality and adhere to the rights stipulated in the treaties in any process of conflict prevention, resolution and peacebuilding.

THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American Human Rights System (IAHRS) is composed of two principal organs with different mandates and tools to respond to peace and security: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. In this chapter we present the two institutions, their relationship to the UN, civil society and the OAS and the tools at hand in relation to contributing to peace and security in the region, using Venezuela as an example.

Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights was created in 1959 at the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile.[86] While first intended to be an autonomous entity in 1960, it was incorporated into the OAS Charter ten years later, through the Protocol of Buenos Aires.[87] The Commission was initially supposed to only promote human rights, but over time its reach has been expanded to also receive complaints and investigate supposed violations of human rights, essentially turning it into a protective body rather than only a promotive one.[88]

As for the mandate of the Commission, article 41 of the American Convention on Human Rights spells out the following primary functions:

- Spread awareness among the people of America regarding human rights.
- Give recommendations to governments with the purpose of advancing human rights.
- Prepare reports and studies relevant for the Commission's work.
- Request information from governments on the implementation of human rights.
- Provide advice and respond to inquiries from member states on the subject of human rights, through the OAS General Secretariat.

- Consider communications and petitions from different actors. According to articles 44 through 51, these actors can be any group of people, legally recognised NGO's or state parties.
- Conduct *in-loco* visits in order to investigate the human rights situation in a specific country.
- Submit annual reports to the OAS General Assembly.

According to article 106 of the OAS Charter, the functions of the Commission is further to (i) promote the respect as well as safeguarding of human rights and (ii) act as a consultative organ to the OAS. The closer structure and establishment of the Commission are laid out in the Inter-American Convention on Human Rights.

The Commission is made up of seven commissioners, all serving in their personal capacity for a term of four years. The selection of Commissioners is based on their high moral character and their expertise in the human rights field.[89]

The Commission receives individual complaints through its petition and case system, conducts country visits, holds thematic hearings on specific topical areas of concern, publishes studies and reports, requests the adoption of precautionary measures to protect individuals at risk, and has established rapporteurships to more closely monitor the member states, certain human rights themes and the rights of specific communities in the hemisphere.[90]

Within the framework of its *petition and case system*, the Commission adopts and follows up on the recommendations in published reports; the decisions in the reports which approve friendly settlement agreements between member states and petitioners before the IAHRS; and, the decisions in the resolutions that grant or extend precautionary measures to persons or groups in situations of imminent risk. Within the framework of its *monitoring system*, the Commission adopts and follows up on the recommendations published in thematic reports, the Annual Report of the Commission and in reports on the human rights situations in countries. The Commission has in recent years consolidated the practice of following-up on its reports by producing specific follow-up reports that aim to assess compliance with previously issued recommendations.

The Commission itself has recognised the need to increase efforts to ensure effectiveness and efficiency of its recommendations and has developed a special program to monitor the recommendations (Program 21). Program 21 is developing ongoing coordinated actions to follow-up on recommendations using all of the Commission's mechanisms. It seeks to strengthen the capacities of the Commission to promote an effective follow-up of the recommendations and decisions it produces, as well as to verify the level of compliance and domestic incorporation of states' international human rights obligations.[91]

As a part of this effort, in 2018, the Commission created and put into operation the Follow-up of Recommendations Section, which is structurally linked to the Assistant Executive Secretariat for the Monitoring, Promotion and Technical Cooperation in Human Rights, and which has the function of organising the follow-up work of the entire Executive Secretariat of the Commission in an integral, transversal and coordinated manner. The Section is responsible for coordinating the follow-up of the recommendations issued by the Commission through its various mechanisms and tools.[92]

Within this follow-up and implementation agenda, the Commission has employed a range of initiatives. It reformulated the structure of the Report that it submits annually to the OAS General Assembly and incorporated follow-up sheets that facilitate the identification of achievements and challenges related to compliance with recommendations. It also ensured an increase in the number of communications and meetings with states, victims, petitioners and civil society that have been based on the construction of consensual routes to facilitate and promote compliance with recommendations. In 2019 it approved and published the General Guidelines

on the Follow-up of Recommendations and Decisions of the IACHR, a document that aims to make transparent and share the mandates, methodologies, criteria and procedures applied in the follow-up of the recommendations that the Commission issues through different mechanisms.

In September 2019, the Commission approved its Resolution 2/2019 creating the "Observatory of Impact of the Inter-American Commission on Human Rights". The Observatory constitutes a collaborative platform that aims to reflect, systematize, make visible and evaluate the impact of its actions for the protection of human rights in the Americas. The observatory also aims to foster synergies with other similar initiatives, and to promote articulated dialogues with universities, research centres and academic networks, as well as other communities interested in the IAHRS. The observatory was publicly launched in July 2021.

Finally, the Commission implemented – SIMORE – a collaborative platform that concentrates the different recommendations addressed to the states and is meant to promote a more democratic approach to their follow-up. This tool is essential for the operation of the Observatory, as it ensures the possibility of having updated information on the recommendations issued by the IACHR.[93]

Inter-American Court of Human Rights

The possibility of an Inter-American Court of Human Rights (hereinafter IACtHR or the Court) was first presented at the Ninth International Conference of American States in Bogota, 1948. At the Conference, resolution XXXI was approved, which called for the outlining of a draft regarding the establishment of an inter-American human rights court. This was at the same time as the American Declaration was agreed on, and there was recognition of the fact that if human rights were to be proclaimed, they also had to be respected and protected. Nevertheless, the Court could not be established and organised until the Convention entered into force in 1978. In 1979 the state parties to the Convention elected the lawyers, who in their personal capacity, were the first judges who would compose the Court during the Seventh Special Session of the OAS General Assembly. The Court's first hearing was held on the same year at the OAS headquarters in Washington, during the Ninth Regular Session of the OAS General Assembly the Statute of the Court was approved, and in August 1980, the Court approved its Rules of Procedure. Following a government invitation to establish the Court in Costa Rica, the Court's premises were located to San José. The Court after initiating its work in 1979, soon issued several advisory opinions, but did not begin exercising its contentious jurisdiction until 1986, when the Commission submitted the first contentious case: *Velasquez Rodriguez v. Honduras*, regarding which the Court issued a judgment in 1988.

The Inter-American Court of Human Rights is one of three regional human rights tribunals, together with the European Court of Human Rights and the African Court of Human and Peoples' Rights. It is an autonomous legal institution whose objective is to interpret and apply the American Convention. The Court exercises a contentious function, in which it resolves cases and supervises judgments; an advisory function; and a function wherein it can order provisional measures. Considering it being the only judicial body of the OAS, delivering binding judgements, the Court carries the important character of legal authority in its judgements and decisions.

The Court consists of seven judges, nationals of the member states, elected in their individual capacity from among jurists of the highest moral authority and of recognised competence in the field of human rights. Twenty member states have recognised the jurisdiction of the Court. Only the States parties to the American Convention who have accepted the Court's jurisdiction and the Commission, may submit a case to the Court. Individuals, groups of individuals or NGOs do not have direct access to the Court, they must first submit their petition to the Commission and go through the procedure for cases before the Commission.

According to article 65 of the Convention, to each regular session of the OAS General Assembly, the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

The Court's mandate includes the following main responsibilities:

- Judgements on cases brought before it by the Commission and by state parties.
- Monitoring of compliance with judgements.
- Providing Provisional Measures when necessary to avoid irreparable harm to people in cases that are very serious and urgent.
- Deliver Advisory Opinions at the request of OAS Member States or organs of the OAS regarding: a) the compatibility of internal norms with the Convention, and b) the interpretation of the Convention or other treaties concerning the protection of human rights in the American States.

The Court follows-up a state's compliance with its judgement by requesting information from the state about the activities developed to comply with a decision within the window of time given by the Court, as well as gathering observations from the Commission and from the victims or their representatives. Once the Court has this information, it can determine whether there has been compliance with the judgment and inform the General Assembly about the state of compliance in a case. Similarly, when is assessed relevant, the Court may call the state and victims' representatives to a hearing to supervise compliance with its decisions and consider the decision of the Commission.[97]

The mechanisms of the Inter-American Human Rights System – Venezuela case

The crisis in Venezuela[98], including violations of human rights, social unrest and extraordinary humanitarian needs, has not only affected peace and stability in the country but has greatly impacted the entire region. According to the Commission, democratic institutions in the country have been deteriorating since 2005, and the Commission has therefore included Venezuela in its list of countries with the most concerning human rights situations in the Americas, especially dealt with in chapter 4 of its annual report. When the crisis began to worsen in 2016, the Commission stepped up its monitoring efforts of the country. Since then, until the end of 2019, it had sent 15 letters requesting information from the state, which represents a 25% increase over the average for 2002–2015. During the same period the Commission also issued 69 press releases (of which 25 were released over the course of 2019) expressing grave concern over the situation in the country.99

In the following, we will look closer at the main tools available to the IAHRS and examples of how these have been applied in the case of Venezuela.

The Rapporteurships of the Inter-American Commission on Human Rights

The Commission established rapporteurships in 1990, as a mechanism to protect and promote the rights of vulnerable groups of people who have historically faced marginalisation or to assume the responsibility of overseeing the Commission's assigned activities in a particular member state. Through the rapporteurships, the Commission is able to monitor human rights conditions on topics of particular concern in situations of conflict and crisis.

As of November 2021, there are nine thematic rapporteurships, and two special rapporteurships. These gather and disseminate information on

how different groups of people or different rights are being protected throughout the OAS member states. The information is used to develop reports or recommendations to member states to help them better protect and promote the human rights of their people, and to guide the Commission in its decisions.

Thematic rapporteurships are generally overseen by one of the Commission's seven Commissioners. The Commission also designates country rapporteurs from among the seven Commissioners. Each member state is assigned a country rapporteur, who is responsible for carrying out activities assigned by the Commission within that state. Thematic rapporteurs often collaborate with the country rapporteurs in conducting country visits to member states. In contrast, the two special rapporteurs – on freedom of expression and on economic, social, cultural, and environmental rights – are not members of the Commission. They are independent experts chosen by the Commission, who serve on a full-time basis for a period of three years, which may be renewed once.

The rapporteurships are responsible for reporting their activities to the Commission. In turn, the Commission is tasked with presenting Annual Reports to the OAS General Assembly. In these reports, the Commission provides an account of the rapporteurships' activities, including any reports produced and promotional activities undertaken.[100]

In particular situations such as conflict and crises, the Commission can also establish special mechanisms for monitoring human rights in a country. In order to strengthen monitoring activities and enable prompt response to the new challenges posed by the humanitarian crisis of Venezuela, the Commission installed the Special Follow-up Mechanism for Venezuela (MESEVE, by its Spanish acronym) on October 21, 2019. The MESEVE aims to approach the victims of human rights violations and work in coordination with civil society organisations and different mechanisms of the OAS and the UN to document the systematic violations of human rights in that country. The MESEVE also supports different mechanisms of the Commission to evaluate requests for precautionary measures and follow up on those granted, revise the prioritisation of requests received; support the litigation of cases before the Court, monitor the situation of migrants from Venezuela in the countries of the region, follow up on the recommendations made to the state by the Commission, and support the strengthening of civil society.[101]

Petition and case system

Individuals, groups of individuals, and non-governmental organisations recognised in any OAS member state may submit complaints ("petitions") concerning alleged violations of the Declaration, the Convention, and other regional human rights treaties. The Commission generally receives at least 2,000 petitions every year. The individual case system is a strong mechanism of the IAHRS and has proven effective in calling attention to human rights violations, protecting communities and preventing escalation of conflict. The Commission investigates the situation and can make recommendations to the state responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and to provide reparations.

The recommendations issued by the Commission to the OAS member states, in order to promote the respect for human rights, is part of the Commission's basic functions. The Commission's decisions have legal support in that the OAS member states have adopted the Declaration, and the majority have also ratified the Convention. Additionally, by virtue of the principles of international public law, states commit to fulfilling in good faith the obligations derived from international treaties.[102] The Commission may refer cases to the Court only with respect to those states that have ratified the American Convention and have previously recognised the contentious jurisdiction of the Court, unless a state accepts jurisdiction expressly for a specific case.

In the case of Venezuela, the mandate of the Commission and the Court to act has been circumscribed since, on in September 2012, the Government

of Venezuela denounced the American Convention on Human Rights. Venezuela will no longer be bound by the American Convention, meaning complaints against it cannot be brought before the Court. Additionally, while the Commission will retain its authority to monitor human rights conditions in Venezuela, its jurisdiction over individual complaints will extend only to alleged violations of the American Declaration on the Rights and Duties of Man (as is the case with other OAS member states not party to the American Convention, such as Canada, and the United States).

Complaints regarding violations of rights enshrined in the American Convention committed before the exit of Venezuela are however admissible. One example of a petition, filed in 2011, is the *Revilla Soto v Venezuela* case. Mr. Revilla Soto claims that Venezuela is responsible for the violation of his rights, in that he was subjected to warrantless detention, torture in prison, and prosecution without judicial safeguards or judicial independence. The political intent was to use him for establishing a connection between journalists Patricia Poleo, Orlando Ochoa Terán, and Carlos Ramírez and the United States, allegedly by accusing him of leaking classified information on the moves of the Venezuelan government and to stop him from testifying at a legal proceeding in Spain about the alleged connection between the Venezuelan government, the Revolutionary Armed Forces of Colombia (FARC, by its Spanish acronym), and Basque Homeland and Freedom (ETA, by its Spanish acronym).[103]

The Commission issued a report on admissibility in 2020, which indicates that the petition meets the admissibility requirements. The case thereby entered the merits stage which will end with the approval of a Merits Report containing a conclusion whether the facts of the case constitute human rights violations. If human rights violations are found, the Merits Report includes recommendations to the state.

Precautionary measures

Another mechanism available to the Commission is urgent requests for states to adopt precautionary measures. Precautionary measures are orders directed to an OAS member state, whether related to a petition or not, concerning "serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system." [104] The precautionary measures are obligatory and require states to comply without exception of domestic political or legal motives. The Commission primarily grants precautionary measures to protect the core basic rights, the right to life and the right to humane treatment.[105] By urging states to adopt precautionary measures the Commission is able to intervene in particular situations and prevent the escalation of violence and conflict.

There are several examples of requests of precautionary measures issued by the Commission regarding Venezuelan cases during the last couple of years. One case from April 2019, concerns the Venezuelan woman María Corina Machado Parisca who had been receiving threats and harassment related to her political participation in the context of Venezuela. After analysing the legal and factual allegations, the Commission considered that María Corina Machado Parisca was in a situation of gravity and urgency, since her rights faced an irreparable risk of harm. Therefore, based on Article 25 of its Rules of Procedure, the Commission requested the State of Venezuela to adopt the necessary measures to protect the rights to life and personal integrity of María Corina Machado Parisca and to adopt the necessary measures to guarantee that she could carry out her activities of political participation without risking threats, harassment or acts of violence.[106]

Between 2016 and 2020, the Commission granted a total of 63 precautionary measures regarding Venezuela, this while in the period 2011-2015, only 12 precautionary measures had been adopted.[107]

Country reports and on-site visits

A central part of the Commission's work is producing general and special reports on grave violations of human rights, including in contexts of conflict. The Commission uses the reports to cooperate with states seeking to

improve their human rights situation. In order to engage with local civil society and gather information for a report, the Commission sometimes conducts on-site visits to countries. The reports on the human rights situation in a particular country are then presented to the international community and to the OAS General Assembly, as part of its Annual Report or a more comprehensive Special Report. Reports can also be presented to the OAS Permanent Council. In this way the Commission is able to "intervene" in a conflict or crisis and call for the attention and collective action of the international community in order to prevent the escalation of a situation. The reports can also be used by local actors in their advocacy efforts to promote the respect for human rights and resolution of conflicts.[108]

In February 2020, the Commission conducted a visit to Cúcuta, Colombia, at the border to Venezuela, and to Bogotá, in order to assess the human rights situation among Venezuelan migrants and refugees. The mission was initially planned for Venezuela but the Commission was denied entry into the country by the regime, as has been the case since 2002. The delegation met with victims of human rights violations and their families, with governmental and UN entities, and Venezuelan and Colombian civil society. The preliminary report presents recommendations to Venezuela with regards to a wide range of issues, including violence and citizen security, internally displaced people, children, adolescents and women. With regards to sexual and gender based violence, the Venezuelan state was recommended to a adopt measures to comply with the state's obligation to prevent, protect, investigate, sanction, and provide reparation for all forms of violence against women.[109]

Provisional measures

Similar to the Commission's *precautionary measures*, the Court can issue *provisional measures*. According to article 63.2 of the American Convention on Human Rights, the purpose is to prevent irreparable harm to the rights and freedoms ensured under the Convention, of persons who are in a situation of extreme gravity and urgency. The Court adopts provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission. The measures should result in protection offered by the respondent state to alleged victims which can include family members of alleged victims, witnesses, journalists, political candidates, human rights defenders, members of indigenous communities, prisoners who live in deplorable conditions, the seriously ill or those on hunger strikes, officials of the justice system, immigrants under orders of deportation or extradition and those sentenced to capital punishment. Provisional measures can save the life of a person or of a group that are being threatened the guarantee of human rights in conflict and crisis situations.[110] As cases are urgent, if the Court is not able to meet, articles 27.6 and 31.2 of its Rules of Procedure, provide for the President of the Court to act swiftly, ordering Urgent Measures to the state.

In the case of Venezuela, provisional measures can be ordered with reference to cases submitted prior to the country's denunciation of the Convention on 10 September 2012. In accordance with Article 78.2 of the Convention, the state is required to fulfil the obligations contained in the Convention with respect to any act occurred prior to the effective date of denunciation. Therefore, during the last couple of years the Court has been able to reiterate and extend previously declared cases. One example is an order from the Court in July 2020 regarding the provisional measures adopted in 2009 in favour of Humberto Prado.

In September 2019 Humberto Prado was appointed by Juan Guaidó, who was designated as the interim president of Venezuela, as "Presidential Commissioner for Human Rights". According to the order of the Court of 24 November 2009 and subsequent ones, (6 July 2011, 6 September 2012 and 13 November 2015), the state must protect the life and personal integrity of Humberto Prado. On 13 March 2020, the representatives of Humberto Prado informed the Court of the "state of alarm" declared by the Venezuelan state due to the Covid-19 pandemic, and that in this context the state would intensify its "policy of social control and repression." It was asserted that people who demand, defend and promote human

rights are considered "enemies" that should be "neutralised". The Venezuelan authorities had allegedly made a call for the activation of the "Bolivarian Fury", to target any person considered an enemy or a destabilising agent. The representatives of Humberto Prado affirmed that, within this framework, there had been a special cruelty and a new wave of aggressions against people close to the circle of Juan Guaidó, and relatives of the persecuted persons, and that there had been new attacks to hinder the work of human rights organisations, and threats to various leaders.[112]

In its order issued on 8 July 2020, the Court decided to maintain the provisional measures ordered in favour of Humberto Prado and to extend the provisional measures requiring the state to take the necessary protection measures to guarantee the life and personal integrity of the additional persons who are at risk, according to the representatives of Humberto Prado. The state has the obligation to report quarterly to the Court on the implementation of the ordered measures. The beneficiaries of the measures or their representatives must on their hand present their observations to the state reports within four weeks, counted from the receipt of the state reports. Similarly, the Commission shall present their observations within a period of six weeks, counted from the receipt of state reports.[113]

The State of Venezuela has requested that the ordered provisional measures are lifted, arguing that measures have been implemented and that there are currently no actual risks requiring an order of provisional measures. In its report submitted on 26 May 2020, nearly two years after the deadline for submission, the state of Venezuela reported on measures adopted during 2018 and 2019 responding to some of the ordered provisional measures. However, according to the Court, no measures were reported with regards to the situation of Humberto Prado.[114]

Court judgements

The Court is competent to hear any case submitted to it, either by a state or the Commission, in regards to interpreting and applying the Convention, provided that the state parties in the case have recognised its contentious jurisdiction. Article 68 of the American Convention establishes the conventional obligation that states have to implement, both in the international and internal sphere, in good faith, and in a prompt and complete manner, the provisions of the Court in the judgments.

The Court has found many violations of human rights in the context of conflict. It has, among other things, found states responsible for violating the right to life when they have failed to keep civilians safe during times of conflict and when they must have known that people were in life-threatening danger.[115] Similarly, arbitrary deprivation of life has been found in cases of disproportionate use of force in armed conflicts. When determining whether something amounts to a violation of article 4, the Court has considered international humanitarian law and the Geneva Conventions. [116] In essence, the jurisprudence of the Court suggests that if a killing is a breach of international humanitarian law, it is also likely a violation of article 4.[117] The legacy of the Court in terms of support to peace and security in the Americas will be further developed in the next chapter.

With regards to Venezuela, the time scope for cases is restricted as the state denounced the Convention on 10 September 2012. This means that the period which the Prosecutor of the International Criminal Court is focusing on, i.e. since April 2017 (even though there is an opening that Rome Statute crimes can have been committed even before) is "out of bounds" for the IACtHR. Nevertheless, in the last few years, the Court has handed down a number of judgements on Venezuela – most of them though concerning events taking place in the end of the nineties and the beginning of the twenty-first century. Quite a few of these cases concern state security forces, including excessive use of force, suspected extrajudicial killings, and lack of due diligence in investigating and prosecuting. However, these cases are not of immediate interest to the main line of investigation of the present report as even though they concern human security and rule of law, they do not connect to the political crisis but are rather a result of it and of widespread corruption, violence and

organised crime. They are as such not insignificant as they signal important patterns that add to the conflict, but for the aims of this study we have chosen to concentrate on others.

An interesting case in the Venezuelan context and also for the regional level – not least considering the tendency of states to limit civic space, including freedom of expression and freedom of speech by means of legal actions – is the *Álvarez Ramos v Venezuela* case. In short, the case concerns the violation of the right to freedom of expression on part of Venezuela regarding the journalist Tulio Álvarez Ramos, by imposing criminal defamation sanctions. Mr. Álvarez Ramos had been sentenced to two years and three months in prison after publishing an article in 2003 about alleged irregularities in the management of the Savings Bank of the National Assembly of Venezuela. The Court *inter alia* determined that Venezuela violated article 13(2) of the American Convention – the protection of freedom of thought and expression, holding that, the publication of an article of public interest concerning a public official cannot be considered a criminal offence or a crime against honour. The Court in its deliberations stated that "the use of criminal law against those who disseminate information of this nature would directly or indirectly constitute intimidation which, in the end, would limit freedom of expression and would impede public scrutiny of unlawful conduct, such as acts of corruption, abuse of authority, etc."[119]

Another case, *San Migue Sosal et al v Venezuela*, concerns three women who were dismissed from their posts as public officials on grounds of their political activism. This case is highly relevant for several countries of the region. The three women had signed a petition for a recall referendum of the President of Venezuela, which was presented before the National Electoral Council in December 2003. The President of Venezuela authorised a member of the National Assembly to obtain a copy of the list of signatories to the petition from that council. After the list was published on a webpage, workers and public officials of several institutions denounced that they had been dismissed as retaliation for having signed the petition.

In March 2004 the victims, who had worked for several years at the National Borders Council, received a letter from their superior, communicating that their temporary labor contracts had been terminated. The decision was allegedly based on a discretionary clause. Subsequent remedies filed by the applicants before judicial authorities and the Ombudsperson were declared inadmissible or denied on the merits.

The Court determined that Venezuela violated article 13(1) – freedom of thought and expression – of the American Convention. The Court held that signing the petition for a recall referendum constituted a form of political opinion and as such was an exercise of freedom of expression. The Court further found that the dismissals of the victims contained a covert intention of deterring political dissidence, used to provoke a chilling effect on political participation. Thus, the fact that they were subjected to political discrimination in retaliation for signing the petition for a recall referendum, constituted a direct restriction on the exercise of their freedom of expression, not permissible under the American Convention.[120]

Lastly, *Granier et al v Venezuela* concerns the case of the non-renewal of the license of the Radio Caracas Television (RCTV). RCTV transmitted news coverage and opinion programs which were often critical of then President Hugo Chavez's government. Prior to the expiration of the license in 2007, Chávez declared that it was the end of RCTV's concession and that the decision was definitive. The agency in charge of granting telecommunications licenses did not renew RCTV's license on two different occasions because they allegedly violated several provisions with regard to social responsibility in radio and television. The government of Venezuela reiterated that the action taken against RCTV was constitutional, given that they are the sole owners of the telecommunication airwaves and that the process had followed legal requirements.

While the Court determined that RCTV did not have a preferential right to the concession of a license, it found that the decision to not renew the

license was taken before it expired and that the decision to not renew came directly from the government. For these reasons, the Court concluded that the real purpose in denying the license was because of RCTV's critical views towards the government and because of alleged irregularities. Although the Court established that the right to freedom of expression enshrined in article 13 of the American Convention does not recognise legal entities, media corporations are regarded as facilitators of freedom of expression and carry an important role in a democratic society. In this case, even though it was the broadcasting company that was affected by a state action, it also affected the right to freedom of expression of the individuals that disseminated their ideas through the broadcasting company. Moreover, the Court considered that a state does have a prerogative to regulate its own broadcasting licensing process, and in doing so, the state has the duty to protect the right to freedom of expression.[121] The Court *inter alia* resolved that the state violated article 13(1) and 13(3) of the American Convention "owing to an indirect restriction of the exercise of the right to freedom of expression".[122]

Relationship between the Court, the Commission and other actors

Relationship with the United Nations

The relationship between the United Nations and regional organisations such as the OAS is recognised in Chapter VIII of the UN Charter as well as in several resolutions of the General Assembly and the Security Council. Article 1 of the OAS Charter states that "within the United Nations, the Organisation of American States is a regional agency". The OAS and the United Nations adopted a Cooperation Agreement in 1995, which includes commitments for the two organisations to work together on matters of common interest such as human rights, fundamental freedoms, peace and security, and economic, social and cultural development.

The American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, were issued with only a few months difference and establish a very similar set of civil, cultural, economic, political and social rights to be protected. As each system developed an increasingly more comprehensive and complex set of norms and mechanisms to translate these international principles into effective human rights protection for all, the opportunities for cooperation between both systems increased; in the inter-American system, through the work of the Commission and the Court, and in the UN system through the work of the former Commission on Human Rights, the numerous Committees established to monitor the implementation of human rights treaties, and the Office of the High Commissioner for Human Rights (OHCHR).

The cooperation between both systems has multiplied throughout the years. Mandate holders of both systems have undertaken joint actions, such as issuing joint press releases in response to specific human rights violations. The Commission has often encouraged states to ratify UN human rights treaties, along with the regional treaties, the Commission and OHCHR have elaborated and issued joint thematic reports, and joint press releases, and both systems have even deployed joint field missions to assess human rights situations.

Relationship with civil society

Civil society has multiple opportunities to engage with the Commission and efforts are actively taken by the Commission in order to strengthen its relationship with civil society. This relationship benefits the Commission's efforts in advancing its mandate, civil society in its advocacy work, as well as victims of human rights abuses, human rights defenders, and the people living in the Americas. Through engagement with civil society organisations, in connection with for example on-site visits, the Commission is provided with information, insight, experience, and assistance that it could not access otherwise. The Commission on its part provides a robust and dynamic forum for civil society to advance the protection of human rights, and prevention and resolution of conflict in the region.

Unlike other regional human rights systems, organisations engaging with the Commission are treated equally with states and are equal participants in the processes before the Commission. Furthermore, civil society, states, and the Commission often engage in productive collaborations as a means of strengthening the Commission and its effectiveness in promoting and protecting human rights in the region.

However, the Commission's resource constraints, partly due to limited resources as a result of insufficient state funding, funding cuts, and funding earmarked for specific activities, limit its capacity to maintain a strong and dynamic relationship with civil society and strengthen opportunities for civil society engagement. Some states have actively worked to circumscribe the role of civil society in front of the Commission. Advocacy and engagement with the Commission, through for example the Commission's public sessions, consideration of individual complaints, creation of standards and guidance for OAS member states, and monitoring of states' compliance with their human rights obligations, are important tools for improving human rights protections in policy and practice. It can therefore be argued that the means of civil society engagement with the Commission, the limitations or restrictions on that engagement, impact the Commission's relevance and ability to protect and promote human rights, peace and security in the Americas.

The Commission holds at least two regular periods of sessions and as many special periods of sessions as it deems necessary during the year. The sessions provide unique opportunities to human rights defenders and other members of civil society to participate in hearings, meetings, and events, potentially conveying their message to various stakeholders and audiences throughout the region. Periods of sessions also present informal advocacy opportunities, such as side events, interactions with government representatives, and media coverage. In other words, the Commission's sessions provide an excellent opportunity for civil society members from across the Americas to come together, share information, strengthen their collaboration, and advance their shared interests.[123]

Relationship with other parts of the OAS

The Permanent Council of the OAS can request the Commission to conduct on-site visits to countries in order to investigate and gather information on developments within contexts such as conflict or crisis situations. The reports on human rights situations observed are presented to the Permanent Council and the General Assembly of the OAS and are important in order to inform the work of the organisation. The Executive Secretary of the Commission is an official of the General Secretariat of the OAS, selected by the Commission and appointed by the Secretary General of the OAS.

The Commission, as well as the Court, presents annual reports to the General Assembly. These reports are a possibility for these entities to present the status of human rights in the region, point to particularly worrying country contexts and to the implementation of recommendations and Court rulings.

Relationship between the Court and the Commission

The relationship between the Court and the Commission is stipulated in the Statutes and the Rules of Procedure of the two bodies. Although decisions and recommendations of the Commission have legal support, they are not legally binding. The Court therefore plays an important role in complementing the work of the Commission by issuing legally binding judgments in cases referred by the Commission, where states have failed to comply with the recommendations presented by the Commission.

IAHRS: CONTRIBUTIONS TO PEACE AND SECURITY

Prevention, early warning and responsibility to protect

In an essay from 2016, Portales and Rodriguez-Pinzon, elaborating on the historic role of the OAS in assuming the responsibility to protect in the context of serious violations of human rights, find that the Court and the Commission have been "some of the most effective tools with which this region has confronted such situations by seeking to prevent them from occurring in the first place." The authors hold that the IAHRS has helped build democratic regimes in the majority of the countries, which has been important to avoid serious violations of human rights that would have required international intervention. Furthermore that regional protection of human rights contributes to avoid unilateral intervention and that the collective action of the OAS member states through the IAHRS has contributed to the creation of "a hemispheric environment in which gross and systematic violations of human rights or war crimes are no longer possible." [124]

In its early stages after the establishment of the Commission in 1960 its activities were expanded contributing reports on human rights violations in Cuba, Guatemala, the Dominican Republic, Paraguay and Nicaragua. After the establishment of an Inter-American Peace Force to the Dominican Republic in 1965, the OAS Secretary General asked the Commission to make a country visit which investigated the numerous human rights violations in the context of the power struggles between rival fractions while it also played a role in the peacekeeping operations. Then during the many military dictatorships governed by the "national security doctrine" of the seventies end eighties, which took place in the midst of the Cold War, the Commission played a key role in reporting human rights violations in Paraguay, Chile, Argentina and Uruguay and started to pursue individual cases. Individual cases were also referred to the Court when it became effective, and while the Commission continued to monitor fragile democracies and political violence, the Court developed a robust set of jurisprudence, expanding the application of the rights enshrined in the Convention.[125] Some emblematic cases that are related to central rights in the context of peace and security and conflict prevention, are further discussed in the present chapter.

Relationship between human rights law and international humanitarian law

The Court has developed a unique jurisprudence on the protection of human rights in the framework of internal armed conflicts and contributed to the understanding of the interplay between human rights law and international humanitarian law (IHL). The Court has contributed to a progressive development where these two frameworks have come closer and now can be considered to be intertwined. The Court in the case *Las Palmeras v. Colombia*, decided in 2002, for the first time took a clear stand regarding its mandate to apply IHL and has since then argued that relevant provisions of the Geneva Conventions can be taken into consideration in its interpretation of the American Convention. In its deliberations on states' obligations to protect civilians during internal armed conflict, in its ruling in 2005 regarding the *Maripipán Massacre v. Colombia*, the Court used elements of IHL deriving the state obligation to prevent human rights violations in the context of internal armed conflict.[126]

Intra-state complaints

The possibility for the Commission to decide on intra-state cases, provided for in article 45 of the American Convention, is a potential resource that has been little used. Only ten states have declared that they recognise the competence of the Commission to receive and examine cases filed by another state party to the Convention and only two cases have been filed. The first case from 2006, *Nicaragua v. Costa Rica*, was rejected by the Commission. The second complaint is interesting from a peace and security perspective as it involved the violation of the rights and freedoms of an Ecuadorian citizen on part of the Colombian armed forces. The victim was killed by Colombian forces in the framework of a secret military intervention "Operation Phoenix" on Ecuadorian territory in 2008.

In 2009, the Commission received a communication from the state of Ecuador accusing the state of Colombia by reason of its international responsibility for the violation of the right to life (Article 4.1), the right to humane treatment (Article 5.1), to judicial guarantees (Article 8.1 and 8.2), to judicial protection (25.1), all in connection with Article 1.1 of the American Convention, to the prejudice of an Ecuadorian citizen, who was arbitrarily deprived of his life by agents of Colombian security forces in the context of "Operation Phoenix", a circumstance that gave rise to a prejudice to the rights of his immediate family.

The state of Ecuador maintained that on 1 March 2008, the Colombian armed forces bombed a camp of the Colombian Revolutionary Armed Forces located in the Lago Agrio Municipality, in Ecuador, 1,850 meters from the Colombian border. In accordance with the inter-state communication, in this context the Ecuadorian citizen, who was in the bombed camp, was extrajudicially executed by members of the Colombian security forces who participated in the above operation.

The Commission concluded that it was competent to examine the claims filed by the State of Ecuador against the State of Colombia on the alleged violations of the American Convention and that the claims were admissible. However, the complaint was concluded by a friendly settlement in 2013.[127, 128]

Habeas corpus

Habeas corpus is a legal concept common in Anglo-Saxon countries which protects against unlawful and indefinite imprisonment and has historically been an important instrument to safeguard individual freedom against arbitrary executive power and especially so in the context of authoritarian states and in the context of internal armed conflict. The recourse of *habeas corpus* is provided for in article 7.6 of the Convention.

In 1986, the Commission demanded a legal opinion from the Court in relation to *habeas corpus* and the fact that a number of states had suspended rights of judicial security related to personal liberty (article 7) and judicial protection (article 25), referring to article 27(2) of the Convention on the suspension of guarantees. The Commission held that thousands of cases of forced disappearances could have been prevented provided that procedures on *habeas corpus* had been working effectively. Additionally, the Commission held that this recourse is an effective instrument to promptly correct abuses of authority including the arbitrary deprivation of freedom and to prevent torture.

The Court in its analysis found that there is no strict prohibition to suspend some rights and freedoms in extraordinary situations but at the same time, taking into count the practice of human rights violations in the region, found it important that such violations should not be possible only by referring to article 27. In relation to *habeas corpus* and *amparo* [129], the Court came to the decision that they are judicial remedies essential for the protection of various rights whose derogation is prohibited according to article 27(2) and also pointed to their importance for preserving legality in democratic societies.

The Commission has for example dealt with the challenge of derogation in country reports. After visits to Colombia in 1990 and 1992, in their second report on Colombia in 1993, the Commission noted that the right to *habeas corpus* was sidestepped and it registered many violations of this right, provided by the Convention. Also, in its third report on Guatemala in 1986, the Commission criticized the weak access to *habeas corpus*.[130]

Children and armed conflict

The IAHRS also contributed to the development of the rights of children in armed conflict. The case of *Molina Theissen v. Guatemala* concerning the forced disappearance of a 14-year old during the internal armed conflict in Guatemala, and the *Gómez Paquiyauri Brotjers v. Peru*, concerning the unlawful detention, torture and extrajudicial execution in the context of the internal armed conflict in Peru, both resolved by the Court in 2004,

are two cases that have been important in this aspect. The protection of children and the principle of the best interest of the child in the context of post-conflict was elaborated upon in the *Servellón Garcia et al v Honduras* case, decided by the Court in 2006. Also recruitment of child soldiers has been handled by the Court, as in the 2006 judgement in the case *Vargas Areco v. Paraguay*. In addition, the *Las Dos Erres Massacre v. Guatemala* handled the kidnapping of children within the context of the massacre and the subsequent adoption of these children of other families, changing their names and identities and thereby violating their right to living with their families and their right to name and identity. In the 2005 Court decision on the *Mapiripán Massacre v. Colombia*, the Court stated that article 19 of the Convention shall be interpreted through the lens of the UN Convention on the Rights of the Child and Protocol II of the Geneva Conventions, concluding that children are especially vulnerable in internal armed conflicts and that they suffer disproportionally compared to other groups.[131]

A recent Commission communication which was resolved by means of a friendly solution in 2009 in which the state assumed responsibility, is the case *Gómez Paredes et al v Paraguay*, regarding the illegal recruitment of two 14-year olds to the mandatory military service and the disappearance of the victims under military custody. Furthermore, the Commission has, for example, in its reports on Colombia in 1999 and 2013 expressed deep concern over the recruitment and use of children in the internal armed conflict.[132] The Commission also, since 1998, counts with a Special Rapporteur on the Rights of the Child, which has made important contributions to the rights of children in conflict and post-conflict.[133]

The right to life

The right to life is a fundamental human right and a preposition for other rights and freedoms protected by the American Convention. In its article 4, the Convention stipulates that everyone has "the right to have his life respected" and that this right shall be protected by law. The article furthermore states that "No one shall be arbitrarily deprived of his life." Most cases regarding the right to life in the context of conflict handled by the Commission and the Court, refer to forced disappearances, massacres and extrajudicial executions.

The dictatorships and military juntas in Latin America employed forced disappearance in an attempt to silence and control political opposition. Dissidents and protesters were abducted in the middle of the street or dragged from their bed in the middle of the night and were never seen again.

In the transition from dictatorships, societies like Chile, Honduras, Guatemala and others were haunted by the fate of *los desaparecidos* (the disappeared). Women were visibly at the frontlines of the search for truth about their loved ones – probably the most iconic being the Mothers of the Plaza de Mayo in Argentina – claiming truth about the fate and whereabouts of their loved ones.

The IAHRS through the *Velásquez Rodríguez* case – the first case decided by the Inter-American Court of Human Rights in 1988 – together with the *Godínez Cruz*, and *Fairén Garbi and Solís Corrales* cases, all considered by the Court around the same time, form a trio of landmark cases targeting forced disappearance practices by the Honduran government during the early 1980s. In the *Velásquez Rodríguez* case, the Court found the government of Honduras responsible for the disappearance of Manfredo Velasquez, a student leader who was disappeared by security services.[134] The matter of forced disappearance is also subject to a special convention within the OAS, as discussed in the chapter on normative framework.

Also under democratic governments such as in the case of Colombia, forced disappearances and extrajudicial killings have been crimes committed both by government forces, the guerrillas and paramilitary forces. The Colombian armed forces have been implied in the so called false-positives scandal or *falsos positivos* – a practice by army units to abduct and assassinate young men, reporting them as enemies killed in combat – in order to gain personal

benefits and to comply with government pressure to show better results in combatting the guerrillas. Here also, mothers have been in the frontline claiming truth and justice – as in the case of the Mothers of Soacha – a Bogotá suburb which was hard hit by these forced disappearances.

A number of false-positive cases have reached the Commission and in 2016, the Commission filed an application with the Court regarding the case of *Villamizar Durán et al*.[135] The Commission established that the extrajudicial executions presented in the case were committed by state security agents and took place in a context of false positives. In addition to the determination of arbitrary deprivation of life in the cases of Gustavo Giraldo Villamizar Duran and Elio Gelves Carrillo, the Commission also found violations in relation to the right to honour and dignity since they were presented as members of illegal armed groups. Moreover, since in several cases, the Commission determined that the extrajudicial executions were preceded by the deprivation of liberty in which they could foresee their fate, these persons were also victimized by having their rights of personal integrity and personal liberty violated.

In its Merits Report[136] (report containing conclusions about whether the facts of a case constitute human rights violations), the Commission recommended the state of Colombia to fully repair these human rights violations – both in their material and moral aspects – urged the state to conduct a full and effective investigation, and to establish the criminal, administrative or other responsibilities that may be found.

The Commission urged Colombia to adopt all legislative, administrative and other measures to ensure the non-repetition of similar events and recommended that the military criminal justice system does not hear cases of human rights violations.

The Commission submitted the case to the Court's jurisdiction since it found that Colombia had not complied with the recommendations contained in the Merits Report.

The Commission held that the case would "allow the Court to deepen its jurisprudence on cases of extrajudicial executions [and] permit the Court to analyze such violations within the specific content to due diligence, among other aspects, under the incorporation of context to the investigation and the practice of fundamental evidence coming from the understanding of the mentioned modus operandi."[137]

The Court resolved the case in 2018 and in its sentence it declared the Colombian state responsible for the deaths of six Colombian citizens in the hands of the Colombian Armed Forces between 1992 and 1997. All deaths took place within the framework of the internal armed conflict and five out of six developed within a modus operandi characterised by the extrajudicial execution of civilians, later presented as members of illegal armed groups killed in combat. The Court, as the Commission, in the cases of Villamizar Duran and Gelves Carrillo, also found violations in relation to the right to honour and dignity of the victims and their families and in five of the cases also found the rights of personal integrity and personal liberty violated. In addition, the Court also established that in five of the cases, the Colombian State had violated the right to fair trial and legal protection as well as the right to personal integrity of the families of the direct victims.

The Commission and the Court have also handled the right to life in a great deal of cases related to massacres, including the *Maripipán Massacre v. Colombia*, the *Pueblo Bello Massacre v. Colombia, La Rochela Massacre v. Colombia, the Las Dos Erres Massacre v. Guatemala, the Massacre of El Mozote and nearby places v. El Salvador*, and others. Cases include the involvement of paramilitary forces and confirm the due diligence of states in protecting the right to life.

It is also worth mentioning the role played by the Commission and the Court in terms of actions aimed at the protection of the right to life through the use of precautionary- and provisional measures. Studies have found that the precautionary measures adopted by the Commission and the provisional measures adopted by the Court had primarily

been used in situations where fundamental rights related to the right to life and personal integrity were at stake.[138]

The prohibition of torture and the right to humane treatment

Article 5 in the Convention handles the right to humane treatment and the prohibition of torture is provided for in 5(2). As for forced disappearance, the prohibition of torture is also subject to a special convention within the OAS, which is discussed under the chapter on the normative framework.

The Court and the Commission have handled a variety of cases concerning torture and have resorted to the definition of torture found in the Inter-American Convention to Prevent and Punish Torture (IACPPT), as a definition is not found in the American Convention. The Court has found that torture not only refers to physical suffering but that mental suffering can amount to torture. Regarding cruel, inhuman, or degrading punishment or treatment the Court has for example in relation to prisons found that inadequate medical access, physical violence and crowded prisons on a cumulative basis amounts to inhumane treatment. The Court also in the *Velázquez Rodriguez v. Honduras* case pronounced that the forced disappearance of the victim violated the respect for physical, mental and moral integrity of the victim as well as freedom from torture, inhumane and degrading treatment.

Torture often takes place in the context of special circumstances where emergency laws give police- and military forces extended powers. One of these powers is the possibility to hold arrested persons in *incommunicado detention*. The IAHRS has dealt with a great deal of cases regarding human rights violations under *incommunicado detentions* – especially in the context of the "national security" era.[139]

As in the case of defending the right to life, defending the freedom from torture, inhumane and degrading treatment is instrumental to the IASHR and a central tool for prevention is the precautionary measures of the Commission and the provisional measures of the Court.

Rights and freedoms and the use of force

The Commission has responded to the allegations of systematic human rights violations after the 9/11 events. Having the possibility to receive communications regarding the United States, the Commission issued orders on controversial issues regarding the detainees brought to Guantanamo Bay. The Commission issued its first precautionary measures regarding Guantanamo detainees in 2002 and these were soon followed by others. The measures focused on the right to a competent tribunal to decide on the legal status of detainees as well as detainees' right to legal mechanisms. In addition, the Commission specifically underlined the responsibility of the United States to ensure the rights of detainees, since they were found to be under the authority and control of U.S. authorities despite the fact that the Guantanamo naval base not being part of U.S. territory.

The Commission, in the coming years, continued to express their concern and requested the U.S. to provide information on the status and treatment of detained and requested the adoption of all necessary measures to conduct independent, impartial and effective investigations on the allegations of torture. In addition, the Commission requested the state to refrain from transferring detainees to countries where they would be in danger of torture or other mistreatment, that the use of statements given under torture would not be used in legal proceedings, that investigations should not be conducted by the Department of Defence and that the tribunal should be competent to establish the legal status of detainees and provide them basic legal rights. After the non-compliance with its precautionary measures, the Commission in 2006 urged the U.S. to close Guantanamo.

In the following years, the Commission continued to issue precautionary measures, making emphasis on the prevention of torture and mistreatment and the adoption of measures to bring to justice any individuals responsible for such acts, as well as to ensure that statements given under torture would not be used as evidence. Then, in 2007, the U.S. government agreed to allow the Commission to visit the Guantanamo naval base, but only under the condition that the delegation would not be able

to interview detainees. The Commission declined to make a visit under that condition. As President Obama expressed a will to close the detention centre, the Commission issued a press release in 2009, stating its satisfaction – however as the promise never came to concretion – in 2011, the Commission issued a resolution (2/11) stating that the detention of the individuals at Guantanamo naval base constitutes a violation of fundamental rights urging the state to close the detention centre and to try detainees according to international human rights and humanitarian law. The Commission has continued to monitor the situation.[140]

The Commission has also, most recently during the protests in Chile and Colombia, acted on the freedom of expression and on the use of force in the context of protests. As a part of follow-up on the issue, the Commission made on-site visits to Chile in 2020 to Colombia in 2021. The Commission in its press release following the visit to Colombia stressed "the call for dialogue to overcome social conflict, as well as the need for investigations with due diligence, a comprehensive approach that enables reparations for victims and punishment for the people responsible for human rights violations, and the protection of journalists and medical missions [and] inclusive talks to address the legitimate demands of the people, with the utmost respect for human rights and within the democratic context of the rule of law." The Commission also decided to launch a Special Monitoring Mechanism for Human Rights in Colombia.[141]

In its recommendations on the right to protest, the Commission called upon the state to respect and guarantee the full enjoyment of the rights to protest, to freedom of expression, to peaceful assembly, and to participate in politics for the entire population. Further, to promote the inter-American standard according to which public officials have a duty to refrain from making statements that stigmatise or incite violence against persons who participate in demonstrations and protests. And finally, to draft and enact a statutory law regulating the scope and limitations of the right to protest in Colombia, in accordance with the rulings of the Supreme Court and pursuant to international standards on the subject.

Recommendations on excessive and disproportionate use of force, included calling on the state to "take the measures necessary to immediately cease the disproportionate use of force by security forces in the framework of social protest [and] to ensure that the priority of the security forces that intervene to protect and control demonstrations and protests is to defend lives and integrity of person, abstaining from arbitrarily detaining demonstrators or violating their rights in any other way, in accordance with current protocols." Further, to immediately implement mechanisms to effectively prohibit the use of lethal force during public demonstrations and to separate the National Police and its ESMAD[142] from the Ministry of Defence "to ensure a structure that consolidates and preserves security with a focus on citizens and human rights and prevent all possibility of military perspectives".[143]

Derogation of rights

Article 27(1) of the Convention allows states to make exceptions as to the guarantee of certain rights and freedoms under certain circumstances and conditions, limited to war, public danger and other emergencies that "threatens the independence or security of a State Party". Derogation from its obligations should be limited to "the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin."

However, according to article 27(2), a number of the Convention articles are non-derogable (i.e. they always apply and cannot be disregarded): Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), as well as the judicial guarantees essential for the protection of such rights.

This catalogue of non-derogable rights is the most extensive one in an international comparison.

Furthermore, according to article 27(3), the state party shall immediately inform the other state parties, through the Secretary General of the OAS, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Considering that the application of derogation not only risk affecting the temporarily suspended rights and freedoms but also may have an indirect impact on the non-derogable rights, that the situations in which derogation is possible are also contexts in which violations of human rights are more frequent, as well as the risk of using derogation as an "excuse" not to fulfil state obligations in relation to human rights protection, derogation is a delicate issue. This has been the case in a number of states in the region, especially during the era of "national security" and the military dictatorships. The Commission has in a number of cases found that states referring to a state of emergency have done so without sufficient reason in the actual context but rather as a means to control and oppress opposition and also that such measures have not been of temporary nature. There have also been cases where states have applied suspension of rights and freedoms but have omitted to notify the OAS Secretary General on the matter. In short, derogation measures must be necessary, temporary, proportional, and adhere to domestic law. It is interesting to note that the Commission has applied the provisions in article 27 also to states that are not parties to the Convention.

The Court in its different deliberations on the catalogue of non-derogable rights has concluded that the right to *habeas corpus, amparo* and similar remedies should not be subject to suspension since they are part of the judicial guarantees that are essential for the protection of non-derogable rights.

When it comes to the definition of contexts that can merit a derogation, the situation must imply a threat to the organised society and to the state power. It cannot only be a matter of small scale civil unrest that can arise in democracies, but must amount to a major unrest that is threatening the integrity of the people, the territorial integrity, or the functions of organs of the state. The whole nation must be under threat, and fundamental functions such as the judiciary and the legislative power or critical assets must be in danger.[145]

State due diligence

The IAHRS has been instrumental for the development of due diligence, establishing the responsibilities of states in cases where the act of violation of rights is performed by private actors. In relation to peace and security there is a clear and imminent connection through the actions of non-state armed actors while there are also a number of secondary effects in the violation of rights, as for example land grabbing and displacement as the result of actions connected to non-state armed actors. As mentioned above, several of the cases regarding massacres committed in the framework of internal armed conflicts in the region that have been resolved by the Commission and the Court, involve non-state actors as direct perpetrators, holding states responsible on the grounds of due diligence for failing to protect the right to life of its citizens and in some cases for cooperating with non-state actors or having omitted to intervene to stop such actions by non-state actors.

Furthermore, according to the first two articles of the American Convention, states both have the responsibility to abstain from violating the given rights and freedoms while also taking the necessary actions in order to provide for and guarantee the enjoyment of the same rights and freedoms. These obligations were further elaborated by the Court in the *Velásquez Rodriguez v. Honduras* case and the *Godinez Cruz v. Honduras* case. In these cases where the victims were subject to forced disappearance which could not clearly be connected to state agents, the state was held responsible on the grounds of not having fulfilled its obligation to implement

preventive actions. The Court establishes the obligation of states in reference to the rights and freedoms of the Convention to include both positive and negative responsibilities and in addition that the international mechanism for the control of their implementation lies with the Court and the Commission. This development has been of uttermost importance for state responsibility in a variety of cases where the violation of human rights is connected to private actors and has affected jurisprudence in the other regional human rights systems.[146]

In relation to for example the armed conflict in Colombia, state responsibility has on occasion been found when there is evidence that the state has collaborated with private actors who violated human rights.[147] In order for such responsibility to be realised however there has to be significant evidence of state involvement.[148]

Sexual violence and rape as a weapon

The IAHRS has been instrumental in policy development, response to and jurisprudence regarding gender-specific aspects of human rights violations, including violence against women and sexual violence in conflict and in peace times. Within the framework of their report on the human rights situation in Haiti, product of an on-site visit in 1994, the Commission documented allegations of women and girls of different ages, subject to violence, including widespread sexual violence and rape. In the Haitian context this included various women that had played prominent roles in the establishment of democratic institutions in Haiti and the Commission came to the conclusion that their roles were a reason for attacks against them. The report also gives examples of sexual violence used as reprisal for political activities. The Commission concluded that the destruction of democratic movements in Haiti had created a climate of terror, and that women had been used as victims. Further that the intention of those in power had been to destroy any democratic movement whatever, through the terror created by this series of sexual crimes.

In retrospective, as the protection from sexual violence still was under construction in international law, the conclusions of the Commission were important contributions to the development of this area in the framework of international law.[149] The Commission stated that "rape represents not only inhumane treatment that infringes upon physical and moral integrity under Article 5 of the Convention, but also a form of torture in the sense of Article 5(2) of that instrument [and] the Commission considers that such use of rape as a weapon of terror also constitutes a crime against humanity under customary international law." [150]

The Court in its 2009 judgement on the *Las Dos Erres v. Guatemala* case regarding a massacre in Guatemala during the internal armed conflict in 1982, further contributed to the protection from sexual violence in the context of armed conflict and the state responsibility to investigate and punish such practice. The Court found that "during the armed conflict women were particularly chosen as victims of sexual violence" and further, referring to the precedent of the *Plan de Sánchez Massacre v. Guatemala* case, reiterated that "rape of women was a State practice, executed in the context of massacres, directed to destroying the dignity of women at a cultural, social, family, and individual level." The Court also stated that "the lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns, constitutes a breach of the State's obligations in relation to grave human rights violations, which infringe non-revocable laws (jus cogens) and generate obligations for the States such as investigating and punishing those practices, in conformity with the American Convention and in this case in light of the [Inter-American Convention to Prevent and Punish Torture] and the Convention of Belém do Pará." [151]

The most recent case decided upon by the Court, in October 2021, is the case of *Bedoya Lima et al. v. Colombia*. Ms. Bedoya was intercepted and kidnapped outside the La Modelo Prison in May 2000, by members of a paramilitary group and subjected to extremely violent and humiliating treatment and suffered severe verbal, physical and sexual assault. The kidnapping took

place as the victim was carrying out her work as a journalist, investigating crimes committed by criminal organisations with the intervention of state agents inside the Modelo prison. The Court found the state of Colombia internationally responsible for the violation of the rights to personal integrity, personal liberty, honour, dignity, and freedom of expression. The Court also noted the existence of "serious, precise and congruent indications" of the state's participation in such events. The case is important as it is the first ruling of the Court regarding the use of sexual violence as a form of silencing and control against a woman journalist in the context of armed conflict. The Court recognised the existence of acts of torture that had a clear connection with her journalistic activity and were intended to punish, intimidate and silence her. The Court further determined that these acts could not have been carried out without the acquiescence and collaboration of the state, or at least with its tolerance. The Court also found that the attacks against the journalist not only violated her freedom of expression at the individual level, but also had a collective impact, both on Colombian society in its right to information and on other people who practice journalism. The Court also declared that the state was internationally responsible for the violation of the rights to judicial guarantees and protection, and equality before the law, owing to the lack of due diligence when investigating the events, the gender-based discrimination in the investigation, and the violation of a reasonable time. In addition, the Court declared the international responsibility of the state for violating the journalist's rights to personal integrity, honour and dignity, freedom of expression, and judicial guarantees owing to the failure to investigate the threats she received before and after the events of May 2000. In relation to the threats that Ms. Bedoya had received since at least 1999, the Court ruled that due to the lack of investigation these constitute acts of torture. Lastly, the Court declared the violation of the right to personal integrity, honour, and dignity, judicial guarantees, and protection of Ms. Bedoya's mother.

One of the reparation measures ordered by the Court, is the obligation to investigate, prosecute and punish all those responsible for the crimes committed against Ms. Bedoya, as the Court determined that to

date the masterminds and other co-perpetrators who may have participated in the kidnapping, assault and subsequent threats, have not been determined.[152, 153]

Transitional Justice, amnesty laws and access to justice

The IAHRS is widely recognised for its significant contribution to domestic accountability for past human rights violations. Since the 1970s and onwards the system has played an increasingly prominent role in struggles for justice, truth, and reparations in contexts of repression and conflict as well as in the aftermath. The Commission's on-site visits and reports had both symbolic and practical significance during the 1970s and 1980s, providing victims with a forum when national justice systems were inaccessible, compromised or actively hostile. Precautionary measures, especially in cases of enforced disappearance, protected lives and collective struggles for defence of human rights.[154]

A broad set of obligations that public institutions have to ensure accountability and reparations has been established through the work of the IAHRS. The key principles that the IAHRS has developed in response to transitional justice dilemmas include: a victim-oriented approach, the right to effective judicial remedy – i.e. right to a fair trial and judicial protection – in other words, access to justice, the right to truth, and increasingly comprehensive and holistic reparation policies.[155, 156]

The IAHRS can be considered a pioneer of the rights-based framing of transitional justice practice in the region and beyond. The result of IAHRS's engagement with transitional justice throughout the decades is a broad set of duties of states, rights of victims and families, and obligations to provide reparations that put pressure on governments to revise the political bargains of the past. This trend has been reflected in the increasing number of human rights trials regarding past occurrences in various countries in Latin America, and in heads of state prosecutions.[157]

The Court has played a leading role in developing the international doctrine and domestic criminal proceedings on disappearance, amnesties, the victim's right to the truth, the obligation of states to prosecute, and judicial guarantees. In particular, the IAHRS has adopted a strong position on the illegitimacy of amnesty laws in the region. The amnesty laws adopted by the democratic governments after the military dictatorships in Argentina[158] and Uruguay[159] were by the Commission found to be violating the American Convention in a decision in 1992. The same happened to the amnesty laws in El Salvador[160] (1992) and Chile[161] (1996). The Court then in 2001, in its first decision on amnesties (*Barrios Altos v. Peru*), concluded that the two self-amnesty laws granted by the Fujimori regime to itself violated victims' rights of access to justice. These judgements have been important for the prevention and limitation of future amnesties for gross human rights violations as a signal of ending impunity while they have also highlighted governments' obligation to protect and created standards for states to comply with. This while national judicial systems in the region developed an increased openness to comply with standards of international law.[162]

In terms of central transitional justice values – the right to truth and justice, including the state obligation to investigate – was established in the first case decided by the Court in 1988 – the *Velásquez Rodríguez v. Honduras* case. In this judgement, the Court affirmed that the relatives of a victim have a right to know the victim's fate and, if he victim was killed, the location of his/her remains. That right is imbedded in the right of access to justice and the obligation to investigate as a form of reparation in order to establish the truth in a given case.[163]

The Commission, for its part, has emphasised that the American Convention protects the right to obtain and receive information, especially in cases of disappeared persons, whose whereabouts the state is obligated to determine.[164]

Other rights related to peace and security

Among other rights handled by the IAHRS is the right to property provided by article 21 of the Convention. The Court in its judgement on the *Ituango Massacre v. Colombia*, concluded that the destruction of homes and stealing cattle, performed by paramilitary forces, was a violation of the right to property.

Furthermore, the rights of indigenous peoples and minorities in the context of and nexus in relation to peace and security is a topic of its own, which would merit its own investigation and currently is relevant in many parts of the region – not only in maybe the most obvious case – within the internal armed conflict in Colombia and the peace agreement between the Colombian state and the FARC-guerrilla. The human rights and peace and security nexus in relation to indigenous peoples and minorities transcends centuries and state borders.

Among others, the right to property provided by article 21 in the Convention was interpreted in an extensive way by the Court in the *Mayagna Awas Tingni Community v. Nicaragua* case defining property as "those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovable, corporeal and incorporeal elements and any other intangible object capable of having value." The jurisprudence of the Court has also elaborated on the right of indigenous peoples to collective property, also in the cases where property has not been registered with the state. The Court has found that this right not only implies a negative responsibility to abstain from expropriating land but also a positive responsibility to demarcate and establish judicially binding ownership of land. In this line, the Court has also elaborated on the right to water in the *Mapuche Paynemil and Kaxipayin Communities v. Argentina* case.

Furthermore, on the right to life, the Court in the *Yakye Axa Indigenous Community v. Paraguay*, concluded that the right to life is violated when indigenous communities are deprived of their traditional way of life.[166]

Lastly, the IAHRS has also handled a number of communications regarding conflicts arising from the right to traditional land and territory and the use of land by private interests, agro industry, extractive industries and mega projects. One example which ended in a massacre of twenty members of the Nasa Paez people in Colombia in 1991 is the case of *Caloto Massacre v. Colombia* in which the state assumed international responsibility including that of state agents involved in the massacre together with private actors.[167]

Another case, regarding the displacement of *Afro-Colombian communities is the case Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, decided by the Court in 2013. In February 1997, the Colombian military carried out "Operation Genesis" near the territories of the Afro-descendant communities of the Cacarica River basin, in the department of Chocó. At the same time, paramilitary groups of the United Self-Defence Forces of Córdoba and Urabá advanced from the north, uniting with the military on the banks of the Salaquí and Truandó rivers. This resulted in the death and dismemberment of Marino López Mena and the forced displacement of several hundreds of people, many of whom were members of the Afro-descendant communities that lived on the banks of the Cacarica River. The operation also led to the destruction of individual and collective property. Additionally, the forced displacement suffered by the communities led to illegal exploitation of their territories on the part of logging companies, with the tolerance of the state.

In 2011, the Commission submitted the case to the Court. Since the events took place in the context of a non-international armed conflict, it was found "appropriate to interpret the scope of the treaty-based obligations in a way that is complementary with international humanitarian law, bearing in mind the latter's specificity in this area." [168]

The Court declared that Colombia had violated its obligations under the right to personal integrity and right to movement, contained in articles 5(1) and 22(1) of the Convention, due to the forced displacement to the detriment of the Communities of the Cacarica Basin following paramilitary action in the framework of "Operation Genesis" and the incompliance of the state of its obligation to guarantee humanitarian assistance and a safe return to the forcefully displaced members of the communities, for about three to four years.

The Court also determined the violation of Colombia´s obligation to prevent, protect and investigate the death of Marino Lopez Mena, under article 4(1), and further determined that there was collaboration between public officials and paramilitary units in the implementation of the military operation, during which Mr. Lopez was killed.

The Court further found that the state violated articles 5 and 19 for the lack of positive actions for the benefit of the children of the displaced community, and of those that were born in displacement, due to their particular vulnerability, especially while they were outside their ancestral territories, where they suffered overcrowding, and lack of access to education, health and adequate food.

Furthermore, the Court declared a violation of the right of collective property, protected under Article 21, due to the illegal dispossession of their ancestral lands. The Court also declared Colombia's international responsibility for the lack of investigation of the case, especially with regard to the state officials with ties to paramilitary structures, which constituted a violation of Articles 8(1) and 25(1).

Finally, the lack of an effective remedy against the illegal wood exploitation within the lands of the communities, and the lack of effectiveness of those decisions that sought to protect the collective rights of the community over their property, constituted violations to Articles 25(2a) and 25(2c).

The Court ordered that the state: carry out a public act of acknowledgement of international responsibility; continue the investigation of the case; provide adequate and priority treatment to the victims of the case; return the lands of the Cacarica River basin communities; guarantee that the conditions of the territory are adequate for security and a decent life for those returning from displacement and for those who have already returned; and guarantee that the victims of the case receive the compensation provided for under domestic law.[169]

In addition, and partly covered in the example above, the IASHR has resolved cases which have an intimate connection to peace and security concerning economic, social, cultural and environmental rights as well as cases of forced displacement.

CONTEMPORARY CONFLICTS: ROLE PLAYED BY THE IAHRS AND THE OAS

The present chapter seeks to elaborate on the role played by the IAHRS and other parts of the OAS in relation to some of the contemporary crises of human rights and peace and security in the region. Nicaragua – considering its character of prolonged and gradual deterioration in terms of human rights and peace and security and in light of the elections in November 2021 – has been chosen as the main example.

Nicaragua

Actions taken by the Commission and the Court

After the protests in Nicaragua in April and May 2018, the Commission has been engaged in the case, first through press releases, then a country visit in May 2018 and subsequently through the setup of an Interdisciplinary Group of Independent Experts (GIEI) and the creation of a Special Follow-Up Mechanism of Nicaragua (MESENI). Having concluded its in-country visit, in light of its Preliminary Observations, the Commission submitted a proposal to create a GIEI to assist and support the investigations into the violent events as well as the creation of a follow-up mechanism in conjunction with the Commission (the MESENI). These mechanisms were created through an agreement between the OAS General Secretariat, the Commission and the Nicaraguan government.[170]

The Commission published its report 21 June 2018, finding that the state's repressive action had led to at least 212 deaths, 1,337 persons wounded as of 19 June, and 507 persons deprived of liberty as of 6 June. This while the Commission also pointed to the hundreds of persons at risk of becoming victims of attacks, harassment, threats and intimidation.

The report further concludes that the findings suggest that "the violence perpetrated by the State has been aimed at deterring participation in the

demonstrations and putting down this expression of political dissent and that it follows a common pattern".[171] This common pattern is characterised by the excessive and arbitrary use of police force, the use of parapolice forces or shock groups with the acquiescence and tolerance of state authorities, obstacles in accessing emergency medical care for the wounded as a form of retaliation for their participation in the demonstrations, arbitrary arrests of young people and adolescents who were participating in protests, the dissemination of propaganda and stigmatisation campaigns, measures of direct and indirect censorship, intimidation and threats against leaders of social movements, and lack of diligence in opening investigations into the killings. Retaliation actions included the reports of homes being attacked and burned by state actors and armed third parties, which lead to loss of property and forced displacements.[172]

In response to accusations of excessive use of force, the Nicaraguan authorities cited maintaining public order and social peace as justification for their actions. Nonetheless, the Commission noted that "it is obvious that there is coordinated action to control public spaces and repress social protest and not just a few illegal acts perpetrated by a few members of the security forces […] the information received describes a pattern of state agents, mainly members of the National Police of Nicaragua and its anti-riot brigades, parapolice forces, as well as strike groups or mobs, acting in concert with the Police, setting into motion a repressive response aimed at deterring society from participating in the demonstrations." [173]

In addition to providing a detailed analysis about the human rights situation, the report served as a basis for the work of the GIEI in order to make a technical decision about the lines of investigation as well as issuing recommendations of actions at the different levels of legal responsibility. The report also served as guidance for the creation of the MESENI, the purpose of which is to follow up on compliance with the recommendations issued in the reports produced in this context and the precautionary measures, as well as to continue to monitor the human rights situation of the country.[174]

As violence continued after its visit, the Commission continued to issue press releases condemning the deaths and violence – in particular regarding the crack-down on the peaceful Mothers' Day marches in favour of the "Mothers of April" when, according to official figures, at least 15 people were killed and 199 wounded.[175]

The state, in response to the draft of the report, rejected the same, regarding it as "subjective, biased, prejudiced and blatantly partial, written under the influence of sectors linked to opposition." The state further rejected that the events would be taking place in the context of social protests but referred to them as "an attempt to remove the legitimately elected authorities".[176]

The GIEI, after six months work in Nicaragua, presented its report in December 2018. The GIEI stated that since beginning its work, it carried out its activities without the cooperation of the government of Nicaragua, which systematically denied the requested information in a context of state violence and repression that continued after the GIEI was instituted in Nicaragua. This represented a serious limitation to the work with which the GIEI was entrusted along with the continuation of violent events, which created fear for retaliation among witnesses and victims and their relatives.

Nonetheless, the GIEI report is the result of direct contact with victims, eye witnesses to the violent events, affected family members, and human rights organisations. Its conclusions also stem from the revision of thousands of documents and more than ten thousand archives of audio-visual material.

In essence, the GIEI report comes to the same conclusions as the report of the Commission. The report confirms the escalation of violence on part of the state and third parties after the initial oppression by shock groups on the first day of manifestations did not bring about the desired outcome, but to the contrary provoked an increase in the number of demonstrations and participants. The GIEI also confirms the mutual collaboration between the state and its organs with parapolice groups as

well as shock groups. The parapolice groups made use of firearms and sometimes even weapons of war and acted in coordination with official police forces. Looking at the confirmed 109 deaths in the period from 18 April to 30 May, the GIEI was able to identify that 95 of them were caused by bullet wounds, while out of the 1,400 persons injured, at least 599 were injured by firearms. Only nine violent deaths had been prosecuted out of which six were related to victims that were allied with the state or the governing party. The GIEI also reported arbitrary and illegal detentions, and in conjunction, the disproportionate and illegitimate use of force, and various forms of torture and sexual violence. The situation of detainees was further aggravated by the ineffectiveness of the writ of habeas corpus and judicial control over such abusive practices.

One aspect, further elaborated upon by the GIEI is the role of the criminal justice system where the Office of the Public Prosecutor and the Judiciary were found to be involved in a scheme of criminalization of civilians who participated in the protests. The GIEI confirmed the existence of a pattern of judicial criminalisation where there is no correlation between the facts and the codified criminal conduct.

The report also confirms that the repetition of patterns of conduct reveal that the measures taken consisted of a policy of repression originating from and supported by the state's highest authorities and the inflammatory discourse maintained by the government, pointing to an internal enemy and the stigmatisation of protesters. The GIEI, in light of this, and of the serious human rights violations committed, recommends the criminal investigation of President Daniel Ortega as supreme chief of the national police, as well as its general directors and general subdirectors, and a range of other officials related to the police and security sector.[177]

In October 2020, the Commission published a report focusing on the rights of people detained in the context of the crisis determining that more than 1,600 persons had been deprived of liberty since the start of the crisis on 18 April 2018. The Commission, *inter alia*, concluded that, in the context of the prolonged crisis, the individuals deprived of freedom were used as objects of negotiation on part of the state, with the objective to maintain their relatives in uncertainty and anxiety, suppress social protest and condition the actions of civil society and the opposition. The Commission also pointed to the preoccupation regarding the treatment of women deprived of liberty, including sexual violence and rape, which amount to torture and/or other cruel, inhuman or degrading treatment. Finally, the Commission established that it did not count with any information which would indicate that the grave human rights violations committed against persons deprived of liberty had been investigated by the state, or any process and sanction of those responsible.[178]

The Commission has continued to be active through the MESENI and as of November 2021 reported that 149 persons maintained deprived of liberty and the total of deaths registered in the context of the crisis amounted to 328. In addition, MESENI registered 150 students expulsed from their universities, at least 405 professionals in the health sector dismissed, and at least 103,600 Nicaraguans exiled – the majority of them in Costa Rica. The August 2021 MESENI news brief highlighted the state actions directed at blocking the opposition from running for elections in the November 2021 general elections, which had been condemned by the Commission. On 6 August the Supreme Electoral Council had cancelled the legal registry of the "Ciudadanos por la Libertad" – the only opposition party that had managed to register for the presidential elections. In terms of actions of the MESENI, as of August 2021, the mechanism had published 122 press releases, registered 1,773 testimonies, and issued 109 precautionary measures.[180]

The Commission released yet another report on 28 October 2021: "Nicaragua: Concentration of power and weakening of Rule of Law". The report handles "the grave political, social and human rights crisis in Nicaragua in a context of complete weakening of the Rule of law and the deep deterioration in the matter of human rights in light of the upcoming general elections to be celebrated on the 7th November." [181] The report holds that

the concentration of power to the executive has enabled the transformation of Nicaragua to a police state in which the government has installed a regime of suppression against all liberties through the control and vigilance of its citizens and repression exercised from the state- and para-state security sectors in cooperation with the institutions of control.

Observations include the arbitrary detention and criminalisation under groundless accusations of seven presidential pre-candidates, the cancelation of the judicial status of three political parties and continuing harassment and closing down of civil society and human rights organisations. The Commission holds that the process has been long-term, beginning with the agreement on power-sharing between the current president Ortega and the previous president Alemán in 1999 – in effect creating a two-party system with the objective to co-opt the most important posts of public administration. This process has led to the complete breakdown of the principle of separation of powers and the institution of a State of exception. In this context, the Commission declares, the general elections in November 2021 represented a possibility for Nicaraguan society to initiate a period of transition towards the reestablishment of democracy and rule of law as well as for guaranteeing the right to truth, memory and access to justice for victims of state violence. It regrets that the measures adopted by the executive power, especially in 2021, means that the then upcoming electoral process would not comply with inter-American standards to guarantee free, fair, transparent and pluralistic elections. The Commission holds that the government seeks to perpetuate its power and maintain its privileges and immunities in a context of repression, corruption, electoral fraud and structural impunity.

Since the outbreak of violence in April 2018, the Court has ordered several provisional measures, extension in time and scope of provisional measures and two urgent measures. To mention one example, in the case of *Juan Sebastián Chamorro et al v Nicaragua*, provisional measures were adopted by the Court 24 June 2021, extended on 9 September and further extended on 4 November. The individuals covered by the provisional measure include three pre-candidates for the presidential elections and other politicians deprived of liberty, as well as their relatives. The Court noted that as of 4 November, the state had not presented the reports requested in relation to actions taken in order to comply with the previous provisional measures. The state had further not implemented the protection measures ordered, but to the contrary, limited itself to repeatedly manifest its position of non-acceptance and rejection regarding the measures adopted by the Court.[182]

It is also worth mentioning that as a consequence of the reform of the electoral law, in 2000, the possibility of participation on part of associations by public subscription was eliminated. This lead to the exclusion of indigenous and ethnic communities in the municipal elections the same year. As a result, the indigenous organisation Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) filed a complaint to the Commission, which in turn remitted the case to the Court. The Court in its decision in 2005, declared internationally responsible the government of Nicaragua, *inter alia*, for the violation of the right to be elected. The Court ordered Nicaragua to implement a series of legislative modifications which had not been complied with as of October 2021.[183, 184]

Additionally, within the framework of a recent Consultative Opinion requested by Colombia, the Court pronounced itself regarding "Presidential reelection without term limits in the context of the Inter-American Human Rights System". The Court established that "from a systematic reading of the American Convention—including its preamble, the OAS Charter, and the Inter-American Democratic Charter—it must be concluded that enabling indefinite presidential reelection is contrary to the principles of a representative democracy and, therefore, to the obligations established in the American Convention and the American Declaration of the Rights and Duties of Man."[185] Thus, according to the Court´s Consultative Opinion, the 2011 decision of the Nicaraguan Supreme Court to declare inapplicable the provisions of the Nicaraguan Constitution which limit presidential re-election to two terms in office, paving the way for

indefinite re-election, was contrary to Nicaragua's international obligations under the American Convention and the American Declaration of the Rights and Duties of Man.

Interesting to note regarding the state of democracy in Nicaragua and the role of the IAHRS is the presentation by the Commission to the Court in June 2021 of a case regarding the 2011 presidential elections. The *Gadea Mantilla v Nicaragua* case concerns the international responsibility of the state for the violation of the political rights and legal protection of Fabio Gadea Mantilla in relation to his political participation as presidential candidate in the 2011 elections. In this case, Mr. Gadea and other candidates presented a resource of objection to the Supreme Electoral Council, considering the inscription of President Manuel Ortega being illegal as article 147 of the Nicaraguan constitution prohibited the re-election of a president after having served two periods – which was the case of President Ortega. Said article had – after a writ of *amparo* taken forward by the President and other persons – been ruled inapplicable by the Supreme Court – on the grounds of violating the principle of equality (to run for president). The objection of Mr. Gadea was declared to be inadmissible. The elections took place on 6 November 2011 in which President Ortega was re-elected and Mr. Gadea the runner-up.

The Commission in its legal analysis departs from article 23 of the Convention which recognises the political rights and protects political participation through the rights to active voting and passive voting. The latter is understood as the right to run for elections as well as the right to equal access to public offices. The Commission found that President Ortega in this respect participated in a state of advantage or superiority. This since the Commission observed a general situation of power concentration in the hands of the executive power which translated into lack of independence and impartiality on part of the Supreme Court, the Supreme Electoral Council and the appointment of persons associated with the executive to different control organs. The Commission also took into account the advantage on part of Ortega, stemming from the use of public resources, including more electoral propaganda in media, and the closing of state channels for other political parties.

Considering this context, the Commission came to the conclusion that Mr. Gadea's right to participate on equal conditions, was violated. Additionally, the Commission argued that the violation of this right not only affects the individual but also the collective dimension of the political rights in terms of the will of the voters through universal suffrage. Finally, the Commission considered that the possibility to contest the decision of the Supreme Electoral Council would have been of particular importance taking into account the constitutional text which prohibited the participation of Ortega, the allegations as to the lack of impartiality of the Supreme Electoral Council, and the position that the victim held in the electoral process.[186, 187] The case, relating to the elections in 2011, reached to Court almost 10 years later, meaning that at least another two rounds of elections will have passed before it will generate a Court judgement.

Actions taken by other parts of the OAS

A first line of action is the interaction with the Commission on part of the OAS Permanent Council. The Commission has been invited to present the situation in Nicaragua to the Council on several occasions, including the presentation of the Commission's report after its in-country visit in May 2018, which was presented to the PC on 22 June and 11 July 2018. Later on, the President of the Commission was invited to brief the PC on the situation in Nicaragua on 23 June 2021 and to present its latest report: "Report on the Concentration of Power and the Weakening of the Rule of Law in Nicaragua" on 3 November 2021.[188]

As a second line of action, the PC has adopted resolutions on the situation in Nicaragua; as of 11 November 2021, it had adopted seven resolutions since the outbreak of violence in April 2018. The first resolution was adopted on 18 July 2018, and made reference to the report of the Commission when condemning the "acts of violence, repression, and human rights violations and abuses committed by police, parapolice groups,

and others against the people of Nicaragua" and encouraging that steps be taken to "identify the individuals responsible, through the corresponding legal procedures; and to demand that parapolice groups be disbanded." [189] The resolution also called upon the government to implement the recommendations of the OAS Electoral Observation Mission, and to support an electoral calendar jointly agreed to in the context of the National Dialogue process. It further called on the government to support the GIEI, the MESENI and the initiative to strengthen democratic institutions advanced by the OAS General Secretariat. Finally, it invited the Commission to keep the PC informed as to the functioning of the mechanisms specifically established and the follow-up of the implementation of the recommendations contained in the report of the Commission, while it offered its own collaboration in finding a peaceful solution.

This was followed by a resolution on 2 August, creating a "Working Group for Nicaragua". The group had presented four reports to the PC as of 21 May 2019. In its first activity report issued on 11 September 2018, the group stated that despite ongoing attempts to contact the Permanent Mission of Nicaragua and to engage their delegates, the Mission had not yet expressed its willingness to support the resolution creating the working group or its mandate.[190] In its second report the working group reported no progress in respect of cooperation on part of the Nicaraguan government and its Permanent Mission. Representatives attended the sessions of the Commission held in Colorado, and participated in hearings related to the situation in Nicaragua. The working group also participated in a video conference with IACHR Commissioners.[191] The third and fourth activity reports continue along the same lines, without any breakthrough towards the government and the Permanent Mission, while they reiterate support to the Commission, the GIEI – whose mandate was discontinued by the government – and the MESENI – whose access to the country had been blocked by the government. In its fourth report, the working group "reiterate its expectation that as a member of the OAS, subject to its Charter, and consistent with obligations contained in the Inter American Convention on Human Rights, the Government of Nicaragua will support the IACHR to fulfill its mandate, and will facilitate the efforts of the human rights mechanisms established to support transparency, access to rights and the provision of justice." [192] The report also mentions that the possible invoking of Article 20 of the Inter-American Democratic Charter – which could lead to the temporary suspension of Nicaragua from the OAS – was discussed with the Legal Secretariat. The working group, apart from its activity reports, also issued communiqués and pushed for the situation in Nicaragua on the agenda of the PC.

In its resolution on 20 October 2021, the PC expressed concern that "the measures instituted by the Government of Nicaragua do not meet the minimum criteria for free and fair elections as established by the Inter American Democratic Charter and, therefore, undermine the credibility of the Presidential and Parliamentary elections to be held on November 7, 2021". The PC also expressed concern that the recommendations in its previous resolution as of 15 June had been disregarded by the Government of Nicaragua and referred to the findings of the UN High Commissioner's oral report on the situation in Nicaragua presented on 13 September.

The PC resolved:

1. "To reiterate its call for the immediate release of presidential candidates and political prisoners.
2. To express grave concern that the attempts of the Permanent Council to engage the Government of Nicaragua on the holding of free and fair elections have been ignored.
3. To record alarm at the ongoing deterioration of the political and human rights situation in Nicaragua and at the Government of Nicaragua's efforts to subvert the electoral process.
4. To strongly urge the Government of Nicaragua to implement without delay the principles of the Inter American Democratic Charter and all internationally recognized electoral standards, including agreed-upon electoral reforms, with a view to holding free, fair, and transparent elections as soon as possible, under OAS and other credible international observation.

5. To undertake, as necessary, further action in accordance with the Charter of the Organization of American States and the Inter American Democratic Charter, including an assessment of the November 7 elections in Nicaragua at the fifty-first regular session of the General Assembly."

A third line of action, adopted by a resolution by the PC on 28 August 2019, was the appointment of a Commission "to carry out diplomatic efforts at the highest level to seek a peaceful and effective solution to the political and social crisis in Nicaragua." The resolution giving rise to the PC Commission was adopted on 28 June 2019 at the forty-ninth regular session of the General Assembly, which stated that human rights violations that have taken place in Nicaragua and the overall situation since April 2018 "are leading to an alteration of the constitutional regime that seriously impairs the democratic order in the terms of Article 20 of the Inter-American Democratic Charter". The OAS High Level Commission on Nicaragua was thus created to carry diplomatic efforts to seek a peaceful and effective solution to the political and social crisis in Nicaragua, and to submit a report within a maximum of 75 days of its creation.[193, 194]

The government of Nicaragua refused to meet the High Level Commission (HLC) and reiterated its rejection of its creation and, consequently, prohibited its members from entering Nicaragua. Nevertheless, the HLC was able to hear testimonies from a number of victims and stakeholders that validated information already provided by independent international bodies on the situation in Nicaragua.

The HLC concluded, based upon its own interviews and observations and the reports of the IACHR and the GIEI and in accordance with Inter-American standards, the OAS Charter, the Inter-American Democratic Charter, and other human rights instruments, the that "ongoing grave human rights violations and abuses of power by the Government of Nicaragua are inconsistent with the Nicaraguan Constitution of 1987 and are giving rise to an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in Nicaragua, as described in Article 20 of the Inter-American Democratic Charter." [195]

The HLC also stated that its diplomatic efforts had been unsuccessful, considering the refusal of the government to engage with it, to return to the dialogue table, and to take any action that would restore human rights and democracy in Nicaragua. In light of its findings, the HLC recommend the Permanent Council, within the framework of article 20 of the Inter-American Charter, to declare the "unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in Nicaragua" and to immediately convene a special session of the General Assembly.

In its recommendations, the HLC also points to necessary components of a peaceful solution:

- An end of repression;
- The restoration of human rights, including freedom of expression, freedom of assembly, and freedom of the press; and
- A sincere effort by all parties to return to the dialogue table.

The HLC also calls for the need for the regional and global human rights mechanisms to return to the country. Lastly, it notes that an agreement was signed in 2017 between the government of Nicaragua and the OAS to launch an electoral reform process. The HLC recommends that priority should be given to implementing said agreement and that efforts should be made to further explore measures that will guarantee the independence of electoral authorities, that will allow for international electoral observation, and that will ensure the free and transparent registration of political parties.

The report was presented to the Permanent Council in November 2019 and in the meeting accompanied by a presentation by the IACHR Rapporteur on Nicaragua.

The OAS General Assembly at its 50th regular meeting, adopted a resolution on Nicaragua on 21 October 2020, which recalled its resolution AG/RES. 2943 (XLIX-O/19), "The Situation in Nicaragua," of the OAS General Assembly in which member states reiterated "the concern of the inter-American community over the deterioration of democratic institutions and human rights in Nicaragua and [their] support for a peaceful solution to the political crisis that has been affecting this country for more than a year". The new resolution "Restoring democratic institutions and respect for human rights in Nicaragua through free and fair elections" departs from the Inter-American Democratic Charter.[196]

It also reiterates that "the Government of Nicaragua has not implemented a series of agreed-upon measures, such as the duly monitored and verified release of all political prisoners; it has not allowed the effective work of the Inter-American Commission on Human Rights (IACHR) and its mechanisms in Nicaragua, including the MESENI; and it has not guaranteed freedom of expression, including for the press, or the exercise of the right to peaceful assembly".[197]

The General Assembly resolved to "urge the Government of Nicaragua to respect fully the constitutional order, human rights, and fundamental freedoms, and to hold free and fair national, presidential, and legislative elections in Nicaragua, in fulfillment of its fundamental commitments and duties as articulated in the Inter-American Democratic Charter." Further to "accept the broad and effective deployment of electoral observation missions comprising independent, accredited international observers in the Nicaraguan electoral process." The GA also requested the General Secretariat to support inclusive and timely negotiations between the government and national actors representing the opposition on meaningful electoral reform measures and that it provide technical assistance in their implementation, so as to promote free and fair elections. Lastly the GA urged that concrete electoral reform commitments be in place at the latest by May 2021, in light of the upcoming general elections, and according to the General Secretariat report on the state of agreements and timetables for the implementation of electoral reforms, leading to free, fair, competitive, observed, and legitimate elections.[198]

The General Assembly had already during its 48th regular meeting, on 5 June 2018 adopted a "Declaration of support for the people of Nicaragua" in which it made reference to information received from the Commission and made an invitation to the Commission to brief the Permanent Council as soon as possible on the findings and conclusions of the working visit. The declaration also made reference to the balance between the principle of non-intervention and responsibility to protect, affirming that "consistent with the principle of non-intervention, the intent and readiness of the OAS to provide support and assistance in: implementing an inclusive dialogue process, establishing the international Interdisciplinary Group of Independent Experts (GIEI), deploying an electoral observation mission in advance of elections, and strengthening democratic institutions in Nicaragua." [199]

The efforts made in relation to guarantee free and fair elections in Nicaragua did however not have a positive outcome and the OAS did not observe the presidential elections on 7 November 2021.

The OAS General Secretariat, on its part, has acted through its Office in Managua and the Special Envoy of the Secretary General to Nicaragua, attempting to support negotiated solutions to the crisis. On 9 June 2021, the SG presented a letter to the Presidency of the Permanent Council, requesting an urgent meeting of the PC, suggesting it to consider the issue of a possible action on article 21 of the OAS Charter, which if supported by a two-thirds majority in the PC, would temporarily suspend Nicaragua from the OAS.[200] However, Nicaragua was not excluded, even though two resolutions concerning Nicaragua were passed by the PC. The Secretary General also, after the Nicaraguan elections, rejected the "illegitimate" elections in Nicaragua, calling upon states to respond to this violation of the Democratic Charter at the upcoming General Assembly.[201] The Secretary General in his tweet made reference to a report on the elections

by the General Secretariat which also explains the frustrated efforts of the General Secretariat of supporting an electoral reform in Nicaragua.[202] Shortly after the adoption on part of the OAS General Assembly of a resolution declaring that the elections were not free, fair and transparent, nor legitimate, on 18 November 2021, the Ortega regime communicated its decision to withdraw from the OAS – a process that takes two years to conclude.[203] The decision was openly supported by Venezuela and Cuba, and Venezuelan representatives began speculating about the possible breakdown and end of the OAS.[204]

In a press release after the communication on the withdrawal, the Commission reminds the state of its responsibilities under the international treaties it is part of as well as the continued mandate of the Commission regarding Nicaragua and its intention of exercising its mandate through the MESENI, including, cases, petitions and precautionary measures. The Commission also reminds that according to the jurisprudence of the Court, the two year transition period constitutes a safeguard against abrupt and untimely withdrawals as well as regarding state decisions taken to the detriment of democratic principles, public inter-American interests and the weakening of the exercise of the IAHRS in protecting human rights. The Commission calls upon the state of Nicaragua to reconsider its decision and invites OAS member states and/or the OAS political organs to enter into a genuine dialogue in good faith and according to obligations regarding human rights.[205]

Colombia

Having lasted for over 50 years, the armed conflict in Colombia is one of the most severe and harmful in the recent history of Latin America, with heinous violations of international human rights and humanitarian law by all armed actors.

Response by the Commission

Through its different mechanisms, the Commission has monitored the human rights situation in Colombia and in particular the evolution of the internal armed conflict and its impact on the protection, enjoyment, and exercise of human rights, for more than five decades.[206] The Commission accompanies the implementation and monitoring of the 2016 Peace Agreement between the government and the FARC-guerrilla as part of its efforts to effectively address the obstacles faced by the victims of human rights violations in Colombia and to comply with its international obligations.[207] In each annual report, under the Colombia chapter, the Commission follows-up and analyses the implementation of the peace agreement. The annual reports furthermore evaluate the actions taken by the Colombian state to comply with the recommendations of the Commission's latest country report.

The Commission has conducted a number of reports and visits – summing seven on-site visits and ten work visits. In 2005, the Special Rapporteur on the Rights of Women of the IACHR conducted an on-site visit to Colombia to investigate violence and discrimination against women in the armed conflict, and in 2014 a similar visit was conducted with a focus on both women and LGBTI people. In 2019 the Commission released the report "Human Rights Defenders and Social Leaders in Colombia", analysing the worrying situation of human rights defenders and social leaders with an emphasis on the time from the peace negotiations and signing of the peace agreement between the Colombian State and the FARC and the release of the report.[208] Lastly, as a response to the social protests in Colombia beginning 28 April 2021, the Commission made a working visit in June, publishing its observations and recommendations 7 July.[209]

The Commission's latest country report on Colombia, "Truth, Justice and Reparation", was published in December 2013. The report analyses the human rights situation in the context of the armed conflict and is based on information collected during and after an on-site visit, as well as other

investigations, inputs from the different IACHR mechanisms, news reports, and decisions and recommendations of specialised international bodies, among others.[210]

The purpose of the on-site visit, conducted in December 2012, was to compile relevant information on the human rights situation in the country, in particular on the internal armed conflict and the situation for groups of particular vulnerability, which implicitly refers to women among other groups. The mission furthermore sought to evaluate the transitional justice mechanisms adopted.[211]

The Commission has also, along the years, issued a number of precautionary measures – in the period between 2016 and 2020, 30 measures were issued, this while in the period 2011-2015, the number was 25. This means that the number of precautionary measures issued by the Commission has increased since the negotiation and implementation of the peace accords. However, considering the situation of human rights defenders and social leaders in Colombia and comparing to Nicaragua and Venezuela, which are discussed in this chapter, the number of precautionary measures issued might seem to be quite limited.

MAPP/OAS and IACHR cooperation

In 2004, the OAS was invited to monitor the disarmament, demobilisation and reintegration of paramilitary forces in Colombia. The mandate of the OAS Mission to Support the Peace Process in Colombia (MAPP) includes promoting the integration of women, peace and security perspectives and working with transitional justice mechanisms instituted for the demobilised paramilitary members and reparations for all victims of the long-running internal armed conflict, in which the Commission has been particularly involved.[212]

The Commission has provided advisory services to the Mission in the areas of human rights and international humanitarian law. It has also monitored the process of dismantling the illegal armed structures and mainly the application of the legal framework aimed at ensuring truth, justice, and reparation for the victims of the conflict as an essential part of its role in advising the member states of the OAS, its General Secretariat, and the MAPP.[213] In this work, the Commission has trained mission personnel on differential approaches and integration of gender issues in a cross-cutting manner. The activities implemented by the mission aim to promote the rights of women by highlighting women's experience in the armed conflict (including sexual violence), and the mission actively facilitates the participation of women in transitional justice activities.[214]

Caseload

Quite a number of the cases referred to in the present report concern Colombia and both the Commission and the Court have done a great deal of work regarding Colombia in this respect. This is also seen in the number of provisional measures ordered by the Court to the Colombian state, which as of November 2021 amounted to an 18 per cent share of total provisional measures registered by the Court.[215] Further, as of January 2019, the Court had decided 18 cases regarding Colombia, ordering 195 different measures of reparation to the benefit of 2,600 victims.[216]

Actions taken by other parts of the OAS

Considering the historic extension of the internal armed conflict in Colombia, the Permanent Council and the General Assembly have addressed the matter on a number of occasions. A central example is the MAPP/OAS-mission which derives from an agreement between the Colombian government and the General Secretariat in 2004 and a resolution adopted by the Permanent Council. The mandate has been renewed eight times, the most recent in October 2021, prolonging its mandate until the end of 2024. The Permanent Council has asked the Secretary General to report periodically on the work of the mission and the SG renders semi-annual reports which constitute a resume of key developments in the areas of human rights and peace and security, as well as recommendations to the Colombian authorities.[217]

Looking at the period 2016 to 2021, the Permanent Council adopted a series of resolutions in 2016 in support of the peace agreement with the FARC-guerrilla and then in 2018 its solidarity with Colombia and Ecuador following the acts of violence perpetrated in the common border area and the abduction and murder of a team of Ecuadorian journalists.[218] Since then there has been no resolutions on part of the PC, despite quite alarming reports from the MAPP/OEA and the report from the Commission on the situation for human rights defenders and social leaders as well as observations and recommendations regarding excessive use of force during the protests in 2021.

International Criminal Court

Even though not a part of the regional system, the International Criminal Court (ICC) plays a role in the prosecution of Rome Statute Crimes – especially considering that there is no regional court for international crimes. The ICC Office of the Prosecutor opened a preliminary examination on Colombia in 2004. In 2012 the Prosecutor found a reasonable basis to believe that crimes against humanity and war crimes had been committed by the Colombian armed forces, the guerrillas and the paramilitary groups. The ICC Prosecutor in October 2021 however, on grounds of complementarity, determined to close the preliminary examination on Colombia which had examined the compatibility of the Colombian ordinary and transitional justice systems to international law and the prosecution of Rome Statute crimes. The Prosecutor determined that "the national authorities of Colombia are neither inactive, unwilling nor unable to genuinely investigate and prosecute Rome Statute crimes." [219] The Prosecutor however underlined that significant work is still required and that the institutions established must continue to be given the space to perform their constitutional responsibilities. The government of Colombia and the Office of the Prosecutor signed an Agreement containing a series of mutual undertakings and cooperation to ensure that domestic transitional justice processes in Colombia remain on track – the first of its kind concluded by the Office and a state party.

Venezuela

The political, human rights and socio-economic developments in Venezuela have led to the largest movement of refugees and migrants in the recent history of the Americas. As of November 2020, of the approximately 5.4 million refugees and migrants from Venezuela outside of their country of origin, some 4.6 million were hosted in the region alone, including an estimated 1 million with an irregular status.[220] Between 2014 and 2021, there was an 8,000 per cent increase in the number of Venezuelans seeking refugee status worldwide, principally in the Americas. Host countries and communities in Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Peru and the southern Caribbean are increasingly overstretched and some are reaching a saturation point.[221]

The responses by the Commission and the Court to human rights violations in Venezuela has been discussed in a previous chapter. This section is therefore focused on certain aspects regarding the response of the Permanent Council, the Meeting of Consultation of Ministers of Foreign Affairs and the General Secretariat, to give an outline of the case of Venezuela for the purposes of this report. Also, given the importance of the Venezuela crisis, it cannot be ignored in light of the subject matter.

Response by the international community

The international community, including the OAS member states, has remained quite divided as for how to respond to the political, humanitarian and human rights crisis in Venezuela. The support for the former National Assembly President, Juan Guaidó – once recognised as the legitimate interim-President of Venezuela by nearly 60 countries – seems to have stagnated. As for the UN, divisions between members have blocked UN Security Council Resolutions. International efforts to mediate in the crisis include the International Contact Group – composed of EU- and Latin American countries as well as negotiation efforts lead by Norway. Negotiations have however not made any major breakthrough and the 2019 negotiations facilitated by Norway, aiming

at the establishment of conditions for free and fair elections were abandoned by Maduro after new U.S. sanctions were imposed on his regime.

The crisis has also meant a special situation as to the status of Venezuela as a member of OAS. Maduro, in March 2017, initiated a two-year process to withdraw from the OAS. Juan Guaidó however, in a communication to the OAS in February 2019, just before the exit of Venezuela would enter into force, declared the withdrawal unlawful and requested – as the interim-President – the OAS to disregard Maduro's paperwork. After that Maduro withdrew his ambassador to the OAS, the Permanent Council, in April 2019, welcomed the representative of the Venezuelan National Assembly. This means, in effect, that while Venezuela is represented by the Maduro regime at the UN, in the OAS – an intergovernmental organisation from which the Maduro regime claims to have withdrawn – Venezuela is represented by means of a delegate of the Venezuelan National Assembly.

The Permanent Council has passed a number of resolutions on Venezuela, including one in January 2019 – counting 19 votes and thus barely reaching the limit of 18 votes to pass – stating its refusal to recognise the legitimacy of Maduro's second term as President and urging member states to adopt measures to ensure the prompt restoration of democratic order in Venezuela.

As the efforts to reach an agreement on an OAS response to the crisis were frustrated, in August 2017, twelve countries of the region formed the Lima Group and signed an accord in which they rejected the rupture of democratic order and the systemic human rights violations in Venezuela. The group later also rejected the re-election of Maduro in 2018 and in 2019 recognised the Guaidó government – which also joined to group – and together signed a call for a peaceful transition in Venezuela. The Lima Group has opposed military intervention but has also not made any statements regarding negotiations.[222]

As for the OAS, the Secretary General has issued reports on Venezuela, convened special sessions of the Permanent Council, advocated for the ICC to open an investigation on Venezuela, and spoken out against Maduro. The active role of the Secretary General and labelling Maduro a "dictator" has been applauded by some while some would argue that he has sided too closely with the opposition, in order for him and his organisation to help broker a diplomatic solution to the crisis. The SG has put together his own panel of independent experts coming to the conclusion in a report in May 2018 that there was reason to believe that crimes against humanity were being committed in Venezuela. The report later was updated and complemented in a second edition in March 2021.[223] The conclusion of the report on crimes against humanity being committed in Venezuela was later supported by a report by the Independent International Fact-Finding Mission appointed by the United Nations Human Rights Council in 2019. In its first report published in September 2020, it found "reasonable grounds to believe that Venezuelan authorities and security forces have since 2014 planned and executed serious human rights violations, some of which – including arbitrary killings and the systematic use of torture – amount to crimes against humanity." [224] The OAS Secretary General submitted the report of the panel of independent experts to the Prosecutor of the International Criminal Court, requesting that the Prosecutor open a full investigation on an urgent basis. After that, the General Secretariat was working to identify a coalition of countries from the region to invoke Article 14 of the Rome Statue and formally refer the situation in Venezuela to the ICC.[225]

The Secretary General also, in September 2018, created a Working Group to address the crisis of Venezuelan migrants and refugees in the region through an executive order.[226] The Working Group is mandated to identify patterns and reasons for migration, analyse the current humanitarian and protection context of Venezuelans in recipient countries, and propose recommendations for a regional response to assist Venezuelans fleeing their country. The Working Group's responsibilities also include frequent visits to the region to hold meetings with authorities, civil society, and the

Venezuelan migrant- and refugee communities. The group has released a number of regional and country reports on the implications of the refugee crisis, how it affects countries of asylum and how Venezuelan refugees are treated.

International Criminal Court

The ICC Office of the Prosecutor opened a preliminary examination on Venezuela in 2018 focusing on crimes committed since at least April 2017, in the context of demonstrations and related political unrest. Then, in September 2018, the Office of the Prosecutor received a referral from a group of state parties[227] to the Rome Statute regarding the situation in Venezuela. The referring states requested the Prosecutor to initiate an investigation on crimes against humanity allegedly committed in the territory of Venezuela since 12 February 2014, with the view to determining whether one or more persons should be charged with the commission of such crimes. In 2020, the Office concluded that there is a reasonable basis to believe that crimes against humanity, particularly in the context of detention, have been committed in Venezuela since at least April 2017. On 5 November 2021, the ICC Prosecutor communicated the decision to open an investigation into the situation in Venezuela and the signing of a Memorandum of Understanding with the Maduro government.[228]

Other crises

The OAS and the IAHRS have also acted in the framework of other crisis in the Western Hemisphere – many of which are related to political crises, in the context of elections and the violation of human rights. Only in the recent years they also, among other important events, entail the murder of the President of Haiti in July 2021, the political crises in Bolivia escalating in 2019 and still ongoing, and the crisis in Honduras.

CONCLUDING ANALYSIS AND RECOMMENDATIONS

A central aspect in conflict prevention is to ensure the effective protection and fulfilment of human rights without distinction and discrimination. The full range of human rights – from the economic, social and cultural rights to the civil and political rights and group rights – is essential for building a society resilient to conflict. In human rights promoting, monitoring and protecting, human rights institutions – including regional systems – have an important role to play in this conflict prevention project. Further, when prevention fails and there is an outbreak of violence or even armed conflict, human rights institutions play an important role in collecting evidence for and make visible the human rights violations and violations of international humanitarian law taking place within the conflict, to serve as an early warning system, and to advocate for justice to be made. Finally, also in the process of peace negotiations, the implementation of peace accords, peace building, transitional justice processes and other processes for non-recurrence, human rights institutions have a role to play. Now, how is that role played by the Inter-American Human Rights System? Could and should it play a greater role? These are the two questions that will be elaborated upon in the concluding analysis.

Role of the IAHRS for peace and security in the Americas

Normative framework

The normative framework of the OAS is highly conducive for peace and security and its full implementation would constitute a potent action of conflict prevention. Even though the normative framework does not include an explicit writing of the right to peace, the OAS Charter, the different treaties on peace and security, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights

and the different special conventions on human rights, as well as the Inter-American Democratic Charter, all contribute to a notion of a right to peace in the Americas. Under the umbrella of the OAS we find a whole range of instruments, of which many are being analysed in this report. Additionally, the central objective for the very founding of the predecessor to the OAS was to prevent armed conflict in the Americas.

Looking at the Charter, the promotion of peace and security is an integral part of the organisation's purpose and guiding principles. Already article 1 states that the central objective of the OAS is to "achieve an order of peace and justice". Although the framework of the charter is focused on the states of the western hemisphere and inter-state conflicts, the Charter also touches upon the rights and freedoms of individuals as it proclaims that stability, peace and development of the region is achieved through representative democracy and juridical organisation and links the protection and fulfilment of rights and freedoms to the achievement of true peace.

Having said this, the principles of non-intervention and state sovereignty have been as central to the region and the OAS as has the promotion of peace and security. Through the amendment to the Charter by means of the Protocol of Cartagena in 1985, the principles of non-intervention and state sovereignty were manifested, making clear that the OAS has no authorisation to intervene in matters within the internal jurisdiction of member states. Often interpreted as a partly contesting principle, the Responsibility to protect developed within the framework of the UN. It parted from the idea of state sovereignty to include positive responsibilities for states for the welfare of their people and for states to assist each other when another state either is unwilling or unable to fulfil its responsibility to protect, or is itself the actual perpetrator of crimes or atrocities. However, the Responsibility to protect can be seen as a principle that reinforces sovereignty in that it first and foremost works through preventive measures, assistance, cooperation and diplomatic efforts to help states meeting their existing responsibilities

In practice, OAS member states and parties to its human rights treaties too often cite the principles of state sovereignty and non-intervention when receiving criticism on part of an OAS institution or political body, or on part of the IASHR, despite the fact that such actions for the most part are a result of obligations and agreements entered into by the state itself in its capacity of a sovereign state, and are based on the failure to comply with these international obligations. Some examples of the latter is the recent walkout of the representatives of the Colombian state in the *Bedoya Lima et al v Colombia* case, requesting the substitution of Court judges, as well as the non-compliance of protective measures on part of the Nicaraguan and Venezuelan states.

As for the American Convention on Human Rights, as discussed above, of particular importance in relation to conflicts are the non-derogable rights, including the right to life and the prohibition of torture, inhumane or degrading treatment. Even though the possibility exists to derogate from some responsibilities under the Convention in situations threatening the independence or the security of the state, such action much be limited in time and scope and reported to the other the state parties through the Secretary General. Furthermore, of special importance has been article 29 which provides for the Court to also interpret the American Declaration and other treaties acceded by the state, customary law, as well as non-binding human rights instruments. This has been instrumental for the development of the IAHRS.

Mandate of its institutions

Whereas the normative framework is quite comprehensive and states' adherence to it would be important for the prevention of conflicts, while also securing individual and collective rights in the event of social unrest and situations escalating to internal armed conflict, the question is if the tools at hand for the IAHRS are as appropriate? The toolbox available to the two institutions of the regional human rights system certainly contain a quite wide array of tools suitable for contributing to peace and security in the region. Although the nature of some work to a certain degree is

reactive, as in the case of complaints and country visits, such actions can potentially contribute to avoid further escalation of conflict and human rights abuses, as well as prevention of future events. These more long-term tools can also contribute to peace building and non-recurrence. This while the adoption of precautionary measures and provisional measures as well as press-notes are actions that can respond to on-going situations and contribute to early warning and conflict prevention.

When it comes to the Court, its possibilities to act are limited as it is dependent on the cases presented before it and also on the limited number of states (20) that have agreed to its jurisdiction. The Court can however also, as an immediate action, adopt provisional measures in relation to cases. Regarding its advisory function, the Court, at the request member states and OAS organs, can issue advisory opinions as to the compatibility of internal norms with the Convention, and on the interpretation of the Convention or other treaties concerning the protection of human rights in the American states. This, in theory, would allow for example the Permanent Council to ask for an advisory opinion regarding a particular issue or situation. Also the Commission has the function of acting as a consultative organ to the OAS and to member states.

Apart from these tools, the Permanent Council can also request the Commission to conduct investigations on the human rights situation in member states. In general, the regional human rights system could be used as an expert resource in all matters related to peace and security and in any peace and security effort – as has been the case in the MAPP/OAS-mission.

Lastly, the reports produced by the Commission create an opportunity to interact with other parts of the OAS, and in particular the Permanent Council, as for example was the case when presenting the reports on Nicaragua to the PC, contributing information on the context and to discussions. Also the annual reports of the Court and the Commission, presented to the General Assembly, at least in theory offer an opportunity for the IAHRS and the General Assembly to interact.

When it comes to Women, Peace and Security, the same tools could be used for advancing the WPS-agenda. Additionally, important for the WPS-agenda would be increased cooperation between the Inter-American Commission of Women, the Rapporteur on the Rights of Women and the Rapporteur on the Rights of Children, as well as the Follow-up Mechanism to the Belém do Pará Convention (MESECVI). In comparison to the African Union, the OAS does not count with an equivalent of its Special Envoy on Women, Peace and Security.

Contributions of its institutions

In the above chapters, quite an array of measures taken by the Commission and the Court, related to peace and security have been described. The IAHRS has contributed to accountability in cases when states have been unwilling to investigate and prosecute, advanced the rights of victims and their families to truth, justice and reparations, declared amnesties for gross human rights violations unlawful, advanced jurisprudence of a wide range of rights and freedoms relevant for conflict prevention and the protection of human rights in conflict situations, contributed analysis regarding the human rights situation in countries facing tension, social unrest and internal armed conflict, and provided protective measures to human rights defenders, social leaders, ethnic groups and others. This work has also included measures contributing to the Women, Peace and Security Agenda.

Impact and effectiveness of the Inter-American Human Rights System

To assess the impact and effectiveness of the Inter-American Human Rights System in relation to peace and security is a tall task, not only considering the challenge of tying action to impact and the often prolonged processes, but also having in mind the extensive track-record of the two organs – covering more than four- and six decades respectively. In this chapter we do not pretend to make such an assessment but rather to contribute to the discussion.

Impact of the IAHRS in relation to peace and security

In general, the Commission and the Court can be considered successful in their efforts to impact the member states' conduct in some areas. States for example often reach partial compliance with decisions of the Court. They tend to comply with softer aspects of orders, such as provision of psychological and medial support to the family of victims, while orders calling for criminal prosecution of military/security actors responsible for violations are more seldom met. However, the IAHRS has been acknowledged for its' impact beyond compliance in individual cases, for example empowering local actors and raising international attention and response to ongoing crises. Although it is difficult to evaluate the system's contributions to prevention and resolution of conflict, transition and peacebuilding, an area where the IAHRS is recognised to have been particularly successful is transitional justice. Apart from the important recommendations and judgements, the Commission in relation to transitional justice has for example also contributed through its inter-American standards on truth, memory, justice and reparations, published in 2021.[230]

To have an impact, the IAHRS is dependent on the individual state's willingness to respect its mandates and authority. It is also dependent on the willingness of OAS member states as a group to defend its mandate and authority and to work for the compliance on part of all member states with their obligations under international law and their duties regarding the mandates and authority of the IAHRS. A first action is for states to recognise the jurisdiction of the Court – only twenty states have done so. A second action is for states to accede the different human rights treaties of the Americas and of the UN-system. The OAS Secretary General in a speech on the occasion of the fortieth anniversary of the Court, alluded to the lack of recognition and respect of the Court as well as the relation to national sovereignty:

"Even in States that recognize the Court, we see dangerous precedents being opened by rulings which fail to recognize the Court's decisions as binding. We are also seeing political leaders criticizing the very foundations of the human rights system. We must overcome this false dichotomy between human rights and national sovereignty. Human rights and national sovereignty go hand in hand. The promotion of human rights strengthens States and societies, thereby reinforcing sovereignty. And the best defenders of human rights are well-functioning sovereign States."[231]

Looking at the impact of the IAHRS from another angle – asking what consequences non-compliance and non-action might have for conflict prevention and non-recurrence – some risks seem apparent. Lack of implementation of recommendations and judgements leads to a notion of failed political and judicial systems and the sense of judicial processes being non-inclusive and the state lacking separation of powers. This, together with other factors, we suggest, might be driving forces for conflict and, in transitional contexts, jeopardising non-repetition.

Turning to the contemporary country contexts relating to conflict situations discussed above, the IAHRS certainly has done a lot, but despite their efforts, the situations in Venezuela and Nicaragua continue being alarming and unresolved. The situation in Colombia in the context of implementation of the peace agreement is highly preoccupying, including the alarming levels of violence against and murders of human rights defenders and social leaders, forced displacements and armed violence.

The compliance dichotomy

Over the years, criticism and concerns have been raised in relation to a low level of compliance with decisions of both the Commission and the Court, as one of the main problems impacting the effectiveness of the regional human rights system.[232] Quantitative research has indicated that non-compliance with measures required by the IAHRS has been notably widespread. A study from 2010 found that half of the remedies recommended, agreed upon, or ordered in the decisions surveyed between June 2001 and June 2006 were not satisfied and only 36 percent of them were totally satisfied. On average, inter-American proceedings required more than seven years from when the petition first entered the system until

a final decision. To this, the average period of time that states delayed in complying totally or partially with the required remedies (when they did so) was approximately two and a half years for final reports, and a little more than a year and a half for Court rulings. These time periods have been excessively long and threatened to generate distrust and frustration among the users of the IAHRS.[233] The Commission acknowledged that limited resources resulted in an unacceptable case backlog and in severe limitations in the analyses requested by the General Assembly, visits and other promotion activities, participation in proceedings before the Inter-American Court, difficulties in funding the Commission's third period of sessions, and restrictions in the functions of thematic rapporteurships.[234]

However, this pessimistic picture, laid out by quantitative studies has been challenged by other researchers and practitioners, questioning the methodology, arguing for adding a qualitative lens to analysis. Moreover, the experience of most stakeholders engaging with the Court seems to suggest otherwise and contradict the critical assessments in terms of impacts in access to justice.[235]

A central critic is the failure of quantitative research to take account of compliance as a dynamic process that evolves over time, as its logic is a binary compliance/non-compliance mind-set. Adding a qualitative approach to compliance also allows for understanding impact beyond compliance. As an example, the decisions of the Court, in some cases and countries, has led to additional and higher rank domestic prosecutions. In effect this means that the outcomes in terms of prosecutions might well be more important in scope, including the prosecution of those in power. This, in a Latin American context, marked by impunity, especially regarding the intellectual authors behind gross human rights violations, has been an important outcome which is not reflected by quantitative research.

As an example, the *Barrios Altos v Peru* case was the first in a series of cases where the Court ruled amnesty laws for gross human rights violations inapplicable and without legal effect. Responding to this, at the request of the Peruvian Prosecutor's Office, prosecutors opened investigations into a range of cases where the amnesty law had been applied. This resulted in a catalytic effect where cases that had not reached the IAHRS, advanced at the national level. In fact, for two decades the Court intervened and assisted the Peruvian judiciary to ensure the effective prosecution and sanction of those bearing the highest responsibility in this and other similar cases. The effect also reached the former president Fujimori who became the first elected president to be convicted for crimes against humanity in his own country. Finally, all authors – intellectual and material – were prosecuted – the intellectual authors being high ranking government and military officials. Thus, making an in-depth analysis of the case we can conclude that the outcomes are much richer than what is reflected by a compliance/non-compliance binary assessment. This case also reflects the ups and downs during a long period of supervision of the implementation by the Court in terms of the positions of the institutional actors, from periods in support of justice to periods of reluctance to accountability. Finally, it also shows the importance of the participation on part of victims and of civil society at the national and international level, taking advantage of the opportunities as the national and international landscape change. Krsticevic and Urueña (2022) suggest that an intervention by the Court could increase the number of processed perpetrators and also could increase the percentage of high-ranked intellectual perpetrators prosecuted. As a consequence, evaluating outcomes and impact should take into account the responsibility and rank of perpetrators and allow for the study of domestic processes according to these factors. The authors conclude that the Court has played an important role for the prosecution of high-rank perpetrators and that this should be taken into account when analysing its impact – not least considering that prosecuting a high-rank intellectual author is harder than a low-rank material author. Elaborating further on the effects of decisions by the IAHRS, it's evident that there are results that go beyond compliance and that there is a need to analyse also the indirect effects of the IAHRS at the domestic level.[236]

Looking at other challenges regarding quantitative analysis of compliance there are a number of factors that limit the reliability of such studies as to assessing the impact of the IAHRS. A first limitation concerns the notion of "partial compliance". The IAHRS uses three degrees of compliance being "compliance", "partial compliance" and "non-compliance". Of these, partial compliance is by far the most commonly registered status of compliance. As the scope of partial compliance is extensive, holding a wide array of measures, using it as a category for quantitative analysis without a qualitative side to it, seems to be a blunt tool, while at the same time the notion of partial compliance also can be failing in taking into account different measures which could register as acts of partial compliance. Partial compliance can range from opening of a criminal investigation to a ruling that has not yet gained legal force, without making any distinction between the two.

Elaborating further on compliance, the low prevalence of compliance, as indicated by a number of quantitative studies, has made the IAHRS to be classified as an ineffective system. However, this picture can be contested also on other, seemingly paradoxical grounds. An order that is categorised as partially complied leaves the possibility of the Court to continue engaging in the case, supervising and redirecting actions that can be of significant value to accountability at the domestic level and reach even beyond the particular case and beyond compliance, as seen in the *Barrios Altos v Peru* case referred to above. I short, the use of these three categories oversimplifies the institutional and societal processes that are triggered by a decision of the IAHRS.

Another factor that has an impact on the reliability of quantitative studies is time. Quantitative studies tend to ignore this factor by not taking into account the amount of time that has passed since the adoption of the decisions – in other words valuing the non-compliance of a recent decision equal to one that is more distant in time. Furthermore, states' compliance with international legal orders takes time even when states are willing to implement. It does however seem reasonable to establish a normal time factor which could be read in conjunction with measures taken by the state to reach compliance, in order to assess symptoms of non-compliance.[237]

In conclusion, there is an evident risk that researchers, practitioners and politicians use quantitative studies as references for the assessment of the impact of the IAHRS as figures are eye-catching and seemingly easy to use and relate to in comparison to qualitative data. However, as elaborated above, while quantitative studies can be of important use, they can also be conveying an absolute but wrongful message if not complemented by qualitative analysis.

Challenges facing the system

Measures have been taken to increase efficiency and impact, including regarding internal procedures and the observation and follow-up on state implementation. Measures have also been taken to come to terms with the lack of funding of staff and activities of the Commission which had reached an acute stage in 2016 when the Commission was unable to pay staff and renew contracts, and had to postpone its sessions. The crisis was so alarming that the UN Coordination Committee of Special Procedures and the Chairpersons of Human Rights Treaty Bodies wrote a joint appeal titled "We cannot let it go bankrupt" calling upon governments to make their contributions to the system.[238] The Commission and the Court, throughout the years, have repeatedly highlighted that the resources allocated are insufficient to enable them to implement their mandates effectively.

Apart from the IAHRS organs themselves, the international community, civil society and the OAS, all have important roles to play in order to increase compliance and ultimately the effectiveness of the Commission and the Court. Not least considering the political challenges currently facing the regional human rights system with member states questioning its legitimacy. Venezuela has withdrawn from the Court's jurisdiction, Ecuador and Peru have threatened to follow Venezuela's example and Nicaragua has just recently initiated the process of withdrawing from the

OAS.[239] Furthermore, Argentina, Brazil, Chile, Colombia and Paraguay have demanded reforms of the Commission in order to decrease the institution's interference in the countries' "internal business".[240]

Strengthening the role of the Inter-American Human Rights System

Part of the objective of the report is to elaborate on the role the IAHRS has played in relation to peace and security in the Americas in the past and the role it plays today. Inevitably, considering the findings, inserting the IAHRS in the current context of the Americas and the OAS, the question arises as to whether the IAHRS could play a more important role in relation to peace and security in the region and if the OAS could make greater use of its regional human rights system. As elaborated upon in the previous chapter there are a few prerogatives as to the functioning and effectiveness of the IAHRS, including the human and financial resources made available, the compliance of states with their international obligations, the cooperation of states in implementing its rulings, decisions and recommendations, and the support from states in terms of backing the mandate of the IAHRS. If the IAHRS is to play a greater role, these prerogatives needs to be delivered upon. In the following we take a look at some additional factors – focusing on the insertion of the IAHRS within the OAS.

Allowing for a deeper and wider impact of the IAHRS

Even though throughout the present report we have documented and discussed significant contributions of the IAHRS to human rights and peace and security in the Americas, we have also come to the conclusion that there is potential for improvements and greater impact. A central impact highlighted above has been halting the implementation of amnesty laws in a great number of countries throughout the region, lately by the Court's 2019 adoption of provisional measures in fourteen cases regarding gross human rights violations in Guatemala where the Court had ordered Guatemala to investigate, prosecute and punish those responsible. The implementation of the judgements were jeopardised by a law proposal, about to be passed in Parliament, which aimed at granting amnesty to perpetrators of gross human rights violations. The Court ordered Guatemala to archive the law proposal.[241]

Looking at reparations, the IAHRS has developed a practice of integral reparation which goes beyond the classic reparation of damage through compensation. This integral reparation also entails the judicial investigation, prosecution and punishment of those responsible, as well as guarantees of non-repetition. While the first is important also in a wider rule-of-law-perspective, the latter often can provide measures for coming to terms with structural deficiencies that caused the harm. In those cases where a legal norm or the absence of a legal norm caused the violation, the state is ordered to repair the violation through legal reforms, the adoption of public policies or change of practice. Considering the importance of rule-of-law and the non-repetition of gross human rights violations also for peace and security and the non-recurrence of violent conflicts, the implementation of measures in the areas of judicial investigation, prosecution and punishment, as well as measures on non-repetition, must be considered as central for the purposes of this study.

As for the Commission, recommendations almost always entails justice and accountability, including the investigation, prosecution and punishment of those responsible. The Commission also frequently recommends guarantees of non-repetition such as reform in law, policy or practice. When it comes to compliance in the field of non-repetition it is more difficult to achieve in comparison to monetary compensation, and implementation reaches a moderate level. This while compliance regarding justice and accountability unfortunately is discouragingly exceptional. This pattern has remained fairly constant over time.

Turning to the Court, as of December 2021, the number of cases where the Court had presented a non-compliance report to the General Assembly

pursuant to article 65 of the Convention and still not seen any advance from the states in the implementation of sentences, amounted to 21. Of these, 15 concerned Venezuela, two Trinidad and Tobago, and one each concerned Haiti and Nicaragua. At the same time, the Court on its list of sentences being supervised – meaning that they had not been fully implemented – counted 230 cases, while 42 had been archived.[242]

Considering the provisional measures ordered by the Court, these are important for the protection from irreparable harm. Unfortunately though, in the country cases focused on in this report, compliance has been very weak in Venezuela and Nicaragua. In the case of Nicaragua, the Court on 22 November 2021 issued an order of prolonged provisional measures referring to three previous resolutions in 2021, regarding detentions in the framework of the general elections, in favour of 22 persons. The Court reiterated its order to the immediate release of the 21 persons that continue in detention. The Court declared that the inaction and position maintained by Nicaragua constitutes an act of contempt regarding the mandatory decisions of the Court – in contrary to the international principle of compliance with international treaty obligations. The Court also manifested its intention to include in its forthcoming annual report to the General Assembly, in line with article 65 of the Convention, the non-compliance regarding its resolutions ordering provisional measures.[243] Unfortunately, as it seems, Nicaragua is on its way walking the same path as Venezuela, disrespecting the decisions of the Court. At the time of writing, it remains to be seen if the General Assembly, this time around, decides to do anything substantial regarding state non-compliance presented to it by the Court.

Looking at the patterns of compliance – as discussed above – states tend to implement the softer parts of measures, and more reluctantly and slowly implement the more substantive and far-reaching ones, including the criminal investigations and prosecutions and the adoption of laws, policies and practice. This means that a part of the work done by the IAHRS does not reach its full potential in serving the non-repetition of gross human rights violations and the non-repetition of violent conflict. Thus, coming to terms with this anomaly in state compliance patterns – especially regarding the recommendations of the Commission and reducing the time-frame in the implementation of Court sentences – would be essential in order to achieve an even greater impact of the IAHRS. At the same time, nuancing the picture a bit, the work and jurisprudence of the IAHRS have had far-reaching effects on impunity for gross human rights violations in Central- and South America. As iconic examples, made possible by declaring amnesty laws illegal, the conviction of former presidents Fujimori of Peru and Rios-Montt of Guatemala in national courts have been important for justice and accountability throughout the region.

While the Court and the Commission already spend considerable resources on the follow-up of state implementation of recommendations and measures ordered regarding cases, seemingly more needs to be done in this area. Also here, there has been a positive development in recent years. The complementarity of the Commission and the Court provides an incentive for states to comply with the recommendations of the Commission, and the Commission, through changes in rules and practice since 2000 has sought to capitalise on this, creating incentives for states to engage in friendly settlements as well as setting out a presumption in favour of submission to the Court whereas previously the submission to the Court had been the exception. This indirectly creates a greater access to the Court while also creating incentives for compliance before the Commission in order to avoid a process before the Court. Interestingly enough, looking at the Commission, the highest degree of implementation is seen in friendly settlements which is largely due to implementation being a part of the process. Also, maybe not surprising, the level of involvement of the petitioners actively advocating regarding implementation of recommendations and measures is important for compliance.[244, 245]

As litigation before the IAHRS is a long-term engagement, adding the time of implementation to the overall time-frame, demands a lot of patience and persistence of petitioners. Considering the satisfaction of

groups and individuals behind petitions, it seems reasonable to assume that while pursuing the criminal investigation, prosecution and punishment of perpetrators is of central interest to many, probably pursuing the implementation of measures of non-recurrence such as legal projects, public policy and practice, demands even greater persistence, resources, knowledge and engagement, and might not be of highest priority to victims and petitioners. Even though implementation should not be put as a burden on victims, considering their importance for the matter, a central factor for improving implementation could be the provision of legal aid to petitioners in the follow-up phase, and financing initiatives following-up on recommendations and measures regarding non-repetition.

Looking at factors contributing to non-compliance, studies have found that the higher level of coordination between state institutions that is needed for the compliance of an order, the lower the degree of compliance. In general, non-compliance has been found to be the result of inaction by judges and national prosecutors as well as the lack of coordination between state institutions. This while studies have also pointed to the importance of the political will of the government, while on the other hand also the judicial independence from military and security institutions. This while the particularities of each legal system and the mechanisms for taking account of an international legal order also are factors that affect compliance. Studies have also found that the culture of judges is a determining factor as well as the engagement by victims and civil society.[246]

The Court, in advancing on implementation compliance, began to implement hearings on compliance in 2007. In recent years these hearings have, to a larger extent been held in the respective countries, allowing for a wider participation of representatives from different government branches and agencies, regional governments, as well as a greater participation of victims, which also opens for the possibility to make on-site visits and assessments. This practice could potentially be conducive for increased implementation compliance.

The impartial character of the IAHRS

The credibility of the OAS as a regional intergovernmental institution unfortunately still is affected by distrust, regional power imbalance and polarisation. A central historical factor for this is the role played by the U.S. vis-à-vis states and governments of the region, including supporting coups-d´état and military intervention – this outside the framework of the OAS and in contrary to the OAS Charter, but with the open or silent support of other OAS member states. Despite numerous peace operations, special missions and election observation missions, only to mention a few initiatives where the OAS has been involved and contributed to peace and security in the region – including in for example Nicaragua – the notion of power imbalance and polarisation persists.

The IAHRS – being a part of – but an independent part of the OAS, might be better positioned in terms of recognition as an independent and impartial body. The mutual criticism towards the IAHRS on part of states that are belonging to both sides of the regional "poles" might be seen as a rough indicator and indirect recognition of the IAHRS as an independent and impartial body – at least when it comes to its "treatment" of states. Additionally, even though the election process of Commissioners and Judges is done by states through the General Assembly, the elected members serve in their own capacity. Further, looking at the activities of the IAHRS as a function of the human rights situations in the different member states, taking account of the severity of each situation and the possibilities open to the IAHRS in each case depending on ratifications and other factors, the IAHRS has engaged in situations no matter the political ideology of states' national governments. One might have opinions as to the exact distribution of efforts of the Commission between different country situations, but it does engage wherever its mandate requests so. Lastly, looking at the approach and language used by the current Secretary General – which is very upfront –the approach of the IAHRS is different and more diplomatic.

In conclusion, this factor – the perceived and factual independence and impartiality of the IAHRS – would support the idea of a strengthened role for the IAHRS as to peace and security in the Americas – not least considering the importance of impartiality in this field of action. On a broader scale, international law, including human rights law and international humanitarian law as well as the IAHRS and other parts of the system of international law, can facilitate a framework for the context of peace and security; i.e. something to hold onto that can guide efforts and context analysis. There will of course always exist different opinions as to the interpretation of international law, which can produce controversy, but at least analysis can be guided by judgements and other contributions of these bodies, offering an objective opinion.

Improved interaction with other parts of the OAS

As a part of this report we have been looking at a few country examples related to peace and security and in doing so we have identified a number of examples showing interaction between the Commission and other parts of the OAS – mostly the Permanent Council. However, we have also identified situations where there seems to be a lack of cooperation and interaction. In general, studies on the subject find that reports and other materials produced by the IAHRS often have not been used by other parts of the OAS and even less been taken into consideration in decision-making. This holds for country reports as well as for the annual reports and entails the General Assembly as well as the other political organs. In other words, while the release of reports have had an immediate effect on the knowledge on part of the international community and a preventive effect as to raising awareness and calling the attention of states to human rights violations and country situations, the political organs of the OAS have not discussed the reports extensively.[247] This suggests that the interaction between the IAHRS and the political organs of the OAS mainly exists on an ad-hoc basis. There is reason to believe that the IAHRS could be of further support to the OAS, formalising the sharing of information and taking into account in its decision-making, the wealth of information produced within the IAHRS. It further suggests that the impact of the IAHRS could be greater, should such interaction be formalised.

Going back to the Venezuela example, the response by the OAS has been manifold but maybe also disperse. As discussed above, different attempts have been made to mediate in the conflict. Lately, at least some humanitarian agreements between the Maduro regime and the opposition have resulted in for example the increase access for the Pan-American Health Organisation. As for the General Secretariat, the "Working Group to address the crisis of Venezuelan migrants and refugees in the region" was created in September 2018. The Working Group is mandated to identify patterns and reasons for migration, analyse the current humanitarian and protection context of Venezuelans in recipient countries, and propose recommendations for a regional response to assist Venezuelans leaving their country. The Working Group's responsibilities also include frequent visits to the region to hold meetings with authorities, civil society, and the Venezuelan migrant and refugee communities.[248] The working group has issued a whole range of reports on the situation of Venezuelan refugees in the region as well as on the response by recipient states and the challenges of the massive refugee flows. At the same time, on behalf of the Commission, the MESEVE was created to especially follow-up on the situation in Venezuela. While the first focuses on the refugee crisis, the latter takes a holistic approach to the political, humanitarian and human rights crisis in the country. Although the two groups could be complementary, parts of their mandates overlap, and from what we have found, the cooperation between the two groups is limited and on an ad-hoc basis.

Additionally, the Secretary General put together his own panel of independent experts coming to the conclusion in a report in 2018 (updated in 2021), that there was reason to believe crimes against humanity were being committed in Venezuela.[249] The OAS Secretary General was very active, requesting that the ICC Prosecutor open a full investigation on an urgent basis and identified a coalition of countries from the region to invoke Article 14 of the Rome Statue and formally refer the situation in Venezuela to the ICC.[250] Furthermore, related to the situation in Venezuela, the Secretary General, under his own office, appointed a Special Advisor on the Responsibility to Protect. Regarding Nicaragua we see

a similar picture of multiple efforts on part of the OAS, even though at the initial stages, the different mechanisms, including the Commission's special mechanism on Nicaragua (MESENI), the GIEI and the different attempts to support negotiations seemed to have the potential to make a difference as to resolving the conflict, the deterioration of rule of law and the democratic deficit.

However, as we have seen, the relationship between the Maduro- and the Ortega regimes and the OAS is extremely frosty. While calling for the Permanent Council to invoke article 20 of the Democratic Charter – meaning the temporary suspension of the states from participating in the OAS – somehow was to embarrass Venezuela and Nicaragua, the response by the regimes was to leave the OAS. Seemingly, the threat of being suspended almost served as a welcomed excuse for leaving. The Venezuelan regime first denounced the American Convention and a few years later also the OAS Charter and the Nicaraguan regime denounced the OAS Charter.

Looking at the relationship with states, through the action of states in OAS political organs, the region's polarised politics often has made it difficult for the OAS to make quick, decisive calls to action. Adding to this the U.S. hegemony, the lack of funding and an inadequately staffed organisation, the challenges are many.[251] Considering history, the heavy weight on non-intervention and state sovereignty and insufficient funding – the question is if member states are interested in investing in a strong intergovernmental organisation or if they are content with an organisation that is struggling to survive. In view of this context, and the financial restraints – not only affecting the IAHRS but the OAS as a whole – taking into account the different mandates and roles of the different political organs and the human rights bodies and not compromising the independence and impartiality of the IAHRS – the effective use of the its different parts and striving at greater coherency seems reasonable, but is not necessarily a priority for member states.

Bearing in mind that a number of critical situations that risk evolving into violent conflicts and even internal armed conflicts – potentially threatening hemispheric security – fall into a pattern combining human rights violations, democratic deficit, the abuse of political power and non-separation of powers as well as the perverse use of rule of law, there seems to be ground for increased cooperation between the IAHRS and the parts of the OAS working on the support of building democratic societies, including electoral support and elections observation. Mandates are of course different but the contexts are the same. This might also add to a notion of OAS as an organisation and a system where the parts are working in the same direction, while at the same time respecting the integrity and the independence of each institution. International IDEA in a 2016 study identified several policy recommendations in order to strengthen the role of the OAS in consolidating peace and democracy in the Americas which resonates well with the findings of the present report:

- Improve conflict-prevention measures including the better understanding of the root causes of conflicts and the way they interconnect and use the Social Charter of the Americas as a framework for these efforts.
- The adoption of a comprehensive and holistic approach to peace and democracy in cooperation with multiple actors.
- Strengthening the dialogue for peace by involving a variety of stakeholders to enhance political dialogue as a tool for conflict resolution and the strengthening of democratic governance, including women, youth and minorities. This while also allocating resources to reach further in the OAS core pillars of democracy, human rights, security and development, and; secure support from member states to increase the effectiveness and sustainability of its work.[252]

Over the years, voices have been raised advocating for a more active role of the General Assembly in supporting and ensuring the implementation of recommendations, decisions and Court rulings, including by the adoption of costly political sanctions against states that are reluctant to comply with the measures ordered. While states are informed of the status of imple-

mentation by the Court, states have, over the years, been reluctant to criticize each other for unwillingness to implement the decisions of the Court and to adopt sanctions on the same grounds – despite the fact that the Court has invoked article 65 of the Convention – providing this possibility – only on a few occasions. Thus, this collective guarantee-system where the General Assembly is supposed to cooperate with the Court in order to ensure that its judgements do not become illusory, has not been delivered upon by states. In fact, the Secretary of the Court in 2020 stated that "since the system was first used almost 20 years ago there has never been a serious discussion among OAS member states of the non-compliance reports presented by the Court." [253] In general, states have also been reluctant to adopt measures designed to increase the efficiency of the IAHRS.[254]

Regarding the role of the OAS, the aforementioned study by International IDEA, points to the comparative advantages of the OAS as not being based on coercion but rather on "moral authority" and "honest broker of region-wide consensus" and a capacity to carry out dialogue processes in pursuit of efforts to strengthening democratic rule.[255] Considering the current state of affairs within the region and the OAS, the question is if these comparative advantages are still valid.

On balance, even though the picture is mixed and complex, there seems to be an opportunity for the IAHRS to play an increasingly important role for peace and security in the Americas in view of fragmented OAS political organs and the questioning of OAS impartiality, historically leaning towards and identified as a U.S. ally. This potential role of the IAHRS however, requires the active, consistent and universal support of OAS member states and state parties to the American Convention to the mandates of the IAHRS, and willingness to dedicate resources and adopt measures to increase the efficiency and impact of the system. Alluding to the responsibility to protect, such active support to the continuous development of the IAHRS would constitute a most important and relevant measure as to responding to the responsibility to protect in the Americas and as such also enhancing conflict prevention and state sovereignty.

Recommendations

In the above analysis we have come to a number of conclusions regarding the role of the IAHRS for peace and security in the Americas and what is needed for that role to be supported and developed to its fullest potential. In this section, we give a range of recommendations to different actors in pursuit of human rights, democracy and peace and security in the Americas, departing from a nexus perspective. Some of the factors that would facilitate a more prominent role of the IAHRS in contributing to peace and security in the Americas are under the power of the regional system itself, some in coordination with other OAS institutions and others fall under the powers of the OAS political bodies and member states.

The Court and the Commission

- Additional efforts to make regional instruments and the regional system widely known within the OAS, the sub-regional intergovernmental organisations, governments, NGOs, the donor community and the general public, would contribute to its effective use and serve as protection of the IAHRS.
- Include in the coming Strategy of the Commission, effective from 2022, objectives related to the nexus between human rights and peace and security, including the Women, Peace and Security Agenda.
- Continue working for enhanced coordination with relevant parts of the OAS, including the Permanent Council and the Secretariat for Political Affairs with a view to institutionalise a better and more timely use of the products provided by the IAHRS, as well as the more timely production, presentation, and follow-up on, for example, country reports.
- Continue to support and engage with civil society.
- Consider the possibility to make further use of IHL in their decisions.

General Assembly

- Provide proper dimensions of financial and human resources for the IAHRS (and the OAS at large), in order for its organs to be able to fully comply with their mandates and also play a prominent role in peace and security matters, including conflict prevention and the Women, Peace and Security Agenda.
- Support in words and action the mandates of the Court and the Commission without reservations and ensure and confirm the independence and autonomy of the regional human rights system.
- Take advantage of the rich competencies, knowledge and products characterising the IAHRS.
- Move on from its general appeal to states in respecting and implementing instruments on human rights and decisions of the IAHRS, to a process where states are specifically targeted and requested to comply with implementation, based on the annual reports of the IAHRS and in particular put into practice the collective guarantee provided by article 65 of the American Convention on Human Rights, cooperating with the Court to ensure the implementation of its judgements.
- Support the enhanced coordination and cooperation between different parts of the OAS, encouraging cross-fertilisation and avoiding working in silos.
- Ensure parity in the representation of women and men in the different organs of the OAS – in all positions and at all levels – including the Court and the Commission.
- Step-up its systematic interaction with civil society.
- Consider the establishment of a Special Envoy for Women, Peace and Security.

Permanent Council

- Institutionalise coordination and interaction with the IAHRS.
- Make use of the regional human rights system as an expert resource, including the possibility of legal advice.

- Consider the IAHRS as a key actor for the alert and early warning regarding conflicts in the Americas.
- Support in words and action, without reservations, the mandates of the Court and the Commission.
- Ensure the full and effective implementation of the peace agreement between the Colombian State and the FARC.
- Adopt a rights-based approach to peace and security.
- Consider reviving the use of the Women, Peace and Security Agenda as a framework as it is highly relevant also for the Americas.

General Secretariat

- Take advantage of the rich competencies, knowledge and products characterising the IAHRS.
- Consider the IAHRS as a key actor for the alert and early warning regarding conflicts in the Americas.
- Support the enhanced coordination and cooperation between different parts of the OAS, encouraging cross-fertilisation and avoiding working in silos.
- Encourage actions for the OAS to work as one system while conserving a respect for the different roles and mandates of its different parts.
- Ensure parity in the representation of women and men in the different institutions and missions – in all positions and at all levels.

OAS Member States

- Ensure, respect and protect the mandate and the independence and autonomy of the IAHRS.
- Fully cooperate with the IAHRS, including prompt responses to urgent appeals, compliance with precautionary- and provisional measures, implementation of recommendations and decisions and to issue a standing invitation for in-loco visits.
- Accede to, respect and implement the regional and international instruments on human rights and international humanitarian law, including the contentious jurisdiction of the Court.

- Inform the public about the regional and international instruments on human rights and the IAHRS and facilitate the interaction of civil society with the government, OAS institutions and mechanisms, and sub-regional intergovernmental organisations.
- Create favourable conditions for civil society to flourish and expand civic space, reversing for example laws on "foreign agents".
- Ensure to put in place the appropriate mechanisms at the national- and sub-national levels in order to comply with the recommendations, decisions and rulings of the IAHRS.
- Elaborate and ensure the implementation of national action plans on Women, Peace and Security.

Observer States to the OAS

- Fully support the mandate, independence and autonomy of the regional human rights system.
- Take account of the recommendations made to the different actors in this report.

Donor community

- Ensure financing of civil society organisations at all levels throughout the continent and encourage their interaction with OAS-mechanisms, including the regional human rights system.
- Provide financing to Pan-American civil society organisations which can advocate and put pressure on governments and the OAS, and facilitate the presentation of petitions to the Commission.
- Make sure to finance long-term processes, including the litigation of cases before the IAHRS and the advocacy for follow-up on and bringing about implementation of recommendations, decisions and judgements.
- Take account of the recommendations made to the different actors in this report.

Civil society

- Continue to engage with victims, states, the OAS and the IAHRS.
- Advocate for the IAHRS in their respective countries and regions.
- Make alliances across sectors, breaking silos – working on the nexus between human rights and peace and security as well as democracy, rule of law and other fields.
- Take account of the recommendations made to the different actors in this report.

REFERENCES

Interviews

Carlos Portales | Former Ambassador of Chile to the OAS.
Diego Rodríguez-Pinzón | Professorial Lecturer in Residence and Co-Director, Academy on Human Rights & Humanitarian Law, American University, Washington College of Law.
Fiorella Melzi | Inter-American Commission on Human Rights.
Santiago Martinez | Inter-American Commission on Human Rights.
Shana Santos | Inter-American Commission on Human Rights.

Panel at on-line seminar April 2020*

Antonia Urrejola Noguera | President of the Inter-American Commission on Human Rights and Rapporteur for Colombia, Ecuador, Guyana and Nicaragua, of the Rights of Indigenous Peoples and of Memory, Truth, and Justice. Principal advisor to the former Secretary General of the OAS between 2006 and 2011.
Diego Rodríguez-Pinzón | Professorial Lecturer in Residence and Co-Director of the Academy on Human Rights and Humanitarian Law at American University Washington College of Law, member of the United Nations Committee against Torture and former Ad Hoc Judge of the Inter-American Court of Human Rights.
Fredrik Svensson | Program Manager and Advisor in International Law, Swedish Foundation for Human Rights.
Jared Genser | Special Advisor on the Responsibility to Protect to the OAS, Managing Director of public interest law firm Perseus Strategies, and Adjunct Professor of Law at Georgetown University Law Center.
Pär Engström | Senior Lecturer in Human Rights at the Institute of the Americas, University College London.
Viviana Krsticevic | Executive Director, Center for Justice and International Law, Founder and member of the GQUAL Campaign

Panel at round-table discussion on the report draft 2 December 2021

Anders Kompass (moderator) | Board member of the Swedish Foundation for Human Rights, former UN official, and former Swedish ambassador to Guatemala.
Anne-Charlotte Wetterwik | Desk Officer, Political Section, Embassy of Sweden in Washington.
Carolina Wennerholm | Head of Unit Latin America, Swedish International Development Cooperation Agency.
Fernando Travesí | Executive Director, International Center for Transitional Justice.
Fredrik Svensson | Program Manager and Advisor in International Law, Swedish Foundation for Human Rights.
Hilary Anderson | Senior Gender Specialist, Inter-American Commission of Women (CIM), Organization of American States.
Soledad García Muñoz | Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Inter-American Commission on Human Rights.
Viviana Krsticevic | Executive Director, Center for Justice and International Law, Founder and member of the GQUAL Campaign.
Yadira Pinilla | Head of Human Development, Scholarships and Training for the Department of Education, Human Development and Employment, Organisation of American States. Former Advisor to the Director of the Department of Sustainable Democracy and Special Missions, Organisation of American States.

Representatives from Diakonia, the International Legal Assistance Consortium, the Nordic Institute of Latin American Studies, the Red Cross, Plan International, Stockholm University Faculty of Law, the Swedish Church – Act Alliance, and the Swedish Fellowship of Reconciliation, also took part in the round-table.

*Available at the YouTube channel of the Swedish Foundation for Human Rights
https://www.youtube.com/watch?v=nMXFyRggppM

ANNEX: PILLARS OF THE WPS-AGENDA

The four pillars of the Women, Peace and Security Agenda as defined by the Swedish International Development Cooperation Agency (Sida):*

Participation: Aims to ensure women's equal participation and influence with men and the promotion of gender equality in peace and security decision-making processes at national, local and international levels. It includes the appointment of more women, including negotiators, mediators, peacekeepers, police and humanitarian personnel, as well as support for local women's peace initiatives.

Protection: A political concept that is used and interpreted differently by different actors. Protection ensures that women and girls' rights are protected and promoted in conflict-affected situations or other humanitarian crisis including protection from gender-based violence (GBV) in general and sexual violence in particular. The specific protection needs of refugees or internally displaced women and girls that can occur during the various stages of displacement is particularly emphasized. *'Protection'* is not the same as *'security'*, although often associated with it. Women and men experience security differently and focus should be on determining what women and girls need in order to safely participate in society.

Prevention: This pillar focuses on '*prevention of conflict and all forms of violence against women and girls in conflict and post-conflict situations*' and is the one that has received least attention. It includes integrating gender considerations into conflict early warning systems and involving women and their specific needs in conflict prevention and disarmament activities. It also includes measures to prevent GBV by fighting impunity and increasing prosecutions for perpetrators of conflict-related sexual violence. Other GBV prevention strategies focus on challenging discriminatory gender norms, attitudes and behaviour and working with men and boys, not only as perpetrators, but also victims of violence and agents of change.

Relief and recovery: Aims to ensure that women and girls' specific relief needs are met, for example in repatriation and resettlement, disarmament, demobilisation and reintegration programmes, the design of refugee camps, support to internally displaced persons and in the delivery of humanitarian assistance. This pillar also promotes the reinforcement of women's capacities to act as agents in relief and recovery processes in conflict and post-conflict.

**Women, Peace and Security, Gender Tool Box Brief*, Sida, March 2015

END NOTES

[1] The treaty codified the previous eleven instruments for peaceful settlement that appeared in earlier treaties. It imposed a general obligation on the signatories to settle their disputes through peaceful means and required them to exhaust regional dispute-settlement mechanisms before bringing matters before the United Nations Security Council. It conferred jurisdiction on the International Court of Justice. Arbitration would only be obligatory when the court declared to have no jurisdiction in the dispute. The treaty was signed on behalf of twenty-one American States on April 30th, 1948 and ratified by fourteen states.

[2] http://www.oas.org/sap/peacefund/VirtualLibrary/virtualLibrary.html#32

[3] http://www.oas.org/sap/peacefund/VirtualLibrary/virtualLibrary.html#20

[4] The treaty provided that all controversies and disputes should be submitted for arbitration in cases where diplomacy had failed, and to investigation by two five-member commissions, one in Washington DC and another in Montevideo, Uruguay. The role of the commissions was to receive requests for inquiries, investigate the controversies and issue a report within one year in each case. The parties agreed to make no preparations for war from the time the commission first convened, until 6 months after it issued its report. The Treaty entered into force after being ratified by twenty countries in 1924.

[5] http://www.oas.org/sap/peacefund/VirtualLibrary/virtualLibrary.html#23

[6] http://www.oas.org/sap/peacefund/VirtualLibrary/Inter-AmericanConf-MaintenancePeace/Treaties/ConventionofMaintenancePeace.pdf

[7] The Convention was ratified by seventeen countries and entered into force in 1937.

[8] http://www.oas.org/sap/peacefund/VirtualLibrary/Inter-AmericanConf-MaintenancePeace/Treaties/AdditionalProtocolRelativeNonIntervention.pdf

[9] The Protocol was ratified by sixteen countries and entered into force in 1937.

[10] http://www.oas.org/sap/peacefund/VirtualLibrary/Inter-AmericanConf-MaintenancePeace/Treaties/TreatyPreventionControversies.pdf

[11] http://www.oas.org/sap/peacefund/VirtualLibrary/Inter-AmericanConf-MaintenancePeace/Treaties/InterAmericanTreatyGoodOfficesMediation.pdf

[12] AG/RES. 2438 (XXXIX-O/09), OAS General Assembly, 3 June, 2009

[13] OAS, Retrieved from: http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS_signatories.asp (2020-11-02)

[14] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 48

[15] https://usoas.usmission.gov/our-relationship/policy-programs/hemispheric-security/

[16] International IDEA, 2016. *Supporting peace in the Americas: Lessons from the Organization of American States*, p.2-4,

[17] Inksater, K. & Jiménez, P. 2016. 'The Organization of American States Mission to Support the Peace Process in Colombia', p. 7 https://www.idea.int/sites/default/files/publications/the-organization-of-american-states-mission-to-support-the-peace-process-in-colombia.pdf

[18] Meyer McAleese, M. K. 2018. 'WPS and the Organization of American State', in Davies S.E. and True, J. (eds.) Oxford Handbook of Women, Peace and Security: Oxford University Press, p. 420-423

[19] The Department of Sustainable Democracy and Special Missions, "About us", http://www.oas.org/en/spa/dsdsm/acerca.asp (2020-10-19)

[20] International IDEA, 2016. *Supporting peace in the Americas: Lessons from the Organization of American States*, p.2-4

[21] http://www.oas.org/en/spa/dsdsm/default.asp

[22] http://www.oas.org/en/spa/dsdsm/analisis_politico.asp

[23] http://www.oas.org/en/spa/deco/default.asp

[24] OAS, "OAS Peace missions" http://www.oas.org/sap/peacefund/PeaceMissions/

[25] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 39-47

[26] Meyer McAleese, M. K. 2018. 'WPS and the Organization of American State', in Davies S.E. and True, J. (eds.) *Oxford Handbook of Women, Peace and Security*: Oxford University Press, p.413

[27] UN Women, Global study, https://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20(1).pdf, p. 361

[28] UN Women, Global study, https://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20(1).pdf, p. 362

[29] The Inter-American Commission of Women, "About CIM; Mission and Mandate", http://www.oas.org/en/CIM/about.asp

[30] Meyer McAleese, M. K, p. 415

[31] Meyer McAleese, M. K. (2018). 'WPS and the Organization of American State', in Davies S.E. and True, J. (eds.) *Oxford Handbook of Women, Peace and Security*: Oxford University Press, p.413

[32] Inter-American Commission of Women, "Strategic plan 2016-2021", http://www.oas.org/en/CIM/docs/PIA[EN].pdf (2020-10-19)

[33] Ibid.

[34] Meyer McAleese, pp. 419-420

[35] Bauer Garcia, C., 1980. *The Observance of Human Rights and the Structure of the System for Their Protection in the Western Hemisphere*, American University Law Review, vol. 30, no. 1, Fall 1980, p. 7-8.

[36] American Declaration of the Rights and Duties of Man, adopted 2 may 1948, reprinted in INTERAMERICAN COMMISSION ON HUMAN RIGHTS [IACHR], HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS, OEA/Ser. L/V/II.50, Doc. 6, at 27 (1980).

[37] OAS, "Charter of the American States", http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp (2020-10-20)

[38] Ratifications as of September 2021: Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, United States of America, Venezuela. Paraguay ratified in 2018.

[39] In a historic perspective it is interesting to note that the USA at the time of signing, in its reservation stated that "… under our support of the general principle of non-intervention as has been suggested, no government need fear any intervention on part of the United States under the Roosevelt Administration."

[40] American Treaty on Pacific Settlement, (A-42), Bogotá April 30, 1948, chapter one

[41] Article 10: "The primary interest of states is the conservation of peace. Differences of any nature which arise between them should be settled by recognized pacific methods."

[42] Organization of American States: Background and Issues for Congress, Congressional Research Service, 23 January 2014

[43] https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml

[44] https://www.globalr2p.org/publications/r2p-in-the-americas-genser/

[45] Ibid.

[46] Ibid.

[47] https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml

[48] https://www.youtube.com/watch?v=nMXFyRggppM

[49] https://www.globalr2p.org/publications/un-general-assembly-adopts-new-resolution-on-the-responsibility-to-protect/

[50] Inter-American Conference on Problems of War and Peace, Mexico City, Mexico, Feb. 2 I-Mar. 8, 1945, reprinted in PAN AMERICAN UNION, THE INTERNATIONAL CONFERENCES OF AMERICAN STATES 353, 376 (2d Supp. 1958, at 102.

[51] Bauer Garcia, C., 1980. "The Observance of Human Rights and the Structure of the System for Their Protection in the Western Hemisphere." American University Law Review, vol. 30, no. 1, Fall 1980, p. 7-8

[52] Inter-American Commission on Human Rights, American Declaration of Rights and Duties of Man, https://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm

[53] Goldman, R. K. 2009. "History and Action: the Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights." Human Rights Quarterly 31.

[54] The Inter American Human Rights Convention, The Review, International Commission of Jurist, Geneva, 1969, no. 2.

[55] Senate of Canada, Enhancing Canada's role in the OAS: Canadian adherence to the American Convention on Human Rights, https://sencanada.ca/Content/SEN/Committee/372/huma/rep/rep04may03part1-e.htm (2020-10-20)

[56] Buergenthal, Thomas. "The American Convention on Human Rights: Illusions and Hopes." Buffalo Law Review, vol. 21, no. 1, Fall 1971, p. 123-124.

[57] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 97

[58] Antkowiak T.M, Gonza A., The American Convention on Human Rights: Essential Rights, p. 232

[59] Cruz Sánchez et al. v. Peru, Preliminary Objections, Merits, Reparations, Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 292 (Apr. 17, 2015); Landaeta Meijias Brothers et al. v. Venezuela, Preliminary Objections, Merits, Reparations,

and Costs, Judgment, Inter- Am. Ct. H.R. (ser. C) No. 281 (Aug. 27, 2014); Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, para. 120 (Sept. 15, 2005).

[60] Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, paras. 167, 176 (June 17, 2005); Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, para. 48 (Nov. 24, 2011)

[61] Article 27 §2: "The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights."

[62] Chapter VIII of the Convention establishes the Inter-American Court of Human Rights, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS [IACHRI, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS, OEA/Ser. L./V/II.50, Doc. 6, at 27 (1980) [hereinafter cited as HANDBOOK].

[63] Chapter VII of the American Convention, also known as the San Jos6 Pact, outlines the Inter-American Commission on Human Rights. American Convention on Human Rights, arts. 3451, signed Nov. 22, 1969, OEA/Ser. K/XVI/1.1, Doc. 65, Rev. 1. Corr. 1 (1970) [hereinafter cited as American Convention], INTER-AMERICAN COMMISSION ON HUMAN RIGHTS [IACHRI, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS, OEA/Ser. L./V/II.50, Doc. 6, at 27 (1980) [hereinafter cited as HANDBOOK].

[64] The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgements, Pablo Saavedra, Journal of Human Rights Practice, 12, 2020, p. 181-182

[65] http://www.cidh.oas.org/basicos/english/basic6.prot.sn%20salv%20ratif.htm

[66] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 122-123

[67] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 126

[68] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 124-126

[69] Persadie, Natalie (2012). *A critical analysis of the efficacy of law as a tool to achieve gender equality.* Lanham, Md.: University Press of America. p. 199

[70] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p. 22-23

[71] Meyer McAleese, p. 416

[72] Ibid.

[73] OAS, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)*, https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf

[74] Meyer McAleese, p. 416

[75] OAS, "What is MESECVI?" http://www.oas.org/en/mesecvi/about.asp

[76] Soto, Y., 2016. "The role of the Organization of American States in conflict-affected states in the Americas", International IDEA, p. 8

[77] US Mission to the Organization of American States, "Democracy promotion and human rights" https://usoas.usmission.gov/our-relationship/policy-programs/democracy/ (2020-10-20)

[78] Soto, Y., 2016. "The role of the Organization of American States in conflict-affected states in the Americas", International IDEA, p.8

[79] International IDEA, 2016. "Supporting peace in the Americas: Lessons from the Organization of American States",

[80] http://humanrightscommitments.ca/wp-content/uploads/2019/03/Inter-American-Convention-to-Prevent-and-Punish-Torture-.pdf

[81] The Convention to Prevent and Punish Torture has been ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.

[82] http://humanrightscommitments.ca/wp-content/uploads/2019/03/Inter-American-Convention-to-Prevent-and-Punish-Torture-.pdf

[83] The Convention on Forced Disappearance of Persons has been ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala,

Honduras, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela. Nicaragua has signed but not ratified.

[84] http://humanrightscommitments.ca/wp-content/uploads/2019/04/Inter-American-Convention-on-Forced-Disappearance-of-Persons.pdf

[85] http://www.oas.org/csh/english/cforhsintro.asp *and* https://www.un.org/nwfz/content/treaty-nuclear-weapon-free-zone-central-asia

[86] Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, 1959, Records and Documents app. V, Res. VIII, OAS Official Records, OVA/ Ser. F./JII.5, at 308 (1960).

[87] Statute of the Inter-American Commission on Human Rights, art. I [hereinafter cited as Statute]. The Statute, which was promulgated by the OAS Council in 1960, is reprinted in HANDBOOK, app. II, at 30

[88] This power was conferred on the Commission by Resolution XXII of the Special Inter-American Conference, held in Rio de Janeiro, Brazil, November 17-30, 1965. See OAS Official Records, OEA/Ser.E. XIII.I (1966). Article 9 (bis) of the Commission's Statute implements Resolution XXII. ; For examples of investigative missions carried out by the court, see Report submitted by the Organization of American States to the International Conference on Human Rights, U.N. Doc. A/Conf. 32/L.10, at 46-58 (1968) and See INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON THE WORK ACCOMPLISHIED DURING ITS 22ND SESSION, FIRST AND SECOND PARTS, AUGUST 5-7, 'AND NOVEMBER 7-22, 1969, OAS Official Records, OEA/Ser.L/V/II.22, Doc. 15 (English), Add. 1, at 5-20, 34-40 (1970)

[89] Commission Statute, art 4(a) and 6(a)

[90] International Justice Resource Center, https://ijrcenter.org/regional/inter-american-system/

[91] IACHR, "Follow-up of Recommendations", https://www.oas.org/en/iachr/activities/follow-up/default.asp

[92] Ibid.

[93] http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/observatory/fundamentacion.asp

[94] Novena Conferencia Internacional Americana, Bogota, Colombia, Mar. 30-May 2, 1948, MINISTERIO DE RELACIONEs EXTERIORES, 5 AcAs Y DOCUMENTOS 597 (1953).

[95] Novena Conferencia Internacional Americana, Bogota, Colombia, Mar. 30-May 2, 1948, MINISTERIO DE RELACIONEs EXTERIORES, 5 AcAs Y DOCUMENTOS 597 (1953), p. 464-65

[96] IACtHR, "About I/A Court H.R." https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en

[97] IACtHR, 2019. 'ABC of the Inter-American Court of Human Rights: What, How, When and Why of the Inter-American Court of Human Rights. Frequently Asked Questions / Inter-American Court of Human Rights.' p. 16. Retrieved from: https://www.corteidh.or.cr/sitios/libros/todos/docs/ABC-CorteIDH_2019_eng.pdf, (2020-10-29)

[98] Since 2015, more than 5.4 million Venezuelans have left the country (Source: Coordination Platform for Refugees and Migrants from Venezuela 2020) due to the country's extreme levels of unemployment and severe shortages of daily necessities such as food and medication. In 2019, 7 million people in Venezuela were estimated to have humanitarian needs. (Source: Venezuela Humanitarian Response Plan 2020)

[99] IACHR, 2019."IACHR Establishes Special Follow-Up Mechanis for Venezuela (MESEVE)" https://www.oas.org/en/iachr/media_center/PReleases/2019/267.asp

[100] International Justice Resource Center, "The Rapporteurships of the Inter-American Commission on Human Rights", https://ijrcenter.org/regional/inter-american-system/

[101] IACHR, "MESEVE" https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/meseve/default.asp

[102] ESCR-Net Strategic Litigation Working Group, Implementation of decisions of the Inter-American Commission on Human Rights, https://www.escr-net.org/sites/default/files/201802-discussion-paper-of-escr-nets-strategic-litigation-working-group.pdf, p. 5

[103] IACHR, Report No. 16/20, Petition 452-11. Admissibility. Milton Gerardo Revilla Soto. Venezuela. March 13, 2020. http://www.oas.org/en/iachr/decisions/2020/vead452-11en.pdf

[104] See "Rules of Procedure of the Inter-American Commission on Human Rights," art. 25, approved by the Commission at its 137th regular period of sessions, October 28–November 13, 2009, and modified on September 2, 2011, http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp.

[105] Rodríguez-Pinzón, D. (2013) "Precautionary Measures of the Inter-American Commission on Human Rights: Legal Status and Importance", https://www.corteidh.or.cr/tablas/r30734.pdf , Retrieved: 2020-12-14

[106] IACHR, "Resolution 22/19 PM 125/19 - María Corina Machado Parisca, Venezuela", http://www.oas.org/en/iachr/decisions/precautionary.asp, Retrieved: 2020-12-14

[107] http://www.oas.org/en/IACHR/decisions/MC/precautionary.asp?-Year=2021&Country=VEN

[108] Portales, C. & Rodríquez-Pinzón, D. 2017. *Anuario Colombiano de Derecho Internacional (acdi)*, 10,
p.281. Doi: 10.12804/revistas.urosario.edu.co/acdi/a.5300

[109] IACHR, 2020. "IACHR Presents Preliminary Observations and Recommendations Following Historic On-Site Visit to Monitor the Human Rights Situation in Venezuela" http://www.oas.org/en/iachr/media_center/PReleases/2020/106.asp

[110] IACtHR, "What are the provisional measures?", https://www.corteidh.or.cr/que_son_medidas_provisionales.cfm?lang=en

[111] IACrtHR, "Resolución de la Corte Interamericana de Derechos Humanos de 8 de Julio de 2020, Medidas Provisionales respecto de Venezuela, Asuntos de determinados centros penitenciarios de Venezuela Humberto Prado Marianela Sánchez Ortiz y familia", https://www.corteidh.or.cr/corteidh/docs/medidas/centrospenitenciarios_se_06.pdf p. 3

[112] Ibid.

[113] https://www.corteidh.or.cr/corteidh/docs/medidas/centrospenitenciarios_se_06.pdf p. 8

[114] Ibid.

[115] Pueblo Bello Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter- Am. Ct. H.R. (ser. C) No. 140, paras. 126, 151 (Jan. 31, 2006)

[116] Bámaca Velásquez v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, para. 208 (Nov. 25, 2000).

[117] Antkowiak T.M, Gonza A., The American Convention on Human Rights: Essential Rights, p. 86-87.

[118] Álvarez Ramos v Venezuela, IACtHR, judgement 30 August 2019,§129

[119] Ibid., §122

[120] San Miguel Sosa et al v Venezuela, IACtHR, judgement 8 February 2018,§158-160

[121] https://globalfreedomofexpression.columbia.edu/cases/granier-v-venezuela/

[122] Granier et al v Venezuela. IACtHR, judgement 22 June 2015, p.112 §3

[123] The International Justice Resource Center, (2019). *Civil Society Access to International Oversight Bodies: Inter-American Commission on Human Rights*. Retrieved from: https://ijrcenter.org/wp-content/uploads/2019/05/Exec-Summary-Civil-Society-Access-IACHR-2019-English.pdf

[124] Portales and Rodriguez-Pinzon, *Building Prevention to Protect: The Inter-American Human Rights System*, ACDI, Bogota, 2017, p. 261-262

[125] Ibid., p. 267-268

[126] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p.276-279

[127] IACHR, Report No. 112/10, Inter-State Petition IP-02, Admissibility

[128] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p.149

[129] In most legal systems of the Spanish-speaking world, the writ of amparo (also called recurso de amparo or juicio de amparo) is a remedy for the protection of constitutional rights, found in certain jurisdictions. The amparo remedy or action is an effective and inexpensive instrument for the protection of individual rights. Amparo, generally granted by a supreme or constitutional court, serves a dual protective purpose: it protects the citizen and their basic guarantees, and protects the constitution itself by ensuring that its principles are not violated by statutes or actions of the state that undermine the basic rights enshrined therein.

[130] Ibid., p.204, 211, 313.

[131] Ibid., p.279

[132] Ibid., p.206

[133] Ibid., p.101-106

[134] https://iachr.lls.edu/cases/vel%C3%A1squez-rodr%C3%ADguez-v-honduras

[135] Cases 12.335, 12.336, 12.757 and 12.711.

[136] IACHR, Report No. 41/15, Cases 12.335; 12.336; 12.757; 12.711, Merits, Gustavo Giraldo Villamizar Durán et al., Colombia, July 28, 2015.

[137] http://www.oas.org/en/iachr/media_center/PReleases/2016/058.asp

[138] Rodríguez-Pinzón, Diego. "Precautionary Measures of the Inter-American Commission on Human Rights: Legal Status and Importance." Human Rights Brief 20, no. 2 (2013): 13-18. And: Portales and Rodriguez-Pinzon, Building Prevention to Protect: The Inter-American Human Rights System, ACDI, Bogota, 2017, p. 277

[139] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p.78-80

[140] Portales and Rodriguez-Pinzon, *Building Prevention to Protect: The Inter-American Human Rights System*, ACDI, Bogota, 2017, p. 278-281

[141] http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/167.asp

[142] Escuadrones Móviles Antidisturbios (ESMAD) or Mobile Anti-Disturbances Squadrons in English, is a Colombian National Police riot control unit.

[143] Observations and recommendations, Working visit to Colombia June 2021, IACHR, p. 39-41

[144] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p.128

[145] Ibid., p.127-134

[146] Ibid., p.60-62

[147] Pueblo Bello Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140 (Jan. 31, 2006); Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, para. 133 (July 1, 2006)

[148] Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter.-Am. Ct. H.R. (ser. C) No. 245 (June 27, 2012), paras. 248-249 (Court did not find a violation of art 4 despite the fact that Ecuador was seemingly aware of and involved in the placement of explosives on ancestral territory.

[149] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p.198

[150] http://www.cidh.org/countryrep/EnHa95/eh95p1.htm#women (§133 & 135)

[151] Inter-American Court of Human Rights, Case of the "Las Dos Erres" Massacre v. Guatemala,, Judgment of November 24, 2009 (Preliminary Objection, Merits, Reparations, and Costs), §139-141

[152] https://www.corteidh.or.cr/docs/comunicados/cp_73_2021_eng.pdf

[153] https://cejil.org/en/press-releases/physical-sexual-and-psychological-torture-of-jineth-bedoya-could-not-have-been-carried-out-without-the-collaboration-of-the-state-inter-american-court-of-human-rights-ruling/

[154] Skaar E., García-Godos, J. and Collins, C. (2016) *Transitional Justice in Latin America – The Uneven Road from Impunity towards accountability*: Routledge, p. 9

[155] Engstrom, P. 2013. "The Inter-American Human Rights System and Transitional Justice in Latin America" https://parengstrom.files.wordpress.com/2013/10/engstrom-tji-remarks-17oct2013fin.pdf, p. 2

[156] Skaar E., García-Godos, J. and Collins, C. (2016). *Transitional Justice in Latin America – The Uneven Road from Impunity towards accountability:* Routledge, p. 9

[157] Engstrom, P. 2013. "The Inter-American Human Rights System and Transitional Justice in Latin America" https://parengstrom.files.wordpress.com/2013/10/engstrom-tji-remarks-17oct2013fin.pdf p.4

[158] Herrera v. Argentina

[159] Santos Mendoza v. Uruguay

[160] Las Hojas Massacre v. El Salvador

[161] Garay Hermosilla v. Chile

[162] Portales and Rodriguez-Pinzon, *Building Prevention to Protect: The Inter-American Human Rights System*, ACDI, Bogota, 2017, p. 273

[163] *The Right to Truth in the Americas*, Inter-American Commission on Human Rights, 2014, p. 31-32

[164] Ibid., p. 32

[165] Skydd av Mänskliga fri- och rättigheter inom OAS, 4:e upplagan, Eriksson & Sjöholm, Uppsala, 2016, p.109-110

[166] Ibid., p.125

[167] http://www.cidh.org/annualrep/99eng/merits/Colombia11.101.htm

[168] https://www.corteidh.or.cr/overview.cfm?doc=38&lang=en

[169] Ibid.

[170] Gross Human Rights Violations in the Context of Social Protests in Nicaragua, IACHR, 21st of June 2018, §28, §44

[171] Ibid., §2

[172] Ibid., §2, §16

[173] Ibid., §4

[174] Ibid., §21

[175] Ibid., §48
[176] Ibid., §52-53
[177] Report on the violent events that took place in Nicaragua between April 18th and May 30th, Executive Summary, GIEI Nicaragua, 21st December 2018, p.1-5
[178] Personas privadas de libertad en Nicaragua, IACHR, October 2020, §2, §8-9, §11
[179] Boletín MESENI, IACHR, November 2021
[180] Boletín MESENI, IACHR, August 2021
[181] Comunicado de Prensa 284/21, IACHR, 28 October, 2021 (author's translation from Spanish).
[182] Resolución Ampliación de medidas provisionales: Asunto Juan Sebastián Chamorro y otros, Corte Interamericana de Derechos Humanos, 4th November 2021
[183] Nicaragua: Concentración del poder y debilitamiento del Estado de Derecho, IACHR, 2021, §11
[184] Case of YATAMA v Nicaragua, 23rd June, 2005
[185] Advisory Opinion, OC-28/21, IACtHR, 7th June, 2021, §146
[186] Comunicado de Prensa 169/21, IACHR, 8 July, 2021
[187] https://www.corteidh.or.cr/docs/tramite/gadea_mantilla.pdf
[188] http://www.oas.org/en/council/CP/documentation/agenda/
[189] CP/RES. 1108 (2172/18), 18th July, 2018, §1
[190] First report of the Permanent Council Working Group on Nicaragua, 11th September, 2018
[191] Second report of the Permanent Council Working Group on Nicaragua, 18th October, 2018
[192] Fourth report of the Permanent Council Working Group on Nicaragua, 5th April, 2019, p. 3
[193] AG/RES. 2943 (XLIX-O/19) "The Situation in Nicaragua", in particular its operative paragraph 5
[194] CP/RES. 1135 (2244/19) "Resolution on the appointment of a commission on Nicaragua"
[195] Report of the OAS High-level Commission on Nicaragua, CP/doc.5570/19, p. 12
[196] AG/RES. 2962 (L-O/20), "Restoring democratic institutions and respect for human rights in Nicaragua through free and fair elections", 21 October, 2020

[197] AG/RES. 2962 (L-O/20), "Restoring democratic institutions and respect for human rights in Nicaragua through free and fair elections", 21 October, 2020
[198] Ibid.
[199] AG/DEC. 97 (XLVIII-O/18), "Declaration of support for the people of Nicaragua", 5th June, 2018, §5
[200] OSG/057-21, Office of the Secretary General, OAS, 9th June 2021
[201] "Rechazamos los resultados de las elecciones ilegítimas en #Nicaragua. Insto a países de
@OEA_oficial a responder a esta clara violación de la Carta Democrática durante su #AsambleaOEA."
https://twitter.com/Almagro_OEA2015/status/1458056788914458625
[202] http://www.oas.org/fpdb/press/Informe-Nicaragua-Elecciones-2021.pdf
[203] Press Release 312/21, IACHR, 20 November 2021
[204] https://www.bbc.com/mundo/noticias-america-latina-59354487
[205] Press Release 312/21, IACHR, 20 November 2021
[206] IACHR, 2013. "Truth, Justice and Reparation", p. 35
[207] IACHR Annual report p. 613
[208] Human Rights Defenders and Social Leaders in Colombia, IACHR, 2019
[209] http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/167.asp
[210] IACHR, 2013. "Truth, Justice and Reparation", p. 44
[211] Ibid., p. 38
[212] Inksater, K. & Jiménez, P. (2016). 'The Organization of American States Mission to Support the Peace Process in Colombia', p. 4
[213] IACHR, Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, p. 48
[214] Inksater, K. & Jiménez, P. (2016). 'The Organization of American States Mission to Support the Peace Process in Colombia', p. 26-28
[215] https://www.corteidh.or.cr/medidas_provisionales.cfm?lang=en
[216] Pablo Saavedra, The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgements, Journal of Human Rights Practice, 12, 2020, p. 179
[217] 29th report of the Secretary General to the Permanent Council on the MAPP/OAS

[218] CP/DEC. 65 (2087/16), 31st August, 2016; CP/DEC. 67 (2096/16), 18th November, 2016; CP/DEC. 70 (2150/18), 20th April, 2018

[219] https://www.icc-cpi.int/Pages/item.aspx?name=pr1623

[220] Regional Refugee and Migrant Response Plan, January - December 2021, Inter--Agency Coordination Platform for Refugees and Migrants from Venezuela, p. 14

[221] https://www.unhcr.org/venezuela-emergency.html

[222] Venezuela: International efforts to resolve the political crisis, Congressional Research Service, 26 May, 2021

[223] Report of the General Secretariat of the OAS and the panel of independent international experts on the possible commission of crimes against humanity in Venezuela, Office of the Secretary General, 29 May 2018 (second edition March 2021)

[224] https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26247&LangID=E

[225] http://www.oas.org/en/about/speech_secretary_general.asp?sCodigo=18-0088

[226] Executive Order No. 18-03, OAS General Secretariat, 7 September, 2018

[227] Argentina, Canada, Colombia, Chile, Paraguay and Peru.

[228] https://www.icc-cpi.int/Pages/item.aspx?name=pr1625

[229] González-Salzberg, D. E. (2010) *The Effectiveness of the Inter-American Human Rights System: A Study of the American States' Compliance with the judgments of the Inter-American Court of Human Rights.* 16 International Law, Revista Colombiana de Derecho Internacional, p. 115-142.

[230] Compendio de la Comisión Interamericana de Derchos Humanos sobre verdas, memoria, justicia y reparación en contextos transicionales, IACHR, April, 2021

[231] Press Release, SG/SM/19136-HR/5401, 17 July 2018

[232] ESCR-Net Strategic Litigation Working Group, Implementation of decisions of the Inter-American Commission on Human Rights, https://www.escr-net.org/sites/default/files/201802-discussion-paper-of-escr-nets-strategic-litigation-working-group.pdf, p. 5

[233] Basch, F. et al., "The Effectiveness of the Inter-American System of Human Rights Protection", in International Journal on Human Rights, v.7 n.12, 2010, https://sur.conectas.org/wp-content/uploads/2017/11/sur12-eng-fernando-basch.pdf, p. 28

[234] IACHR, "Reform Process – 2012" http://www.oas.org/en/iachr/mandate/docs/Methodeng.pdf, p. 5

[235] Krsticevic & Urueña, Transformative impact of the Inter-American Human Rights System: Elements for a methodology to think beyond compliance, 2022, p. 1

[236] Ibid., p. 17-22

[237] Ibid., p. 2-4

[238] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20059&LangID=E

[239] Engstrom, P. 2013. "The Inter-American Human Rights System and Transitional Justice in Latin America, https://parengstrom.files.wordpress.com/2013/10/engstrom-tji-remarks-17oct2013fin.pdf, p. 6

[240] http://agendapublica.elpais.com/almagro-la-cidh-y-la-grieta-interamericana/

[241] Pablo Saavedra, The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgements, Journal of Human Rights Practice, 12, 2020, p. 182

[242] https://www.corteidh.or.cr/casos_aplicacion_articulo_65_convencion.cfm

[243] Resolución de la Corte Interamericana de Derechos Humanos, Medidas Provisionales, Asunto Juan Sebastián Chamorro y otros respecto a Nicaragua, 22 Novermber 2021

[244] Pablo Saavedra, The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgements, Journal of Human Rights Practice, 12, 2020, p. 178-184

[245] Elizabeth Abi-Mershed, The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgements, Journal of Human Rights Practice, 12, 2020, p. 171-177

[246] Krsticevic & Urueña, Transformative impact of the Inter-American Human Rights System: Elements for a methodology to think beyond compliance, 2022, p. 5-7

[247] Portales, C., & Rodríguez-Pinzón, D, 2017, p. 289

[248] OAS, "Working Group to Address the Regional Crisis of Venezuelan Migrants and Refugees of the General Secretariat of the OAS", Retrieved from: https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-047/18

[249] Report of the General Secretariat of the OAS and the panel of independent international experts on the possible commission of crimes against humanity in Venezuela, Office of the Secretary General, 29 May 2018 (second edition March 2021)

[250] http://www.oas.org/en/about/speech_secretary_general.asp?sCodigo=18-0088

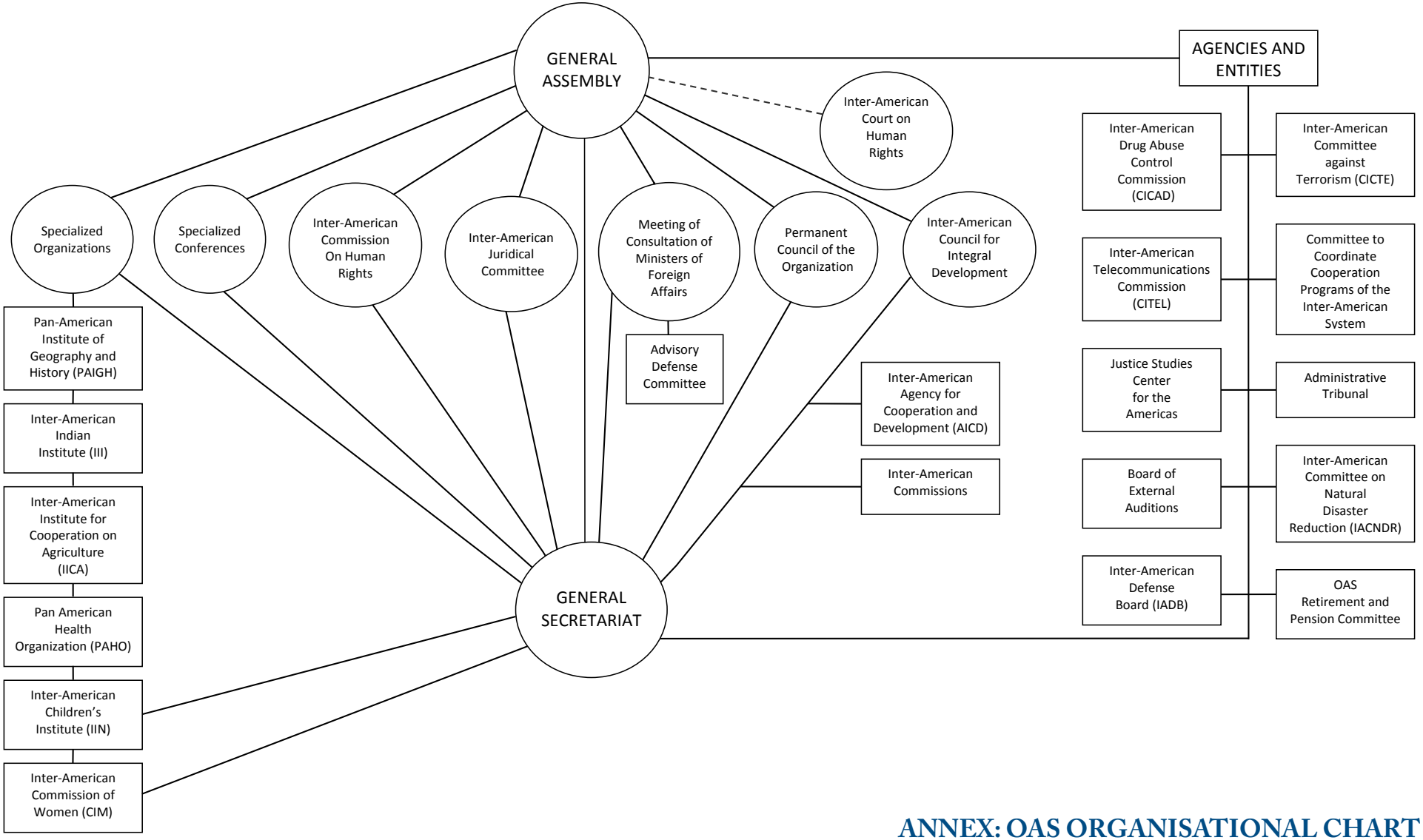
[251] https://foreignpolicy.com/2016/06/17/venezuela-maduro-almagro-oas-chavez/

[252] Supporting peace in the Americas: Lessons from the Organization of American States, International IDEA, January 2016

[253] The Role of the Inter-American Court of Human Rights in Monitoring Compliance with Judgements, Journal of Human Rights Practice, 12, 2020, p. 182

[254] Portales, C., & Rodríguez-Pinzón, D, 2017, p. 289

[255] Supporting peace in the Americas: Lessons from the Organization of American States, International IDEA, January 2016



ANNEX: OAS ORGANISATIONAL CHART