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REPUBBLICA ITALIANA



REPORT ON CITIZEN SECURITY AND HUMAN RIGHTS

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GLOSSARY

OAS: Organization of American States

IACHR: Inter-American Commission on Human Rights (or “the Commission”)

I/A Court H.R.: Inter-American Court of Human Rights (or “the Court”)

American Declaration: American Declaration of the Rights and Duties of Man

American Convention: American Convention on Human Rights (or “the Convention”)

Convention of Belém do Pará: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

Universal Declaration: Universal Declaration of Human Rights

EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights has addressed the issue of citizen security and its relationship to human rights through the study of petitions, cases and precautionary measures, in reports on the situation of human rights in the member states of the Organization of American States (OAS), in thematic reports and at hearings held during its sessions. Based on the information received, the Commission decided to prepare a thematic report on citizen security and human rights in order to analyze the issue and make recommendations to the member states of the OAS on how to improve the institutions, laws, policies, programs and practices on prevention and control of crime and violence.

2. Citizen security is one of the dimensions of human security and therefore of human development and is linked to the interrelated presence of multiple actors, conditions and factors. Among these factors are: the history and structure of the State and society; the policies and programs of the governments; the relevance of economic, social and cultural rights; and the international and regional level. Citizen security is undermined whenever States fail to protect their population from crime and social violence, signaling a breakdown in the relationship between those governing and the governed.

3. The countries of the region have some of the highest rates of crime and violence in the world and their young population has been the most affected, both as victims and as perpetrators. For the first time in decades the population of Latin America lists crime as a major concern, even greater than unemployment. The judicial branch, public prosecutor's offices, the police and the prison system have failed to develop the capability to respond effectively through lawful measures to prevent and suppress crime and violence.

4. The IACHR indicates in its report that citizen security must be regarded as a public policy, understood as the guidelines or courses of action established by the authorities to achieve an objective and that serve to create or transform the conditions in which individuals or groups in society carry out their activities. A public policy cannot be fully understood without establishing a nexus to human rights. The purpose of public policy is to ensure that these rights are respected in law and in practice, and in the conduct of state institutions and agents. It should also involve a comprehensive approach to the causes of crime and violence.

5. A human rights perspective enables the issues of crime and violence, and their impact in citizen security, to be tackled through the strengthening of democratic participation and the implementation of policies focused on the protection of the individual instead of those focused on the security of the State or of any particular political system. While the international legal order of human rights does not expressly define the right to be safe from crime or interpersonal or social violence, whose prevention and control are the object of citizen security policies, States are bound by a normative core demanding the protection of rights particularly vulnerable to criminal or violent acts: the right to life; the right to physical integrity; the right to personal liberty; the right to due process and the right to peaceful use of property and possessions. The States' obligations in the area of citizen security also involve the right to a fair trial and the right to judicial protection; the right to privacy and the right to have one's honor respected and dignity recognized; the right to freedom of expression; the right to freedom of assembly and association; and the right to participate in public affairs. In broad terms it may also include measures to guarantee other human rights, such as the right to education, the right to health, the right to social security and the right to work, among others.

6. The report identifies the international human rights standards that are relevant to citizen security, based on the provisions of international human rights law, particularly those embodied in the instruments governing the Inter-American system. The report elaborates upon the

interpretation of the States' negative and positive obligations with respect to the human rights associated with the security of all persons under their jurisdiction. Particular emphasis is placed on the rights that crime victims have vis-à-vis violent acts committed by state and non-state actors. It includes an analysis of prevention programs, as well as lawful methods of deterrence and suppression that competent public institutions should employ; and the design, implementation and evaluation of the policies on citizen security in the region, informed by the international principles of human rights, especially the principles of participation, accountability and nondiscrimination.

7. The positive obligations undertaken by member states demand public policies on citizen security contemplating as a priority an efficient institutional structure that guarantees the public the exercise of human rights related to the prevention and control of violence and crime. The Commission is thus troubled by the difficulties that the region has had in the past in creating a set of institutions to enable the State to function properly in this area. These difficulties are particularly evident in the following areas: (1) the treatment of victims of violence and crime; (2) the privatization of security services; (3) the governability of citizen security; (4) the professionalization and modernization of the police forces; and (5) the intervention of the armed forces in tasks related to citizen security.

8. In its report the IACHR issues a number of recommendations calling for the member states to comply with their international obligations to protect and ensure the human rights at stake in citizen security by designing and implementing comprehensive public policies involving simultaneous performance of specific measures and strategic plans at the operational, normative, and preventive levels. The IACHR recommends generating the necessary institutional capacity within the public sector to carry out the measures included in the plans and programs associated with public policy on citizen security, while making available adequate human, technical, and economic resources. These policies must ensure democratic governance of citizen security; they should be sustainable based upon political and social consensus; and they should be permanently subject to evaluation and accountability through internal and external control mechanisms, fostering transparency in the exercise of public office, and implementing measures to deal with impunity and corruption.

9. The IACHR also recommends that member states ensure the special standards of protection for those persons or groups that are particularly vulnerable to violence and crime, such as children and adolescents, women, the indigenous population, Afro-descendants, migrants and their families, notwithstanding the obligations that the member states have undertaken to protect and ensure the human rights at stake in the policy on citizen security to all persons subject to their jurisdiction.

10. Finally the IACHR makes a number of specific recommendations for the adoption of administrative, legislative or other measures in order that the State institutions respond adequately to the victims of crime and violence and that they implement measures for the prevention, deterrence and legitimate suppression of violent and criminal conduct within the framework of respect for and guarantee of the human rights related to citizen security.

REPORT ON CITIZEN SECURITY AND HUMAN RIGHTS

I. INTRODUCTION

A. Background

1. As the specialized organ of the Organization of American States charged with overseeing the observance of human rights in the Hemisphere, the Inter-American Commission on Human Rights has addressed problems of citizen security and its relationship to human rights. It has done so through the study of petitions, cases and precautionary measures, thematic reports, country reports issued on the basis of *in loco* visits made to various countries of the region and at hearings held during its sessions. Given its mission of promoting and protecting human rights, the Commission has a particular interest in the policies that the member states put into practice to comply with their international obligations with respect to the current threats that violence and crime pose in the complex world that is the Americas today. That scenario is one that has been building steadily for the last twenty-five years.

2. The Commission has called attention to the effects of violence and crime upon governability in the countries of the Hemisphere and it has indicated that citizen security requires a civil police to protect citizens, the strengthening of the administration of justice, the elimination of corruption or impunity, and a prison system aimed at the genuine rehabilitation and social reintegration of prisoners.¹ Thus, in their domestic laws and procedures every State, without exception, must operate on the premise that the instruments that comprise the universal and regional systems of human rights “enable them to enforce measures to deal with the threats to citizen security (...) within a framework of the rule of law. Such measures must be put in place in such a way as to guarantee full respect for the basic, inalienable rights recognized under international law.”²

3. On October 14, 2005, the Commission convened a special hearing on citizen security and human rights in the Americas. There, a group of civil society organizations presented a concept paper and also examined the possibility of the Commission’s preparing a thematic report on citizen security and human rights.³ In the paper they presented, the civil society organizations indicated:

As nongovernmental organizations active in the area of citizen security from the standpoint of human rights and democracy, we understand that this problem cannot be tackled by focusing solely on the limits to State power. Were that the case, we would run the risk of perpetuating the mistaken belief that human rights are an obstacle to promoting effective policies on security; in other words, we

¹ Introduction of the IACHR’s Annual Report for 1999 at the General Assembly in Windsor, Canada, June 6, 2000.

² Press Release 20/02, May 1, 2002 on the Introduction of the IACHR’s Annual Report for 2001.

³ The group of nongovernmental organizations included: Centro de Estudios Legales y Sociales - CELS (Argentina); Conectas Direitos Humanos/Sur Rede Universitária de Direitos Humanos (Brazil); Núcleo de Estudos Da Violência Da Univerisdade de São Pablo - NEV-USP (Brazil); Instituto Sou DA Paz (Brazil); Viva Río (Brazil); Centro de Estudios de Seguridad Ciudadana – CESC- (Chile); Fundación de Estudios para la Aplicación del Derecho –FESPAD- (El Salvador); Instituto para la Seguridad y la Democracia – INSYDE- (Mexico); Centro de Derechos Humanos Pró-Juárez - Centro Prodh (Mexico); Instituto de Defensa Legal - IDL (Peru); Open Society Institute (United States); and Washington Office on Latin America – WOLA (United States).

would be playing into the false dichotomy that juxtaposes human rights against security. The Organization of American States and the Inter-American Commission in particular, can be a major agent in a regional strategy to respond to this problem, by systematically adding citizen security to their agenda. By examining the problem of citizen security and human rights as issues that affect democratic government, the Commission could help build up and consolidate democratic institutions as the effective means of protecting human rights.⁴

4. In this context and in furtherance of its established functions within the Inter-American system, the Commission decided to prepare and publish a thematic report that would address the issue of citizen security in the Hemisphere, while making recommendations to the member states to help them improve their institutions, laws, policies, programs and practices on crime and violence prevention and control. It was determined that the report should identify the international standards on human rights and their relationship to citizen security, using as a basis the provisions of international human rights law, particularly the instruments within the Inter-American system.

5. The Commission also announced the objectives and methodology that would be used to prepare the study:

there is a pressing need for States to reflect on this matter and to adopt effective measures and public policies to guarantee the safety of the population and respect for human rights. To that end, the IACHR has embarked on a regional study that will provide guidelines to OAS member states on how to meet their obligation to protect the inhabitants of the Hemisphere, especially the victims of crimes and human rights violations. The research for that study will be preceded by ample debate and consultation, coordinated with the General Secretariat and civil society organizations specializing in citizen security and human rights. The relation between citizen security and human rights has been and continues to be a priority issue for the IACHR, which it addresses through the cases it processes, precautionary measures, and working visits to, and investigations in, the member states. Its annual report, adopted at its 127th period of session, again registered in 2006 an increase in the number of actions threatening citizen security.⁵

B. Objectives of the report

6. The purpose of this report is to identify human rights norms and principles that have a bearing on citizen security, so as to help build up and strengthen the member states' capacity to prevent and respond to crime and violence. The report enhances the interpretation of the States' obligations both positive and negative with regard to those human rights that are related to the citizen security of all persons under their jurisdiction. Particular attention is devoted to the victim's rights *vis-à-vis* the State and the violence committed by State and non-state actors (whether organized or not). It also includes an analysis of prevention programs and legitimate deterrence and measures of suppression under the jurisdiction of public institutions.

⁴ Report of the coalition of nongovernmental organizations "The Inter-American System for the Protection of Citizen Security and the Challenges of Human Rights in the Americas", presented to the IACHR on October 14, 2005, Washington, DC.

⁵ IACHR, Press Release No. 16/07, March 15, 2007.

7. In its report, the Commission also makes recommendations to the member states and to civil society organizations on how best to effectively apply the international human rights norms and principles so as to improve citizen security and democracy in the Americas. Specifically, the report's objective is to recommend strategies and measures to prevent and mitigate the impact of crime and violence at the individual and community levels. These strategies and measures will involve mobilization of the political, economic, scientific and technological sectors and professional resources and are also intended to strengthen the institutional alignments that will provide proper incentives to tackle the problems of citizen security. These were the objectives set by the member states at the recent First Meeting of Ministers Responsible for Public Security in the Americas, which issued a declaration to the effect that they recognize the need for additional efforts to

(...) 1) Foster and strengthen comprehensive long-term government security policies, with full respect for human rights; 2) Strengthen, within the context of those policies, the capacity of our states to promote citizen security and to respond effectively to insecurity, crime, and violence, by adapting their legal framework, structures, operational procedures, and management mechanisms, as necessary; 3) Analyze citizen security problems from a comprehensive point of view, taking into account emerging threats, and to promote management instruments that enable the national authorities to evaluate, and, where necessary, improve the effectiveness of citizen security policies (...).⁶

8. The Commission also hopes that this report will illustrate just how immediate is the need to support the processes underway to effect change in the policies on citizen security by promoting activities and forming and expanding networks and partnerships at the domestic and international levels. It is the Commission's hope that this report will promote in-depth interdisciplinary cooperation and comparative research on citizen security, human rights and democracy in the Americas, thereby not only expanding the pool of available knowledge but also the ability of experts, government officials, police and professionals in the justice system, human rights groups and society as a whole to make good use of the information and know-how available.

9. The report is also intended to highlight the need to devise indicators that can measure and evaluate the impact that the institutional mechanisms, laws and policies are having on citizen security, especially the impact of the reforms and innovations introduced during and after a transition to democratic government.⁷ In this sense, it is highlighted that the successful experiences the region has had in preventing and controlling violence and crime have been based on strategic plans designed by using reliable indicators. These not only enable a proper diagnosis of the problems to be tackled, but also constant circulation of information, which in turn makes possible society's involvement and democratic oversight.

⁶ "Commitment to Public Security in the Americas" approved at the First Meeting of Ministers Responsible for Public Security in the Americas," Mexico, October 7 and 8, 2008, OEA/Ser.K/XLIX.1 MISPA/doc.7/08 rev. 3, October 8, 2008, paragraphs 1, 2 and 3. Member States have also acknowledged that "the conditions for public security improve through the full respect of human rights and fundamental freedoms as well as the promotion of education, culture, health, economic and social development." Document of the Second Meeting of Ministers in the Area of Public Security in the Americas, adopted on November 5, 2009 during the seventh plenary session, OEA/Ser.K/XLIX.1 MISPA II/doc. 8/09 rev. 2.

⁷ The United Nations are currently testing a pilot scheme that may serve as a guide: UN ROLIP (United Nations Rule of Law Indicator Project), which aims at obtaining empirical and objective information about the application of the law, the judiciary and the prison services in a country and its evolution over time.

C. Methodology

10. The Commission convened the first meeting of regional and international experts, held on May 30, 2007, in Washington D.C.,⁸ as an initial activity in the preparation of this report on citizen security. The meeting discussed the technical aspects of the report and worked on a proposed methodology for its preparation. It was established that consultations would be held with countries of various areas of the region, for the purpose of sharing experiences and defining basic concepts. The participants would be government officials, experts, academics and representatives of local and international nongovernmental organizations active in the area of citizen security.

11. In December 2007, a questionnaire was sent to the member states and to a number of civil society organizations, asking for information on issues related to human rights and citizen security. Specifically, the questionnaire was aimed at identifying the member states' principal achievements and the challenges they face in endeavoring to ensure the citizen security of persons within their jurisdiction, and the policies and measures being implemented to respond to these demands. The answers to the questionnaire provided a wealth of input for preparation of this report.⁹

12. During 2008, steps were taken with a view to concluding a cooperation agreement between the IACHR and the Americas and Caribbean Regional Office of the United Nations Children's Fund (UNICEF-TACRO) to establish a framework of cooperation for preparation of this study. The Office for Latin America and the Caribbean of the United Nations High Commissioner for Human Rights (OHCHR) has also become party to this cooperation agreement. This cooperative arrangement made it possible to conduct the various activities introduced into the plan for securing the information needed to produce the report, and then to write and edit it.

13. A second meeting of experts was held in Bogotá, Colombia, on September 18, 2008, during the seminar on "City, Conflict and the Public Sphere: the Latin American view," organized by the *Instituto de Estudios Políticos y Relaciones internacionales* (IEPRI) of the *Universidad Nacional de Colombia*, UNICEF, the IACHR, and the United Nations' OHCHR.¹⁰ At this second meeting

⁸ The regional and international experts participating in this meeting were: Ariel Dulitzky (IACHR); Carlos Basombrio (Instituto de Defensa Legal -IDL, Instituto Prensa y Sociedad, Peru); Daniela Salazar (IACHR); Elizabeth Abi-Mershed (IACHR); Ernesto López Portillo Vargas (Instituto para la Seguridad y la Democracia – INSYDE, Mexico); Gastón Chillier (Centro de Estudios Legales e Sociales – CELS, Argentina) Gustavo Gorriti Elenbongen (Instituto de Defensa Legal -IDL, and Instituto Prensa y Sociedad –IPYS, Peru); Gustavo Palmieri (Centro de Estudios Legales e Sociales – CELS, Argentina); Hernán Charosky (Centro de Estudios Legales e Sociales – CELS, Argentina); Joy Olson (Washington Office on Latin America -WOLA, United States); Leandro Piquet Carneiro (Universidade de São Paulo – NEV/USP, Brazil); Paul Chevigny (New York University, United States); Paulo de Mesquita Neto (Núcleo de Estudos da Violência, Universidade de São Paulo – NEV/USP, Brazil); Paulo Sérgio Pinheiro (IACHR); Santiago Canton (IACHR); Victor Abramovich (IACHR); Victoria Wigodsky (Open Society Institute – OSI, United States).

⁹ The following States and institutions answered the questionnaire: Argentina (March 26, 2008); Bolivia (April 14, 2008); Chile (February 27, 2008); Colombia (March 7, 2008); Costa Rica (February 1; February 27 and April 30, 2008); El Salvador (April 10, 2008); Honduras (February 19, 2008); Panama (March 4, 2008); Peru (February 15, 2008); Uruguay (March 3, 2008); Venezuela (February 1, 2008); Brazil (May 27, 2008); Mexico (June 2, 2008) and Jamaica (June 11, 2008). The following civil society organizations also answered the questionnaire: COFAVIC, Venezuela (March 7, 2008); Justiça Global, Brazil (March 5, 2008); Comissão Teotônio Vilela, Brazil (March 5, 2008), and Mexico's Centro PRODH (March 5, 2008).

¹⁰ The following regional and international experts attended this second meeting: Fernando Carrión (Facultad Latinoamericana de Ciencias Sociales –FLACSO- Ecuador); Francisca Márquez (Escuela de Antropología, Universidad Academia Humanismo Cristiano, Chile); Lucía Álvarez (Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades. Universidad Autónoma de México - UNAM); Luis Fuentes (Instituto de Estudios Urbanos

there was further discussion about the concepts that would serve as the basis of the report, and adjustments were made to the topics that would be added in the next phase, which was implementation of sub-regional consultation meetings.

14. The sub-regional consultations were conducted in the form of two-day workshops and included the following working meetings with representatives of government, civil society and experts: (a) Asunción, Paraguay, November 20 and 21, 2008, for the countries in the Southern Cone. Representatives of Argentina, Brazil, Chile, Paraguay and Uruguay were invited to this event;¹¹ (b) San José, Costa Rica, on March 2 and 3, 2000, attended by representatives of Costa Rica, the Dominican Republic, Honduras, Nicaragua, Guatemala, El Salvador, Panama and Mexico, and (c) Bogotá, Colombia, on March 5 and 6, 2009, to which representatives of Colombia, Venezuela, Ecuador, Peru and Bolivia were invited, joined by a delegation from Brazil. During May of 2009, representatives of the IACHR and UNICEF undertook a working visit to Haiti, in order to gather information for the preparation of the report. At each of these consultation meetings, statistics and information were compiled and participants shared ideas and experiences.

15. The existing pool of knowledge and information –in the form of research, studies and other academic projects in the region- was also used to prepare this report. Here the Commission would like to expressly acknowledge the contribution that experts and academic institutions have made in recent years to the conceptualization of theoretical constructs and to defining the subject matter of this report. Another source drawn upon to prepare this report was the international juridical framework, general principles, jurisprudence and various pronouncements of specialized organizations –with emphasis on the Inter-American system— on the subject of citizen security and human rights. The idea was to identify the norms and standards that apply to this specific issue in the region. Using this input, observations and recommendations were included in the report to enable the member states to continue their efforts to improve citizen security through public policies that focus on protecting and guaranteeing human rights and that prove to be effective and efficient means of preventing and controlling crime and violence. Finally, this report also includes the information and figures supplied by the representatives of the member states, civil society organizations, and the experts brought together for each of the consultation meetings held as this report was being prepared.

D. Structure of the report

16. The report introduces a definition of the concept of citizen security in order to identify precisely the subject matter. Once the conceptual framework has been presented, the report describes violence and crime in the Americas today, using the statistical data available. It then examines the policies, laws and institutional practices in the Hemisphere with regard to citizen security, as a function of the obligations arising out of international human rights law, especially the

...continuation

and professor at the Instituto de Geografía of the Pontificia Universidad Católica de Chile); Pablo Montiel (Under Secretary for Cultural Industries of the Republic of Argentina and a professor at FLACSO-Argentina); Liliana López Borbón (Fábrica de Artes y Oficios –FARO-, Mexico); Iván Gomez César (Universidad Autónoma de la Ciudad de México); Antonio Rodríguez López-Tercero (Centro de Formación y Orientación Rafael Palacios. Asociación Corporación de La Pasión, El Salvador); Helena Azaola (Centro de Investigación y Educación en Antropología Social –CIESAS- México); Gino Costa (Organization “Ciudad Nuestra” and Former Minister of the Interior of Peru); Carlos Mario Perea (Instituto de Estudios Políticos y Relaciones Internacionales of the Universidad Nacional de Colombia); Paulo Sérgio Pinheiro (IACHR); Sonia Eljach (UNICEF); Teresa Albergo (United Nations OHCHR) and Juan Faroppa Fontana (consultant for the preparation of this study).

¹¹ In the case of Brazil, due to scheduling problems only nongovernmental organizations participated. State representatives joined the Third Consultation, conducted in Bogotá.

obligations under the Inter-American System. The report makes reference to the following regional instruments: the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women. Similarly, the report draws on the principles of the principal instruments within the universal system, such as the Universal Declaration of the Rights and Duties of Man; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of the Child, among other instruments of equal rank.

17. The report also examines the member states' positive and negative obligations *vis-à-vis* their policies on citizen security. It also looks at how the principles of human rights are put into practice in the measures the member states take to deal with the problem of violence and crime in the region. In this context the Commission presents the main elements that, in its view, characterize public policy on citizen security in light of international standards on human rights. Afterwards, an examination is made regarding each individual human right directly at stake in policies on citizen security. Finally, it concludes with a series of specific recommendations aimed at working with the member states for the proper fulfillment of their obligations *vis-à-vis* citizen security.

II. CONCEPTUAL FRAMEWORK: CITIZEN SECURITY

18. For the purpose of this report, it is pertinent to define the specific concept of citizen security, as the definition is an essential prerequisite for determining the scope of the obligations incumbent upon the members States under the relevant instruments of international human rights law. The right to security from crime or interpersonal or social violence is not expressly protected under the international system of human rights law.¹² However, the right to such protection can be inferred from the obligation of the State to guarantee the security of the individual, as set forth in Article 3 of the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and security of person"; Article 1 of the American Declaration of the Rights and Duties of Man: "Every human being has the right to life, liberty and the security of his person"; Article 7 of the American Convention on Human Rights: "Every person has the right to personal liberty and security"; and Article 9 of the International Covenant on Civil and Political Rights: "Everyone has the right to liberty and security of person". Nevertheless, the Commission considers that the current basis of the obligations incumbent upon States is a normative core demanding the protection of rights particularly vulnerable to criminal or violent acts that citizen security policies are intended to prevent and control. This group of rights includes the right to life, the right to physical integrity, the right to freedom, the right to due process and the right to the use and enjoyment of one's property, without prejudice to other rights that will be specifically examined in the body of this report.

19. At the meetings of experts and working meetings held during the sub-regional consultations in the preparation of this report, one point that came up repeatedly was the fact that in both political and academic circles in the Americas different concepts are used when discussing the same topic –protecting and ensuring human rights against crime and violence.¹³ In some cases the

¹² This generalization notwithstanding, in the specific case of the regional provisions that comprise the framework for protecting and guaranteeing women's human rights, the right to live free from violence is expressly recognized in Article 3 of the Convention of Belém do Pará, which provides the following: "Every woman has the right to be free from violence in both the public and private spheres. "

¹³ At the second meeting of experts, held in Bogota, Colombia on September 18, 2008, reference was made " (...) to the need to determine whether there is a specific human right to security from violence and crime or whether, when attributing source, one should look to a combination of rights that can be violated in situations of citizen insecurity. "

definition used is very expansive and includes measures to ensure other human rights (such as the right to education, the right to health, the right to social security, the right to work, and others), whereas in other cases a narrower definition is used that refers only to interventions by the police forces and, perhaps, the judicial system. At times different concepts are used interchangeably, such as “citizen security,” “human security” or “democratic security.” Technically speaking, this creates an imprecise conceptual framework for defining the human rights standards at issue.

20. When considering the premises of this conceptual definition, the Commission has indicated:

Security has always been one of the States’ main functions. Undoubtedly, as authoritarian States transitioned into democratic States, the concept of security evolved. In the past, the concept of security meant maintaining order, as an expression of the power and supremacy of the State. Today, democratic States are espousing law enforcement models that encourage citizen participation and that are premised on the principle that the protection of citizens by law enforcement must be respectful of the institution, the laws and basic rights. Thus, from the standpoint of human rights, when we speak of security today, we are not just talking about fighting crime; instead we are talking about how to create an environment conducive to peaceful coexistence. And so, the concept of security must place greater emphasis on activities to prevent and control the factors that generate violence and insecurity, rather than purely repressive or reactive behaviors to consummated acts.¹⁴

This ever-present connection between the security of persons and democratic coexistence is a theme that runs throughout this report. Crime is only one of the many forms of violence that people living in the region experience today (more specifically, crime refers only to the types of violence described in the criminal law systems). This necessitates a comprehensive approach to the problem under study. That comprehensive approach will produce prevention and control activities of a different kind, whose execution will involve different actors, from both the public sector and civil society.

21. In this sense, and for the purpose of this report, the concept of citizen security is the one that best lends itself to addressing the problems of crime and violence from a human rights perspective. In lieu of concepts such as “public security”, “internal security” or “public order,” it represents an uncontroversial move towards an approach that focuses on building a stronger democratic citizenry, while making clear that the central objective of the policies established is the human person, and not the security of the State or a given political system. The expression *citizen security* emerged, for the most part, as a concept in Latin America, as governments made the transition to democracy, as a way to distinguish the concept of security under a democracy from the notion of security under the earlier authoritarian regimes. In the latter case, the concept of security was associated with concepts like “national security”, “internal security” or “public security”, all of which refer specifically to the security of the State. Under democratic regimes, the concept of security against the threat of crime or violence is associated with “citizen security” and is used to refer to the paramount security of individuals and social groups. By contrast to other concepts used in the region, namely “urban security” or “safe city”, citizen security refers to the security of all persons and groups, both urban and rural. Nevertheless, it is worth highlighting that the concept of “public security” is still widely used in the United States and Canada to also refer to the security of

¹⁴ Presentation of the Executive Secretary of the IACHR before the Special Working Group for the Preparation of the First Meeting of Ministers in the Area of Public Security in the Americas, Washington, DC, June 20, 2008.

the individuals and groups who make up society. By contrast, as noted above, in Latin America the very same expression, “public security”, refers to a different concept altogether, alluding to the security built by the State or, on occasion, the security of the State.

22. In recent years, the input of the academia and specialized international organizations has allowed a more precise approach to the concept of citizen security, distinguishing it from the concept of “*human security*” that evolved over the last fifteen years, basically as a result of the work done under the United Nations Development Program.¹⁵ Human security refers to “one of the means or conditions for human development, which in turn is defined as the process that opens up an individual’s options... [which] range from enjoying a long and healthy life, access to the knowledge and resources needed to achieve a decent standard of living, to enjoyment of political, economic and social freedoms.”¹⁶ In this construct, citizen security is strictly a dimension of human security, because it is conceived as being

the social situation in which all persons are free to enjoy their fundamental rights and public institutions have sufficient capacity, against a backdrop of the rule of law, to guarantee the exercise of those rights and respond efficiently when they are violated (...) Thus, the citizenry is the principal focus of the State’s protection. Summing up, citizen security becomes a necessary –albeit not sufficient– condition of human security that in the end is the ultimate guarantee of *human* development. Therefore, institutional interventions to prevent and control violence and crime (citizen security policies) can be regarded as an indirect but nonetheless significant opportunity: first, to buttress sustainable economic development; second, to strengthen democratic governance and the observance of human rights.¹⁷

23. In recent years conceptual developments bring us closer to a concept of citizen security from the perspective of human rights. The concept of citizen security involves those rights to which all members of a society are entitled, so that they are able to live their daily lives with as little threat as possible to their personal security, their civic rights and their right to the use and enjoyment of their property; on the other hand, citizen security problems occur when a State’s failure to discharge, either in whole or in part, its function of providing protection against crime and social

¹⁵ In its 1994 Human Development Report, the UNDP defines the two main components of human security: “freedom from fear and freedom from want.” Human security, then, is “safety from chronic threats such as hunger, disease and repression,” and “protection from sudden and hurtful disruptions in the patterns of daily life –whether in homes, in jobs or in communities.” The 1994 World Development Report defines the four elements of human security as: (1) universal; (2) interdependent; (3) people-centered and (4) easier to ensure through early prevention than later intervention. Available at http://hdr.undp.org/en/media/hdr_1994_en_chap2.pdf.

¹⁶ See UNDP, *Guía de Evaluación de la Seguridad Ciudadana en América Latina y El Caribe*, Regional Services Centre for Latin America and the Caribbean, 2006.

¹⁷ UNDP, Human Development Report 1994, available at <http://hdr.undp.org/en/reports/global/hdr1994>. The Report on Human Development for Central America 2009-2010 establishes that “without ignoring the importance of other dimensions of human security, five features give citizen security special relevance, urgency and importance. In the first place, it can be said that citizen security is based on human security (...). In the second place, citizen security is the main form of human security (...). Consequently, and in the third place, citizen security guarantees fundamental human rights. In the fourth place (...) safety from crime is an essential component of citizenship (...). Lastly, and singularly important, citizen security directly involves freedom: the essence of human development (...).” See <http://hdr.undp.org/en/reports/regionalreports/americalatinacaribe/name.19660.en.html>.

violence becomes a generalized situation, which means that the basic relationship between those governing and the governed has broken down.¹⁸

24. On the other hand, the activity of the security forces lawfully directed toward the protection of the population is fundamental in achieving the common good in a democratic society. At the same time the abuse of police authority in the urban setting constitutes a high risk factor for the enforcement of individual liberty and security. Human rights as limits on the arbitrary exercise of authority constitute an essential safeguard for the security of the public in preventing the State's lawful measures, enacted in order to protect general security, from being used to suppress rights. Therefore, the respect for, and the correct interpretation and application of, the guarantees established in the American Convention must serve as a guide to the member states in order to steer the activities of the security forces towards a respect for human rights.¹⁹ In the light of these elements, this report identifies the obligations undertaken by member states with respect to human rights and their connection with the implementation of measures required to prevent conduct that affects citizen security.

III. CITIZEN SECURITY IN THE AMERICAS

25. The authoritarian governments and military dictatorships that acted in the Hemisphere during the last decades in defiance of international obligations to respect human rights, left as a legacy a permanent cycle of violence. It has also been argued that the so-called structural adjustment policies exacted a heavy toll on the role of the State as guarantor of the social covenant of coexistence prompting profound cultural changes and weakening the influence of traditional institutions of socialization (the family, the school, the workplace or community organizations) in shaping the individual's habits and behavior. The increase in poverty and indigence raised levels of inequality and social exclusion and favored violence and crime.

26. The Americas have some of the highest rates of crime and violence in the world. The rate of homicides per 100,000, which is the universally accepted ratio of measuring violence in a society, reached 25.6/100,000 in Latin America, although the figure changes constantly.²⁰ By comparison, the rate in Europe reached 8.9/100,000, whereas in the Western Pacific it was 3.4/100,000 and in Southeast Asia 5.8/100,000. However, if the focus is narrowed to just the middle and low-income sectors of the population, the average homicide rate in the Americas climbs to 27.5/100,000.²¹

27. The Commission is particularly troubled by the fact that prominent among the victims and perpetrators of violence and crime are children and young people in the age group ranging from 15 to 29, with a homicide rate of 68.9/100,000. Breaking down this figure, one finds that the rate among young people in the high-income group is 21.4/100,000, whereas the rate among

¹⁸ Aguilera, Javier "Sobre seguridad ciudadana y democracia" in *Buscando la seguridad. Seguridad ciudadana y democracia en Guatemala*, FLACSO, Guatemala Program, 1996.

¹⁹ IACHR Application before the Inter/American Court of Human Rights in the case of Walter Bulacio, 24 January 2001, paragraphs 61 and 62. Available (in Spanish only) at http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=77.

²⁰ Based on data and forecasts on mortality and population for the years 2005, 2015 and 2030 from the World Health Organization in Dammert, Lucía; Alda, Eric; and Ruz, Felipe, *Desafíos de la seguridad ciudadana en Iberoamérica*, FLACSO, Chile, 2008, pp. 22 to 25, available at <http://www.who.int>.

²¹ Pan American Health Organization (PAHO)/World Health Organization (WHO), *Health in the Americas*, 2002.

young people in the middle and low-income sectors surges to 89.7/100,000. Here again, the region accounts for the highest rate of violence in the world.²² Although it is alarmingly high in the region, violence among adolescents and young adults is part of a disturbing pattern worldwide. The United Nations has reported that

A sudden, steep increase is noticeable in the rates of violence (both victimization and perpetration), particularly among boys at around age 15, indicating that a number of factors come together during adolescence to make peer violence more common. The available data indicate that in most parts of the world, homicide rates among boys aged 15 to 17 are at least three times greater than among boys aged 10 to 14. This sudden increase in violence among children older than 15 years occurs even in regions with low overall homicide rates and implies that measures to curtail violent behavior are critical before, and in, the early to mid-teens.²³

28. Taking the Americas a whole, the highest levels of violence are in the countries of Latin America and the Caribbean, although the situation may be different if sub-regions are considered. The average homicide rate for the Caribbean countries is 30/100,000; for South America it is 26/100,000; and for Central America, it is 22/100,000.²⁴ Apart from the toll in human lives, violence has a significant impact on the economy: the estimate is that the cost of violence ranges from 2% to 15% of these countries' gross domestic product.²⁵

29. Apart from the impact of crime and violence on the right to life and the right to physical integrity, in most countries of the Hemisphere property-related crimes like robbery and theft have been steadily increasing. It is difficult to pin down the average rates for the region as a whole, because there are no objective indicators to measure crimes of this type. However, the increase is obvious in the country-by-country statistics produced by official agencies and nongovernmental organizations. In general, the main victims of this type of common crime are within the middle and low-income sectors of the population. Children and teens are particularly affected, and significant physical violence is often involved. The United Nations describes the situation as follows:

Physical violence between peers tends to be more common in urban areas characterized by lack of employment, education and social amenities and low standards of housing, where youthful and rapidly growing populations express frustration, anger and pent-up tension in fights and anti-social behavior. Much of

²² Dammert, Lucía; Alda, Eric; and Ruz, Felipe, *Desafíos de la seguridad ciudadana en Iberoamérica*, FLACSO, Chile, 2008, pp. 22 to 25.

²³ United Nations, General Assembly, "Report of the Independent Expert for the United Nations Study on Violence against Children", Paulo Sérgio Pinheiro, A/61/299, 61st Period of Sessions, item 62(a) on the provisional agenda, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 71.

²⁴ United Nations/World Bank, *Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean*, cited by Rojas Alavena, Francisco in "Violencia en América Latina. Debilidad estatal, inequidad y crimen organizado inhiben el desarrollo humano" in *Revista Pensamiento Iberoamericano* No. 2, AECID-Fundación Carolina Editors, Madrid, 2008.

²⁵ Carrillo-Flores, Fernando, "Seguridad ciudadana en América Latina: un bien público cada vez más escaso" in *Pensamiento Iberoamericano*, Nueva Época No. 0, Fundación Carolina, Madrid, 2007, citing data from the Inter-American Development Bank.

the violence involves personal disputes between friends and acquaintances; there is a very pronounced correlation with the use of drugs and alcohol.²⁶

30. With this overview, the Commission observes that member states are having serious difficulties finding effective solutions to these problems. For the first time in decades, crime is the public's number one concern in Latin American countries, even more than unemployment.²⁷ Security appears as an everyday demand within the political and popular debate.²⁸

31. In the Americas –and Latin America and the Caribbean in particular- the high rate of violent crime is alarming for democratic governance and the rule of law, as the public's confidence in government, the legislature, the police and the judicial system is on the decline. Although the level of confidence started to rise in 1996, in 2006 only 43% of the population had confidence in the government, 37% in the police, 36% in the judicial system, and 27% in the legislature. Of all the data analyzed thus far, the most alarming of all is that only 38% of the population has confidence in the democratic system of government.²⁹ The Commission has indicated that:

[i]n this context, the democratic system and the observance of the rule of law are crucial for effective protection of human rights. In accordance with international instruments on human rights, a state in which the rule of law prevails is one that functions soundly and that equitably and effectively fulfills its responsibilities in the areas of justice, security, education and health. In the final analysis, the rule of law entails full respect and effective exercise of the human, political, economic, social and cultural rights of the inhabitants of states, ensuring access to better and increased protection of the values of human dignity.³⁰

States must find solutions to the problems arising from violence within the framework of the tools provided for in the international human rights instruments and the enforcement of the rule of law as basic pillars for overcoming poverty and full respect for human rights and dignity.

32. The citizen security policies historically pursued in the Americas have, in general terms, diverged from international standards in the area of human rights and in many cases, the authorities have resorted to the illegal and arbitrary use of force in the name of crime prevention and control.

33. Despite the region's recent history of transitions from authoritarian to democratic systems of government, the majority of the institutions that are today part of the state apparatus of

²⁶ United Nations, "Report of the Independent Expert for the Study of Violence against Children", Paulo Sérgio Pinheiro, A/61/299, General Assembly, 61st Period of Sessions, Item 62 of the provisional program, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 72.

²⁷ Within the region, "concern over crime and violence is clearly on the rise, as the crime rate doubled between 2003 and 2007. In Europe, on the other hand, the rate of crime and violence has held steady, at around 24%." Perea Restrepo, Carlos Mario, *Con el diablo adentro: pandillas, tiempo paralelo y poder*, Siglo XI, Mexico, 2007, page 19 and following.

²⁸ See OAS, Permanent Council, Committee on Hemispheric Security, Working Group to Prepare the First Meeting of Ministers Responsible for Public Security in the Americas: "An Academic Diagnostic Assessment and Proposals regarding Security Issues in Latin America. Input for the First Meeting of Ministers of the Americas Responsible for Public Security in the Americas", OEA Ser.G/CSH/GT/MISPA 2-08, June 10, 2008, p. 2.

²⁹ Informe Latinobarómetro, Informes 2006-2008 available at <http://www.latinobarometro.org>.

³⁰ IACHR, *Annual Report 2006*, Chapter IV, paragraph 208.

judicial and police control have not undergone in-depth, effective reforms. Despite the political transitions and a generation of constitutional and legal reforms, the institutional apparatus of the security forces today retains vestiges of the old authoritarianism. The judicial mechanisms charged with the task of ensuring transparency and accountability remain weakened. All in all, the institutions associated with the judicial branch, the prosecutor's office, the police and the prison system have not developed the capacity to respond to crime and violence effectively through legitimate measures of prevention and enforcement. In certain cases the private sector, social organizations and other actors have tried to replace the State with precarious results.³¹ In some countries of the region, corruption and impunity have enabled criminal organizations to develop and establish parallel power structures.

34. The use of force beyond the boundaries established by law and by international standards, compounded by the inability of the institutions responsible for ensuring citizen security to develop effective measures to deal with crime and violence, only increases the public's insecurity. As will be explained later in this report, this is particularly evident in the generalized absence of efficient and effective citizen security policies aimed at confronting the violence committed against those groups that have traditionally experienced discrimination and marginalization, such as women, children and adolescents, Afro-descendants, indigenous populations, migrant workers and their families, among others.

IV. CITIZEN SECURITY AND HUMAN RIGHTS

35. As previously observed, the insecurity generated by crime and violence in the Americas is a very serious problem in which the observance and enjoyment of human rights are at stake. Citizen security policies must be evaluated from a perspective of respect and guarantee of human rights. On the one hand, negative obligations involving abstention and respect; on the other hand, positive obligations linked to the adoption of prevention measures. The effective enforcement of rights involves positive and negative obligations at four levels: the obligation to respect, the obligation to protect, the obligation to ensure and the obligation to promote the right in question. The obligation to respect is defined as the State's duty not to interfere with, hinder or bar access to, the enjoyment of the resources that are the object of the right. The obligation to protect is the duty to prevent third parties from interfering with, hindering or barring access to the resources that are the object of that right. The obligation to ensure means to guarantee that the *titulaire* of the right is able to gain access to the enjoyment of the right, when he or she is unable to do it for him or herself. The obligation to promote is the duty to create conditions so that the *titulaire* of a right can have access to the enjoyment of the right.³²

36. One of the main dimensions of state obligations is linked to the judicial clarification of criminal conduct with the view to eliminating impunity and preventing the recurrence of violence. Both the Inter-American Commission and Court have condemned the impunity of events violating fundamental rights. Impunity facilitates the continuing repetition of human rights violations and the total defenselessness of victims and their families. Undoubtedly the adequate and effective administration of justice on the part of the judicial branch and to an appropriate extent, of

³¹ OAS, Permanent Council, Committee on Hemispheric Security, Working Group to Prepare the First Meeting of Ministers Responsible for Public Security in the Americas "An Academic Diagnostic Assessment and Proposals regarding Security Issues in Latin America. Input for the First Meeting of Ministers of the Americas Responsible for Public Security in the Americas", OEA Ser.G/CSH/GT/MISPA 2-08, June 10, 2008, p. 2.

³² Abramovich, Víctor and Courtis, Christian. *Apuntes sobre la exigibilidad judicial de los derechos sociales, 2005*, available at <http://www.juragentium.unifi.it/es/surveys/latina/courtis.htm>.

disciplinary entities, has a fundamental role not only in terms of reparations but also in terms of the lessening of the risk and the scope of violence.

A. The States' obligations from the standpoint of citizen security

37. The American Convention protects the right to life (Article 4), physical integrity (Article 5), and liberty (Article 7) among others relating to citizen security, which will be analyzed in detail in forthcoming chapters of the present report. Article 1 of the American Convention provides that

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

The Commission and the Court have repeatedly examined the scope of this provision to determine what is meant by positive obligations in the realm of human rights. The Court, specifically, has established precedent to the effect that

[P]rotection of the law consists, fundamentally, of the remedies the law provides for the protection of the rights guaranteed by the Convention. The obligation to respect and guarantee such rights, which Article 1(1) imposes on the States Parties, implies, as the Court has already stated, the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.³³

The scope of the juridical concept of positive obligations within the Inter-American system is elaborated upon in Article 2 of the American Convention, which provides as follows:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

The Court has reiterated that

(...) the general duty under Article 2 of the American Convention implies the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees. Furthermore,

³³ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, paragraph 166; and *Godínez Cruz v. Honduras Case*. Judgment of January 20, 1989. Series C No. 5, paragraph 175.

adoption of these measures becomes necessary when there is evidence of practices that are violations of the American Convention in any way.³⁴

The international obligations undertaken by the member states, in accordance with the general principles on this subject, must be performed in good faith, in keeping with Articles 26, 27 and 31 of the Vienna Convention on the Law of Treaties.³⁵

38. Before dealing with the issues directly related to public policy on citizen security and in order to understand the possible scope of the international responsibility, it is necessary to review the criteria for attribution of state responsibility established in the American Convention, as well as its interpretation by the Commission and the Court in reports and judgments in relevant individual cases. Broadly speaking, persons under state jurisdiction may see their fundamental rights compromised either from the behavior of State agents or from conduct perpetrated by individuals which, if not clarified generates state responsibility for non-fulfillment of the obligation to provide judicial protection. In the case of persons in especially vulnerable situations, State responsibility also arises because of the lack of measures to prevent harm. The particular case of obligations reinforced under the Convention of Belém do Pará will also be addressed.

1. State responsibility for the acts of its agents and third parties

39. Article 1(1) is crucial to establish whether a violation of the human rights embodied in the American Convention can be attributed to a State Party. This Article does in fact entail a commitment by the States Party to the fundamental duties of respecting and ensuring rights, so any abridgment of the human rights recognized by the Convention that may be attributed,

³⁴ I/A Court H.R., *Castillo Petruzzi et al. v. Peru Case*. Judgment of May 30, 1999. Series C No. 52, paragraph 207; *Baena Ricardo et al. v. Panama Case. Preliminary Objections*. Judgment of November 28, 2003. Series C No. 104, paragraph 180; *Cantoral Benavides v. Peru Case. Merits*. Judgment of August 18, 2000. Series C No. 69, paragraph 178; *La Cantuta v. Peru Case. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, paragraph 172.

³⁵ Article 26 of the Vienna Convention on the Law of Treaties, *Pacta sunt servanda*: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Article 27: "Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 31. General rule of interpretation: "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended. In its case law, the Court has established the content and scope of the rule of *pacta sunt servanda* in relation to the international obligations undertaken by the States in the matter of human rights." On this specific point, the Court has held that "(...) the promulgation of a law that manifestly violates the obligations assumed by a state upon ratifying or acceding to the Convention constitutes a violation of that treaty and, if such violation affects the guaranteed rights and liberties of specific individuals, gives rise to international responsibility for the state in question...the enforcement of a law manifestly in violation of the Convention by agents or officials of a state results in international responsibility for that state. If the enforcement in question constitutes an international crime, it will also subject the agents or officials who execute it to international responsibility." I/A Court H.R., *Advisory Opinion OC-14/94*, December 9, 1994, Series A No. 14, paragraphs 50 and 57.

according to the rules of international law, to actions or omissions by any public authority constitutes an act attributable to the State, entailing its international responsibility under the terms set forth in the Convention and international law. It is a principle under international law that the State is responsible for the acts and omissions of its agents carried out in their official capacity even if they act outside the limits of their sphere of competence.³⁶ The international responsibility of the State is based on acts or omissions of any of its powers or organs, irrespective of their rank, which violate the American Convention, and is generated immediately with the international illegal act attributed to the State. In these conditions, in order to establish whether a violation of the human rights established in the Convention has been committed, it is not necessary to determine, as it is in domestic criminal law, the guilt of the perpetrators or their intention; nor is it necessary to identify individually the agents to whom the acts that violate the human rights embodied in the Convention are attributed. It is sufficient that a State obligation exists and that the State failed to comply with it.

40. A State's international responsibility may arise from the attribution of human rights violations committed by third parties or individuals, within the framework of the State's obligations to guarantee respect for those rights between individuals. The Court has recognized that

Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.³⁷

³⁶ I/A Court H.R., "*Mapiripán Massacre*" v. *Colombia Case*. Judgment of September 15, 2005. Series C No. 134, paragraph 108; and *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006, Series C No. 140, paragraph 111.

³⁷ I/A Court of H.R., "*Mapiripán Massacre*" v. *Colombia Case*. Judgment of September 15, 2005. Series C No. 134, paragraphs 111 and 112; *Moiwana Community v. Suriname Case*. Judgment of June 15, 2005. Series C No. 124, paragraph 211; *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, paragraph 91; *19 Merchants v. Colombia Case*. Judgment of July 5, 2004. Series C No. 109, paragraph 183; *Maritza Urrutia v. Guatemala Case*. Judgment of November 27, 2003. Series C No. 103, paragraph 71; *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 111. Also, in its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants the Court established that "[...]the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (*erga omnes*). This obligation has been developed in legal writings, and particularly by the *Drittwirkung* theory, according to which fundamental rights must be respected by both the public authorities and by individuals with regard to other individuals. I/A Court H.R. "Juridical Condition and Rights of Undocumented Migrants" Advisory Opinion OC-18/03 of 17 September 2003, Series A No. 18, paragraph 140. The Court took into account similar considerations when issuing provisional measures to protect groups and communities from acts of violence or threats by State agents and third parties.

2. The obligation to adopt measures to prevent the violation of rights linked to citizen security

41. Prevention involves all legal, political, administrative and cultural measures for the promotion of the protection of human rights that ensure that their violation be considered and treated as a punishable offence for the perpetrators. It also involves the duty to provide reparations to the victims.³⁸

42. At the same time, States are not responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals. Their obligation to adopt prevention and protection measures for individuals in their relationships with each other is conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered.³⁹

43. The rights to life and to humane treatment are central to the Convention. According to Article 27(2) of the said treaty, these rights are part of a non-derogable nucleus, because they are established as rights that cannot be suspended in case of war, public danger or other threats to the independence or security of the States Parties. It is not sufficient to abstain from violating these rights. States must adopt positive and specific measures in response to the specific needs of those who require protection because of their personal profile or their current situation.⁴⁰ States have the obligation to guarantee the conditions to ensure that violations of these inalienable rights do not occur. In compliance with the obligations imposed by Article 4 of the American Convention, in relation to Article 1(1) thereof, this not only assumes that no one shall be deprived of his life arbitrarily⁴¹, but also, in light of the State's obligation to guarantee the full and free exercise of human rights, it requires States to adopt all the appropriate measures to protect and preserve the

³⁸ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988, Series C No. 4, paragraph 166; *Perozo et al. v. Venezuela Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 149; *Case of Anzualdo-Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 63; *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 252.

³⁹ I/A Court H.R., *González et al. ("cotton field") v. Mexico Case*. Series C No. 205, Judgment November 16, 2009, paragraph 280; *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 123; *Indigenous Community Sawhoyamaxa v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, paragraph 155; and *Valle-Jaramillo and et al. v. Colombia Case. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, paragraph 78. See also ECHR, *Case of Kiliç v. Turkey*, Judgment of 28 March 2000, paragraphs 62 and 63 y ECHR, *Case of Osman v. the United Kingdom*, Judgment of 28 October 1998, paragraphs 115 and 116.

⁴⁰ I/A Court H.R., *Baldeón García v. Peru Case*. Judgment of April 6, 2006. Series C No. 147, paragraph 81; *Indigenous Community Sawhoyamaxa v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, paragraph 154; and *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 111.

⁴¹ I/A Court H.R., *The "Street Children" v. Guatemala Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 144; *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 237; and *Vargas-Areco v. Paraguay Case. Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 155, paragraph 75.

right to life, pursuant to the obligation to ensure the enjoyment of human rights for all persons under its jurisdiction.⁴²

44. There is under international law a primary duty of the State to ensure the right to life through domestic criminal law with effective provisions contemplating the commission of offenses against persons supported by enforcement machinery for prevention, suppression and punishment for non-compliance with such provisions. In some cases this obligation extends to the positive duty of the authorities to adopt preventive operative measures to protect an individual or group individuals, whose lives are at risk of criminal offenses by other individuals. For a positive obligation to arise, it must be established that the authorities knew, or ought to have known, at the time of the existence of a real and immediate danger to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that danger.⁴³ In situations of serious and systematic violations of human rights, the State's obligation to adopt positive measures of prevention and protection under Article 1(1) of the American Convention are enhanced.

3. The duty to investigate

45. The obligation of States to investigate cases of violations of these rights arises from this general obligation to guarantee the rights established in Article 1(1) of the Convention, together with the substantive right that must be protected or ensured⁴⁴ and the due process and judicial protection guarantees set forth in Articles 8 and 25. In light of this duty, the authorities must investigate conduct affecting the enjoyment of the rights protected in the American Convention and subject to public prosecution, as soon as they become aware of them. This investigation must be carried out, without delay, by all available legal means with the aim of determining the truth and the investigation, prosecution and punishment of the perpetrators. During the investigation procedure and the judicial proceedings, the victims of the human rights violations, or their next of kin, should have extensive opportunities to participate and be heard, both in the clarification of the facts and the punishment of those responsible, and in seeking fair compensation.⁴⁵ However, the investigation should be assumed by the State as an inherent juridical obligation and not merely as a reaction to private interests, which depend on the procedural initiative of the victims or their next of kin and on the contribution of evidence by private individuals, while the public authority is not making an effective effort to discover the truth.

⁴² I/A Court H.R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 120; *Miguel Castro-Castro Prison v. Peru Case. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, paragraph 237; and *Vargas-Areco v. Paraguay Case. Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 155, paragraph 75.

⁴³ European Court of Human Rights, *Kiliç v. Turkey*, Judgment of 28 March 2000, Application No. 22492/93, paragraphs 62 and 63; *Osman v. the United Kingdom* Judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, paragraphs 115 y 116.

⁴⁴ I/A Court H.R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 142; *Heliodoro-Portugal v. Panama Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 12, 2008. Series C No. 186, paragraph 115; and *Perozo et al. v. Venezuela Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 28, 2009. Series C No. 195, paragraph 298.

⁴⁵ I/A Court H.R., *"Mapiripán Massacre" v. Colombia Case*. Judgment of September 15, 2005. Series C No. 134, paragraph 219; *Moiwana Community v. Suriname Case*. Judgment of June 15, 2005. Series C No. 124, paragraph 147; and *Serrano Cruz Sisters v. El Salvador Case*. Judgment of March 1, 2005. Series C No. 120, paragraph 63.

46. The duty of the State to investigate conduct affecting the enjoyment of the right protected in the Convention applies irrespective of the agent to which the violation may eventually be attributed. In those cases where conduct is attributed to individuals, the lack of serious investigation could compromise the international responsibility of the State.⁴⁶ In cases where the conduct may involve the participation of its agents, States have a special duty to clarify the facts and prosecute those responsible.⁴⁷ Lastly, in cases involving the commission of serious violations of human rights such as torture, extrajudicial executions, and forced disappearances the Court has established that amnesties, statutes of limitation and provisions for the exclusion of responsibility, are inadmissible and cannot prevent the investigation and punishment of those responsible.⁴⁸ Crimes against humanity give rise to the violation of a series of non-derogable rights that are recognized by the American Convention, whose violation cannot remain unpunished. Likewise, it has determined that the investigation must be conducted resorting to all legal means available and must be focused on the determination of the truth and the investigation, prosecution, arrest, trial, and conviction of those persons responsible for the facts, both as perpetrators and instigators, especially when State agents are or may be involved in such events.⁴⁹ Amnesty laws leave victims defenseless and perpetuate impunity for crimes against humanity. Therefore, they are overtly incompatible with the wording and the spirit of the American Convention, and undoubtedly affect rights embodied in the Convention.⁵⁰

4. Reinforced obligations in the area of violence against women pursuant to the Convention of Belém do Pará

47. In the case of crimes involving violence against women, in addition to the generic obligations contained in the American Convention, the States have an obligation reinforced under the Convention of Belém do Pará. This Convention defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”⁵¹ and Article 7(b) obliges the States parties to apply due diligence to prevent, punish and eradicate violence. Given that not all breaches of human rights committed against women necessarily implicate a breach of the provisions of the Convention of Belém do Pará, it must be determined in a particular case whether the acts of violence have been

⁴⁶ I/A Court H.R., *González et al. (“Cotton Field”) v. Mexico Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paragraph 291; *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 145; and *Kawas-Fernández v. Honduras Case. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, paragraph 78.

⁴⁷ I/A Court H.R., *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, paragraph 143; *Heliodoro-Portugal v. Panama Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 144; and *Valle-Jaramillo and et al. v. Colombia Case. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, paragraph 101.

⁴⁸ I/A Court H.R., *Barrios Altos v. Peru Case*. Judgment of March 14, 2001. Series C No. 75, paragraph 41; *Almonacid-Arellano et al. v. Chile Case. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, paragraph 112; and *Ituango Massacres v. Colombia Case*. Judgment of July 1, 2006. Series C No. 148, paragraph 402.

⁴⁹ I/A Court H.R., *Almonacid-Arellano et al. v. Chile Case. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154 paragraph 111.

⁵⁰ I/A Court H.R., *Almonacid-Arellano et al. v. Chile Case. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, paragraph 119.

⁵¹ Article 1 of the Convention of Belém do Pará.

influenced by a context of discrimination against women.⁵² In cases where it has been determined that acts of violence against a woman fall within the obligations undertaken by the States party to the Convention of Belém do Pará, it is necessary to examine whether the authorities have fulfilled their duty to guarantee the rights affected (life, personal integrity, liberty, as appropriate), in accordance with Article 1(1) of the American Convention and Article 7 of the Convention of Belém do Pará, which forms the international *corpus juris* in the area of the prevention and punishment of violence against women.

48. The States' duty of effective investigation has additional significance when a woman sees her right to life, physical integrity or personal liberty affected, in the general context of violence against women. It is imperative to reinforce society's condemnation and to maintain women's confidence in the authorities' ability to protect them from the threat of violence.⁵³ In its report on "Access to justice for women victims of violence" the Commission pointed out that:

[t]he influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.⁵⁴

In those cases where there is a breach of the obligation to investigate criminal conduct involving violence against women, the Inter-American Court has thus pointed out that the impunity for such crimes sends a message that violence against women may be tolerated. This favors its perpetuation and social acceptance of the phenomenon, insecurity, and the mistrust in the administration of justice. For its part, the Inter-American Court has emphasized that the creation and use of stereotypes becomes one of the causes and consequences of gender violence against women.⁵⁵ In this sense, it found that in cases involving violence against women and impunity the States, influenced by a culture of discrimination against women, are responsible for failing in their duty of non discrimination contained in Article 1(1) of the Convention, in relation to the duty to ensure the rights of the victims and their families.⁵⁶

⁵² In its Judgment in the Case of Gonzalez et al., the Court determined that the acts of violence at issue formed the context of the murder of women committed in Juarez City, Mexico, that had been addressed in reports issued by the Rapporteur on the Rights of Women of the IACHR, CEDAW, Amnesty International and in acknowledgements of the State itself before international organs in the sense that many bore the hallmarks of gender-related violence. I/A Court H.R., *González et al. ("Cotton Field") v. Mexico Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205.

⁵³ I/A Court H.R., *González et al. ("Cotton Field") v. Mexico Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paragraph 293.

⁵⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, 20 January 2007.

⁵⁵ I/A Court H.R., *González et al. ("Cotton Field") v. Mexico Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paragraph 400.

⁵⁶ I/A Court H.R., *González et al. ("Cotton Field") v. Mexico Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paragraph 402.

49. As regards to the duty of prevention, the States must adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they must have in place an adequate and effective legal framework of protection, together with policies of prevention and practices which permit action in an efficacious manner against risk factors, and a condemnation of violence against women.⁵⁷ For its part, the UN Special Rapporteur on violence against women has provided guidelines on what measures States should take to fulfill their international obligations of due diligence regarding prevention, i.e.: ratification of international human rights instruments; constitutional guarantees on the equality of women; the existence of national laws and administrative sanctions that issue adequate compensation to women victims of violence; policies or plans of action that concentrate on the question of violence against women; making the criminal justice system and police more aware of gender issues; access to and availability of support services; the promotion of awareness and a modification of discriminatory policies in the sphere of education and the media, and the collection of data and publication of statistics on violence against women.⁵⁸

B. The characteristics of public policy on citizen security

50. Human rights standards must be incorporated when building a policy on citizen security, where they serve both as a guide and as a boundary beyond which State interventions must not go. These standards are part of the framework of laws originating in the instruments that together comprise international human rights law and in the decisions and case law delivered by the oversight bodies from the different systems of protection. They set general guidelines, indicating the minimum degree of protection that a State must afford. The Commission has repeatedly reminded the member states of their obligation to ensure the security of the population and to guarantee the rule of law with full respect for human rights.⁵⁹ The member states must work from this premise when defining and conducting the measures necessary to ensure the rights that are most vulnerable where crime and violence are high. The Commission has already observed that "(...) violence and crime seriously undermine the rule of law (...)"⁶⁰

51. The design, implementation and evaluation of policies on citizen security in the region have to be defined within the frame of reference that the international principles of human rights provide, especially the principles of participation, accountability and non-discrimination. According to the most widely accepted definitions at the international level: (1) the principle of participation means that "[e]very person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized"; (2) the principle of accountability and rule of law means that "States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law"; and (3) the principle of

⁵⁷ I/A Court H.R., *González et al. ("Cotton Field") v. Mexico Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paragraph 258.

⁵⁸ United Nations "Violence against women in the family Report of Ms. Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, its Causes and Consequences", submitted in accordance with Commission on Human Rights Resolution 1995/85, UN Doc. E/CN.4/1999/68, 10 March 1999, paragraph 25.

⁵⁹ IACHR, Press Release 18/06 of May 17, 2006; Press Release 39/06 of October 31, 2006, and Press Release 36/07, of July 20, 2007.

⁶⁰ IACHR, *Annual Report 2003*, Chapter IV, paragraph 34.

equality and non-discrimination means that “All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, color, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.”⁶¹

52. Based on the preceding paragraphs, it is clear that citizen security must be thought of as public policy, defined as the guidelines or courses of action that the State authorities lay down in order to achieve a given objective and that serve to create or transform the conditions under which individuals or groups in society conduct their affairs.⁶² A public policy is, therefore, a planning tool that makes efficient use of available resources, within a framework of constant participation by the social actors involved. According to the most widely accepted definitions, public policies are: (1) comprehensive (as they systematically address human rights as whole); (2) inter-sectoral (because they impact the activities, plans and budgets of various state actors); (3) participatory (because the population in question is constantly involved and because public policies are instrumental in making societies more democratic); (4) universal (because they are all-encompassing and do not discriminate in any way); and (5) intergovernmental (because they involve agencies in central and local government).⁶³

53. Public policies must also be sustainable. Given their nature, their execution is a middle- to long-term undertaking. This means that a public policy’s implementation must not be measured by the length of just one administration. Consequently, to be truly effective, any public policy on citizen security must be supported by a strong political consensus and enjoy the support of broad sectors of the population, which is also central to strengthening democratic governance in the region. Building a sustainable policy on citizen security is difficult when a subjective sense of insecurity is manipulated for purely partisan political purposes, a scene that plays itself out in some countries of the region at election time. This is not to say that some issues may be barred from open public debate. Quite the contrary, the give-and-take of ideas, the introduction of alternative proposals for resolving the major issues of concern to the public, and the citizenry’s demand for accountability on the part of public authorities are all fundamental elements of a democratic society. However, given the public’s heightened sensitivity to acts of violence or the spread of certain crimes within the Hemisphere in recent years, the issue of citizen insecurity has figured prominently in election debates, with short-term effects, more so than it has in efforts undertaken to keep society properly informed and to rally public institutions, social organizations, the mass media and the community in general to reflect upon the factors that contribute to this problem and on truly effective measures to improve the public’s living conditions in the face of the threat of violence and crime.

54. This public policy concept cannot be fully understood without specific reference to human rights. The purpose of public policies is to give effect to these rights in law and in practice, and in the conduct of state institutions and agents, so that member states may fully comply with their international obligations to protect and ensure. The reference to the rights-based approach in public

⁶¹ "A Human Rights Based Approach To Development Cooperation. Towards a Common Understanding Among UN Agencies" available at http://www.undg.org/archive_docs/3069-Common_understanding_of_a_rights-based_approach.doc.

⁶² Garretón, Roberto, "La perspectiva de los derechos humanos en el diseño y ejecución de las políticas públicas" in *El enfoque de los derechos humanos en las políticas públicas*, Comisión Andina de Juristas, Lima, pp. 27-48.

⁶³ Jiménez Benítez, William G., "El enfoque de los derechos humanos y las políticas públicas" available at http://www.usergioarboleda.edu.co/civilizar/revista12/enfoque_DDHH.pdf.

policies must be understood on two dimensions that, although different, nonetheless complement each other. The standards and principles of human rights are both a guide and a roadmap for designing, implementing and evaluating public policies. The objective of the public policies that the States craft must be to give effect to these rights.⁶⁴

55. Member States must devise and implement public policies with a rights-based approach as instruments to enable rigorous compliance with their negative and positive obligations, especially those undertaken within the framework of the Inter-American system with respect to the rights at stake in citizen security. The Commission has stated the following in this regard: "The IACHR considers that there is a pressing need for states to reflect on this matter and to adopt effective measures and public policies to guarantee the safety of the population and respect for human rights."⁶⁵ For the Commission, a public policy on citizen security seen from a human rights-based approach is one that involves simultaneous measures in three strategic areas: the institutional area; the normative area, and the preventive area.⁶⁶ In this way, two essential requirements of public policy are satisfied: that it is comprehensive and multilateral.

56. The institutional area concerns the capacity of the state apparatus to fulfill its human rights obligations. In the case of public policy on citizen security, the operational-institutional aspects basically concern the human and material resources assigned to the judicial branch, the public prosecutor's office, the police force and the prison system. Accordingly, member states must put together reliable indicators so that they are able to constantly evaluate the following, *inter alia*: (1) human resources, from the quantitative and qualitative standpoints; (2) the mechanisms for selecting and providing basic and specialized training to the civil servants in the institutions in question and their career service; (3) the working conditions and pay of these civil servants, and (4) the equipment, means of transportation and communications available to perform the assigned functions. Specifically, in the case of the prison system and police force, the First Meeting of the Ministers Responsible for Public Security in the Americas recommended the following:

(...) [to] [s]trengthen and, as appropriate, establish policies and programs for the modernization of the prison systems of the member states and for the design of sustainable social reintegration models, especially for youth; (...) Promote the modernization of police management by incorporating transparency and accountability, enhance the professionalization of security forces; and improve the living and working conditions of their members (...).⁶⁷

57. The normative area of public policy on citizen security means adapting the legal framework to meet the need to prevent or suppress crime and violence, and to develop criminal

⁶⁴ "On the other hand, the studies on the rights-based approach and public policies come to the following conclusions: human rights are the ethical foundation for formulation and execution of public policy. Human rights are the object of public policy to the extent that these policies seek the materialization, protection or defense of socially relevant situations that imply a violation or infringement of human rights." Jiménez Benítez, William, G. "El enfoque de los derechos humanos y las políticas públicas" available at http://www.usergioarboleda.edu.co/civilizar/revista12/enfoque_DDHH.pdf.

⁶⁵ IACHR, Press Release No. 16/07 "IACHR Calls upon States to Reflect on the Importance of Public Security and Respect for Human Rights", Washington, D.C., March 15, 2007.

⁶⁶ Faroppa Fontana, Juan "La gestión de la seguridad ciudadana con enfoque de derechos humanos", in Derechos Humanos en el Uruguay - Informe 2007, Servicio Paz y Justicia, Montevideo, 2007, pp. 58-60.

⁶⁷ "Commitment to Public Security in the Americas" approved at the First Meeting of Ministers Responsible for Public Security in the Americas," Mexico, October 7 and 8, 2008, OEA/Ser.K/XLIX.1.MISPA/doc. 7/08 rev. 3, October 8, 2008, paragraphs 6 and 9.

procedure and prison management. A state's domestic laws must strike a balance between the authorities vested in state institutions (the judicial system, the police system and the prison system) and the necessary guarantees of human rights. As repeatedly observed in this report, in most cases the laws and regulations pertaining to the policy of citizen security establish limits or restrictions on the exercise of certain human rights. Hence, regardless of the circumstance, the principle of legality requires that these rules have the rank of law, both in the material sense and in the formal sense. This was the finding of the Inter-American Court of Human Rights, which analyzed Article 30 of the American Convention on Human Rights.⁶⁸ The provisions of international human rights law must be interpreted as a harmonious whole. This means, on the one hand, weighing rights of equal hierarchy that often contradict each other; on the other hand, it means that the member states' legal systems can stipulate that the exercise of certain rights may be regulated and ultimately subject to some form of restriction or limitation.⁶⁹ The principles of legality, respect for the rule of law, the dignity of the human person, exception from law, equality and nondiscrimination establish the limits for any restriction or limitation on the exercise of human rights, specifically as regards the means that member states take to deal with the problems created by crime and violence.⁷⁰ The Commission must also underscore the fact that there are certain rights protected by the Inter-American system that can never be suspended.⁷¹

58. The preventive area includes responsibilities that are beyond the competence assigned to the judicial system and the police. Based on the definition of public policy adopted, this area includes the non-punitive measures that other state agencies must implement (within both the central government and local governments), working in partnership with civil society organizations, private enterprise and the media.⁷² These are social, communitarian and situational measures whose

⁶⁸ I/A Court H.R., Advisory Opinion OC-6/86 of 9 May 1986, Series A No.6: "(...)The "laws" referred to in Article 30 are, therefore, normative acts directed towards the general welfare, passed by a democratically elected legislature and promulgated by the Executive Branch. This meaning is fully consistent with the general context of the Convention, in line with the philosophy of the inter-American system. Only formal law, as the Court understands that term, can restrict the enjoyment and exercise of the rights recognized by the Convention (...) That the word "laws" in Article 30 of the Convention means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose."

⁶⁹ This eventuality was already anticipated in one of history's first declarations of human rights, the "Declaration of the Rights of Man and of Citizen" of 1789, Article 4 of which provided that "[l]iberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of society the enjoyment of the same rights."

⁷⁰ "Any lawful limitation or restriction in favour of the whole community –consequently, the protection of the public interest- should be above the individual interest; the measure of the public interest should define the extent of the restriction of freedom, so that the legality of the restriction should be limited by the importance of the interest of the community [...] Limitations or restrictions imposed on the basis of promoting the "general welfare in a democratic society" are provided for in the Universal Declaration, Article 29, paragraph 2; International Covenant on Economic, Social and Cultural Rights, Article 4] are particularly relevant to the right to own property, protected by the Universal Declaration of Human Rights [Article 17]. "Freedom of the Individual Under Law: a Study on the Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights" Erica-Irene A. Daes, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Human Rights Study Series No. 3, Geneva and New York, United Nations, 1990, paragraphs 257 and 258, p. 124.

⁷¹ IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116.Doc. 5 rev. 1 corr., October 22, 2002, paragraphs 50 to 57.

⁷² United Nations, "Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century", Tenth United Nations Conference on the Prevention of Crime and Treatment of Offenders, A/Conf.187/4/Rev.3. April 15, 2000.

purpose is to influence the enabling factors or social, cultural, economic, environmental or urban risk factors, among others, that contribute to higher rates of violence and crime.⁷³ Those in charge of crafting public policy in citizen security must even consider the costs and benefits of prevention measures as opposed to measures to suppress violence and crime.⁷⁴

59. A public policy on citizen security must address the various dimensions of the problems that cause crime and violence. Hence, the measures taken must be a comprehensive approach to those problems. Having said this, and given the experience gained from the programs and projects conducted in the region in recent years, preventive activities should be the centerpiece of the measures that the member states take to deal with violence and crime. The authorities responsible for citizen security said as much when singling out the need to adopt measures designed to

(...) [f]oster, in coordination with the pertinent institutions, public policies designed to prevent crime, violence, and insecurity, and (...) Promote educational programs, in particular in schools, and raise awareness among the different players in society regarding the prevention of crime, violence, and insecurity (...).⁷⁵

60. The most successful experiences in crime prevention in the Hemisphere have focused mainly on dealing with the factors that make violence a recurring problem at the local level. These efforts have involved measures to reduce alcohol consumption and to limit and regulate private possession of firearms. Another important aspect of these efforts has been the work done in urban redesign, to create and maintain public-friendly areas and transportation systems. Job centers have been created in the more violent areas of the cities. At the institutional level, the successful programs chose to create a more professional police force and to implement programs to improve the relationship between the police and local communities. There have been positive returns as well on security management that relies on good information about the objective and subjective reality of violence and crime. These systems feature performance indicators, data gathering, and geo-referenced mapping in order to use the human and material resources of the institutions in the citizen security system to better advantage. Mention should also be made of the programs designed to work on the enabling factors of violence and crime in specific areas, such as the programs to promote non-violent techniques for settling disputes in schools; early child development programs and programs that support families with children, adolescents and young adults who are more vulnerable to crime and violence. Programs in the area of recidivism prevention are working with young adults who have already committed crimes but are being offered an alternative to

⁷³ "The concept of crime prevention has taken on a much narrower meaning, to refer only to non-punitive measures. Today, therefore, crime prevention means any measure aimed at attacking the causal factors of crime, including opportunity." United Nations, "The Impact of Organised Criminal Activities Upon Society at Large: Report of the Secretary General", E/CN.15/1993/3, paragraphs 4 and 5.

⁷⁴ "Estimates are that every dollar spent on preventing violence saves up to six dollars in the cost of controlling and suppressing crime and dealing with its consequences." Buvinic, Mayra "Un balance de la violencia en América Latina: los costos y las acciones para la prevención" in Pensamiento Iberoamericano, Nueva Epoca, No. 0, Fundación Carolina, Madrid, 2007, p. 47.

⁷⁵ "Commitment to Public Security in the Americas" approved at the First Meeting of Ministers Responsible for Public Security in the Americas," Mexico, October 7 and 8, 2008, paragraphs 7 and 8. OEA/Ser.K/XLIX 1 MISPA/doc.7/08 rev. 3, October 8, 2008. In their second meeting, States reaffirmed the importance of continuing with the adoption of policies, programs and steps toward prevention of crime, violence and insecurity while protecting young people and vulnerable groups at risk. See MISPA II doc. 8/09 rev. 2, November 5, 2009.

imprisonment. The idea is to make them conscious of the harm they have done and to pay for their crimes by making reparations to the victim or doing community service.⁷⁶

61. Given the positive obligations undertaken by the States, they have a duty to create the conditions that will enable public policy on citizen security to focus on building an efficient institutional structure capable of ensuring, to all persons, the effective exercise of the human rights most threatened by violence. The Commission is concerned by the chronic weaknesses in the region in terms of creating institutions with which to manage citizen security properly. These weaknesses are particularly evident in the following: (1) the treatment of victims of crime and violence; (2) privatization of security services; (3) governability of citizen security; (4) professionalization and modernization of the police forces; and (5) the intervention of the armed forces in tasks related to citizen security.

1. The treatment of victims of crime and violence

62. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁷⁷ defines "victim of crime and violence" as

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.

In the words of the Declaration, the Commission observes that a "person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."⁷⁷

63. The Commission has repeatedly addressed the obligations that member states have vis-à-vis victims of violence and crime, obligations that emanate from Article 1(1) of the American Convention which establishes the obligation of the States parties to guarantee the exercise of the rights and freedoms recognized in that instrument with respect to persons under their jurisdiction. This obligation includes the duty to organize the government apparatus, and, in general, all structures through which State power is exercised, in such a way that they are capable of ensuring the full and free exercise of human rights in a legal context. As a result of this obligation, the States parties have a legal duty to prevent, investigate, and sanction the violation of all rights protected under the American Convention.⁷⁸ The Commission has established in the context of individual cases that illegal acts that violate human rights, although not directly attributable to State agents, may involve international responsibility for lack of due diligence to prevent the violation, or to clarify it in terms required by the Convention.⁷⁸

⁷⁶ See Dammert, Lucía, *Perspectivas y dilemas de la seguridad ciudadana en América Latina*, FLACSO Ecuador, 2007, pp. 25-44. On this subject, see also the Report of the UN Secretary General on Violence against Children, United Nations, General Assembly, A/61/29, August 20, 2006. Available at <http://www.unicef.org/violencestudy>.

⁷⁷ United Nations, General Assembly, Resolution 40/34 of November 29, 1985.

⁷⁸ IACHR, Report No. 42/00, Case 11.103, Pedro Peredo Valderrama (Mexico), April 13, 2000.

64. The Court makes the point that impunity leaves victims and their relatives defenseless.⁷⁹ It has also indicated that “the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”⁸⁰

65. Citing the Court, the Commission has also addressed the member states’ duty to prevent and combat impunity, which is defined as “an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights protected by the American Convention.”⁸¹

66. Therefore, it is clear from the preceding paragraphs that member states are responsible vis-à-vis their citizenry to conduct effective plans and programs to prevent crime and violence, based on a strategy that involves state institutions in various sectors, ranging from the police and judicial system to methods of social, community or situational prevention, which institutions in the education, health, labor and other sectors are to conduct, engaging as well national and local governments. When, despite this preventive work, crime and violence still claim victims, the State has an obligation to provide these victims with proper treatment that conforms to international standards. In particular, the State must have an adequate set of institutions to apply effective protocols of intervention, in the terms described by the aforementioned United Nations “Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power.” That document sets specific guidelines regarding access to justice and compassionate and respectful treatment of victims; restitution by offenders; compensation by the State when restitution from the offender is not available; and material, medical, psychological and social assistance for the victims of crime and violence. At the same time, the member states should take into account, where appropriate, the provisions of the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” also approved by the United Nations.⁸²

67. Member states must comply with their positive obligations with respect to the rights at stake in the area of citizen security by transforming these guidelines into an institutional normative framework and earmarking the budgetary appropriations needed to enable practical responses to the victims of violence and crime. The normative framework and institutional practices must make provision for the training that police, judicial, health and government social services will require; the intervention protocols common to all areas of the State; and a proper infrastructure. The Commission reiterates that “the victims’ participation in the various procedural stages guarantees the right to the truth and justice is part of the complex structure of checks and balances in criminal proceedings and encourages public oversight of government actions.”⁸³

68. The Commission has established that whenever persons identified as members of vulnerable groups are injured and there is a general pattern of negligence and lack of effectiveness to

⁷⁹ I/A Court H.R., *The “Panel Blanca” v. Guatemala Case (Paniagua Morales et al)*. Judgment of March 8, 1998. Series C No. 37, paragraph 173.

⁸⁰ I/A Court H.R., *Velásquez Rodríguez v. Honduras Case*. Judgment of July 29, 1988. Series C No. 4, paragraph 166.

⁸¹ IACHR, *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, OEA/Ser/L/V/II.125- Doc. 15, 1 August 2006, paragraph 50.

⁸² United Nations, General Assembly, Resolution 60/147, December 16, 2005.

⁸³ IACHR, *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*, OEA/Ser/L/V/II.125- Doc. 15, 1 August 2006, paragraph 35.

process and punish the perpetrators, the State not only fails to comply with its obligation to clarify an offence but also fails to comply with its duty to prevent degrading practices. The Commission has indicated that

[such] general and discriminatory judicial ineffectiveness also creates a climate that is conducive to [] violence, since society sees no evidence of a willingness by the State, as the representative of society, to take effective action to sanction such acts.⁸⁴

The Commission has established that in order to guarantee the right to non-discrimination, the States are required to adopt positive measures by establishing, for such purposes, distinctions based on *de facto* inequities. In a case on patterns of discrimination and violence by the Police against youths belonging to an especially vulnerable social group due to its racial and social condition, the Commission indicated that the victim's situation justified adopting positive measures in its favor, such as equal treatment before the law (Article 24 of the American Convention), and respect for the presumption of innocence (Article 8 of the American Convention).⁸⁵ The Commission has indicated that in those cases,

[f]rom this perspective, the failure to take affirmative measures to reverse or change *de iure* or *de facto* discriminatory situations harmful to a specific group produces international responsibility on the part of the State. (...) From another perspective, although the laws (...) are not discriminatory and *prima facie* do guarantee apparent equality, in reality the situation is otherwise, as the bias of the State police, according to existing studies, indicates the use of unnecessary violence towards those subject to their procedures, particularly those individuals with characteristics of the black race and who reside in marginal areas (*favelas*). This conduct often leads to the death of the subject. It is for this reason that the mere promulgation of laws that have no practical effect does not guarantee the full enjoyment and exercise of rights.⁸⁶

The formal existence of legal provisions guaranteeing equality is not sufficient. Rather, such provisions must be effective, that is, they must yield the results or responses needed for the protection of the rights embodied in the Convention.

69. Although the services the State provides are to be universal, it must ensure that adequate systems are in place to treat victims of violence or crime who are women, children or adolescents, senior citizens, the indigenous population or Afro-descendent population.⁸⁷ In the past

⁸⁴ IACHR, Report No. 25/09, Sebastião Camargo Filho (Brazil), paragraph 81; Report No. 54/01, Case 12.051, Maria da Penha Maia Fernandes (Brazil), 16 April 2001, paragraph 56.

⁸⁵ See IACHR Report No. 26/09, Case 12.440, Wallace de Almeida (Brazil), paragraph 146.

⁸⁶ See IACHR Report No. 26/09, Case 12.440, Wallace de Almeida (Brazil), paragraphs 147 and 148.

⁸⁷ I/A Court H.R., "Juridical Condition and Human Rights of the Child" Advisory Opinion OC-17/02 of 28 August 2002, paragraphs 137 and 136. In this opinion, which concerns the care of children and adolescents, the Court ruled that "the State must resort to institutions with adequate staff, appropriate facilities, suitable means, and proven experience in such tasks." The Inter-American Court has indicated that "(...) no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious,

the Commission has observed that the member states must have specialized personnel in all institutions of the citizen security system, who are prepared to provide quality service to the entire population, thereby fulfilling the principles of equality and nondiscrimination recognized in Article 24 of the American Convention.⁸⁸

2. Privatization of citizen security

70. In the last twenty-five years, the number of private firms offering security services has increased steadily in the Americas. In many cases, the employees of these businesses far outnumber the police in the member states. Recent studies show how the number of private security services is growing worldwide. These studies find that in the period that preceded the current global economic crisis, private firms or industries involved in security on the world's major markets experienced extraordinary growth rates that ranged between 8% and 9%. This was twice the rate of growth of the global economy as a whole, and was exceeded only by the growth in the automotive industry during that same period.⁸⁹ In Latin America, the growth in the market for private security goods and services is estimated at around 11% over the last 15 years.⁹⁰

71. The Commission has made some opportune observations about certain problems associated with the increasing involvement of private firms in delivering security services. It has highlighted the fact that "because private police services are not legally registered, the State has no control over their sometimes criminal activities, which is a factor enabling abuses." The Commission also observed the lack of procedures to control private security firms and expressed its concern over the complaints lodged alleging violations of individual rights by employees of private security firms.⁹¹

72. To be in compliance with their duty to ensure the human rights at stake in citizen security policies, the member states must undertake the mission of preventing, deterring and suppressing crime and violence, as theirs is a monopoly on the legitimate use of force. The privatization of the functions involved in citizen security is a departure from the concept of human rights, where the State is responsible for guaranteeing that citizen security is defended, protected

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despotic or in conflict with the essential oneness and dignity of humankind." I/A Court H.R., Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC 4/84 of 19 January 1984, Series A No. 4, paragraph 57.

⁸⁸ IACHR, Press Release 20/04, September 18, 2004, "The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women In Guatemala to Live Free from Violence and Discrimination." See IACHR, Justice and social inclusion: The challenges of democracy in Guatemala, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, 29 December 2003, [available in Spanish only], Chapter III, paragraph 112. See also IACHR, Report 1/98 (Case 11543 - Rolando Hernández Hernández), Mexico, May 5, 1998, paragraph 37.

⁸⁹ Curbet, Jaime "La prevención de la inseguridad ciudadana", in II Foro Iberoamericano sobre seguridad ciudadana, violencia y políticas públicas en el ámbito local, Barcelona, Spain, 2008. Available at <http://www.segib.org>.

⁹⁰ Carrión, Fernando, citing Frigo, Edgardo, in "Seguridad privada: ¿ha mejorado la seguridad ciudadana?" Revista Ciudad Segura No. 19, FLACSO, Ecuador, 2007.

⁹¹ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala* [only in Spanish], 2003, paragraph 110. See also Resolution 10/11 of the Human Rights Council of the United Nations, 42nd session, March 26, 2009, on the "Working Group on the use of mercenaries to violate human Rights and obstruct the right of peoples to self-determination." In this resolution, the Human Rights Council calls the working Group to make a consultation on the content and scope of a draft Convention on private firms offering military assistance, advice and services, linked to security and related model legislation and other legal instruments.

and ensured. Instead, citizen security becomes a mere product to be bought on the market and, in most cases, is available only to those sectors of society with the means to buy it.

73. In countries where the law allows private security firms to operate according to the rules governing business activity, the presence of these firms must be properly regulated by public authorities. The domestic legal system must regulate the functions that private security services can perform; the types of weapons and materials they are authorized to use; the proper mechanisms to oversee their activities; introduction of licensing, and a system whereby these private security firms are required to report their contracts on a regular basis, detailing the typing of activities they perform. Likewise, the public authorities should demand compliance with selection and training requirements that individuals hired by these private security firms must meet, specifying which public institutions are authorized to issue certifications attesting to the firms' employees.⁹² By the definition that the Commission adopted in this report, private firms only offer security for assets and valuables, and are not intended to augment or supplant the member states' obligations in the area of citizen security, as the State's responsibility for the protection of human rights is a non-delegable duty.

3. Democratic governance of citizen security

74. The Commission defines democratic governance of citizen security as the lawful authorities' institutional capacity to design, implement and evaluate policies to prevent and control violence and crime.⁹³ Historically within the region, the political system delegated these responsibilities –often informally- to the state security forces. The result was that decisions about the security of persons and their property were informed mainly by the interests of those forces; these decisions were completely separate and apart from the rest of public policy and not subject to any form of citizen oversight. In many cases, the result was the abuse and misuse of power on the part of state security forces.⁹⁴ This institutional weakness and the lack of civilian oversight constitute a clear-cut failure to fulfill the obligations that the member states have undertaken vis-à-vis their duties with respect to the human rights at stake in public policy on citizen security.⁹⁵

⁹² United Nations, First Regional Consultation for Latin America and the Caribbean on the Impact of the Activities of Private Military and Security Companies in the Enjoyment of Human Rights: Regulation and Monitoring (December 17 to 18, 2007). UN General Assembly "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development", Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination, A/HRC/7/7/Add.5, March 5, 2008.

⁹³ Álvarez, Alejandro, *El estado de la seguridad en América Latina: una aproximación a la evaluación situacional e institucional de la seguridad ciudadana en la region*, United Nations Development Programme - SURF LAC, 2006, Available at http://www.lac.workspace.undp.org.co/fileadmin/Seguridad_Ciudadana/La_seguridad_en_America_Latina_PNUD.pdf.

⁹⁴ Saín, Marcelo Fabián "Seguridad, delito y crimen organizado. Los desafíos de la modernización del sistema de seguridad policial en la región sudamericana" in *El desarrollo local en América Latina. Logros y desafíos para la cooperación europea*, José Luis Rhi-Sausi, Editor, RECAL/CESPI/Nueva Sociedad, Caracas, 2004, pp. 135-148.

⁹⁵ "A basic function of government is to maintain peace and security within the borders of the State. As police are one of the means by which Governments fulfill this function, a law enforcement agency is a significant organ in the governance of a State (...) International legal obligations are translated into national legal obligations by the constitutional and legal arrangements of States. In this way, human rights are protected by domestic law. However, effective protection of human rights engages almost the entire range of government activity, including the activities of law- making, resource allocation, formulation of policies and practices, and the establishment of structures and systems throughout the machinery of government and within ancillary governmental organizations and agencies." Office of the United Nations High Commissioner for Human Rights/ Centre for Human Rights

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75. The difficulties with respect to governance of citizen security became readily apparent when many countries in the Hemisphere over the last twenty-five years began their return to a democratic system of government after years of civil war, authoritarian government or military dictatorship. While the institutional deficit in the region has been a longstanding problem, the absence of the rule of law during those periods only exacerbated the problem. The Commission has already spoken out about what the weakness of democratic institutions means for the observance of human rights. It held that

the democratic system and the observance of the rule of law are crucial for effective protection of human rights. In accordance with international instruments on human rights, a state in which the rule of law prevails is one that functions soundly and that equitably and effectively fulfills its responsibilities in the areas of justice, security, education and health. In the final analysis, the rule of law entails full respect and effective exercise of the human, political, economic, social and cultural rights of the inhabitants of states, ensuring access to better and increased protection of the values of human dignity.⁹⁶

76. To enable democratic institutions to function normally and the citizenry to exercise control over the political system, legitimately elected government authorities must undertake full responsibility for designing and putting in place a public policy on citizen security. Within the apparatus of government, the ministries or secretariats that have responsibilities in the area of citizen security must have technical and policy personnel trained in the various professions associated with citizen security, to craft and make decisions in the established areas within this public policy. The legislatures must have professional advisory services to enable them to exercise effective political oversight of the measures implemented to prevent and control violence and crime. Member States must also put into place systems to allow civil society to participate and thereby make democratic oversight possible, to foster transparency and hold accountable officials of the institutions in charge of public policy on citizen security.

4. Professionalization and modernization of police forces

77. Time and again the Commission has stressed the vital role that the police play in enabling the democratic system of government to function properly. It has said that “[t]he police force is a fundamental institution to uphold the rule of law and to guarantee the security of the population. Given its nationwide coverage and the variety of its functions, it is one of the State institutions that most often have relations with the public.”⁹⁷ It also observed that “an honest police force that is professional in its approach, well trained and efficient is essential for gaining the confidence of citizens.”⁹⁸

78. Under the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, the member states must be mindful of the fact that law enforcement officials perform “a social service of great importance and there is, therefore, a need to maintain and, whenever

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Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police, Professional Training Series No. 5, New York and Geneva, 1997, paragraphs 879 and 881.

⁹⁶ IACHR, *Annual Report 2006*, Chapter IV, paragraph 208.

⁹⁷ IACHR, *Report on the Situation of Human Rights in Venezuela*, OEA/Ser.L/V/II.118, doc. 4 rev. 2, 29 December 2003, Chapter III: “State Security: The Armed Forces and the Police,” paragraph 294.

⁹⁸ IACHR, *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Chapter V, paragraph 392.

necessary to improve the working conditions and status of these officials.” These principles make express reference to the fact that “law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights”⁹⁹ and in the instruments of international human rights law that comprise the Inter-American system.

79. Within the Hemisphere, there has always been a tension between the member states’ obligation to respect, protect and ensure human rights and the law, on the one hand, and the operational structure and practices of the police force on the other. In the vast majority of the countries of the region, it was not until the early 1990s that the magnitude of this problem began to be realized. What followed was a process to introduce substantive changes in police institutions, designed to modernize them and make them more professional. The idea was to make them more effective at their job of preventing and controlling crime and violence, without undermining the commitments that the member states had undertaken in the area of human rights. This process is still ongoing. While significant headway has been made in the Americas, there have also been times when police forces have reverted back to the traditional ways of doing business.

80. These efforts to modernize and professionalize police forces within the region are up against longstanding institutional problems. In general, apart from an occasional formal change, police forces have not modernized their philosophical frame of reference. In a number of countries of the Hemisphere, the police philosophy is still tied to the concept of public order, with the security of the State as the first priority, over the needs of the individuals or groups that make up society. In traditional police literature in the region, human rights are at most mentioned only in passing and they are never tied in with what are understood to be the values or principles of police work. For a police force to aspire to be respectful of human rights, it should not only be trained in human rights theory but it should also organize itself, select its personnel, train constantly and perform its professional functions to ensure the observance of the human rights of the public it serves.

81. On the other hand, in most countries of the region, the territorial and functional deployment of police forces follows a reactive model and disregards the proactive model of police work that focuses especially on prevention and deterrence of violence and crime. Rounding out the picture, the human and material resources of the police are often not distributed to be responsive to the real needs of the public. A large percentage of a police force is assigned to deskwork or as support to other public institutions or private entities that have no relationship –direct or indirect- to citizen security. Thus, large sectors of society continue to demand that the number of police be increased to deal with violence and crime. In many cases, however, the number of police in the Hemisphere is well above the internationally accepted ratio of police per inhabitant. In reality, the problem is attributable to an inefficient distribution of police officers to effectively discharge the police’s security functions, and to the model of police work historically used in the region.

82. The functions of prevention, deterrence and suppression of crime, especially organized crime, trafficking in persons or drug trafficking, require effective police officers who are highly trained in police investigation and intelligence work. They must also have the equipment and material resources needed to perform their job effectively. Within the Hemisphere, serious shortcomings are common in this respect, which fosters impunity, increases the sense of insecurity within the public and its mistrust of the institutions within the citizen security system. On the subject of police intelligence services, the Commission recalls that the Inter-American Court has held that

⁹⁹ United Nations, Eighth United Nations Conference on Prevention of Crime and Treatment of Offenders, held in Havana (Cuba), August 27 to September 7, 1990, Consideranda 1 and 3.

[t]hese agencies must, *inter alia*, be: a) respectful, at all times, of the fundamental rights of persons; and b) subject to control by civil authorities, including not only those of the executive branch, but also, insofar as pertinent, those of the other public powers. Measures to control intelligence activities must be especially rigorous because, given the conditions of secrecy under which these activities take place, they can drift toward committing violations of human rights and illegal criminal actions...¹⁰⁰

83. Police forces must have personnel and infrastructure specialized to provide quality services that meet the needs of those sectors of the population that are most vulnerable to violence and crime, such as women, children and adolescents, the indigenous population, Afro-descendants and migrants. The Commission has indicated that

[w]hile the doctrine of the Inter-American human rights system, like that of other human rights regimes, does not prohibit all distinctions in treatment in the enjoyment of protected rights and freedoms, it requires at base that any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought (...). The principle of equality may also sometimes require member states to take affirmative action as a temporary measure in order to diminish or eliminate conditions which cause or help to perpetuate discrimination, including vulnerabilities, disadvantages or threats encountered by particular groups such as minorities and women.¹⁰¹

In this context, the situation of vulnerability of lesbians, gays, bisexuals and transsexuals and the list of discrimination vis-à-vis violence and crime, deserves special attention. The Court, too, has been very clear about the scope of the principle of equality before the law:

the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable. This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*.¹⁰²

¹⁰⁰ I/A Court H.R., *Myrna Mack Chang v. Guatemala Case*. Judgment of November 25, 2003. Series C No. 101, paragraph 284.

¹⁰¹ IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, paragraph 338.

¹⁰² I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September 2003, Series A No.18, paragraph 101.

84. The Commission has addressed this issue on a number of occasions, noting that

public policy in the area of citizen security does not take into account the specific needs of women. Family and domestic violence particularly affect women but are not considered a public safety issue. Furthermore, we can see from the absence of studies or statistics on the prevalence of family or domestic violence and from the lack of information on the prevalence of sexual crimes that mostly affect women that the issue of violence against women is largely ignored.¹⁰³

The Commission believes that the police forces in the member states should be equipped with specialized services to treat women victims of violence and crime, with properly trained staff and with intervention protocols that enable them to work with other state and civil society organizations. In this way, the impact of the prevention measures will be all the greater and secondary victimization may be avoided, while also laying the groundwork for an effective investigation of the facts and to bring the responsible parties to justice.

85. The Commission also notes that, in the Americas, women serving on the police force do not as a rule receive equal and nondiscriminatory treatment with respect to their job-related rights, especially in regards to assignment of duty stations and posts or the opportunity to actually perform all the functions involved in police work. The international standards on this issue address three specific aspects: (1) "Access and appointment to the police service, (2) Equality of opportunity within the police service and (3) Deployment of women police."¹⁰⁴

86. The makeup of a police force must be representative of each country's social and cultural reality. Given the particular nature of the various societies within the Hemisphere, the Commission has had occasion to observe that a country has to maintain a multiethnic and multicultural police force, and take particular care to encourage members of indigenous peoples and women to participate in various agencies of the State.¹⁰⁵ This requirement is specifically embodied in the United Nations Code of Conduct for Law Enforcement Officials, which provides that "Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole."¹⁰⁶ The Commission has previously observed that the State institutions, including the police force, must have the elements to enable them to respond properly to everyone living within the country's territory, respecting all cultural manifestations, among them the various languages and dialects in use.¹⁰⁷ The Court, for its part, has developed an extensive body of case law and has ruled that:

¹⁰³ Press Release 20/04 of September 18, 2004. "The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women In Guatemala to Live Free from Violence and Discrimination."

¹⁰⁴ Office of the United Nations High Commissioner for Human Rights/ Centre for Human Rights Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police, Professional Training Series No. 5, New York and Geneva, 1997, paragraphs 747 to 754.

¹⁰⁵ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, paragraph 112.

¹⁰⁶ United Nations Code of Conduct for Law Enforcement Officials. Approved by the United Nations General Assembly in resolution 34/169 of December 17, 1979.

¹⁰⁷ IACHR, Report No. 1/98, Case 11543, Rolando Hernández (Mexico), May 5, 1998, paragraph 37. "In addition, the statement made by the petitioners, not controverted by the State, that the parents of Atanasio and Rolando made statements to the competent authorities, without an interpreter, which was essential as they speak only the Otomí language, constitutes not only a violation of the judicial guarantees provided for in Article 8 of the American Convention, but it also represents a clear irregularity in the process, as they were unaware of the contents of the statement they signed before the Prosecutor's Office."

There is an inseparable connection between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination. States are obliged to respect and guarantee the full and free exercise of rights and freedoms without any discrimination. Non-compliance by the State with the general obligation to respect and guarantee human rights, owing to any discriminatory treatment, gives rise to its international responsibility.¹⁰⁸

87. As previously noted in this report, the main victims of violence in the Hemisphere are children and adolescents. In many countries of the region, violations of criminal law committed by persons under the age of eighteen take a serious toll on citizen-security-related human rights among large sectors of the population. Police interventions in these situations of heightened vulnerability require that member states adopt special practices and procedures to ensure the rights of this segment of the population. Since the Convention on the Rights of the Child entered into force,¹⁰⁹ international law recognizes that children and adolescents, like other persons, have the same rights as all other human beings, and that it is the States' duty to promote and ensure them equal and effective protection; it is also recognized that certain groups, including children and adolescents, enjoy special legal protections and specific rights.¹¹⁰ It is not a matter of having public policy on citizen security afford different rights to children under the age of 18; instead it is a question of establishing additional protection for this sector of the population in their relations with the State, society and the family. This was the finding of the Inter-American Court when addressing the obligations of special protection that member states have undertaken. It provided that "This provision [Article 19 of the American Convention] must be construed as an added right which the Convention establishes for those who, because of their physical and emotional development, require special protection."¹¹¹

88. In the same direction, based on the doctrine of integral protection, which the Convention on the Rights of the Child renders as the *best interests of the child*, the latter's only possible interpretation is that each and every one of a child's human rights must be respected and observed. In other words: all decisions taken by the family, society or the State that affect an individual under the age of eighteen will have to objectively consider the effective observance of all those rights, without exception. This was the understanding of the Inter-American Court where it held that "(...) the phrase "best interests of the child", set forth in Article 3 of the Convention on the Rights of the Child, entails that children's development and full enjoyment of their rights must be considered as the guiding principles to establish and apply provisions pertaining to all aspects of children's lives."¹¹² Any public policy on citizen security must bear in mind that the concept of best

¹⁰⁸ I/A Court H.R., *The Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion, OC 18/03 of 17 September 2003, Series A No. 18, paragraph 85.

¹⁰⁹ United Nations, General Assembly Resolution 44/25 of November 20, 1989. The Convention entered into force on September 2, 1990. Specifically, the Convention on the Rights of the Child spells out guiding principles of interpretation, design of social policies, and verification of the manner in which States observe and respect each one of the protected rights. These guiding principles are: non-discrimination (Article 2); best interests of the child (Article 3); survival and development (Article 6), and participation (Article 12).

¹¹⁰ Cillero Bruñol, Miguel "Infancia, Autonomía y Derechos: una cuestión de principios" in *Derecho a tener derecho*, Volume 4, UNICEF, IIN, Fundación A. Senna, p. 31.

¹¹¹ I/A Court H.R., "*Juvenile Reeducation Institute*" v. *Paraguay Case*. Judgment of September 2, 2004. Series C No. 112, paragraph 147 et seq.

¹¹² I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 171, paragraph 137.

interests of a child or adolescent is no longer a subjective or imprecise concept left to the discretion of the adults to determine; instead it is an exact indicator of how the effective enjoyment of the rights of persons under the age of eighteen are ensured.¹¹³

89. Historically, in the Commission's view, the relationship between the police force and that sector of the population comprised of children and adolescents has been a complex one, always marked by pronounced problems in communication. In various countries of the region where the increase in the levels of violence and crime has sectors of the population demanding more repressive measures, the relationship between the police and young people has become even more difficult. Thus, where police business is concerned, the effectiveness of the special measures of protection depends on whether a proper framework of laws is in place that is consistent with international standards, and whether specially formed units are in place to intervene in situations involving minors under the age of 18 who are either victims or perpetrators of acts of violence or crime. The foregoing notwithstanding, all police personnel should receive basic training on how to conduct themselves in situations of this type; intervention protocols should be introduced, as should referral criteria and facilities for teamwork with other public institutions and civil society organizations.

90. Public policy on citizen security must devote special attention to the relationship between the police and migrants and their families, recognizing that migrant women, children and adolescents are the most vulnerable. In many countries of the region, migrants are stigmatized; large sectors of the population blame them for the increase in violence and crime. On the other hand, they are easy targets of crime and state and private violence. As for the international standards on the human rights of migrant persons, the Inter-American Court and the Inter-American Commission have established positions on: (1) the grounds for denying immigrants their freedom; (2) the guidelines for detention during immigration proceedings; (3) the rules of due process that must govern immigration proceedings; (4) the guarantee of the right to be represented by legal counsel to challenge decisions in cases of individual deportation and mass expulsion; and (5) access to the basic social rights in the case of undocumented immigrants, especially their basic labor rights. Often, these processes of exclusion play out in the context of the "partial integration" of documented immigrants whose rights are not recognized as fully as those who are citizens of a country. Compounding this are specific threats to the human rights of immigrants and their families, in the form of international human trafficking and the violence in border areas.¹¹⁴ The Court has held that

[m]igrants are generally in a vulnerable situation as subjects of human rights; they are in an individual situation of absence or difference of power with regard to non-migrants (nationals or residents). This situation of vulnerability has an ideological dimension and occurs in a historical context that is distinct for each

¹¹³ "Perhaps it is easier to understand now that any diminishment of the degree of discretionary authority is directly proportional to the real instances of democracy in action. History and experience tell us that there is no single example that illustrates that discretionary authority (command over any type of subjective condition) has functioned effectively (as it should, if it is living up to its claims) to serve the weakest and most vulnerable sectors." García-Méndez, Emilio *Infancia, ley y democracia en América Latina*, Temis-Depalma, Santafe de Bogotá-Buenos Aires, 1999, p. 28. See also on this point General Comment No. 5 of the Committee on the Rights of the Child, 34th Session, 19 September to 3 October 2003: "General Measures of Implementation for the Convention on the Rights of the Child", Articles 4 and 42, and paragraph 6 of Article 44, available at [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En).

¹¹⁴ International Organization for Migration (IOM), *Los estándares internacionales en materia de derechos humanos y las políticas migratorias*, report prepared in partnership with the Human Rights Center of the Universidad de Lanús (Argentina), Seventh South American Conference on Migration, Caracas, 2007, available at <http://www.acnur.org/biblioteca/pdf/5577.pdf>.

State and is maintained by *de jure* (inequalities between nationals and aliens in the laws) and *de facto* (structural inequalities) situations. This leads to the establishment of differences in their access to the public resources administered by the State.¹¹⁵

91. On the other hand, member states must take into account that the principles of equality before the law, equal protection of the law and non-discrimination must inform the system for protecting the labor rights of members of a police force. The Commission has had occasion to address the working conditions of police officers in the vast majority of the countries of the region and found that the “physical conditions under which they work are also not good, and some other aspects of their working conditions are deplorable. Salaries are also very low.”¹¹⁶ Among the positive measures to ensure the human rights associated with citizen security, member states must have a professional police force. Accordingly, rules and regulations to govern the police career service must be observed. The Commission has said that a true police career service should be created, and include rigorous training featuring instruction in police procedure and human rights, strict selection criteria and a promotion system. The necessary material resources to enable the police to perform their duties must be supplied, they should be paid a decent wage that is commensurate with the job they perform and that attracts suitable recruits; lastly, excesses should be punished to purge the force of corrupt and criminal elements.¹¹⁷ At the same time, the police career service should also stipulate the requirements that must be present to discharge officers from the service and provide for pensions systems that ensure them a decent quality of life once they retire.

92. The most widely recognized literature in the region mentions the following among the rights of members of the police force: (1) fair pay that affords the police officer and his or her family a decent living, taking into account the dangers, responsibilities and stress that the police officer experiences every day in his or her work; (2) safety and hygiene on the job; (3) respect for working hours and the required psychological and physical support, with time off for relaxation and vacation that is proportionate to the toll that the constant stress of the job exacts; (4) following the orders of superiors when those orders are lawful; if not, the right to challenge the orders without having to face criminal or disciplinary sanctions for refusal to follow an unlawful order or one that violates human rights; (5) constant training that enables the police officer to perform his or her functions, and a police career service that will be an academic-professional underpinning of the cultural transformation. The men and women who serve on the police force must receive ongoing instruction and practical training in human rights, and thorough training and instruction in the area of tactical danger assessment, so that they are able to determine, in every situation, whether the use of force, including lethal force, is proportionate, necessary and lawful.¹¹⁸

93. Also in regard to the rights that officers in a police force enjoy, it is crucial to consider the right to organize. Member States must guarantee members of the police force their right of association for defense of their professional rights, as prescribed by international law. A permanent balance must be maintained between the police officers’ right to associate for labor purposes and the member states’ fulfillment of the obligations they have undertaken with respect to the entire population under their jurisdiction, all in accordance with the international law of human

¹¹⁵ I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September, 2003, Series A No. 18, paragraph 112.

¹¹⁶ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter V, paragraph 391.

¹¹⁷ IACHR, *Report on the Situation of Human Rights in Mexico*, paragraph 39.

¹¹⁸ Domínguez Vial, *Andrés Policía y Derechos Humanos, Policía de Investigaciones de Chile*/IIDH, Santiago, 1996.

rights. Striking this balance may mean that the organized labor activities of police officers may be subject to certain limitations or restrictions that do not apply to other workers, either in government or the private sector. These limitations or restrictions are unique to an institution governed by specific rules of discipline and hierarchy and by the needs of a democratic society. This report will elaborate upon this point when examining the right of freedom of association and its relationship to public policy on citizen security.

94. Another essential aspect of the professional career service for the police is the creation of systems that provide constant training and specialized instruction. The member states have an obligation to update the professional skills and practices of all police personnel. Working through competent institutions, they are to plan and put into practice courses, seminars and lectures and provide study materials, all intended to provide police officers with constant professional training, especially in those subjects or techniques that have changed or evolved the most. Police personnel should be afforded every opportunity to attend refresher courses and to pursue their education to a higher level in areas that are relevant to the police service. To keep these training activities and specialized instruction on the right track, the responsible authorities must periodically evaluate the professional skills and knowledge of police officers. When examining the situation of citizen security in the region, the Commission has reiterated that

(...) a good part of the problem lies in the highly inadequate training received by agents (...) Many of them never completed the preparatory phase of their training, which is generally superficial and bears little relation to what should be their primary function: the investigation and prosecution of crimes. The lack of proper training means that not only do they not have a clear idea of the importance of the law but also makes it difficult for them to operate within its framework. The habit of operating in a certain way, without any accountability for the abuses that they may commit, has created a pattern of behavior that is difficult to eradicate.¹¹⁹

95. One of the main obstacles to proper fulfillment of the member states' obligations with respect to the rights at stake in citizen security has been the lack of effective accountability systems to ensure transparent performance and enable the citizenry to exercise various types of oversight. The Commission made this point where it provided that "[c]itizen security is compromised (...) by the fact that there is no efficient police force that is respectful of human rights, dedicated to internal security, and thus enabling a *rapprochement* between police and the citizenry."¹²⁰ Thus, an institutional structure and human and material resources are essential for this type of performance; indicators must be devised and made public so that the entire population knows what they are; the means to verify compliance with the goals or objectives set within public policy on citizen security must also be clearly defined.

96. From the standpoint of the rules of conduct of a police force, the Commission observes that many countries of the region lack any clear-cut, established rules spelling out what the police can and cannot do in police interventions. In general, police procedures are subject to administrative regulation, through rules, guidelines or service orders. Only in a few, rare exceptions are police procedures spelled out by law. As the Commission noted earlier in this report, based on the case law of the Inter-American Court only law, in the formal sense and the material sense, can

¹¹⁹ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter V, paragraph 390.

¹²⁰ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, [available in Spanish only], paragraph 93.

restrict or limit the exercise of human rights.¹²¹ Where there is no clear set of laws, rules and regulations available to the public and constituting the basis of the training and instruction that police officers receive, police officers are more likely to rely upon their own judgment. Such a situation invites violations and abuses of power.¹²²

97. In this sense, and according to the principle of legality, member states have an obligation to enact laws and comply with international law on the subject for strict regulation of police procedures. Such regulation is particularly important in cases where the police are called upon to act quickly, before the public prosecutor's office or the competent court can examine all the facts. State agents must know and follow these rules to the letter. The State, for its part, must use every means within its power to ensure that these rules are brought to the public's attention. The Inter-American Court cited the United Nations Human Rights Committee's analysis of Article 2 of the International Covenant on Civil and Political Rights, where it held that

(...) Article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights (...) In this connection, it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant.¹²³

98. Likewise, the regulations governing police procedure must include codes of ethics or principles of police conduct. Accordingly, the law must spell out the internal disciplinary measures through which administrative due process is followed. The law must specify the conduct that would warrant a disciplinary reprimand, while also identifying the bodies that will prosecute the case, the procedures that must be followed to investigate each specific case, the penalties to be imposed, as well as the resources that the officer involved can use to challenge the decision. Naturally, this is notwithstanding any criminal liability that the police officer may have incurred, which would fall within the jurisdiction of the regular courts. A police disciplinary system that functions properly (with

¹²¹ I/A Court H.R., Advisory Opinion OC 6/86 of 9 May 1986, Series A No. 6.

¹²² Barcelona Llop, Javier *Policía y Constitución*, Tecnos S.A., Madrid, 1997. "In a democratic State, where it is assumed "that the legal system is based on the premise that rights and liberties are paramount, it is clear that law enforcement should, in the final analysis, see itself as protecting a normative system in which the essential point of reference are rights and freedoms (...) Police are not only bound to protect those rights and freedoms, but must also assume that everything they do is to be imbued with respect for those rights and freedoms. In other words, the system of rights and freedoms is the norm to which all police conduct must necessarily adhere."

¹²³ I/A Court H.R., *Judicial Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September, 2003, Series A No. 18, paragraph 79, citing the Human Rights Committee, General Comment 3, Article 2 Implementation at the national level (Thirteenth session, 1981), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994), paragraphs 1 and 2.

internal investigative agencies charged with prosecuting and, where appropriate, punishing conduct already classified as misdemeanors or more serious offenses) is an essential element in a modern, professional and democratic police force. A disciplinary system that affords all the constitutional guarantees and the protection of a speedy hearing is a basic incentive to those police officers who perform their functions dutifully, responsibly and lawfully. The quality of the police disciplinary system will be a primary factor in eradicating impunity and increasing public confidence in the State as a repository of public force, since the public will see that the conduct of the police is transparent, regulated and not arbitrary.

99. In the past, the Commission has addressed these issues, expressing its concern over the improper practices employed by some police forces, and over the State's "lack of proper attention to the matter (...), since an honest police force that is professional in its approach, well trained and efficient is essential for gaining the confidence of citizens." The Commission emphasized the point that as long as skepticism makes people reluctant to lodge complaints about criminal acts because they consider the police to be ill-equipped as an organization to conduct the necessary investigations, serious cases of taking justice into private hands will increase and, with them, impunity." In order to combat this problem, the Commission has said that a true police career service must be created, including rigorous training, featuring instruction in police procedure and human rights, strict selection criteria and a promotion system. The necessary material resources to enable the police to perform their duties must be supplied; they should be paid a decent wage that is commensurate with the job they perform and that attracts suitable recruits; lastly, excesses should be punished to purge the force of corrupt and criminal elements.¹²⁴

5. The intervention of the armed forces in the work of citizen security

100. One of the Commission's central concerns with respect to the actions that the member states have taken as part of their policy on citizen security is the following: the involvement of the armed forces in professional tasks that, given their nature, fall strictly within the purview of the police force. The Commission has repeatedly observed that the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front.¹²⁵

101. The Commission's concern over this situation, which occurs in various countries of the region, also is linked to the functioning of the democratic system of government, since

in a democratic system it is essential to make a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces, since they are two substantively different institutions, insofar as the purposes for which they were created and their training and preparation are concerned. The history of the Hemisphere shows that, broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances.

¹²⁴ IACHR, *Report on the Situation of Human Rights in Mexico*, paragraph 392.

¹²⁵ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, [available in Spanish only], paragraph 113.

Therefore, practice teaches us that it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.¹²⁶

102. A public policy on citizen security that becomes an efficient tool enabling member states to properly perform their obligations of respecting and ensuring the human rights of all persons subject to their jurisdiction, must have functioning institutions and a professional structure suited to those ends. The distinction between the functions of the armed forces, which are limited to defending national sovereignty, and the functions of the police, which has exclusive responsibility in the matter of citizen security, is an essential premise that cannot be overlooked when devising and implementing public policy on citizen security. The Court has held that “(...) the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.”¹²⁷

103. Within the region, it is sometimes suggested –or even carried out directly- that military troops take over internal security based on the argument that violence or criminal acts are on the rise. The Commission has also addressed this point, stating that arguments of this type “confuse the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the State.”¹²⁸

104. One particularly serious issue is that in some countries of the region, the armed forces’ participation in matters of internal security is obvious from the fact that they are deployed nationwide as part of a strategy whose main objective is to increase troop visibility by means of preventive or deterrent patrols; more troubling still is the fact that the armed forces also have a hand in criminal investigations and intelligence gathering. The Commission has observed that in some cases, the armed forces “continue participating in the investigation of crimes – in particular in cases related to drug-trafficking and organized crime – immigration control, and civilian intelligence tasks.”¹²⁹ If a democratic system of government is to function properly, these kinds of activities should be the purview of the civilian police force, subject to the necessary scrutiny by the legislature and, if need be, the judicial branch.

105. In the final analysis, issues that have to do with citizen security are the exclusive purview of the civilian police force, which is to be organized and trained in the manner described in this report. The Inter-American Commission concurs with the following: “The State must be ready and willing to deal with conflicts through peaceful means, as this is an axiom of citizen security which holds that differences arise between citizens who are to be protected, not between enemies one has to fight.”¹³⁰

¹²⁶ IACHR, *Report on the Situation of Human Rights in Venezuela*, paragraph 272.

¹²⁷ I/A Court H.R., *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela Case*. Judgment of July 5, 2006. Series C No. 150, paragraph 78.

¹²⁸ IACHR, *Report on the Situation of Human Rights in Mexico*, paragraph 403.

¹²⁹ IACHR, Press Release 8/03, March 29, 2003

¹³⁰ Ramírez Ocampo, Augusto, *Seguridad ciudadana y derechos humanos*, Andean Commission of Jurists, Lima, 1999. On the same issue, High Commissioner Louise Arbour issued the following statement at the end of her mission to Mexico on 8 February 2008: “during my visit, I have seen and heard that the situation of human rights at the national level raises persistent concerns in a number of areas. Foremost amongst the issues brought to my attention has been the question of the use of the military to engage in law enforcement activities. I emphasize that it is the primary obligation of the State to protect and defend life and physical security. In a

V. RIGHTS AT STAKE IN PUBLIC POLICY ON CITIZEN SECURITY

A. Right to life

106. The right to life is protected under the American Declaration and the American Convention:

American Declaration - Article I. Every human being has the right to life, liberty and the security of his person.

American Convention - Article 4. (1) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. (2) In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply. (3) The death penalty shall not be reestablished in states that have abolished it. (4) In no case shall capital punishment be inflicted for political offenses or related common crimes. (5) Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women. (6) Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

This right is also recognized in other international instruments such as: the Universal Declaration of Human Rights, (Article 3);¹³¹ the International Covenant on Civil and Political Rights (Article 6(1));¹³² the Convention on the Rights of the Child (Article 6(1));¹³³ and the Convention of Belém do Pará, Articles 3 and 4.¹³⁴

...continuation

situation of serious challenges to the State's authority from heavily armed organized criminals and severe deficiencies in law enforcement agencies, including widespread corruption, I acknowledge the dilemma faced by the authorities in discharging their responsibility to protect. However, recourse to the military remains problematic, as it is fundamentally unsuited – in training, philosophy, equipment and outlook - to perform civilian law enforcement functions. The focus must be on devoting urgently the necessary resources for reinforcing civilian agencies that work with integrity and professionalism. In the meantime, civilian courts should have jurisdiction over the acts of military personnel performing law enforcement functions, and effective remedies must be available for human rights violations perpetrated by military personnel." Available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/A2804F56E452D130C12573EC0057685B?opendocument>.

¹³¹ "Everyone has the right to life, liberty and security of person".

¹³² "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

¹³³ "States Parties recognize that every child has the inherent right to life".

¹³⁴ Article 3. "Every woman has the right to be free from violence in both the public and private spheres." Article 4. "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: a. The right to have her life respected..."

107. In conducting public policy on citizen security, member states can fail to comply with their obligations vis-à-vis protection of the right to life basically in two types of situations: (1) when the State fails to adopt effective measures of protection against the actions of private parties who threaten or violate the right to life of persons subject to its jurisdiction; and (2) when its security forces use lethal force that is beyond internationally recognized boundaries. The Commission defined the scope of these obligations when it reiterated that

(...) Article 27 of the American Convention provides that the right to life is a non-derogable right. Accordingly, states may not, even in time of war, public danger, or other emergency that threatens its independence or security, take measures suspending the protection of the right to life.¹³⁵

108. It is the obligation of the States to reasonably prevent, investigate, and punish actions that implicate violations of the right to life, including those committed by State agents or individuals. The Commission specifically mentioned the high level of impunity with regard to numerous extrajudicial executions committed by State agents in the context of the phenomenon known as hired killings for the supposed “protection of citizen security.

109. The surge in crime in the region –especially in the number of violent crimes- is one of the principal threats to the right to life. As mentioned earlier in this report, the highest rate of victimization is among adolescents and young people in the middle- to low-income sectors, and women. Nevertheless, crime and the various forms of interpersonal and social violence imperil everyone’s right to life, irrespective of the age bracket or social sector. Given its positive obligations to guarantee and protect human rights and as part of its public policy on citizen security, the State must design and put into practice effective prevention plans and programs whose objective is to stop the spread of violence and crime while making available all the resources needed to pursue the perpetrators of crime and hand them over to the judicial system, especially those suspected of violence against persons.

110. The Commission is still troubled by the fact that in the specific case of girls and women victims of violence and crime, the member states are having difficulty in mustering the due diligence to act in time to prevent events of this kind or to pursue the perpetrators. Because women and girls are more vulnerable to certain types of common and organized crime, it is incumbent upon States to take specific measures within their legal system and equip the institutions in the citizen security system in such a way that they conform to the general framework of international standards for the protection of human rights, especially the provisions of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, the United Nations Convention on the Rights of the Child and the United Nations Convention on the Elimination of All Forms of Discrimination against Women. In several countries of the region, femicide (that is, gender-based killings of women) has been growing in recent years in an alarming form, and it has not been accompanied by significant progress in the investigations of the cases and the prosecution of the persons responsible for this type of crime. In the same sense, the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, has emphasized that:

[u]nder the due diligence obligation, States have a duty to take positive action to prevent and protect women from violence, punish perpetrators of violent acts and compensate victims of violence. However, the application of due diligence standard, to date, has tended to be State-centric and limited to responding to

¹³⁵ IACHR, *Report on Terrorism and Human Rights*, paragraph 84.

violence when it occurs, largely neglecting the obligation to prevent and compensate and the responsibility of non-State actors.¹³⁶

111. The Commission recently observed that indigenous women and Afro-descendent women are especially vulnerable to violence. It has indicated that

certain groups of women have special needs when they are victims of violence seeking judicial protection (...) (...) Violence, discrimination and access to justice are particularly problematic for indigenous and Afro-descendent women. In their case, racism figures prominently as one of the underlying causes of the contempt for their rights. The obstacles these women encounter in trying to avail themselves of adequate and effective remedies that will redress the violations they have suffered may be particularly critical, as these women are victims of multiple forms of discrimination: gender-based discrimination, discrimination based on ethnic origin or race, and discrimination based on socio-economic status.¹³⁷

Therefore, as part of their policies on citizen security, member states have an obligation to adopt special measures of protection to address these situations, so that the rights of indigenous and Afro-descendent women are properly protected and guaranteed.

112. States have the obligation to identify, prosecute and punish those responsible for violating the right to life due to the close link between the obligation to prevent, investigate and punish and the obligation to make reparations for human rights violations. Accordingly, the member states should earmark the necessary budgetary resources to equip themselves with the human, technical and infrastructural resources necessary to have police and prosecutors who specialize in investigating crime. The shortages in this area have always been one of the causes of impunity and of the mistrust in the system of the administration of justice in the Hemisphere.

113. The Commission has repeatedly stated its position on the use of force and at times lethal force by agents of the State and has expressly cited the jurisprudence of the Inter-American Court and internationally accepted standards.¹³⁸ The Commission has categorically asserted that the State has the right and the obligation to provide protection when the security of persons subject to its jurisdiction is threatened by situations of violence. In concrete situations, this may include the use of lethal force. The Commission has stated that in situations where a state's population is threatened by violence, the state has the right and obligation to protect the population against such threats and in so doing may use lethal force in certain situations.

¹³⁶ United Nations, Economic and Social Council, 62nd Period of Session, E/CN.4/2006/61, 20 January 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>.

¹³⁷ IACHR, Press Release 11/07 March 6, 2007, paragraph 14.

¹³⁸ "The Police in every society is entrusted with a variety of powers for the purposes of enforcing the law and maintaining order. Inevitably, the exercise by a police official of any of the powers which are vested in him or her has an immediate and direct effect on the rights and freedoms of fellow citizens (...) Along with the authority of police to use force under certain conditions and restraints comes a great responsibility to ensure that the authority is exercised lawfully and effectively. The task of police in society is a difficult and delicate one, and it is recognized that the use of force by police under clearly defined and controlled circumstances is entirely legitimate." Office of the United Nations High Commissioner for Human Rights/ Centre for Human Rights Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police, Professional Training Series No. 5, New York and Geneva, 1997, paragraphs 439 and 440.

This includes, for example, the use of lethal force by law enforcement officials where strictly unavoidable to protect themselves or other persons from imminent threat of death or serious injury, or to otherwise maintain law and order where strictly necessary and proportionate. The Court has explained that, in such circumstances, states have the right to use force, ‘even if this implies depriving people of their lives.’¹³⁹

114. The use of lethal force by agents of the State is always the last resort to protect the threatened rights against criminal or violent acts. Interventions of this type must be strictly governed by the principles that ensure the lawfulness of the conduct of a police force. The Commission has observed that “according to the international standards developed with respect to the use of force by law enforcement to perform their function, the force used must be necessary and proportionate to the needs of the situation and to the end being sought.”¹⁴⁰ For the Commission, adjusting the procedures used by state agents to conform to international standards means, among other things, the use of force must be necessary and proportionate to the situation, i.e. it must be exercised with moderation and in proportion to the legitimate objective pursued. At the same time, personal injuries and loss of human life must be kept to a minimum. The means that can be used to suppress acts of violence or crime in order to protect the rights of the public vis-à-vis citizen security

are not unlimited, however. To the contrary, as specified by the Court, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. (...) Indiscriminate uses of force may as such constitute violations of Article 4 of the Convention and Article I of the Declaration.¹⁴¹

115. It is imperative that in their system of domestic laws, the member states regulate, by law, the procedures for the use of lethal force by police. The Commission observes that member states have a specific obligation to provide permanent training and instruction to the members of their police forces so that when they use lethal force in their operations, they do so in strict accordance with internationally accepted standards. States have an obligation to provide their police with the means, weaponry and equipment that will enable them to use nonlethal force in the procedures they follow to lawfully deter and suppress violence and crime. Within the region, there have been multiple cases in which the right to life was violated by members of the state security forces. These deaths could have been avoided had the members of the state security forces been equipped with nonlethal means of deterrence and adequate protective equipment, rather than relying strictly on firearms to perform their assigned function.

116. Accordingly, the member states must enact the regulations necessary to dictate the principle of necessity in the use of force, which holds that no matter what the situation, the defensive and offensive security measures used should be those strictly necessary to carry out the lawful orders of a competent authority in the event of acts of violence or crime that imperil the right to life or the right to personal security. By the same token, the domestic laws should provide that the use of force, including lethal force, shall be informed by the principles of reasonableness, moderation

¹³⁹ IACHR, *Report on Terrorism and Human Rights*, paragraph 87.

¹⁴⁰ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, [available in Spanish only], paragraph 108.

¹⁴¹ IACHR, *Report on Terrorism and Human Rights*, paragraphs 89 and 90.

and graduality, always taking into account: (1) the rights that are to be protected; (2) the legitimate end to be achieved, and (3) the risk that the police must face.¹⁴²

117. State agents must receive the training and instruction to enable them to resort, first and foremost, to nonviolent means to deal with situations that jeopardize the observance of the rights directly at stake in citizen security, before resorting to physical force, coercive tactics or firearms. The use of force, including lethal force, will only be lawful when nonviolent means are manifestly incapable of protecting the threatened rights. The ongoing training and instruction that new recruits and officers in active service receive are essential to accomplish this objective. Members of the security forces must keep intact, throughout their period of service, the ability to discern the seriousness of the threat in order to weigh the alternative ways of responding to it, including the type or degree of force that can be used. This is a professional right of the members of the state security forces; therefore, the member states have an obligation to provide their agents with ongoing training and instruction.

118. Should the use of lethal force be strictly necessary, the rules of conduct should require that the agents of the State first identify themselves as such, and then give the persons involved a clear warning of their intention to use force, so as to give them time to cease and desist, except in those cases where the life or personal safety of third persons or the agents themselves is in imminent danger. The use of firearms is an extreme measure; they can only be used in those instances where the police, using nonlethal means, are still unable to restrain or detain those who are threatening the life or personal safety of third persons or police officers. The Commission has reiterated that

[t]he legitimate use of public force entails, among other factors, that it is both necessary and proportional to the situation; that is to say that it must be exercised with moderation and in proportion to the legitimate objective being pursued while simultaneously trying to reduce to a minimum personal injury and the loss of human life. The degree of force exercised by state agents, to be considered within international parameters, must not exceed what is 'absolutely necessary'. The state must not use force disproportionately and immoderately against individuals who, because they are under its control, do not represent a threat; in such cases, the use of force is disproportional.¹⁴³

119. Likewise, it must be pointed out that in any case where recourse to firearms is necessary, State security agents, in application of the principles of proportionality and moderation, will follow a code of conduct dictating that the injury and harm caused to the aggressor shall be the minimum possible. A police force shall ensure that immediate attention and medical treatment are given to persons who are wounded or otherwise affected, and see to it that their next of kin or loved ones are notified of what happened as soon as possible. The standards of conduct must also

¹⁴² United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, 1990. Provision 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that they "shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

¹⁴³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, paragraph 64.

stipulate that any member of the force that uses his firearm must inform his superiors immediately so that the necessary internal inquiry may be undertaken; the state agent responsible for the inquiry must immediately file a report with the public prosecutor's office or the competent judge, as the case may be, concerning the events that prompted the use of lethal force. The Court has also provided that once a State learns that its agents have used firearms with lethal consequences, the State must undertake, at its own initiative and without delay, a serious, impartial and effective investigation.¹⁴⁴

120. The officers in a police force must have a framework of laws and regulations that affords them the necessary assurances and guarantees should the dire situation of having to use lethal force in legitimate self-defense ever arise, since another person could lose his or her life in the event. The worst experiences in the region in this regard are a function of inadequately trained police personnel and/or a failure on the part of government officials to take steps to outfit police officers with the proper equipment and weapons. The other side of this coin is a pattern of impunity, i.e., that those members of the security forces who have used lethal force arbitrarily and disproportionately or in an obvious abuse of power, resulting in some cases in extrajudicial executions, were never made to answer for their behavior.¹⁴⁵ The Commission once again makes the point that the "obligation to investigate human rights violations in a complete, independent, and impartial manner is inherent in the duty to protect human rights, recognized in the American Convention."¹⁴⁶ The Commission has also previously said that member states need to investigate cases in which violations of the right to life may have occurred as a consequence of the use of force by State security agents. It also observes that, as the Inter-American Court has held that force should only be used by the State security forces as an exception, and be planned and limited proportionately by the authorities. The Commission has also asserted that in the police reforms underway in a number of countries of the region, "measures to prevent cases of abuse of authority that result in the deprivation of the right to life or attacks on the physical integrity of persons should be addressed as core issues."¹⁴⁷

B. Right to the security of one's person

121. The right to the security of one's person is protected under Articles I, XXV and XXVI of the American Declaration, and Articles 5 and 7 of the American Convention.

¹⁴⁴ I/A Court H.R., *Baldeón García v. Peru Case*. Judgment of April 6, 2006. Series C No. 147, paragraph 143; *Case of the Mapiripán Massacre*. Judgment of 15 September 2005. Series C No. 134, paragraph 219.

¹⁴⁵ IACHR, Report No. 1/98, Case 11543, Rolando Hernández Hernández (Mexico), May 5, 1998, paragraph 74: "In previous cases, the IACHR has applied the criteria established in the "Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions" that were adopted by the United Nations Economic and Social Council's Resolution 1989/65, the purpose of which was to determine whether a State had complied with its obligation to conduct a thorough, prompt and impartial investigation of any summary executions of persons under its exclusive control. According to those principles, the purpose of the inquiry in cases of this nature should be to determine the cause, the manner and the moment of death; the person responsible; and the procedure or practice which might have led to the death. There should also be an adequate autopsy; physical and documentary evidence must be collected and analyzed, and statements taken from the witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide. See also Report No. 10/95, Case 10.580, Manuel Stalin Bolaños Quiñones (Ecuador), paragraphs 32 to 34; Report No. 55/97, Case 11.137, Juan Carlos Abella (Argentina), paragraphs 413 through 424.

¹⁴⁶ IACHR, Report No. 42/00, Case 11.103, Pedro Peredo Valderrama (Mexico), April 13, 2000, paragraph 59.

¹⁴⁷ IACHR, *Annual Report 2006*, Chapter IV, paragraph 177.

American Declaration - Article I. Every human being has the right to life, liberty and the security of his person. Article XXV. (...) Every individual who has been deprived of his liberty has the right (...) to humane treatment during the time he is in custody. Article XXVI. (...) Every accused person has the right (...) not to receive cruel, infamous or unusual punishment.

American Convention - Article 5(1) Every person has the right to have his physical, mental, and moral integrity respected. (2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. (3) Punishment shall not be extended to any person other than the criminal. (4) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. (5) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. (6) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social reintegration of the prisoners.

Article 7(1) - 1. Every person has the right to personal liberty and security.

This right is also recognized in Articles 3 and 5 of the Universal Declaration of Human Rights;¹⁴⁸ Articles 7 and 9 of the International Covenant on Civil and Political Rights;¹⁴⁹ Article 37 of the Convention on the Rights of the Child;¹⁵⁰ Articles 1 and 2 of the United Nations Convention on Torture;¹⁵¹ Article 7 of the Rome Statute;¹⁵² Articles 14 and 15 of the Convention on the Rights of

¹⁴⁸ Article 3: "Everyone has the right to life, liberty and security of person." Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. "

¹⁴⁹ Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Article 9: "1. Everyone has the right to liberty and security of person (...)"

¹⁵⁰ "a) States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. (...)"

¹⁵¹ Article 1: "For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (...)." Article 2: "1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2) No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3) An order from a superior officer or a public authority may not be invoked as a justification of torture. "

¹⁵² Article 7: "Crimes against humanity. 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

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Persons with Disabilities;¹⁵³ Articles 1 and 2 of the Inter-American Convention to Prevent and Punish Torture;¹⁵⁴ and Articles 3 and 4 of the Convention of Belém do Pará.¹⁵⁵

122. As previously noted in the case of the right to life, the observance of the right to the security or integrity of one's person can be analyzed from two perspectives in the context of the positive and negative obligations that the member states undertake to protect and ensure the human rights directly at stake in the concept of citizen security. The first has to do with the effects of acts of violence or crime committed by private parties; the second examines the actions of State agents who violate this right, especially in those cases that qualify as torture, cruel, inhuman or degrading treatment, or the illegitimate use of non-lethal force.

123. In this sense, the Inter-American Court held that Article 1(1) of the American Convention

(...) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee, the rights recognized in the Convention. Any impairment of those rights which can be

...continuation

(...) (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. 2. For the purpose of paragraph 1: (...) (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy (...)."

¹⁵³ Article 14: "Liberty and security of the person 1. States Parties shall ensure that persons with disabilities, on an equal basis with others: a. Enjoy the right to liberty and security of person; b. Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty. 2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation. Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment 1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. "

¹⁵⁴ Article 1: "The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention. Article 2: For the purposes of this Convention, torture shall be understood to be 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 punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be 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. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article. "

¹⁵⁵ Article 3: "Every woman has the right to be free from violence in both the public and private spheres. Article 4: 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: (...) b) The right to have her physical, mental and moral integrity respected; c) The right to personal liberty and security; d) The right not to be subjected to torture (...)."

attributed to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention, is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention. This conclusion is independent of whether the organ or official has contravened provisions of domestic law or overstepped the limits of his authority. Under international law, a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate domestic law.¹⁵⁶

124. As for the effects of acts of violence or crime committed by private persons in violation of the right to the security or integrity of one's person, States have an obligation to ensure this right to all persons subject to their jurisdiction, by implementing effective preventive measures and actions. Although such measures are universal, particular attention should be devoted to those who are most vulnerable, especially women, children and adolescents. Within the region, these groups are continually victimized by serious violations to the security and integrity of their person, both in cases of common and organized crime; the same is true on the domestic front, where violence seriously imperils the right to the security and integrity of their person. The Declaration on the Elimination of Violence against Women establishes the responsibility of the States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, the States must develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.¹⁵⁷ The Commission has indicated that

[t]he regional and international human rights protection systems have identified the right of women to live free from violence and discrimination as a priority challenge. The international instruments adopted to protect women's right to live free from violence reflect a consensus among States and their acknowledgement of the discriminatory treatment that women have traditionally received in their respective societies, which has exposed them to various forms of violence: sexual, psychological and physical violence, and abusive treatment of their bodies.¹⁵⁸

125. Similarly, the State has an obligation to create effective mechanisms for preventing and punishing acts of violence whose victims are children and adolescents, both at home,

¹⁵⁶ I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September, 2003, Series A No. 18, paragraph 76.

¹⁵⁷ United Nations, Resolution A/RES/48/104, of the General Assembly, 20 December 1993.

¹⁵⁸ IACHR, Press Release 11/07 "Justice Fails in Defending Women Victims of Violence: There is a Pattern of Impunity and Discrimination", Washington D.C., 6 March 2007, paragraph 3. See also on this point the Special Rapporteur on Torture, on the protection of women (United Nations, General Assembly, Human Rights Council, A/HRC/7/3, 15 January 2008), in particular his recommendation to comprehend torture and mistreatment from a generic perspective and that the States widen their preventive efforts to include to the full torture and mistreatment of women even when it occurs in the "private" sphere.

in the school and in other spheres of social life where threats of this kind can occur. The Commission has mentioned this obligation of the member states in the past, and recommended the adoption of “strict monitoring of the situation of children and (...) any necessary measures to guarantee the rights of minors, especially those who are victims of domestic violence.”¹⁵⁹ In Advisory Opinion OC-17/02 on the *Juridical Condition and Human Rights of the Child*, the Court elaborated upon the scope of the member states’ positive obligations in this area by pointing out that they are “under the obligation (...) to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities.”¹⁶⁰ The Expert for the United Nations Study on Violence against Children reported recently that

Community violence affects marginalized groups of children. Violence by police against street children — from verbal harassment and beatings to rape and other sexual violence, torture and ‘disappearance’ — is a common theme in the study reviews and consultations. Children from all regions report cruel and gratuitous violence by police for petty offences.¹⁶¹

126. The measures to deal with common or organized crime or violent situations should always be informed by the obligations undertaken by the State, especially with respect to actions of its agents that may constitute torture or cruel, inhuman or degrading treatment. Time and again the Commission has observed that under Article 6 of the Inter-American Convention to Prevent and Punish Torture,

(...) the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8 provides that the “States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case (...)”

127. When there is well-founded cause or reason to believe that an act of torture has been committed within their jurisdiction, the member states shall guarantee that the appropriate authorities proceed *–ex officio* and immediately- to conduct an investigation and to begin, where necessary, the respective criminal case.¹⁶² The case law of the Inter-American Court on the subject of torture has held that

¹⁵⁹ IACHR, *The Rights of Children in the Inter-American Human Rights System*, OEA/Ser. L/V/II.133. Doc. 34, 29 October 2008, paragraph 68.

¹⁶⁰ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraph 87.

¹⁶¹ United Nations, General Assembly, “Report of the Independent Expert for the United Nations Study on Violence against Children”, Paulo Sérgio Pinheiro, A/61/299, 61st Period of Sessions, item 62(a) on the provisional agenda, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 76.

¹⁶² IACHR, Report No. 53/01, Case 11.565, Ana Beatriz y Celia González Perez (Mexico), April 4, 2001, paragraph 89.

[t]orture and cruel, inhuman and degrading treatment are strictly prohibited by international human rights law. Nowadays, the absolute prohibition of torture, both physical and psychological, belongs to the domain of international *jus cogens*. The Court has understood that an act that constitutes torture exists when the ill-treatment is: (a) intentional; (b) causes severe physical or mental suffering, and (c) is committed with a purpose or objective, including the investigation of crimes.¹⁶³

128. Under Article 10 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, one of the positive obligations that States must perform to prevent cases of torture or cruel, inhuman or degrading treatment by members of their police force is to ensure that they receive education and specialized training in criminal investigation techniques, especially evidence gathering and techniques of questioning detainees. Likewise, internal oversight and monitoring systems are essential to prevent torture and cruel, inhuman or degrading treatment or punishment and, where necessary, punish police officers who engage in such conduct. The Commission recalls that

[t]he ways in which evidence is gathered by police and presented to the prosecuting authorities and the courts are crucial to protection of the right to a fair trial. This means that effective internal monitoring and supervisory systems must be in place to ensure that the conduct of police investigators in this respect is entirely proper.¹⁶⁴

129. While this is a general guideline as to the measures that States must take to comply with their duty to ensure and protect human rights in their policy on citizen security, given the possibility that State agents might resort to conduct that would qualify as torture or cruel, inhuman or degrading treatment, the domestic legal systems of the countries of the Hemisphere should include very clear regulations regarding the concept of due obedience. The functions that the member states' police forces perform must be properly delimited. It is especially important that the rules regulating police procedure state clearly that no law enforcement officer can inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, and cannot invoke the defense of superior orders or exceptional circumstances such as a state of war, an attack on the country's national security, political unrest or any other public emergency as justification for unlawful conduct. The rules and philosophy of the police force and the training its

¹⁶³ I/A Court H.R., *Bayarri v. Argentina Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 30, 2008. Series C No. 187, paragraph 81.

¹⁶⁴ Office of the United Nations High Commissioner for Human Rights/ Centre for Human Rights Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police, Professional Training Series No. 5, New York and Geneva, 1997, paragraph 912. See also the criteria included in paragraphs 327 to 330: "Effective investigation, if it is to be based on respect for human dignity and on the principle of legality, depends largely on: - availability of scientific and technical resources, and intelligent use of those resources.- intensive application of basic policing skills;- the knowledge and awareness of investigators;-compliance with legal rules governing criminal investigations, and with human rights standards.(...) Scientific and technical resources include, for example: -the means to examine the scene of a crime; items and matter discovered at that scene; other material which may have value as evidence- the means to record, and cross-reference, information collated during an investigation. (...)Basic policing skills include, for example:-interviewing of witnesses and suspects (these being distinct skills requiring different approaches); -searching various locations such as open spaces, buildings and vehicles, and personal searches of individuals (these again being distinct skills requiring different approaches)(...) Knowledge and awareness of investigators include, for example:-resources and means available to him or her;-basic policing skills possessed by an investigator; -legal powers and ethical standards."

members receive must emphasize the obligation that every member of the police force has to immediately report any case of torture or cruel, inhuman or degrading treatment of which he or she has knowledge and any order he or she may have received from superiors to subject a person to treatment of this kind. All this is in accordance with that established in applicable international instruments, in particular the United Nations Convention against Torture, and the Inter-American Convention for the Prevention and Punishment of Torture.

130. As for the special measures of protection that States must adopt, the Commission observes that the international instruments on children and adolescents contain specific provisions to prevent acts of torture or cruel, inhuman or degrading treatment. Article VII of the American Declaration¹⁶⁵ and Article 19 of the American Convention¹⁶⁶ establish the right that minors under the age of eighteen have to protection. Article 37 of the United Nations Convention on the Rights of the Child is even more specific with respect to this obligation.¹⁶⁷ Because minors are more vulnerable, the Commission places particular emphasis on the member states' obligation to investigate, *ex officio*, any situation in which there is evidence of acts of torture. The Court has ruled the following in this regard:

Even when the application of torture or cruel, inhuman or degrading treatment has not been denounced before the competent authorities, whenever there are indications that it has occurred, the State must initiate, *ex officio* and immediately, an impartial, independent and meticulous investigation that allows the nature and origin of the injuries observed to be determined, those responsible to be identified, and their prosecution to commence. It is essential that the State act diligently to avoid the practice of torture, taking into account that the victim usually abstains from denouncing the facts because he is afraid. The judicial authorities have the duty to guarantee the rights of the person detained, which entails obtaining and ensuring the authenticity of any evidence that can prove acts of torture. The State must guarantee the independence of the medical and health care personnel responsible for examining and providing assistance to those who are detained so that they can freely carry out the necessary medical evaluations, respecting the norms established for the practice of their profession.¹⁶⁸

This general obligation is particularly important in those cases in which the children or adolescents who are the victims are Afro-descendants, indigenous, or migrants.

¹⁶⁵ "All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid."

¹⁶⁶ "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

¹⁶⁷ (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

¹⁶⁸ I/A Court H.R., *Bayarri v. Argentina Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 30, 2008. Series C No. 187, paragraph 92.

131. Regarding the situation of women victims of torture, Article VII of the American Declaration¹⁶⁹ recognizes the particular vulnerability of women by upholding pregnant women's right to special protection, assistance and care. Article 1 of the Convention of Belém do Pará defines and prohibits violence against women.¹⁷⁰ Article 4 of that same convention reaffirms every woman's right to have her physical, mental and moral integrity respected, her right to personal liberty and security and her right not to be subjected to torture.¹⁷¹ In terms of the positive obligations of the member states to be fulfilled through their public policies on citizen security, the Convention of Belém do Pará includes the obligation to prevent, investigate and punish violence against women and the obligation to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women. As previously noted in this report, Article 9 of the Convention refers to women who are especially vulnerable "(...) by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."¹⁷²

132. Member States must adopt the precautions necessary to ensure that the police force's internal investigation systems are functioning properly to prevent and, where necessary, investigate and punish cases of torture. The police internal affairs offices are basic monitoring mechanisms essential to transparent and democratic performance of State institutions, and should be matched by external monitoring by the legislature, the courts or quasi-courts. It is vital that these internal mechanisms to monitor police procedures are run by special units that are not answerable to the police hierarchy. The State must earmark the human and material resources to enable these units to be effective and efficient. As the Commission has previously stated,

when an individual is in the custody of state agents, the State is responsible for the treatment accorded (...) Accordingly, it is up to the State, through its agents, to ensure that this type of situations be subjected to investigation and trial in order to find those responsible and thus keep these acts from going unpunished.¹⁷³

¹⁶⁹ "All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid. "

¹⁷⁰ "For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere. "

¹⁷¹ Article 3. "Every woman has the right to be free from violence in both the public and private spheres. " Article 4. "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: (...) b) The right to have her physical, mental and moral integrity respected; c) The right to personal liberty and security; d) The right not to be subjected to torture (...).

¹⁷² "With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.

¹⁷³ IACHR, *Annual Report 2005*, Chapter IV, Report on Ecuador, paragraph 183.

These internal and external monitoring systems must follow the international standards for investigating cases of torture. The Commission recently had occasion to reference the principles formulated by the United Nations Commission on Human Rights regarding the way in which complaints of torture should be investigated. The following point was made: "Particularly relevant to this analysis is the principle stipulating that 'States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated.... the investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial'."¹⁷⁴

133. As for the use of non-lethal force by State agents, States must regulate the procedures followed by their police so that –as observed earlier when discussing the use of lethal force- the interventions are those that are strictly necessary and the means used are lawful and informed by the principles of moderation, proportionality and graduality. These principles must be observed in situations where the objective is to restrain and/or detain a person who is resisting the police authority's lawful action, and in those police operations involving demonstrators or large groups of people that can result in violence or affect the rights of third parties. The Commission has recently observed that

(...) the actions of the security forces should protect, rather than discourage, the right to assembly and therefore, the rationale for dispersing the demonstration must be the duty to protect people. The law enforcement officer deployed in such contexts must contemplate the safest and quickest methods of dispersal that cause the least harm to the demonstrators.¹⁷⁵

134. As is true of other rights and as previously noted in this report, violations of the right to integrity or security of persons are often attributable to the fact that the police are not properly equipped for the lawful use of legitimate, non-lethal measures and are not properly trained. Among the positive obligations that the member states have undertaken to protect and ensure the rights at stake in the policy on citizen security are the duties to adequately equip and train the members of their police force so that they can perform the functions expected and required of an effective and efficient professional service. Member States must comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, especially Principle VIII which stipulate that

all law enforcement officials are (to have) appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review. (...) In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programs and operational procedures in the light of particular incidents. (...) Governments and law enforcement agencies shall

¹⁷⁴ IACHR, Report No. 53/01, Case 11.565, Ana Beatriz y Celia González Perez (Mexico), April 4, 2001, paragraph 78.

¹⁷⁵ IACHR, *Access to Justice and Social Inclusion: the road towards strengthening democracy in Bolivia*, paragraph 43; IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, pp. 56 and 63.

make stress counseling available to law enforcement officials who are involved in situations where force and firearms are used.¹⁷⁶

C. Right to personal liberty and security

135. This right is recognized and protected under Article XXV of the American Declaration and Article 7 of the American Convention:

American Declaration - Article XXV No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. No person may be deprived of liberty for non-fulfillment of obligations of a purely civil character. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

American Convention- Article 7(1) Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support.

The right to liberty and security of person is also recognized in Article 9 of the Universal Declaration of Human Rights;¹⁷⁷ Article 9 of the International Covenant on Civil and Political Rights;¹⁷⁸ Article 37 of the Convention on the Rights of the Child;¹⁷⁹ and Article 4 of the Convention of Belém do Pará.¹⁸⁰

¹⁷⁶ United Nations, Eighth United Nations Conference on Prevention of Crime and Treatment of Offenders, held in Havana (Cuba), August 27 to September 7, 1990.

¹⁷⁷ "No one shall be subjected to arbitrary arrest, detention or exile."

¹⁷⁸ 1. "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for

136. Kidnapping and human trafficking –among other activities of organized crime-- affect the right to liberty and security of persons in the Americas. As explained above, States are not only responsible for the violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority. States can also be responsible for the conduct of private persons acting with the aid of, or due to, the acquiescence or omission of State agents; for the failures in the investigation of the violation; or the lack of due diligence to prevent it. The member states have an obligation to enforce legislation and operational measures –by way of preventive actions and necessary and legitimate police work- so that their policy on citizen security is a dexterous and apt tool to ensure and protect the right to liberty and security of person against these kinds of criminal acts committed by private parties.

137. The crime of kidnapping can mean deprivation of freedom for a protracted period, as in the case of kidnapping for ransom; or it may be for a very brief period, as happens in some forms of kidnapping common in the region, in which persons are abducted unlawfully for the purpose of getting money from them quickly (known in some countries of the Hemisphere as “express kidnapping”). The Commission recognizes the enormous toll that this type of crime takes on its victims who –as mentioned previously in this report- are the immediate victims, along with their next of kin and loved ones.¹⁸¹ The member states should take the necessary measures to prevent criminal acts of this kind, which also put the victims’ rights to life and to the integrity of person in serious peril. The member states should have the human and technical resources at hand for a proper police investigation and intelligence gathering; when necessary and as a last resort, they should also have special police units that can perform interventions with the minimum risk to the kidnapped victim’s life and integrity of person. The Commission is troubled by the operations in the region that have failed because of bad planning or ill-trained or ill-equipped police, and that have resulted in loss of human life. These situations could have been averted had the proper police procedures been followed

...continuation

trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

¹⁷⁹ "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

¹⁸⁰ "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: (...) c. The right to personal liberty and security; (...)"

¹⁸¹ IACHR Press Release 18/06 of May 17, 2006; Press Release 39/06 of October 31 of 2006; and Press Release 36/07 of July 20, 2007.

138. Another problem that constitutes an egregious violation of the right to personal liberty and security is human trafficking. The main victims of this type of crime are from particularly vulnerable sectors of the population: women, children and adolescents, migrant workers and their families. Article 3(a) and (c) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime¹⁸² provides that: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, and the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons." Children are to enjoy special measures of protection from the State because of their vulnerability to possible violations of their human rights. The Commission shares the United Nations principles and findings on this subject, especially the fact that

[t]rafficking in human beings, including children, within countries and across international borders is a major international concern. The phenomenon is complex, arising from the interaction of poverty, labour migration, conflict, or political unrest resulting in population displacement. Trafficking can involve multiple forms of Violence (...) Most victims are trafficked into violent situations: prostitution, forced marriage, and domestic or agricultural work in conditions of slavery, servitude or debt bondage.¹⁸³

139. In the types of action that must be integrated to the public policy on citizen security, member states must include legislative and institutional measures and earmark adequate human and material resources to prevent cases of human trafficking and, where necessary, investigate and prosecute those responsible for the crime. Measures of this kind must be effective if they are to guarantee the right to personal liberty and security of the victims of this criminal practice. The Commission observes that any policy on citizen security should include the United Nations' Recommended Principles and Guidelines on Human Rights and Human Trafficking,¹⁸⁴ and specifically (1) the primacy of human rights; (2) trafficking prevention, addressing the root causes of this practice and factors conducive to it, while taking measures to eradicate State agents' involvement or complicity in any phase of trafficking; (3) protection of and assistance to victims, which means that trafficked persons are not to be detained, charged or prosecuted for illegal entry if the latter was a consequence of their plight as trafficked persons. Their prosecution for illegal entry would merely re-victimize them. As for the institutions responsible for citizen security system, member states must

¹⁸² United Nations, General Assembly, A/Res/55/25, Annex II, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, January 8, 2001.

¹⁸³ United Nations, General Assembly, "Report of the Independent Expert for the United Nations Study on Violence against Children", Paulo Sérgio Pinheiro, A/61/299, 61st Period of Sessions, item 62(a) on the provisional agenda, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 79.

¹⁸⁴ United Nations, "Recommended Principles and Guidelines on Human Rights and Human Trafficking", Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, 20 May 2002.

take the necessary measures to carry out Guideline No. 2 of these Principles and Guidelines, so that victims and traffickers can be quickly identified.¹⁸⁵

140. On the need for special measures of protection for migrant workers and their families to protect them in cases of trafficking, the Inter-American Court, referencing the United Nations General Assembly resolution on Protection of Migrants,¹⁸⁶ has observed that one must always bear in mind

(...) 'the situation of vulnerability in which migrants frequently find themselves, owing, *inter alia*, to their absence from their State of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles for the return to their States of origin of migrants who are non-documented or in an irregular situation. (...)' The General Assembly also expressed its concern 'at the manifestations of violence, racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world.' Based on these considerations, the General Assembly reiterated: the need for all States to protect fully the universally recognized human rights of migrants, especially women and children, regardless of their legal status, and to provide humane treatment, particularly with regard to assistance and protection [...].¹⁸⁷

The Commission observes that the right to personal liberty and security of migrants and their families is under constant threat in the Americas, among other reasons because of the difficulties that various States in the region continue to have in conducting, as part of their public policy on citizen security, effective measures to prevent human trafficking; prosecute the perpetrators of the crime, and provide proper treatment and assistance to the victims of this type of crime.

141. Another form of deprivation of liberty that, although unique in nature, involves clearly identifiable criminal conduct, are cases of slave or forced labor still found in some countries of

¹⁸⁵ This guideline provides that: States and, where applicable, intergovernmental and non-governmental organizations, should consider: 1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons. 2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above. 3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness. 4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required. 5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons. 6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody. 7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times. United Nations, "Recommended Principles and Guidelines on Human Rights and Human Trafficking", Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, 20 May 2002.

¹⁸⁶ United Nations, General Assembly, A/RES/54/166, February 24, 2000.

¹⁸⁷ I/A Court H.R., *Judicial Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of 17 September, 2003, Series A No. 18, paragraph 114.

the region. The Commission recently had occasion to address this deplorable criminal behavior, which it described as

(...) situations of slave-like debt bondage and forced labor, a practice that is absolutely prohibited by the American Convention on Human Rights and other international instruments (...).The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines as practices analogous to slavery ‘debt bondage’ as well as ‘serfdom’, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.¹⁸⁸

The Commission has also pointed out that one of the factors that enable these forms of deprivation of freedom is the fact that States have no specific comprehensive policies to address them. Specifically, the Commission has said that the State has “(...) the international obligation to eradicate bondage and forced labor in all of its territory and should immediately take all necessary measures to comply with this obligation. Similarly, the State should adopt the measures needed to confront and resolve the legal, institutional, political, and other obstacles (...)” that allow these practices to go on. The Commission has also called for the competent institutions in the citizen security system to adopt effective measures to “(...) investigate and punish those responsible for these crimes (...),” simultaneously putting into practice “(...) victim and witness protection systems.”¹⁸⁹ Additionally, it should be highlighted that Principle No. 10 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), establishes that “Effective measures shall be taken to ensure the security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information to the commission.” Within this framework, the police, members of the public prosecutor’s office and the court system need the professional training required to identify situations of this type, prevent them and, where necessary, bring the perpetrators of this violation of the right to personal liberty before the competent authorities.

142. Public policy on citizen security must include the norms and procedures adequate for the lawful operational needs of the police so that they can fulfill their mandate and enforce the State’s duty to ensure and protect the human rights at risk in the face of violence and crime. In many cases, the measures adopted for this purpose may involve temporary restrictions or limitations on the right to personal liberty, in order to preserve the general interest constituted by the rights of third parties in a democratic society. In such circumstances, the Commission reiterates to the member states that they should adopt all necessary safeguards pursuant to international standards for the protection of human rights in order to avoid restrictions or unlawful or abusive limitations on the exercise of the right to personal liberty.

143. As for the conduct of the agents of the State and the observance of the right to personal liberty and security, the Commission recalls that it recently defined “deprivation of liberty” as follows,

[a]ny form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or

¹⁸⁸ IACHR, Press Release No. 26/08, La Paz, June 13, 2008.

¹⁸⁹ IACHR, Press Release No. 26/08, La Paz, June 13, 2008.

any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses. This category of persons includes not only those deprived of their liberty because of crimes or infringements or non compliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental, or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.¹⁹⁰

144. Article 7 of the American Convention establishes that arrests arbitrarily made without reference to the domestic law of the State parties amounts to a violation of the international obligations assumed by the States. The Commission has emphasized that to establish an arrest's compatibility with paragraphs 2 and 3 of Article 7 of the American Convention there must in the first place be a determination of its legality in a formal and material sense, that is, whether it has a lawful base founded on the domestic law, and that the rule in question is not arbitrary. Finally there must be appropriate scrutiny that the application of the law in the specific case was not made arbitrarily.¹⁹¹

145. The guarantee of the lawfulness of an arrest established in Article 7 envisages substantive and other formal or procedural aspects. The substantive aspect requires that persons may only be deprived of their liberty in cases and circumstances laid down by the law. The formal or procedural aspect requires that in the arrest of persons fulfilling any of the circumstances established by the law, the rules during the process of detention are observed. Consequently it must be determined whether the national law setting out the reasons and procedures for arrest has been enacted in conformity with the rules and principles of the Convention in the light of a test of formality, legal definition, objectivity and rationality.¹⁹²

146. As far as the formality of the rule is concerned, Article 7(2) establishes that the grounds for an arrest must be laid down in the States' constitution or laws established in accordance with a fundamental rule, in the sense that Article 30 of the American Convention attributes to the term 'laws'. Regarding specificity, the grounds and conditions of an arrest must be defined in law in a precise and predetermined manner. Article 7(2) imposes the obligation to establish beforehand the grounds and conditions that may lead to an arrest being made. On the other hand, the "unpredictability" of an arrest may raise the presumption of arbitrariness. In addition, the

¹⁹⁰ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, documented approved at the 131st regular session held March 3 to 14, 2008. In that definition, the Commission observes that: "Given the breadth of the aforementioned concept, the following principles and best practices shall be invoked, according to each case, depending on whether the persons are deprived of liberty as a result of the perpetration of crimes or violations of the law, or for humanitarian and protective reasons." See also General Comment on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance of the United Nations Working Group on Enforced or Involuntary Disappearances, paragraph 22 onwards, E/CN.4/1997/34, available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/5d318c28de2c5ce4802566740033c50e?Opendocument>.

¹⁹¹ IACHR, Application before the Inter-American Court in the case of Walter Bulacio, 24 January 2001, paragraph 65. Available (in Spanish only) at http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=77.

¹⁹² IACHR, Application before the Inter-American Court in the case of Walter Bulacio, 24 January 2001, paragraph 69. Available at http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=77.

procedures to which the arresting authority must be subject in order to justify the circumstances surrounding an arrest must be objectively defined by law. The justification of the circumstances of an arrest must not depend on the good faith, the honesty, the opinion or discretionary view of the authorities charged with carrying it into effect. At the same time the rule of restriction on personal liberty must be carried out with the requirements of reasonableness and proportionality seen in the light of Articles 30 and 32(2) of the American Convention. Even when the rule permits the arrest of persons as a measure designed to achieve ends compatible with the American Convention, the principle of proportionality requires that the greater the restriction on liberty becomes, so the duty of the State to justify such a restriction is raised.¹⁹³ Finally, it is possible to invoke a law compatible with the Convention in cases that are not really adequate to the circumstances for which an arrest may be considered legal. Therefore, verification on the arbitrariness of the application of such law to the particular case is required also. There may also be arbitrariness when the application of the law intentionally singles out for persecution a sector or group of the population defined by race, religion, national or social origin, or political views. Arbitrariness also exists in the case of a subversion of power, when a law is interpreted in an irrational manner in order to be used as a tool of repression or social discipline.¹⁹⁴

147. The Court has indicated that the detainee has “the right to be informed of the causes and reasons for his or her detention at the time it occurs, which ‘constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individual’s right to defense’.”¹⁹⁵ The detainee’s next of kin and loved ones also have the right to be notified of his or her detention. The Court has ruled that the “detainee also has the right to notify a third party that he or she is under State custody. This notification can be, for example, to a relative, an attorney and/or a consul, as the case may be.”¹⁹⁶ The Commission has remarked on how important notification of a consul is in the case of the persons who are most vulnerable in situations where citizen security is at stake, namely migrant workers and their families. At the same time, all deprivation of liberty undertaken by State agents must immediately be brought to the attention of the competent judge:

The first part of Article 7(5) of the Convention stipulates that any person detained must be brought promptly before a judge. The Court has determined that this is a measure designed to avoid arbitrary or unlawful detentions, taking into account that, under the rule of law, the judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary, and generally endeavoring to ensure that the accused is treated in a way that is consequent with the presumption of innocence. (...) The Court has reiterated that the judge must hear the detainee personally and assess all the explanations that the latter provides, so as to decide whether it is in order to release him or to maintain the deprivation of liberty.

¹⁹³ IACHR, Application before the Inter-American Court in the case of Walter Bulacio, 24 January 2001, paragraphs 66 to 71. Available at http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=77.

¹⁹⁴ IACHR, Application before the Inter-American Court in the case of Walter Bulacio, 24 January 2001, paragraph 72. Available at http://www.corteidh.or.cr/expediente_caso.cfm?id_caso=77.

¹⁹⁵ I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 128.

¹⁹⁶ I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 130.

Otherwise, it would be tantamount to stripping the judicial review established in Article 7(5) of the Convention of its effectiveness.¹⁹⁷

148. The frequency with which acts of violence occur and the increase in the rates of crime overall have meant that in a number of countries in the Americas, the institutions involved in public security have also seen an increase in the number of interventions involving children and adolescents. There has been a steady increase in the number of persons under the age of eighteen who have been detained by police and/or deprived of their liberty by order of the court. When examining specific situations, the Commission has consistently held "(...) the arrest of a person suspected of having committed a crime must be done in accordance with domestic and international law; i.e., by an order from the court and under court supervision, and for a specified period. In practice, however, these requirements are often ignored, even in cases involving minors (...)." ¹⁹⁸ The Commission also reiterated that the majority of arbitrary and/or illegal arrests are made by the police. It expressed its concern over the fact that some countries of the region do not have "(...) a centralized record of arrests and detentions and that would enable one to effectively track the detainees; there are cases of obstruction of justice by altering police reports," especially in the case of minors under the age of eighteen.¹⁹⁹

149. The member states must operate from the premise that solitary confinement is a last resort and should be for as brief a period as possible. The police can use measures of this kind when launching an investigation into a criminal act at the crime scene, and must immediately inform the competent judge of the situation. Apart from these exceptional cases, solitary confinement can only be ordered by the presiding judge. The Inter-American Court has held the following in this regard:

This Court has emphasized that solitary confinement of the detainee must be exceptional, as it causes him or her moral suffering and psychological disturbances, as it places the detainee in an especially vulnerable situation and increases the risk of aggression and arbitrary treatment in prisons, and because it endangers strict observance of due legal process.²⁰⁰

150. When the sector of the population involved is one that requires special measures of protection, the Commission recalls the international standards that must inform the deprivation of liberty in the case of children and adolescents. The Inter-American Court has held that "(...) [w]hen preventive detention is ordered for children, the rule must be applied with even greater rigor, since the norm should be measures that are alternatives to preventive imprisonment."²⁰¹ The Court has also ruled that detention of children "(...) must be exceptional and for the briefest time possible."²⁰² The Court has also examined the State's duty to ensure in the case of children or adolescents in its

¹⁹⁷ I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraphs 63 and 65.

¹⁹⁸ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, [available in Spanish only], paragraph 163.

¹⁹⁹ *Idem*.

²⁰⁰ I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 127.

²⁰¹ I/A Court H.R., *"Juvenile Reeducation Institute" v. Paraguay Case*. Judgment of September 2, 2004. Series C No. 112, paragraph 230.

²⁰² I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 135.

custody and deprived of their liberty as a result of police actions or by decision of the competent court authorities. The Court reiterates that the State must take “(...) all care required by the weakness, the lack of knowledge, and the defenselessness that minors naturally have under those circumstances.”²⁰³ The Court has held that in order to comply with its obligation to protect and ensure the life of a minor under the age of eighteen who is deprived of his or her liberty, the State must be attentive to certain specific aspects, especially the “(...) living conditions while deprived of his or her liberty, as the child’s detention or imprisonment does not deny the child his or her right to life or restrict that right.”²⁰⁴

151. Detained persons have the right to live in conditions of detention that are compatible with their personal dignity and the State must guarantee their right to life and to humane treatment. State authorities exercise total control over persons under their custody and therefore States are guarantors of the physical integrity of detainees.

152. The member states must take the measures necessary to ensure that children or adolescents deprived of their liberty, be separated from the adult population in custody, that they are housed in proper establishments and in the custody of specially trained personnel, and other measures dictated by the need to protect the rights of inmates under the age of eighteen. To give effect to this obligation, the Court has ruled that

(...) the State’s policy must include, *inter alia*, strategies, appropriate measures and the earmarking of the resources needed so that children awaiting or standing trial can be housed separately from those already convicted, and for the establishment of education programs and full medical and psychological services for all children deprived of their liberty.²⁰⁵

These requirements have also been singled out in the Report of the Independent Expert for the United Nations Study on Violence against Children, who held that

[i]n keeping with the provisions of the Convention on the Rights of the Child, national legislation in most countries requires separate facilities for children in conflict with the law in order to prevent abuse and exploitation by adults. Yet detention with adults is routine in many countries. Children in detention are also at heightened risk of self-harm or suicidal behavior, particularly in cases of prolonged or indefinite detention, isolation, or when detained in adult facilities.²⁰⁶

²⁰³ I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 126.

²⁰⁴ I/A Court H.R., *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, paragraph 160. In the same sense, Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography establishes that “States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular, allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law; and providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.”

²⁰⁵ I/A Court H.R., “*Juvenile Reeducation Institute*” v. *Paraguay Case*. Judgment of September 2, 2004. Series C No. 112, paragraph 371.

²⁰⁶ United Nations, General Assembly, “Report of the Independent Expert for the United Nations Study on Violence against Children”, Paulo Sérgio Pinheiro, A/61/299, 61st Period of Sessions, item 62(a) on the provisional agenda, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 63.

153. The Commission calls the States Parties attention to the fact that policies on citizen security should feature provisions that specifically address the situation of minors under the age of eighteen who are confined either because of a court-ordered precautionary measure or a conviction handed down by a competent court. According to the study prepared by the Independent Expert for the United Nations Study on Violence against Children, the human rights of minors under the age of eighteen are particularly at risk when they are housed in establishments in the region that are reserved for criminal sentences. They are even at risk of violence from the adult population. The Commission shares the study's finding that

[o]vercrowding and squalid conditions, societal stigmatization and discrimination, and poorly trained staff heighten the risk of violence. Effective complaints, monitoring and inspection mechanisms, and adequate government regulation and oversight are frequently absent. Not all perpetrators are held accountable, creating a culture of impunity and tolerance of violence against children.²⁰⁷

154. The situation of persons deprived of their liberty lead the Commission to issue a document titled "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas."²⁰⁸ Among the instruments adopted in the context of the universal system for the protection of human rights are the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

155. In this context, it is pertinent to highlight in this report that there is a direct relationship between the proper functioning of the prison system and the States' obligation to protect and ensure the human rights directly at stake in the policy on citizen security. Most prison institutions in the region are today a breeding ground for the violence with which the societies in the Hemisphere are coping. In the Commission's view, the priorities of the public policies that the member states of the region put into practice for citizen security should be measures to prevent violence and crime in the three generally accepted categories: (1) primary prevention, which are measures directed at the entire population, and have to do with programs in public health, education, employment and instruction in observance of human rights and building a democratic citizenry; (2) secondary prevention, which involves measures that focus on individuals or groups who are more vulnerable to violence and crime, using targeted programs to reduce the risk factors and open up social opportunities; and (3) tertiary prevention, which involves individualized measures directed at persons already engaged in criminal conduct, who are serving a sentence or have recently completed their sentence. Particularly important here are the programs that target persons serving prison sentences.

156. The Commission has established general criteria that, in its view, are the minimum standards that prison facilities in the Americas must meet under the international system of laws for the protection and guarantee of human rights. The requirements that the Commission has mentioned include: decent prison conditions for inmates and their families, and for the staff who work there; measures to prevent overcrowding; adequate amounts of food, proper levels of hygiene and internal security; measures to ensure that inmates are separated into appropriate categories; prevention of internal violence; prison services, which are to include medical and therapeutic

²⁰⁷ United Nations, General Assembly, "Report of the Independent Expert for the United Nations Study on Violence against Children", Paulo Sérgio Pinheiro, A/61/299, 61st Period of Sessions, item 62(a) on the provisional agenda, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 54.

²⁰⁸ IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, approved by the Commission at its 131st regular session, held March 3 through 14, 2008.

treatment, among others.²⁰⁹ The Commission also pointed out the principal problems with the prison systems in the region, which include: excessive and unnecessary use of force and punishments; the systematic practice of physical abuse by prison staff; the use of isolation in subhuman conditions; the widespread practice of denigrating and humiliating bodily searches of visitors, especially women and children, and the housing of the mentally disabled and the elderly in prison establishments. Other problems include social rehabilitation programs that are inadequate and poorly resourced; by extension, only a small percentage of the prison population has access to job training or educational programs.²¹⁰

157. The policies that promote deprivation of liberty as a tool for reduction of violence and crime rates, with debatable efficacy, have in fact increased the prison population. However, the vast majority of the countries of the region did not have –and do not have– either the infrastructure or the technical and human resources that their prison systems need in order to ensure that persons deprived of their liberty will receive humane treatment and to make that system an effective tool for preventing violence and crime. The obligations that the member states have undertaken vis-à-vis the human rights directly at stake in public policies on citizen security make it incumbent upon them to design and put into practice programs to bring their codes of criminal procedure, infrastructure, and the human and material resources assigned to the prison system to a level that guarantees that sentences delivered by courts of law are served under conditions that strictly conform to international standards in this area. The Commission must underscore that no plan or program to prevent and control violence and crime can succeed if it fails to make the issue of the prison system part of a public policy on citizen security.

D. Right to a fair trial and to judicial protection

158. The rights to a fair trial and to judicial protection are recognized in Articles XVIII and XXVI of the American Declaration and 8(1) and 25 of the American Convention:

American Declaration - Article XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights. Article XXVI. Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

American Convention - Article 8(1) Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. (2) Every

²⁰⁹ IACHR, Press Release 39/08, “Rapporteurship on the Rights of Persons Deprived of Liberty Concludes Visit to Chile.” August 28, 2008.

²¹⁰ IACHR, Press Release 39/08, “Rapporteurship on the Rights of Persons Deprived of Liberty Concludes Visit to Chile.” August 28, 2008.

person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. (3) A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. (4) An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause. (5) Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 25 (1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. (2) The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted.

These rights are also recognized in Articles 10 and 11 of the Universal Declaration,²¹¹ Articles 14 and 15 of the International Covenant on Civil and Political Rights,²¹² Article 4 (g) of the Convention of Belém do Pará,²¹³ and others.

²¹¹ Article 10. "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Article 11. (1) "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

²¹² Article 14: 1. "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3. In the determination of any criminal charge against him, everyone

159. The member states must be particularly careful to comply with their international obligations to protect and ensure the right to due process and a fair trial when putting into practice the measures that are part of their policies to prevent and control acts of violence and crime. The Commission is disturbed by the fact that this right is constantly in jeopardy in the region; schools of thought frequently surface arguing that these guarantees are an impediment to proper police and judicial investigation of acts of violence or crime. In certain specific situations, these schools of thought have materialized into legal reforms that constitute clear-cut violations of the international commitments the member states have undertaken to protect and ensure human rights.

160. The Commission has recently had occasion to address the procedural and substantive protections inherent in the right to judicial guarantees, and reiterated its position when addressing the standards that the State must observe when implementing policies to deal with the problems caused by violent and criminal acts. Similarly, the Commission reasserts that the internationally accepted basic principles of criminal law must be the barometer for measuring the degree of protection and guarantees. Of these principles, the Commission has mentioned the following: the principle of presumption of innocence; and the principles of *nullum crimen sine lege*, *nulla poena sine lege*, and *non bis in idem*. The Commission recalls that under the principles of legality and non-retroactivity that are part of Article 9 of the American Convention and Article 15 of the International Covenant on Civil and Political Rights, States must refrain from incorporating into their domestic legal systems open-ended definitions of crime; instead, their criminal law systems must give very precise and unequivocal definitions of crimes and the penalties they carry.²¹⁴

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shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. Article 15: 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

²¹³ "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: (...) g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights."

²¹⁴ American Convention, Article 9: "No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not

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161. In the case of the principle of presumption of innocence, the Commission held that “this presumption can be considered violated where a person is held in connection with criminal charges for a prolonged period of time in preventative detention without proper justification, for the reason that such detention becomes a punitive rather than precautionary measure that is tantamount to anticipating a sentence.”²¹⁵ The Court has elaborated upon the principle of presumption of innocence in a number of its rulings, establishing specific criteria to determine what can be considered a protracted and unjustified or unwarranted period of detention. For the Court,

[p]reventive detention should not be prolonged when the reasons that gave rise to the adoption of the precautionary measure no longer exist. The Court has observed that the national authorities are responsible for assessing the pertinence of maintaining the precautionary measures they issue pursuant to their own body of laws. When exercising this task, the national authorities should provide sufficient grounds to permit the reasons for which they are maintaining the restriction of liberty to be known and, to ensure that this is compatible with Article 7(3) of the American Convention, it should be based on the need to ensure that the person detained will not impede the development of the investigation or evade the action of justice. The personal characteristics of the supposed perpetrator and the gravity of the offense he is charged with are not, in themselves, sufficient justification for preventive detention. Despite this, even when there are reasons for keeping a person in preventive detention, Article 7(5) guarantees that he will be released if the detention period has exceeded a reasonable time.²¹⁶

162. It must be reiterated that the member states have a duty to adopt measures to lawfully prevent, deter and suppress violent and criminal acts, and these measures must be conducted within the framework afforded by the international system of laws on the protection and guarantee of human rights. The Commission has a number of specific standards that the States must take into account when crafting the normative tools that will become part of their public policy on citizen security. While these standards must be observed regardless of the type or form of crime is involved, they are particularly relevant in the case of the State’s interventions against organized or complex crime. Specifically, the Commission is compelled to point out that

criminal prosecutions must comply with the fundamental requirement that no one should be convicted of an offense except on the basis of individual penal responsibility, and the corollary to this principle that there can be no collective criminal responsibility (...) This restriction does not, however, preclude the

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be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.” International Covenant on Civil and Political Rights. Article 15 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”² Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

²¹⁵ IACHR, *Report on Terrorism and Human Rights*, paragraph 223.

²¹⁶ I/A Court H.R., *Bayarri v. Argentina Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, paragraph 74.

prosecution of persons on such established grounds of individual criminal responsibility such as complicity, incitement, or participation in a common criminal enterprise, nor does it prevent individual accountability on the basis of the well-established doctrine of superior responsibility.²¹⁷

Another requirement that Inter-American jurisprudence has repeatedly affirmed concerns the independence and impartiality of the courts.²¹⁸ Time and again the Commission has denounced the creation of special courts or tribunals that displace the jurisdiction belonging to the ordinary courts or judicial tribunals and that do not use the duly established procedures of the legal process. This has included in particular the use of *ad hoc* or special courts or military tribunals to prosecute civilians for security offenses in times of emergency, which practice has been condemned by this Commission, the Inter-American Court and other international authorities. The basis of this criticism has related in large part to the lack of independence of such tribunals from the Executive and the absence of minimal due process and fair trial guarantees in their proceedings.²¹⁹

163. It is also necessary to emphasize the importance of administrative and disciplinary mechanisms of accountability in those cases that may involve a responsibility of police forces for abuse of authority, violence or the disproportionate use of force. As far as these internal control mechanisms over the functioning of the police forces may result in a change or cessation of the function of the agents involved in the violation of a human right, the outcome involves the public interest. Therefore, the proceedings must be handled by independent authorities; any state agents or state agencies directly or indirectly involved in the facts under investigation should abstain from intervening; and victims must have the opportunity to participate in the proceedings. In some countries, these proceedings are exclusively employed to investigate disciplinary matters and are not considered a remedy for inadequate policing. In such jurisdictions, victims are excluded from the proceedings on the grounds that their interests are irrelevant to the institutional interests of the police force. The Commission considers that even in those cases States must ensure the participation of the victims whenever these proceedings involve accountability for abuse of force, arbitrary detentions or other conduct that may compromise the enjoyment of the rights protected in the American Convention.²²⁰

164. Again in reference to these minimum standards or conditions, the lawful measures that States undertake to deal with the threats of violence and crime must not disregard the right of every person accused of a crime to be brought to trial within a reasonable period of time; his right to be duly notified of the charges against him, and his right to defend himself on his own or through the services of an attorney of his choosing or one provided by the State at no cost to the accused. These protections also include “the right to adequate time and means for the preparation of his defense, to examine witnesses present in the court, and to obtain the appearance, as witnesses, of experts or other persons who may shed light on the facts. Further, a defendant must not be compelled to be a witness against himself or to plead guilty, and must be afforded the right to a public trial and the right to appeal the judgment to a higher court. In cases where the defendant does not understand or speak the language of the court or tribunal he must be assisted without charge by a translator or interpreter.”²²¹

²¹⁷ IACHR, *Report on Terrorism and Human Rights*, paragraph 227.

²¹⁸ IACHR, *Report on Terrorism and Human Rights*, paragraph 230.

²¹⁹ IACHR, *Report on Terrorism and Human Rights*, paragraph 230.

²²⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 68.

²²¹ IACHR, *Report on Terrorism and Human Rights*, paragraph 235.

165. With respect to the right to judicial protection, States violate their obligations to protect and ensure human rights when the system for the administration of justice is not an effective and efficient tool to provide satisfaction to victims of violence and crime. The Commission has observed that the proper administration of justice is an essential element in ensuring that individuals responsible for violations of the right to life and other rights are identified, held responsible and punished. Under Articles 8 and 25 of the American Convention, States parties have an obligation to provide effective judicial remedies to victims of human rights violations and to support them in accordance with the rules of due process within the framework of the general obligation to guarantee the free and full exercise of rights recognized under the Convention with respect to each person under their jurisdiction.

166. The relationship of citizen security to the right of judicial protection relies on a system for the administration of justice that affords a rapid, effective and efficient response to victims of violence and crime. The Commission has issued repeated pronouncements to this effect. Thus, it observed that in many countries of the region, the administration of justice is another area in crisis as

judicial institutions in many states do not have adequate resources; not all segments of the population have effective access to the administration of justice. The result is a sense of impunity that often causes people to take justice into own hands. Many judges still do not have tenure and can be removed without benefit of the basic protections of due process. Many have been the targets of threats, as have prosecutors, witnesses and others involved in the administration and pursuit of justice. Member States must take the necessary steps to respond to threats of this nature and to ensure the independence and effectiveness of their judicial institutions.²²²

Every State's public policy on citizen security should feature the necessary normative and budgetary provisions to give everyone access to a reliable system for the administration of justice. A number of factors are involved here, one of which is a system of tenure for judges. The consolidation of a transparent judicial career and the resulting job stability that have obtained tenure in strict compliance with the procedures established constitutionally and legally, is fundamental to guarantee the independence and impartiality in their performance and has direct effects on the strengthening the access to justice.²²³

167. The impunity common in many regions of the Hemisphere is also associated with high levels of corruption, which is an obstacle to the proper administration of justice and thereby serves to heighten fear and the sense of insecurity vis-à-vis violence and common and organized crime, especially among the more vulnerable sectors of the population. The Commission has repeatedly spoken out about these problems. It observed that

the phenomenon of corruption is not only related to the legitimacy of public institutions, society, the integral development of peoples, and all other more general aspects mentioned *supra*, but also has a specific impact on the effective enjoyment of human rights in society in general. (...) The corruption of the judge in a particular trial undermines his or her independence when deciding the case,

²²² Presentation of the Commission's Annual Report for 2003, to the Committee on Juridical and Political Affairs of the OAS, CP/CAJP 2166/04 rev. 1.

²²³ IACHR, *Annual Report 2006*, Chapter IV, paragraph 164.

and may consequently constitute a violation by the state of ...the guarantee that all persons will be judged by an independent and impartial judge, enshrined in Article 8(1) of the American Convention. (...) The relationship between corruption and human rights has also been addressed from the perspective of discrimination (...) there is discrimination when a public official accepts money or other gifts or favors from a person, given that said person then acquires a privileged status in relation to other persons.²²⁴

168. While any victim of crime or act of violence may have difficulty getting justice, those difficulties are compounded for those sectors of the population that have historically been the most vulnerable: children, adolescents, women, the indigenous population, Afro-descendants, migrant workers and their families. States must take all measures necessary to ensure that all persons within their territory have equal access to the administration of justice. This is particularly important in those States of the Hemisphere whose population consists of multiple ethnic groups who represent diverse cultures and languages. In a specific case involving someone who had to appear in court in a multilingual society, without being afforded the benefit of a translator or interpreter, the Commission provided that this “constitutes not only a violation of the judicial guarantees provided for in Article 8 of the American Convention, but it also represents a clear irregularity in the process, as they were unaware of the contents of the statement they signed before the prosecutor’s office.”²²⁵ As to the situation of women in the region, the Commission has repeatedly warned that

(...) one serious outcome of the cycle of violence against women is the impunity associated with those violations of the fundamental rights of women. Both state authorities as well as representatives of civil society said repeatedly during our visit that the system for administering justice had not responded effectively to those crimes and this has given rise to impunity and an increased sense of insecurity among women. During the week, the delegation followed the steps that must be taken by a victim in her search for justice. Our experience (...) was finally that the justice to which women are entitled is nowhere to be found.²²⁶

E. Right to privacy and to have one’s honor respected and dignity recognized

169. This right is recognized in Articles V, IX and X of the American Declaration and Article 11 of the American Convention:

American Declaration - Article V. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life. Article IX. Every person has the right to the inviolability of his home. Article X. Every person has the right to the inviolability and transmission of his correspondence.

American Convention - Article 11(1) Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his

²²⁴ IACHR, *Annual Report 2005*, Chapter IV, Ecuador, paragraph 132.

²²⁵ IACHR, Report No. 1/98, Case 11.543, Rolando Hernández Hernández (Mexico), May 5, 1998.

²²⁶ IACHR, Press Release 20/04 dated September 18, 2004, paragraph 17.

correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.

This right is also recognized in other instruments of international human rights law such as the Article 12 of the Universal Declaration,²²⁷ Article 17 of the International Covenant on Civil and Political Rights,²²⁸ and Article 16 of the Convention on the Rights of the Child.²²⁹

170. These rights are involved in different types of situations, which in turn may involve varying degrees of responsibility on the part of the member states as to their negative and positive obligations in carrying out their public policies on citizen security. One of the priority issues for the Commission concerns police procedures where bodily searches have to be conducted on detained persons; on persons who visit next of kin or loved ones being held in police cells, prisons, or other incarceration facilities; or as part of the general security protocols established to prevent certain acts of violence or criminal acts. In many countries of the region, these procedures have been a constant occasion for abuse and violations of the dignity of those persons who have to subject themselves to searches of this kind, particularly in the case of women, children and adolescents.

171. Bodily searches are part of the basic procedure that State law enforcement must perform to fulfill its institutional obligations. The life and physical integrity of third persons, the security personnel, and even the person being searched often depend upon whether a bodily search is properly executed. Nevertheless, the Commission notes that the procedures for bodily searches must be regulated by law, and spell out the administrative and criminal liability that those members of the security forces who violate the laws on bodily searches will incur. Law enforcement personnel must be given specific and ongoing training in how these procedures are to be performed; the member states, for their part, must constantly update the equipment and technical resources available so that this type of search can be conducted in the least invasive manner possible.

172. As a general rule, the domestic laws of the member states should reserve the practice of bodily searches for those situations in which they are strictly necessary to comply with the safety measures needed to guarantee the security and safety of any person involved in a police procedure. The personnel charged with performing bodily searches are to take the necessary measures to avoid any situation that might violate the right to privacy or the dignity of the person being searched. Whenever a police officer has well-founded reasons to suspect that, in the interests of safety, the individual undergoing the bodily search should be required to undress, he or she will have to get the corresponding court order first, and then perform the bodily search in the presence of a health professional.

²²⁷ "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

²²⁸ 1. "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks." See also General Observation 16 of the Human Rights Committee on the respect of privacy, family life, and correspondence and the protection of honour and reputation. Adopted during the 32 sessions, 1988, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

²²⁹ 1. "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks."

173. As for searches of packages, handbags, suitcases and similar articles that a person carries with him, and searches of various individual and collective modes of transportation, the Commission observes that the domestic laws of the States must establish clear and routine procedures that will avoid any type of abuse or discriminatory treatment by the agents of the institution in charge of conducting such searches. Searches of articles that one carries on one's persons should ideally be done in private, taking the utmost care not to violate the person's dignity, honor or privacy. No form of corruption by anyone involved in these procedures should undermine them, as the absence of corruption will ensure the transparency and lawfulness of the actions being taken by the competent authorities. Persons who have been subjected to these procedures should have readily available to them rapid and simple means of filing a complaint against any irregularity or abuse of authority.

174. As has been said repeatedly in this report, when executing those actions contemplated in their public policies on citizen security that are designed to prevent and, where necessary, lawfully suppress acts of violence or crime, member states may order measures that restrict or curtail the exercise of certain rights, provided those limitations or restrictions are exclusively in answer to the "just demands of a democratic society, which takes account of the need to balance the competing interests involved and the need to preserve the object and purpose of the Convention."²³⁰ And as previously mentioned in this report, citing the standards established by the Court in this regard, any restriction or limit on the exercise of a right must be established by law, in the formal and material sense.²³¹ In the case of the inviolability of correspondence or of communications in the broader sense, the Court has held that the private sphere is immune to abusive or arbitrary encroachments or attacks by third parties or the public authorities. Although telephone conversations are not expressly mentioned in Article 11 of the Convention, it is a mode of communication that, like correspondence, is within the realm of those things protected by the right to a private life.²³² The Court has also ruled that Article 11 prohibits any arbitrary or abusive interference in the private life of persons, and specifies a number of realms of privacy, such as the private life of the family, domicile and correspondence.

175. The foregoing notwithstanding, the Commission deems it reasonable for States to be able to enact domestic norms that, in certain exceptional circumstances and taking account of the standards enunciated above, may limit or restrict the exercise of this right. Specifically, in the case of actions that the public authorities take to prevent and pursue criminal acts, especially those associated with organized or complex crime, the possibility of intercepting communications is often a vital tool enabling police or judicial investigations to produce results. Today's globalization of communications and the ways in which criminal organizations can avail themselves of those communications, requires that the States constantly modernize their technological resources so as to be able to properly discharge their duty of ensuring respect for the rights at stake in the area of citizen security. Nevertheless, and in order to prevent restrictions or limitations that violate the obligations that the States have undertaken in international human rights law, certain criteria must be followed when establishing said limitations or restrictions. First, any restriction or limitation must be justified by the need to protect the human rights of third parties and the general welfare in a democratic society; second, and as previously observed, they must be established by law, in both the

²³⁰ I/A Court H.R., Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraphs 66 and 67.

²³¹ I/A Court H.R., Advisory Opinion OC 6/86 of 9 May 1986, Series A No. 6, paragraph 38.

²³² I/A Court H.R., *Tristán-Donoso v. Panama Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, paragraph 55.

formal and material sense; third, they must be constantly subject to the authority of the competent court, which will decide whether or not to order them, keep them in place, or lift them.

176. Interventions by the state security forces in the Hemisphere have all too often resulted in violations of the right to the inviolability of the home, especially in the more socially or economically disadvantaged sectors of the population or those historically subjected to discriminatory treatment because of their ethnicity or race. Concerning the effect that illegal raids or forcible entries have on the right to the inviolability of the home, the Commission has argued that

[t]his right, in addition to operating as a guarantee of the right to privacy, guarantees due process insofar as it establishes a legal limit on the collection of evidence that incriminates an individual accused of a crime. If a home is to be searched in violation of the appropriate constitutional procedures, that guarantee keeps the evidence obtained from being considered in a subsequent judicial decision. In this way, in practice it operates like a rule to exclude illegally obtained evidence.²³³

Therefore, the Commission deems that member states not only have an obligation to enact domestic laws to clearly regulate the limits of what the police forces can do in this area, but also to properly train the members of the police force to equip them with the knowledge and the practical tools they need to conduct investigative procedures and curb violence and crime without unlawfully infringing upon the personal and family privacy and integrity of the individuals who live in a household.

177. However, the guarantee of the inviolability of the domicile and of private papers must give way when there is a well-substantiated search warrant issued by a competent judicial authority, spelling out the reasons for the measure being adopted and specifying the place to be searched and the objects that will be seized. The Court has singled out other elements that are essential in determining the lawfulness of a measure that restricts or limits the exercise of this right. It provided that

[t]he right to a private life is not an absolute and hence can be restricted by States provided the intrusions are neither abusive nor arbitrary; they must be allowed by law, seek a lawful end and satisfy the requirements of appropriateness, necessity and proportionality; in other words, they must be necessary in a democratic society.²³⁴

These criteria should be taken as the minimum standards that member states must observe when establishing their domestic laws and ordering the police operations necessary to develop the plans and programs contained in their policies on citizen security, so as to properly guarantee and respect the human rights directly threatened by violence and crime.

178. In this sense, the Commission shares the position of the Office of the United Nations High Commissioner for Human Rights, which expressly underscored the fact that the practice of household raids and searches ordered by administrative authorities is utterly incompatible with international human rights law, since the rule in such cases is that the order must be issued by the competent judicial authority. In exceptional cases, “and in keeping with the provisions of Article 17 of the International Covenant on Civil and Political Rights and Article 11 of the American Convention

²³³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 97.

²³⁴ I/A Court H.R., *Tristán-Donoso v. Panama Case. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, paragraph 53.

on Human Rights, where a crime is suspected, the authorities may intrude into a place protected by the principle of the inviolability of the home, without a court order, only when a punishable offense is in the process of being committed or about to be committed. If neither of these circumstances obtains, the extrajudicial raid constitutes an arbitrary interference or intrusion prohibited in one of those instruments.”²³⁵

179. It is necessary that the domestic laws of the member states draw a clear distinction between the concept of forcible entry and detainer, and forcible entry for purposes of a search or raid. The Office of the United Nations High Commissioner for Human Rights defines forcible entry and detainer (for which a court order is not always required, as it may be a case of *in flagrante delicto*) as a measure that “seeks to take into custody persons for whom an arrest warrant has been issued, or persons who took refuge in home while being pursued by the authorities after being caught in the commission of a crime, or persons who are committing a punishable offense inside that home.”²³⁶ On the other hand, forcible entry for purposes of a search or raid (which will always require a court order issued in the course of a criminal investigation) is done to search the house or dwelling in order to find objects that might be evidence of a crime.²³⁷

180. In conclusion, for the Commission, the measures that member states may employ under international law to prevent and, where necessary, lawfully suppress criminal acts, forcible entry without a court order is only possible under the following circumstances: “(1) To arrest an individual caught *in flagrante* (or caught and identified at the scene) who, while being pursued by law-enforcement authorities, took refuge in a home, either his own or someone else’s; (2) To stop the commission of a crime in progress in a place not open to the public. International law is not being violated, of course, when in certain exceptional cases, clearly spelled out in police rules and regulations, forcible entries are done without a court order when dictated by extreme necessity having nothing to do with criminal law or crime (for example, to put out a fire or to rescue people from flooded homes).”²³⁸ These criteria must be clearly spelled out in the member states’ domestic laws, so that law enforcement agencies have a well-defined framework of action that averts irregular procedures that result in violations of the right to privacy, specifically the right to the inviolability of the home.²³⁹

²³⁵ United Nations, Office of the High Commissioner for Human Rights in Colombia “*Prevención y lucha contra el terrorismo: los límites de la actividad antiterrorista del Estado*” statement made by the Director of the Office of the High Commissioner for Human Rights in Colombia, Amerigo Incalcaterra, July 27, 2004, available at <http://www.hchr.org.co/publico/pronunciamientos/ponencias/ponencias.php3?cod=44&cat=24>. See also Factsheet No. 32 “Human Rights, Terrorism and the fight against Terrorism”, Office of the UN High Commissioner for Human, page 49.

²³⁶ *Idem.*

²³⁷ *Idem.*

²³⁸ *Idem.*

²³⁹ The criteria adopted by the Office of the United Nations High Commissioner for Human Rights are formulated along lines similar to the current literature in the region, which takes the following line of reasoning: “one has to work (...) from certain fundamental premises. First, the premise that holds that fundamental rights are not absolutes and, therefore, can yield to constitutionally protected goods and values. Second, the premise that because every legal system is highly interlinked, its interpretation must be from a systematic perspective (...) Finally, working from the theory that posits inherent limits on basic rights, it is reasonable to accept that, in exceptional circumstances, some rights may have to yield so as to either protect or preserve other constitutional rights and other constitutionally protected goods. Everyone knows that there are special circumstances of a humanitarian nature, where the lives or safety of people are at stake: fires, accidents around the home, and so. In situations of this kind, the authorities have an obligation to enter the home to provide aid. In addition to these exceptional, albeit daily situations, are those dictated by necessity and urgency in cases of *in flagrante delicto*. The most obvious example is being present as a crime is committed inside the home, as in the case of domestic

181. In the exceptional circumstances described above, law enforcement agents that conduct forcible entries or raids without a court order must immediately inform the competent judge of the action they have taken. Furthermore, the rules and regulations governing police conduct in the member states should include disciplinary systems and administrative sanctions for those cases in which the police officers who took these actions abused their authority, notwithstanding any criminal consequences that such conduct may have for those responsible.

F. Right to freedom of expression

182. The right to freedom of expression is protected under Article IV of the American Declaration and Article 13 of the American Convention:

American Declaration - Article IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

American Convention, Article 13 - 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals. 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

...continuation

violence, sex-related crimes, and so on, or of someone who, being pursued for a crime, takes refuge in a house and could escape unless immediate action is taken. In such cases, the rights of the accused collide with those of the victim –who also enjoys the protection of the constitution-.” Perciball, Ricardo, *Sistema de garantías constitucionales*, Montevideo, 2006, pp. 202 to 205.

The right to freedom of expression is also protected under Article 19 of the Universal Declaration of Human Rights,²⁴⁰ Article 19 of the International Covenant on Civil and Political Rights,²⁴¹ and Article 13 of the Convention on the Rights of the Child.²⁴²

183. When designing, implementing and –most especially- evaluating the public policy on citizen security described in this report, the authorities of the State must produce, organize and disseminate information. Reliable information available to the public, social organizations, academia and the media is part of the foundation that must be laid down to build a new, intrinsically democratic model of citizen security whose fundamental objective is to protect and ensure the human rights of the entire population. Without reliable indicators based on technical elements that are widely disseminated and easy for the various sectors of society to understand, public opinion will be easy to manipulate. This is the *modus operandi* for some sectors of government, that hide or misrepresent vital information on relevant aspects of citizen security; it is also a technique used by certain political interest groups or sectors of public opinion who take advantage of the lack of objective information to heighten the sense of insecurity among the public and thus further promote repressive models that foster intolerance, stigmatization, greater exclusion, or the disintegration of societies within the region. The production and dissemination of reliable information on the policy of citizen security is one of the State’s positive obligations in order to protect and ensure the human rights at stake in the matter of citizen security.

184. Citizen participation cannot be fostered without access to good information; by extension, without that citizen participation, democracy cannot be further consolidated. While this assertion applies with equal force to all issues having to do with the quality of life of those who live in the region and with building an increasingly more informed democratic citizenry, it is especially relevant to problems associated with violence and crime, given their growing impact on the public agenda of the countries of the Hemisphere. As the Commission has reiterated, this requires that States parties “(...) [g]uarantee the effective right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.”²⁴³ One of many issues that need to be addressed regarding production and dissemination of timely and reliable

²⁴⁰ "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

²⁴¹ 1. "Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."

²⁴² 1. "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals."

²⁴³ IACHR, *Report on the Situation of Human Rights in Venezuela*, Chapter VI, paragraph 489, subparagraph 6. See also "Report of the UN Special Rapporteur on Freedom of Expression, Human Rights Council, A/HRC/11/4, April 30, 2009, paragraphs 59 and 60 on deregulation and "maximum dissemination". See also the Special Rapporteur's Report on libel and slander, Human Rights Council, A/HRC/7/14, February 28 2008, paragraph 79.

information are the procedures involved in putting together the national budgets that are relevant to public policy on citizen security.

185. State authorities have the duty to be transparent and consistent when reporting the criteria used to earmark resources to the various public institutions that have jurisdiction over the policy on citizen security. They must also disclose the performance indicators used, thereby enabling the public to determine whether the spending and investment in citizen security are done according to pre-determined objectives. State authorities must also inform the public of the systems in place for introducing adjustments or corrections when those very same indicators reveal execution problems. Exceptions occasionally have to be made when some information must be withheld for a time in order to guarantee the effectiveness of the State's interventions. When this happens, legislative oversight systems should be in place to handle the related budgetary issues. Judicial procedures should also be in place so that a judge can ultimately decide whether or not the information is to remain confidential.²⁴⁴ The foregoing must be examined in light of the general principle that the Commission has articulated on previous occasions which is as follows: "(...) given the need to promote greater transparency in government action as the basis for strengthening democratic institutions, limitations on the files held by the State must be exceptional and must be interpreted restrictively."²⁴⁵

186. The information that the public authorities produce and circulate should highlight the plight of those sectors of the population that are most likely to have their human rights violated with implementation of policies on citizen security, especially when it comes to preventing interpersonal and/or social violence. This information should devote as a priority attention to the situation of women, Afro-descendants, the indigenous population, migrants, children and adolescents. The Commission shares the view that

(...)States [need to] improve data collection and information systems in order to identify vulnerable subgroups, inform policy and programming at all levels, and track progress towards the goal of preventing violence against children. (...) States should use national indicators based on internationally agreed standards, and ensure that data are compiled, analyzed and disseminated to monitor progress over time (...) States should also create and maintain data on children without parental care and children in the criminal justice system. (...) States should also develop a national research agenda on violence against children across settings where violence occurs (...).²⁴⁶

²⁴⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 91: "Article 13(2) of the American Convention on Human Rights stipulates the circumstances in which states may refuse public access to sensitive information while still complying with their obligations under international law. In this regard, the Convention provides that the restrictions must be explicitly defined in the law and must be necessary to ensure: a) respect for the rights or reputations of others, or b) the protection of national security, public order, or public health or morals. Derived from this principle the exceptions must be established by law, and these must have been carefully written and widely disseminated, and approved through the formal mechanisms set out in the law. The Inter-American Court stated in 1985 that limitations on the rights set forth in Article 13 "must meet certain requirements of form, which depend upon the manner in which they are expressed...and certain substantive conditions, which depend upon the legitimacy of the ends that such restrictions are designed to accomplish."

²⁴⁵ IACHR, *Annual Report 2004*, Chapter V, paragraph 303.

²⁴⁶ United Nations, General Assembly, "Report of the Independent Expert for the United Nations Study on Violence against Children", Paulo Sérgio Pinheiro, A/61/299, 61st Period of Sessions, item 62(a) on the provisional agenda, Promotion and Protection of the Rights of Children, August 29, 2006, paragraph 107.

187. On the other hand, State authorities must also produce quality data that can be used to adequately plan the various police operations to favor preventive over suppressive measures, while also creating the conditions for more rational and balanced use of human and material resources. The design and update of reliable indicators of the various factors that are conducive to acts of violence or crime is an indispensable tool for putting into practice proper strategic planning, which is a key piece of any public policy. The Commission shares the view that

To do their job properly, the police must have adequate information so that they can better prioritize and target their interventions. The same information can serve as objective points of reference for evaluating performance. To that end, a police force should ensure that it has sufficient, reliable, verifiable, comparable and auditable information. To that end, a police force must conduct activities to build confidence and trust with the public, simplify police routines and procedures, and conduct campaigns to increase citizen awareness of the importance of reporting crime. A police force must be properly trained and equipped with the means to gather, process, systematize, use and disseminate statistics on crime and the results of its police work. It must also collaborate with the institutions monitoring public and private violence, which compile and centralize data from various sources, and then use their findings to its advantage. The training that members of a police force receive should include lessons that teach the benefits of organizing and evaluating police experience in the production and use of information.²⁴⁷

188. The institutions monitoring violence and crime in the region have been an important experiment in furthering activities that support the member states' efforts to protect and ensure the right to seek, receive and impart reliable information on citizen security issues. Monitoring institutions compile reliable information, classify and analyze it, build objective indicators, do measurements and comparisons with the situation in other areas or regions of the country or different countries; and then gauge the impact of public policies to prevent and control violence and crime. The monitoring institutions identify and track the programs and projects that various nongovernmental, community or social organizations are conducting to prevent violence and crime in various countries of the region; they compare results and replicate positive experiences. Monitoring institutions can be public, private, mixed ventures or partnerships. For the Commission, their main role is to help identify the real threat level to the human rights imperiled by violence and crime. Reliable information makes it possible to accurately gauge the real levels of objective and subjective insecurity, and then to direct the measures necessary to properly tackle each of these situations, while avoiding irresponsible or intentional fear-mongering in society. Publicly or privately-owned mass media have an enormous responsibility for imparting this type of information as responsibly, objectively and widely as possible, so that the information is more readily available to the public.

189. The Commission has repeatedly addressed the issue of the action of *habeas data*, a matter that is of particular relevance when examining the impact of the measures that the States can take as part of their policy on citizen security as it pertains to the right to freedom of information. The Commission has drawn the following distinction between the concepts of "access to information" and "*habeas data*":

²⁴⁷ "Fifty Recommendations on the Police Force that Latin America and the Caribbean Need: an Input from the Coalition of Civil Society Organizations", document submitted in the sub regional consultations made in preparation of this report, Principle No. 26.

The concept of “access to information” is often confused with the concept of “habeas data.” The IACHR has understood that “access to information” refers to state-held information that should be available to the public. An action of *habeas data* refers to the right of any individual to have access to information referring to him and to modify, remove, or correct such information when necessary (...) individuals have the right to know about the intelligence information which has been gathered about them, even when they are not faced with a criminal proceeding based on that information.²⁴⁸

In any case, the legitimate measures that the member states adopt to lawfully prevent and suppress acts of violence and crime ought not to violate a person’s right to ascertain, by means of a rapid and effective action, what information the competent authorities have on him

G. Right of assembly and association

190. The right of assembly is protected under Articles XXI of the American Declaration and 15 of the American Convention:

American Declaration - Article XXI Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

American Convention - Article 15 The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

This right is also recognized in Article 20(1) of the Universal Declaration²⁴⁹ and Article 21 of the International Covenant on Civil and Political Rights.²⁵⁰

191. The right of association is protected in Article XXII of the American Declaration and Article 16 of the American Convention:

American Declaration - Article XXII Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

American Convention - Article 16(1) Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other

²⁴⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 87 and 88. The Commission has defined an action of habeas data as “(...) 1) the right of any individual to not have his privacy disturbed, 2) the right of any individual to access information referring to him in public or private databases, and to modify, remove, or correct information if it is sensitive, false, biased, or discriminatory; and 3) and the right of any individual to use the action of habeas data as an oversight mechanism.”

²⁴⁹ “Everyone has the right to freedom of peaceful assembly and association.”

²⁵⁰ “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

purposes. (2) The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others. 3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

The right of association is also protected under Article 20 of the Universal Declaration,²⁵¹ Article 22 of the International Covenant on Civil and Political Rights,²⁵² Article 15 of the Convention on the Rights of the Child,²⁵³ and Article 4 of the Convention of Belém do Pará.²⁵⁴

192. The Commission is compelled to address the responsibilities of the member states with respect to ensuring and protecting the rights of association and assembly, in principle based on the lines of action embodied in legislative measures and the practices and procedures followed by their citizen security institutions, all intended to prevent and control social violence. In the case of the rights of assembly and association, the State's positive and negative obligations are clearly identifiable. The Commission has taken a position on this matter when it provided that

(...) [i]mplicit in protection of the right of assembly is not just the State's obligation to refrain from interfering in the exercise of that right, but also its obligation to adopt, in certain circumstances, positive measures to guarantee it: for example, protecting demonstrators from physical violence by persons who may hold the opposite opinion.²⁵⁵

Historically within the region, the failure to comply with both types of obligations has triggered episodes of mass violence, which have in turn caused serious violations of these rights and violations of the State's obligations with respect to other human rights, especially the rights to life, physical integrity and personal liberty and security.

²⁵¹ (1) "Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association."

²⁵² 1. "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."

²⁵³ 1. "States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

²⁵⁴ "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: (...) h. The right to associate freely."

²⁵⁵ IACHR, *Annual Report 2007*, Chapter IV, paragraph 259.

193. The competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly. This involves everything from rerouting pedestrian and vehicular traffic in a certain area, to escorting those who are participating in the mass gathering or demonstration in order to guarantee their safety and make it possible for the activities involved to take place. The police must be aware of their rules of conduct and have the professional training needed to perform in situations involving mass concentrations of people, so as to create the conditions that will enable these events to unfold in accordance with the established regulations and without infringing upon other human rights. The State has an obligation to supply its police officers with the equipment and communication devices, vehicles, means of personal defense and non-lethal deterrence suitable for intervening in the event of problems. The police must also receive clear and unequivocal instructions that their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right. The Commission has observed that

the lawful function of the security forces is to protect peaceful demonstrators and to ensure public security, acting with complete impartiality towards all (...) citizens, regardless of their political affiliation or the content of their demonstrations. (...) Under international law and the (...) Constitution, the actions of the security forces in democratic systems should exclusively serve the interests of society at large, not given political factions. In other words, in exercising their public functions, the police should not side with political parties or movements, however large they may be, against other similar groups that confront or threaten them.²⁵⁶

194. In a complementary manner, it is necessary to point out that police forces must adopt all the measures necessary to prevent the violence that ensues when the right of assembly is abused or exercised unlawfully. In principle, recognition of the right of assembly is premised on the fact that the assembly will be peaceful, i.e., will not infringe the human rights of other persons or groups of persons who are part of the same society. The Commission mentioned this point when analyzing a specific case: “The level of aggression and violence unleashed by the demonstrators at various points around the city, blatantly threatening public security, combined with the failure of the police force to intervene, provoked an understandable sense of insecurity in the society (...) The IACHR believes that the State’s failure to control public order constitutes a clear-cut failure to fulfill its duty to protect the persons subject to its jurisdiction.”²⁵⁷ In this specific case, the Commission applauded the removal of the Chief of Police “because of the failure of the police to step in to control the violent demonstrations.”²⁵⁸

195. In the give-and-take of a democratic society, the State’s role is to constantly weigh these often competing or conflicting rights and interests. As has been observed frequently in this regard, under certain circumstances the State may regulate or limit the exercise of certain rights provided the standards established within the Inter-American system are observed. As indicated by the Commission

(...) in addition to regulations established by law, the State may impose reasonable restrictions on demonstrations to ensure that they are peaceful and

²⁵⁶ IACHR, *Report on the Situation of Human Rights in Venezuela*, paragraphs 301 and 302.

²⁵⁷ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, [available in Spanish only], paragraph 104.

²⁵⁸ *Idem*.

to disperse those demonstrations that turn violent or obstructive, provided that those restrictions are informed by the principles of legality, necessity and proportionality. (...) The Commission must underscore the fact that the rights to freedom of assembly and peaceful demonstration are protected under the American Convention. Hence, any measure that a State adopts to restrict the exercise of those rights must be established by law beforehand, and must also be only what is strictly necessary when circumstances warrant it. Any such measure must always be a proportional response to the end being sought.²⁵⁹

Based on the literature on this subject in the region, it is now generally accepted that certain limits are allowed on the exercise of human rights, provided a number of conditions and circumstances coincide that are inherent in democratic rule of law. It has been observed that the interpretation of these limitations must be an objective one which establishes a “correlation between personal liberty and equality, solidarity and the general welfare (...)”. Such limitations “cannot stray beyond the boundaries of reason, i.e., they cannot disregard, destroy or alter the right being limited.”²⁶⁰

196. The Commission has issued various statements on what can be regarded as lawful limitations on the exercise of the right of assembly, i.e., the limitations strictly necessary to guarantee the general welfare and the functioning of a democratic society. It observed that

Article 15 of the American Convention protects the right to peaceful assembly without arms, and stipulates that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, or to protect public health or morals or the rights or freedom of others. (...) In the Commission’s view, States may regulate the use of public space, for example by establishing requirements of prior notice, but such regulations may not impose excessive demands that invalidate the exercise of the right. (...) Moreover, the Commission has stated that the arrest of participants at peaceful demonstrations violates freedom of assembly.”²⁶¹

In the Commission’s view, the member states must set clear criteria, which are to be properly disseminated so that as many people as possible may know that the systems are for coordination and communication between the police authorities and the persons participating in the demonstration or mass public gathering. The goal is to do as much as possible to accommodate the right of assembly, while at the same time limiting the negative consequences that these events can have on the rights of other members of the same community whose rights the State must also protect and ensure.²⁶²

²⁵⁹ IACHR, *Annual Report 2007*, Chapter IV, Report on Venezuela, paragraphs 260 and 268.

²⁶⁰ Bidart Campos, Germán J. *Teoría General de los Derechos Humanos*, Ed. Astrea, Buenos Aires, 1991.

²⁶¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraphs 55 and 56.

²⁶² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 58. For example, the “United Nations Human Rights Committee has stated its opinion in this regard when it asserted that the requirement to notify the police prior to a demonstration is not incompatible with Article 21 of the ICCPR (right of assembly). Nonetheless, the requirement of previous notification should not be transformed into a demand for the prior issuance of a permit by an agent with unlimited discretionary powers. That is to say that a demonstration may not be prevented because it is considered likely to jeopardize the peace or public security or order, without taking into account whether it is possible to prevent the threat to peace or the risk of disorder by altering the original conditions of the demonstration (time, place, etc). Restrictions on public demonstrations must be intended exclusively to prevent serious and imminent danger, and a future, generic danger would be insufficient.”

197. The Commission has addressed the issue of effective protection and guarantee of the right of assembly in the Hemisphere and how it specifically ties in with the need to reconcile exercise of that right with the State's obligations to prevent violence and to maintain the conditions that make coexistence in a democratic society possible. The Commission has dwelled at length on the approach that regards social protest strictly as a matter of criminal law. This phenomenon, which some have branded the criminalization of social protest, must be properly addressed by the member states because it has direct implications for the commitments they have undertaken to respect and observe international human rights law. This topic has been addressed in previous Commission pronouncements, specifically where it asserted that

in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly. In other words, it must be examined whether the application of criminal sanctions is justified under the standard, established by the Inter-American Court, that said restriction (criminalization) satisfies a pressing public interest necessary for the operation of a democratic society.²⁶³

198. State authorities have an obligation to prevent and, where necessary, control any form of violent behavior that violates the rights of any other person subject to that State's jurisdiction. One of the distinctive features of the right of assembly, as defined in international instruments and in the domestic laws that have the force of constitutional law in the countries of the region, is that it be exercised peaceably and without arms. The Commission is mindful of the fact that the exercise of this right can sometimes be disruptive to the normal routine of daily life, especially in large urban centers; it may even cause problems or affect the exercise of other rights that the State has an obligation to protect and ensure, such as freedom of movement. However, such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves. The Commission has also noted the very close relationship between the right of assembly and freedom of expression, where it held that "(...) in balancing, for example, freedom of movement and the right to assembly, it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system."²⁶⁴

199. The Commission has also pointed out that

[t]he most impoverished sectors of our Hemisphere face discriminatory policies and actions; their access to information on the planning and execution of measures that affect their daily lives is incipient and, in general, traditional channels to make their complaints known are frequently inaccessible. Confronting these prospects, in many of the Hemisphere's countries, social protest and mobilization have become tools to petition the public authorities, as

²⁶³ IACHR, *Annual Report 2007*, Chapter IV, paragraph 266. The Commission cites the I/A Court H.R., *Ricardo Canese v. Paraguay Case*. Judgment of August 31, 2004. Series C No. 111, paragraphs 96 to 98.

²⁶⁴ IACHR, 2005 Annual Report of the Rapporteurship for Freedom of Expression, Chapter V: "Public demonstrations as an exercise of freedom of expression and freedom of assembly."

well as channels for public complaints regarding abuses or human rights violations.²⁶⁵

In this unquestionably complex scenario, the member states are called upon to adopt the right decisions that strike the normal balance between the exercise of the various rights they must protect and guarantee.

200. The Commission established its position on this matter when it asserted that

(...) the State may impose reasonable restrictions on demonstrations to ensure that they are peaceful and to disperse those demonstrations that turn violent or obstructive, provided that those restrictions are informed by the principles of legality, necessity and proportionality (...) the actions of State agents should protect rather than discourage the right of assembly. Therefore, the rationale for dispersing demonstrations must be informed by the duty to protect the people demonstrating. A law enforcement officer charged with dispersing demonstrators must be prepared to use the methods that are safest and cause the least harm to the demonstrators.

(...) As a corollary to this reasoning, the Commission reiterates that when arranging the procedures to ensure the exercise of the human rights at stake in citizen security from the kind of social violence that could threaten or impair them, the authorities have to manage the various responses that the domestic legal system offers so that they are reasonable and proportional, taking into account the accepted international standards regarding the obligations to protect and ensure human rights. "It is also necessary to examine whether the imposition of criminal sanctions is, in fact, the least harmful means to restrict the freedom of expression, exercised through the right of assembly, in turn exercised through a demonstration on a thoroughfare or in a public square."²⁶⁶

201. The Commission has indicated that states should establish administrative controls to ensure only exceptional use of force in public demonstrations, in cases where it is necessary, through measures for planning, prevention, and for the investigation of cases in which an abuse of force may have occurred. The Commission has recommended the following: a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as a recourse in public demonstrations; b) implementation of an ammunition registration and control system; c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out; d) promotion of visible means of personal identification for police agents participating in public law enforcement operations; e) promotion of opportunities for communication and dialogue prior to demonstrations and of the activities of liaison officers to coordinate with demonstrators concerning demonstration and protest activities and law enforcement operations, in order to avoid conflict situations; f) the identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct; g) the establishment of an administrative sanctions regime for the law enforcement personnel

²⁶⁵ IACHR, 2005 Annual Report of the Rapporteurship for Freedom of Expression, Chapter V: "Public demonstrations as an exercise of freedom of expression and freedom of assembly."

²⁶⁶ IACHR, *Annual Report 2007*, Chapter IV, paragraphs 260 and 261.

involving independent investigators and the participation of victims of abuses or acts of violence; h) the adoption of measures to ensure that police or judicial officials (judges or prosecutors) directly involved in operations are not responsible for investigating irregularities or abuses committed during the course of those operations.²⁶⁷

202. The OAS member states' obligations with respect to the rights of association and assembly as they relate to citizen security must also consider one issue that has traditionally been set aside in the region: the right of members of the police force to organize. Within the Hemisphere, the right of police personnel to organize was not duly guaranteed. In fact, most of the rules and regulations governing law enforcement services do not allow members of the service to form unions; any form of association for work-related claims is considered a breach, or even a very serious breach, of the police code. In recent years, this trend started to reverse itself in some countries of the region, although not without difficulty. Today, the rules and regulations governing the police service are being amended to allow for unionized action. The objective is to set up a reasonable labor relations system that comports with international standards on the subject.

203. In principle, the restrictions that the member states' legal systems include on the exercise of police officers' right to strike and, where applicable, their right to form labor unions are not a violation of Article 9 of International Labour Organisation Convention No. 87.²⁶⁸ Likewise, restrictions of this kind are compatible with Article 16 of the American Convention, Article 22 of the International Covenant on Civil and Political Rights,²⁶⁹ and Article 8 of the International Covenant on Economic, Social and Cultural Rights.²⁷⁰ The Commission understands that when addressing this

²⁶⁷ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 68.

²⁶⁸ 1. "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. 2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention."

²⁶⁹ 1. "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."

²⁷⁰ "The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations; (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. 2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention."

issue, the proper balance will have to be struck among the various rights involved, informed by the standards of interpretation provided by international human rights law in general, and particularly models prepared by specialized organizations.

204. Given the nature of their duties, law enforcement personnel bear arms, a factor that should be taken into account in their exercise of the rights of association and assembly. No matter what manner or mode is used to exercise the right of assembly, no one should be allowed to participate bearing arms. Under international law, States have an obligation to ensure the right to assemble peaceably and without arms. Another criterion that the Commission would suggest is that law enforcement personnel should not be wearing their regulation uniform when participating in meetings or demonstrations held to assert job demands. The public attaches a certain symbolic value to the police uniform and insignia. The Commission therefore believes the appropriate course of action is to use those symbols only in the performance of police functions, as this has implications for the authority and duties that accompany the wearing of the uniform.

H. Right to participate in government

205. This right is protected under Article XX of the American Declaration and Article 23 of the American Convention:

American Declaration - Article XX: Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

American Convention - Article 23: 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

This right is also recognized in other international human rights instruments, such as Article 21 of the Universal Declaration,²⁷¹ Article 25 of the International Covenant on Civil and Political Rights,²⁷² the Convention on the Rights of the Child,²⁷³ and Article 4 of the Convention of Belém do Pará.²⁷⁴

²⁷¹ (1) "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

²⁷² "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."

²⁷³ 1. "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in

206. The planning, implementation and evaluation of public policy on citizen security involves the interaction of various rights, the enjoyment of which must be ensured by the State. This is also the area where the State parties' obligations with respect to freedom of association analyzed earlier in the body of this report converge; an expansive interpretation would also include in this area the obligations of the State with regard to the right to participate in government. The jurisprudence of the Court has examined the evolution of the right to participate in government from the perspective of the requirements of modern democratic social structures. The Court ruled that:

In recent years, this evolution has developed substantially the concept of the right to take part in the conduct of public affairs, which, nowadays, is a reference point that includes a very wide variety of components that can range from the right to support the removal of elected authorities, to supervise public administration, to have access to public information, to propose initiatives, to express opinions, etc. Indeed, the broad and general concept of the right "to take part in the conduct of public affairs," as it appears in the Convention, has been refined and expanded.²⁷⁵

207. The Court singles out for approval the Inter-American Democratic Charter as a basic milestone in the evolution of the concept of the right to participate in government.²⁷⁶ There, the member states establish the criteria for a precise interpretation of the obligations that follow from application of Article 23 of the Convention. The Court finds that:

Indeed, Article 4 of the Inter-American Democratic Charter enumerates a series of "essential components" of the exercise of democracy that express the conceptual development of the right to take part in the conduct of public affairs, and that are condensed in this Inter-American instrument. It underscores a series of State obligations which are merely the counterpart of the rights of citizens: '...Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press.' In the absence of progress in clarifications such as

...continuation

accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

²⁷⁴ "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: j) The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making."

²⁷⁵ I/A Court H.R., *Yatama v. Nicaragua Case*. Judgment of June 23, 2005. Series C No. 127, Concurring Opinion of Judge Diego Garcia-Sayan, paragraph 13.

²⁷⁶ Inter-American Democratic Charter, approved by the OAS General Assembly at the twenty-eighth special session held on September 11, 2001 in Lima, Peru. The Inter-American Democratic Charter emphasizes the importance of citizen participation as a permanent process that strengthens democracy. Article 2 of the Charter states that "Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order." This statement takes on a teleological meaning that is basic to the conceptual development of the political rights, which the Charter describes in Article 4.

these, which the American community has adopted consensually, it is evident that the said right to take part in the conduct of public affairs would be frozen in time, and not reflect the changing requirements of the democracies in our region.²⁷⁷

For the people living in the various countries of the region, the issues associated with crime and violence prevention are priorities. Therefore, under Article 23 of the Convention, States have a legal obligation to organize the most all-inclusive systems for society's participation in dealing with such issues, as a way to strengthen democracy and the rule of law in the Hemisphere.

208. As for the specific measures that must be taken within the framework of public policy on citizen security, organized society's participation is essential in planning, implementing and evaluating the measures being taken in the area of prevention, from the standpoint of a society and a community and in the context of the measures aimed at preventing the occasions of violence and crime.²⁷⁸ The Commission has said that while "(...) preventing crime and solving disputes are the State's responsibility (...) greater participation on the part of members of the community is needed to implement programs of this type, which should be ongoing and include a follow-up of the activities carried out."²⁷⁹ These mechanisms or forms of participation are more effective if carried out at the local level. This is directly attributable to the greater degree of autonomy that the domestic legal systems generally give to local government, which is conducive to and encourages citizen participation in all issues that are priority concerns for the community. This allows for a precise definition of the obligations undertaken by the State to protect and guarantee human rights at the municipal level, through the practice of concrete forms of self-government and self-management, all to establish efficient systems through which to meet diverse social demands. Citizen participation is essential for democratic governance. Because local governments have a more direct relationship with their constituents –if for no other reason than proximity- those constituents should play a critical role in crafting the public policy on citizen security, especially in terms of improving the quality of daily life, the use of public space and preventing and controlling certain forms of violence.

209. Neighborhood associations, community organizations, development commissions, unions, sports clubs, religious organizations, networks or interest groups are, by their nature, an important social resource. These types of groups rely on bonds of trust and reciprocity, which better prepares them to intervene to prevent or stop some of the factors that enable violence and crime. These types of social organization are also more conducive to enabling non-violent solutions to interpersonal or group conflicts at the local level. Various forms or modes of community participation in actions related to citizen security, in exercise of the right of association and the right to participate in government must be via previously agreed and clearly established channels. The main purpose is to strengthen the rule of law and the institutions of democracy. Society's involvement in matters related to citizen security must be confined exclusively to social, community or situational prevention of violent or criminal conduct, helping to create a climate of tolerance and

²⁷⁷ I/A Court H.R., *Yatama v. Nicaragua Case*. Judgment of June 23, 2005. Series C No. 127, Concurring Opinion of Judge Diego Garcia-Sayan, paragraph 17

²⁷⁸ Social prevention is understood as measures that targeted at the social risk factors that contribute to the violent behavior of an individual or his criminal activity; community prevention is understood to mean those activities aimed at strengthening local capacities to intervene to prevent or stop violent or criminal acts in a given neighborhood or zone. Finally, the definition of social prevention being used here ties it in with the measures calculated to reduce the opportunities to commit crime or to prevent violent situations from erupting through the use of deterrence, surveillance or urban interventions.

²⁷⁹ IACHR, *Justice and social inclusion: The challenges of democracy in Guatemala*, [available in Spanish only], paragraph 138.

respect and helping to correct the cultural, social or economic risk factors. The Commission wants to emphasize the fact that in the rule of law, the use of force and other legitimate means of coercion are reserved exclusively for the public authorities, who must exercise them in accordance with the standards discussed earlier in this report. As the Commission sees it, States are not fulfilling their duties to protect and ensure human rights when they allow, encourage or tolerate private groups that usurp the essential functions of the institutions within the system for the administration of justice or the police force. The recent history of the Hemisphere has seen practices of this type, which have caused extensive and systematic violations of human rights. Therefore, it is the duty of a democratic state to exercise strong control over such groups, to prevent them from operating and, where necessary, to apply the appropriate penalties under its criminal laws.

210. In a democratic State, exercising the right to participate in government affairs that concern citizen security becomes an important tool for monitoring the actions of public authorities. The Court made express reference to this point where it ruled that

(...) the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately. (...) Democratic control by society, through public opinion, fosters transparency in State activities and promotes the accountability of State officials in relation to their public activities.²⁸⁰

This position was echoed by the highest authorities responsible for citizen security in the Hemisphere when they recently declared their determination to:

(...) [e]ncourage and strengthen citizen and community participation in the implementation of public security plans and programs; (...) Encourage and strengthen social responsibility as well as a culture of comprehensive prevention of crime, violence, and insecurity, with the participation of citizens, the community, the media, and the private sector; (...) Promote, in that context, public policies that strengthen citizen trust in public security institutions.²⁸¹

211. Some of the most widely recognized studies in the region have examined the situations that the countries of the Hemisphere are experiencing with the increase in objective crime, the sense of insecurity, and the limited means that the State actors have to solve problems. These studies have found that "the strategy of citizen participation has been elevated to one of the principal alternative responses to this crisis."²⁸² Against this backdrop, the various forms of citizen participation should complement but never supplant the State's primary responsibility in preventing, deterring and suppressing violent or criminal behavior. This was the Commission's finding in earlier decisions, where it reiterated that

²⁸⁰ I/A Court H.R., *Claude-Reyes et al. v. Chile Case. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, paragraphs 86 and 87.

²⁸¹ "Commitment to Public Security in the Americas" approved at the First Meeting of Ministers Responsible for Public Security in the Americas," Mexico, October 7 and 8, 2008, OEA/Ser.K/XLIX.1 MISPA/doc.7/08 rev. 3, October 8, 2008, paragraphs 13, 14 y 15.

²⁸² Dammert Lucía, "Participación comunitaria en la prevención del delito en América Latina", in *Perspectivas y dilemas de la seguridad ciudadana en América Latina*, FLACSO Ecuador, 2007, p. 57.

The state may receive cooperation from civil society on certain security matters, but that is not say that possession and responsibility for such a duty may reside also with institutions alien to the state. (...) The Commission takes the view that the security of a democratic state is founded, *inter alia*, on values such as peace, liberty, justice, equality, protection of human rights and democratic coexistence; however, the foregoing does not mean that civil society can be placed on the same tier of responsibility as the state, which has the lawful monopoly over the use of public force, and is bound by a system of domestic and international responsibility distinct from that applicable to private persons.²⁸³

212. The importance that the Commission attaches to the need for member states to establish objectives, precise limits and ways of integrating citizen, social or community organizations for their activities in the field of citizen security is apparent from the statements it has made in recent years on this very point. The Commission has observed that "(...) it is crucial that the use of force be vested exclusively in the public security forces. It is essential to investigate the existence of these alleged armed groups and to disarm them fully as soon as possible."²⁸⁴ The Commission has made statements and concrete recommendations in this regard, pointing out that "The international responsibility of a State is triggered if groups of civilians violate human rights and do so with the support or acquiescence of the Government. The Commission has called upon the Government to investigate seriously the acts of violence attributed to some "popular organizations," and to adopt, as a matter of the utmost urgency, all necessary measures to prevent the recurrence of such acts."²⁸⁵

I. Right to the peaceful use and enjoyment of one's property

213. The right to use and enjoy one's property is recognized in Article XXIII of the American Declaration and Article 21 of the American Convention:

American Declaration - Article XXIII "Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home."

American Convention - Article 21.1 Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

This right is also recognized in Article 17 of the Universal Declaration.²⁸⁶

214. In many cases, crime and violence in the Hemisphere also takes its toll on everyone's right to the use and enjoy their property. The vast majority of the people of the Hemisphere, who fall into the middle- and low-income sectors, have been particularly affected. While the State has an obligation to guarantee, to all persons subject to its jurisdiction, the human

²⁸³ IACHR, *Report on the Situation of Human Rights in Venezuela*, paragraphs 262 and 264.

²⁸⁴ IACHR, *Annual Report 2002*, Chapter IV, Haiti, paragraph 28.

²⁸⁵ IACHR, *Annual Report 2002*, Chapter IV, Haiti, paragraph 27.

²⁸⁶ 1. "Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property."

rights most at stake in the policy on citizen security, it must take special measures to prevent and lawfully suppress crime and violence in those cases where the economic or social conditions of certain sectors of the population make them more vulnerable.

215. The Court has developed a definition of property, as follows: “Property can be defined 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 immovables, corporeal and incorporeal elements and any other intangible object capable of having value.”²⁸⁷ In keeping with this definition, the Commission has held that “From the standpoint of human rights, a small corn field deserves the same respect as the private property of a person that a bank account or a modern factory receives; a peasant farmer’s identification papers are as important as the private papers of a legal office and may only be reviewed or confiscated on orders from the competent.”²⁸⁸ The right to the peaceful use of property is also recognized in the UN Principles on Housing and Property Restitution for Refugees. Principle No. 7 (the right to peaceful enjoyment of possessions) provides that: “7(1) Everyone has the right to the peaceful enjoyment of his or her possessions. 7(2) States shall only subordinate the use and enjoyment of possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law. Whenever possible, the “interest of society” should be read restrictively, so as to mean only a temporary or limited interference with the right to peaceful enjoyment of possessions.”²⁸⁹

216. The strategies that the member states have mapped out for their public policy on citizen security should include measures in social, community and situational prevention, as well as deterrence plans to be implemented by the police force, all to help reduce the risk that individuals will fall victim to violence and crime that affect their right to the peaceful enjoyment of their possessions. Often, the absence of efficient and effective intervention on the part of the State when this type of risk presents itself increases the sense of frustration and vulnerability in many sectors of the population. These people ask themselves whether the competent authorities will react. It also induces vigilante justice, which has a very deleterious effect on peaceful coexistence in a democratic society and the rule of law.

VI. CONCLUSIONS

217. The rates of crime and violence in the Hemisphere today have made citizen security one of society’s chief demands of its state officials. The situation today is the result of a process that has been underway for decades, in which social, economic, cultural and institutional factors have converged, operating as enablers allowing various forms of violent behavior to develop and multiply, mirroring the sharp increase in crimes that pose a threat to the effective exercise and enjoyment of human rights.

218. Everyday, the societies of the Hemisphere are up against new and ever changing challenges to the kind of democratic co-existence that fosters tolerance, solidarity and respect for the rights of all persons. Salient among these challenges is violence, which manifests itself in a variety of

²⁸⁷ I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, paragraph 144.

²⁸⁸ IACHR, *The Human Rights Situation of the Indigenous People in the Americas*, Chapter III, Doctrine and Jurisprudence of the IACHR on Indigenous Rights (1970-1999), OEA/Ser.L/VII.108 Doc. 62, October 20, 2000, paragraph 2.

²⁸⁹ United Nations, Economic and Social Council, “Principles on Housing and Property Restitution for Refugees and Displaced Persons”, Sub-commission on the Promotion and Protection of Human Rights, 57th Session, E/CN.4/Sub.2/2005/17, June 28, 2005.

ways: organized crime; the large numbers of firearms in private hands; the abuse of narcotic drugs; violence against women; violence against children and adolescents; violence against the indigenous population and violence against Afro-descendants; disputes that involve social and community movements, and the rarely-studied phenomenon of the violence associated with juvenile delinquency and its many causes.

219. In a number of countries of the region, the response to the situation has been to reinforce approaches that have proved to be ineffective in solving society's demands for citizen security, based upon harsher penalties, fewer procedural guarantees, and to have adolescents charged as adults when accused of criminal offenses. The State's failure to adequately respond to the violence and crime triggered a reawakening of social mentalities based on intolerance and stigmatization of individuals or groups of individuals and in the process laid the groundwork for vigilante justice by "social cleansing" groups, "deaths squads" or para-police or para-military groups.

220. While some problems associated with citizen insecurity can be found in all countries of the region, no single policy fits every situation; instead, specific policies have to be crafted to deal with concrete situations. The historical processes at work in the Hemisphere and the political, social, economic and cultural conditions have created different realities in each member State. In the case of some countries, one also has to consider the effects of the transitions they have undergone, from civil war, to dictatorial government, and now to democratic government. Still other countries have kept their democratic institutions and the rule of law fully intact. In some sub-regional blocks, violence and crime is associated primarily with organized crime, especially drug trafficking; in others, the main problem is social violence; in still others, juvenile violence is fast becoming a major cause for concern.

221. The Commission's concept of citizen security is a situation in which persons are able to live free of the threats caused by violence and crime, and the State has the necessary means to guarantee and protect the human rights directly threatened by violence and crime. Taking a human rights approach, citizen security is, in practical terms, a condition in which individuals live free from the violence practiced by State and non-state actors.

222. Contrary to a long-held belief, citizen security is not solely up to the police. Citizen security is an amalgamation of multiple actors, conditions and factors. The following are just some of those factors: history and the structure of the State; government policies and programs; the observance of economic, social and cultural rights; and regional and international scenarios. The police are, however, an irreplaceable cog in the machinery that guarantees the human rights threatened by violence and crime. Unlike what happens in authoritarian regimes, in a democratic form of government the police force is a central part of those guarantees. Police also play an important role in ensuring that the administration of justice functions properly: they are responsible for conducting criminal investigations, identifying assailants, victims and witnesses, gathering and analyzing material evidence, and preparing reports for prosecutors and judges.

223. Within the region, the professionalization of the police force has in general run into two obstacles: on the one hand, it has not been a sustainable undertaking; on other, the model used has been of a military-style authoritarian professionalism, with the police somewhat isolated from the rest of society. The legitimacy and the efficacy of the police are essential to fostering citizen security, justice and human rights in democratic societies. However, they are not sufficient. The police play a pivotal role in preventing, deterring and controlling crime, violence and human rights violations. However, to do so, the police need the support and cooperation of those in the criminal justice system, governmental organizations, civil society organizations and private enterprise. And yet, the relationship between the police and the criminal justice system, the government and even society itself has sometimes been one of hostility instead of cooperation.

224. Fostering citizen security from a human rights approach demands that attention also be devoted to the security and rights of the agents of the State, which includes members of the police force. Frequently denied the security that observance of their fundamental rights gives, police perform their functions without the conditions and the authority necessary to effectively ensure citizen security. The member states have an obligation to protect and ensure the professional rights of the members of its police force and to provide them with the training, infrastructure and equipment needed to perform their duties properly.

225. While the policy on citizen security ought not to be confused with the State's social policies, those countries where the problems of inequality and discrimination are more acute, are more vulnerable to crime, violence and human rights violations. Reducing inequality and discrimination can play a vital role in citizen security within the Hemisphere.

226. The member states have undertaken international obligations to protect and ensure the human rights directly threatened by the dangers that interpersonal violence and crime pose. These obligations are both positive and negative in nature. A State fulfills these obligations by designing, implementing and constantly scrutinizing its public policies on citizen security, which are to be comprehensive, sustainable, and aimed at ensuring observance of the human rights of all persons subject to its jurisdiction. Observance of its international obligations in the area of human rights is another tool the State has to adequately address the demands that the societies of the region continually place on citizen security.

227. Member States have a duty to protect and ensure the human rights at stake in the area of citizen security through plans and programs aimed at prevention, deterrence and, where necessary, measures of lawful suppression of acts of violence and crime, based on the guidelines and within the boundaries set by the standards and principles on human rights within the universal and regional human rights systems.

228. The Commission recognizes that in order to fulfill the obligations referred to in the preceding paragraphs, the member states may occasionally have to limit or restrict the exercise of certain rights. These limitations or restrictions comply with internationally accepted standards on human rights only when they are informed by the principles of necessity, lawful purpose, proportionality, rationality and nondiscrimination.

229. Public policies on citizen security necessitate the creation or strengthening of state institutions that effectively and efficiently answer a democratic society's needs in this regard. This is mainly reflected in the way this institutional structure responds to the following priority issues: treatment of victims of violence and crime; the operation of private security firms; democratic governance of citizen security; the professionalization and modernization of the police force, and the participation of the armed forces in citizen security functions.

230. As has been said repeatedly throughout this report, the member states' obligations vis-à-vis citizen security come from a normative core comprised of the duties to protect and ensure that they have assumed under international human rights law, especially with regard to the right to life, the right to physical integrity; the right to personal liberty and security and the right to the peaceful enjoyment of one's possessions. Having said this, the positive and negative obligations of the State vis-à-vis citizen security also consist of the right to due process and to judicial protection, the right to privacy and protection of one's honor and dignity, the right to freedom of expression, the right of assembly and association, and the right to participate in government.

231. The Commission is troubled by the public authorities' inefficient response or failure to respond to society's needs in the area of citizen security and the negative consequences this could have for democratic governance and the rule of law. By the same token, the Commission is

pleased with the efforts that the member states are making at the domestic, bilateral and multilateral levels to build adequate responses to the needs of all those subject to its jurisdiction. It encourages them to persist in that effort and offers its continuing cooperation, as part of its specific mandate.

VII. RECOMMENDATIONS

232. In exercise of its authority, the Commission has the following recommendations for the member states, based on the text of this report:

A. General recommendations

1. Discharge their international obligations to protect and ensure the human rights at stake in citizen security by designing and implementing comprehensive public policies involving simultaneous performance of specific measures and strategic plans at the operational, normative, and preventive levels. These policies must be sustainable, which will necessitate the required political and social consensuses. At the same time, evaluation and accountability systems will have to be in place to check these policies in a context of broader citizen participation.

2. Generate the institutional capacity within the public sector to carry out the measures included in the plans and programs associated with public policy on citizen security, while making available adequate human, technical, and economic resources. This means, *inter alia*, improving the process for selecting and training the personnel of the institutions involved in implementing the policy on citizen security (especially the police, the members of the judicial branch, the staff of the public prosecutor's office and those of the prison system) and earmarking the material resources needed to provide the public with quality service.

3. Adapt the domestic laws and State apparatus to ensure democratic governance of citizen security. The legitimate political authorities of the State will have to shoulder their responsibility for designing, executing and monitoring public policy on citizen security, with the support of multidisciplinary technical teams.

4. Put into practice accountability systems and procedures that apply to all those authorities who have some role in the policy on citizen security. The procedures will use internal and external control mechanisms, thereby strengthening the institutions of democratic government, fostering transparency in the exercise of public office, and implementing measures to deal with impunity and corruption.

5. Ensure the special standards of protection needed for those persons or groups that are particularly vulnerable to violence and crime, such as children and adolescents, women, the indigenous population, Afro-descendants, migrants and their families, notwithstanding the obligations that the member states have undertaken to protect and ensure the human rights at stake in the policy on citizen security to all persons subject to their jurisdiction.

B. Specific recommendations

6. Take the administrative, legislative or other measures necessary for the apparatus of the State to be able to offer rapid and proper care to victims of violence and crime. This involves, *inter alia*, the following:

- (a) Incorporate into its domestic laws the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, clearly defining what persons fall into that category, especially the immediate victim, his or her

next of kin, loved ones and third persons who have intervened to assist the victim in danger or to prevent victimization;

- (b) In order to combat impunity, adapt the domestic laws, administrative regulations, procedures and plans of operation of the institutions with jurisdiction over the policy of citizen security, to ensure that they are able to prevent, investigate and punish any human rights violation resulting from acts of violence or crime, or from the action or omission of State agents;
- (c) In keeping with international standards, adopt all measures necessary to restore to the victim, to the extent possible, all rights that were violated as a consequence of acts of violence or crime;
- (d) Provide permanent training and instruction to those civil servants who have some immediate responsibility in the procedures for treating victims of violence and crime, especially those who are most vulnerable;
- (e) Design and implement procedural protocols to be followed by all institutions involved in the treatment and care of victims of crime and violence, to ensure proper treatment and to avoid their re-victimization;
- (f) Coordinate interventions conducted by government institutions at the national or local level with civil society organizations that specialize in the area, and enlist their cooperation;
- (g) Provide the proper infrastructure and equipment to care for persons who have been victims of crime or violence;
- (h) Establish the legal provisions that will enable victims to participate in all phases of judicial and administrative proceedings;
- (i) Provide full compensation to victims of violence and crime when the State bears some responsibility for the damages or harm caused by virtue of its failure to comply with its positive and negative obligations to protect and ensure human rights.

7. Ensure that the police force conducts all operational activities necessary to prevent, deter and lawfully suppress acts of violence or crime, as part of the State's obligation to protect and ensure the human rights directly at stake in the policy of citizen security. This involves the following:

- (a) Regulating the activities of private security firms and establishing the boundaries within which they must operate;
- (b) Establishing a public record to provide adequate information on the owners of firms of this type; their employees; the weaponry they carry and the service contracts currently in force;
- (c) Requiring that employees of these private security firms be certified by the competent state agencies to show that they are qualified for their employment and that they have, *inter alia*, the physical and psychological aptitude and training (especially in the use of firearms) necessary to perform these types of tasks.

8. Strengthen the ability of the legitimate political authorities to oversee the design, implementation and evaluation of the public policy on citizen security. In this regard:

- (a) Consider passage of laws establishing the structure and operation of the citizen security system, with the necessary division of policy-related, technical and administrative responsibilities;
- (b) Adapt the framework of state institutions to ensure democratic governance of the citizen security system;

- (c) Earmark the human and material resources needed by the multidisciplinary technical teams that will produce the information that government and administrative officials require to make decisions;
 - (d) Establish independent mechanisms to control and supervise the functioning of the institutions in the citizen security system;
 - (e) Strengthen the technical capacity of the legislatures to evaluate and exercise political oversight of public policy on citizen security.
9. Implement plans to modernize and professionalize the police force. In this respect:
- (a) Adjust the institutional philosophy to conform to international human rights standards and principles as they relate to citizen security;
 - (b) Adopt objective procedures for recruiting and selecting those individuals who will become members of the police force, based on open competition and by making the advance training more rigorous;
 - (c) Establish procedures for attracting quality candidates for law enforcement, both at the entry level and for promotions and postings. Conduct permanent refresher training courses for officers already on the police force;
 - (d) Ensure a proper police career service by establishing a framework of clear and precise rules and regulations, and include administrative due process at all stages of the career service. The police career service should take particular care to avoid any type of discrimination against women police officers and to create the conditions to make the institution representative of the country's social and cultural reality. Clearly spell out the labor rights and regulate the scope of police officers' right to form and join unions;
 - (e) Determine where the police are to be deployed and what their functions are to be, to make law enforcement a proactive service accessible to all sectors of the population;
 - (f) Train police personnel in how to deal effectively and efficiently with persons from the most vulnerable sectors of society (including children and adolescents, women, indigenous people, Afro-descendants and migrants);
 - (g) Develop skills in police intelligence work (with a legal framework that conforms to international standards on human rights; trained personnel; and equipment and infrastructure) to assist in preventing violence and crime, especially in the case of organized or complex crime;
 - (h) Adopt laws to regulate police procedure, to define and publicize the authorities the police force has and the limits beyond which it cannot go; approve and put into practice police codes of ethics that conform to the general framework of the United Nations Code of Conduct for Law Enforcement Officials. Regulate disciplinary proceedings and establish independent systems for internal and external oversight of police performance;
 - (i) Outfit the police with the equipment, means of lethal and nonlethal force and the infrastructure they need to perform their service functions effectively and efficiently.
10. In the domestic legal system, draw a clear distinction between national defense as the function of the armed forces, and citizen security as a function of the police. Make it very clear that because of the nature of the situations they must deal with, the instruction and specialized training they receive, and the region's unfortunate history of military intervention into internal security affairs, the police have sole responsibility for the functions associated with prevention, deterrence and lawful suppression of violence, under the oversight of the legitimate authorities of a democratic government.

11. Adopt effective measures to guard against interventions by State agents and actions by private parties that threaten the right to life. This means designing and putting into practice plans and programs in social, community and situational prevention, designed to address those factors that enable violent behavior to breed and multiply within society, especially:

- (a) prevention of domestic violence;
- (b) specific violence-prevention programs that target adolescents and young people;
- (c) control and reduce the number of firearms in private hands;
- (d) violence treatment programs in academic institutions, which includes instruction in the peaceful resolution of differences;
- (e) measures to prevent violence at sporting events;
- (f) awareness and information programs that include media campaigns aimed at preventing interpersonal and social violence;
- (g) plans for training and specialized instruction for law enforcement personnel in the use of nonviolent means of preventing, deterring and suppressing criminal acts.

12. Generate the abilities of state institutions to identify and punish the perpetrators of crimes that violate the right to life. This requires, *inter alia*:

- (a) upgrading the human, technical and infrastructure resources of the police and the public prosecutor's office to equip them with the skills they need to conduct a proper criminal investigation in cases of crimes that violate the right to life;
- (b) adapting police procedures so that agents of the State or private persons who violate the right to life do not go unpunished;
- (c) incorporating into the domestic laws the United Nations "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions."

13. As for the use of lethal force by agents of the State:

- (a) train police officers in how to use lethal force in a manner that is consistent with international standards, especially the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- (b) by law, in both the formal and material sense, regulate police procedures that involve the legitimate use of lethal force, stipulating that recourse to such an extreme is a last resort that must be informed by the principles of necessity, graduality, and reasonableness;
- (c) outfit the police with the equipment and weapons they need to allow them to use nonlethal methods of coercion as the preferred method in police operations;
- (d) establish independent internal and external control systems to give effect to the State's obligation to investigate any cases in which law enforcement uses lethal means and methods.

14. Concerning respect for the right to the integrity of one's person:

- (a) take measures, both within the private realm and with respect to interventions of State agents, to prevent and control violence, especially in the case of those persons who are particularly vulnerable to threats to their personal security, such as children, adolescents and women;
- (b) take the legislative and institutional measures to prevent and punish torture and other cruel, inhuman and degrading treatment or punishment inflicted by agents of the State. In this regard:

- i) In the domestic legal system, criminalize torture and other cruel, inhuman or degrading punishment;
 - ii) Ensure that the domestic laws make clear that due obedience cannot be invoked to exonerate the perpetrators, accomplices or accessories after the fact in cases of torture or cruel, inhuman or degrading treatment;
 - iii) Create the internal and external systems and procedures that will allow for an independent investigation of facts that may constitute torture or cruel, inhuman or degrading treatment or punishment;
 - iv) Require, by law, that the authorities of the State act *ex officio* in cases of possible torture or cruel, inhuman or degrading treatment;
 - v) Train and instruct members of law enforcement in the techniques of criminal investigation and lawful means of gathering evidence, in keeping with the framework established pursuant to the international obligations undertaken by the State to protect and ensure human rights;
 - vi) Make condemnation of torture and other forms of cruel, inhuman or degrading treatment part of the law enforcement philosophy, and require every member of the police force to report any act of this nature that comes to his or her attention.
- (c) equip and train police officers in the use of nonlethal methods for interventions, the use of lawful physical coercion, within the boundaries of the internationally accepted principles and standards on this subject.

15. As for the guarantees of the right to personal liberty and security:

- (a) adopt the normative and operational measures to prevent, investigate and punish threats made against the right to personal liberty and security by private parties;
- (b) properly train and equip security forces for their interventions in cases in which the acts of private parties affect the right to personal liberty and security;
- (c) assist the situation of children, adolescents, women, indigenous persons, Afro-descendants, migrants and families who are victims of human trafficking or the slave trade. Make the United Nations Principles and Guidelines on Human Rights and Trafficking part of their domestic laws;
- (d) adapt the domestic legal system and institutional procedures and practices so that they are able to prevent and, where necessary, investigate and punish cases of arbitrary detentions by agents of the State. This involves the following:
 - i) stipulating that no person shall be deprived of his or her liberty except under the circumstances that the law specifically prescribes;
 - ii) guaranteeing that persons in the custody of State authorities will receive decent treatment;
 - iii) incorporating into its domestic laws the obligation of State agents to immediately inform the person detained of the reasons for his or her detention;
 - iv) immediately reporting the detention to the competent judge for a determination of the detained person's rights;
 - v) informing the detained person's next of kin and loved ones of his or her whereabouts and the reasons for the detention;
 - vi) guaranteeing the detained person the services of legal counsel from the moment of his or her arrest; and
 - vii) organizing a public record of persons taken into custody.

- (e) Put into practice systems that ensure that minors under the age of eighteen will receive special protection from unlawful detention: basically, the competent judge and the parents or guardian are to be notified immediately and a medical examination is to be conducted to certify to his or her health at the time of the detention;
- (f) Take into account the direct impact of these guarantees on the policy of citizen security, with respect to persons held in custody in prison facilities by order of a judge; incorporate into the state's domestic laws and put into practice the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the IACHR, and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

16. A citizen security policy must be implemented in such a way that the right to due process and the right to judicial protection are observed. Member States must be especially mindful of their obligations to:

- (a) Respect the internationally accepted basic principles of criminal law: presumption of innocence, *nullum crimen sine lege*, *nulla poena sine lege*, and *non bis in idem*;
- (b) Limit preventive detention, as a precautionary measure, to the minimum period of time possible, based on the principles of necessity and reasonableness;
- (c) Give the regular courts exclusive competence to prosecute criminal violations, preventing the creation of *ad hoc* or special judges or courts;
- (d) Ensure the independence of the courts so that they may observe the judicial guarantees and the right to a fair trial, by instituting tenure on the bench and requiring that judges and magistrates be professionally qualified;
- (e) Provide the human and material resources necessary for proper administration of justice, so that victims of crime and acts of violence are assured the protection of the court.
- (f) Implement the mechanisms necessary to prevent, investigate and punish any form of corruption that prevents the system of administration of justice from functioning correctly.

17. Establish the legislative measures and administrative procedures that will ensure everyone's right to privacy and the protection of their honor and dignity. This involves:

- (a) Regulating, by law, the occasion and boundaries of police-conducted bodily searches;
- (b) Likewise, establishing transparent procedural protocols to be followed when searching objects or vehicles as part of police procedures;
- (c) Putting into practice the technology necessary to conduct non-invasive searches of persons and property, whenever possible;
- (d) Updating the laws to allow for interception of private communications, in a manner that is consistent with international standards and with a court order;
- (e) Incorporating into the constitution and higher law, the guarantees of the inviolability of the home, and detailing any limitations or restrictions thereto;
- (f) Clearly specifying the exceptional circumstances under which a domicile can be entered without a court order, exclusively in cases of extreme need and only to put a stop to some imminent threat to the right to life or the right to personal integrity of those inside said domicile.

18. Public policy on citizen security should make provision for specific aspects of the right to freedom of expression, the following in particular:

- (a) produce, organize and disclose quality information that enables a democratic citizenry to monitor policies on citizen security. This is particularly relevant to:
 - i) the operation of systems that gather and analyze information;
 - ii) preparation of qualitative and quantitative indicators on: the rates and types of acts of violence and crime; the budget assigned to the sector and how effectively it is used; surveys on victimization; dissemination of successes in social and community prevention of violence and crime, and other topics.
- (b) generate and report objective information on the situation of the most vulnerable groups in the population and how they are affected by violence and crime (children and adolescents, women, the indigenous population, Afro-descendants, migrants and their families);
- (c) enable access to all information in the State's possession on matters related to citizen security, with the exception of those topics that must be kept confidential to ensure that specific measures taken to prevent or control violence and crime are effective. Ensure a rapid and simple recourse to the competent court to determine whether the confidential classification of a specific piece of information is warranted;
- (d) promote the operation of institutions monitoring violence and crime at the national and regional levels, to complement the measures taken by public institutions and civil society organizations to generate, analyze and circulate quality information on citizen security;
- (e) include the remedy of *habeas data* in domestic law, to guarantee:
 - i) Every person's right to privacy;
 - ii) Every person's right to obtain his or her information in government databases;
 - iii) Every person's right to use this action as a means to monitor the performance of public authorities.

19. As for the State's obligations vis-à-vis the rights of assembly and association:

- (a) within its domestic laws, spell out any limitations or restrictions on the exercise of these rights. Any such restriction or limitation must be objective, i.e., it must weigh the personal liberty against the general welfare in a democratic society; it is not to disregard or alter the recognition of these rights, and must be ordered on the basis of the principles of legality, necessity and proportionality;
- (b) establish the procedures that the law enforcement officers must follow to ensure the exercise of the right to assemble for peaceful purposes, through measures such as: control of pedestrian and vehicular traffic; planning the avenues for dispersal or evacuation of the public areas where the mass gathering or demonstration is taking place; and implement security measures that prevent any person or group from interfering in the public activities through which this right is being exercised;
- (c) continually train police to prepare them for operations whose purpose is to guarantee the exercise of the right of assembly. Accordingly, train and adequately equip the police to intervene in those mass gatherings or demonstrations that turn violent and where the rights of third parties are being

affected. The police are to use nonviolent methods to settle disputes and, if absolutely necessary, may resort to nonlethal physical methods of coercion, adhering to the internationally recognized principles and standards;

- (d) Limit the imposition of criminal sanctions incurred in the course of exercising the right of assembly strictly to those cases in which it is shown that the rights of third parties were violated by recourse to violence. If criminal sanctions are imposed, it must be out of the need to protect these rights and the general welfare in a democratic society;
- (e) Guarantee police officers' right of association and their right to form and join unions. In keeping with international standards and as dictated by the needs of a democratic society and to ensure fulfillment of the State's obligations to protect and ensure the human rights at stake in the area of citizen security, the law may establish limitations on the exercise of the right to strike and other ways in which the right of assembly is exercised by police personnel.

20. Create the conditions to enable the public to participate in matters related to citizen security, as a means of strengthening democracy, improving the quality of the services related to the citizen security policy, and to develop systems to control and oversee the performance of public authorities. However, when involving the public in matters related to citizen security, the following guidelines must be followed:

- (a) The State must have a monopoly on the use of legitimate force. The domestic legal system must adopt measures to investigate and punish any type of organization whose objective is to engage in private, vigilante justice;
- (b) The public's involvement is to be centered on activities in social, community and situational prevention of violence and crime;
- (c) Any type of organization must be independent of the State authorities or partisan political sectors;
- (d) Areas for proper coordination with the types of organizations that already exist within society must be created; the design of violence and crime prevention plans and development of accountability systems must be encouraged;
- (e) Local or municipal governments must be encouraged to take responsibility for managing citizen security at the local level.

21. Design and implement crime and violence prevention plans that help ensure that all persons subject to their jurisdiction have the right the peaceful enjoyment of their possessions. Apart from the general measures taken to achieve this objective, the States should pay special attention to those whose social or economic situation is such that they require special measures of protection.

ANNEXES

INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 2 0 0 0 6 U.S.A.

December 10, 2007

Excellency:

I have the honor of addressing Your Excellency on behalf of the Inter-American Commission on Human Rights to send to you a questionnaire designed to compile information that will assist the Commission's work in the area of public security and human rights.

In the Commission's view, it is imperative that the States immediately adopt effective laws, policies and practices to guarantee the public's security and respect for human rights. The Commission is in the process of preparing a regional study that will serve as a guide and make recommendations to the member states of the Organization of American States pertaining to their obligation to protect their inhabitants, especially victims of crime and violations of human rights. Through the cases it receives, the precautionary measures it orders, its studies on specific issues and visits to a number of the member states, the relationship between citizen security and human rights continues to be one of the Commission's priorities.

The report that the Commission is preparing in connection with this regional study will take into account the information received from state sources and from civil society. Enclosed Your Excellency will find a questionnaire whose purpose is to compile information on the principal achievements and challenges that the States of the region are facing in the area of citizen security and human rights. The questionnaire is looking for qualitative and quantitative data. The Commission hopes to compile information at the local and national level; in the case of federal systems, it hopes to get information from the national governments and the federated units, so that it can consider the challenges they face. The Commission would appreciate any replies, reports, statistics and other data you might be able to offer in this regard.

I am respectfully requesting that Your Excellency's Government make the necessary arrangements to get this information to the Inter-American Commission before February 4, 2008. The responses to this questionnaire should be sent to the following address: (...)

Accept, Excellency the assurances of my highest consideration.

Santiago Canton
Executive Secretary

1. Which are the principal provisions of the Constitution and the law that concern protection and promotion of public security and the functioning of the public security sector?
2. Which are the principal provisions of the Constitution and the law on the structure and functioning of the police and the armed forces and the relationship between them?
3. Which are the principal provisions of the Constitution and the law that specifically pertain to organized crime?
4. Which provisions of the Constitution and the law specifically concern the production, marketing and use of firearms?
5. What are the country's main challenges in terms of public security and rule of law? Have the rates of robbery and homicide increased or decreased in the last five years? Please explain how the robbery and homicide rates are figured.
6. Does the country have a national policy and/or plan of action with respect to public security? What prevention-oriented components do those policies and/or plans of action feature, apart from the rule of law?
7. Do the national policies and/or plans of action on public security feature specific instruments to protect the rights of specific groups, such as children, women, ethnic/racial minorities and indigenous groups?
8. Does the country have a national policy and/or plan of action with respect to organized crime?
9. Does the country have a national policy and/or plan of action specifically targeted at organized crime involved in the drug trade?
10. How much progress has been made in implementing policies and/or plans of action on public security? What have been the principal problems during implementation? Political support? Public support? Economic resources? Scientific and technological capacity? Professional competence?
11. What is the best example of progress and/or success in implementing policies and/or plans of action to improve public security? How are progress and success measured when it comes to public security?
12. What are the main difficulties in implementing, monitoring and evaluating the reforms, policies and programs to promote citizen security and human rights?
13. Which are the principal initiatives to reform the police and/or improve strategies for law enforcement and preventing crime and violence in the country?
14. How many police organizations are there in the country? How many police officers are employed in the country's police organizations? In federal states, please provide this information in relation to state/provincial and municipal/local agencies?
15. Are there military police organizations in the country? How many? Which are they? In countries that do have military police organizations, how many police officers are employed in those organizations?

16. Do police organizations have specific strategies and programs for preventing crime and violence, apart from the job that law enforcement officers perform?
17. Do police organizations have specific programs to protect particular groups, such as children, women, ethnic/racial minorities and indigenous groups?
18. Are there specific policies and programs to protect and assist victims of violence and crime? Which organizations run these programs and policies?
19. What percentage of national and/or state/provincial spending goes toward public security?
20. What percentage of the national and/or state/provincial spending goes to the police?
21. In the executive branch, which ministry/secretariat/department is in charge of public security? In federal states, which secretariat/department is in charge of public security? Are there councils/committees on which members of civil society organizations serve?
22. In the executive branch, which ministry/secretariat/department is in charge of human rights? Are there councils/committees on which members of human rights organizations serve?
23. Does the legislative branch have a specific body/committee in charge of public security issues? If so, what is its name? In federal states, which organizations/committees are in charge of security issues in the federal and state/provincial legislatures?
24. What are the principal organizations in charge of external oversight of the police? In federal states, which federal and state/provincial organizations are in charge of external oversight of police organizations at the federal and state/provincial levels?
25. Are there unofficial vigilante groups or paramilitary groups in the country? If so, what mechanisms are used to control and monitor these groups?
26. How many private security firms are there in the country? How many people are employed by private security firms? Which are the principal watchdog organizations monitoring private security firms?
27. What percentage of the national and/or state/provincial budget goes to the Public Prosecutor's Office or the Attorney General's Office? How many prosecutors are there nationwide?
28. What percentage of the national and/or state/provincial budget goes toward the Judicial Branch? How many judges are there nationwide?
29. How do civil society organizations participate in developing, implementing, monitoring and evaluating public security programs and policies?
30. How do civil society organizations interact with police organizations? How do they monitor and evaluate the police?

Please indicate the following:

1. Name:
2. Profession/Occupation:
3. Position:
4. Organization:
5. Address:
6. Telephone:
7. Fax:
8. E-mail: