

Inter-American Commission on Human Rights

REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

I. INTRODUCTION

1. The human rights instruments enshrine rights that the States must respect and guarantee for all persons under their jurisdiction. The work of human rights defenders is fundamental for the universal implementation of those rights, and for the full existence of democracy and the rule of law. The tireless work of human rights defenders has been essential in the defense of rights under dictatorships, authoritarian governments, and during internal armed conflicts. Today, in a context marked by democratic governments, the work of human rights defenders continues to be essential for the process of strengthening democracies. For this reason, the day-to-day problems that human rights defenders face have been a matter of particular interest in the work of the Inter-American Commission on Human Rights (the "IACHR" or "the Commission").^[1]

2. Since it was established, the Commission has followed the work of, supported, and expressed its recognition for those who, with their work, have helped create the conditions for the development of human rights. In large measure, thanks to human rights defenders today we have guarantees of protection for all inhabitants of the region, including the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

3. Even today, in democratic societies, human rights defenders continue to be victims of extrajudicial executions and forced disappearances; assaults, threats, and harassment; smear campaigns, judicial actions; restriction of access to information in the hands of the state; abusive administrative and financial controls; and impunity in relation to those who perpetrate these violations.

4. The Commission considers that when efforts are made to silence and inhibit the work of human rights defenders, thousands are denied the opportunity to obtain justice for violations of their human rights. Such efforts place at great risk the work of protecting and promoting human rights, social oversight of the proper functioning of public institutions, accompaniment and judicial support for victims of human rights violations, among other tasks.

5. One of the most important mechanisms the inter-American system has to protect human rights defenders is that constituted by urgent actions, precautionary measures, and provisional measures. This report describes the effectiveness of their application in protecting the work of those persons engaged in the protection of the human rights of persons who live in this hemisphere.

6. In order to obtain the information needed for drafting the report, the Special Human Rights Defenders Unit of the Executive Secretariat, established in 2001, drew up two questionnaires to be sent to the member states and human rights organizations of the hemisphere.^[2] The questions in the questionnaire to the states parties were divided into three issues: recognition of human rights organizations, protection of human rights defenders by the state, and acts that impede or encumber the work of the defenders and their organizations. In the questionnaire sent to the human rights organizations, questions were asked about their work and organization, acts of violence and attacks on individuals and organizations, relations with the state, and measures of protection granted by the organs of the inter-American system. The Commission would like to express its gratitude to the states and the organizations that sent their observations. The report also draws on the information obtained through the cases and precautionary measures that come before the system, the hearings before the Commission, the on-site visits, and regional and country consultations, from the creation of the Unit to the writing of this report.

7. The objective of this Report is to identify the patterns of violations of those who work in the defense of human rights in the region, and at the same time to highlight the special risk faced by some groups of defenders. A second objective is to reaffirm the legal framework of protection afforded by the inter-American system, which should be applied to the work of men and women engaged in the defense of human rights. The Commission points out that this report provides a preliminary overview of a variety of topics that will be examined in depth in more detailed thematic reports. Finally, through this report the Commission proposes to the states measures to legitimate, promote, and protect the work of human rights defenders.

II. THE HUMAN RIGHTS DEFENDERS UNIT

8. In its 1998 Annual Report, the Commission has highlighted the importance and the ethical dimension of the work carried out by those persons who are dedicated to promoting, monitoring, and providing legal defense for human rights and by the organizations with

which many of them are affiliated. In that report the Commission recommended to the member states that they “take all necessary measures to protect the physical integrity of human rights defenders and to ensure they can work under appropriate conditions.”^[3] When these recommendations were presented to the member states, the General Assembly adopted resolution 1671, entitled “Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas.” Through this resolution, the General Assembly entrusted the Permanent Council, in coordination with the Inter-American Commission, to continue studying the issues of human rights defenders in the Americas.”^[4]

9. Following up on this resolution, in the context of its thirty-first session, the General Assembly asked the Commission “to consider preparing a comprehensive study in this area which, inter alia, describes their work, for study by the pertinent political authorities.”^[5] In December 2001, mindful of this request, the Executive Secretariat decided to establish a Human Rights Defenders Unit^[6], entrusted with coordinating the activities of the Executive Secretariat in this area, directly under the Executive Secretary. Special mention should be made of the contribution to the creation of this unit by Ms. Hina Jilani, the Special Representative of the United Nations Secretary-General on Human Rights Defenders.

10. Since its was established, the Unit has carried out the following tasks: receive and analyze the communications, complaints, urgent actions, and press information that human rights organizations send the Executive Secretariat; advise the Commission on individual petitions and requests for precautionary measures related to human rights defenders; promote hearings on the subject^[7]; and publicize incidents that have a detrimental effect on the full enjoyment of their rights by human rights defenders in the region.

11. The Unit has made several visits to the countries to evaluate specific situations. As of December 2001, the Unit has provided support for the visits by the Commission to Colombia (December 2001), Argentina (August 2001), and Guatemala (July 2002, March 2003, and July 2005). In each instance, in the context of both working and on-site visits, the Unit has scheduled meetings with human rights defenders and with the authorities in charge of protecting these persons. As a result of those visits, the Unit has provided support for the preparation of several country reports in which a special chapter has been included about the situation of human rights defenders. This has been done in the recent reports on Colombia, Guatemala, and Venezuela.^[8]

12. The Unit has engaged in permanent coordination with other international and regional organizations devoted to the issue of human rights defenders. On several occasions meetings have been held, both at its headquarters and in other countries, with the Special Representative of the United Nations Secretary General on the Situation of Human Rights Defenders, and with the Special Rapporteur of the African Commission.^[9] Additionally, the Unit has participated in numerous meetings called by human rights organizations in which the issue of human rights defenders has been addressed.^[10]

III. HUMAN RIGHTS DEFENDERS IN A DEMOCRATIC SOCIETY

A. Human rights defenders

13. The basic framework for analysis for determining who should be considered a human rights defender is found in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter "the United Nations Declaration"). Article 1 of the United Nations Declaration provides: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels." Therefore, every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally, must be considered a human rights defender.^[11]

14. The United Nations High Commissioner for Human Rights, interpreting this provision, has noted certain tools that facilitate the task of identifying who can be considered a human rights defender.^[12] The High Commissioner has suggested that the determination as to whether a person is a human rights defender is based on the actions of that person, and no other considerations, such as whether he or she is paid for such work. To be considered in this category, the person must protect or promote any right or rights of persons or groups of persons, which includes promoting and protecting any civil or political right, or economic, social, or cultural right.

15. The United Nations High Commissioner notes that human rights defenders undertake to further the realization of any of the rights, which includes addressing summary executions, forced disappearances, torture, arbitrary detentions, discrimination, labor rights, the right to housing and forced evictions, among others. In addition, human rights defenders may carry out their work in certain categories of rights or

persons, such as protecting the rights of women, children, indigenous peoples, refugees and forcibly displaced persons.

16. In the manual on this topic, the High Commissioner indicates that there is not a closed list of activities that are considered action in the defense of human rights. These actions may entail investigating and compiling information to report human rights violations, lobbying the national and international authorities to ensure they learn of those reports or of a given situation, actions to ensure the responsibility of state authorities and eradicate impunity, actions to support democratic governance and to eradicate corruption, the contribution to implementing, on a national scale, the international standards established by human rights treaties, and education and training in human rights. Whatever the action, the important thing is that it be aimed at promoting the protection of any component of at least one human right, and that it not involve violent methods.

17. Accordingly, the General Assembly of the OAS has called on the member states to protect the individuals, groups, and organizations of civil society engaged in efforts to protect human rights and fundamental freedoms, and to effectively do away with human rights violations, nationally and/or regionally.^[13] In addition, the General Assembly has called on the states to promote and enforce the United Nations Declaration on Defenders, as well as the provisions of the inter-American system and the decisions of its organs.

18. The Commission in this report and its subsequent work will use the broad concept of human rights defender found in the United Nations Declaration, and invites the member states to apply this standard in their domestic legislation and practices, as several states of the hemisphere do at this time.

19. The criterion that determines who should be considered a human rights defender is the activity itself. In this sense, those individuals working in State institutions whose functions relate to the promotion and protection of human rights and who, in the exercise of those duties, are victims of acts that directly or indirectly prevent or hamper their work, should receive the same protection as members of civil society who are working in the defense of human rights. This is the case insofar as such acts affect the enjoyment of human rights by society as a whole. Moreover, the Commission takes into account that, in general, public officials working in entities such as human rights offices, ombudsperson's and procurator's offices [*defensorías, personerías, procuradurías*], special human rights prosecutors offices, and the like, who are constantly working to verify the proper functioning

of the State and the performance of the authorities in fulfilling their human rights obligations, are more vulnerable to falling victim to hostile acts.^[14]

B. International protection of human rights defenders

20. The Inter-American Democratic Charter reaffirms that democracy is essential for the social, political, and economic development of the peoples of the Americas^[15], where respect for human rights is essential to their existence.^[16] In addition, the Democratic Charter highlights the importance of the permanent, ethical, and responsible participation of the citizenry in a framework of legality in keeping with the respective constitutional order for the development of democracy.^[17] Human rights defenders, from different sectors of civil society, and, in some cases, from state institutions, make fundamental contributions to the existence and strengthening of democratic societies. Accordingly, respect for human rights in a democratic state largely depends on the human rights defenders enjoying effective and adequate guarantees for freely carrying out their activities.

21. For more than ten years, the General Assembly of the OAS has made several statements about the importance it attributes to respect for and protection of human rights defenders, and it has shown the OAS's profound concern over the situation of the defenders and their organizations. On June 8, 1990, by resolution AG/RES. 1044, approved June 8, 1990, the General Assembly reiterated "the recommendation made in prior years to the governments of the member states that they grant the necessary guarantees and facilities to enable nongovernmental human rights organizations to continue contributing to the promotion and protection of human rights, and that they respect the freedom and safety of the members of such organizations."

22. For more than five years, during its regular sessions the General Assembly has taken up a specific agenda item on the situation of human rights defenders, called on the states to provide them special protection, and has reiterated that the obligation to promote and protect human rights is first and foremost an obligation of the states. For example, in resolution AG/RES. 1920 of June 10, 2003, it acknowledged the important work, nationally and regionally, of human rights defenders, and their valuable contribution to the protection and promotion of fundamental rights and liberties in the hemisphere. Similarly, in its resolution AG/RES 2036 (XXXIV-O/04), the Assembly emphasized that "the performance by human rights defenders of their tasks contributes actively to strengthening democratic institutions and improving national human rights systems." Accordingly, the Assembly reiterated its

recommendation to the governments of the member states “to continue stepping up their efforts to adopt the necessary measures to safeguard the lives, freedom, and personal safety of human rights defenders, and to conduct thorough and impartial investigations in all cases of violations against human rights defenders, ensuring that the findings thereof are transparent and publicized.”^[18] In addition, the Assembly has issued an appeal to the states to “promote the dissemination and enforcement of the instruments of the inter-American system and the decisions of its bodies on this matter, as well as the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.” In its most recent resolution, adopted June 7, 2005, the General Assembly acknowledged, in particular, “in view of their specific role and needs, women human rights defenders should be accorded special attention to ensure that they are fully protected and effective in carrying out their important activities.”^[19]

23. The human rights organs of the inter-American system, for their part, have repeatedly highlighted the importance of the work of those persons who, individually or collectively, promote and seek the protection and attainment of human rights and fundamental, as well as the oversight of democratic institutions.^[20] The Commission has stated that human rights defenders play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy.^[21] The IACHR has indicated that the work of human rights defenders, protecting individuals and groups of individuals who are victims of human rights violations, publicly denouncing the injustices that affect large sectors of society, and pointing to the need for citizen oversight of public officials and democratic institutions, among other activities, means they play an irreplaceable role in building a solid and lasting democratic society.

24. The Inter-American Court has also emphasized the importance of the work of human rights defenders, when it indicated, for example, that “respect for human rights in a democratic state depend largely on human rights defenders enjoying effective and adequate guarantees so as to freely go about their activities, and it is advisable to pay special attention to those actions that limit or hinder the work of human rights defenders.”^[22]

25. The work of human rights defenders has also been recognized by several international organizations. As indicated previously, the United Nations Commission on Human Rights highlighted the importance of human rights defenders in the United Nations Declaration on Defenders.^[23] This document provides: “Everyone has the right, individually and in

association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."^[24] For the purposes of fostering and protecting human rights, all persons have the right to peaceful assembly and to form non-governmental organizations and join them or participate in their work, and to communicate with such organizations.^[25] It also provides that all persons have the right to lodge complaints in relation to the policies and actions of government officers or organs related to human rights.^[26]

26. The Secretary General of the United Nations has said: "Human rights defenders are at the core of the human rights movement the world over. They work at democratic transformation in order to increase the participation of people in the decision-making that shapes their lives. Human rights defenders contribute to the improvement of social, political and economical conditions, the reduction of social and political tensions, the building-up of a peaceful environment, domestically and internationally, and the nurturing of national and international awareness of human rights. They form the base that regional and international human rights organizations and mechanisms, including those within the United Nations, build upon in the promotion and protection of human rights."^[27]

27. In August 2000, the Secretary General of the United Nations, at the request of the Economic and Social Council, designated Ms. Hina Jilani, of Pakistani nationality, as United Nations Special Representative for Human Rights Defenders. The mandate of the Special Representative is to report on the situation of human rights defenders in all parts of the world, and on possible means for enhancing their protection.

28. In 2004, the Council of the European Union established the European Union Guidelines on Human Rights Defenders, which recognize that the fundamental responsibility for promoting and protecting human rights corresponds to the states, and supports the role played by human rights defenders in supporting the States in that area. In addition, the EU Council recognizes the fundamental role of defenders in their contribution to the states, in getting the states to adopt appropriate legislation, and to back the establishment of national human rights plans and strategies.^[28] The guidelines provide practical suggestions for improving the action of the European Union and support and strengthen respect for the right to defend human rights. They also provide for action by the EU on behalf of human rights defenders. With a view to promoting these guidelines, the European Union entrusted Mr. Michael Matthiessen, Personal Representative on Human Rights of the Secretary General of the Council of the European Union, to direct actions this area.

29. The African Commission on Human and Peoples' Rights, during its thirty-fourth session in Banjul, Gambia, created a Rapporteurship for the protection of human rights defenders, under Commissioner Jainaba Johm.^[29]

IV. LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE INTER-AMERICAN SYSTEM

30. International human rights law is based on the principle that the states have the primary responsibility to promote and protect the human rights and fundamental freedoms of all persons subject to their jurisdiction. Accordingly, the work of human rights promotion and protection carried out by persons under their jurisdiction at their own initiative is a legitimate activity that contributes to the fulfillment of an essential obligation of the states, and, therefore, gives rise to special obligations of the states to ensure the protection of those who are engaged in the promotion and protection of such rights. In a democratic society human rights activities should not only be protected, but encouraged.

31. The public authorities are under an obligation to adopt the measures needed to create the conditions that make it possible for persons who so wish to freely exercise activities aimed at promoting and protecting internationally recognized human rights. This state obligation requires that states guarantee that they will not obstruct, in any guise, the work carried out by human rights defenders. The state must provide the utmost collaboration to the initiatives of society to promote and protect human rights, including those aimed at monitoring the conduct of public affairs at every level. In addition, the states bear the responsibility of protecting the defenders from third persons who seek to impede their work.

32. The Commission finds that the promotion and protection of human rights involves three important dimensions that should be protected by the states. The first dimension is individual and is developed through the exercise of universally recognized human rights that are realized in each of the persons who have committed their lives to the defense of human rights. States must guarantee that human rights defenders, like all individuals under their jurisdiction, not suffer violations of their rights nor the unlawful curtailment of their fundamental freedoms.

33. The second dimension is collective. The defense of human rights is a matter of public interest, and generally includes the participation of various persons associated with one another. Several of the rights crucial for this defense of rights to be translated into practice have a collective aspect to them, such as the right to association, the right to assemble, or some dimensions of the freedom of expression. Accordingly, the states have the obligation to guarantee the collective dimension of those rights.

34. The third dimension is social. This dimension refers to the intention of human rights protection and protection initiatives to seek positive changes in the attainment of the rights for society in general. The purpose that motivates the work of human rights defenders involves society in general, and seeks to benefit society; accordingly, when a person is kept from defending human rights, the rest of society is directly affected.

35. The inter-American provisions have not established a single right that guarantees the work of promoting and protecting human rights. To the contrary, the inter-American system has established components of many rights whose guarantee makes possible the work of human rights defenders. Based on these provisions, society has the right and the duty to seek, by different means, to promote and realize their rights both domestically and internationally. Any person, individually or collectively, has the right to pursue peaceful activities that make it possible to attain those objectives, whether directly geared to the public authorities, or to society in general or in groups.

36. The observance of human rights is a matter of universal concern, accordingly, the right to defend those rights may not be subject to geographical restrictions. The states must guarantee that the persons under their jurisdictions may exercise this right domestically and internationally. In addition, the state must guarantee that persons are able to promote and protect any or all human rights, including both those whose acceptance is unquestioned, and new rights or components of rights whose formulation is still a matter of debate.

37. The Commission has indicated that the defense of human rights and the strengthening of democracy require, among other things, that the citizens have broad knowledge of the work of the various organs of the state, such as budgetary aspects, the extent of attainment of the objectives proposed and the plans and policies of the state to improve society's living conditions.^[30] Along the same lines, the United Nations Declaration on Defenders establishes the right of individuals and groups to "know, seek, obtain, receive, hold, study, publish, and discuss" any

information on the means by which effect is given to human rights in the internal legislative, judicial, and administrative systems of the states.^[31] As a component of these rights, the Declaration establishes the right to participate in public hearings, procedures, and public trials to form an opinion regarding the implementation of both domestic legal provisions and international obligations.^[32] The United Nations Declaration on Defenders also highlights the right to participate in the conduct of domestic public affairs of the countries to seek the promotion and attainment of human rights. The defense of human rights involves the ability to make criticisms and proposals to improve the functioning of the state and to seek to call attention to any obstacle or impediment to the promotion and attainment of any human rights.^[33]

38. As a corollary, those persons individually or collectively have the right to protest the rules, policies, and practices of public officials and private actors who violate human rights. To this end, the states must guarantee systems of petition or other adequate means vis-à-vis the judicial, administrative, or legislative authorities at all levels of decision-making, capable of adequately processing these petitions in keeping with minimum due process standards. In addition, those persons have the right to seek the effective protection of domestic and international provisions to protect human rights and oppose any type of activity or action that causes human rights violations.^[34] This right involves the possibility of going before international organs that protect human rights and monitor international treaties, without any type of obstacle or reprisal.

39. In addition, individuals and groups have the right to promote the protection and attainment of human rights through actions geared to society. As one component of this principle, persons have the right to publish, make known, and disseminate publicly to third persons their opinions and knowledge with respect to human rights, and to debate and develop new principles and ideas in this respect, and promote their acceptance. Accordingly, human rights defenders have the right to verify by themselves the existence of abuses, to meet with victims, witnesses, and experts (such as lawyers or forensic physicians), to speak with the authorities, study documentation, and carry out any type of investigation for the purpose of obtaining objective information. Similarly, individuals and groups have the right to offer and provide professional legal counsel or other advice and assistance relevant to the defense of the human rights and fundamental freedoms of third persons.^[35] In addition, this right includes the possibility of engaging in activities of representation, accompaniment, self-management, and search for recognition of communities and individuals who have been victims of human rights violations and other acts of discrimination and exclusion.

40. In order to carry out these activities, human rights defenders have the right to seek and obtain economic resources to finance their work. The states must guarantee the exercise of this right in the broadest possible manner, and promote it, for example, through tax exemptions to organizations dedicated to protecting human rights. Fundraising activities to finance the work of human rights defenders, such as the production and sale of books, reports, and newspapers on human rights, collecting professional fees, donations, and receiving legacies from individuals and organizations, and the contributions of foreign governmental and non-governmental organizations, among others, should be considered legitimate.

41. The inter-American norms for the protection of human rights constitute a minimum framework of protection that should be guaranteed by the states for all persons under their jurisdiction, and whose attainment is essential for protecting the activities described above. Only when human rights defenders have appropriate protection for their rights can they seek to protect the rights of others.^[36] Hence, the case-law of the Commission and the Court has been establishing the parameters for protection and guarantee necessary for freely developing the promotion and defense of human rights in a democratic society. Next, the Commission will briefly outline those components of the rights recognized by the norms of the inter-American system that are a vehicle for developing the activities of human rights defenders, in its various dimensions: individual, social and collective.

A. Right to life, humane treatment, and personal liberty

1. Right to life^[37]

42. The states of the hemisphere have recognized the right to life as a fundamental and basic right for the exercise of any other right, including the right to defend human rights. At the same time, the Court and the Commission, in consistent case-law, have recognized that the rights to life and physical integrity constitute essential minimums for the exercise of any activity.^[38]

43. The Commission notes that the special impact of attacks on the right to life of human rights defenders lies in their effect beyond the direct victims. Accordingly, the Inter-American Court of Human Rights has established through its case-law that violations of the right to life – be they forced disappearances or extrajudicial executions – directed against human rights defenders, have a chilling effect that reaches all other human rights defenders, directly diminishing their possibilities of

exercising their right to defend human rights.^[39] As a result, the Court has highlighted the special obligation of states to ensure that persons can freely exercise their activities of promoting and protecting human rights without fear that they will be subject to any violence, and has indicated that when that protection is lacking, the ability of groups to organize to protect their interests is diminished.^[40]

44. The Commission has noted that a systematic and reiterated practice of attacks on the life, physical integrity, and liberty of the members of a human rights organization entails a violation of the freedom of association.^[41] In addition, the United Nations Special Representative has reaffirmed that assassinations, disappearances, and attacks not only constitute a violation of the right to life protected by international human rights law, but also constitute an attack on the promotion and dissemination of human rights generally, for they inhibits human rights defenders from exercising their important role in maintaining peace and security worldwide and restoring them they have been violated.^[42]

45. Under the norms of the inter-American system, the general clause of protecting the individual from the arbitrary deprivation of life, which entails an absolute prohibition on arbitrary executions and forced disappearances, interpreted in keeping with the obligation to respect and ensure human rights, gives rise to both negative and positive obligations incumbent on the states.^[43] That generic obligation translates, in the case of human rights defenders, among other obligations, into the need to do away with environments incompatible with or dangerous for the protection of human rights. It is essential that the states, pursuant to their obligations to prevent and protect the right to life, offer adequate protection to human rights defenders, bring about the conditions for eradicating violations by state agents or private persons, and investigate and sanction the violations of that right.^[44] In that regard, the Commission reiterates that an important aspect of the state's duty to prevent violations of the right to life is investigating immediately, exhaustively, seriously, and impartially where the threats come from, and punishing, as the case may be, those responsible, with the aim of trying to prevent the threats from being carried out.^[45]

2. Right to humane treatment^[46]

46. The defense of human rights can be exercised freely only when the persons engaged in it are not victims of threats or of any type of physical, psychological, or moral aggression, or other forms of harassment.^[47] Carrying out violent acts for the purpose of diminishing the physical and mental capacity of the defenders, or the threats of

having such suffering inflicted on them, constitute violations of the right to personal integrity and could constitute indirect violations of other rights protected by inter-American instruments. Depending on the circumstances in which those attacks or threats occur, they could be considered as torture^[48] or cruel, inhuman, or degrading treatment.^[49]

47. In keeping with the obligation to respect and ensure the right to humane treatment, the states must adopt special measures of protection for human rights defenders from the acts of violence that are regularly perpetrated against them. The state's obligation is not limited to providing material measures to protect life and personal integrity, but entails the obligation to act to address the structural causes that have a detrimental impact on the security of the persons threatened. This obligation includes investigating and punishing the persons responsible for harassment, threats, and attacks against human rights defenders. The Commission considers that in contexts of aggression and systematic acts of harassment an efficient and effective investigation is essential to ensure that the risk these persons run is identified and eradicated.

3. Personal liberty^[50]

48. The exercise of personal liberty and its full guarantee that it will not be restricted by unlawful action is a basic need for the full exercise of human rights defense. A person whose liberty is unlawfully restricted or who lives in fear of being subject to imprisonment or being held against his will because of his actions to defend the rights of other persons is directly limited in his ability to do his work.

49. The Commission recalls the case-law of the Inter-American Court, which has established that detentions by state agents should meet two kinds of requirements in order to meet the standards of the American Convention.^[51] First, no one should be deprived of his or her personal liberty other than for causes expressly spelled out in the law (substantive aspect), but also, strictly subject to the procedures objectively defined by the law (procedural aspect). Under these principles, a human rights defender, like any other person, may only be detained when there are well-founded reasons for considering the grounds described in the domestic laws to be present, strictly subject to the procedural formalities which, according to law, must be followed by the judicial and police authorities. Second, the states must guarantee that no human rights defender will be subjected to detention or imprisonment by causes and methods which, even if considered legal, may be incompatible with respect for the fundamental rights of the person for being, among other things, unreasonable, unforeseeable, or lacking proportionality.^[52] The Commission considers that a detention

based exclusively on the activity of human rights defense does not meet the requirements of reasonability and proportionality established by international standards.

B. Right to assembly and freedom of association

50. The Commission has indicated that the right of assembly and freedom of association have been widely recognized as substantive civil rights that offer protection from the arbitrary interference of the state when persons decide to associate with others, and that are fundamental for the existence and functioning of a democratic society.^[53] In that regard, the protection of those rights entails not only the obligation of the state not to interfere with the exercise of the right of assembly or association, but also requires, in certain circumstances, positive measures by the state to ensure the effective exercise of liberty, for example, by protecting the participants in a demonstration from the physical violence of those who might hold contrary views.^[54]

51. These rights are fundamental for the defense of human rights, since they protect the means by which the grievances of both human rights defenders are expressed. Accordingly, restrictions on the exercise of these rights are serious obstacles to the people's ability to vindicate their rights, make known their petitions, and foster the search for changes or solutions to the problems that affect them.

1. Right of assembly^[55]

52. Through the exercise of freedom of assembly, individuals have the right to share opinions, express their positions on human rights, and coordinate action plans, whether at assemblies or public demonstrations. The defense of human rights, as a legitimate issue that concerns all people and seeks the participation of society as a whole and the response of the government authorities, finds in the exercise of this right a fundamental channel for its activities. Similarly, this right is essential for the expression of political and social criticism of the activities of the authorities. For these reasons, it is difficult to exercise the defense of human rights in contexts where restrictions are placed on the right to peaceful assembly. Moreover, the exercise of the right to assembly is essential for the exercise of other rights such as freedom of expression and the right to association.

53. The exercise of this right means that human rights defenders may freely meet in private locations with the consent of the owners, in public places—in accordance with the applicable regulations—and in places of business, in the case of workers.^[56] Human rights defenders

have the right to participate in the preparation and direction of a meeting or demonstration, as well as in the event itself.^[57]

54. The state's obligations to protect and ensure the right to assembly include actions that, if not anticipated, impede the work of defending human rights. Hence, states have the obligation to ensure that no human rights defender is prevented from meeting or publicly expressing him or herself, which means that the state authorities must abstain from preventing the exercise of this right and must also take measures to ensure that others do not prevent it. States also must take the administrative and law enforcement steps necessary to enable defenders to carry out their activities, which includes positive steps such as detouring traffic and providing police protection for demonstrations and rallies, where necessary.^[58]

55. 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.^[59] Inherent to the sharing of ideas and social demands as a form of expression is the exercise of related rights, such as the right of citizens to assemble and demonstrate and the right to the free flow of ideas and information. Both of the rights set forth in Articles 13 and 15 of the American Convention are vital elements for the proper functioning of a democratic system that includes all sectors of society.

56. 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. The Commission shares the opinion expressed by the Spanish Constitutional Court in the sense that "in a democratic society, the urban space is not only an area not only for circulation, but also a space for participation."^[60] Hence, the Commission has found disproportionately restrictive a law requiring a police permit that must be requested ten days in advance of any public act, assembly, election, conference, parade, congress, or sports, cultural, artistic or family event.^[61] Moreover, the Commission has stated that the arrest of participants at peaceful demonstrations violates freedom of assembly.^[62]

57. The purpose of regulating the right to assembly cannot be to create the basis for prohibiting the meeting or the demonstration. To the contrary, regulations establishing, for example, advance notice, exist for the purpose of informing the authorities so that they can take measures

to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community.

58. 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).^[63] 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.^[64]

59. With respect to the right to assembly, the Commission considers that special mention should be made of familiar forms of social protest in some countries, such as street closures, pot-banging sessions, vigils, and so forth, in which many people come together to appeal to government officials and to demand direct state intervention with respect to a particular social problem. The conditions in which many of these demonstrations and demands occur are complex and require appropriate responses from the authorities in terms of respecting and ensuring human rights.

60. The Commission underscores that political and social participation through public demonstration is critical to the consolidation of democratic life in societies. Such participation, as an exercise of freedom of expression and freedom of assembly, contains a keen social interest, which leaves the state very narrow margins for justifying restrictions on this right.^[65] Therefore, the purpose of regulating the right to assembly cannot be to create a basis for prohibiting the meeting or demonstration. The right to assemble or demonstrate cannot be considered synonymous with public disorder for the purpose of restricting it *per se*.

61. In this regard, the Commission reiterates the opinion of its Office of the Special Rapporteur for Freedom of Expression which, in its 2002 Report, stated that

the *per se* criminalization of public demonstrations is, in principle, inadmissible, provided they take place in accordance with the right of free expression and

the right of assembly. In other words, the question is whether the application of criminal sanctions is justified under the Inter-American Court's stance whereby such a restriction (i.e. criminalization) must be shown to satisfy an imperative public interest that is necessary for the functioning of a democratic society. Another question is whether the imposition of criminal sanctions is the least harmful way of restricting the freedom of expression and right of assembly exercised through a demonstration in the streets or other public space. It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from which the object of the claim arose. Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticism of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made. [66]

62. In this sense, the Commission reiterates the pressing need that States, when imposing restrictions on this form of expression, conduct a rigorous analysis of the interests it intends to protect by way of the restriction, taking into account the high level of protection merited by the right to assembly and the freedom of expression as rights that give form to citizen participation and to the oversight of State actions in public matters.

63. Finally, in the Commission's view, agents may impose reasonable restraints on demonstrators to ensure that they are peaceful or to contain those who are violent, as well as to disperse demonstrations that become violent and obstructive.[67] However, 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.

64. The use of force is a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the state's reaction. Law enforcement officials may not, under any circumstances, resort to illegal practices to obtain the objectives entrusted to them. The Commission has stated categorically that the means that the state may employ to protect its security or that of its citizens are not unlimited.^[68] As the Inter-American Court has pointed out, [...] 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."^[69]

65. The 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.^[70] The degree of force exercised by state agents, to be considered within international parameters, must not exceed what is "absolutely necessary."^[71] 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.

66. According to the international standards that have been developed concerning the use of force by law enforcement officials in the discharge of their duties, such action must be necessary and proportional to the needs of the situation and to the objective sought.^[72] In this regard, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulate that "law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Likewise, the United Nations Code of Conduct for Law Enforcement Officials states explicitly that "the use of firearms is considered an extreme measure,"^[73] while article 9 of the Basic Principles points out that firearms must not be used against people, except when there is an imminent danger to life.^[74] Basic Principles 12, 13, and 14, refer specifically to the regulation of the use of force in legal gatherings.^[75]

67. The Inter-American Court has recommended the implementation of clear procedures and protocols for prevention and for the conduct of the security forces with respect to incidents that threaten public order.^[76] In this regard, it has recommended the adoption of

all necessary provisions to this end, and specifically those for the education and training of all members of its

armed forces and its security agencies on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency. The pretext of maintenance of public security cannot be invoked to violate the right to life. The State must also adjust operational plans regarding public disturbances to the requirements of respect and protection of those rights, adopting to this end, among other measures those geared toward control of actions by all members of the security forces in every field of action to avoid excesses [...] the State must ensure that, if it is necessary to resort to physical means to face situations of disturbance of public order, members of its armed forces and its security bodies will use only those means that are indispensable to control such situations in a rational and proportional manner, and respecting the rights to life and to humane treatment.^[77]

68. Based on these norms and principles, the Commission deems 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. In particular, the Commission recommends measures such as 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 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.

2. Freedom of association^[78]

69. The United Nations Declaration on Defenders reaffirms that in order to promote human rights and fundamental freedoms, all persons have the right to “form, join and participate in non-governmental organizations, associations or groups.”^[79] The freedom of association, in the specific case of human rights defenders, is a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact. Because of this, when a state impedes this right, it not only restricts the freedom of association, but also obstructs the work of promoting and defending human rights.

70. The right of association should be understood not only as the right of human rights defenders to form an organization, but also the right to implement their internal structure, programs, and activities. In relation to this, the Inter-American Court held:

In labour union matters, freedom of association consists basically of the ability to constitute labour union organisations, and to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right. On the other hand, under such freedom it is possible to assume that each person may determine, without any pressure, whether or not she or he wishes to form part of the association. This matter, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.^[80]

71. The Inter-American Court has established that the right to associate protected by Article 16 of the American Convention protects two dimensions.^[81] The first dimension encompasses the right and freedom to associate freely with other persons, without the intervention

of the public authorities limiting or encumbering the exercise of this right, which represents, therefore, a right of each individual. The second recognizes and protects the right and the freedom to seek the common attainment of a lawful purpose, without pressures or meddling that could alter or thwart their aim. Accordingly, in the view of the Court, "the execution of a trade union leader ... restricts not only the freedom of association of an individual, but also the right and freedom of a certain group to associate freely, without fear, hence the right protected by Article 16 has a special scope and nature. Thus the two dimensions of the freedom of association are apparent in such circumstances."^[82] The same consequence holds for any person who defends any other type of right or human rights issue.

72. Consequently, the Court established that in its individual dimension, the freedom of association is not exhausted with the theoretical recognition of the right to form trade unions or organizations, but that it also encompasses, inseparably, the right to use any appropriate means for exercising that liberty. So when the Convention proclaims that the freedom of association includes the right to associate freely for "other purposes," it underscores that the freedom to associate and the pursuit of certain collective purposes are indivisible, such that a restriction on the possibilities of associating represents directly, and to the same extent, a limitation on the right of society to attain the purposes proposed.

73. In this sense, the guarantee that people who associate for trade union purposes will be protected from retaliatory actions is fundamental for the exercise of this right. The Committee on Freedom of Association has stated in this regard that

[o]ne of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer, or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental

principle that workers' organizations shall have the right to elect their representatives in full freedom.

[83]

74. On this point, it is important to underscore that measures to protect or safeguard union delegates should not be restricted unreasonably. They should also include, for example, leaders of minority unions or those in formation, since acts of harassment sometimes occur with the consent of existing trade union structures in collusion with companies or with the state. In this regard, the Committee on Freedom of Association stated that

Any measures taken against workers because they attempt to constitute organizations of workers outside the existing trade union organization are incompatible with the principles that workers should have the right to establish and join organizations of their own choosing without previous authorization.[84] It further stated that no person should be prejudiced in his or her employment by reason of membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned.[85]

75. In addition, in its social dimension, the right of association, according to the Inter-American Court, enables the members of a group or society to attain certain purposes together, and to benefit from them. The Inter-American Court, picking up on standards established by the Committee on Freedom of Association and the European Court of Human Rights, has indicated that this freedom may only be exercised in a situation in which fundamental human rights are fully respected and guaranteed, in particular the rights to life and personal security. Accordingly, this right gives rise to the state obligation to guarantee that persons can freely exercise their freedom of association free of any violence; otherwise the capacity of groups to organize to protect their interests could be diminished[86].

76. Any act that tends to impede the association of human rights defenders, or in any way impedes the purposes for which they have formally associated, is a direct attack on the defense of human rights. Acts of violence that tend to discourage membership or the activity of human rights organizations are prohibited by international law, and could give rise to the international responsibility of the state. In addition, the Commission has found that the fact that a defender must go into exile

because of threats to his or her life made in retaliation for his or her work is a direct violation of the right of association.^[87]

77. The Commission finds that the states are free to regulate the registration and oversight of organizations within their jurisdictions, including human rights organizations. Nonetheless, the right to associate freely without interference requires that the state ensure that those legal requirements not impede, delay, or limit the creation or functioning of these organizations, lest the state become responsible internationally. The formalities prescribed in the national regulations on the establishing and functioning of non-governmental organizations, trade unions, and other organizations are compatible with the provisions of the instruments of the inter-American system, so long as those regulatory provisions are not at odds with the guarantees prescribed in those conventions. In that regard, while those who wish to associate and exercise their rights must comply with the formalities provided for in the legislation, at the same time these formalities must not impose abusive hindrances to the right to association and to the free operation of the organizations.

C. Right to the freedom of expression^[88]

78. The Inter-American Court has determined that this right encompasses not only the right and the freedom to express one's own thinking, but also the right and the freedom to seek, receive, and disseminate information and ideas of all sorts.^[89] In addition, the Court has determined that the freedom of expression has an individual dimension and a social dimension. Accordingly:

It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.^[90]

79. The freedom of expression is another of the rights essential to the work of human rights defenders. The Inter-American Court has said that the freedom of expression "is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade union, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its opinions, to be sufficiently informed. Consequently, it can

be said that a society that is not well informed is not a society that is truly free."^[91] As indicated below, in the case of human rights defenders, the exercise of this right is restricted not only in its individual aspect (the possibility of expressing ideas) but also in its social or collective aspect (the possibility of seeking and receiving information).

80. The Commission reiterates that the coercive power of the state may be exercised so as to negatively affect the freedom of expression of human rights defenders by using criminal laws to silence those who exercise their right to express themselves critically, accusing them of "inciting rebellion," "disseminating false information," and "harming the country's reputation."^[92]

81. Accordingly, one cannot legitimately impose a sanction that impedes or restricts the critical and necessary work of human rights defenders when they scrutinize the persons who hold public positions. An excessive sanction may have a chilling effect on such criticism. On restricting the freedom of expression to this extent, democracy is transformed into a system in which authoritarianism and human rights violations find fertile ground for imposing themselves on the will of society.

82. For these reasons, the Commission has said:

[T]he State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.^[93]

1. Access to public information

83. Another priority issue for the work of human rights defenders has to do with the exercise of the right of access to public information. From a theoretical perspective, it can be said that the interest that is accorded preferential protection in Article 13 of the Convention is the formation of public opinion through the free exchange of information and democratic criticism of the public administration.^[94]

84. The Inter-American Court has indicated that access to information in the hands of the state is a fundamental right of

individuals, and that the states are under an obligation to guarantee it.^[95] The right of access to information is a priority because it contributes to fighting corruption and defending human rights. Access to public information has proven to be a useful tool for contributing to societal knowledge of human rights violations that occurred in the past. The effective exercise of this right can also help prevent possible new violations.

85. Achieving an access to information regime that complies with the requirements of the American Convention on Human Rights is more complex than simply declaring that the public may have access to state-held information. There are specific legislative and procedural characteristics that must be exhibited by any compliant access to information regime, including a principle of maximum disclosure, presumption of publicity with respect to meetings and key documents, broad definitions of the type of information that is accessible, reasonable fees and deadlines, independent review of denials, and sanctions for noncompliance.^[96]

86. In June 2003, the OAS General Assembly recognized the importance of access to information with the adoption of Resolution AG/Res.1932 (XXXIII-O/03). In this resolution, the General Assembly reaffirmed Article 13 of the American Convention which provides that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.^[97] Moreover, the General Assembly emphasized that States are obliged to respect and promote everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.^[98] In June 2004, the OAS General Assembly approved Resolution 2057, entitled, "Access to Public Information: Strengthening Democracy." This resolution broadens the efforts established by the previous resolution on the subject and encourages OAS member states to implement laws or other provisions to provide the citizenry with broad access to public information. In both resolutions, the General Assembly resolved to "instruct the Inter-American Commission on Human Rights, through the Special Rapporteur for Freedom of Expression, to continue including in its annual report a report on access to public information in the region."

2. Action of *habeas data*

87. 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.^[99]

88. The Commission reiterates that 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.^[100] To be precise, Article XXIV of the American Declaration guarantees all individuals the right of petition and Article 25 of the American Convention guarantees the right to simple and prompt recourse against acts that violate his or her fundamental rights.

89. Moreover, the Commission deems that the right to privacy also guarantees people the right to know without delay that the state decided to gather information about them, even for the purpose of making sure that the information does not contain errors. In this regard, the IACHR has established that each person has the right to know what information exists about him or her, by means of a prompt, simple, and effective action. The action of "*habeas data*," as previously defined, is built upon three premises:^[101] 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,^[102] false, biased, or discriminatory;^[103] and 3) and the right of any individual to use the action of *habeas data* as an oversight mechanism.^[104] In recent years, the action of *habeas data* remedy has become an essential tool for the investigation of human rights violations committed during past military dictatorships in the Americas. Relatives of the disappeared have brought actions of *habeas data* to obtain information about the government's behavior, to ascertain the whereabouts of the disappeared, and to determine responsibilities. Such actions ultimately constitute an important means of ensuring the "right to truth."^[105]

90. In terms of both access to public information and the exercise of the action of *habeas data*, the Commission understands that there may be certain specific cases in which state security forces would not have to reveal information, for example, when the release of such information could jeopardize national security. But the security forces cannot decide at their own discretion whether to release the information or not, in the absence of any external oversight. In this regard, the IACHR has stipulated that:

In the context of fighting terrorism, governments often attempt to restrict access to broad categories of information related to the investigation of suspected terrorists, the gathering of intelligence

and the execution of police and military actions. In some of these cases, the government may have a legitimate need to keep information secret in order to protect national security or public order. At the same time, the public's need for information is greater than ever as anti-terrorism actions may be subject to abuse and the public and the press are among the most significant checks on abusive governmental behavior.^[106]

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^[107] 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.^[108] 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."^[109]

92. Citing the Johannesburg Principles on National Security, the IACHR has added that:

Most access to information laws contain exemptions that allow the State to refuse to release information on the grounds that to do so would damage the State's national security or ability to maintain public order. These exemptions should be applied only to information that clearly affects national security as defined by [principle 2] (a restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose is to protect a country's existence or its territorial integrity against the use of threat of force..).^[110]

93. The Commission understands that to ensure the protection and promotion of human rights, the State must create a mechanism that makes it possible for all persons to have expeditious access to public information and information on themselves. Such independent oversight

is necessary to ensure that the security forces act within the scope of their authority and follow appropriate procedures when collecting intelligence.^[111]

D. Right to privacy and protection of honor and dignity^[112]

94. If they are to do their work freely, human rights defenders need adequate protection from the state authorities to guarantee they will not be victims of arbitrary meddling in their private lives, or of attacks on their honor and dignity. This right includes state protection from harassment and intimidation, assaults, surveillance, interference with correspondence and telephone and electronic communications, and illegal intelligence activities. The Commission's experience indicates that in several countries of the region persons close to human rights defenders also have their right to privacy and protection of honor and dignity violated, as part of an effort to interfere with the activities of their family members. Accordingly, protection should be guaranteed from attacks directed at human rights defenders, and also attacks on their family members.

95. In this respect, the UN Special Representative has determined: "This type of harassment of human rights defenders bears serious repercussions for their physical and psychological integrity: it stigmatizes them, places them at risk, and in some cases has impelled them to give up their work to go into hiding. While in many cases accusations were proven wrong, no public apology was forthcoming. Such attacks constitute grave attempts to undermine the credibility and integrity of human rights work in the public eye."^[113]

96. The Commission has found, for example, that there is a violation of the right protected at Article 11 of the Convention when the state uses its criminal justice system to indict a human rights defender for the sole purpose of harassing him and impeding his work. In an individual case, the Commission found that "the fact that so many prior investigations and the criminal cases cited have been opened; that there has been a series of suits in the wake of a declaration of innocence; that those suits target the same person; and that the individual in question has been absolved in every case tried to date, also leads to the presumption that officials of the ... Army have engaged in harassment and hounding."^[114]

97. Human rights defenders require the same protection from illegal raids or searches at both their residences and their workplaces, especially at the offices of human rights organizations. The Commission has referred to the inviolability of the home indicating that it is one of

the guarantees implicit in Article 8 of the Convention. This 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.^[115]

98. As for human rights defenders' right to honor and dignity, the Commission indicated in a contentious case that this right had been violated when "a smear campaign was undertaken by the State against them ... they were presented to public opinion as irresponsible infractors and as a threat to peace," and also because they "were presented to Mexican and international public opinion as dangerous criminals"; nonetheless, based on the steps taken by the authorities on expelling them summarily, they never had an opportunity to defend themselves from the criminal charges against them."^[116]

99. In the same vein, the Commission has found that there is a violation of the right to honor in cases in which the state authorities make statements or issue communiqués that publicly incriminate a human rights defender, accusing him or her of acts that have not been judicially verified.^[117] In addition, the Commission has reiterated that no effort on the part of the state authorities to cast doubt on the legitimacy of the work of human rights defenders and their organizations should be tolerated. The IACHR has indicated that public officials should refrain from making declarations that stigmatize human rights defenders or that suggest that human rights organizations act improperly or unlawfully, merely because they work to promote or protect human rights^[118].

100. The Commission likewise recognizes that the government law enforcement agencies may find it necessary to conduct intelligence operations, in accordance with the law, to combat crime or protect the constitutional order, and to facilitate criminal prosecutions and specific, lawful military operations.^[119] Nonetheless, the Commission reiterates its concern over the fact that state law enforcement personnel target human rights organizations and their members for intelligence activities due exclusively to their activities.^[120] The Commission emphasizes that, in keeping with its human rights obligations, the state cannot maintain intelligence files as a means of control over general information related to the citizenry.^[121]

E. Movement and residence^[122]

101. Many of the actions entailed in promoting and protecting human rights require the physical presence of human rights defenders in the places in which they carry out their activities, such as providing permanent accompaniment of the communities at risk. The close relationship between human rights defenders and the victims they represent is necessary for the defenders to understand the problems that affect the victims, and to be able to propose appropriate lines of action and denunciation. When that bond is broken, not only does it have a negative impact on the right of the defenders to freedom of movement or to choose their place of work and residence without restrictions, it also seriously limits the victims' possibility of voicing their grievances and coming forth with their complaints.

102. The violations of these rights may be direct or indirect, understanding direct violations as the restrictions imposed on human rights defenders from leaving the country or even going to certain areas within the country, whereas indirect violations include threats and harassment seeking to restrict the movement of defenders through fear.^[123] The Commission has considered that threats and attacks on human rights defenders that force them to leave their countries of residence constitute violations of the rights protected at Article 22 of the American Convention.^[124] Similarly, the Commission has considered that forced displacement is a direct violation of the rights of residence and movement, among others.^[125]

103. According to the inter-American standards, human rights defenders should enjoy adequate protection that guarantees they will not be subject to improper interference with the exercise of their freedom of movement and residence, whether in their work-related activities or in matters concerning their private lives. Among these guarantees, the authorities should refrain from imposing any restrictions, by any means, on the movement of human rights defenders to those areas of interest for their work, where they can collect field information and verify first-hand the situations in which human rights are alleged to be violated. Moreover, the states are under an obligation to guarantee that third persons not impede human rights organizations from verifying the situation of persons on the ground.

104. In addition, the United Nations representative has referred to this issue, stating that some defenders "have been barred from traveling abroad, have had their travel documents seized, been refused access to places and detained at airports in order to prevent them from reporting about the human rights situation in their country to international forums and bodies. Others have been refused visas and barred from access to places of human rights abuses, victims and

clients.”^[126] Similarly, the Committee on Freedom of Association has stated that “participation as a trade unionist in meetings organized by the ILO is a fundamental trade union right. It is therefore incumbent on the government of any member State of the ILO to abstain from any measure which would prevent representatives of a workers’ or employers’ organization from exercising their mandate in full freedom and independence.”^[127]

105. The Commission has established that in exercising their sovereign powers, the states may determine their immigration policy and legislation, and therefore may decide on the entry, stay, and expulsion of foreigners from their territory. Nonetheless, the Commission has also said that international human rights law imposes certain limitations.^[128] The Commission considers that the prohibition on the entry or stay in a foreign country merely because a person is a human rights defender violates the intent to support and strengthen the work of defenders that the American states have set forth in repeated resolutions of the OAS General Assembly. To the contrary, the effective implementation of the principles set forth in those resolutions requires that the states grant – in keeping with their domestic law provisions – the permits and conditions necessary for human rights defenders to be able to develop their work in their territory, independent of a person’s national origin, and facilitate visas for access to the jurisdiction for those cases in which the human rights defenders must travel to attend international meetings or similar events. The Commission finds that prohibiting the entry of some defenders to some countries has kept them from lodging and supporting complaints before international mechanisms, seriously prejudicing their work, and hindering the victims of violations from freely litigating their interests.

F. Due process and judicial guarantees^[129]

106. The right of victims and their family members to appropriate administration of justice in relation to human rights violations derives from Articles 8 and 25 of the Convention. Articles 8 and 25 grant persons the right of access to a remedy in the face of a violation of their rights, the right to recourse to and to be heard by a competent court, and the right to a speedy decision by the competent authorities. Furthermore, the provisions ensure that principles of due process are respected and guaranteed.

107. First, the Commission wishes to reiterate that the rule of law and democracy cannot be consolidated if the domestic judiciaries are not effective in prosecuting the very serious violations of human rights committed in many states, and if impunity continues to prevail in

cases involving attacks on human rights defenders. When the state investigates and punishes the perpetrators of violations of the rights of human rights defenders, it sends a clear message to society to the effect that there will be no tolerance of those who violate human rights. Also, impunity for human rights violations corrodes the foundations of a democratic state.

108. The Commission has stated on a number of occasions that impunity helps hamper the work of human rights defenders and has an impact on society whereby intimidation prevents it from denouncing any violations it might suffer. At the Second Dublin Platform for Human Rights Defenders,^[130] and at the Consultations on Human Rights Defenders held in Mexico, Guatemala, and Brazil, the issue of impunity was identified as one of the main challenges facing human rights defenders worldwide. One of the main violations of the duty to ensure rights is impunity, which the Inter-American Court has defined as

the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention... The State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations and the total defenselessness of victims and their relatives.^[131]

109. The Commission reiterates that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.^[132] The Commission has found that in several countries of the region, the violation of the human rights of human rights defenders are among the systematic attacks organized and perpetrated by different persons at various levels of participation. The states have the obligation to investigate and punish all those persons who participate in planning and carrying out violations of the rights of persons who dedicate their lives to defending human rights. Partial investigation and punishment increases impunity, and with it, the risk affecting many human rights defenders in the hemisphere.

110. Moreover, if the judiciary is to serve as an effective organ of control, guarantee, and protection of human rights, it must not only exist formally, but also must be independent and impartial. The impartiality and independence of courts of justice cannot be guaranteed when the human, civil, labor, and association rights of those responsible

for imparting justice are not respected. Therefore, the Commission is concerned that in some states, those responsible for imparting justice and investigating human rights violations are harassed through threats against their lives and unfounded administrative and job-related sanctions, including dismissal from their posts.

111. Another factor that the Commission has found to give rise to impunity in cases of violations of the human rights of human rights defenders is the fact that "most of the cases that involve human rights violations by the members of the State security forces are tried by the military criminal courts."^[133] The Commission considers that the violations allegedly committed by officers of the state security forces against human rights defenders, as well as any accusations against human rights defenders, should not be investigated or tried by military tribunals, for they are not service-related activities.

112. Second, the United Nations Declaration on Defenders reaffirms the right of every person "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means."^[134] This right includes the possibility of going before the courts and seeking protection and justice for the victims of human rights violations; demanding the urgent intervention of the judiciary to protect fundamental rights at imminent risk; bringing cases against the state arguing the responsibility of state agents who have allegedly committed violations; appealing against abuses of power such as unjust confiscations, unjustified withdrawal of legal recognition of professional associations or trade unions, or the arbitrary removal of public officials; and participating as observers at trials and public hearings to verify the observance of due process standards.

113. The complaints and appeals filed by human rights defenders must be examined in keeping with the minimum due process standards, which includes a well-founded decision within a reasonable time. The Commission finds that this right is fundamental for the exercise of the activities of human rights defenders, and must be strictly observed in both criminal and administrative proceedings, considering that such proceedings seek to protect human rights and oversee the authorities. Having judicial and administrative cases regarding the protection of human rights heard and decided on in timely fashion is essential for the public and complete revelation the truth, for justice and reparations.

114. Finally, as regards the rights to judicial protection and minimal due process guarantees, the Commission recalls that the

punitive power of the state and its judicial apparatus should not be manipulated for the purpose of harassing those who are dedicated to legitimate activities such as the defense of human rights. The American Convention establishes that given that the criminal law seeks to mete out punishment, how the law defines crimes must meet certain requirements that allow for persons under the jurisdiction of the state to be informed of what conduct is considered criminal, which should be established in keeping with democratic standards. In addition, the Convention, following the same principle of legality, establishes that judicial proceedings brought by the state authorities should be conducted in such a way that – based on objective evidence that is legally produced – only those persons who can reasonably be presumed to have committed conduct deserving of a criminal sanction are investigated and subjected to judicial proceedings.^[135] Using criminal or administrative sanctions pursuing any other aim violates the guarantees established by the Convention and triggers the international responsibility of the state.

115. Moreover, the principle of legality set forth in the Convention provides that judicial processes initiated by the state authorities must be conducted in such a way that, based on objective, legally obtained evidence, only persons reasonably presumed to have committed acts subject to criminal penalties are investigated and prosecuted under the law.^[136] To apply criminal or administrative penalties for any other purpose violates the guarantees set forth in the Convention and gives rise to international liability on the part of the state.

116. In this regard, the Commission reiterates that the punitive power of the state and its justice organs must not be manipulated to harass those engaged in legitimate activities. The Commission reiterates that the criminal justice system is the most severe means that the state has at its disposal to determine liability and, therefore, it must be used in strict adherence to fundamental principles such as due process (Supra § 61). The Commission also wishes to reiterate that, as established by the Inter-American Court, due process guarantees extend beyond criminal proceedings.^[137] In the Commission's view, states must investigate those who break the law in their territory, but states also have the obligation to take the necessary steps to ensure that government's refrain from using investigations to subject people who demand respect and protection of their human rights through legitimate means to unfair or unfounded prosecutions.

117. In addition, the Commission stresses that the right to effective judicial protection also requires the implementation—in those states where they still do not exist—and strengthening—in those where

they have been constitutionally or legally established—of legal precautionary measures in the domestic venue, in situations of imminent threat or risk to the defense of human rights *inter alia*, life, personal integrity, the right to assembly, and freedom of expression and association. The Commission reiterates that precautionary and provisional measures fulfill subsidiary protective functions *vis-à-vis* the protections that correspond to the state itself and that one of the important roles of the IACHR is to promote local mechanisms for precautionary protection.

118. On this issue, the Inter-American Court has stated that "Article 25 of the American Convention provides that 'everyone has the right to a simple and prompt recourse, or any other effective recourse to a competent court or tribunal,'" a provision that "constitutes one of the basic pillars not only of the American Convention, but of the very rule of law in a democratic society..."^[138] These precautionary measures should be available for urgent cases in which the imminence or immediacy of the potential human rights violation has been demonstrated. This obligation also derives from the obligations undertaken by the states parties upon ratifying the American Convention and from the fundamental principles of the state itself.

119. Therefore, the right to judicial protection creates an obligation for states to establish and guarantee appropriate and effective judicial remedies for the precautionary protection of rights, including life and physical integrity, at the local level. Several domestic bodies of law have adopted these remedies through mechanisms such as *habeas corpus*, *amparo*, action of *tutela*, *writ of injunction*, *mandados de segurança* or individual protection measures, etc.

120. Given the special nature of these remedies, and the urgency and necessity in which they must operate, some basic characteristics are required if they are to be considered suitable in the sense established by the Commission and the Court. Such characteristics include, for example, that the remedies be simple, urgent, informal, accessible, and processed by independent bodies. It is also necessary that individuals have the opportunity to approach federal or national legal entities when bias is suspected in the conduct of state or local bodies. Likewise, these remedies must enjoy broad, active legitimacy so that they may be pursued by relatives or by public entities such as prosecutors or ombudspersons on behalf of the individuals under threat, without requiring the signature of the latter. It is also helpful if such remedies can be processed on an individual basis or as collective precautionary actions, in other words, to protect a particular group or one that is identifiable based on certain parameters as affected or at

imminent risk. It is also important to provide for the implementation of protective measures in consultation with the affected parties and with special law enforcement agencies other than those under suspicion, among other provisions.

121. In this sense, because such actions are designed to protect fundamental rights in urgent cases, the evidentiary procedures should not be the same as that required in ordinary proceedings; the idea is that measures be adopted within a brief time period for the immediate protection of the threatened rights. For example, while in criminal law a threat against life only constitutes an offense upon initiation of the execution of the crime, in a precautionary situation, the protection of the right to life should include protection against any act that threatens that right, regardless of the magnitude or degree of probability of the threat, so long as it is genuine.

G. General duty to guarantee and protect, and to adopt provisions of domestic law

122. As with all international commitments, the states are under an obligation to carry out their international human rights obligations in good faith.^[139] This includes conducting themselves so as to respect and ensure the free and full exercise of human rights for all persons subject to their jurisdiction, without discrimination of any type. The Commission underscores the importance of the role assumed by state organs in implementing international human rights law. In addition, it recognizes that many of the international provisions are only operative if the states of the Americas set in motion their domestic legal systems to give them effect. Accordingly, international law ultimately leaves compliance with its obligations to the domestic organs.

123. The states have the legal duty to adopt all measures necessary to guarantee the “contextual space” in which human rights defenders and society in general can freely promote and seek the protection of their rights through national and international mechanisms. Those measures aimed at protecting the human rights of defenders, and at investigating, prosecuting, and punishing those who commit violations of their rights, merit special consideration.

124. The Commission notes that the vast majority of attacks on the right to life and physical integrity of defenders that come to the attention of the Commission are characterized by a lack of protection from threats and the subsequent impunity for the attacks and

acts of aggression. The cases and requests for precautionary measures received suggest that the states should bear in mind that the inter-American system for the protection of human rights is based on the dual principle of protection and guarantee, which requires that the states investigate, prosecute, and punish the perpetrators, and make reparation to the victims of human rights violations.^[140]

125. In this sense, the Commission wishes to reiterate that any circumstance in which a public agency, institution, or official damages a right protected by the American Declaration or the American Convention gives rise to a potential failure to observe the duty to respect rights enshrined in Article 1 of the Convention and the implicit obligation in the American Declaration to ensure and respect rights, regardless of whether the agent has overstepped the limits of his authority.^[141]

126. The Commission wishes to highlight that impunity in investigations, in addition to endangering the lives of hundreds of human rights defenders in the region, also helps foster a climate of intimidation and fear that impedes the full exercise of human rights defense. In addition, the Commission reiterates that the failure of a state to undertake an exhaustive and complete investigation into assassinations and disappearances of human rights defenders and the failure to criminally sanction the direct perpetrators and masterminds is especially grave due to the impact it has on society. When the state investigates and punishes the perpetrators of human rights violations, it sends a clear message to society to the effect that it will not tolerate those who commit human rights violations.^[142]

127. In this regard, the Commission recalls once again that the state is responsible internationally for human rights violations when private groups act as state agents, or with the approval, acquiescence, or tolerance of state agents. In this vein, if violations of the American Declaration or the American Convention result from such attacks, the state must answer internationally for the violations of rights protected by these instruments.^[143]

128. In this respect, the Inter-American Court has established that respect for human rights in a democratic state depends largely on the effective and adequate guarantees that human rights defenders enjoy to carry out their activities freely.^[144] Accordingly, the States should grant effective and adequate guarantees to defenders, and pay special attention to actions that limit or hinder their work.^[145]

129. In view of this obligation, the Commission has recommended the implementation of protective measures for human rights defenders, such as

Deploy the necessary human, budgetary, and logistical resources to guarantee the implementation of adequate and effective measures of protection whenever the personal safety and lives of these persons are at risk. In addition, ensure that the security measures are effectively put into practice and maintained for as long as the risks continue.... Establish specialized units within the National Civil Police and the Office of the Attorney General, endowed with the necessary resources and training to enable them to work in a coordinated manner and respond with due diligence in investigating these acts. In addition, increase the resources of the Office of the Ombudsman for Human Rights with a view to strengthening its capacity for defending and protecting the activities carried out by the human rights defenders.”[\[146\]](#)

130. Among the precautionary measures underlying the states’ duty to safeguard rights, the Commission stresses the important role of programs for the protection of human rights defenders, and of victims and witnesses of human rights violations. The Commission notes the efforts made by some states in the implementation of these much-needed programs and appeals for their mass replication and strengthening.

131. A comprehensive and efficient system to protect the work undertaken by human rights defenders must go beyond the mere operation of a protection program against acts of violence—although such protection is necessary and a priority—. As the OAS General Assembly has stated, a protection program should be geared toward eradicating “actions that directly or indirectly prevent or hamper the work of human rights defenders.”[\[147\]](#)

132. In this sense, the Commission deems it advisable that member states adopt effective and exhaustive prevention strategies to avert attacks against human rights defenders. This prevention and protection policy should take into account periods during which defenders are most vulnerable. The state authorities should remain vigilant during those periods and publicly declare their commitment to support and protection.

133. The Commission is of the opinion that for a protection program to be effective, in other words, to produce the desired results, it must be backed up by a strong political commitment on the part of the state. The program should form part of a national human rights plan adopted as priority policy by all institutional decision-making entities at the central and local levels.^[148] To this end, norms must be established to clearly define the spheres of competence and the responsibilities of the central and decentralized authorities (state governments and federal government in the case of federal states), and ensure that there is coherence between the transfer of competence and of resources from the national to the local level.

134. Similarly, a protection program for human rights defenders should guarantee that the state will allocate the human, budgetary, and logistical resources needed to implement protection measures to protect the life and physical integrity of defenders. Such measures should be in effect for the time period necessary and should be determined in consultation with the defenders themselves so as to ensure their relevance and the ability of human rights defenders to continue to carry out their activities.

135. In this regard, the Commission's also deems essential for the functioning of a protection program the existence of stable, respectful, and constructive channels for consultation and dialogue with human rights organizations and with the protected individuals. Opportunities for negotiation and dialogue allow the authorities to hear the proposals of the organizations, become familiar with their needs, and evaluate the performance of the protective measures granted.

136. Based on its regional experience, the Commission recommends operational measures such as the establishment of escort corps trained to properly perform the exclusive function of protecting at-risk individuals, which should be attached to and operate hierarchically under a law enforcement agency. In addition, this corps should operate separately from intelligence and counterintelligence activities, have instructors, supervisors and security experts assigned to it exclusively, and operate out of its own facility. Risk analysis and implementation of measures, including the security of offices and homes, should be under the purview of this corps, rather than the intelligence and counterintelligence divisions of the security forces. These investigators should be specifically trained in topics such as state responsibility and international human rights law. Moreover, the process of selection, enlistment, training, and re-training of these protection officers should be conducted with absolute transparency and with the participation of

representatives of the program's target population, so as to forge bonds of trust between the protected individuals and those assigned to protect them.

^[1] In this regard, see, for example, IACHR, Annual Report 1997, Part II, OEA/Ser.L/V/11.43 Doc. 21 corr. 1 of April 20, 1978; Annual Report 1981-1982, Ch. V, Chile, para. 7, OAS Part II, OEA/Ser.L/V/11.57 Doc. 6 rev. 1 of September 20, 1982.

^[2] Thirteen states and 67 human rights organizations answered the questionnaire.

^[3] IACHR, Annual Report 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, p. 1189.

^[4] OAS, General Assembly, resolution AG/RES. 1671 (XXIX-O/99), June 7, 1999.

^[5] OAS, General Assembly, resolution AG/RES. 1818 (XXXI-O/01), June 5, 2001.

^[6] IACHR, Press release N° 32/01, published on the IACHR website on December 7, 2001.

^[7] The Commission has convened hearings to look into, *inter alia*, issues such as the situation of judicial officers in Central America, the situation of freedom to form and join unions Central America and Colombia, and the situation of human rights defenders in Latin America.

^[8] See IACHR, Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999; IACHR, *Justicia e inclusión social: los desafíos de la democracia en Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, pp. 81-98; IACHR, Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118, Doc. 4 rev. 2, December 29, 2003, pp. 81-84.

^[9] In March 2004, the Unit traveled to Gambia to provide advisory services and share experiences on its work with the African Commission.

^[10] The Executive Secretary has attended many events convened by human rights organizations where the issues facing human rights defenders have been addressed. At such events the Executive Secretary has presented the work of the Unit and has listened to the needs of the organizations of human rights defenders at conferences such as the Dublin Platform for Human Rights Defenders (January 2002), the conference "Human Rights Defenders on the Frontlines of Freedom: Protecting Human Rights in the context of the War on Terror," sponsored by the Carter Center and the Office of the United Nations High Commissioner for Human Rights (November 2003), and the Second and Third Latin American Consultations on Human Rights Defenders, held in Guatemala (July 2002) and Brazil (August 2004). In addition, an attorney from the Unit attended the Human Rights Defenders Seminar held in Oslo, Norway, in May 2005. In August 2005, the Executive Secretary participated in the First Central American Assembly of Human Rights Defenders.

^[11] Along the same lines, the European Union has established that: Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

Council of the European Union, Draft conclusions of the Council on the EU guidelines on human rights defenders, 100056/1/04 REV 1, Brussels, June 9, 2004. See, European Union Guidelines on Human Rights Defenders, items 2 and 3.

^[12] United Nations Office of the High Commissioner for Human Rights, Protecting the Right to Defend Human Rights and Fundamental Freedoms, Fact Sheet No. 29, UN publications, Geneva, 2004.

^[13] OAS, General Assembly, resolution AG/RES. 1671 (XXIX-O/99), June 7, 1999.

^[14] The United Nations Special Representative on Human Rights Defenders has applied the same criterion in her reports and visits, including the situation of government

officials such as members of parliaments, procurators, national human rights commissions, ombudspersons, judges and prosecutors. Cfr. U.N., Commission on Human Rights, Report presented by the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2002, Doc. E/CN.4/2002/106; para.51; and Annual Report 2004, Doc. E/CN.4/2004/94, para. 30.

[15] Inter-American Democratic Charter, Article 1.

[16] Inter-American Democratic Charter, Article 3.

[17] Inter-American Democratic Charter, Article 2.

[18] OAS, General Assembly, resolution AG/RES. 1920 (XXXIII-O-03), June 10, 2003.

In the same connection, see, e.g.: AG/RES. 1842 (XXXII-O-02), June 4, 2002; AG/RES. 1818 (XXXI-O/O1), June 5, 2001; Resolution AG/RES. 1671 (XXIX-O/99), June 7, 1999; and resolution AG/RES 1044 (XX-O/90), June 8, 1990.

[19] OAS, General Assembly, resolution AG/RES. 2067 (XXXV-O/05), of June 7 2005, operative paragraph 2.

[20] In its 1998 Annual Report, for example, the Commission highlighted the importance and ethical dimension of the work done by persons dedicated to the promotion, monitoring, and legal defense of human rights and the organizations with which many of them are affiliated. In addition, the Commission recommended to the member states that they "take all necessary measures to ensure the freedom of expression of those who work for the respect of fundamental rights and to protect their lives and physical integrity." See IACHR, Annual Report 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, p. 1237. See also: IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Chapter VI, Section C, para. 23, published April 6, 2001, OEA/Ser.L/V/II.111.

[21] IACHR, Press Release N° 23/02 - IACHR concludes on-site visit to the Bolivarian Republic of Venezuela. Caracas, Venezuela. May 10, 2002.

[22] I/A Court H.R., *Lysias Fleury Case*. Order of June 7, 2003, fifth whereas paragraph; *Nieto Palma Case*. Order of July 9, 2004, eighth whereas paragraph.

[23] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, approved December 9, 1998.

[24] Declaration, Article 1.

[25] See *Id.*, Article 5.

[26] See *Id.*, Article 9(3).

[27] A/55/292, August 11, 2000. Report of the Secretary-General of the United Nations to the General Assembly, Fifty-fifth session.

[28] Council of the European Union, Draft conclusions of the Council on the EU Guidelines on Human Rights Defenders, 100056/1/04 REV 1, Brussels, June 9, 2004. See, European Union Guidelines on Human Rights Defenders, p. 5.

[29] African Commission on Human and Peoples' Rights, Resolution on the Protection of Human Rights Defenders in Africa, meeting at its 35th Ordinary, 4th June 2004, Banjul, The Gambia.

[30] IACHR, Annual Report 2001. OEA/Ser.L/V/II.114, doc. 5 rev. 1, April 16, 2002, Vol. II, Chapter III.

[31] Article 6.

[32] Article 9.

[33] Article 8.

[34] Articles 9 and 12.

[35] See United Nations Declaration on Defenders, Article 9. See also, Basic Principles on the Role of Lawyers, especially principle 16.

[36] In this respect, the United Nations Special Representative has indicated:

Particular attention must be given to ensuring and maintaining the "contextual space" in which defenders operate - including rights to assembly and expression and the possibility to legally register and obtain funding for a human rights organization. With this "space" assured, defenders are in a better position to conduct their work and to defend their own rights.

UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2003, Doc. E/CN.4/2003/104; para. 87.

[37] The right to life is established in Article I of the American Declaration of the Rights and Duties of Man and Article 4 of the American Convention on Human Rights.

[38] The Inter-American Court has said in this respect that:

When the right to life is not respect, all of the other rights lack meaning.

The States have the obligation to ensure that conditions are created as necessary to ensure that violations of this inalienable right not occur, and, in particular, the duty to impede its agents from attacking it.

I/A Court H.R., *Case of Children's Rehabilitation*. Judgment of September 2, 2004. Series C No. 112, para. 156; *The Brothers Gómez Paquiyaury Case*. Judgment of July 8, 2004. Series C No. 110, para. 128; *Myrna Mack Chang Case*, Judgment of November 25, 2003. Series C No. 101, para. 152.

[39] In the case of the extrajudicial execution of a trade union leader in retaliation for his activities promoting and protecting human rights, the Inter-American Court established that

the Court considers that, in the instant case, the legitimate exercise by Mr. Pedro Huilca Tecse of the right to freedom of association, in relation to trade union activity, provoked a fatal reprisal, which in turn consummated a violation to his detriment of Article 16 of the American Convention. In addition, the Court considers that the execution of Mr. Pedro Huilca Tecse had a chilling effect on the works of the Peruvian trade union movement, and in so doing diminished the freedom of a given group to exercise that right.

I/A Court H.R., *Huilca Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. Para. 78.

[40] I/A Court H.R., *Huilca Tecse Case*. Judgment of March 3, 2005. Series C No. 121. Para. 70.

[41] IACHR, Report Nº 13/96, Case 10,948 (El Salvador), March 1, 1996, para. 25. See also, IACHR, Report No. 29/96, Case 11,303, (Guatemala), October 16, 1996.

[42] UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. Para. 124.

[43] I/A Court H.R., *Huilca Tecse Case*. Judgment of March 3, 2005. Series C No. 121. Para. 69. See also: *Bulacio Case*. Judgment of September 18, 2003. Series C No. 100; Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99.

[44] On the duty to investigate extrajudicial executions, see: IACHR, Report No. 10/95, Case 10,580, Manuel Stalin Bolaños, Ecuador, IACHR Annual Report 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, paras. 32 to 34; Report No. 55/97, Case 11,137, Juan Carlos Abella et al., Argentina, paras. 413 to 424; and Report No. 48/97, Case 11,411, "Ejido Morelia," Mexico, IACHR Annual Report 1997, OEA/Ser.L/V/II.98, Doc. 7, rev., April 13, 1996, paras. 109 to 112.

[45] In considerations related to that aspect, the Inter-American Court of Human Rights has noted, for example, that "as an essential part of its duty to protect, the State must take effective measures to investigate and, where appropriate, punish those responsible for the acts that gave rise to the adoption of the provisional measures." (I/A Court H.R., *Giraldo Cardona Case*, Provisional Measures, Resolution of June 19, 1998, Operative paragraph 4. See also that the European Court of Human Rights, on considering the positive duty to adopt measures of protection for the right to life, has considered "whether in the circumstances the authorities failed in a positive obligation to protect [the victim] from a risk to his life." When these defects in the state response "removed the protection which [the victim] should have received by law" the European Court concluded that "in the circumstances ... the authorities failed to take reasonable measures available to them to prevent a real and immediate risk to the life of [the victim]." (European Court of Human Rights, *Mahmut Kaya v. Turkey*, March 28, 2000, paras. 87, 99, and 101).

[46] The right to physical and psychological integrity is noted in generic terms in Article I of the American Declaration of the Rights and Duties of Man and in Article 5 of the American Convention on Human Rights. In addition, the general prohibition on torture is established by the Inter-American Convention to Prevent and Punish Torture at Articles 1, 2, and 3 of that instrument.

[47] The Commission has held that violations of the right to humane treatment as a reprisal may be committed in several ways. In a case regarding the persecution of a member of the Mexican military forces, as a result of his involvement in activities to defend human rights, the Commission found that:

Having already concluded that the ... Army authorities have displayed an attitude of dogged pursuit and harassment toward General ..., we must now determine whether--as a result of such persecution and harassment--General ...'s physical, mental and moral integrity has not been respected. In this regard, the Commission considers that to subject a person who occupies a high rank in the Armed Forces to the constant annoyance of having to defend himself before the Courts (in this case military tribunals), to the degradation of being detained on several occasions and to the humiliation of being the target of attacks by military authorities in the ... media, in addition to causing serious material damage to his person, also seriously damages his mental and moral integrity, as it affects the normal development of daily life and causes great tumult and perturbation to him and his family. The severity of the harassment is likewise verified by General ...'s constant uncertainty about his future, after seven years of constant harassment and more than two years in prison.

IACHR, Report N° 43/96, Case 11,430 (Mexico), October 15 1996, para. 79.

[48] In this respect, the Inter-American Court has noted: "the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered 'psychological torture.'" See I/A Court H.R., *Maritza Urrutia Case*, Judgment of November 27, 2003, para. 92.

[49] According to the Inter-American Court: "The violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation." I/A Court H.R., *Loayza Tamayo Case*, Judgment of September 17, 1997, para. 57.

[50] On the same matter, the right to person liberty and security, and the right to freedom from arbitrary arrest or detention are established in Article XXV of the American Declaration and Article 7 of the American Convention on Human Rights.

[51] The Working Group on Arbitrary Detentions of the United Nations defines arbitrary detention as such deprivation of liberty executed by state authorities without respecting the fundamental principles that protect detained persons, and/or in open violation of the standards that the state party has undertaken to uphold vis-à-vis the international community. (UN, Commission on Human Rights, Question of the human rights of all persons subjected to any form of detention or imprisonment, report of the working group on arbitrary detention, doc. E/CN.4/1994/27). In addition, the Working Group has defined three categories for considering that a detention is arbitrary:

First category: The first category refers to persons whose detention is arbitrary because it lacks any basis in law. For example, the person is detained without a judicial order, without flagrancy, and without the arrest being publicly required.

Second category: Regarding those cases in which the detention is the result of a judicial decision for exercising a freedom or right subject to universal protection. (Right to equality, to freedom of movement and choice of residency, right of asylum, to freedom of thought and expression, of assembly and peaceful association, to vote and be elected in democratic elections.)

Third category: Cases in which the nonobservance of international provisions regarding an impartial trial is so serious that it makes the detention arbitrary. For example, because the detainee is not allowed to have defense counsel, is not assigned an interpreter in the event that he or she does not speak the country's official language, is not allowed to submit evidence to prove his or her innocence or to contradict those who incriminate him or her, if the

trial is drawn out without justification and indefinitely, among others. (UN, Commission on Human Rights, Question of the human rights of all persons subjected to any form of detention or imprisonment, report of the working group on arbitrary detention, E/CN.4/1992/20).

[52] See I/A Court H.R., *Durand and Ugarte Case*, Judgment of August 16, 2000. Series C No. 68, paras. 52-56, para. 85; *Villagrán Morales et al. Case* ("The Streetchildren Case"), Judgment of November 19, 1999. Series C No. 63, para. 131; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, para. 43; and *Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 47.

[53] IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 359.

[54] IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 359.

[55] Established in Article XXI of the American Declaration and Article 15 of the American Convention.

[56] On this issue, the Committee on Freedom of Information has stated that: freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential element of trade union rights and that the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered.

Committee on Freedom of Association, see for example, Report 211, Case no. 1014 (Dominican Republic), paragraph 512; Report 233, Case No. 1217 (Chile), paragraphs 109 and 110, and Report 246, Cases No. 1129, 1169, 1298, 1344, and 1351, Para. 260.

[57] European Commission on Human Rights, *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, DR 21, p. 138, p. 148.

[58] As the European Court has stated, "a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy, the right to counter-demonstrate cannot extend to inhibit the exercise of the right to demonstrate."

European Ct. of HR, *Case Plattform "Arzte fur das Leben" c. Austria*, Judgment of June 21, 1988, Ser. A, No. 139, para. 32.

[59] The Inter-American Court of Human Rights has stated that "necessary," while not synonymous with "indispensable," implied the existence of a "pressing social need" and that for a restriction to be "necessary" it is not enough to show that it is "useful," "reasonable," or "desirable." It also pointed out that "the legality of restrictions imposed under Article 13(2) will depend upon showing that the restrictions are required by a compelling governmental interest.... That is, the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it." Inter-Am. Ct. of H.R., *Compulsory Membership in an Association Prescribed by Law for Journalists*, (Arts. 13 and 29 of the American Convention on Human Rights). Consultative Opinion OC-5/85, November 13, 1985. Series A No. 5, para. 46.

[60] Spanish Constitutional Court, Judgment 66/1995, Leaf 3.

[61] IACHR, Annual Report 1979-1980, pp. 128-130.

[62] IACHR, Annual Report 1979-1980, pp. 105-107.

[63] Human Rights Committee, *Case Kivenmaa v. Finlandia*, Judgment of June 10, 1994, available at <http://www.unhchr.ch/tbs/doc.nsf/>. Communication No. 412/1990: Finland. 10/06/94. CCPR/C/50/D/412/1990 (jurisprudence), para. 9.2.

[64] IACHR, Chapter IV, Annual Report 2002, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 34.

[65] The Inter-American Commission has stated that "governments may not invoke one of the lawful restrictions of freedom of expression, such as the maintenance of "public order," as a means to deny a right guaranteed by the Convention or to impair it of its true content." If this occurs, the restriction, as applied, is not lawful." Cfr. IACHR, Chapter V, Annual

Report 1994, "Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights," OEA/Ser. L/V/II.88, Doc. 9 rev.

^[66] IACHR, Chapter IV, Annual Report 2002, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 35. see also IACHR, Chapter IV, Annual Report 2005, Vol. III, "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, Chapter V "Public Demonstrations as an exercise of Freedom of Expression and Freedom of Assembly, p. 99-120.

^[67] See United States Court of Appeals, *Washington Mobilization Committee v. Cullinane*, Judgment of April 12, 1977, 566 F.2d 107, 184 U.S.App.D.C. 215, p. 119.

^[68] IACHR, Report Nº 57/02, Case 11.382 (Merits), *Finca La Exacta v. Guatemala*, October 21, 2002, para. 35 on; IACHR, Report Nº 32/04, Case 11.556 (Merits), *Corumbiara v. Brazil*, March 11, 2004, para. 164 on.

^[69] I/A Court H.R., *Neira Alegria et al. Case*. Judgment of January 19, 1995. Series C No. 20, para. 75.

^[70] ECHR, *Case Ribitsch v. Austria*, Judgment of 4 December 1995, Series A no. 336, para. 38.

^[71] According to the European Court, the use of the phrase "absolutely necessary" must be interpreted using stricter and more rigorous examination than that normally used to determine whether a State action is "necessary in a democratic society." In particular, the force used must be strictly proportional to the interests being protected and the force or threat that it intends to deter. ECHR, *Case Andronicou and Constantinou v. Cyprus*, Judgment of October 9, 1997, Reports 1997-VI, no. 52, p. 2059 ff, para. 171.

^[72] See the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly, Resolution 34/169, of December 17, 1979, Article 3 [hereinafter, "Code of Conduct"]; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, Articles 4-5 [hereinafter, "Basic Principles "].

^[73] Code of Conduct, Article 3.

^[74] Article 9 of the Basic Principles states:

Law enforcement officials shall not use firearms against persons except in self-defence or defence 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..."

^[75] These principles stipulate:

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

^[76] Moreover, the Human Rights Committee has stated that States have the duty to train personnel such as police officers and prison guards to reduce the risk of human rights violations (Human Rights Committee, General Comment 20/44, April 3, 1992, para. 10). Similarly, the European Court has pointed out that an evaluation of the use of force must take into account not only the actions of State agents directly carrying out such acts, but all the circumstances related to the case, including actions related to the planning and control of the

events being studied (ECHR, *Case Andronicou and Constantinou v. Cyprus*, Judgment of October 9, 1997, Reports 1997-VI, no. 52, p. 2059 ff, para. 171).

^[77] I/A Court H.R., *Caracazo Case. Reparations* (Article 63.1 American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 127.

^[78] The freedom of association is recognized in the American Declaration (Article XXII), the American Convention (Article 16) and the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights – Protocol of San Salvador (Article 8).

^[79] UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Article 5.

^[80] I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72. para. 156.

^[81] I/A Court H.R., *Huila Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. paras. 69 -72.

^[82] I/A Court H.R., *Huila Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. para. 69.

^[83] Committee on Freedom of Association, Digest of Decisions and Principles on Freedom of Association, 1985 para. 724. Among the actions that may be considered violations of freedom of association, the IACHR has included, for example, matters such as arbitrary arrests, death threats, attempts against the lives of union leaders and their arbitrary dismissal, as well as docked wages of those who participate in union assemblies, job discrimination against union members, etc. Cfr. IACHR, Report on the Human Rights Situation in Guatemala (1993), Cap. IX. Doc. OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993.

^[84] Committee on Freedom of Association, Case 1594, Ivory Coast. In the same way, the Committee affirmed that “[m]easures taken against workers because they attempt to constitute organizations or reconstitute organizations of workers outside the official trade union organization would be incompatible with the principle that workers should have the right to establish and join organizations of their own choosing without previous authorization. (CFA, 301) and that “[t]he necessary measures have to be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish.” (CLS, 302).

^[85] Committee on Freedom of Association, Digest of Decisions and Principles on Freedom of Association, 1985, para. 693.

^[86] I/A Court H.R., *Huila Tecse vs. Peru Case*. Judgment of March 3, 2005. Series C No. 121. para. 77.

^[87] IACHR, Report N° 31/96, Case 10.526, (Guatemala), October 16, 1996, para. 119. Along the same lines see Report on the Merits No. 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico), April 13, 1999.

^[88] Article IV of the Declaration and Article 13 of the American Convention protect the right to freedom of expression. The Inter-American Democratic Charter establishes at its Article 4: “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 are essential components of the exercise of democracy.”

^[89] I/A Court H.R., *The Last Temptation of Christ Case*. Judgment of February 5, 2001. Series C No. 73, para. 64. *Ricardo Canese Case*. Judgment of August 31, 2004. Series C No. 111, para. 77.

^[90] I/A Court H.R., Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. November 13, 1985. Series A No. 5, para. 30.

^[91] I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, para. 149.

^[92] UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc E/CN.4/2005/101. para. 54.

[93] IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2000, Chapter II, paragraph 45.

[94] I/A Court H.R., Advisory Opinion OC-5/85 Series A, No. 5, para. 69: The "concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard... It is also in the interest of the democratic public order inherent in the American Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected."

[95] I/A Court H.R., Advisory Opinion OC-5/85, Series A. No. 5, para. 70.

[96] These concepts are developed in IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, paragraph 32 on.

[97] OAS, General Assembly, resolution AG/RES. 1932 (XXXIII-O/03), para. 1.

[98] *Ibid*, para. 2.

[99] IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter 4, footnote 72.

[100] IACHR, Report on Colombia 1999, Chapter VII Human Rights Defenders, para. 58. OEA/Ser.L/V/11.102.

[101] See IACHR Annual Reports of the Office of the Special Rapporteur for Freedom of Expression, years 2000, 2001, and 2003.

[102] "Sensitive information" is understood as any information referring to the private life of the individual.

[103] See Alicia Pierini, Valentín Lorences, and María Inés Tornabene. *Habeas Data: Derecho a la Intimidación*. Editorial Universidad, Buenos Aires, 1999, p. 16.

[104] See, Víctor Abramovich and Christian Courtis, *El acceso a la información como derecho*, CELS, 2000, p. 7.

[105] See, for example, I/A Court H.R., *Barrios Altos (Chumbipuma Aguirre y otros vs. Perú) Case*, Judgment of March 14, 2001, Series C, N° 75. In the Barrios Altos case, the Inter-American Commission on Human Rights argued before the Inter-American Court that:

The right to truth is founded in Articles 8 and 25 of the Convention, insofar as they are both "instrumental" in the judicial establishment of the facts and circumstances that surrounded the violation of a fundamental right. It also indicated that this right has its roots in Article 13(1) of the Convention, because that article recognizes the right to seek and receive information. With regard to that article, the Commission added that the State has the positive obligation to guarantee essential information to preserve the rights of the victims, to ensure transparency in public administration, and the protection of human rights (para. 45).

[106] IACHR, Report on Terrorism and Human Rights, para. 327. See also, IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, para. 41 on.

[107] José Antonio Guevara, "El Secreto Oficial," in *Derecho de la Información: Conceptos Básicos, Colección Encuentros*, Ecuador, August 2003, pp. 438-439.

[108] *Ibid*, note 342. Guevara observes that the Inter-American Court of Human Rights has established that within the framework of the protection of human rights, the word "laws" would not make sense without reference to the concept that such rights cannot be restricted at the sole discretion of governmental authorities. To affirm otherwise would be to recognize in those who govern virtually absolute power over their subjects. On the other hand, the word "laws" acquires all of its logical and historical meaning if it is regarded as a requirement of the necessary restriction of governmental interference in the area of individual rights and freedoms. The Court concludes that the word "laws" used in Article 30, can have no other meaning than that of formal law, that is, a legal norm passed by the legislature and promulgated by the Executive Branch, pursuant to the procedure set out in the domestic law of each State." Inter-American Court of Human Rights, The Word "Laws" in Article 30 of the American Convention on Human Rights Consultative Opinion OC-6/86, May 9, 1986, Inter-Am. Ct. H.R. (Ser.A) No. 6 (1986).

[109] I/A Court H.R., Advisory Opinion OC-5/85, para. 37.

[110] IACHR, Report on Terrorism and Human Rights, paras. 327 and 330. See also, IACHR Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, paragraphs 41 on.

[111] IACHR, Report on Colombia 1999, Chapter VI Human Rights Defenders, para. 59. OEA/Ser. L/V/II.102.

[112] This right is protected by both the American Declaration (Articles V, IX, and X) and the American Convention (Article 11), and contains provisions that protect the rights of persons to the inviolability of both their home and their correspondence.

[113] UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. Para. 55.

[114] IACHR, Report N° 43/96, Case 11.430 (Mexico), October 15, 1996, para. 47.

[115] IACHR, Report N° 1/95 (Merits), Case 11.006 (Peru), February 7, 1995.

[116] Report on the Merits N° 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico), April 13, 1999, para. 95.

[117] IACHR, Report N° 43/96, Case 11.430 (Mexico), October 15, 1996, para. 76.

[118] IACHR, Annual Report 2005, OEA/Ser.L/V/II.125. Doc. 7, 27 February 2006, Chapter IV, para. 35.

[119] The Inter-American Court has referred to the legitimacy and limits of intelligence activities in the following terms:

The Court deems that the activities of the military forces and of the police, and of all, other security agencies, must be strictly subject to the rules of the democratic constitutional order and to the international human rights treaties and to International Humanitarian Law. This is especially valid with respect to intelligence agencies and activities. These 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, as occurred in the instant case.

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

[120] In its Report on Terrorism and Human Rights, the Commission affirmed that:

In the context of fighting terrorism, governments often attempt to restrict access to broad categories of information related to the investigation of suspected terrorists, the gathering of intelligence and the execution of police and military actions. In some of these cases, the government may have a legitimate need to keep information secret in order to protect national security or public order. At the same time, the public's need for information is greater than ever as anti-terrorism actions may be subject to abuse and the public and the press are among the most significant checks on abusive governmental behavior.

IACHR, Report on Terrorism and Human Rights, OEA/ser.L/V/II. , Doc. 5 rev. 1 corr., October 22, 2002, Para. 327.

[121] The Commission has underscored that:

In cases where entities of the state or the private sector obtain data improperly and/or illegally, the petitioner must have access to that information, even when classified, so that individuals have control over data that affects them. The action of *habeas data* as a mechanism for ensuring the accountability of security and intelligence agencies within this context provides a means to verify that personal data has been gathered legally. The action of *habeas data* entitles the injured party or his family members to ascertain the purpose for which the data was collected and, if

collected illegally, to determine whether the responsible parties are punishable. Public disclosure of illegal practices in the collection of personal data can have the effect of preventing such practices by these agencies in the future.

IACHR, Report on Terrorism and Human Rights, OEA/ser.L/V/II. , Doc. 5 rev. 1 corr., October 22, 2002, para. 292.

[122] The right to choose and establish a place of residence, as well as the right to move about freely, are established in the inter-American system at Article VIII of the American Declaration and Article 22 of the American Convention.

[123] Along the same lines, the Human Rights Committee of the United Nations has considered that, pursuant to the provisions of the International Covenant on Civil and Political Rights, the freedom of movement is violated when a person must go into exile out of fear of threats, and the state does not provide the guarantees necessary for that person to be able to reside freely in his or her country of origin, even when such threats comes from non-state actors. See UN, Human Rights Committee, Case of Jiménez Vaca v. Colombia, Communication No. 859/1999, Doc. CCPR/C/74/D/859/1999, April 15, 2002.

[124] IACHR, Report N° 29/96, Case 11.303, (Guatemala), October 16, 1996, paras. 97 and 98.

[125] Report N° 32/96, Case 10.553 (Guatemala), October 16, 1996, paras. 64 and 65.

[126] UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Ms. Hina Jilani, Annual Report 2004, Doc. E/CN.4/2005/101. para. 59.

[127] ILO, Committee on Freedom of Association, see 254th report, case no. 1406 (Zambia), para. 470; and 283rd report, case no. 1590 (Lesotho), para. 346.

[128] IACHR, Fifth Progress Report of the Rapporteurship on Migrant Workers and their Families, Annual Report 2003, OEA/Ser.L/V/II.118, Doc. 70 rev. 2, December 29, 2003, Original: Spanish, para. 273.

[129] The rights to due process and judicial guaranties are established in the inter-American system at Article XVIII of the American Declaration and Articles 8 and 25 of the American Convention.

[130] Second Dublin Platform for Human Rights Defenders (Frontline) held on September 10 – 12, 2003.

[131] I/A Court H.R., *Loayza Tamayo Case*, Reparations Judgment, para. 168 y 170.

[132] The Inter-American Court has indicated, for example, that “the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations.” I/A Court H.R., *Constitutional Court Case*, Judgment of January 31, 2001. Series C No. 71, para. 123. See also I/A Court H.R., *Blake Case*, Reparations, Judgment of January 22, 1999, Series C No. 48, para. 65.

[133] IACHR, Second Report on the Situation of Human Rights in Peru, Ch. II, para. 209, published June 2, 2000. OEA/Ser.L/V/11.106.

[134] Article 13.

[135] In particular, the Court has established:

Under the rule of law, the principles of legality and non-retroactivity govern the activity of all the organs of the State, in their respective areas of authority, particularly as regards the exercise of its punitive power... In a democratic system it is necessary to take precautions to ensure that criminal law punishments are adopted with strict respect for the basic rights of persons, and only after carefully verifying the actual existence of the unlawful conduct... In this regard, it is up to the criminal law judge, when applying the criminal law, to abide strictly by what its provisions, and observe the greatest possible rigor in fitting the conduct of the accused to the criminal law definition, to ensure that acts not punishable under the legal order are not penalized.

I/A Court H.R., *De la Cruz Sierra Case*, Judgment of November 18, 2004. Series C No. 115, paras. 80 ff.

[136] In particular, the Court has established that

Where the rule of law is in effect, the principles of legality and nonretroactivity govern the actions of all State organs, in their respective jurisdictions, particularly when it comes to the exercise of punitive power.. In a democratic system, it is essential to specifically identify the precautions to ensure that penal sanctions are applied with strict respect for the basic rights of individuals and are contingent upon a painstaking verification of the actual existence of an illicit behavior.. In this sense, it falls to the criminal judge, in the moment of applying criminal law, to adhere strictly to such provisions, and to observe the greatest rigor in applying the correct offense to the behavior of the incriminated person, to make sure that nonpunishable acts are not criminalized in the legal system.

I/A Court H.R., *De la Cruz Flores Case*, Judgment of November 18, 2004. Series C No. 115, paras. 80 on.

[137] Cfr. I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 70; *Paniagua Morales et al Case*. Judgment of March 8, 1998. Series C No. 37, para. 149.

[138] I/A Court H.R., *Suárez Rosero Case*, Judgment of November 12, 1997, Series C No 35, para. 65; Inter-Am. Ct. H.R., *El Habeas Corpus In Emergency Situations* (Articles 27.2, 25.1 and 7.6 American Convention on Human Rights), Consultative Opinion OC-8/87 of January 30, 1987, Series A No. 8, para. 32.

[139] See, I/A Court H.R., *Cases of Liliana Ortega et al.; Luisiana Ríos et al.; Luis Uzcátegui; Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of May 4, 2004, seventh whereas paragraph; *Lysias Fleury Case*. Provisional Measures. Order of December 2, 2003, seventh whereas paragraph; and *James et al. Case*. Provisional Measures. Order of December 2, 2003, sixth whereas paragraph.

[140] See, in this regard, IACHR, Report N° 24/98 (Merits). Case 11,287. João Canuto de Oliveira v. Brazil. April 7, 1998.

[141] I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 170.

[142] IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report 2002, Chapter II, Evaluation of the Status of the Freedom of Expression in the Hemisphere, para. 224.

[143] The Inter-American Court has ruled along the same lines, on noting that an illegal act that violates human rights that initially is not imputable to a state, for example because it is the act of a private person, or because the perpetrator has not been identified, may give rise to the international responsibility of the state, not for the act itself, but due to the lack of due diligence in preventing the violation, or in treating it in the terms required by the Convention. See I/A Court H.R., Series C, No. 4, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 172.

[144] I/A Court H.R., *Lysias Fleury Case*. Provisional Measures. Order of June 7, 2003, fifth whereas paragraph, and Order of December 2, 2003, tenth whereas paragraph.

[145] OAS, General Assembly, resolution 1842 (XXXII-O/02); resolution 1818 (XXXI-O/01); and the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. AG Res. 53/144.

[146] IACHR, *Justicia e inclusión social: los desafíos de la democracia en Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 2, December 29, 2003, para. 208.

[147] OAS, General Assembly, resolution AG/RES. 2067 (XXXV-O/05), of June 7, 2005, resolatory point 2.

[148] In this regard, the IACHR has pointed out that "a state's human rights obligations are superior to the requirements of its domestic law and must be performed in good faith." IACHR: Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 42.